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Presidential Documents

Title 3—

The President

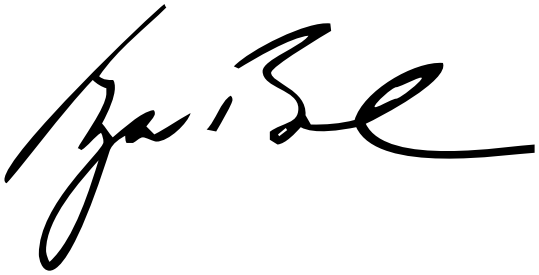
Presidential Determination No. 2002–09 of March 12, 2002

Eligibility of Palau, Kiribati, and Tuvalu to Receive Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 503(a) of the Foreign Assistance Act of 1961, as amended, and section 3(a)(1) of the Arms Export Control Act, I hereby find that the furnishing of defense articles and services to the Governments of Palau, Kiribati, and Tuvalu will strengthen the security of the United States and promote world peace.

You are authorized and directed to report this finding to the Congress and to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, March 12, 2002.

[FR Doc. 02–07103
Filed 03–21–02; 8:45 am]
Billing code 4710–10–M

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Title 3—

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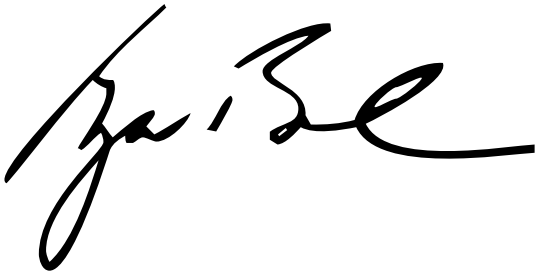

THE WHITE HOUSE,
Washington, March 12, 2002.

[FR Doc. 02–07103
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Billing code 4710–10–M

Presidential Documents

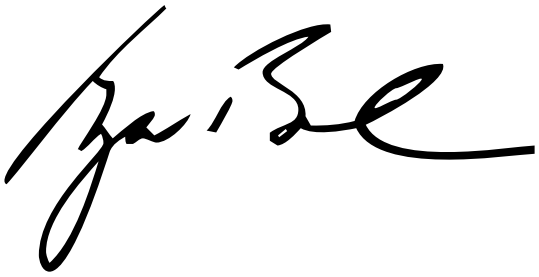
Presidential Determination No. 2002–10 of March 14, 2002

Designation of Bahrain as a Major Non-Nato Ally

Memorandum for the Secretary of State

Pursuant to the authority vested in me, by section 517 of the Foreign Assistance Act of 1961, as amended (the ''Act''), I hereby designate the Kingdom of Bahrain as a major non-NATO ally of the United States for the purposes of the Act and the Arms Export Control Act.

You are authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, March 14, 2002.

[FR Doc. 02–07102
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Presidential Documents

Presidential Determination No. 2002–10 of March 14, 2002

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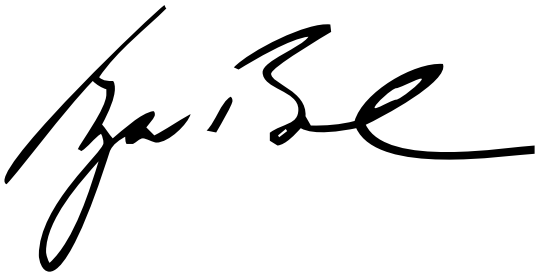

THE WHITE HOUSE,
Washington, March 14, 2002.

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

Farm Service Agency

7 CFR Part 780

Appeal Procedures

AGENCIES: Federal Crop Insurance Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) and the Farm Service Agency (FSA) are amending the general administrative regulations and appeal procedure regulations. The intended effect of this rule is to establish procedures for program participant appeals of adverse decisions made by the Risk Management Agency (RMA) and to incorporate the appeals procedures created by the Agricultural Risk Protection Act of 2000 regarding the appealability of determinations of good farming practices.

DATES: This rule is effective April 22, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy Kreitzer, Director, Appeals, Litigation and Legal Liaison Staff, Federal Crop Insurance Corporation, United States Department of Agriculture, 1400 Independence Avenue, SW., AG STOP 0820, Washington, DC 20250–0820, telephone (202) 690–1683.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order 12866 and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

This rule does not constitute a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Unfunded Mandates Reform Act of 1995

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

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. This action does not increase the burden on any entity because this action merely clarifies and establishes provisions for producers to use in filing appeals of adverse decisions. The effect on small entities is the same as that for large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

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

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed under the provisions of Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought against FCIC.

Environmental Evaluation

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

Background

This rule amends FCIC and FSA informal appeal regulations to reflect the establishment of RMA and the reorganization of crop insurance functions. On September 30, 1999, FCIC and FSA published a notice of proposed rulemaking in the **Federal Register** at 64 FR 52678–52680 to amend 7 CFR part 400, subpart J and 7 CFR part 780.

Discussion of Comments

Following publication of the proposed rule the public was afforded 60 days to submit written comments and opinions. A total of three timely comments were received in response to the request for comment on the proposed rule. The comments received and FCIC's responses are as follows:

Comment 1: A reinsured company requested clarification regarding (1) the type of adverse decision with respect to ''Compliance with program requirements'' that is envisioned to be subject to the rule; (2) the intent of the term ''indebtedness,'' notification to the private company, and the option to participate in any appeal proceedings involving Fiscal Operations and Systems Division (FOSD) decisions that involve contracts of insurance of the private insurance company; and (3) the ambiguity of the definition of the term ''adverse decision.''

Response: (1) Section 400.91(c) involves catastrophic risk protection

policies that may be sold directly by FCIC through local FSA offices. While none are currently sold in this manner, the authority to offer such coverage through local FSA offices still exists. In such cases, FCIC would be the entity that makes the decisions regarding eligibility, compliance with the policy provisions, and indemnity payments made. For the purpose of clarity, FCIC has revised the provisions to specifically refer to the crop insurance program. (2) Indebtedness, as used in the definition of the term ''FOSD,'' is one of the grounds upon which an insured can be determined to be ineligible for insurance. Under 7 CFR part 400, subpart U, either FCIC or the reinsured companies make the initial determination that an insured owes a debt and that the debt has not been timely paid based on whether the policy is insured or reinsured by FCIC. Since FCIC makes some direct determinations of indebtedness, the review process of these determinations must be included in the rule. For reinsured policies, the reinsured company provides notice to the producer that the producer owes a debt and the producer must be given an opportunity to dispute the debt. After this process is complete and the debt is determined to be delinquent, the reinsured company notifies FCIC, who then verifies that the debt is delinquent before listing the producer on the Ineligible List. FOSD's role is to determine indebtedness for FCIC insured policies and verify indebtedness for reinsured policies. The definition of the term ''FOSD'' has been revised to clarify its function with respect to policies that FCIC insures and reinsures. Even though FCIC only verifies the debt, since it is the agency that determines that the producer is ineligible, producers are entitled to appeal FCIC's listing of them on the Ineligible List. However, current regulations limit the reinsured company's role in the review process to that permitted by 7 CFR part 11. That rule does not permit the insurance company participation in these disputes. Until 7 CFR part 11 is revised, reinsured companies are not permitted to directly participate in the administrative review process. (3) FCIC recognizes that the definition of ''adverse decisions'' in 7 CFR part 11 is much broader than its applicability to FCIC decisions and, therefore, FCIC has revised the definition to limit its applicability to the crop insurance program.

Comment 2: A reinsured company questioned whether: (1) Section 400.91(a)(1) could be removed as no contracts were issued by FCIC; all are issued by private insurance companies; (2) the findings of the Compliance Division are intended to be included under section 400.91(c)(2); (3) section 400.91(c)(3) includes reinsured companies' decisions on claims since it is the reinsured company's decision with respect to whether a claim is paid; (4) sections 400.91(c)(4) and 400.91(d) are in conflict since subsection (c)(4) provides that participants may request an administrative review, mediation or appeal of adverse decisions made by the Agency relative to issuance of payments or other benefits to an individual or entity who is not a participant in the program and subsection (d) states that only a participant may seek an administrative review or mediation under this subpart; (5) the reinsured company will be held harmless by RMA if a mediation decision is arrived at that is counter to policy or procedural provisions; (6) the reinsured company will be made aware of the fact an appellant is seeking mediation, and what time frames apply for such notification; and (7) if ''FSA'' is included correctly in 780.2(a)(iv), under what authority, circumstances and provisions would FSA make decisions on private insurance carriers' policies.

Response: (1) As stated above, even though all policies are currently reinsured by FCIC, FCIC still has the authority to offer insurance directly to producers. As long as such authority exists, the appeal provisions must remain in effect. (2) Section 400.91(c)(2) only applies to decisions of FCIC regarding whether producers have complied with policy requirements under policies insured by FCIC. This provision has no bearing on those policies insured by the insurance companies since decisions regarding compliance are made by the reinsured company and are not appealable under this rule. (3) As stated above, section 400.91(c)(3) is only applicable to policies insured by FCIC and where FCIC is making the decision with respect to whether claims should be paid. (4) There is no conflict between section 400.91(c)(4) and section 400.91(d). Section 400.91(c)(4) specifically refers to situations where the payment was made to a non-participant such as assignments, etc. where the participant may be challenging the payment made under such an assignment to a non-participant. However, it is still only the participant who may challenge the action, not the non-participant. This is consistent with section 400.91(d). (5) A settlement in mediation is no different than any other appeals process whereby the parties determine their litigative risk. Mediation often assumes a compromise that may entail paying money when it is believed that the producer is not entitled. Reinsured companies do it every day when they settle disputes. If settlement of a dispute can be presumed to be an error or omission, then FCIC would not be required to reinsure such claims when reinsured companies settle a dispute. As in other settlement cases, the risk sharing provisions of the Standard Reinsurance Agreement continue to apply. (6) If the appeal involves a dispute regarding FCIC's conduct regarding a policy it reinsures, the reinsured company will be notified of such appeal in the manner as established in FCIC handbooks. (7) With respect to FSA's 7 CFR 780.2(a)(1), (a)(1)(iii), and (iv) are revised as the references to FCIC exceed the intended current scope of part 780 and because the explicit reference to FSA noninsured crop assistance program is unnecessary in light of other provisions in the section.

Comment 3: A trade association (1) commented that the proposed rule should include notification of companies when appeals are requested; (2) questioned whether section 400.93 is meant to refer to ''one administrative review'' or whether it should say ''an administrative review''; and (3) suggested several editorial or grammatical changes.

Response: (1) As stated above, reinsured companies will be notified in writing of any appeal of a FCIC decision regarding a policy that the reinsured company insures. (2) Section 400.93 refers to one administrative review to make it clear that producers only have one level of appeal in the informal administrative appeals process, which in some cases may be different than the appeals process that was available under 7 CFR part 780. (3) Some of the grammatical changes have been made.

FCIC also made other technical changes to improve the readability of this rule and remove conflicts with other provisions in this rule or with parts 11 or 780 of this title and other ambiguities that may have existed. FCIC has not made any substantive changes as a result of these technical corrections.

After the proposed rule was published and the comments received, Congress enacted ARPA, which created specific limitations on the appeals of determinations of good farming practices made by FCIC. Since these limitations are statutorily mandated, they are incorporated into this final rule. This entails revisions to many of the provisions to incorporate this new appeals process because mediation and

NAD appeal are not applicable to determinations regarding good farming practices. However, except as stated above, the substantive appeals process for adverse decisions remains the same.

List of Subjects in 7 CFR Parts 400 and 780

Administrative practice and procedure, Claims, Crop insurance, Fraud, Reporting and record keeping requirements.

Final Rule

For the reasons stated in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 400, subpart J, and the Farm Service Agency amends 7 CFR part 780 as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

1. Revise subpart J of part 400 to read as follows:

Subpart J—Appeal Procedure

Sec.

400.90 Definitions.
400.91 Applicability.
400.92 Appeals.
400.93 Administrative review.
400.94 Mediation.
400.95 Time limitations for filing and responding to requests for administrative review.
400.96 Judicial review.
400.97 Reservations of authority.

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

§ 400.90 Definitions.

Act. The Federal Crop Insurance Act (7 U.S.C. 1501–1524).

Administrative review. A review within the Department of Agriculture of an adverse decision.

Adverse decision. A decision by an employee or Director of the Agency that is adverse to the participant. The term includes the denial of program benefits, written agreements, eligibility, etc. that results in the participant receiving less funds than the participant believes should have been paid or not receiving a benefit to which the participant believes he or she was entitled.

Agency. RMA or FCIC, including the RSO, FOSD or any other division within the Agency with decision making authority.

Appellant. Any participant who appeals or requests mediation of an adverse decision of the Agency in accordance with this subpart. Unless otherwise specified in this subpart, the term ''appellant'' includes an authorized representative.

Authorized representative. Any person, whether or not an attorney, who has obtained a Privacy Act waiver and is authorized in writing by a participant to act for the participant in the administrative review, mediation, or appeal process.

Certified State. A State with a mediation program, approved by the Secretary, that meets the requirements of 7 CFR part 1946, subpart A, or a successor regulation.

FCIC. The Federal Crop Insurance Corporation, a wholly owned Government corporation within USDA.

FOSD. The Fiscal Operations and Systems Division established by the Agency for the purpose of making determinations of indebtedness for policies insured by FCIC and for determining ineligibility for policies both insured and reinsured by FCIC.

FSA. The Farm Service Agency, an agency within USDA, or its successor agency.

Good farming practices. The farming practices used in the area where the crop is produced, including sustainable farming practices, that are determined by FCIC to be necessary for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance and to be compatible with the agronomic and weather conditions in the area or, for crops grown under an organic practice, the farming practices recommended by a private organization or government agency that certifies organic products and is accredited in accordance with the requirements of the Federal Organic Food Production Act of 1990.

Mediation. A process in which a trained, impartial, neutral third party (the mediator), meets with the disputing parties, facilitates discussions, and works with the parties to mutually resolve their disputes, narrow areas of disagreement, and improve communication.

NAD. The USDA National Appeals Division. See 7 CFR part 11.

Non-certified State. A State that is not approved by the Secretary of Agriculture to participate in the USDA Mediation Program under 7 CFR part 1946, subpart A, or its successor regulation.

Participant. An individual or entity that has applied for crop insurance or who holds a valid crop insurance policy that was in effect for the previous crop year and continues to be in effect for the current crop year. The term does not include individuals or entities whose claims arise under the programs excluded in the definition of participant published at 7 CFR 11.1.

Reinsured company. A private insurance company, including its agents, that has been approved and reinsured by FCIC to provide insurance to participants.

Reviewing authority. A person assigned the responsibility by the Agency of making a decision on a request for administrative review by the participant in accordance with this subpart.

RMA. The Risk Management Agency, an agency within USDA, or its successor agency.

RSO. The Regional Service Office established by the Agency for the purpose of providing program and underwriting services for private insurance companies reinsured by FCIC under the Act and for FCIC insurance contracts delivered through FSA offices.

Secretary. The Secretary of Agriculture.

USDA. United States Department of Agriculture.

§ 400.91 Applicability.

(a) This subpart applies to:

(1) Adverse decisions made by personnel of the Agency with respect to:

(i) Contracts of insurance insured by FCIC; and

(ii) Contracts of insurance of private insurance companies and reinsured by FCIC under the provisions of the Act.

(2) Determinations of good farming practices made by personnel of the Agency.

(b) This subpart is not applicable to any decision:

(1) Made by the Agency with respect to any matter arising under the terms of the Standard Reinsurance Agreement with the reinsured company; or

(2) Made by any private insurance company with respect to any contract of insurance issued to any producer by the private insurance company and reinsured by FCIC under the provisions of the Act.

(c) With respect to matters identified in § 400.91(a)(1), participants may request an administrative review, mediation, or appeal of adverse decisions by the Agency made with respect to:

(1) Denial of participation in the crop insurance program;

(2) Compliance with terms and conditions of insurance;

(3) Issuance of payments or other program benefits to a participant in the crop insurance program; and

(4) Issuance of payments or other benefits to an individual or entity who is not a participant in the crop insurance program.

(d) Only a participant may seek an administrative review or mediation under this subpart, as applicable.

§ 400.92 Appeals.

(a) Except for determinations of good farming practices, nothing in this subpart prohibits a participant from filing an appeal of an adverse decision directly with NAD in accordance with part 11 of this title without first requesting administrative review or mediation under this subpart.

(b) If the participant has timely requested administrative review or mediation, the participant may not participate in a NAD hearing until such administrative review or mediation is concluded. The time for appeal to NAD is suspended from the date of receipt of a request for administrative review or mediation until the conclusion of the administrative review or mediation. The participant will have only the remaining time to appeal to NAD after the conclusion of the administrative review or mediation.

(c) There is no appeal to NAD of determinations regarding good farming practices.

§ 400.93 Administrative review.

(a) With respect to adverse decisions, an appellant may seek one administrative review or seek mediation under § 400.94, but not both. Only an administrative review is available for determinations of good farming practices. Mediation is not available for determinations of good farming practices.

(b) If the appellant seeks an administrative review, the appellant must file a written request for administrative review with the reviewing authority in accordance with § 400.95. The written request must state the basis upon which the appellant relies to show that:

(1) The decision was not proper and not made in accordance with applicable program regulations and procedures; or

(2) All material facts were not properly considered in such decision.

(c) The reviewing authority will issue a written decision that will not be subject to further administrative review by the Agency.

§ 400.94 Mediation.

For adverse decisions only:

(a) Appellants have the right to seek mediation or other forms of alternative dispute resolution instead of an administrative review under § 400.93.

(b) All requests for mediation under this subpart must be made after issuance of the adverse decision by the Agency and before the appellant has a NAD hearing on the adverse decision.

(c) An appellant who chooses mediation must request mediation not later than 30 calendar days from receipt of the written notice of the adverse decision. A request for mediation will be considered to have been ''filed'' when personally delivered in writing to the appropriate decision maker or when the properly addressed request, postage paid, is postmarked.

(d) An appellant will have any balance of the days remaining in the 30-day period to appeal to NAD if mediation is concluded without resolution. If a new adverse decision that raises new matters or relies on different grounds is issued as a result of mediation, the participant will have a new 30-day period for appeals to NAD.

(e) An appellant is responsible for contacting the Certified State Mediation Program in States where such mediation program exists. The State mediation program will make all arrangements for the mediation process. A list of Certified State Mediation Programs is available at *http://www.act.fcic.usda.gov.*

(f) An appellant is responsible for making all necessary contacts to arrange for mediation in non-certified States or in certified States that are not currently offering mediation on the subject in dispute. An appellant needing mediation in States without a certified mediation program may request mediation by contacting the RSO, which will provide the participant with a list of acceptable mediators.

(g) An appellant may only mediate an adverse decision once.

(h) If the dispute is not completely resolved in mediation, the adverse decision that was the subject of the mediation remains in effect and becomes the adverse decision that is appealable to NAD.

(i) If the adverse decision is modified as a result of the mediation process, the modified decision becomes the new adverse decision for appeal to NAD.

§ 400.95 Time limitations for filing and responding to requests for administrative review.

(a) A request for administrative review must be filed within 30 days of receipt of written notice of the adverse decision or determination regarding good farming practices. A request for an administrative review will be considered to have been ''filed'' when personally delivered in writing to the appropriate decision maker or when the properly addressed request, postage paid, is postmarked.

(b) Notwithstanding paragraph (a) of this section, an untimely request for administrative review may be accepted and acted upon if the participant can demonstrate a physical inability to timely file the request for administrative review.

§ 400.96 Judicial review.

(a) With respect to adverse determinations:

(1) A participant must exhaust administrative remedies before seeking judicial review of an adverse decision. This requires the participant to appeal an Agency adverse decision to NAD in accordance with 7 CFR part 11 prior to seeking judicial review of the adverse decision.

(2) If the adverse decision involves a matter determined by the Agency to be not appealable, the appellant must request a determination of non-appealability from the Director of NAD, and appeal the adverse decision to NAD if the Director determines that it is appealable, prior to seeking judicial review.

(3) A participant with a contract of insurance reinsured by the Agency may bring suit against the Agency if the suit involves an adverse action in a United States district court after exhaustion of administrative remedies as provided in paragraphs (a) and (b) of this section. Nothing in this section can be construed to create privity of contract between the Agency and a participant.

(b) With respect to determinations regarding good farming practices, participants are not required to exhaust their administrative remedies before bringing suit against FCIC in a United States district court. Any determination by the Agency, or reviewing authority, regarding good farming practices shall not be reversed or modified as the result of judicial review unless the determination is found to be arbitrary or capricious.

§ 400.97 Reservations of authority.

(a) Representatives of the Agency may correct all errors in entering data on program contracts and other program documents, and the results of computations or calculations made pursuant to the contract.

(b) Nothing contained in this subpart precludes the Secretary, the Manager of FCIC, or the Administrator of RMA, or a designee, from determining at any time any question arising under the programs within their respective authority or from reversing or modifying any adverse decision.

PART 780—APPEAL REGULATIONS

2. The authority citation for 7 CFR part 780 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 714b and 714c; 16 U.S.C. 590h.

§ 780.1 [Amended]

3. Amend § 780.1 to remove the definition of ''Regional Service Office,''

the term ''FCIC'' in the definition of ''agency,'' and ''or the FCIC Regional Service Office'' in the definition of ''final decision.''

§ 780.2 [Amended]

4. In § 780.2:

a. Amend paragraph (a)(2) to remove the initials ''FCIC'' wherever they appear.

b. Remove paragraphs (a)(1)(iii), (a)(1)(iv), and (a)(3).

§ 780.7 [Amended]

5. In § 780.7:

a. Amend the to remove the phrase ''and reconsideration with the regional service offices.''

b. Amend §§ 780.7(b), (c) and (e), to remove the phrase ''or the Regional Service Office,'' wherever it may appear.

§ 780.11 [Amended]

6. Amend § 780.11 to remove the words ''FCIC,'' and ''the Manager of FCIC,'' wherever they may appear.

Signed in Washington, DC, March 15, 2002.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 02–6888 Filed 3–21–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 362 and 381

[Docket No. 01–045F]

RIN 0583–AC84

Mandatory Inspection of Ratites and Squabs

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is affirming the interim final rule that it published on May 7, 2001 (66 FR 22899) that amended the Poultry Products Inspection Regulations and the Voluntary Poultry Inspection Regulations to make the slaughtering and processing of ratites and squabs subject to mandatory inspection. The Agency acted in response to the FY 2001 Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act (the Appropriations Act). The Agency invited interested parties to comment on the interim final rule. FSIS is also making minor clarifying modifications to the regulations concerning ratites and squabs and is extending for an additional 12 months the time allowed for foreign countries to become equivalent for exporting ratites or squabs to the United States.

DATES: This final rule will be effective April 22, 2002.

FOR FURTHER INFORMATION CONTACT: For information about the final rule, contact Robert Ragland, DVM, Acting Director, Inspection and Enforcement Standards Development Staff, Office of Policy, Program Development, and Evaluation, FSIS, U.S. Department of Agriculture, Room 202, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700, (202) 720–3219.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 2001, the Food Safety and Inspection Service (FSIS) published an interim final rule (66 FR 22899) that amended the Poultry Products Inspection Regulations (Part 381) and the Voluntary Poultry Inspection Regulations (Part 362) to include ratites and squabs under the mandatory poultry products inspection regulations. (The interim final rule was originally published on May 1, 2001 (66 FR 21631), but had to be republished on May 7, 2001 because of printing errors.) The Agency acted in response to the FY 2001 Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act (the Appropriations Act), signed by the President on October 28, 2000, which provided that 180 days after the date of its enactment, U.S. establishments slaughtering or processing ratites or squabs for distribution into commerce as human food will be subject to the requirements of the Poultry Products Inspection Act (21 U.S.C. 451, *et seq.*) (PPIA), rather than the voluntary poultry inspection program under section 203 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622) (AMA). That provision of the Appropriations Act was effective on April 26, 2001.

Import Inspection

In the interim final rule FSIS allowed foreign countries 18 months from the effective date (April 26, 2001) to become equivalent for exporting ratites and squabs to the U. S. Thus, foreign countries had until October 26, 2002 to do so. FSIS is now extending this time for an additional 12 months to allow countries exporting or wanting to export ratite and squab products to go through the equivalency process. A 12 month extension is being granted because the original 18 month period has proved to be inadequate to complete both the equivalence evaluations and the notice and comment period rulemaking that are necessary to complete an equivalence process. The extended effective date will now be October 26, 2003.

FSIS will make equivalency determinations in accordance with 9 CFR part 327. If FSIS finds the country's export inspection system to be equivalent to the U.S. domestic inspection system, FSIS will publish a proposal in the **Federal Register** to list the country as eligible to export ratites or squabs to the United States. After the public has had 60 days to comment on the proposed rule, FSIS will review all of the public comments and make a final determination of equivalency and a determination whether to list the country as equivalent and, therefore, eligible to export ratites or squabs to the United States. This determination will be announced in a final rule in the **Federal Register**, along with FSIS's responses to the public comments. At that time, the country's inspection service may certify establishments for export of ratites and squabs to the United States. In the interim final rule FSIS also set out what countries exporting or wanting to export ratites and squabs needed to do prior to receiving an equivalency determination. These instructions remain unchanged.

Comments on the Interim Final Rule

FSIS provided 60 days for public comment on the interim final rule, ending July 2, 2001. The Agency received comments from industry groups, the European Union, and one individual. FSIS addresses their specific comments.

Comment: The commenters took issue with the definition of ''squab'' as a ''young flightless pigeon.'' They pointed out that this definition is not always correct and is unenforceable. The commenters requested that the definition of ''squab'' be changed to a ''young pigeon from one to about thirty days of age,'' the definition used by Wendell Levi in his authoritative book, *The Pigeon*.

Response: FSIS agrees that program inspection personnel have no way of distinguishing between squabs that have flown and those that have not flown and, therefore, is changing the definition of ''squabs'' to ''young pigeons from one to about thirty days of age.''

Comment: Commenters stated that the Agency made a mistake including just

squabs and not all pigeons under the mandatory poultry products inspection regulations because such was the clear intent of the Congress to include all pigeons under the PPIA.

Response: The Agency disagrees. The Appropriation Act states specifically that ''squabs'' are to be inspected under the PPIA. It does not mention pigeons.

Comment: The European Union (EU) commented that because of the Sanitary Phytosanitary (SPS) equivalence agreement between the EU and the United States (U.S.), FSIS should not certify individual nations in the EU, but rather the Agency should consider the EU as a single entity.

Response: The U.S. and the EU have signed an agreement that establishes a mechanism for the recognition of equivalent sanitary measures maintained by either party (Agreement between the European Community and the United States of America on sanitary measures to protect public health in trade in live animals and animal products commonly called the ''Veterinary Equivalence Agreement'' or ''VEA''). Initially, the Agreement is limited to those sanitary measures enumerated by both parties in an Appendix to the Articles. The Agreement itself is not a blanket recognition of mutual equivalence. Thus, there is no basis for treating the EU as a single exporting country of ratites or any other poultry species.

While the U.S. has agreed in principle that EU poultry standards are equivalent to those of the United States, no final determination has been made that they meet the level of protection that the U.S. deems appropriate. In the interim, the U.S. will continue to accept poultry products from EU Member States that were judged equivalent prior to signing of the VEA. Other Member States may demonstrate that they also have equivalent poultry inspection systems.

In order to make additional poultry equivalence determinations, the U.S. will require documentation (1) that all applicable EU poultry directives have been transposed into country legislation, as is required by EU law, and (2) that they have implemented EU standards appropriately. In addition, a Member State would also need to demonstrate that U.S. pathogen reduction and HACCP requirements—which are not covered by the VEA—have been assimilated into its poultry inspection system and are being implemented in an equivalent manner. Certain other U.S. regulatory import requirements must be met as well.

Comment: One commenter supported any legislation that would increase the consumption of emus.

Response: As is stated in the Regulatory Impact Analysis, the mandatory inspection of ratites and squabs should lead to increased consumption of ratites and squabs.

Summary of the Final Rule

FSIS is affirming the interim final rule on the mandatory inspection of ratites and squabs (66 FR 22899). FSIS is also extending the date for foreign countries to become equivalent for exporting ratite and squabs to the United States for an additional 12 months. The new date will be October 26, 2003. The Agency is also amending the paragraph in § 381.1(b) that defines poultry by changing the definition of squabs from ''young pigeons that have not flown'' to ''young pigeons from one to about thirty days of age.'' FSIS is also modifying § 381.71 (b) by removing the word ''carcasses'' from the first sentence of this paragraph to make the language clearer. Moreover, the Agency is adding further information to § 381.94 on the *E. coli* testing and sampling for ratites and squabs as it does for other species under mandatory inspection. This information makes explicit the fact that FSIS has not established specific performance standards for *E. coli* testing of either ratites or squabs.

Regulatory Impact Analysis

Basis for Regulatory Action

The interim final rule amended § 362.1(d) by removing squab from the definition of poultry in the Voluntary Poultry Inspection Regulations and amended Part 381 to include ratites and squabs under the Agency's mandatory poultry inspection requirements.

Baseline

Ratites and squabs are now amenable species and are inspected by the Agency under the mandatory poultry inspection regulations. These species are also inspected under State programs. Ratites are an order of flightless birds that includes ostriches, emus, rheas, cassowaries, and kiwis. The most economically important species of ratites are the ostrich and the emu. Squabs are young pigeons from one to about thirty days of age. Ratite meat and squab meat are valued for their flavor and nutritional characteristics.

Since 1992, when FSIS first granted a request for voluntary inspection for ostriches, approximately 166 establishments have been issued a grant of inspection for ratite operations. Currently, approximately 100 establishments possess a grant of inspection. In 1999, there were a total of 48,286 (76%) ratites inspected in Federal establishments, and 14,427 (24%) ratites inspected in State establishments, or a total of 62,713 ratites inspected (Table 1). Ostriches made up the largest share (69%) of the ratites inspected under the Federal program, whereas emus made up the largest share (56%) of the ratites inspected under State programs.

TABLE 1.—RATITES AND SQUAB INSPECTION VOLUME AND ESTABLISHMENTS, FY 1999

Species	Federal establishments		State establishments		Total inspected
	Number inspected	Percent of total	Number inspected	Percent of total	
Ratites:					
Ostrich	33,521	86	5,254	14	38,775
Emu	14,745	64	8,068	36	22,813
Other	20	2	1,105	98	1,125
Ratites:					
Total	48,286	76	14,427	24	62,713
Squabs	175,496	14	1,122,131	86	1,297,627
Totals	223,782	16	1,136,558	84	1,360,340
Ests	Number		Number		
Squabs	2		2		
Ratites	99		95		

In 1999, States with a large share of ratites inspected under the Federal program were California, Georgia, Illinois, Louisiana, Oklahoma, and Texas. Alabama, California, Mississippi, North Carolina, Ohio, and Texas inspected a large share of ratites under State programs. There were almost an equal number of establishments involved in slaughter of ratites under the Federal (99) and State (95) inspection programs.

Ostriches

Ostrich is the largest bird in the world, standing about seven to eight feet tall and weighing 300–400 pounds when fully grown. Industry representatives indicate that there were about 600 ostrich growers 1998, down from 1000 growers in 1996. There is significant uncertainty about the annual production of ostriches and other ratites at this time.

Ostriches are slaughtered at an average age of 12 months. The average weight at slaughter is 350 pounds. Ostrich meat is sold as steaks, fillets, medallions, roasts, and ground meat. Because of their size ostriches are currently slaughtered in establishments that are equipped to process other red meat species such as cattle, sheep, goats, and swine.

Emus

A mature emu reaches a height of 5 to 6 feet, weighing 90 to 120 pounds. In 1999, 22,813 emus were inspected under Federal and State programs (Table 1). There are a number of valuable products derived from emus in addition to their meat.

There is also significant uncertainty about the annual production of emus. Some sources indicate that there may be as many as 500,000 birds on 5,000 to 6,000 farms in the U.S., with the majority of them in Texas, Oklahoma, and elsewhere in the Southwest.

Squabs

Squabs are young pigeons from one to about thirty days of age. Squabs usually weigh 1 pound or less at the time of slaughter (about 4 weeks old). In 1999, California and Oregon were the only two States that inspected squabs under the Federal voluntary inspection program. In that year, 175,496 squabs were inspected (Table 1). During that same period 1,122,131 squabs were inspected under the State inspection programs of California and South Carolina.

Regulatory Alternatives

FSIS considered two options in developing its interim final rule. The first option was to only change the definition of ''poultry'' in the Poultry Products Inspection Regulations to include ratites and squabs. This approach may have caused confusion in the industry because it would be difficult to apply some of the current poultry regulations to ratites and squabs, e.g., chilling and certain handling requirements.

The Agency's second option was to make the changes required by statute and other changes as noted above. FSIS selected this option because it provided a more orderly transition from voluntary inspection to mandatory inspection of ratites and squabs than the first option at little or no additional cost. The Agency is now affirming this option in this final rule.

Benefits

There are three primary benefits that may result from extending mandatory inspection services to ratites and squabs: industry growth, public health, and industry cost savings.

Having the mark of inspection on ratite and squab products will likely lead to greater consumer confidence and acceptance of the products. Demand would be expected to increase as a result. Establishments that are able to capitalize on the change in consumer preference would realize increased sales of these products. To the extent that inspection promotes growth in the ratite and squab industry, society could benefit also from the increased employment and earnings of workers in these establishments. Studies are not available to identify the potential growth in the industry that may occur.

The public health benefits of inspection are related to the reduction in risk associated with consumption of all ratite and squab meat that must be inspected using the same procedures employed in the meat and poultry industries. HACCP systems, Sanitation SOPs, and process control practices have been shown to reduce contamination by harmful foodborne pathogens.

A shift to the mandatory inspection system eliminated the payment of fees for inspection services. This is not a benefit from an economic perspective as the costs of inspection are transferred elsewhere in the economy. Since FSIS is recovering these costs through appropriated funds, the change to a mandatory inspection system results in an income transfer from the public to the ratite and squab industry. The total cost savings to the industry will be about $2 million in 2001, with the possibility of increasing over time with the expansion of the industry.

Industry Costs

The compliance cost of extending mandatory inspection to ratite and squab species is negligible. All establishments involved in slaughtering amenable species, as of January 25, 2000, must be in compliance with the provisions of Pathogen Reduction/Hazard Analysis Critical Control Point (PR/HACCP) final rule. Under the provisions of the rule, all slaughter establishments under mandatory inspection are required to have HACCP plans and meet process control requirements. Nearly all establishments that slaughter and process ratites and squabs, because they also slaughtered other species under mandatory inspection, had already implemented HACCP, Sanitation SOPs, and other measures consistent with mandatory inspection. These establishments were required under the interim final rule to make changes to their HACCP or sanitation procedures to include ratites and squabs. The Agency estimates that establishments that had not included ratites and squabs in their HACCP plans[1] incurred a minimal cost of $500.00 associated with HACCP plan modification.

Because poultry is subject to mandatory Federal inspection, ratites and squabs are now subject to *E. coli* testing requirements. Establishments that slaughter more than one kind of poultry and livestock are required to test the species that the establishment slaughters in the greatest number. Agency research indicates that the number of establishments where ratites and squabs are the species being slaughtered in the greatest number is very low. Consequently, very few establishments are being required to perform additional *E. coli* testing for process control verification. The costs per establishment for *E. coli* testing are shown in Table 2.

For those establishments that slaughtered and processed ratites and squabs under voluntary inspection, the transition to mandatory inspection did not require changes in equipment and processing methods. Ratites are currently being slaughtered and processed in establishments that are equipped to process cattle, sheep, goats, and swine. Squabs are processed using the same equipment and procedures as those used for young chickens.

The Agency estimates that 50% of the Federal establishments (50 establishments) and 25% of the State establishments (24 establishments) made minor changes in their HACCP

[1] HACCP plans are not required to cover non-amenable species.

plan to accommodate mandatory inspection requirements for ratites.

TABLE 2.—POTENTIAL COSTS FOR MANDATORY FEDERAL INSPECTION

Costs	Per est. (dollars)	Industry ($thousand)
Start up Cost:		
HACCP Plan Modification	500	37.0
SSOP Modification	100	7.4
Recurring Cost:		
E. coli Sampling (26 samples@$20 per sample per establishment)	520	38.5
Recordkeeping	300	22.2
Total	1,420	105.1

Another cost that applies to all establishments applying for Federal mandatory inspection is the application cost. This cost is negligible, as it is limited to a one-time cost for filling out an application, about $10. The total compliance cost to the establishments identified above are estimated to be $105,100.

FSIS Costs

The Agency anticipates the need to conduct baseline microbiological studies. These studies constitute the major costs to the Agency totaling $205,000.

Microbiological Testing

The microbiological studies will help the Agency determine the prevalence of harmful bacteria or pathogens in ratites and squabs. These studies can also be used to develop performance standards for pathogen reduction. The cost of a microbiological baseline testing for ratites will be $110,000 and for squabs, $95,000 (Tables 3 and 4).

TABLE 3.—COST TO FSIS OF A MANDATORY RATITE INSPECTION PROGRAM

One-time costs	Inspection hours	$Thousand
Microbiological Baseline		110.0
Transfer Payment [1]:		
Federally-Inspected Ests	38,524	$1,959.0

[1] The hourly rate for Federal inspection in FY 2000 is estimated to be $38.44 per hour.

TABLE 4.—FSIS MANDATORY SQUAB INSPECTION PROGRAM COSTS

One-time costs	Inspection hours	$Thousand
Microbiological Baseline		95.0
Transfer Payment [1]:		
Federally-Inspected Ests	322	16.4

[1] The hourly rate for Federal inspection in FY 2000 is estimated to be $38.44 per hour.

Transfer Payments

Under voluntary inspection, establishments pay for inspection services. The funds for mandatory inspection activities are appropriated from Federal tax revenues. The transition from voluntary to mandatory inspection changes the source of inspection program funding. The Agency estimates that the industry cost of inspection of ratites and squabs for 1999 in Federal establishments was $1,975,000, of which ratites accounted for $1,959,000 and squabs for $16,400, including overhead (Tables 3 and 4).

With ratite and squab inspection mandatory, it is possible that the volume of ratites and squabs inspected at Federally inspected establishments will increase beyond what is currently being inspected. An establishment that was under a State inspection program that shipped ratites and squabs in interstate commerce had to shift to Federal inspection to maintain its markets. It is expected that 25% of the establishments that were under State voluntary inspection will migrate to the Federal mandatory program. This analysis does not take into account the potential increase in the demand for inspection services. Both species currently account for an extremely small share of meat and poultry inspection. Changes in the required level of inspection program personnel are not expected to be significant in the near-term.

The estimated total cost of inspection in State establishments was $554,400 for 14,427 ratites and 1,122,131 squabs for FY 1999. Under the agreement the Agency formerly had with a State having a voluntary inspection program, the Agency paid half of the inspection program costs, or $277,191 (Table 5).

Under the mandatory program, States no longer are able to collect fees for inspection services. States may decide to terminate their ratite and squab inspection programs. If terminations occur, FSIS will take over inspection at the facilities operating under the State program and thereby absorb the total costs of inspection at these establishments. For those States that did not have a State voluntary program for ratites and squabs, the impact of a Federal mandatory inspection program is minimal. The payment of these costs at previously State inspected establishments is an income transfer similar to that occurring for Federally inspected establishments.

The total transfer payment to Federal and State establishments is $2,252,000 ($1,975,000 plus $277,000).

TABLE 5.—RATITES AND SQUABS INSPECTION COST AT STATE ESTABLISHMENTS—FY 1999

Species	Number inspected	Total inspection hours required	Total cost of inspections [1] ($thousand)
Ratites	14,427	11,510	442.4

TABLE 5.—RATITES AND SQUABS INSPECTION COST AT STATE ESTABLISHMENTS—FY 1999—Continued

Species	Number inspected	Total inspection hours required	Total cost of inspections [1] ($thousand)
Squabs	1,122,131	2,912	111.9
Total	1,136,558	14,422	554.4

[1] FSIS hourly base rate of $38.44 times inspection hours required.

Consumer Cost

In large part, the costs of ratite and squab inspection were transferred from producers to taxpayers. With the burden of paying for inspection service eliminated, establishments may transfer these cost savings to consumers through lower prices.

Economic Impact on International Trade Assessment

Countries that previously had little interest in export certification may petition FSIS because these additional species now come under mandatory inspection. Foreign establishments that specialize in exotic species may seek to broaden their markets by exporting to the United States. The Agency may need to evaluate the equivalence of a greater number of foreign food regulatory inspection systems.

Executive Order 12866 and Regulatory Flexibility Act

Because this final rule has been determined to be significant, the Office of Management and Budget (OMB) has reviewed it under Executive Order 12866.

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact, as defined by the Regulatory Flexibility Act (5 U.S.C. 601), on a substantial number of small entities.

Small establishments will not be adversely affected by this final rule. Few establishments slaughter and process ratites or squabs exclusively. For small slaughtering establishments as well as large ones, ratites and squabs do not comprise all or even most of their business. Of the 100 establishments that slaughter or process ratites and squabs, only two slaughter over 90% of the squabs consumed in the market. There are no establishments that dominate the slaughtering of ratites. Small entities will benefit along with the rest of the industry with the increased marketability of their product and the cost savings realized because they no longer have to pay fees to either FSIS or the State for voluntary inspection service.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35, respectively, must be exhausted before any judicial challenge of the application of the provisions of this final rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the PPIA.

Executive Order 13132

Executive Order 13132, ''Federalism,'' requires that agencies assess the federalism implications of their policy statements and actions, i.e., the effects of those statements and actions 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. The Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) preempt State and local laws in regard to the manufacture and distribution of meat and poultry products. Therefore, FSIS policy statements and actions affect federalism within the context of these statutory preemptions.

States and local jurisdictions are preempted by the FMIA and PPIA from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA and the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are within their jurisdiction and outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA and PPIA, or, in the case of imported articles, that are not at such an establishment, after their entry into the United States.

Specifically, under section 301 of the FMIA and section 5 of the PPIA, a State may administer State meat and poultry inspection programs provided that it has developed and is effectively enforcing State meat and poultry inspection requirements at least equal to those imposed under titles I and IV of the FMIA and sections 1–4, 6–10, and 12–22 of the PPIA. These titles contemplate continuous ongoing programs. When States can no longer effectively enforce meat and poultry inspection requirements at least equal to Federal requirements, they must be ''designated'' by the Secretary to receive Federal inspection.

When FSIS revises its meat and poultry inspection requirements, States that administer their own inspection programs may be affected, since they must continue to enforce requirements equal to those of FSIS. To minimize any additional costs States must incur to modify their inspection programs, FSIS grants the States significant flexibility under the ''equal to'' provisions of the FMIA and PPIA. Further, States are eligible to receive up to 50 percent Federal matching funds to cover the costs of their inspection programs.

Paperwork Reduction Act Requirements

The Office of Management and Budget has approved the paperwork and recordkeeping requirements under approval number 0583–0122.

Departmental Regulation 4300–4, ''Civil Rights Impact Analysis''

FSIS has considered under Departmental Regulation 4300–4, ''Civil Rights Impact Analysis,'' dated September 22, 1993, the potential civil rights impact of this final rule on minorities, women, and persons with disabilities.

The purpose of the final rule is to affirm the interim final rule (66 FR 22899) that included ratites and squabs under mandatory Poultry Products Inspection Regulations.

Congress mandated the inspection of ratites and squabs by April 26, 2001. The Agency promulgated an interim final rule that made all of the necessary changes to the mandatory poultry

products regulations to include ratites and squabs. This final rule affirms the interim final rule and makes two minor amendments to the regulations.

The requirements placed on the relatively small number of establishments that slaughter or process ratites or squabs are consistent with FSIS mandatory regulatory requirements for other species. The economic impacts on these establishment are in line with the benefits that the public should expect and with what the establishments should expect to recover as a result of moving from voluntary to mandatory inspection. For the overwhelming majority of establishments potentially affected by the move to mandatory inspection, the impacts will be beneficial.

Of the 7,500 Federal and State inspected meat and poultry establishments for which data are available, 317 are owned by females and 297 are owned by non-whites—or a total of about 4 percent of these establishments are female or minority owned. This compares to the 1992 Census figures for all U.S. firms which showed that minorities owned 6.3 percent and women owned 11.2 percent of businesses. No data are available at this time on the disabilities of the owners of meat and poultry establishments. Nor is any data available on the ownership of establishments that slaughter or process ratites and squabs.

There is no evidence to suggest that the establishments owned by minorities would be any more or less affected than establishments owned by non-minorities.

Neither will the final rule have a significant adverse impact on low-income consumers or minority employment. The costs associated with implementing the final rule will not be unduly burdensome to industry and will provide an economic benefit to the industry as a whole. Consumers may realize lower prices for ratites and squabs.

FSIS has used the available information to evaluate the potential impacts of the proposal on small entities and to determine civil rights impacts.

Additional Public Notice

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this final rule, FSIS will announce and provide copies of this **Federal Register** publication in the *FSIS Constituent Update*. FSIS provides a weekly *FSIS Constituent Update* via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience than would be otherwise possible. For more information or to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

List of Subjects in 9 CFR Part 381

Poultry and poultry products

Accordingly, the interim final rule published on May 7, 2001 (66 FR 22899) amending 9 CFR parts 362 and 381 is adopted as final, with the following changes:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for Part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

2. Section 381.1 (b) is amended by revising the definition of poultry to read as follows:

§ 381.1 Definition

* * * * *

Poultry. ''Poultry'' means any domesticated bird (chickens, turkeys, ducks, geese, guineas, ratites, or squabs, also termed young pigeons from one to about thirty days of age), whether live or dead.

* * * * *

3. Amend § 381.71 by revising paragraph (b) to read as follows:

§ 381.71 Coverage of all poultry and poultry products processed in official establishments.

* * * * *

(b) Dead-on-arrival ratites and ratites condemned on ante mortem inspection will be tagged ''U.S. Condemned'' by an establishment employee under FSIS supervision and disposed of by one of the methods prescribed in § 381.95.

* * * * *

4. Amend § 381.94 by revising paragraphs (a)(2)(ii), (a)(2)(iii)(B), (a)(2)(v)(A), Table 1 in paragraph (a)(5)(i), and Table 2 in paragraph (b)(1) as follows:

§ 381.94 Contamination with Microorganisms; process control verification criteria and testing; pathogen reduction standards.

(a) * * *

(2) * * *

(ii) *Sample collection.* A whole bird must be taken from the end of the chilling process. If this is impracticable, the whole bird can be taken from the end of the slaughter line. Samples must be collected by rinsing the whole carcass in an amount of buffer appropriate for that type of bird. Samples from turkeys or ratites also may be collected by sponging the carcass on the back and thigh.[1]

(iii) * * * (B) Turkeys, Ducks, Geese, Guineas, Squabs, and Ratites: 1 sample per 3,000 carcasses, but at a minimum one sample each week of operation.

* * * * *

(v) * * * (A) Very low volume establishments annually slaughter no more than 440,000 chickens, 60,000 turkeys, 60,000 ducks, 60,000 geese, 60,000 guineas, 60,000 squabs, 6,000 ratites, or a combination of all types of poultry not exceeding 60,000 turkeys and 440,000 birds total. Very low volume establishments that slaughter turkeys, ducks, geese, guineas, squabs, or ratites in the largest number must collect at least one sample during each week of operation after June 1 of each year, and continue sampling at a minimum of once each week the establishment operates until June of the following year or until 13 samples have been collected, whichever comes first.

* * * * *

(5)(i) * * *

[1] A copy of FSIS's ''Guidelines for *Escherichia coli* Testing for Process Control Verification in Poultry Slaughter Establishments,'' and ''FSIS Turkey Microbiological Procedures for Sponge Sample Collection and Methods of Analysis'' are available for inspection in the FSIS Docket Room.

TABLE 1.—EVALUATION OF E. COLI TEST RESULTS

Types of poultry	Lower limit of marginal range (m)	Upper limit of marginal range (M)	Number of samples tested (n)	Maximum number permitted in marginal range (c)
Chickens	[1] 100	[1] 1,000	13	3
Turkeys	*NA	*NA	*NA	*NA
Ducks	*NA	*NA	*NA	*NA
Geese	*NA	*NA	*NA	*NA
Guineas	*NA	*NA	*NA	*NA
Squabs	*NA	*NA	*NA	*NA
Ratites	*NA	*NA	*NA	*NA

[1] CFU/ml.
*Values will be added upon completion of data collection programs.

* * * * * * *

(b) * * *
(1) * * *

TABLE 2.—SALMONELLA PERFORMANCE STANDARDS

Class of product	Performance Standard (percent positive for salmonella) [a]	Number of samples tested (n)	Maximum number of positives to achieve standard (c)
Broilers	20.0%	51	12
Ground chicken	44.6	53	26
Ground turkey	49.9	53	29
Turkeys	[b] NA	NA	NA
Squabs	[b] NA	NA	NA
Ratites	[b] NA	NA	NA

[a] Performance Standards are FSIS's calculation of the national prevalence of Salmonella on the indicated raw products based on data developed by FSIS in its nationwide microbiological baseline data collection programs and surveys. (Copies of Reports on FSIS's Nationwide Microbiological Data Collection Programs and Nationwide Microbiological Surveys used in determining the prevalence of Salmonella on raw products are available in the FSIS Docket Room.)
[b] Not available; baseline targets for turkeys, squabs, or ratites will be added upon completion of the data collection programs for that product.

* * * * *

Done at Washington, DC, on March 18, 2002.

Margaret O'K. Glavin,

Acting Administrator.

[FR Doc. 02–6836 Filed 3–21–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–75–AD; Amendment 39–12686; AD 2002–06–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300; A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600); and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Airbus Model A300; A300–600; and A310 series airplanes. This action requires certain inspections of the airplane (including the vertical stabilizer, horizontal stabilizer, pylons, wing, and fuselage areas) following an in-flight incident resulting in extreme lateral loading. This action is necessary to detect and correct reduced structural integrity of the airplane following any future event. This action is intended to address the identified unsafe condition.

DATES: Effective April 8, 2002. Comments for inclusion in the Rules Docket must be received on or before May 21, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–75–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–75–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, ANM–116, International Branch, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On November 12, 2001, an Airbus Model A300 B4–600R series airplane was involved in an accident shortly after takeoff from John F. Kennedy Airport, Jamaica, New York. During the accident event, the vertical stabilizer and rudder departed the airplane. The cause of this accident is under investigation by the National Transportation Safety Board

(NTSB), and, although the NTSB has not determined the cause of the accident, information to date indicates that the vertical stabilizer was subjected to large aerodynamic structural loading during the accident event.

A recent review of Airbus fleet data indicated that another Airbus Model A300–600 series airplane was involved in an upset event in 1997 that may have subjected the airplane to lateral loads on the vertical stabilizer similar to those experienced on the airplane involved in the November 12, 2001, accident. The vertical stabilizer was recently removed from the airplane involved in the 1997 event, and the composite attachment lugs were subjected to ultrasonic nondestructive inspections (NDIs). The results of the NDI yielded indications consistent with composite delamination of the right-hand aft attachment lug. This type of delamination is characteristic of extreme lateral loading conditions.

Following the event, the operator performed the inspections of the airplane specified in the Airplane Maintenance Manual (AMM) that are deemed necessary by the manufacturer after an in-flight incident. However, the AMM did not include inspections for damage of the vertical stabilizer caused by extreme lateral loading. Extreme lateral load factors can occur as a consequence of severe turbulence, loss of control of the airplane involving yaw and/or roll maneuvers, hazardous system failures or other rare flight conditions. Review of service history indicates that these events only occur rarely. Such conditions, if not corrected, could result in reduced structural integrity of the airplane.

U.S. Type Certification of the Airplane

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. The FAA has coordinated this action with the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France. The DGAC plans to release a recommended bulletin to address this issue.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect and correct reduced structural integrity of the airplane following an in-flight incident resulting in extreme lateral loading. This AD requires certain inspections of the airplane (including the vertical stabilizer, horizontal stabilizer, pylons, wing, and fuselage areas), immediately following such an incident.

This AD requires inspections for extreme lateral loads exceeding 0.3g. Because no such inspection methods were defined previously, these inspections must be approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

This AD also requires reporting of these inspection results to the manufacturer, including information regarding the extreme lateral loading event. Based on this information, the manufacturer will develop any appropriate additional inspections. Upon FAA approval, these inspections are also required.

Inspections are not required for extreme lateral loading events that occur on the ground (landing, taxiing). On the ground an extreme lateral load would not be transmitted to the airplane through the vertical stabilizer.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–75–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation

Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–06–09 Airbus Industrie: Amendment 39–12686. Docket 2002–NM–75–AD.

Applicability: All Model A300; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); and A310 series airplanes; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct reduced structural integrity of the airplane following an extreme lateral loading event, accomplish the following:

Lateral Load Factor Determination

(a) As of the effective date of this AD, before further flight following an in-flight incident that results in extreme lateral loading, determine whether the lateral load factor (Ny) equaled or exceeded 0.3g. Extreme lateral loading can occur as a consequence of severe turbulence, loss of control of the aircraft involving yaw and/or roll maneuvers, hazardous systems failures, or other rare flight conditions. Then do the inspections specified in paragraph (b) or (c) of this AD, as applicable, at the time specified.

Note 2: Acceptable methods for determining if the lateral load factor equaled or exceeded 0.3g include but are not limited to: Aircraft Communication Addressing and Reporting System (ACARS), Digital Flight Data Recorder (DFDR) readout, or Quick Access Recorder (QAR). A pilot report of extreme lateral acceleration in-flight can be used to assess whether one of the previous methods should be used to determine the lateral load factor.

Note 3: The inspections specified in paragraphs (b) and (c) of this AD are not necessary if lateral load factors exceed 0.3g when the airplane is on the ground (landing, taxiing).

Inspections for Certain Lateral Load Factors

(b) For airplanes on which the lateral load factor (Ny) is greater than or equal to 0.3g, but less than 0.35g, accomplish the following actions:

(1) Before further flight, do the detailed inspections specified in paragraph (d) of this AD.

Reporting Requirement

(2) Within 5 days after accomplishing the inspections required by paragraph (b)(1) of this AD: Submit a report to Airbus, including the DFDR recording (or equivalent) of the portion of the flight when the extreme lateral loading event occurred, and other relevant information necessary to fully describe the event and develop the actual loads, including but not limited to, airplane weight, weather, and flight crew report. Submit a report of the inspection results (both positive and negative findings) to AI/SE–D32 Technical Data and Documentation Services, Airbus Industrie Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France; fax (+33) 5 61 93 28 06. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Note 4: Following accomplishment of the requirements of paragraphs (b)(1), (b)(2) and, if necessary, (e) of this AD, the airplane may be returned to service before accomplishing the inspections required by paragraph (b)(3) of this AD.

Supplementary Inspections

(3) The manufacturer will develop an airplane loads assessment and recommend, if necessary, supplementary inspections of the applicable areas of the airplane (including the vertical stabilizer, horizontal stabilizer pylons, wing, and fuselage areas). Within 30 days after the extreme lateral loading event, do the supplementary inspections of the airplane according to a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

Note 5: The loads assessment, and if necessary, supplementary inspections required by paragraph (b)(3) of this AD, will be developed and proposed by the manufacturer based on the manufacturer's analysis of the report required by paragraph (b)(2) of this AD.

Inspections for Certain Other Lateral Load Factors

(c) For airplanes on which the lateral load factor (Ny) is greater than or equal to 0.35g, accomplish the following:

(1) Before further flight, do the detailed inspections specified in paragraph (d) of this AD.

Reporting Requirement

(2) Before further flight after accomplishing the inspections required by paragraph (c)(1) of this AD: Submit a report to Airbus, including the DFDR recording (or equivalent) of the portion of the flight when the extreme lateral loading event occurred, and other relevant information necessary to fully describe the event and develop the actual loads, including but not limited to, airplane weight, weather, and flight crew report. Submit a report of the inspection results (both positive and negative findings) to AI/SE–D32 Technical Data and Documentation Services, Airbus Industrie Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France; fax (+33) 5 61 93 28 06. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Supplementary Inspections

(3) The manufacturer will develop an airplane loads assessment and recommend, if necessary, supplementary inspections of the applicable areas of the airplane (including the vertical stabilizer, horizontal stabilizer pylons, wing, and fuselage areas). Before further flight, do the supplementary inspections of the airplane according to a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

Note 6: The loads assessment, and if necessary, supplementary inspections required by paragraph (c)(3) of this AD, will be developed and proposed by the manufacturer based on the manufacturer's analysis of the report required by paragraph (c)(2) of this AD.

Detailed Inspections

(d) Do the following detailed inspections at the time specified in paragraph (b)(1) or (c)(1) of this AD, as applicable:

(1) Do the inspections as specified in and per Chapter 05–51–17 (Inspections After Flight in Excessive Turbulence or In Excess of VMO/MMO) of Airbus A300, A300–600 or A310 Airplane Maintenance Manual (AMM), as applicable. Extend the areas for these inspections as specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this AD.

(i) Extend the wing inspection area to include rib 22 through rib 29.

(ii) Extend the fuselage inspection area from the inside to include frame 84 through 87 above stringer 23, and all areas of frame 91.

(2) Do detailed inspections to find damage of the areas specified in paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this AD, according to a method approved by the Manager, International Branch, ANM–116.

(i) Inspect the fuselage external surface under the vertical stabilizer to fuselage fairing, including side load fittings and lower surface of rib 1 of the vertical stabilizer.

(ii) Inspect the rudder hinge arms and support fittings 1 through 7, and the actuator support fittings of the vertical stabilizer.

(iii) Inspect the rudder hinge fittings 1 through 7, and the actuator support fittings of the vertical stabilizer.

Note 7: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific

structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Corrective Actions

(e) If any damage is found during any inspection required by this AD: Before further flight, repair according to the method specified in the Airbus structural repair manual or according to a method approved by the Manager, International Branch, ANM–116, or by the Direction Ǵeńerale de l'Aviation Civile or its delegated agent.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, which may add comments and then send it to the Manager, International Branch, ANM–116.

Note 8: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Effective Date

(h) This amendment becomes effective on April 8, 2002.

Issued in Renton, Washington, on March 15, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6910 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–31–AD; Amendment 39–12685; AD 2002–06–08]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation (Formerly Allison Engine Company) 250–C28 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to certain Rolls-Royce Corporation (formerly Allison Engine Company) 250–C28 series engines. This amendment requires removal of third stage turbine wheels, part number (P/N) 6899383, with certain serial numbers (SN's), from service before exceeding new, reduced life limits. This amendment also establishes a drawdown program to require the removal of those turbine wheels that exceed the new lower limits. This amendment is prompted by the potential to experience uncommanded shutdown caused by fractures of third stage turbine blade tips and shrouds. The actions specified by this AD are intended to prevent uncommanded shutdown of the engine due to fractures of third stage turbine blade tips and shrouds.

DATES: Effective date April 26, 2002.

ADDRESSES: The information contained in this AD may be examined, by appointment, at the Federal Aviation Administration (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.

FOR FURTHER INFORMATION CONTACT: John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–8180; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Rolls-Royce Corporation (formerly Allison Engine Company) 250–C28, –C28B, and –C28C model engines with third stage turbine wheels part number (P/N) 6899383, listed by serial number (SN) in the proposal, was published in the **Federal Register** on November 8, 2001 (66 FR 56493). That action proposed to require removal of third stage turbine wheels, part number (P/N) 6899383, with SN's, from service before exceeding new, reduced life limits. That action also proposed to establish a drawdown program to require the removal of those turbine wheels that exceed the new lower limit.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Change Life Limits References

One commenter requests that all references to ''new, reduced life'', and ''new lower'' limits be removed and replaced with ''specified hour and cycle'' limits and ''acceptable hour and cycle'' limits.

The FAA does not agree. The preamble of the AD provides background information as to why the AD is being issued. The FAA has only one means of mandating lower life limits on a life limited part, and that is with an AD. The sole purpose of this AD is to mandate lower life limits. Removing references to ''new, reduced life'', and ''new lower'' limits in the preamble adds to confusion because those references explain why this AD is being issued.

Remove References to Reports of Five Uncommanded Shutdowns

The manufacturer requests that references to reports of five uncommanded shutdowns occurring as a result of the out-of-print condition addressed by this AD, be removed. At the time this AD action was first being considered, it was preliminarily reported that there were five uncommanded shutdowns occurring as a result of the out-of-print condition addressed by this AD. It has since been determined that those shutdowns did not have the out-of-print condition and are unrelated to the actions required by this AD. The manufacturer still supports the issuance of this AD because of the potential safety issue that remains.

The FAA agrees. Therefore, the summary in the preamble of this final rule is changed to read: ''This amendment is prompted by the potential to experience uncommanded shutdown caused by third stage turbine blade tip fractures, and turbine shroud fractures.''

Eliminate Potential Nomenclature Confusion

The manufacturer requests that the phrase ''third stage turbine shrouds'' be replaced with the word ''shrouds'' and remove reference to turbine shroud fractures, to eliminate potential nomenclature confusion. The reason for the request is that on the model 250–C28 series third stage turbine wheels, the blades and shrouds are cast together with the hub, creating a one piece unit.

The FAA agrees. Therefore, the summary in the preamble of this final rule is changed to read: ''This amendment is prompted by the potential to experience uncommanded shutdown caused by fractures of third stage turbine blade tips and shrouds.

The actions specified by this AD are intended to prevent uncommanded shutdown of the engine due to fractures of third stage turbine blade tips and shrouds.''

Change Unsafe Condition Wording

One commenter requests that the NPRM preamble wording found in the FAA's Determination of an Unsafe Condition and Proposed Actions paragraph be changed from: ''Since an unsafe condition has been identified that is likely to exist. * * *'', to ''Since an unsafe condition has been identified that may exist. * * *'' No justification was given for this change.

The FAA does not agree. AD's are issued under Part 39 of the Federal Aviation Regulations, 14 CFR part 39. The FAA must make a finding that an unsafe condition prompting the AD ''is likely to'' exist or develop in other products of the same type design.

Incorporate Additional Information

The manufacturer requests that a phrase be added to the Economic Analysis that states that not all affected third stage turbine wheels may be installed in engines.

The FAA agrees that additional information should be added to the Economic Analysis. Therefore, the Economic Analysis is modified to include the sentence: ''There are approximately 84 engines worldwide that may have an affected third stage turbine wheel installed, however, it is not known how many of those third stage turbine wheels are installed in engines.''

Add Reference to Rolls-Royce Service Bulletin

The manufacturer requests a clarification to the AD to include a reference to the Rolls-Royce Corporation service bulletin associated with this life limit change.

The FAA does not agree. There is no reason to reference the service bulletin because all the pertinent information regarding the new reduced life limits of the affected third stage turbine wheels, which includes part number, serial numbers, and drawdown schedule, are included in the AD.

Reword Discussion Information

One commenter requests changing in the discussion section the phrase '' to life limits of 1,500 hours TSN and 3,000 CSN'' to ''to life limits of 1,500 hours TSN or 3,000 CSN, whichever occurs first.'' This change request by the commenter would be appropriate if the intent of this section was to describe how to comply with the new reduced life limits. However, the intent of the discussion section is to provide background information on the various life limits and how they are changing relative to each other. Details on compliance are explained in Table 2 of the compliance section of the AD, in which the phrase ''whichever occurs earlier'' is used where appropriate, consistent with the commenter's intent.

Restructure Contents of Table 2

One commenter requests the restructuring of the contents of Table 2 in the AD.

The FAA does not agree. The information in Table 2 as published in the NPRM is accurate and concise, and therefore remains unchanged in this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 84 third stage turbine wheels of the affected design in the worldwide fleet. The FAA estimates that 42 engines installed on helicopters of U.S. registry would be affected by this AD. However, it is not known how many of those third stage turbine wheels are installed in engines. It would take approximately 44 work hours per engine to remove and replace an affected turbine wheel. The average labor rate is $60 per work hour. The cost of a new third stage turbine wheel is approximately $4,371. The FAA estimates that approximately $2,929 per wheel has been lost due to life reduction. However, the manufacturer has stated it may reduce the new wheel cost to the customer. Based on these figures, the total cost of the AD on U.S. operators is estimated to be $294,462.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–06–08 Rolls-Royce Corporation: Amendment 39–12685. Docket No. 2001–NE–31–AD.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce Corporation (formerly Allison Engine Company) 250–C28, –C28B, and –C28C model engines with third stage turbine wheels part number (P/N) 6899383, listed by serial number (SN) in the following Table 1:

TABLE 1.—SN'S OF AFFECTED THIRD STAGE TURBINE WHEELS

HX91428R	HX91489R	HX91707R
HX91456R	HX91490R	HX91708R
HX91457R	HX91492R	HX91709R
HX91458R	HX91493R	HX91710R
HX91459R	HX91494R	HX91711R
HX91461R	HX91500R	HX91712R
HX91462R	HX91501R	HX91713R
HX91464R	HX91503R	HX91714R
HX914659	HX91504R	HX91715R
HX91465R	HX91506R	HX91721R
HX91466R	HX91507R	HX91722R
HX91467R	HX91508R	HX91726R
HX91468R	HX91510R	HX91733R
HX91469R	HX91511R	HX91735R
HX91471R	HX91512R	HX91736R
HX91472R	HX91513R	HX91738R
HX91473R	HX91519R	HX91742R
HX91474R	HX91520R	HX91744R
HX91475R	HX91522R	HX91748R
HX91477R	HX91523R	HX91749R
HX91478R	HX91524R	HX91750R
HX91480R	HX91525R	HX91754R
HX91482R	HX91526R	HX91764R

TABLE 1.—SN'S OF AFFECTED THIRD STAGE TURBINE WHEELS—Continued

HX91483R	HX91527R	HX91765R
HX91485R	HX91528R	HX91766R
HX91486R	HX91529R	HX91767R
HX91487R	HX91530R	HX91768R
HX91488R	HX91706R	HX91769R

Note.—These engines are installed on, but not limited to Bell Helicopter Textron 206L–1 helicopters.

Note 1: This 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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent an uncommanded shutdown of the engine due to fractures of third stage turbine blade tips and third stage turbine shrouds, do the following:

(a) Remove from service the third stage turbine wheels, P/N 6899383, listed by SN in Table 1 of this AD, in accordance with the following Table 2:

TABLE 2.—REMOVAL SCHEDULE

For third stage turbine wheels on the effective date of this AD	Remove by
(1) With fewer than 3,000 cycles-since-new (CSN), and fewer than 1,500 hours time-since-new (TSN).	3,000 CSN or 1,500 hours TSN, whichever occurs earlier.
(2) With between 3,000 and 6,000 CSN, and fewer than 1,500 hours TSN.	200 additional cycles, after the effective date of this AD.
(3) With fewer than 3,000 CSN, and between 1,500 and 3,000 hours TSN.	100 additional hours, after the effective date of this AD.
(4) With between 3,000 and 6,000 CSN and between 1,500 and 3,000 hours TSN.	200 additional cycles or 100 additional hours, after the effective date of this AD, whichever occurs earlier.
(5) With more than 6,000 CSN, or more than 3,000 hours TSN	Before further flight.

(b) After the effective date of this AD, do not install any third stage turbine wheels listed by SN in Table 1 of this AD. Thereafter, except as provided in paragraph (c) of this AD, no alternative cyclic life limits may be approved for the turbine wheels listed in Table 1 of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Effective Date

(e) This amendment becomes effective on April 26, 2002.

Issued in Burlington, Massachusetts, on March 14, 2002.

Francis A. Favara,

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

[FR Doc. 02–6913 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–284–AD; Amendment 39–12682; AD 2002–06–05]

RIN 2120–AA64

Airworthiness Directives; Various Transport Category Airplanes Equipped With Air Traffic Control (ATC) Transponders Manufactured by Rockwell Collins, Inc.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to various transport category airplanes equipped with certain Mode C air traffic control (ATC) transponders manufactured by Rockwell Collins, Inc. This amendment requires testing each transponder; replacing certain parts in any transponder that fails the initial test with new parts and performing additional test(s); and making repairs, as necessary, so that the transponder passes the test. This amendment is prompted by reports that indicate that the equipment used to conduct earlier tests of certain transponders did not detect certain malfunctions. An airplane equipped with such malfunctioning transponders could transmit inaccurate data concerning its altitude to a nearby airplane equipped with the traffic alert and collision avoidance system (TCAS II), causing the TCAS II to issue an erroneous resolution advisory to the pilot. The actions specified by this AD are intended to prevent transmission of inaccurate data concerning altitude from one airplane to another, which could cause the pilot receiving the data to change course, either ascending or descending, and possibly lead to a mid-air collision or near mid-air collision.

DATES: Effective April 26, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 26, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Rockwell Collins, Inc., 400 Collins Road, NE., Cedar Rapids, Iowa 52498. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elizabeth Zurcher, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1674; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to various transport

category airplanes equipped with certain Mode C air traffic control (ATC) transponders manufactured by Rockwell Collins, Inc., was published in the **Federal Register** on January 5, 2001 (66 FR 1054). That action proposed to require testing each transponder; replacing certain parts in any transponder that fails the initial test and performing additional test(s); and making repairs, as necessary, so that the transponder passes the test.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. Two commenters state that the airplanes they operate are not affected by the proposed rule.

Change Paragraphs (a) and (b)

One commenter states that Rockwell Collins Service Information Letter (SIL) 00–1, dated May 25, 2000, as specified in the preamble of the proposed rule, implies that the only approved ''ramp-tester'' to test their 621A–3 transponder is the ATC–601. However, the commenter indicates that all ''approved'' transponder ramp-testers must meet the criteria set forth in Federal Aviation Regulation 91.413, Part 43, Appendix F. The commenter asks if this proposed AD will change those criteria, and states that, if not, operators should be able to use any transponder ramp-tester that meets those requirements. The commenter adds that verification that a ramp-tester meets the FAR requirements can be confirmed by the manufacturer's technical data sheets and current calibration certificates.

The FAA does not agree that ''any'' transponder ramp-tester meets the requirements in paragraphs (a) and (b) of the final rule. As specified in the preamble of the proposed rule, ''The document (SIL 00–1), subtitled '621A–3 Transponder Overhaul Manual Test Equipment Modification Recommendation,' indicates that some operators using ATC ramp tester model number 601 (ATC–601) to verify performance of Mode C transponders with single Gillham encoded altitude input were experiencing a high reject rate of the 621A–3 transponders manufactured by Rockwell Collins, Inc. The service letter states that the ATC–601 ramp tester is capable of detecting out-of-tolerance errors in the framing pulse width, whereas the ATC–600 ramp tester previously used to test the transponders did not detect these pulse width errors.'' We concur that certain other ramp-testers may be used, and we have added a new Note 2 (and renumbered subsequent notes) to this final rule that specifies ''approved'' transponder ramp-testers.

Another commenter states that, to perform the pulse width test specified in paragraph (a) of the proposed rule, a bench check of the transponder is required, and adds that operators may be removing properly operating transponders to comply with the proposed rule. The commenter asks that an option be given to allow operators to perform a functional test with a Mode S ATC test set per the applicable airplane maintenance manual. The commenter adds that, if the transponder passes the functional test, it would not be necessary to remove the transponder from the airplane for a bench check.

We partially agree with the commenter. We do not agree that a bench check of the transponder is required to perform the pulse width test; the pulse width test can be done either with the transponder on the airplane or by removing the transponder and doing a bench check, depending on the capabilities of the test equipment used. We agree that the Mode S ATC is an approved test set, and that test set is specified in Note 2 of this final rule.

The same commenter asks that the final rule specify that any bench check done on a transponder before the effective date of the final rule, in accordance with the service information specified in the proposed rule, is acceptable for compliance with the pulse width tests specified in paragraphs (a) and (b) of the proposed rule. The commenter adds that if the FAA agrees to include the bench check, submission of the reporting requirements specified in paragraph (d) of the proposed rule should be amended to allow for a compliance time of more than 60 days after completion of the bench check. The commenter recommends a 30-day grace period after the effective date of the final rule for the reporting requirement.

We agree and have added a new Note 3 to this final rule to specify that bench checks used to perform the tests per Rockwell Collins Air Transport Systems Overhaul Manual with Illustrated Parts List, Temporary Revision No. 34–44–00–38, dated April 20, 2000, are acceptable for compliance with paragraph (a) of this final rule. Additionally, we have changed the reporting requirement specified in paragraph (d) of this final rule to specify that the report may be submitted within 60 days AFTER the effective date of the AD.

Another commenter notes that paragraph (b) of the proposed rule specifies that the transmitter tube and resistor be replaced (if any malfunction is detected), per Rockwell Collins Service Bulletin 621A–3–34–21, Revision 1, dated November 14, 1975. The commenter states that the referenced service bulletin specifies removal of the resistor (only) on units having serial numbers 7192 and below. The commenter interprets paragraph (b) of the proposed rule as requiring replacement of the transmitter tube and resistor regardless of the unit serial number. The commenter recommends paragraph (b) of the proposed rule be changed to specify that resistor removal is only required on units with serial numbers 7192 and below.

We concur with the commenter and have changed paragraph (b) of the final rule to add paragraphs (b)(1) and (b)(2) to require replacement of the transmitter tube and resistor for transponders having serial numbers up to and including 7192; and replacement of the transmitter tube (only) for transponders having serial numbers 7193 and subsequent.

Credit for Transponders Previously Modified

One commenter asks if the proposed rule will apply to transponders that have already been modified using the procedures specified in Rockwell Collins, Inc. SIL 00–1, which references Rockwell Collins Service Bulletin 621A–3–34–21, Revision 1, dated November 14, 1975, cited in the proposed rule as the appropriate source of service information doing the replacement.

We agree that if the replacement required by paragraph (b) of this final rule was done prior to the effective date of the AD using the service information cited in the final rule, it is acceptable for compliance. Therefore, we have added a new Note 4 to this final rule (and renumbered subsequent notes) that specifies previous modification of the transponder is acceptable for compliance with this AD.

Change Paragraph (c)

One commenter states that paragraph (c) of the proposed rule cites the air data computer or interconnect wiring as possibly being defective. The commenter notes that this is in error because the pulse width cannot be affected by the air data computer or its wiring. The commenter adds that the pulse width can be affected by antenna/wiring faults.

We agree with the commenter and have changed paragraph (c) of this final rule to remove the references to repair of the air data computer or wiring connections.

The same commenter notes that paragraph (c) of the proposed rule specifies that, if malfunction of the transponder is detected, the transponder must be repaired prior to further flight. The commenter asks that the final rule allow for continued operation of the airplane in accordance with the Minimum Equipment List (MEL), provided the defective transponder is not operated.

Note 5 of this final rule (which was Note 2 of the proposed rule) addresses the commenter's concern. That note specifies that the airplane may be operated in accordance with the provisions and limitations specified in the FAA-approved Master Minimum Equipment List (MMEL), provided that only one Mode C transponder on the airplane is inoperative.

Delete Paragraph (c)

One commenter states that paragraphs (a) and (b) of the proposed rule discuss actions for off-wing shop tests per the transponder overhaul manual (OM), but paragraph (c) implies that an on-wing test must be accomplished. The commenter asks that paragraph (c) of the proposed rule be deleted. The commenter notes that any transponder tested in accordance with the OM will not be returned to service unless it can pass the pulse width test. The commenter adds that both the aircraft wiring and interfacing equipment were previously tested per AD 99–23–22 R1, amendment 39–11473 (64 FR 70181, December 16, 1999), which addressed concerns specific to the Rockwell Collins 621A–3 transponders. The commenter states that no additional testing should be required.

We do not agree with the commenter. Paragraph (c) of this final rule requires repair of the transponder if a malfunction is detected; no on-wing test is required by that paragraph. No change to the final rule is necessary in this regard.

Change to Final Rule

We have changed the point of contact for information concerning this final rule to Elizabeth Zurcher, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 800 airplanes with transponders with the affected part in the worldwide fleet. The FAA estimates that approximately 400 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required test, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $96,000, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–06–05 Transport Category Airplanes: Amendment 39–12682. Docket 2000–NM–284–AD.

Applicability: Transport category airplanes, certificated in any category, equipped with Rockwell Collins Mode C 621A–3 Air Traffic Control (ATC) transponder(s), part number (P/N) 522–2703–XXX (where XXX is any series number).

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

Compliance: Required as indicated, unless accomplished previously.

To prevent transmission of inaccurate data concerning altitude from one airplane to another, which could cause the pilot receiving the data to change course, either ascending or descending, and possibly lead to a mid-air collision or near mid-air collision, accomplish the following:

Testing

(a) Within 6 months after the effective date of this AD: Perform a pulse width test to detect malfunctions of any Mode C 621A–3 ATC transponder(s) equipped with P/N 522–2703–XXX, where XXX is any part number, in accordance with Rockwell Collins Air Transport Systems Overhaul Manual with Illustrated Parts List, Temporary Revision No. 34–44–00–38, dated April 20, 2000.

Note 2: Pulse width tests done using TIC–49, ATC–601, ATC–601A, or ATC–1400A ramp or bench testers meet the applicable test requirements specified in paragraphs (a) and (b) of this AD.

Note 3: Previous checks used to perform the test specified in paragraph (a) of this AD,

per Rockwell Collins Air Transport Systems Overhaul Manual with Illustrated Parts List, Temporary Revision No. 34–44–00–38, dated April 20, 2000, are considered acceptable for compliance with paragraph (a) of this AD.

Replacement

(b) If the pulse width test required by paragraph (a) of this AD detects malfunction of a transponder, prior to further flight, perform the requirements specified in paragraph (b)(1) or (b)(2) of this AD, as applicable, in accordance with Rockwell Collins Service Bulletin 621A–3–34–21, Revision 1, dated November 14, 1975.

(1) For transponders having serial numbers up to and including 7192: Replace the transmitter tube and resistor with a new tube and resistor and repeat the pulse width test required by paragraph (a) of this AD.

(2) For transponders having serial numbers 7193 and subsequent: Replace the transmitter tube with a new tube and repeat the pulse width test required by paragraph (a) of this AD.

Note 4: Accomplishment of the replacement specified in paragraph (b)(1) or (b)(2) of this AD, as applicable, prior to the effective date of this AD, per Rockwell Collins Service Information Letter (SIL) 00–1, dated May 25, 2000, is acceptable for compliance with the applicable replacement required by paragraph (b)(1) or (b)(2) of this AD.

Repair

(c) If the follow-up pulse width test required by paragraph (b) of this AD detects malfunction of a transponder: Prior to further flight, repair the transponder in accordance with the applicable Mode C transponder component maintenance manual and airplane maintenance manual. If the repair information is not available in the applicable manual, prior to further flight, repair the transponder in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Note 5: The airplane may be operated in accordance with the provisions and limitations specified in the FAA-approved Master Minimum Equipment List (MMEL), provided that only one Mode C transponder on the airplane is inoperative.

Reporting Requirement

(d) Submit a report of the results (both positive and negative) of the tests required by paragraphs (a) and (b) of this AD, at the applicable time specified in paragraph (d)(1) or (d)(2) of this AD, to: Elizabeth Zurcher, Aerospace Engineer, FAA, Seattle ACO, Systems and Equipment Branch, ANM–130S, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181. The report must include the part number of the Mode C transponder(s) and whether corrective action was required. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the pulse width test (using a bench check, if necessary) is accomplished after the effective date of this AD: Submit the report within 60 days after performing the test required by paragraph (a) or (b) of this AD, as applicable.

(2) For airplanes on which the pulse width test has been accomplished prior to the effective date of this AD: Submit the report within 60 days after the effective date of this AD.

Alternative Methods of Compliance

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

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(g) Except as provided by paragraph (c) of this AD: The actions shall be done in accordance with Rockwell Collins Air Transport Systems Overhaul Manual with Illustrated Parts List, Temporary Revision No. 34–44–00–38, dated April 20, 2000; and Rockwell Collins Service Bulletin 621A–3–34–21, Revision 1, dated November 14, 1975; as applicable. Revision 1 of Rockwell Collins Service Bulletin 621A–3–34–2 contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 4	1	Nov. 14, 1975.
2, 3, 5/6	Original	June 15, 1975.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rockwell Collins, Inc., 400 Collins Road NE; Cedar Rapids, Iowa 52498. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on April 26, 2002.

Issued in Renton, Washington, on March 13, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6793 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30301; Amdt. No. 2098]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

The amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on March 15, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

Effective Upon Publication

FDC Date	State	City	Airport	FDC No.	Subject
02/25/02	MI	HOWELL	LIVINGSTON COUNTY	2/1650	NDB RWY 13, AMDT 2
02/26/02	MI	PORT HURON	ST. CLAIR COUNTY INTL	2/1665	NDB OR GPS RWY 4, AMDT 3
02/26/02	MI	PORT HURON	ST. CLAIR COUNTY INTL	2/1666	VOR/DME RNAV OR GPS RWY 22, AMDT 2
02/26/02	MI	PORT HURON	ST. CLAIR COUNTY INTL	2/1667	VOR/DME OR GPS–A, AMDT 7
02/26/02	MI	PORT HURON	ST. CLAIR COUNTY INTL	2/1670	ILS RWY 4, AMDT 3
02/27/02	WY	GREYBULL	SOUTH BIG HORN COUNTY	2/1755	NDB OR GPS RWY 33, AMDT 1
02/27/02	WY	RIVERTON	RIVERTON REGIONAL	2/1756	VOR RWY 28, AMDT 8A
02/28/02	TN	DAYTON	MARK ANTON	2/1777	NDB OR GPS RWY 3, AMDT 1
02/28/02	CA	STOCKTON	STOCKTON METROPOLITAN	2/1778	VOR RWY 29R AMDT 18

FDC Date	State	City	Airport	FDC No.	Subject
02/28/02	HI	HILO	HILO INTL	2/1789	ILS RWY 26, AMDT 12
03/01/02	HI	HONOLULU	HONOLULU INTL	2/1811	ILS RWY 4R, AMDT 11A
03/04/02	FL	PENSACOLA	PENSACOLA REGIONAL	2/1885	VOR RWY 8, AMDT 3A
03/04/02	GA	LAWRENCEVILLE	GWINNETT COUNTY-BRISCOE FIELD.	2/1889	NDB OR GPS RWY 25, ORIG–B
03/04/02	GA	LAWRENCEVILLE	GWINNETT COUNTY-BRISCOE FIELD.	2/1891	ILS RWY 25, AMDT 1A
03/04/02	CT	WILLIMANTIC	WINDHAM	2/1904	LOC RWY 27, AMDT 2
03/04/02	CT	WILLIMANTIC	WINDHAM	2/1905	VOR OR GPS–A, AMDT 8
03/06/02	NY	BINGHAMTON	BINGHAMTON REGIONAL/EDWIN A. LINK FIELD.	2/1950	ILS RWY 16, AMDT 6A
03/06/02	CA	SACRAMENTO	SACRAMENTO INTL	2/1969	ILS RWY 16R, AMDT 13B
03/06/02	CA	SACRAMENTO	SACRAMENTO INTL	2/2010	ILS RWY 34L, AMDT 5B
03/06/02	CA	SACRAMENTO	SACRAMENTO INTL	2/2012	NDB OR GPS RWY 34L, AMDT 4A
03/06/02	CA	SACRAMENTO	SACRAMENTO INTL	2/2014	NDB OR GPS RWY 34, ORIG–A
03/07/02	TN	CLARKSVILLE	OUTLAW FIELD	2/1991	LOC RWY 35, AMDT 5D
03/07/02	TN	CLARKSVILLE	OUTLAW FIELD	2/1992	NDB OR GPS RWY 35, AMDT 5D
03/07/02	TN	CLARKSVILLE	OUTLAW FIELD	2/1993	VOR RWY 35, AMDT 15C
03/07/02	NY	OLEAN	CATTARAUGUS COUNTY-OLEAN	2/2005	VOR/DME RNAV RWY 22, AMDT 4A
03/07/02	NY	OLEAN	CATTARAUGUS COUNTY-OLEAN	2/2006	LOC RWY 22, AMDT 5
03/07/02	NY	OLEAN	CATTARAUGUS COUNTY-OLEAN	2/2007	NDB RWY 22, AMDT 12
03/07/02	NY	OLEAN	CATTARAUGUS COUNTY-OLEAN	2/2009	GPS RWY 22, ORIG
03/07/02	NY	WELLSVILLE	WELLSVILLE MUNI ARTP, TARANTINE FLD.	2/2015	NDB OR GPS RWY 28, AMDT 6A
03/07/02	NY	WELLSVILLE	WELLSVILLE MUNI ARPT, TARANTINE FLD.	2/2016	VOR OR GPS–A, AMDT 5A
03/07/02	NY	WELLSVILLE	WELLSVILLE MUNI ARPT, TARANTINE FLD.	2/2017	LOC RWY 28, AMDT 3A
03/11/02	GA	ATLANTA	DEKALB-PEACHTREE	2/2083	ILS RWY 20L, AMDT 7B
03/11/02	GA	ATLANTA	DEKALB-PEACHTREE	2/2084	VOR/DME OR GPS RWY 20L, AMDT 1A
03/11/02	GA	ATLANTA	THE WILLIAM B. HARTSFIELD ATLANTA INTL.	2/2089	RNAV (GPS) RWY 27L, ORIG
03/12/02	SD	RAPID CITY	RAPID CITY REGIONAL	2/2120	ILS RWY 32, AMDT 17A
03/12/02	SD	RAPID CITY	RAPID CITY REGIONAL	2/2121	VOR OR TACAN RWY 32, AMDT 24B
03/12/02	SD	RAPID CITY	RAPID CITY REGIONAL	2/2122	NDB RWY 32, AMDT 3B
03/12/02	SD	RAPID CITY	RAPID CITY REGIONAL	2/2123	VOR OR TACAN RWY 14, ORIG–B
03/12/02	SD	RAPID CITY	RAPID CITY REGIONAL	2/2124	RNAV (GPS) RWY 14, ORIG
03/12/02	SD	RAPID CITY	RAPID CITY REGIONAL	2/2125	RNAV (GPS) RWY 32, ORIG–A
03/13/02	AK	TALKEETNA	TALKEETNA	2/2142	VOR–A, AMDT 9B
03/13/02	AK	TALKEETNA	TALKEETNA	2/2143	GPS RWY 35, ORIG–A
03/13/02	AK	TALKEETNA	TALKEETNA	2/2143	VOR/DME RWY 36, AMDT 1B
03/13/02	TN	FAYETTEVILLE	FAYETTEVILLE MUNI	2/2164	NDB RWY 20, AMDT 3B
03/13/02	TN	FAYETTEVILLE	FAYETTEVILLE MUNI	2/2169	GPS RWY 2, ORIG
03/13/02	TN	FAYETTEVILLE	FAYETTEVILLE MUNI	2/2170	GPS RWY 20, ORIG
03/13/02	GA	METTER	METTER MUNI	2/2172	NDB OR GPS RWY 10, AMDT 2
03/13/02	TN	FAYETTEVILLE	FAYETTEVILLE MUNI	2/2175	SDF RWY 20, AMDT 2B
02/13/02	TN	FAYETTEVILLE	FAYETTEVILLE MUNI	2/2178	VOR/DME RWY 2, ORIG–B
03/13/02	ND	FARGO	HECTOR INTL	2/2184	VOR OR TACAN RWY 35, AMDT 12B
03/13/02	ND	FARGO	HECTOR INTL	2/2185	HI–VOR OR TACAN RWY 35, ORIG
03/07/02	NY	OLEAN	CATTARAUGUS COUNTY-OLEAN	2/2008	GPS RWY 4, ORIG

[FR Doc. 02–6968 Filed 3–21–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30300; Amdt. No. 2097]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

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

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

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

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

The Rule

This amendment to part 97 it effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on March 15, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701, and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective April 18, 2002*

Montgomery, AL, Montgomery Regional (Dannelly Field), NDB OR GPS RWY 10, Amdt 18C
Los Angeles, CA, Los Angeles Intl, NDB RWY 24R, Amdt 13
Los Angeles, CA, Los Angeles Intl, ILS RWY 6R, Amdt 16
Los Angeles, CA, Los Angeles Intl, ILS RWY 6L, Amdt 11
Los Angeles, CA, Los Angeles Intl, ILS RWY 7R, Amdt 4
Los Angeles, CA, Los Angeles Intl, ILS RWY 7L, Amdt 5
Los Angeles, CA, Los Angeles Intl, ILS RWY 24R, Amdt 22
Los Angeles, CA, Los Angeles Intl, ILS RWY 24L, Amdt 23
Los Angeles, CA, Los Angeles Intl, ILS RWY 25R, Amdt 14
Los Angeles, CA, Los Angeles Intl, ILS RWY 25L, Amdt 8
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 6R, Orig
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 6L, Orig
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 7R, Orig
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 7L, Orig
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 24R, Orig
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 24L, Orig
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 25R, Orig
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 25L, Orig
Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, RADAR–1, Amdt 4A, CANCELLED
Orlando, FL, Executive, RADAR–1, Amdt 25, CANCELLED
Orlando, FL, Orlando Intl, RADAR–1, Amdt 5B, CANCELLED
Springfield, MO, Springfield-Branson Regional, RNAV (GPS) RWY 32, Orig
Springfield, MO, Springfield-Branson Regional, VOR/DME OR TACAN RWY 2, Orig
Las Vegas, NV, McCarran Intl, ILS RWY 25L, Amdt 3
Las Vegas, NV, McCarran Intl, RNAV (GPS) RWY IL, Orig
Las Vegas, NV, McCarran Intl, RNAV (GPS) RWY 1R, Orig
Las Vegas, NV, McCarran Intl, GPS RWY 1R, Orig, CANCELLED
Las Vegas, NV, McCarran Intl, RNAV (GPS) RWY 19L, Orig
Las Vegas, NV, McCarran Intl, RNAV (GPS) RWY 19R, Orig
Las Vegas, NV, McCarran Intl, RNAV (GPS) RWY 25L, Orig
Lexington, NC, Davidson County, LOC/DME RWY 6, Orig
Monroe, NC, Monroe, NDB RWY 5, Amdt 3
Atlanta, TX, Hall-Miller Muni, RNAV (GPS) RWY 5, Orig
Atlanta, TX, Hall-Miller Muni, NDB RWY 5, Amdt 3
San Angelo, TX, San Angelo Regional/Mathis Field, VOR/DME OR TACAN RWY 3, Orig
San Angelo, TX, San Angelo Regional/Mathis Field, RNAV (GPS) RWY 3, Orig
San Angelo, TX, San Angelo Regional/Mathis Field, GPS RWY 3, Orig, CANCELLED

** * * Effective May 16, 2002*

Sacramento, CA, Sacramento Mather, VOR RWY 4R, Orig-D

** * * Effective June 13, 2002*

Manassas, VA, Manassas Regional/Harry P. Davis, NDB OR GPS–A, Amdt 8C, CANCELLED

The FAA published an Amendment in Docket No. 30290, Amdt. No. 2088 to Part 97 of the Federal Aviation Regulations (67 FR 3612; dated January 25, 2002) under § 97.33 effective April 18, 2002 which is hereby rescinded:

Cold Bay, AK, Cold Bay, RNAV (GPS) RWY 26, Orig

[FR Doc. 02–6967 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FRL–7161–9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; States of Kansas, Missouri and Nebraska; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction.

SUMMARY: On January 29, 2002, EPA published a direct final action approving the Commercial and Industrial Solid Waste Incineration (CISWI) negative declaration submitted by Nebraska. We are correcting a citation for the entry for Nebraska.

DATES: This action is effective April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION:

On January 29, 2002 (67 FR 4179), EPA published a direct final action approving the Commercial and Industrial Solid Waste Incineration (CISWI) negative declaration submitted by the states of Kansas, Missouri, and Nebraska.

The new entry in 40 CFR part 62, subpart CC-Nebraska contained an incorrect section numerical listing. The correct citation is: § 62.6916.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is such good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely corrects an incorrect citation in a previous action, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely corrects a citation in a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act (CAA). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing state plan submissions, our role is to approve state choices,

provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have no authority to disapprove state submissions for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews state submissions, to use VCS in place of state submissions that otherwise satisfy the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. As stated previously, we made such a good cause finding, including the reasons therefore and established an effective date of April 1, 2002. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction is not a ''major rule'' as defined by 5 U.S.C. 804 *et seq.* (2).

List of Subjects 40 CFR Part 62

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Sulfur oxides, Waste treatment and disposal.

Accordingly, 40 CFR part 62, subpart CC-Nebraska, paragraph four is corrected to read:

In rule FR Doc. 02–2119 published on January 29, 2002 (67 FR 4179), make the following correction. On page 4181, in the second column, the § number ''62.6915'' is corrected to read ''62.6916.''

Dated: March 12, 2002.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 02–6942 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7160–4]

RIN 2060–AG12

Protection of Stratospheric Ozone: Notice 16 for Significant New Alternatives Policy Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of acceptability; notice of data availability.

SUMMARY: This notice of acceptability expands the list of acceptable substitutes for ozone-depleting substances (ODS) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. The substitutes are for use in the following sectors: refrigeration and air conditioning; aerosols; and adhesives, coatings, and inks. In addition, we are notifying the public of new information available on the toxicity of HCFC–225ca and HCFC–225cb, acceptable substitutes used in solvents cleaning.

EFFECTIVE DATE: March 22, 2002.

ADDRESSES: Information relevant to this document is contained in Air Docket A–91–42, Room M–1500, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone: (202) 260–7548. You may inspect the docket between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying. Submissions to EPA for the use of the substitutes listed in this document may be found under category VI–D of EPA docket A–91–42. You can find other materials supporting the decisions in this action under category IX–B of EPA docket A–91–42.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard by telephone at (202) 564–9163, by fax at (202) 565–2155, by e-mail at *sheppard.margaret@epa.gov,* or by mail at U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to 501 3rd Street, NW., Washington, DC, 20001.

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the original SNAP rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as other EPA publications on protection of stratospheric ozone, are available from EPA's Ozone Depletion World Wide Web site at *http://www.epa.gov/ozone/* including the SNAP portion at *http://www.epa.gov/ozone/title6/snap/.*

SUPPLEMENTARY INFORMATION:

I. Listing of Acceptable Substitutes
A. Refrigeration and Air Conditioning
B. Aerosols
C. Adhesives, Coating and Inks
II. New Data Available on the Toxicity of HCFC–225ca/cb
III. Section 612 Program
A. Statutory Requirements
B. Regulatory History
Appendix A—Summary of Acceptable Decisions
Appendix B—New Information Available

I. Listing of Acceptable Substitutes

This section presents EPA's most recent acceptable listing decisions for substitutes in the following industrial sectors: refrigeration and air conditioning; aerosols; and adhesives, coatings, and inks. For copies of the full list of SNAP decisions in all industrial sectors, visit EPA's Ozone Depletion web site at *http://www.epa.gov/ozone/title6/snap/lists/index.html.*

The sections below discuss the substitute listing in detail. Appendix A contains a table summarizing today's listing decisions. The statements of further information contained in the table provide additional information, but are not legally binding under section 612 of the Clean Air Act. In addition, the ''further information'' may not be a comprehensive list of other legal obligations you may need to meet when using the substitute. Although you are not required to follow recommendations in the ''further information'' column of the table to use a substitute, EPA

strongly encourages you to apply the information when using these substitutes. In many instances, the information simply refers to standard operating practices in existing industry and/or building-code standards. Thus, many of these statements, if adopted, would not require significant changes to existing operating practices.

A. Refrigeration and Air Conditioning

1., 2., 3. and 4. PFC–1102HC, PFC–662HC, PFC–552HC and FLC–15

EPA's decision: The chemical blends submitted to EPA with the unregistered trade names PFC–1102HC, PFC–662HC, PFC–552HC and FLC–15 are acceptable for use in new equipment as substitutes for:

• CFC–13, CFC–113, CFC–114 and blends thereof in very low temperature refrigeration.

IGC Polycold Systems Inc., the submitter of the above-listed blends, claims that the compositions of these HFC blends, tailored for use in its equipment, are confidential business information. Despite the trade names of these refrigerants, they are not perfluorocarbons. You can find a version of the submission with information claimed confidential by the submitter removed, in EPA Air Docket A–91–42, item VI–D–268.

Environmental information: The ozone depletion potential (ODP) of each of these four blends is zero.

The global warming potentials (GWPs) of the blends are between 7500 and 8500; therefore, EPA strongly encourages prompt identification and repair of any leaks that may occur. EPA notes that many of the alternatives already listed as acceptable for use within the very low temperature refrigeration end use have GWPs this high or higher, and encourages the continued search for lower-GWP alternatives for this end use. The contribution of these blends to global warming will be minimized through the implementation of the venting prohibition under section 608(c)(2) of the Clean Air Act (see 40 CFR part 82, subpart F). This section and EPA's implementing regulations prohibit venting or release of substitutes for class I and class II ozone depleting substances used in refrigeration and air-conditioning and require proper handling and disposal of these substances, such as recycling or recovery.

Some components of these blends have not been exempted from listing as volatile organic compounds (VOCs) under Clean Air Act regulations for purposes of State Implementation Programs (SIPs) to control ground-level ozone.

Flammability information: These four blends are nonflammable. The individual components of the blends exhibit little to no flammability.

Toxicity and exposure data: All components in these blends have eight-hour time-weighted average occupational exposure limits, such as Workplace Environmental Exposure Levels (WEELs) from the American Industrial Hygiene Association (AIHA), of approximately 1,000 ppm. EPA expects users to follow all recommendations specified in the material safety data sheets (MSDSs) for the blends and other safety precautions common in the refrigeration and air conditioning industry.

Comparison to other refrigerants: The Polycold HFC blends reduce risk to the public compared to the ODSs they replace because they have no ODP. The other substitutes already listed as acceptable for very low temperature refrigeration either (1) have an ODP, (2) have a higher GWP than the Polycold HFC blends, (3) have lower energy efficiency compared to the Polycold HFC blends, resulting in an even higher GWP, or (4) have not been developed into a useful technology for this end use. In addition, there are relatively few acceptable substitutes in this end use with no ODP. Thus, we find that the Polycold HFC blends are acceptable because they reduce overall risk to public health and the environment in the end uses listed.

5. HFE–7000

EPA's decision: Hydrofluoroether (HFE)–7000 is acceptable for use in new and retrofit equipment as a substitute for:

• HCFC–123 in very low temperature refrigeration;
• CFC–11 and CFC–113 in industrial process refrigeration; and
• CFC–11 and CFC–113 in non-mechanical heat transfer.

3M, the submitter of the above-listed blends, indicates that this chemical is also known as HFE–301 and propane, 1,1,1,2,2,3,3 hepta fluoro-3-methoxy or 1-(methoxy)-1,1,2,2,3,3,3-heptafluoropropane. The empirical formula is C4H3F7O and it is also identified as CH3–O–CF2–CF2–CF3 and R–E347mcc1. You can find a version of the submission with information claimed confidential by the submitter removed, in EPA Air Docket A–91–42, item VI–D–272.

Environmental information: The ODP of HFE–7000 is zero. The GWP is estimated to range between 140 (World Meterological Organization estimate) and 400 (derived from Ninomiya et.al., 2000) relative to carbon dioxide, using a 100-year time horizon. The World Meteorological Organization previously estimated an atmospheric lifetime of 1.3 years, but more recent experimental data indicates a lifetime of 4.7 years (Ninomiya et.al., 2000).

This chemical has been exempted from listing as a VOC under Clean Air Act regulations.

Flammability information: This chemical is nonflammable.

Toxicity and exposure data: The manufacturer has recommended an acceptable exposure limit (AEL) of 75 ppm over an eight-hour time-weighted average. EPA believes this exposure limit will be protective of human health and safety. We expect users to follow all recommendations specified in the MSDS for this refrigerant and other safety precautions common in the refrigeration and air conditioning industry. This substitute was submitted to the Agency as part of a Premanufacture Notice (PMN) under the Toxic Substances Control Act (TSCA).

Comparison to other refrigerants: HFE–7000 is less toxic than HCFC–123 and is not an ozone depleter; thus, in the very low temperature end use, it reduces risk overall compared to CFC–11, CFC–113, and HCFC–123, the ODS it replaces. The GWP and atmospheric lifetime of HFE–7000 are lower than those of other acceptable alternatives in very low temperature refrigeration.

There are few alternatives for CFC–11 and CFC–113 in non-mechanical heat transfer, and HFE–7000 has a comparable or lower GWP than those alternatives. HFE–7000 has lower or comparable GWP and an ODP of zero, compared to most other substitutes available for industrial process refrigeration. Thus, we find that HFE–7000 is acceptable because it reduces overall risk to public health and the environment in the end uses listed.

6. ISCEON 39TC

ISCEON 39TC is acceptable for use in new and retrofit equipment as a substitute for CFC–12 in:

• Centrifugal chillers;
• Industrial process refrigeration;
• Industrial process air conditioning;
• Cold storage warehouses; and
• Ice skating rinks.

Rhodia Organique Fine Limited, the submitter of the above-listed refrigerant, claims the composition to be confidential business information. The submitter indicates that the refrigerant, also known as Centri-Cool, is a blend of two hydrofluorocarbons (HFCs).You can find a version of the submission with information claimed confidential by the

submitter removed, in EPA Air Docket A–91–42, item VI–D–279.

Environmental information: The ozone depletion potential (ODP) of ISCEON 39TC is zero. The Global Warming Potential (GWP) of each of the two components is roughly 2000 to 3000 (relative to carbon dioxide, using a 100-year time horizon).

One component of this blend has not been exempted from listing as a volatile organic compound (VOC) under Clean Air Act regulations for purposes of State implementation plans (SIP) to control ground-level ozone.

Flammability information: Neither component, nor the blend, is flammable.

Toxicity and exposure data: Both components of the blend have workplace guidance level exposure limits on the order of 1000 ppm. EPA believes this exposure limit will be protective of human health and safety. EPA expects users to follow all recommendations specified in the Material Safety Data Sheet (MSDS) for the blend and the individual components and other safety precautions common in the refrigeration and air conditioning industry.

Comparison to other refrigerants: ISCEON 39TC is not an ozone depleter; thus, it reduces risk overall compared to CFC–12, the ODS it replaces. ISCEON 39TC has a comparable or lower GWP than the other substitutes for CFC–12. Thus, we find that ISCEON 39TC is acceptable because it reduces overall risk to public health and the environment in the end uses listed.

7. R–404A

R–404A is acceptable for use in new and retrofit equipment as a substitute for HCFC–22 in:

- Industrial process refrigeration.

R–404A is a blend of 44% by weight HFC–125 (pentafluoroethane), 52% by weight HFC–143a (1,1,1-trifluoroethane) and 4% by weight HFC–134a (1,1,1,2-tetrafluoroethane). You may find the submission under EPA Air Docket A–91–42, item VI–D–283. EPA previously listed R–404A as an acceptable substitute for CFC–12 in industrial process refrigeration and other end uses in the original SNAP rule (March 18, 1994; 59 FR 13044).

Environmental information: The ozone depletion potential (ODP) of R–404A is zero. The Global Warming Potentials (GWP) of HFC–125, HFC–143a and HFC–134a are 3400, 4300 and 1300, respectively (relative to carbon dioxide, using a 100-year time horizon). The contribution of this blend to global warming will be minimized through the implementation of the venting prohibition under section 608(c)(2) of the Clean Air Act (see 40 CFR part 82, subpart F). This section and EPA's implementing regulations prohibit venting or release of substitutes for class I and class II ozone depleting substances used in refrigeration and air-conditioning and require proper handling and disposal of these substances, such as recycling or recovery.

All components of this blend have been exempted from listing as a volatile organic compound (VOC) under Clean Air Act regulations for purposes of the State implementation plan (SIP) program.

Flammability information: The component HFC–143a is moderately flammable; however, the blend is not flammable nor does it fractionate into a flammable mixture.

Toxicity and exposure data: All components of the blend have workplace environmental exposure limits (WEELs) of 1000 ppm established by the American Industrial Hygiene Association (AIHA). EPA expects users to follow all recommendations specified in the Material Safety Data Sheet (MSDS) for the blend and the individual components and other safety precautions common in the refrigeration and air conditioning industry. We also expect that users of R–404A will adhere to the AIHA's WEELs.

Comparison to other refrigerants: R–404A is not an ozone depleter; thus, it reduces risk overall compared to HCFC–22, the ODS it replaces. R–404A has a comparable or lower GWP than the other substitutes for HCFC–22 and no ODP. Thus, we find that R–404A is acceptable because it reduces overall risk to public health and the environment in the end use listed.

8. Update: Formulation of NU–22 Changed

ICOR International has indicated that it is changing the composition of NU–22. On December 18, 2000, EPA found the original formulation acceptable for a variety of end-uses. At that time, the composition was claimed as confidential business information (CBI); however, the submitter has withdrawn that claim. The original formulation was 28.1% by weight pentafluoroethane (HFC–125), 70% 1,1,1,2-tetrafluoroethane (HFC–134a) and 1.9% isobutane (HC–600a). ICOR International has indicated it will not market this formulation. We are modifying the previous acceptability determination to now list this blend by its composition [R–125/134a/600a (28.1/70.0/1.9)] (rather than as NU–22) as an acceptable substitute for HCFC–22 in new and retrofit applications in the following end-uses:

- Industrial process refrigeration and air-conditioning;
- Centrifugal chillers;
- Reciprocating chillers;
- Residential air conditioning and heat pumps;
- Residential dehumidifiers;
- Refrigerated transport;
- Motor vehicle air conditioning (buses only).

The composition of NU–22 has been changed to 46.6% by weight pentafluoroethane (HFC–125), 50% 1,1,1,2-tetrafluoroethane (HFC–134a) and 3.4% butane, also known as n-butane (HC–600). This composition is identical to that of the refrigerant ISCEON 59. The manufacturer of ISCEON 59 has applied for assignment under the American Society of Heating, Refrigerating and Air-conditioning Engineers, Inc. (ASHRAE) Standard 34. The designation of R–417A has been recommended; however, this has not yet been formally published in an addendum or revision to ASHRAE Standard 34.

EPA previously found ISCEON 59 acceptable for several end-uses on December 6, 1999 at 64 FR 68040. That finding now applies to NU–22. NU–22 [R–125/134a/600 (46.6/50.0/3.4)] is acceptable for use in new and retrofit equipment as a substitute for R–22 in:

- Household and light commercial air-conditioning
- Commercial comfort air-conditioning (centrifugal chillers; reciprocating and screw chillers)
- Industrial process refrigeration;
- Industrial process air-conditioning;
- Cold storage warehouses;
- Refrigerated transport;
- Retail food refrigeration;
- Commercial ice machines;
- Vending machines;
- Water coolers;
- Household refrigerators;
- Household freezers;
- Ice skating rinks;
- Non-mechanical heat transfer.

B. Aerosols

1. HFC–245fa

EPA's decision: *Hydrofluorocarbon-245fa is acceptable as a substitute for:*

- CFC–113 and HCFC–141b in the aerosol solvent end use.

This compound is also known as HFC–245fa or 1,1,1,3,3-pentafluoropropane. You can find a version of the submission with information claimed confidential by the submitter removed, in EPA Air Docket A–91–42, item VI-D–274. EPA has previously found HFC–245fa acceptable

for use in certain foam blowing (64 FR 68041, December 6, 1999) and refrigeration and air conditioning applications (65 FR 37901, June 19, 2000).

Environmental information: HFC–245fa has an ozone depletion potential of zero. It has a global warming potential (GWP) of 1022. This chemical has been exempted from listing as a VOC under Clean Air Act regulations.

Flammability: HFC–245fa is non-flammable.

Toxicity and exposure data: We expect users to follow all recommendations specified in the manufacturer's MSDS for HFC–245fa. We also expect that the workplace environmental exposure will not exceed the American Industrial Hygiene Association's (AIHA) workplace environmental exposure limit (WEEL) of 300 ppm.

Comparison to other aerosols: HFC–245fa's global warming potential (GWP) is similar to or lower than that of the ODSs that it would be replacing, and it has no ODP. Thus, HFC–245fa reduces risk overall compared to the substances it replaces. HFC–245fa:

(1) Is non-flammable and reduces the risk of fire compared to flammable aerosol solvents,

(2) Is less toxic than many of the non-flammable aerosol solvents, and

(3) Has a GWP comparable to or less than other substitute aerosol solvents and has no ODP.

Thus, we find that HFC–245fa is acceptable because it reduces overall risk to public health and the environment in the aerosol solvent end use.

C. Adhesives, Coatings and Inks

1. HFE–7100

EPA's decision: Hydrofluoroether-7100 is an acceptable substitute for:

- CFC–113, HCFC–141b, and methyl chloroform in adhesives, coatings, and inks.

Hydrofluoroether-7100 is also called HFE–7100; $C_4F_9OCH_3$;$C_5F_9OH_3$; methoxynonafluorobutane, iso and normal; and methyl nonafluorobutyl ether. HFE–7100 also may be used as a carrier for lubricant coatings.

Environmental information: HFE–7100 has an ozone depletion potential (ODP) of zero, a global warming potential (GWP) of 390 over a 100-year time horizon, and an atmospheric lifetime of 4.1years. This chemical has been exempted from listing as a volatile organic compound (VOC) under Clean Air Act regulations.

Flammability: HFE–7100 is non-flammable.

Toxicity and exposure data: HFE–7100 has low toxicity. HFE–7100 has a workplace environmental exposure limit (WEEL) of 750 ppm established by the American Industrial Hygiene Association (AIHA).

Comparison to other carrier solvents in adhesives, coatings, and inks: HFE–7100's GWP is similar to or lower than that of the ODSs that it would be replacing, and it has no ODP. Thus, HFE–7100 reduces risk overall compared to the substances it replaces.

HFE–7100:

(1) Is non-flammable and reduces the risk of fire compared to flammable carrier solvents,

(2) Is less toxic than the non-flammable carrier solvents, and

(3) Has a GWP comparable to or less than other substitute carrier solvents and has no ODP.

Thus, we find that HFE–7100 is acceptable because it reduces overall risk to public health and the environment in the adhesives, coatings, and inks end uses.

2. HFE–7200

EPA's decision: Hydrofluoroether-7200 is an acceptable substitute for:

- CFC–113, HCFC–141b, and methyl chloroform in adhesives, coatings, and inks.

Hydrofluoroether 7200 is also known as HFE–7200; $C_4F_9OC_2H_5$; $C_6F_9OH_5$; and ethoxynonafluorobutane, iso and normal. HFE–7200 also may be used as a carrier for lubricant coatings.

Environmental information: HFE–7200 has an ODP of zero, a GWP of 55 and an atmospheric lifetime of 0.9 years. This chemical has been exempted from listing as a VOC under Clean Air Act regulations.

Flammability: HFE–7200 has no flash point. Its flammability range in air is 2.4–12.4%.

Toxicity and exposure data: The manufacturer's recommended exposure guideline for HFE–7200 is 200 ppm over an eight-hour time-weighted average. EPA expects HFE–7200 users to follow all recommendations specified in the manufacturer's Material Safety Data Sheets (MSDSs). We also expect that users of HFE–7200 will adhere to any acceptable exposure limits set by any voluntary consensus standards organization, including the American Conference of Governmental Industrial Hygienists' (ACGIH) threshold limit values (TLVs) or the AIHA's WEELs.

Comparison to other carrier solvents in adhesives, coatings, and inks: HFE–7200's GWP is similar to or lower than that of the ODSs that it would be replacing, and it has no ODP. Thus, HFE–7200 reduces risk overall compared to the substances it replaces.

HFE–7200:

(1) Reduces the risk of fire compared to more flammable carrier solvents,

(2) Is less toxic than the non-flammable carrier solvents, and

(3) Has a GWP comparable to or less than other substitute carrier solvents and has no ODP.

Thus, we find that HFE–7200 is acceptable because it reduces overall risk to public health and the environment in the adhesives, coatings, and inks end uses.

II. New Data Available on the Toxicity of HCFC–225ca/cb

The manufacturer of HCFC–225ca/cb conducted a review of the toxicity of HCFC–225ca, HCFC–225cb, and the mixture of the two isomers. The manufacturer's new analysis indicates that exposure limits of 50 ppm, 400 ppm, and 100 ppm, respectively, for the -ca and -cb isomers and for the commercial formulation of HCFC–225ca/cb may be appropriate. The company that produces HCFC–225 ca/cb has indicated to EPA that they may petition the American Industrial Hygiene Association, a voluntary standard setting committee, to set a Workplace Environmental Exposure Level using these new data.

When EPA originally reviewed HCFC–225ca/cb, we found this substitute acceptable subject to use conditions in solvents cleaning (June 13, 1995; 60 FR 31099) and acceptable in aerosol solvents (April 28, 1999; 64 FR 22993) as a substitute for methyl chloroform and CFC–113. At the time of our determination, we stated that the company-set exposure limit of 25 ppm for the -ca isomer and 250 ppm for the -cb isomer would be protective of human health. The condition for use of HCFC–225 as a non-aerosol cleaning solvent specified that users must meet the company-set exposure limit of 25 ppm for the -ca isomer.

EPA has also done our own assessment of the toxicity using all available toxicity studies and a benchmark dose approach to arrive at an acceptable exposure limit. Our analysis indicates that the manufacturer's revised exposure limits are sufficiently protective of human health. You can find this information in a document titled, ''Recommendation of AELs for HCFC–225ca, HCFC–225cb, and HCFC–225 ca/cb.'' This document is in EPA's Air Docket #A–91–42, item IX-B–73. To obtain a copy, you can contact the EPA Air Docket at the address and phone number listed above in the **ADDRESSES**

section at the beginning of this document.

III. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. We refer to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- Rulemaking—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- Listing of Unacceptable/Acceptable Substitutes—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.
- Petition Process—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, it must publish the revised lists within an additional six months.
- 90-day Notification—Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or *existing* chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.
- Outreach—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.
- Clearinghouse—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the rulemaking (59 FR 13044) which described the process for administering the SNAP program. In the same notice, we issued the first acceptability lists for substitutes in the major industrial use sectors. These sectors include:

- Refrigeration and air conditioning;
- Foam blowing;
- Solvents cleaning;
- Fire suppression and explosion protection;
- Sterilants;
- Aerosols;
- Adhesives, coatings and inks; and
- Tobacco expansion.

These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

As described in this original rule for the SNAP program, EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substance. Therefore, by this notice we are adding substances to the list of acceptable alternatives without first requesting comment on new listings.

However, we do believe that notice-and-comment rulemaking is required to place any substance on the list of prohibited substitutes, to list a substance as acceptable only under certain conditions, to list substances as acceptable only for certain uses, or to remove a substance from the lists of prohibited or acceptable substitutes. We publish updates to these lists as separate notices of rulemaking in the **Federal Register**.

The Agency defines a ''substitute'' as any chemical, product substitute, or alternative manufacturing process, whether existing or new, intended for use as a replacement for a class I or class II substance. Anyone who produces a substitute must provide EPA with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to substitute manufacturers, but may include importers, formulators, or end-users, when they are responsible for introducing a substitute into commerce.

You can find a complete chronology of SNAP decisions and the appropriate **Federal Register** citations from the SNAP section of EPA's Ozone Depletion World Wide Web site at *www.epa.gov/ozone/title6/snap/chron.html.* This information is also available from the Air Docket (see **ADDRESSES** section above for contact information).

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: March 1, 2002.

Paul Stolpman,

Director, Office of Atmospheric Programs, Office of Air and Radiation.

Appendix A—Summary of Acceptable Decisions

REFRIGERATION AND AIR CONDITIONING

End-use	Substitute	Decision	Further information
Very low temperature refrigeration (new equipment only).	PFC–1102HC, PFC–662HC, PFC–552HC and FLC–15 as substitutes for CFC–13, CFC–113, CFC–114 and blends thereof.	Acceptable.	
Very low temperature refrigeration (retrofit and new).	Hydrofluoroether-7000 as a substitute for HCFC–123.	Acceptable.	
Industrial process refrigeration (retrofit and new).	Hydrofluoroether-7000 as a substitute for CFC–11 and CFC–113.	Acceptable.	
	ISCEON 39TC as a substitute for CFC–12.	Acceptable.	
	R–404A as a substitute for HCFC–22.	Acceptable.	
Non-mechanical heat transfer (retrofit and new).	Hydrofluoroether-7000 as a substitute for CFC–11 and CFC–113.	Acceptable.	

REFRIGERATION AND AIR CONDITIONING—Continued

End-use	Substitute	Decision	Further information
Centrifugal chillers (retrofit and new)	ISCEON 39TC as a substitute for CFC–12.	Acceptable.	
Industrial process air conditioning (retrofit and new).	ISCEON 39TC as a substitute for CFC–12.	Acceptable.	
Cold storage warehouses (retrofit and new).	ISCEON 39TC as a substitute for CFC–12.	Acceptable.	
Ice skating rinks (retrofit and new)	ISCEON 39TC as a substitute for CFC–12.	Acceptable.	
The following end-uses (retrofit and new): • Centrifugal chiller • Reciprocating chillers • Industrial process refrigeration • Industrial process air-conditioning • Refrigerated transport • Residential air conditioning and heat pumps • Residential dehumidifiers • Motor vehicle air conditioning, buses only	R125/134a/600a (28.1/70.01/1.9)] as a sustitute for HCFC–22.	Acceptable.	
The following end-uses (retrofit and new): • Household and light commercial air-conditioning • Centrifugal chiller • Reciprocating chillers • Screw chillers • Industrial process refrigeration • Industrial process air-conditioning • Cold storage warehouses • Refrigerated transport • Retail food refrigeration • Commercial ice machines • Vending machines • Water coolers • Household refrigerators • Household freezers • Ice skating rinks • Non-mechanical heat transfer	NU–22/ISCEON 59 [R–125/134a/600 (46.6/50.0/3.4] as a substitute for HCFC–22.	Acceptable	EPA expects that manufacturers, installers and servicers of refrigeration and air-conditioning systems will follow all applicable industry practices and technical standards, including but not limited to standards issued by the American Society of Heating, Refrigerating and Air-conditioning Engineers (ASHRAE), and that exposures will be kept within all applicable American Industrial Hygiene Association (AIHA) and American Conference of Governmental Industrial Hygienists (ACGIH) occupational exposure limits.
Aerosol solvents	HFC–245fa as a substitute for CFC–113 and HCFC–141b.	Acceptable	EPA expects that the workplace environmental exposure will not exceed the Workplace Environmental Exposure Limit of 300 ppm and that users will observe the manufacturer's recommendations in MSDSs.
Adhesives, Coatings, and Inks			
Adhesives, coatings, and inks	Hydrofluoroether-7100 as a substitute for CFC–113, HCFC-141b, and methyl chloroform.	Acceptable.	
Adhesives, coatings, and inks	Hydrofluoroether-7200 as a substitute for CFC–113, HCFC-141b, and methyl chloroform.	Acceptable.	

Appendix B—New Information Available

NON-AEROSOL CLEANING SOLVENTS

End-use	Substitute	Information available
Metal cleaning, Electronics cleaning, Precision cleaning.	HCFC–225ca/cb	Report on benchmark dose analysis of acceptable exposure limit for HCFC–225ca/cb, HCFC–225ca, and HCFC–225cb. See Docket A–91–42, item IX–B–73.

NON-AEROSOL CLEANING SOLVENTS—Continued

End-use	Substitute	Information available
Aerosols		
Aerosol solvents	HCFC–225ca/cb	Report on benchmark dose analysis of acceptable exposure limit for HCFC–225ca/cb, HCFC–225ca, and HCFC–225cb. See Docket A–91–42, item IX–B–73.

[FR Doc. 02–6848 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410, 411, 413, 424, and 489

[CMS–1163–CN]

RIN 0938–AK47

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects technical errors that appeared in the final rule published in the **Federal Register** on July 31, 2001 entitled ''Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update''.

EFFECTIVE DATE: This correction is effective October 1, 2001, except for certain wage index corrections that are effective December 1, 2001.

FOR FURTHER INFORMATION CONTACT: Bill Ullman, (410) 786–5667.

SUPPLEMENTARY INFORMATION: In the July 31, 2001 final rule entitled ''Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update'' (66 FR 39562), there were several technical errors in the preamble involving the SNF PPS wage index values. Accordingly, we are correcting several SNF PPS wage index values as published in Table 7.

Specifically, effective October 1, 2001, the wage index value for the Albuquerque, NM Metropolitan Statistical Area (MSA) (area 0200) is corrected from 0.9750 to 0.9759, and the wage index value for the Killeen-Temple, TX MSA (area 3810) is corrected from 0.7292 to 0.7940.

In addition, effective December 1, 2001, the wage index value for the Boston, MA MSA (area 1123) is corrected from 1.1289 to 1.1378, the wage index value for the Savannah, GA MSA (area 7520) is corrected from 0.9243 to 1.0018, and the wage index value for the Killeen-Temple, TX MSA (area 3810) is corrected again from 0.7940 (as corrected in the previous paragraph) to 0.8471.

In accordance with our longstanding policies, these technical and tabulation errors are being corrected prospectively, effective on the dates noted above. This correction notice conforms the published SNF PPS wage index values to the prospectively revised values and does not represent any changes to the policies set forth in the final rule.

The corrections appear in this document under the heading ''Correction of Errors''. The provisions in this correction notice are effective as if they had been included in the document published in the **Federal Register** on July 31, 2001, except for those wage index corrections that we specifically noted to be effective December 1, 2001.

Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before provisions of a notice such as this take effect. We can waive this procedure, however, if we find good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and its reasons in the notice issued.

We find it unnecessary to undertake notice and comment rulemaking because this notice merely provides technical corrections to the regulations and does not make any substantive changes to the regulations. Therefore, for good cause, we waive notice and comment procedures.

Correction of Errors

In FR Doc. 01–18869 of July 31, 2001 (66 FR 39562), we are making the following corrections:

Corrections to Preamble

1. On page 39572, in column 3 of Table 7, ''Wage Index for Urban Areas'', the entry of ''0.9750'' for the Albuquerque, NM MSA (area 0200) is revised to read ''0.9759''.
2. On page 39573, in column 2 of Table 7, ''Wage Index for Urban Areas'', the entry of ''1.1289'' for Boston, MA MSA (area 1123) is revised by adding ''1.1378 (effective December 1, 2001)''.
3. On page 39575, in column 3 of Table 7, ''Wage Index for Urban Areas'', the entry of ''0.7292'' for the Killeen-Temple, TX MSA (area 3810) is revised to read ''0.7940'' and by adding ''0.8471 (effective December 1, 2001)''.
4. On page 39578, in column 1 of Table 7, ''Wage Index for Urban Areas'', the entry of ''0.9243'' for the Savannah, GA MSA (area 7520) is revised by adding ''1.0018 (effective December 1, 2001)''.

(Authority: Section 1888 of the Social Security Act (42 U.S.C. 1395yy))

(Catalog of Federal Domestic Assistance Program No. 93–773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 14, 2002.

Dennis Williams,

Acting, Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 02–6757 Filed 3–21–02; 8:45 am]

BILLING CODE 4120–01–P

THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 417 and 422

[CMS–1181–F]

RIN 0938–AK90

Medicare Program; Modifications to Managed Care Rules Based on Payment Provisions of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, and Technical Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations to reflect changes in the Social Security Act (the Act), enacted in certain sections of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), relating to the Medicare+Choice (M+C) program. This final rule only makes conforming changes to the regulations that implement the sections of the BIPA, and do not have any substantive effect.

This final rule also makes technical corrections to the M+C regulation published on June 29, 2000 (65 FR 40170). The remainder of the sections of the BIPA relating to the M+C program will be addressed in a subsequent proposed rule.

DATES: This final rule is effective May 21, 2002.

FOR FURTHER INFORMATION CONTACT: Al D'Alberto, (410) 786–1100.

SUPPLEMENTARY INFORMATION:

I. Background

A. Balanced Budget Act of 1997

Section 4001 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), added sections 1851 through 1859 to the Social Security Act (the Act) to establish a new Part C of the Medicare program, known as the Medicare+Choice (M+C) program. Under section 1851(a)(1) of the Act, every individual entitled to Medicare Part A and enrolled under Part B, except for individuals with end-stage renal disease, could elect to receive benefits either through the original Medicare fee-for-service program or an M+C plan, if one was offered where he or she lived.

The primary goal of the M+C program was to provide Medicare beneficiaries with a wider range of health plan choices through which to obtain their Medicare benefits. The BBA authorized a variety of private health plan options for beneficiaries, including both the traditional managed care plans (such as those offered by health maintenance organizations (HMOs)) that had been offered under section 1876 of the Act, and new options that were not previously authorized. Three types of M+C plans were authorized under the new Part C:

- M+C coordinated care plans, including HMO plans (with or without point-of-service options), provider-sponsored organization (PSO) plans, and preferred provider organization (PPO) plans.
- M+C medical savings account (MSA) plans (that is, combinations of a high-deductible M+C health insurance plan and a contribution to an M+C MSA).
- M+C private fee-for-service plans.

The BBA also enacted new beneficiary protections and quality assurance requirements, a new methodology for paying risk contractors, and new enrollment rules.

B. Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999

The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) (Pub.L. 106–113) amended the M+C provisions of the Act. These amendments were implemented in a final rule with comment period published in the **Federal Register** on June 29, 2000 (65 FR 40170). We received 5 comments in response to that final rule, which will be part of the future rulemaking implementing discretionary provisions of the BIPA.

Section 501 of the BBRA amended section 1851(e)(4) of the Act to permit enrollees to receive certain rights ordinarily effective when an M+C plan terminates, at the time the beneficiary receives notice of the termination, as well as when the termination takes effect. These rights include an open enrollment period during which other M+C plans must be open, and the right to choose certain Medigap plans. It also amended section 1851(e)(2) to provide for continuous open enrollment for institutionalized individuals.

Section 502 amended section 1851(f)(2) of the Act to provide that if an election or change in election to an M+C plan were made after the 10th day of a calendar month, the election would be effective the first day of the second calendar month following the date the election or change in election was made, not the first calendar month. In section 503, which amended section 1876(h)(5)(B) of the Act, the BBRA also permitted the extension or renewal of Medicare cost contracts for an additional 2 years, through December 31, 2004. Section 511(a) amended section 1853(a) of the Act by revising the original risk adjustment transition schedule for calendar years (CY) 2000, 2001, and 2002.

Section 512 of the BBRA amended section 1853 of the Act by adding a new paragraph (i) to provide for new entry bonus payments to encourage M+C organizations to offer plans where there were no M+C plans serving the area. Section 513 amended section 1857(c)(4) of the Act to reduce from 5 years to 2 years the period during which an M+C organization that has terminated its M+C contract is barred from entering into a new M+C contract, and provided for a new exception to this rule in cases in which M+C payments are increased by statute or regulation subsequent to the decision to terminate.

M+C organizations were permitted to elect to apply the premium and benefit provisions of section 1854 of the Act uniformly to separate segments of a service area by the amendment in section 515 of the BBRA. The annual deadline for submission of adjusted community rate proposals was changed from May 1 to July 1 pursuant to section 516 of the BBRA, which amended section 1854(a)(1) of the Act.

The annual adjustment in the national per capita M+C growth percentage for 2002, found in section 1853(c)(6) of the Act, was revised by section 517 of the BBRA from a 0.5 percentage point reduction to a reduction of 0.3 percentage points. Section 518 of the BBRA amended section 1852(e)(4) of the Act to make changes in the procedures through which an M+C organization can be deemed by a private accreditation organization to meet certain M+C requirements, and added new categories of requirements that can be deemed to be met.

Section 1852(e)(2) of the Act was amended by section 520 of the BBRA to provide that PPO plans are required to meet only the quality assurance requirements that apply to private fee-for-service plans. Section 522 amended section 1857(e) of the Act by basing the M+C portion of the user fee on the percentage of all Medicare beneficiaries who have enrolled in M+C plans.

Finally, section 523 of the BBRA amended section 1859(e)(2) of the Act to provide that a religious fraternal benefit society could offer any type of M+C plan, and section 524 amended section 1877(b)(3) of the Act to specify that certain Medicare rules that established prohibitions on physician referrals did not apply for purposes of M+C organizations offering M+C coordinated care plans, although they would apply for purposes of M+C MSA plans and private fee-for-service plans.

C. Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000

The Medicare, Medicaid, and SCHIP Benefits Improvement Act of 2000 (BIPA) (Pub. L. 106–554), enacted December 21, 2000, amended the M+C provisions of the Act in sections 601 through 634. In this final rule, we are only making conforming changes to the regulations to reflect amendments made in sections 601, 602, 603, 607, 608, 613, 619, and 634 of the BIPA. In those sections the Congress mandated that the Secretary take certain actions by certain

deadlines, leaving no discretion in implementing these mandates. In a subsequent rulemaking, we will address the remaining sections of the BIPA that amend M+C provisions of the Act.

1. Increase in Minimum Payment Amount

Section 601 amended section 1853(c)(1)(B) of the Act by establishing new minimum payment amount rates (floor rates) in CY 2001 for months after February. The new monthly minimum rates for March through December of 2001 are as follows:

- $525 for any payment area in a Metropolitan Statistical Area (MSA) within the 50 States and the District of Columbia with a population of more than 250,000;
- $475 for any other area within the 50 States; or
- not more than 120 percent of the minimum amount rate for CY 2000 for any area outside the 50 States and the District of Columbia.

For January and February of 2001, the minimum amount rate is the minimum amount rate for the previous year increased by the national per capita M+C growth percentage, as described in § 422.254(b), for the year. Minimum amount rates for January and February 2001 are based on the M+C rate book published in the March 1, 2000 *Announcement of Calendar Year (CY) 2001 Medicare+Choice Payment Rates.* These rates are published on the Centers for Medicare & Medicaid Services (CMS) web site at *http://www.hcfa.gov/stats/hmorates/aapccpg.htm.* Minimum amount rates established by the BIPA for March through December 2001 are published in the January 4, 2001 *Revised Medicare+Choice (M+C) Payment Rates for Calendar Year (CY) 2001.* These rates are published on the CMS web site at *http://www.hcfa.gov/stats/hmorates/aapccpg/htm.*

The BIPA mandated that floor payment amounts are no longer established on a payment area basis. A single floor rate is now assigned to all payment areas (generally, a county) within MSAs of a certain size, and another floor rate is assigned to all other payment areas. If a payment area is located in an MSA with a population greater than 250,000, the BIPA changed the floor rate for that payment area, effective March 1, 2001. As a result, pre-BIPA revisions to prior years' growth estimates for that payment area cannot be linked to post-BIPA revisions for that payment area. Thus, revisions to prior years' growth estimates for area-specific rates will differ from revisions to prior years' growth estimates for floor rates. We are revising § 422.252(b) to reflect these changes.

2. Increase in Minimum Percentage Increase

Section 602 amended section 1853(c)(1)(C) of the Act by specifying that for March through December 2001, the minimum percentage increase rate is changed to 103 percent of the annual M+C capitation rate for a payment area for 2000. For January and February of 2001, for 2002, and for each succeeding year, the minimum percentage increase rate will be 102 percent of the prior year's annual M+C capitation rate. We have reflected this provision in § 422.252(c).

3. Phase-In of Risk Adjustment

Section 603 amended section 1853(a)(3)(C) of the Act by specifying that for CY 2002 and CY 2003, the risk adjustment method will be used to adjust only 10 percent of the M+C payment rate. (The BBRA provided that for 2002 the risk adjustment method would be used to adjust not more than 20 percent of the rate.) Under the BIPA, therefore, we will continue to apply the transition percentages applied in CYs 2000 and 2001, which are 90 percent demographic method and 10 percent risk adjusted method based on inpatient data, through CY 2003. This change for CY 2002 was announced in the January 12, 2001 *Advance Notice of Methodological Changes for Calendar Year (CY) 2002 Medicare+Choice (M+C) Payment Rates, which was published on our web site at http://www.hcfa.gov/stats/hmorates/45d2001.*

Under section 603 of the BIPA, for CY 2004, risk adjustment is to be based on both inpatient hospital and ambulatory data, and the percentage of the M+C payment rate that is risk adjusted is to increase to 30 percent of the capitation rate. The risk adjustment percentage is to increase to 50 percent in 2005, 75 percent in 2006, and 100 percent in 2007 and succeeding years. We are revising § 422.256 to reflect these changes.

Although the risk adjustment methodology will not be based on both inpatient hospital and ambulatory data until 2004, we have been collecting physician and hospital outpatient data since 2001. In a letter to the American Association of Health Plans, the Health Insurance Association of America, the Blue Cross and Blue Shield Association, and all M+C organizations, dated May 25, 2001, the Secretary suspended the required filing of physician and hospital outpatient department encounter data through July 1, 2002, in contemplation of a re-assessment of our approach to implementing comprehensive risk adjustment.

4. Full Implementation of Risk Adjustment for Congestive Heart Failure Enrollees for 2001

Section 607 amended section 1853(a)(3)(C) of the Act to provide for full implementation of risk adjustment for congestive heart failure enrollees for 2001. Under the BBRA, the phase-in amount for risk adjustment was 10 percent in 2001. This section of the BIPA provides for 100 percent implementation of risk adjustment in 2001 for each enrollee who, as determined under the risk adjustment methodology, has a qualifying congestive heart failure inpatient hospital discharge diagnosis that occurred July 1, 1999 through June 30, 2000. This provision only applies, however, to enrollees who are enrolled in a coordinated care plan that was the only coordinated care plan, as of January 1, 2001, offered in the area where the enrollee lives. Full implementation of risk adjustment for congestive heart failure began January 1, 2001, and is not included in the computation of the M+C capitation rates. Payments began in the spring of 2001, retroactive to January 1, 2001, and will end on December 31, 2001. We will revise § 422.256 to reflect these changes.

5. Expansion of Application of Medicare+Choice New Entry Bonus

Section 608 of the BIPA amended section 1853(i)(1) of the Act to expand the application of the new entry bonus to M+C organizations that enter payment areas (generally counties) that have been unserved since January 1 2001. The BBRA established bonus payments to encourage M+C organizations to offer plans in areas that otherwise would not have an M+C plan available. The application of the new entry bonus is governed by three factors: the definition of unserved payment area, the date a plan is first offered, and the period of application of the bonus plan.

First, the BBRA, in section 512, defined a previously unserved payment area as:

- A payment area in which an M+C plan has not been offered since 1997; or
- A payment area in which an M+C plan (or plans) had been offered since 1997, but in which every M+C organization offering an M+C plan in that payment area since then has notified CMS (no later than October 13, 1999) that it would no longer offer M+C plans in that payment area as of January 1, 2000.

Second, under our interpretation of section 608, the date on which a plan is

considered to be first offered is the date on which our contract with the M+C organization becomes effective and M+C beneficiaries may enroll in the plan. Two or more M+C organizations may be eligible for the bonus in the same previously unserved payment area if their M+C plans are first offered on the same date.

Third, the BBRA specified that the new entry bonus payments would only apply to M+C plans that are first offered during the period beginning January 1, 2000 and ending on December 31, 2001 (the period of application). This period of application is a 2-year window during which an M+C organization that enters a previously unserved payment area and offers the first M+C plan in that area will be eligible to begin receiving bonus payments.

Finally, the BBRA specified that the bonus payments to an eligible M+C organization would be 5 percent of the total monthly payment for that payment area for the first 12 months in the previously unserved payment area, and 3 percent for the second 12 months.

Section 608 of the BIPA extended by 1 year (to January 1, 2001) the time period during which an area could become an unserved payment area. The BIPA mandated that a payment area now will be considered a previously unserved payment area if:

- An M+C plan (or plans) had been offered since 1997; and
- Every M+C organization offering an M+C plan in that payment area since then has notified CMS (no later than October 3, 2000) that it would no longer offer M+C plans in that payment area as of January 1, 2001.

The effect of this section of the BIPA was to include additional payment areas in the definition of previously unserved payment area. The BBRA definition of a previously unserved payment area as a payment area in which an M+C plan has not been offered since 1997 remains unchanged.

Table 1 shows a comparison of the two different time periods in effect for the new entry bonus. Although the BIPA changed the time period defining a previously unserved payment area, it did not change the time period during which an M+C plan must first be offered (the period of application). The two time periods are the same: from January 1, 2000 through December 31, 2001.

TABLE 1.—COMPARISON OF BBRA AND BIPA PROVISIONS ON NEW ENTRY BONUS

Provision	BBRA	BIPA
Date a payment area becomes previously unserved	By January 1, 2000	By January 1, 2000 or by January 1, 2001.
Period of application (the window for M+C organizations to first offer an M+C plan in an unserved area).	January 1, 2000 through December 31, 2001.	January 1, 2000 through December 31, 2001.

We discussed the BIPA amendment to the new entry bonus in the January 12, 2001 *Advance Notice of Methodological Changes for Calendar Year 2002 Medicare+Choice Payment Rates,* published on our website at *http://www.hcfa.gov/stats/hmorates/cover01,* and in the March 1, 2001 *Announcement of Calendar Year 2002 Medicare+Choice Payment Rates.* In the March 1 announcement, we indicated that the 1-year extension in the time period defining an unserved area mandated by the BIPA also applied to the 2-year period of application. In effect, this would extend the end of the period of application window from December 31, 2001 to December 31, 2002. As a result, we stated that an M+C organization first offering a plan in a previously unserved payment area on January 1, 2002 would be eligible for the bonus payments.

After further analysis, we have determined that while the BIPA did expand the time period used to define a previously unserved payment area, it did not extend the period of application window during which an M+C organization must first offer a plan in a previously unserved area. The period of application remains January 1, 2000 through December 31, 2001. For example, an M+C organization that first offers a plan in a previously unserved payment area on January 1, 2002 would not be eligible for the new entry bonus payments. However, if the M+C organization first offers a plan in a previously unserved payment area prior to January 1, 2002, then the M+C organization would have first offered an M+C plan within the period of application and the organization would be eligible for new entry bonus payments.

We have reflected the changes in section 608 by the addition of § 422.250(g)(2)(iii).

6. Timely Approval of Marketing Material That Follows Model Marketing Language

Section 613 of the BIPA amended section 1851(h) of the Act by altering the review period for marketing materials that utilize, without modification, proposed model language as specified by us. The review period for these marketing materials was reduced from 45 days to 10 days. All other marketing materials will remain subject to the 45-day review period. We have revised § 422.80(a)(1) to reflect this change.

7. Restoring Effective Date of Elections and Changes of Elections of Medicare+Choice Plans

Section 619 of the BIPA amended section 1851(f) of the Act to reestablish the original BBA effective date of elections or changes in elections to M+C plans during an open enrollment period. The effective date for these elections in the BBA provisions establishing the M+C program was the first day of the calendar month following the election or change in election during an open enrollment period. The BBRA changed this effective date in the case of an election or change in election made after the 10th of the month. Under the BBRA, an election or change in election made after the 10th of the month during an open enrolment period was effective the first day of the second calendar month after the election or change in election. Section 619 of the BIPA reestablishes the original provision making an election or change of election made during an open enrollment period effective the first day of the calendar month following the election, regardless of the day of the month on which the election or change of election is made. We are revising § 422.68(c) to reflect this change, which was effective on June 1, 2001.

8. Service Area Expansion for Medicare Cost Contracts During Transition Period

Section 634 of the BIPA amended section 1876(h)(5) of the Act by revising the limitation on expansion of service areas for cost contracts. We must now accept and approve applications to expand the service area of cost contracts if they are submitted on or before September 1, 2003 and we determine that the organization continues to meet

the requirements applicable to the organization and to cost contracts under section 1876 of the Act. We are revising § 417.402(b) to reflect this change.

D. Technical Corrections

We are making a number of technical corrections to part 422. These corrections are technical and editorial in nature and do not alter the substance of the regulations. In some sections, they represent material that was inadvertently changed or omitted in the final rule published on June 29, 2000 (65 FR 40170). In § 422.100(d), in order to make clear that no change was intended in the final rule, we are restoring the words ''level of'' before ''cost-sharing'', as they appeared before ''cost-sharing'' in the June 26, 1998 interim final rule. This also makes the language consistent with the reference to the ''level of cost-sharing'' in § 422.304(b)(1).

In § 422.100(g)(2), we are restoring language that was inadvertently deleted in the final rule, by inserting, at the end of the sentence, before the word '';and'', the words '', promote discrimination, discourage enrollment, steer subsets of Medicare beneficiaries to particular M+C plans, or inhibit access to services.'' While these concepts arguably are captured in the reference to designing benefits to ''discriminate'' against particular beneficiaries, we want to clarify that the deletion of this language (which was not discussed in the preamble to the final rule) was not intended to make any change in our standards of review in this area.

In § 422.506(a)(4), we are correcting the number of years an M+C organization must wait to enter into a new contract with us after not renewing a contract, which is 2 years, not 5 years, as stated in the current rule. We are also making the same correction to § 422.512(e), by changing the ''5'' to a ''2'', to indicate the number of years an M+C organization must wait to enter into a new contract with us after they have terminated a contract.

II. Provisions of This Final Rule

The provisions of this final rule are as follows:

- In § 417.402, we are revising paragraph (b) to indicate that we must accept and approve service area expansion applications, provided they are submitted on or before September 1, 2003, and we determine that the organization continues to meet the requirements in section 1876 of the Act pertaining to cost contractors and the requirements in its cost contract.
- In § 422.68(c), we are indicating that for an election, or change in election, made during an open enrollment period, coverage is effective as of the first day of the first month following the month in which the election, or change in election, is made.
- In § 422.80, we are revising paragraph (a)(1) to indicate that the review period for marketing materials that utilize, without modification, proposed model language as specified by us, will be 10 days, not the 45 days required for all other marketing materials.
- In § 422.250, we are revising paragraph (g)(2) to extend the category of previously unserved payment areas to include a payment area in which every M+C organization that offered an M+C plan in that payment area notified us by October 3, 2000 that it will no longer offer an M+C plan in that payment area effective January 1, 2001. New entry bonus payments may be made to M+C organizations that first enter these payment areas from January 1, 2000 through December 31, 2001.
- In § 422.252, we are revising paragraph (b) to indicate that the minimum amount rate (floor rate) for a payment area for 1999, 2000, and January and February of 2001 is the minimum amount rate for the preceding year, increased by the national per capita growth percentage, as described in § 422.254(b), for the year. The floor rates for January and February 2001 are published in the March 1, 2000 *Announcement of Calendar Year 2001 Medicare+Choice Payment Rates (http://www.hcfa.gov/stats/hmorates/cover01*). For March through December, 2001, the minimum amount rate for any area in an MSA within the 50 States and the District of Columbia with a population of more than 250,00 is $525; and for any other area within the 50 States, it is $475. For any area outside of the 50 States and the District of Columbia, the minimum amount rate cannot exceed 120 percent of the minimum amounts for those areas for CY 2000. We will also indicate in that section that for 2002, and each succeeding year, the minimum amount rate is the minimum amount for the preceding year, increased by the national per capita growth percentage, as described in § 422.254(b), for the year.

We are also revising paragraph (c) to indicate that the minimum percentage increase for 1999, 2000, and January and February of 2001 is 102 percent of the annual M+C capitation rate for the preceding year. For March through December of 2001, the minimum percentage increase rate is 103 percent of the annual M+C capitation rate for 2000. For 2002, and for each succeeding year, the minimum percentage increase is 102 percent of the annual M+C capitation rate for the preceding year.

- In § 422.256, we are revising paragraph (d) to indicate changes to the phase-in schedule for risk adjustment. For payments beginning January 1, 2000 and ending December 31, 2003, the risk factor will be based on the inpatient hospital data and will comprise 10 percent of the monthly payment. For January 1, 2001 through December 31, 2001 only, this factor comprises 100 percent of the monthly payment for enrollees with a qualifying inpatient diagnosis of congestive heart failure who are enrolled in a coordinated care plan that is the only coordinated care plan offered on January 1, 2001 in the enrollee's county. For payments beginning January 1, 2004, and for all succeeding years, the risk factor will include both inpatient and ambulatory data. The health status risk factor will be phased in according to the following schedule: 30 percent in 2004; 50 percent in 2005; 75 percent in 2006; and 100 percent in 2007 and succeeding years.

The technical corrections in this final rule are as follows:

- In § 422.100(d)(2), we are correcting an omission by inserting the words ''level of'' before ''cost-sharing'', so that the sentence reads ''At a uniform premium, with uniform benefits and level of cost-sharing throughout the plan's service area, or segment of service area as provided in § 422.304(b)(2).''
- In § 422.100(g)(2), we are correcting an omission by inserting a phrase at the end of the section, so that it reads ''M+C organizations are not designing benefits to discriminate against beneficiaries, promote discrimination, discourage enrollment, steer subsets of Medicare beneficiaries to particular M+C plans, or inhibit access to services; and''.
- In § 422.250(g)(2)(ii), we are making a correction by deleting the word ''any'' and replacing it with the word ''all''.
- In § 422.506(a)(4), we are correcting the number of years an M+C organization must wait to enter into a new contract with us after deciding not to renew a contract by deleting the ''5'' and replacing it with a ''2''.
- In § 422.512(e), we are making the same correction by changing the ''5'' to a ''2'', to indicate the number of years an M+C organization must wait to enter into a new contract with us after terminating a contract.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60 days notice in the **Federal Register** and solicit public comment when a collection of information

requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(C)(2)(A) of the PRA requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of our estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

IV. Regulatory Impact

A. Overall Impact

We have examined this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Unfunded Mandate Reform Act (UMRA, Pub. L. 104–4), the Regulatory Flexibility Act (RFA, Pub.L. 96–354, September 19, 1980), and the Federalism Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives, and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year).

As a result of changes to the M+C regulations that reflect provisions of the BIPA specified in sections 601, 602, 603, 607, 608, 613, 619, and 634, we have determined that this final rule is a major rule with economically significant effects, as defined in Title 5, United States Code, section 804(2), and under Executive Order 12866. The BIPA provisions addressed in this final rule will result in expenditures by the Federal government of more than $100 million annually. We estimate its impact will be to increase the aggregate payments to M+C organizations by approximately $1 billion in 2001, and approximately $11 billion during the 5-year period from FY 2001 through FY 2005.

Table 2 shows the estimated expenditures under these provisions of the BIPA for this 5-year period. The estimates are rounded to the nearest $5 million, with estimates of less than $5 million represented as $0 in the table. All assumptions applied in calculating the estimates were consistent with the assumptions underlying the President's FY 2002 budget baseline. The total direct impact of approximately $7 billion does not include the additional impact of approximately $4 billion attributable to the indirect effect of increases in fee-for-service expenditures over the same 5-year period. Thus, all provisions of the BIPA addressed in this final rule are expected to increase aggregate payments to M+C organizations by approximately $11 billion over the next 5 years, beginning with $1 billion for 2001. The new payment rates are effective March 1, 2001.

TABLE 2.—ESTIMATED EXPENDITURES FOR BIPA PROVISIONS IN THIS FINAL RULE

BIPA section and provision	Additional cash expenditures, 2001–2005 (in millions)
Sec. 601:	
Increase minimum payment amounts:	
Hospital Insurance (Part A)	$610.
Supplementary Medical Insurance (Part B)	$540.
Sec. 602:	
Increase minimum % pay increase for 2001	Included in figures for Section 601.
Sections 601 and 602 Total	$1,150.
Sec. 603:	
Phase-in of risk adjustment:	
Hospital Insurance (Part A)	$3,310.
Supplementary Medical Insurance (Part B)	$2,430.
Section 603 Total	$5,740.
Sec. 607:	
Full risk adjustment in 2001 for Congestive Heart Failure enrollees:	
Hospital Insurance (Part A)	$50.
Supplementary Medical Insurance (Part B)	$40.
Section 607 Total	$90.
Sec. 608:	
Expand M+C new entry bonus	Not estimable, due to unknown number of eligible M+C organizations. Likely to be $0. (Provision is in effect less than 5 years.)
Sec. 613:	
Timely approval of marketing materials	Not applicable.
Sec. 619:	
Restore effective date of elections	Not applicable.
Sec. 634:	
Service area expansion for Medicare cost contracts	Not applicable.
Total, direct impact of the provisions in this rule	$6,980.
Total, indirect impact of increases in fee-for-service expenditures	Approximately $4,000.
Total, direct and indirect impacts	Approximately $11,000.

The distribution of expenditures for the BIPA provisions included in this final rule varies by whether or not the payment areas served by the M+C organization are floor payment areas, and which type of floor applies. Under the M+C payment methodology prescribed in the BBA, the payment rate for each payment area for a year is the highest of three amounts:

- The minimum payment rate amount, or floor rate;
- The minimum percent increase rate, which is the payment amount received during the last year plus the minimum percent increase for the current year; or
- A blended rate, which is an amount derived from blending the payment area specific rate with a national rate based on historic spending under the original Medicare fee-for-service program.

Generally, a payment area is the same as a county. Floor payment areas are payment areas that receive the minimum, or floor payment rate amounts. Under the provisions of the BIPA, there are now two categories of floor payment areas, those in MSAs with populations of 250,000 or more that receive the $525 minimum payment rate, and all other payment areas that receive the $475 minimum payment rate. The BIPA also specifies that from March through December 2001, all payment areas for which the minimum percentage rate is the highest rate (the non-floor payment areas) will receive 103 percent of the prior year's payment rate amount.

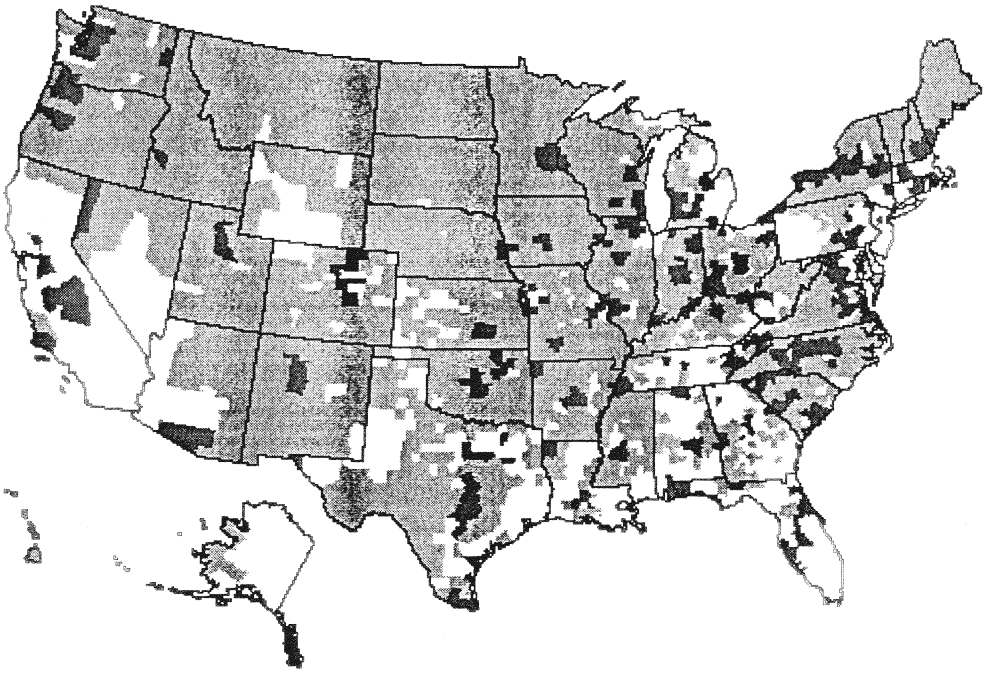
Figure 1 shows the distribution of the three types of payment rates assigned to payment areas in 2001. A high proportion of payment areas receive the $475 floor rate. This floor rate predominates in the mountain states of the Western region and the west-central sections of the Midwest. (In CY 2001, all non-floor rates are the minimum percentage increase, since no payment areas receive a blended rate.)

For most rural areas in the United States, the M+C payment rate is the floor rate. In the June 2001 Report to the Congress, MedPAC examined the differences between urban and rural areas. The report stated that in 2000, 94 percent of Medicare beneficiaries living in a Metropolitan Statistical Area (MSA) with at least 1 million people had at least one M+C HMO offered where they lived. In contrast, only 16 percent of beneficiaries living adjacent to an MSA, but in an area without a town of at least 10,000 people had the option to enroll in an M+C HMO. Only 5 percent of the beneficiaries who lived in completely rural areas (not adjacent to any large or small MSA) had an M+C HMO option available where they lived.

BILLING CODE 4120–01–P

Figure 1

2001 Medicare+Choice Payment Rates, by Payment Area**



$475 floor rate
$525 floor rate
Non-floor rate

**Source: Medpac, Report to the Congress, June 2001

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Table 3 shows how the distribution of enrollees, payment areas, and payment increases varies according to the three payment categories mandated by the BIPA. Enrollment figures include all enrollees as of January 2001 and payment area figures are based on only those areas that have M+C enrollees.

Payment increases refer to the difference between pre-BIPA rates and the BIPA mandated 2001 rates that are effective March through December 2001.

Non-floor payment areas receive the smallest average payment increase of 1 percent above the pre-BIPA rates for CY 2001, and 75 percent of all M+C enrollees reside in these areas. The 53 percent of payment areas that receive the $475 floor rate for CY 2001 have payment increases, on average, of 8 percent. Two percent of all M+C enrollees live in these payment areas. The largest average increase in payment rates are in payment areas that receive the new $525 floor, where approximately one-quarter of all M+C enrollees live. The 18 percent of payment areas assigned the $525 floor receive an average payment increase of 9.7 percent.

TABLE 3.—DISTRIBUTION OF ENROLLEES AND PAYMENT INCREASES FOR 2001, BY THE BIPA PAYMENT CATEGORY

[In percent]

Payment category	Percent of M+C enrollees in payment category	Percent of payment areas in payment category	Average payment increase
$475 floor payment areas	2	55	8.3
$525 floor payment areas	23	15	9.7
Non-floor payment areas	75	30	1.0

Table 4 shows M+C enrollment by payment categories and geographical region. The table is based on January 2001 enrollment, and includes M+C enrollees in coordinated care and private fee-for-service M+C plans, but not enrollees in cost or other non-risk plans. Within each of the four Census regions, the States are ordered by size of M+C enrollment as of January 2001.

Although the map in Figure 1 may show that all three types of payment categories are present in a State, Table 4 may show that there are no M+C enrollees in 1 or 2 of the payment categories. For example, the map shows that South Dakota has at least 1 payment area that is assigned the non-floor rate, but Table 4 shows that there are no M+C enrollees in the non-floor areas.

TABLE 4.—PERCENT OF M+C ENROLLEES IN EACH STATE, BY BIPA PAYMENT CATEGORY

Enrollee residence	In percent			
	Percent enrollees in low-floor payment areas	Percent enrollees in high-floor payment areas	Percent enrollees in non-floor payment areas	Total M+C enrollees, January 2001
Nation	2	23	75	
Northeast:				
Connecticut	None	<1	100	67,051
New Jersey	None	2	98	154,100
Pennsylvania	2	4	94	507,626
Massachusetts	None	14	86	220,246
New York	2	26	72	393,403
Rhode Island	None	72	28	57,368
New Hampshire	10	90	None	1647
Maine	80	20	None	271
Vermont	100	None	None	96
Midwest:				
Michigan	<1	6	94	78,057
Illinois	4	24	72	149,886
Indiana	2	50	48	11,428
Ohio	2	52	46	237,371
Missouri	2	54	44	124,584
Kansas	<1	70	28	26,133
Iowa	8	92	None	2,446
Minnesota	2	98	None	38,804
Nebraska	2	98	None	8,305
N. Dakota	100	None	None	54
S. Dakota	100	None	None	585
Wisconsin	12	88	None	33,068
South:				
Alabama	<1	<1	100	54,285
Dist. of Columbia	None	None	100	3,715
Georgia	<1	<1	100	38,685
Louisiana	<1	<1	100	92,055
Maryland	<1	<1	100	15,220
Delaware	4	None	96	799
Florida	<1	8	92	667,825
Texas	2	8	92	203,968
W. Virginia	18	2	82	5,334
Mississippi	14	8	78	1,252

TABLE 4.—PERCENT OF M+C ENROLLEES IN EACH STATE, BY BIPA PAYMENT CATEGORY—Continued

Enrollee residence	In percent			
	Percent enrollees in low-floor payment areas	Percent enrollees in high-floor payment areas	Percent enrollees in non-floor payment areas	Total M+C enrollees, January 2001
Tennessee	2	44	52	31,930
Arkansas	34	40	26	17,722
S. Carolina	36	54	10	475
Kentucky	<1	94	6	18,642
Virginia	2	92	6	11,196
N. Carolina	16	82	2	45,192
Oklahoma	4	92	2	46,830
West:				
Alaska	2	None	98	116
California	<1	8	92	1,469,716
Arizona	2	22	76	235,366
Nevada	2	22	74	45,030
Colorado	8	54	38	130,181
Wyoming	78	None	22	97
Washington	6	88	6	149,854
Utah	38	60	2	351
Idaho	6	94	<1	5,344
New Mexico	6	94	<1	27,946
Oregon	10	90	<1	136,707
Hawaii	26	74	None	21,563
Montana	100	None	None	165

Under the BIPA, M+C organizations could qualify for higher payment rates, and the statute mandated that the increase in payments be used by the M+C organizations in the following ways:

- To reduce beneficiary premiums.
- To reduce beneficiary cost-sharing.
- To enhance benefits.
- To make contributions to a benefit stabilization fund to reserve funds for future use to offset premium increases or benefit reductions.
- To stabilize or enhance the network of health care providers.
- A combination of the above.

Table 5 describes how M+C organizations choose to use the higher payments for 2001 by showing the percentage of M+C enrollment by each type of fund use and within payment categories ($475 floor, $525 floor, and non-floor payment areas). Almost two-thirds of M+C enrollees are in M+C organizations that used the increased funds for 2001 to enhance provider networks only, and 17 percent of enrollees are in M+C organizations that selected multiple options. The largest payment rate increases went to both floor payment areas (see Table 3) and M+C organizations serving these payment areas were less likely to use the increase in funds exclusively for enhanced provider networks.

TABLE 5.—USE OF INCREASED PAYMENTS UNDER BIPA, BY PERCENT OF ENROLLMENT WITHIN PAYMENT CATEGORIES

[In percent]

M+C organizations uses of increased payment	Percent of total M+C enrollment	Percent of M+C enrollment in *$475 floor* payment areas	Percent of M+C enrollment in *$525 floor* payment areas	Percent of M+C enrollment in *non-floor* payment areas
Reduced premium or cost-sharing only	6	8.4	8.7	5.3
Added or enhanced benefits only	1	0.9	0	0.94
Used stabilization fund only	11	0	2.8	14.2
Enhanced provider network only	65	48.6	43.5	72.3
Used multiple options	17	42.1	45	7.3

The increases in payment rates also had an impact on the premiums that M+C organizations offered their enrollees for 2001. After the increase in payment rates, the national average 2001 premium for the plan with the lowest premium that had the most generous benefit package offered by an M+C organization in a payment area decreased by about $2 per month. Currently, we have enrollment data at the level of M+C organization contracts, not at the level of individual plans offered by M+C organizations. Thus, we assigned contract level enrollment data to the plan with the lowest premium that had the most generous benefit package offered by an M+C organization in a payment area in each contract. There may be several plans offered by an M+C organization in a payment area, some of which may have additional benefits available for an additional premium.

Premiums have tended to be highest in payment areas where Medicare payment rates have been the lowest. Table 6 shows the impact of the increase in payment rates on 2001 premiums.

TABLE 6.—PREMIUM LEVELS BY PAYMENT CATEGORY, PRE- AND POST-BIPA

Payment category	Pre-BIPA average 2001 premium for ''representative'' plans	Post-BIPA average 2001 premiums for ''representative'' plans	Percent change
All payment areas	$25.44	$23.44	−7.9
$475 floor areas	51.70	48.39	−6.4
$525 floor areas	37.75	31.51	−16.5
Non-floor areas	21.08	20.41	−3.2

Prior to the increase in payment rates, 20.5 percent of enrollees were paying over $50 for 2001 premiums. The increase in payment rates decreased this share by 5 percentage points, so that only 15.6 percent of enrollees pay premiums over $50 in 2001. The increase in payment rates had no effect on the percentage of enrollees in the plan with the lowest premium that had the most generous benefit package offered by an M+C organization in a payment area with a zero dollar premium for 2001. That share would remain approximately 45 percent.

Drug coverage is most common in payment areas with the highest payment rates. Few M+C organizations have used the increase in payment rates to add a drug benefit. Prior to implementation of the BIPA payment provisions, approximately 69 percent of M+C enrollees would have had drug coverage in the plan with the lowest premium that had the most generous benefit package offered by their M+C organization in the payment area in 2001. As a result of the BIPA payment increases, 70 percent of enrollees (an additional 61,000 enrollees) would have drug coverage in the plan with the lowest premium that had the most generous benefit package offered by their M+C organization in the payment area in 2001. Payment areas with the $475 floor recorded the largest change in the percent of enrollees with drug coverage in the plan with the lowest premium that had the most generous benefit package offered by an M+C organization in a payment area as a result of the changes in the BIPA, increasing from 31 percent to 38 percent.

We have not considered alternatives to lessen the impact or regulatory burden of this final rule because the provisions are mandated by the BIPA and no additional burden is imposed by us.

The RFA also requires agencies to analyze options for regulatory relief of small businesses, nonprofit organizations, and governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of between $7.5 million and $25 million annually. Individuals and States are not included in the definition of small entities.

We estimate that fewer than 5 out of 177 M+C contractors have annual revenues of $7.5 million or less. Approximately 35 percent of M+C contractors have tax-exempt status, and thus, for purposes of the RFA are considered to be small entities. We have examined the economic impact of this final rule on M+C organizations, including those that are tax-exempt, and thus small entities, and we find that overall the economic impact is significant but positive, generating an increase in payments. We have not considered alternatives to lessen the impact or regulatory burden of this final rule because the provisions are mandated by the BIPA and no burden is imposed.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital located outside of an MSA with fewer than 100 beds. Almost 2 percent of M+C enrollees reside in payment areas outside MSAs, with floor payment rates of $475 for March through December of 2001. M+C organizations in these payment areas will receive, on average, an 8.3 percent increase in payments for 2001. Assuming BIPA-related payment increases in both original Medicare and the M+C program, small rural hospitals in these payment areas could be in a better position to renegotiate their contracts with M+C organizations. This could generate a positive increase in payments to some small rural hospitals. However, information on the payment terms of contracts between M+C organizations and providers is not available, therefore, we are unable to provide data on the level of this impact.

B. The Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. This final rule would have no consequential effect on the annual expenditures of any State, local, or tribal government, or the private sector. Therefore, we have determined, and we certify, that this final regulation would not result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million.

C. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed or final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will impose no direct requirement costs on State and local governments, would not preempt State law, or have any Federalism implications.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

V. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. The notice of proposed rulemaking can be waived, however, if an agency finds good cause that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, and it incorporates a statement of the finding and its reasons in the rule issued.

Publishing a proposed rule is unnecessary because this final rule only makes conforming changes to the regulations to implement those sections of the BIPA in which the Congress allowed no discretion as to the actions to be taken and the times in which they must be completed. These changes were enacted by the Congress, and would be in effect on the date mandated by the legislation without regard to whether they are reflected in conforming changes to the regulation text, since a statute controls over a regulation. In this final rule we merely have revised the regulation text to reflect these new statutory provisions. The BIPA provisions have been incorporated virtually verbatim, with no interpretation necessary. In accordance with 5 U.S.C. 808(2), we do not believe that publishing a notice of proposed rulemaking is necessary, nor would it be practicable given that a number of the provisions have already taken effect consistent with the effective dates established under the BIPA.

Also, this final rule contains only technical corrections to a prior final rule with comment period published in the **Federal Register** on June 29, 2000 (65 FR 40170). These technical corrections are editorial in nature and do not alter the substance of the regulations.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule.

List of Subjects

42 CFR Part 417

Administrative practice and procedure, Grant programs-health, Health care, Health facilities, Health insurance, Health maintenance organizations (HMO), Loan programs-health, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 422

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare+Choice, Penalties, Privacy, Provider-sponsored organizations (PSO), Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), secs. 1301, 1306, and 1310 of the Public Health Service Act (2 U.S.C. 300e, 300e–5, 300e–9), and 31 U.S.C. 9701.

Subpart J—Qualifying Conditions for Medicare Contracts

2. In § 417.402, paragraph (b) is revised to read as follows:

§ 417.402 Effective date of initial regulations.

* * * * *

(b) The changes made to section 1876 of the Act by section 4002 of the Balanced Budget Act of 1997 (BBA) are incorporated in part 422 of this chapter, except for changes affecting section 1876 cost contracts, which are incorporated in subpart L of this part. Upon enactment of the BBA (August 5, 1998), no new cost contracts are accepted by CMS, except for current Health Care Prepayment Plans that may convert to section 1876 cost contracts. Section 1876 cost contracts may not be extended or renewed beyond December 31, 2004. CMS must accept and approve applications to modify the cost contracts in order to expand the service area, provided they are submitted on or before September 1, 2003 and CMS determines that the organization continues to meet the regulatory requirements and the requirements in its cost contract.

PART 422—MEDICARE+CHOICE PROGRAM

1. The authority citation for part 422 continues to read as follows:

Authority: Secs. 1851 and 1855 of the Social Security Act (42 U.S.C. 1395w–21, and 1395w–25).

Subpart B—Eligibility, Election, and Enrollment

2. In § 422.68, paragraph (c) is revised to read as follows:

§ 422.68 Effective dates of coverage and change of coverage.

* * * * *

(c) *Open enrollment periods*. For an election, or change in election, made during an open enrollment period, as described in § 422.62(a)(3) through (a)(6), coverage is effective as of the first day of the first calendar month following the month in which the election is made.

* * * * *

3. In § 422.80, paragraph (a)(1) is revised to read as follows:

§ 422.80 Approval of marketing materials and election forms.

(a) * * *

(1) At least 45 days (or 10 days if using marketing materials that use, without modification, proposed model language as specified by CMS) before the date of distribution the M+C organization has submitted the material or form to CMS for review under the guidelines in paragraph (c); and

* * * * *

Subpart C—Benefits and Beneficiary Protections

4. In § 422.100, paragraphs (d)(2) and (g)(2) are revised to read as follows:

§ 422.100 General requirements.

* * * * *

(d) * * *

(2) At a uniform premium, with uniform benefits and level of cost-sharing throughout the plan's service area, or segment of service area as provided in § 422.304(b)(2).

* * * * *

(g) * * *

(2) M+C organizations are not designing benefits to discriminate against beneficiaries, promote discrimination, discourage enrollment, steer subsets of Medicare beneficiaries to particular M+C plans, or inhibit access to services; and

* * * * *

Subpart F—Payments to Medicare+Choice Organizations

5. In § 422.250, the following changes are made to read as set forth below:

A. Paragraphs (g)(2)(i) and (g)(2)(ii) are revised.

B. Paragraph (g)(2) (iii) is added.

§ 422.250 General provisions.

* * * * *

(g) * * *

(1) * * *

(2) * * *

(i) A county in which no M+C plan has been offered;

(ii) A county in which an M+C plan or plans have been offered, but where all M+C organizations offering an M+C plan notified CMS by October 13, 1999, that they will no longer offer plans in the county as of January 1, 2000; or

(iii) A county in which an M+C plan or plans have been offered, but where all M+C organizations offering an M+C plan notified CMS by October 3, 2000, that they will no longer offer plans in the county as of January 1, 2001.

* * * * *

6. In § 422.252, the following changes are made to read as set forth below:

A. Paragraph (b)(2) is revised.

B. Paragraphs (b)(3) and (b)(4) are added.

C. Paragraph (c)(2) is revised.

D. Paragraphs (c)(3) and (c)(4) are added.

§ 422.252 Annual capitation rates.

* * * * *

(b) * * *

(2) For 1999, 2000, and January and February of 2001, the minimum amount rate is the minimum amount rate for the preceding year, increased by the national per capita growth percentage (specified in § 422.254(b)) for the year.

(3) For March through December, 2001—

(i) The minimum amount rate for any area in a metropolitan statistical area within the 50 States and the District of Columbia with a population of more than 250,000 is $525;

(ii) For any other area within the 50 States, it is $475; or

(iii) For any area outside the 50 States and the District of Columbia, it is not more than 120 percent of the minimum amount rates for CY 2000.

(4) For 2002 and each succeeding year, the minimum amount rate is the minimum amount for the preceding year, increased by the national per capita percentage (specified in § 422.252(b)) for the year.

(c) * * *

(2) For 1999, 2000, and January and February of 2001, the minimum percentage increase is 102 percent of the annual Medicare+Choice capitation rate for the preceding year.

(3) For March through December of 2001, the minimum percentage increase is 103 percent of the annual Medicare+Choice capitation rate for 2000.

(4) For 2002, and for each succeeding year, the minimum percentage increase is 102 percent of the annual Medicare+Choice capitation rate for the preceding year.

7. In § 422.256, paragraph (d)(2) is revised to read as follows:

§ 422.256 Adjustments to capitation rates and aggregate payments.

* * * * *

(d) * * *

(2) *Implementation.* CMS applies the risk adjustment factor as follows:

(i) For payments beginning January 1, 2001 and ending December 31, 2003, CMS applies a risk factor that incorporates inpatient hospital encounter data. The risk factor will comprise 10 percent of the monthly payment.

(ii) For payments beginning January 1, 2000 and ending December 31, 2001 only, the risk factor comprises 100 percent of the monthly payment for individuals with a qualifying inpatient diagnosis of congestive heart failure who are enrolled in a coordinated care plan that is the only coordinated care plan offered on January 1, 2001 in the area where the individual lives.

(iii) For payments beginning January 1, 2004, and for all succeeding years, CMS applies a risk factor that incorporates inpatient hospital and ambulatory encounter data. This factor is phased in as follows:

(A) 30 percent in 2004;

(B) 50 percent in 2005;

(C) 75 percent 2006; and

(D) 100 percent in 2007 and succeeding years.

* * * * *

Subpart K—Contracts With Medicare+Choice Organizations

§ 422.505 [Corrected]

8. In § 422.506, in paragraph (a)(4), the phrase ''5 years'' is removed and the phrase ''2 years'' is added in its place.

§ 422.512 [Corrected]

9. In § 422.512, in paragraph (e), the phrase ''5 years'' is removed and the phrase ''2 years'' is added in its place.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774—Medicare—Supplementary Medical Insurance Program)

Dated: August 2, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: October 16, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–6956 Filed 3–21–02; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7779]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Edward Pasterick, Division Director, Program Marketing and Partnership Division, Federal Insurance Administration and Mitigation Directorate, 500 C Street, SW., Room 411, Washington, DC 20472, (202) 646–3098.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of

the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region II				
New Jersey: Millburn, Township of, Essex County.	340187	July 23, 1971, Emerg.; August 1, 1979, Reg. March 17, 2002.	3/17/02	3/17/02
Region III				
Pennsylvania: Birmingham, Township of, Chester County.	421474	November 14, 1974, Emerg.; April 15, 1981, Reg. March 17, 2002.	3/17/02	3/17/02
East Caln, Township of, Chester County ..	421477	October 10, 1974, Emerg.; September 30, 1980, Reg. March 17, 2002.	3/17/02	3/17/02
East Brandywine, Township of, Chester County.	421476	November 21, 1975, Emerg.; February 1, 1984, Reg. March 17, 2002.	3/17/02	3/17/02
East Fallowfield, Township of, Chester County.	421479	November 3, 1975, Emerg.; June 1, 1983, Reg. March 17, 2002.	3/17/02	3/17/02
East Marlborough, Township of, Chester County.	421480	March 28, 1975, Emerg.; July 16, 1981, Reg. March 17, 2002.	3/17/02	3/17/02
Modena, Borough of, Chester County	420282	October 10, 1974, Emerg.; November 19, 1987, Reg. March 17, 2002.	3/17/02	3/17/02
South Coatesville, Borough of, Chester County.	420288	December 10, 1975, Emerg.; May 3, 1982, Reg. March 17, 2002.	3/17/02	3/17/02
Valley, Township of, Chester County	421206	May 23, 1974, Emerg.; August 1, 1984, Reg. March 17, 2002.	3/17/02	3/17/02
Wallace, Township of, Chester County	421493	February 11, 1976, Emerg.; March 11, 1983, Reg. March 17, 2002.	3/17/02	3/17/02
West Brandywine, Township of, Chester County.	421496	August 6, 1975, Emerg.; September 28, 1979, Reg. March 17, 2002.	3/17/02	3/17/02
West Marlborough, Township of, Chester County.	422279	May 20, 1975, Emerg.; January 18, 1984, Reg. March 17, 2002.	3/17/02	3/17/02

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region VIII				
Colorado: Fremont County, Unincorporated Areas.	080067	June 25, 1975, Emerg.; September 29, 1989, Reg. March 17, 2002.	3/17/02	3/17/02
South Dakota: Hot Springs, City of, Fall River County.	460027	May 7, 1973, Emerg.; June 30, 1976, Reg. March 17, 2002.	3/17/02	3/17/02

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: March 13, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance Administration and Mitigation Administration.

[FR Doc. 02–6921 Filed 3–21–02; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[CC Docket No. 96–187; CC Docket No. 98–108; DA 02–583]

Termination of Stale or Moot Docketed Proceedings; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; termination of docketed proceedings; correction.

SUMMARY: In an order adopted December 21, 2001 and released January 11, 2002, the Commission terminated stale or moot docketed proceedings (Termination Order). Inadvertently two docketed proceedings were terminated in error. This document corrects that error by reinstating to pending status CC Docket No. 96–187 and CC Docket No. 98–108.

DATES: Effective March 12, 2002.

FOR FURTHER INFORMATION CONTACT: Lynne Milne, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1520.

SUPPLEMENTARY INFORMATION: In the **Federal Register** Doc. 02–1859 published on January 25, 2002 (67 FR 3617), the Commission inadvertently terminated docketed proceedings in FCC 01–385. Make the first correction on page 3618 by removing the seventh entry of the appendix as follows: CC 96–187 Implementation of a Section of the Telecommunications Act of 1996—RO 62 FR 5757.

Make the last correction on page 3618 by removing the thirteenth entry of the appendix as follows: CC 98–108 Beehive Telephone Company, Inc., Beehive Telephone, Inc. Nevada—ON 14 FCC Rcd 8077.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–6930 Filed 3–21–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010710172–2039–02; I.D. 061301A]

RIN 0648–AL92

Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program

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

ACTION: Final rule; response to comments.

SUMMARY: NMFS issues a final rule to change the Community Development Quota (CDQ) regulations for Bering Sea/Aleutian Islands (BSAI) crab to allow the State of Alaska (State) greater flexibility in establishing CDQ fishing seasons. This action is necessary to achieve the conservation and management goals for the BSAI crab CDQ program and is intended to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crabs (FMP).

DATES: Effective on April 22, 2002.

ADDRESSES: Copies of the Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228, or *gretchen.harrington@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act, at section 305(i)(1), required the North Pacific Fishery Management Council (Council) and NMFS to establish a CDQ program. See 16 U.S.C. 1855(i). In 1998, NMFS implemented the crab CDQ program with regulations at 50 CFR 679.31 (63 FR 8356, February 19, 1998) and crab CDQ fisheries began that year. Under the Magnuson-Stevens Act, 7.5 percent of the total allowable catch of each BSAI crab fishery for 2000 and beyond is allocated to the crab CDQ program.

Under the FMP, the Council and NMFS defer management of the BSAI king and Tanner crab fisheries, including the CDQ fisheries, to the State, with Federal oversight. The State/Federal cooperative management regime established in the FMP specifies three categories of management measures that provide the framework for the State management of the crab fisheries, including the determination of the guideline harvest levels (GHLs) and fishery seasons. They are (1) Category 1: Federal Management Measures Fixed in the FMP, (2) Category 2: Framework Management Measures, and (3) Category 3: Management Measures Deferred to the State. The FMP also provides for the State management of CDQ crab harvesting activity, including times when CDQ fishermen may harvest the CDQ reserve.

The State establishes crab fishing seasons according to a shellfish management cycle, based on stock assessment surveys conducted in the summer, and the GHLs for the upcoming fall and winter fishing seasons set according to those surveys. The CDQ reserve is a portion of the GHL. Currently, CDQ crab fisheries are conducted after the regular commercial fishery. However, State regulations allow the harvest of a portion of a CDQ crab fishery before the regular commercial crab fishery begins under specific conditions.

Although Federal regulations implementing the crab CDQ reserve, at 50 CFR 679.31(d), specify that the crab CDQ reserves be allocated by calendar year, the Magnuson-Stevens Act does not dictate when the reserve is available for harvest, only that the reserve be a portion of the annual harvest amount. By allocating the crab CDQ reserve on a calendar year basis, the State is prevented from conducting a CDQ crab season before the regular commercial fishery for snow crab (*Chionoecetes opilio*) because of the timing of the snow crab fishing season. The regular commercial fishery for snow crab starts on January 15 and is open until the GHL is harvested. Additionally, State stand-down provisions prohibit vessels that intend to participate in the snow crab fishery from being on the fishing grounds 14 days prior to the opening of the fishery. Thus, a CDQ season before the regular snow crab fishery could only start in December of the previous calendar year.

Existing Federal regulations do not prevent a CDQ fishery before the regular commercial fishery for the other crab species because these crab fisheries are prosecuted at times that would allow a CDQ fishery to occur before the regular fishery in the same calendar year.

In October 1998, NMFS proposed to the Council, and the Council concurred, that the Federal regulatory language that specified crab CDQ reserves by ''calendar year'' be changed to allow the State more flexibility in managing the crab CDQ harvests.

This regulatory amendment changes the Federal regulation at 50 CFR 679.31(d) by removing the phrase ''calendar year'' from the regulatory language. The CDQ reserve will still be apportioned annually based on the GHLs derived from the annual stock assessments. However, the CDQ reserve for snow crab will be available for harvest before January 1 to follow the annual cycle for crab fisheries used by the State rather than the calendar year cycle for groundfish fisheries used by NMFS. This change is consistent with the intent of the FMP by providing the State with greater flexibility to establish CDQ fishing seasons.

This action also removes the expired CDQ reserve phase-in language at 50 CFR 679.31(d).

NMFS published a proposed rule in the **Federal Register** on July 25, 2001 (66 FR 38626), which described the proposed regulatory amendment and invited comments from the public. Comments were invited until August 24, 2001. NMFS received no public comments on the proposed rule.

Changes From Proposed to Final Rule

NMFS decided to include in this final rule a correction to the regulations at 50 CFR 679.1 concerning the FMP title. In 1998, the Council, when updating the FMP, changed the title of the FMP from the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area to the FMP for Bering Sea/Aleutian Islands King and Tanner Crabs. NMFS approved the updated FMP in March 1999 (64 FR 11390, March 9, 1999). However, the regulations at 50 CFR 679.1 were not changed to reflect the new FMP title.

Small Entity Compliance Guide

This final rule does not directly effect the management or prosecution of the BSAI crab fisheries. As explained in the FRFA, this final rule adds management flexibility for the State of Alaska to set CDQ fishing seasons according to State regulations.

Classification

The Administrator, Alaska Region, NMFS, determined that this regulatory amendment is necessary for the management of the CDQ crab fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

NMFS prepared an Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Act for this regulatory amendment that describes the management background, the purpose and need for action, the management alternatives, and the socio-economic impacts of the alternatives. NMFS also prepared an FRFA based on the IRFA. The FRFA estimates the total number of small entities that will be affected by this action, and analyzes the economic impact on those small entities as required by the Regulatory Flexibility Act (RFA). A summary of the FRFA follows.

This regulatory change will have no direct effects, in and of itself, although it is intended to provide added management flexibility. With this Federal regulatory change, the State may choose to conduct a CDQ fishing season before a regular commercial fishery for snow crab.

NMFS considers most of the fishing operations affected by this final rule to be small entities. The universe of small entities is composed of the 319 regular commercial fishermen who hold licenses to operate catcher vessels with snow crab endorsements, the 65 villages that participate in the CDQ program, and the six CDQ groups, for a total of 390 small entities. For the purposes of the FRFA, NMFS assumes that all of the catcher vessels belong to small entities, while the 29 operators of licensed catcher processors with snow crab endorsements are not small entities. At present, however, information on ownership, affiliation, and contractual relationships between and among the catcher vessels is insufficient to allow definitive enumerations of which of these operations are, or are not ''small entities'' for Regulatory Flexibility Act purposes.

NMFS considered two alternatives, status quo and the regulation change. This regulatory change is a measure to reduce the impacts of the existing regulation on small entities, specifically the CDQ groups and communities that belong to the CDQ groups. The FRFA shows that the status quo alternative adversely impacts the 65 villages and 6 CDQ groups by preventing them from realizing the full value of their snow crab CDQ allocation.

On the other hand, the 319 regular commercial fishermen may experience adverse impacts from the proposed alternative due to the potential disadvantage of fishing for snow crab after some of the GHL has been harvested. Measures to reduce the impacts on these small entities will be taken by the State in determining whether to conduct a CDQ fishery before the regular commercial fishery. These measures include limiting the amount of CDQ quota that can be harvested pre-season to 30 percent of the CDQ quota (which equals 2.25 percent of the GHL) and limiting preseason CDQ fisheries for crab stocks with GHLs above 50 million pounds.

This final rule does not contain a collection-of-information requirement subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act (PRA). This rule does not duplicate, overlap, or conflict with other Federal regulations.

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

The Assistant Administrator, NMFS, finds good cause to waive the requirement to provide prior notice and the opportunity for public comment, pursuant to authority set forth at 5 U.S.C. 553 (b)(B), on the portion of the final rule that changes the title of the FMP. NMFS has determined that such procedures would be unnecessary because changing the FMP title has no effect on the public.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 15, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

§ 679.1 [Amended]

2. In § 679.1(g), remove the words ''Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area'' and add, in their place, the words ''Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs''.

§ 679.2 [Amended]

3. In § 679.2, in the definition for *Crab species*, remove the words ''Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands'' and add, in their place, the words ''Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs''.

4. In § 679.31, paragraph (d) is revised to read as follows:

§ 679.31 CDQ reserves.

* * * * *

(d) *Crab CDQ reserves.* For those king and Tanner crab species in the Bering Sea and Aleutian Islands Area that have a guideline harvest level specified by the State of Alaska, 7.5 percent of the annual guideline harvest level for each fishery is apportioned to a crab CDQ reserve.

* * * * *

[FR Doc. 02–6748 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–22–S

Rules and Regulations

Federal Register
Vol. 67, No. 56
Friday, March 22, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

Farm Service Agency

7 CFR Part 780

Appeal Procedures

AGENCIES: Federal Crop Insurance Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) and the Farm Service Agency (FSA) are amending the general administrative regulations and appeal procedure regulations. The intended effect of this rule is to establish procedures for program participant appeals of adverse decisions made by the Risk Management Agency (RMA) and to incorporate the appeals procedures created by the Agricultural Risk Protection Act of 2000 regarding the appealability of determinations of good farming practices.

DATES: This rule is effective April 22, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy Kreitzer, Director, Appeals, Litigation and Legal Liaison Staff, Federal Crop Insurance Corporation, United States Department of Agriculture, 1400 Independence Avenue, SW., AG STOP 0820, Washington, DC 20250–0820, telephone (202) 690–1683.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order 12866 and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

This rule does not constitute a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Unfunded Mandates Reform Act of 1995

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

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. This action does not increase the burden on any entity because this action merely clarifies and establishes provisions for producers to use in filing appeals of adverse decisions. The effect on small entities is the same as that for large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

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

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed under the provisions of Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought against FCIC.

Environmental Evaluation

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

Background

This rule amends FCIC and FSA informal appeal regulations to reflect the establishment of RMA and the reorganization of crop insurance functions. On September 30, 1999, FCIC and FSA published a notice of proposed rulemaking in the **Federal Register** at 64 FR 52678–52680 to amend 7 CFR part 400, subpart J and 7 CFR part 780.

Discussion of Comments

Following publication of the proposed rule the public was afforded 60 days to submit written comments and opinions. A total of three timely comments were received in response to the request for comment on the proposed rule. The comments received and FCIC's responses are as follows:

Comment 1: A reinsured company requested clarification regarding (1) the type of adverse decision with respect to ''Compliance with program requirements'' that is envisioned to be subject to the rule; (2) the intent of the term ''indebtedness,'' notification to the private company, and the option to participate in any appeal proceedings involving Fiscal Operations and Systems Division (FOSD) decisions that involve contracts of insurance of the private insurance company; and (3) the ambiguity of the definition of the term ''adverse decision.''

Response: (1) Section 400.91(c) involves catastrophic risk protection

policies that may be sold directly by FCIC through local FSA offices. While none are currently sold in this manner, the authority to offer such coverage through local FSA offices still exists. In such cases, FCIC would be the entity that makes the decisions regarding eligibility, compliance with the policy provisions, and indemnity payments made. For the purpose of clarity, FCIC has revised the provisions to specifically refer to the crop insurance program. (2) Indebtedness, as used in the definition of the term ''FOSD,'' is one of the grounds upon which an insured can be determined to be ineligible for insurance. Under 7 CFR part 400, subpart U, either FCIC or the reinsured companies make the initial determination that an insured owes a debt and that the debt has not been timely paid based on whether the policy is insured or reinsured by FCIC. Since FCIC makes some direct determinations of indebtedness, the review process of these determinations must be included in the rule. For reinsured policies, the reinsured company provides notice to the producer that the producer owes a debt and the producer must be given an opportunity to dispute the debt. After this process is complete and the debt is determined to be delinquent, the reinsured company notifies FCIC, who then verifies that the debt is delinquent before listing the producer on the Ineligible List. FOSD's role is to determine indebtedness for FCIC insured policies and verify indebtedness for reinsured policies. The definition of the term ''FOSD'' has been revised to clarify its function with respect to policies that FCIC insures and reinsures. Even though FCIC only verifies the debt, since it is the agency that determines that the producer is ineligible, producers are entitled to appeal FCIC's listing of them on the Ineligible List. However, current regulations limit the reinsured company's role in the review process to that permitted by 7 CFR part 11. That rule does not permit the insurance company participation in these disputes. Until 7 CFR part 11 is revised, reinsured companies are not permitted to directly participate in the administrative review process. (3) FCIC recognizes that the definition of ''adverse decisions'' in 7 CFR part 11 is much broader than its applicability to FCIC decisions and, therefore, FCIC has revised the definition to limit its applicability to the crop insurance program.

Comment 2: A reinsured company questioned whether: (1) Section 400.91(a)(1) could be removed as no contracts were issued by FCIC; all are issued by private insurance companies; (2) the findings of the Compliance Division are intended to be included under section 400.91(c)(2); (3) section 400.91(c)(3) includes reinsured companies' decisions on claims since it is the reinsured company's decision with respect to whether a claim is paid; (4) sections 400.91(c)(4) and 400.91(d) are in conflict since subsection (c)(4) provides that participants may request an administrative review, mediation or appeal of adverse decisions made by the Agency relative to issuance of payments or other benefits to an individual or entity who is not a participant in the program and subsection (d) states that only a participant may seek an administrative review or mediation under this subpart; (5) the reinsured company will be held harmless by RMA if a mediation decision is arrived at that is counter to policy or procedural provisions; (6) the reinsured company will be made aware of the fact an appellant is seeking mediation, and what time frames apply for such notification; and (7) if ''FSA'' is included correctly in 780.2(a)(iv), under what authority, circumstances and provisions would FSA make decisions on private insurance carriers' policies.

Response: (1) As stated above, even though all policies are currently reinsured by FCIC, FCIC still has the authority to offer insurance directly to producers. As long as such authority exists, the appeal provisions must remain in effect. (2) Section 400.91(c)(2) only applies to decisions of FCIC regarding whether producers have complied with policy requirements under policies insured by FCIC. This provision has no bearing on those policies insured by the insurance companies since decisions regarding compliance are made by the reinsured company and are not appealable under this rule. (3) As stated above, section 400.91(c)(3) is only applicable to policies insured by FCIC and where FCIC is making the decision with respect to whether claims should be paid. (4) There is no conflict between section 400.91(c)(4) and section 400.91(d). Section 400.91(c)(4) specifically refers to situations where the payment was made to a non-participant such as assignments, etc. where the participant may be challenging the payment made under such an assignment to a non-participant. However, it is still only the participant who may challenge the action, not the non-participant. This is consistent with section 400.91(d). (5) A settlement in mediation is no different than any other appeals process whereby the parties determine their litigative risk. Mediation often assumes a compromise that may entail paying money when it is believed that the producer is not entitled. Reinsured companies do it every day when they settle disputes. If settlement of a dispute can be presumed to be an error or omission, then FCIC would not be required to reinsure such claims when reinsured companies settle a dispute. As in other settlement cases, the risk sharing provisions of the Standard Reinsurance Agreement continue to apply. (6) If the appeal involves a dispute regarding FCIC's conduct regarding a policy it reinsures, the reinsured company will be notified of such appeal in the manner as established in FCIC handbooks. (7) With respect to FSA's 7 CFR 780.2(a)(1), (a)(1)(iii), and (iv) are revised as the references to FCIC exceed the intended current scope of part 780 and because the explicit reference to FSA noninsured crop assistance program is unnecessary in light of other provisions in the section.

Comment 3: A trade association (1) commented that the proposed rule should include notification of companies when appeals are requested; (2) questioned whether section 400.93 is meant to refer to ''one administrative review'' or whether it should say ''an administrative review''; and (3) suggested several editorial or grammatical changes.

Response: (1) As stated above, reinsured companies will be notified in writing of any appeal of a FCIC decision regarding a policy that the reinsured company insures. (2) Section 400.93 refers to one administrative review to make it clear that producers only have one level of appeal in the informal administrative appeals process, which in some cases may be different than the appeals process that was available under 7 CFR part 780. (3) Some of the grammatical changes have been made.

FCIC also made other technical changes to improve the readability of this rule and remove conflicts with other provisions in this rule or with parts 11 or 780 of this title and other ambiguities that may have existed. FCIC has not made any substantive changes as a result of these technical corrections.

After the proposed rule was published and the comments received, Congress enacted ARPA, which created specific limitations on the appeals of determinations of good farming practices made by FCIC. Since these limitations are statutorily mandated, they are incorporated into this final rule. This entails revisions to many of the provisions to incorporate this new appeals process because mediation and

NAD appeal are not applicable to determinations regarding good farming practices. However, except as stated above, the substantive appeals process for adverse decisions remains the same.

List of Subjects in 7 CFR Parts 400 and 780

Administrative practice and procedure, Claims, Crop insurance, Fraud, Reporting and record keeping requirements.

Final Rule

For the reasons stated in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 400, subpart J, and the Farm Service Agency amends 7 CFR part 780 as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

1. Revise subpart J of part 400 to read as follows:

Subpart J—Appeal Procedure

Sec.

400.90 Definitions.
400.91 Applicability.
400.92 Appeals.
400.93 Administrative review.
400.94 Mediation.
400.95 Time limitations for filing and responding to requests for administrative review.
400.96 Judicial review.
400.97 Reservations of authority.

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

§ 400.90 Definitions.

Act. The Federal Crop Insurance Act (7 U.S.C. 1501–1524).

Administrative review. A review within the Department of Agriculture of an adverse decision.

Adverse decision. A decision by an employee or Director of the Agency that is adverse to the participant. The term includes the denial of program benefits, written agreements, eligibility, etc. that results in the participant receiving less funds than the participant believes should have been paid or not receiving a benefit to which the participant believes he or she was entitled.

Agency. RMA or FCIC, including the RSO, FOSD or any other division within the Agency with decision making authority.

Appellant. Any participant who appeals or requests mediation of an adverse decision of the Agency in accordance with this subpart. Unless otherwise specified in this subpart, the term ''appellant'' includes an authorized representative.

Authorized representative. Any person, whether or not an attorney, who has obtained a Privacy Act waiver and is authorized in writing by a participant to act for the participant in the administrative review, mediation, or appeal process.

Certified State. A State with a mediation program, approved by the Secretary, that meets the requirements of 7 CFR part 1946, subpart A, or a successor regulation.

FCIC. The Federal Crop Insurance Corporation, a wholly owned Government corporation within USDA.

FOSD. The Fiscal Operations and Systems Division established by the Agency for the purpose of making determinations of indebtedness for policies insured by FCIC and for determining ineligibility for policies both insured and reinsured by FCIC.

FSA. The Farm Service Agency, an agency within USDA, or its successor agency.

Good farming practices. The farming practices used in the area where the crop is produced, including sustainable farming practices, that are determined by FCIC to be necessary for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance and to be compatible with the agronomic and weather conditions in the area or, for crops grown under an organic practice, the farming practices recommended by a private organization or government agency that certifies organic products and is accredited in accordance with the requirements of the Federal Organic Food Production Act of 1990.

Mediation. A process in which a trained, impartial, neutral third party (the mediator), meets with the disputing parties, facilitates discussions, and works with the parties to mutually resolve their disputes, narrow areas of disagreement, and improve communication.

NAD. The USDA National Appeals Division. See 7 CFR part 11.

Non-certified State. A State that is not approved by the Secretary of Agriculture to participate in the USDA Mediation Program under 7 CFR part 1946, subpart A, or its successor regulation.

Participant. An individual or entity that has applied for crop insurance or who holds a valid crop insurance policy that was in effect for the previous crop year and continues to be in effect for the current crop year. The term does not include individuals or entities whose claims arise under the programs excluded in the definition of participant published at 7 CFR 11.1.

Reinsured company. A private insurance company, including its agents, that has been approved and reinsured by FCIC to provide insurance to participants.

Reviewing authority. A person assigned the responsibility by the Agency of making a decision on a request for administrative review by the participant in accordance with this subpart.

RMA. The Risk Management Agency, an agency within USDA, or its successor agency.

RSO. The Regional Service Office established by the Agency for the purpose of providing program and underwriting services for private insurance companies reinsured by FCIC under the Act and for FCIC insurance contracts delivered through FSA offices.

Secretary. The Secretary of Agriculture.

USDA. United States Department of Agriculture.

§ 400.91 Applicability.

(a) This subpart applies to:

(1) Adverse decisions made by personnel of the Agency with respect to:

(i) Contracts of insurance insured by FCIC; and

(ii) Contracts of insurance of private insurance companies and reinsured by FCIC under the provisions of the Act.

(2) Determinations of good farming practices made by personnel of the Agency.

(b) This subpart is not applicable to any decision:

(1) Made by the Agency with respect to any matter arising under the terms of the Standard Reinsurance Agreement with the reinsured company; or

(2) Made by any private insurance company with respect to any contract of insurance issued to any producer by the private insurance company and reinsured by FCIC under the provisions of the Act.

(c) With respect to matters identified in § 400.91(a)(1), participants may request an administrative review, mediation, or appeal of adverse decisions by the Agency made with respect to:

(1) Denial of participation in the crop insurance program;

(2) Compliance with terms and conditions of insurance;

(3) Issuance of payments or other program benefits to a participant in the crop insurance program; and

(4) Issuance of payments or other benefits to an individual or entity who is not a participant in the crop insurance program.

(d) Only a participant may seek an administrative review or mediation under this subpart, as applicable.

§ 400.92 Appeals.

(a) Except for determinations of good farming practices, nothing in this subpart prohibits a participant from filing an appeal of an adverse decision directly with NAD in accordance with part 11 of this title without first requesting administrative review or mediation under this subpart.

(b) If the participant has timely requested administrative review or mediation, the participant may not participate in a NAD hearing until such administrative review or mediation is concluded. The time for appeal to NAD is suspended from the date of receipt of a request for administrative review or mediation until the conclusion of the administrative review or mediation. The participant will have only the remaining time to appeal to NAD after the conclusion of the administrative review or mediation.

(c) There is no appeal to NAD of determinations regarding good farming practices.

§ 400.93 Administrative review.

(a) With respect to adverse decisions, an appellant may seek one administrative review or seek mediation under § 400.94, but not both. Only an administrative review is available for determinations of good farming practices. Mediation is not available for determinations of good farming practices.

(b) If the appellant seeks an administrative review, the appellant must file a written request for administrative review with the reviewing authority in accordance with § 400.95. The written request must state the basis upon which the appellant relies to show that:

(1) The decision was not proper and not made in accordance with applicable program regulations and procedures; or

(2) All material facts were not properly considered in such decision.

(c) The reviewing authority will issue a written decision that will not be subject to further administrative review by the Agency.

§ 400.94 Mediation.

For adverse decisions only:

(a) Appellants have the right to seek mediation or other forms of alternative dispute resolution instead of an administrative review under § 400.93.

(b) All requests for mediation under this subpart must be made after issuance of the adverse decision by the Agency and before the appellant has a NAD hearing on the adverse decision.

(c) An appellant who chooses mediation must request mediation not later than 30 calendar days from receipt of the written notice of the adverse decision. A request for mediation will be considered to have been ''filed'' when personally delivered in writing to the appropriate decision maker or when the properly addressed request, postage paid, is postmarked.

(d) An appellant will have any balance of the days remaining in the 30-day period to appeal to NAD if mediation is concluded without resolution. If a new adverse decision that raises new matters or relies on different grounds is issued as a result of mediation, the participant will have a new 30-day period for appeals to NAD.

(e) An appellant is responsible for contacting the Certified State Mediation Program in States where such mediation program exists. The State mediation program will make all arrangements for the mediation process. A list of Certified State Mediation Programs is available at *http://www.act.fcic.usda.gov.*

(f) An appellant is responsible for making all necessary contacts to arrange for mediation in non-certified States or in certified States that are not currently offering mediation on the subject in dispute. An appellant needing mediation in States without a certified mediation program may request mediation by contacting the RSO, which will provide the participant with a list of acceptable mediators.

(g) An appellant may only mediate an adverse decision once.

(h) If the dispute is not completely resolved in mediation, the adverse decision that was the subject of the mediation remains in effect and becomes the adverse decision that is appealable to NAD.

(i) If the adverse decision is modified as a result of the mediation process, the modified decision becomes the new adverse decision for appeal to NAD.

§ 400.95 Time limitations for filing and responding to requests for administrative review.

(a) A request for administrative review must be filed within 30 days of receipt of written notice of the adverse decision or determination regarding good farming practices. A request for an administrative review will be considered to have been ''filed'' when personally delivered in writing to the appropriate decision maker or when the properly addressed request, postage paid, is postmarked.

(b) Notwithstanding paragraph (a) of this section, an untimely request for administrative review may be accepted and acted upon if the participant can demonstrate a physical inability to timely file the request for administrative review.

§ 400.96 Judicial review.

(a) With respect to adverse determinations:

(1) A participant must exhaust administrative remedies before seeking judicial review of an adverse decision. This requires the participant to appeal an Agency adverse decision to NAD in accordance with 7 CFR part 11 prior to seeking judicial review of the adverse decision.

(2) If the adverse decision involves a matter determined by the Agency to be not appealable, the appellant must request a determination of non-appealability from the Director of NAD, and appeal the adverse decision to NAD if the Director determines that it is appealable, prior to seeking judicial review.

(3) A participant with a contract of insurance reinsured by the Agency may bring suit against the Agency if the suit involves an adverse action in a United States district court after exhaustion of administrative remedies as provided in paragraphs (a) and (b) of this section. Nothing in this section can be construed to create privity of contract between the Agency and a participant.

(b) With respect to determinations regarding good farming practices, participants are not required to exhaust their administrative remedies before bringing suit against FCIC in a United States district court. Any determination by the Agency, or reviewing authority, regarding good farming practices shall not be reversed or modified as the result of judicial review unless the determination is found to be arbitrary or capricious.

§ 400.97 Reservations of authority.

(a) Representatives of the Agency may correct all errors in entering data on program contracts and other program documents, and the results of computations or calculations made pursuant to the contract.

(b) Nothing contained in this subpart precludes the Secretary, the Manager of FCIC, or the Administrator of RMA, or a designee, from determining at any time any question arising under the programs within their respective authority or from reversing or modifying any adverse decision.

PART 780—APPEAL REGULATIONS

2. The authority citation for 7 CFR part 780 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 714b and 714c; 16 U.S.C. 590h.

§ 780.1 [Amended]

3. Amend § 780.1 to remove the definition of ''Regional Service Office,''

the term ''FCIC'' in the definition of ''agency,'' and ''or the FCIC Regional Service Office'' in the definition of ''final decision.''

§ 780.2 [Amended]

4. In § 780.2:

a. Amend paragraph (a)(2) to remove the initials ''FCIC'' wherever they appear.

b. Remove paragraphs (a)(1)(iii), (a)(1)(iv), and (a)(3).

§ 780.7 [Amended]

5. In § 780.7:

a. Amend the to remove the phrase ''and reconsideration with the regional service offices.''

b. Amend §§ 780.7(b), (c) and (e), to remove the phrase ''or the Regional Service Office,'' wherever it may appear.

§ 780.11 [Amended]

6. Amend § 780.11 to remove the words ''FCIC,'' and ''the Manager of FCIC,'' wherever they may appear.

Signed in Washington, DC, March 15, 2002.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 02–6888 Filed 3–21–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 362 and 381

[Docket No. 01–045F]

RIN 0583–AC84

Mandatory Inspection of Ratites and Squabs

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is affirming the interim final rule that it published on May 7, 2001 (66 FR 22899) that amended the Poultry Products Inspection Regulations and the Voluntary Poultry Inspection Regulations to make the slaughtering and processing of ratites and squabs subject to mandatory inspection. The Agency acted in response to the FY 2001 Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act (the Appropriations Act). The Agency invited interested parties to comment on the interim final rule. FSIS is also making minor clarifying modifications to the regulations concerning ratites and squabs and is extending for an additional 12 months the time allowed for foreign countries to become equivalent for exporting ratites or squabs to the United States.

DATES: This final rule will be effective April 22, 2002.

FOR FURTHER INFORMATION CONTACT: For information about the final rule, contact Robert Ragland, DVM, Acting Director, Inspection and Enforcement Standards Development Staff, Office of Policy, Program Development, and Evaluation, FSIS, U.S. Department of Agriculture, Room 202, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700, (202) 720–3219.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 2001, the Food Safety and Inspection Service (FSIS) published an interim final rule (66 FR 22899) that amended the Poultry Products Inspection Regulations (Part 381) and the Voluntary Poultry Inspection Regulations (Part 362) to include ratites and squabs under the mandatory poultry products inspection regulations. (The interim final rule was originally published on May 1, 2001 (66 FR 21631), but had to be republished on May 7, 2001 because of printing errors.) The Agency acted in response to the FY 2001 Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act (the Appropriations Act), signed by the President on October 28, 2000, which provided that 180 days after the date of its enactment, U.S. establishments slaughtering or processing ratites or squabs for distribution into commerce as human food will be subject to the requirements of the Poultry Products Inspection Act (21 U.S.C. 451, *et seq.*) (PPIA), rather than the voluntary poultry inspection program under section 203 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622) (AMA). That provision of the Appropriations Act was effective on April 26, 2001.

Import Inspection

In the interim final rule FSIS allowed foreign countries 18 months from the effective date (April 26, 2001) to become equivalent for exporting ratites and squabs to the U. S. Thus, foreign countries had until October 26, 2002 to do so. FSIS is now extending this time for an additional 12 months to allow countries exporting or wanting to export ratite and squab products to go through the equivalency process. A 12 month extension is being granted because the original 18 month period has proved to be inadequate to complete both the equivalence evaluations and the notice and comment period rulemaking that are necessary to complete an equivalence process. The extended effective date will now be October 26, 2003.

FSIS will make equivalency determinations in accordance with 9 CFR part 327. If FSIS finds the country's export inspection system to be equivalent to the U.S. domestic inspection system, FSIS will publish a proposal in the **Federal Register** to list the country as eligible to export ratites or squabs to the United States. After the public has had 60 days to comment on the proposed rule, FSIS will review all of the public comments and make a final determination of equivalency and a determination whether to list the country as equivalent and, therefore, eligible to export ratites or squabs to the United States. This determination will be announced in a final rule in the **Federal Register**, along with FSIS's responses to the public comments. At that time, the country's inspection service may certify establishments for export of ratites and squabs to the United States. In the interim final rule FSIS also set out what countries exporting or wanting to export ratites and squabs needed to do prior to receiving an equivalency determination. These instructions remain unchanged.

Comments on the Interim Final Rule

FSIS provided 60 days for public comment on the interim final rule, ending July 2, 2001. The Agency received comments from industry groups, the European Union, and one individual. FSIS addresses their specific comments.

Comment: The commenters took issue with the definition of ''squab'' as a ''young flightless pigeon.'' They pointed out that this definition is not always correct and is unenforceable. The commenters requested that the definition of ''squab'' be changed to a ''young pigeon from one to about thirty days of age,'' the definition used by Wendell Levi in his authoritative book, *The Pigeon*.

Response: FSIS agrees that program inspection personnel have no way of distinguishing between squabs that have flown and those that have not flown and, therefore, is changing the definition of ''squabs'' to ''young pigeons from one to about thirty days of age.''

Comment: Commenters stated that the Agency made a mistake including just

squabs and not all pigeons under the mandatory poultry products inspection regulations because such was the clear intent of the Congress to include all pigeons under the PPIA.

Response: The Agency disagrees. The Appropriation Act states specifically that ''squabs'' are to be inspected under the PPIA. It does not mention pigeons.

Comment: The European Union (EU) commented that because of the Sanitary Phytosanitary (SPS) equivalence agreement between the EU and the United States (U.S.), FSIS should not certify individual nations in the EU, but rather the Agency should consider the EU as a single entity.

Response: The U.S. and the EU have signed an agreement that establishes a mechanism for the recognition of equivalent sanitary measures maintained by either party (Agreement between the European Community and the United States of America on sanitary measures to protect public health in trade in live animals and animal products commonly called the ''Veterinary Equivalence Agreement'' or ''VEA''). Initially, the Agreement is limited to those sanitary measures enumerated by both parties in an Appendix to the Articles. The Agreement itself is not a blanket recognition of mutual equivalence. Thus, there is no basis for treating the EU as a single exporting country of ratites or any other poultry species.

While the U.S. has agreed in principle that EU poultry standards are equivalent to those of the United States, no final determination has been made that they meet the level of protection that the U.S. deems appropriate. In the interim, the U.S. will continue to accept poultry products from EU Member States that were judged equivalent prior to signing of the VEA. Other Member States may demonstrate that they also have equivalent poultry inspection systems.

In order to make additional poultry equivalence determinations, the U.S. will require documentation (1) that all applicable EU poultry directives have been transposed into country legislation, as is required by EU law, and (2) that they have implemented EU standards appropriately. In addition, a Member State would also need to demonstrate that U.S. pathogen reduction and HACCP requirements—which are not covered by the VEA—have been assimilated into its poultry inspection system and are being implemented in an equivalent manner. Certain other U.S. regulatory import requirements must be met as well.

Comment: One commenter supported any legislation that would increase the consumption of emus.

Response: As is stated in the Regulatory Impact Analysis, the mandatory inspection of ratites and squabs should lead to increased consumption of ratites and squabs.

Summary of the Final Rule

FSIS is affirming the interim final rule on the mandatory inspection of ratites and squabs (66 FR 22899). FSIS is also extending the date for foreign countries to become equivalent for exporting ratite and squabs to the United States for an additional 12 months. The new date will be October 26, 2003. The Agency is also amending the paragraph in § 381.1(b) that defines poultry by changing the definition of squabs from ''young pigeons that have not flown'' to ''young pigeons from one to about thirty days of age.'' FSIS is also modifying § 381.71 (b) by removing the word ''carcasses'' from the first sentence of this paragraph to make the language clearer. Moreover, the Agency is adding further information to § 381.94 on the *E. coli* testing and sampling for ratites and squabs as it does for other species under mandatory inspection. This information makes explicit the fact that FSIS has not established specific performance standards for *E. coli* testing of either ratites or squabs.

Regulatory Impact Analysis

Basis for Regulatory Action

The interim final rule amended § 362.1(d) by removing squab from the definition of poultry in the Voluntary Poultry Inspection Regulations and amended Part 381 to include ratites and squabs under the Agency's mandatory poultry inspection requirements.

Baseline

Ratites and squabs are now amenable species and are inspected by the Agency under the mandatory poultry inspection regulations. These species are also inspected under State programs. Ratites are an order of flightless birds that includes ostriches, emus, rheas, cassowaries, and kiwis. The most economically important species of ratites are the ostrich and the emu. Squabs are young pigeons from one to about thirty days of age. Ratite meat and squab meat are valued for their flavor and nutritional characteristics.

Since 1992, when FSIS first granted a request for voluntary inspection for ostriches, approximately 166 establishments have been issued a grant of inspection for ratite operations. Currently, approximately 100 establishments possess a grant of inspection. In 1999, there were a total of 48,286 (76%) ratites inspected in Federal establishments, and 14,427 (24%) ratites inspected in State establishments, or a total of 62,713 ratites inspected (Table 1). Ostriches made up the largest share (69%) of the ratites inspected under the Federal program, whereas emus made up the largest share (56%) of the ratites inspected under State programs.

TABLE 1.—RATITES AND SQUAB INSPECTION VOLUME AND ESTABLISHMENTS, FY 1999

Species	Federal establishments		State establishments		Total inspected
	Number inspected	Percent of total	Number inspected	Percent of total	
Ratites:					
Ostrich	33,521	86	5,254	14	38,775
Emu	14,745	64	8,068	36	22,813
Other	20	2	1,105	98	1,125
Ratites:					
Total	48,286	76	14,427	24	62,713
Squabs	175,496	14	1,122,131	86	1,297,627
Totals	223,782	16	1,136,558	84	1,360,340
Ests	Number		Number		
Squabs	2		2		
Ratites	99		95		

In 1999, States with a large share of ratites inspected under the Federal program were California, Georgia, Illinois, Louisiana, Oklahoma, and Texas. Alabama, California, Mississippi, North Carolina, Ohio, and Texas inspected a large share of ratites under State programs. There were almost an equal number of establishments involved in slaughter of ratites under the Federal (99) and State (95) inspection programs.

Ostriches

Ostrich is the largest bird in the world, standing about seven to eight feet tall and weighing 300–400 pounds when fully grown. Industry representatives indicate that there were about 600 ostrich growers 1998, down from 1000 growers in 1996. There is significant uncertainty about the annual production of ostriches and other ratites at this time.

Ostriches are slaughtered at an average age of 12 months. The average weight at slaughter is 350 pounds. Ostrich meat is sold as steaks, fillets, medallions, roasts, and ground meat. Because of their size ostriches are currently slaughtered in establishments that are equipped to process other red meat species such as cattle, sheep, goats, and swine.

Emus

A mature emu reaches a height of 5 to 6 feet, weighing 90 to 120 pounds. In 1999, 22,813 emus were inspected under Federal and State programs (Table 1). There are a number of valuable products derived from emus in addition to their meat.

There is also significant uncertainty about the annual production of emus. Some sources indicate that there may be as many as 500,000 birds on 5,000 to 6,000 farms in the U.S., with the majority of them in Texas, Oklahoma, and elsewhere in the Southwest.

Squabs

Squabs are young pigeons from one to about thirty days of age. Squabs usually weigh 1 pound or less at the time of slaughter (about 4 weeks old). In 1999, California and Oregon were the only two States that inspected squabs under the Federal voluntary inspection program. In that year, 175,496 squabs were inspected (Table 1). During that same period 1,122,131 squabs were inspected under the State inspection programs of California and South Carolina.

Regulatory Alternatives

FSIS considered two options in developing its interim final rule. The first option was to only change the definition of ''poultry'' in the Poultry Products Inspection Regulations to include ratites and squabs. This approach may have caused confusion in the industry because it would be difficult to apply some of the current poultry regulations to ratites and squabs, e.g., chilling and certain handling requirements.

The Agency's second option was to make the changes required by statute and other changes as noted above. FSIS selected this option because it provided a more orderly transition from voluntary inspection to mandatory inspection of ratites and squabs than the first option at little or no additional cost. The Agency is now affirming this option in this final rule.

Benefits

There are three primary benefits that may result from extending mandatory inspection services to ratites and squabs: industry growth, public health, and industry cost savings.

Having the mark of inspection on ratite and squab products will likely lead to greater consumer confidence and acceptance of the products. Demand would be expected to increase as a result. Establishments that are able to capitalize on the change in consumer preference would realize increased sales of these products. To the extent that inspection promotes growth in the ratite and squab industry, society could benefit also from the increased employment and earnings of workers in these establishments. Studies are not available to identify the potential growth in the industry that may occur.

The public health benefits of inspection are related to the reduction in risk associated with consumption of all ratite and squab meat that must be inspected using the same procedures employed in the meat and poultry industries. HACCP systems, Sanitation SOPs, and process control practices have been shown to reduce contamination by harmful foodborne pathogens.

A shift to the mandatory inspection system eliminated the payment of fees for inspection services. This is not a benefit from an economic perspective as the costs of inspection are transferred elsewhere in the economy. Since FSIS is recovering these costs through appropriated funds, the change to a mandatory inspection system results in an income transfer from the public to the ratite and squab industry. The total cost savings to the industry will be about $2 million in 2001, with the possibility of increasing over time with the expansion of the industry.

Industry Costs

The compliance cost of extending mandatory inspection to ratite and squab species is negligible. All establishments involved in slaughtering amenable species, as of January 25, 2000, must be in compliance with the provisions of Pathogen Reduction/Hazard Analysis Critical Control Point (PR/HACCP) final rule. Under the provisions of the rule, all slaughter establishments under mandatory inspection are required to have HACCP plans and meet process control requirements. Nearly all establishments that slaughter and process ratites and squabs, because they also slaughtered other species under mandatory inspection, had already implemented HACCP, Sanitation SOPs, and other measures consistent with mandatory inspection. These establishments were required under the interim final rule to make changes to their HACCP or sanitation procedures to include ratites and squabs. The Agency estimates that establishments that had not included ratites and squabs in their HACCP plans[1] incurred a minimal cost of $500.00 associated with HACCP plan modification.

Because poultry is subject to mandatory Federal inspection, ratites and squabs are now subject to *E. coli* testing requirements. Establishments that slaughter more than one kind of poultry and livestock are required to test the species that the establishment slaughters in the greatest number. Agency research indicates that the number of establishments where ratites and squabs are the species being slaughtered in the greatest number is very low. Consequently, very few establishments are being required to perform additional *E. coli* testing for process control verification. The costs per establishment for *E. coli* testing are shown in Table 2.

For those establishments that slaughtered and processed ratites and squabs under voluntary inspection, the transition to mandatory inspection did not require changes in equipment and processing methods. Ratites are currently being slaughtered and processed in establishments that are equipped to process cattle, sheep, goats, and swine. Squabs are processed using the same equipment and procedures as those used for young chickens.

The Agency estimates that 50% of the Federal establishments (50 establishments) and 25% of the State establishments (24 establishments) made minor changes in their HACCP

[1] HACCP plans are not required to cover non-amenable species.

plan to accommodate mandatory inspection requirements for ratites.

TABLE 2.—POTENTIAL COSTS FOR MANDATORY FEDERAL INSPECTION

Costs	Per est. (dollars)	Industry ($thousand)
Start up Cost:		
HACCP Plan Modification	500	37.0
SSOP Modification	100	7.4
Recurring Cost:		
E. coli Sampling (26 samples@$20 per sample per establishment)	520	38.5
Recordkeeping	300	22.2
Total	1,420	105.1

Another cost that applies to all establishments applying for Federal mandatory inspection is the application cost. This cost is negligible, as it is limited to a one-time cost for filling out an application, about $10. The total compliance cost to the establishments identified above are estimated to be $105,100.

FSIS Costs

The Agency anticipates the need to conduct baseline microbiological studies. These studies constitute the major costs to the Agency totaling $205,000.

Microbiological Testing

The microbiological studies will help the Agency determine the prevalence of harmful bacteria or pathogens in ratites and squabs. These studies can also be used to develop performance standards for pathogen reduction. The cost of a microbiological baseline testing for ratites will be $110,000 and for squabs, $95,000 (Tables 3 and 4).

TABLE 3.—COST TO FSIS OF A MANDATORY RATITE INSPECTION PROGRAM

One-time costs	Inspection hours	$Thousand
Microbiological Baseline		110.0
Transfer Payment [1]:		
Federally-Inspected Ests	38,524	$1,959.0

[1] The hourly rate for Federal inspection in FY 2000 is estimated to be $38.44 per hour.

TABLE 4.—FSIS MANDATORY SQUAB INSPECTION PROGRAM COSTS

One-time costs	Inspection hours	$Thousand
Microbiological Baseline		95.0
Transfer Payment [1]:		
Federally-Inspected Ests	322	16.4

[1] The hourly rate for Federal inspection in FY 2000 is estimated to be $38.44 per hour.

Transfer Payments

Under voluntary inspection, establishments pay for inspection services. The funds for mandatory inspection activities are appropriated from Federal tax revenues. The transition from voluntary to mandatory inspection changes the source of inspection program funding. The Agency estimates that the industry cost of inspection of ratites and squabs for 1999 in Federal establishments was $1,975,000, of which ratites accounted for $1,959,000 and squabs for $16,400, including overhead (Tables 3 and 4).

With ratite and squab inspection mandatory, it is possible that the volume of ratites and squabs inspected at Federally inspected establishments will increase beyond what is currently being inspected. An establishment that was under a State inspection program that shipped ratites and squabs in interstate commerce had to shift to Federal inspection to maintain its markets. It is expected that 25% of the establishments that were under State voluntary inspection will migrate to the Federal mandatory program. This analysis does not take into account the potential increase in the demand for inspection services. Both species currently account for an extremely small share of meat and poultry inspection. Changes in the required level of inspection program personnel are not expected to be significant in the near-term.

The estimated total cost of inspection in State establishments was $554,400 for 14,427 ratites and 1,122,131 squabs for FY 1999. Under the agreement the Agency formerly had with a State having a voluntary inspection program, the Agency paid half of the inspection program costs, or $277,191 (Table 5).

Under the mandatory program, States no longer are able to collect fees for inspection services. States may decide to terminate their ratite and squab inspection programs. If terminations occur, FSIS will take over inspection at the facilities operating under the State program and thereby absorb the total costs of inspection at these establishments. For those States that did not have a State voluntary program for ratites and squabs, the impact of a Federal mandatory inspection program is minimal. The payment of these costs at previously State inspected establishments is an income transfer similar to that occurring for Federally inspected establishments.

The total transfer payment to Federal and State establishments is $2,252,000 ($1,975,000 plus $277,000).

TABLE 5.—RATITES AND SQUABS INSPECTION COST AT STATE ESTABLISHMENTS—FY 1999

Species	Number inspected	Total inspection hours required	Total cost of inspections [1] ($thousand)
Ratites	14,427	11,510	442.4

TABLE 5.—RATITES AND SQUABS INSPECTION COST AT STATE ESTABLISHMENTS—FY 1999—Continued

Species	Number inspected	Total inspection hours required	Total cost of inspections [1] ($thousand)
Squabs	1,122,131	2,912	111.9
Total	1,136,558	14,422	554.4

[1] FSIS hourly base rate of $38.44 times inspection hours required.

Consumer Cost

In large part, the costs of ratite and squab inspection were transferred from producers to taxpayers. With the burden of paying for inspection service eliminated, establishments may transfer these cost savings to consumers through lower prices.

Economic Impact on International Trade Assessment

Countries that previously had little interest in export certification may petition FSIS because these additional species now come under mandatory inspection. Foreign establishments that specialize in exotic species may seek to broaden their markets by exporting to the United States. The Agency may need to evaluate the equivalence of a greater number of foreign food regulatory inspection systems.

Executive Order 12866 and Regulatory Flexibility Act

Because this final rule has been determined to be significant, the Office of Management and Budget (OMB) has reviewed it under Executive Order 12866.

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact, as defined by the Regulatory Flexibility Act (5 U.S.C. 601), on a substantial number of small entities.

Small establishments will not be adversely affected by this final rule. Few establishments slaughter and process ratites or squabs exclusively. For small slaughtering establishments as well as large ones, ratites and squabs do not comprise all or even most of their business. Of the 100 establishments that slaughter or process ratites and squabs, only two slaughter over 90% of the squabs consumed in the market. There are no establishments that dominate the slaughtering of ratites. Small entities will benefit along with the rest of the industry with the increased marketability of their product and the cost savings realized because they no longer have to pay fees to either FSIS or the State for voluntary inspection service.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35, respectively, must be exhausted before any judicial challenge of the application of the provisions of this final rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the PPIA.

Executive Order 13132

Executive Order 13132, ''Federalism,'' requires that agencies assess the federalism implications of their policy statements and actions, i.e., the effects of those statements and actions 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. The Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) preempt State and local laws in regard to the manufacture and distribution of meat and poultry products. Therefore, FSIS policy statements and actions affect federalism within the context of these statutory preemptions.

States and local jurisdictions are preempted by the FMIA and PPIA from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA and the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are within their jurisdiction and outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA and PPIA, or, in the case of imported articles, that are not at such an establishment, after their entry into the United States.

Specifically, under section 301 of the FMIA and section 5 of the PPIA, a State may administer State meat and poultry inspection programs provided that it has developed and is effectively enforcing State meat and poultry inspection requirements at least equal to those imposed under titles I and IV of the FMIA and sections 1–4, 6–10, and 12–22 of the PPIA. These titles contemplate continuous ongoing programs. When States can no longer effectively enforce meat and poultry inspection requirements at least equal to Federal requirements, they must be ''designated'' by the Secretary to receive Federal inspection.

When FSIS revises its meat and poultry inspection requirements, States that administer their own inspection programs may be affected, since they must continue to enforce requirements equal to those of FSIS. To minimize any additional costs States must incur to modify their inspection programs, FSIS grants the States significant flexibility under the ''equal to'' provisions of the FMIA and PPIA. Further, States are eligible to receive up to 50 percent Federal matching funds to cover the costs of their inspection programs.

Paperwork Reduction Act Requirements

The Office of Management and Budget has approved the paperwork and recordkeeping requirements under approval number 0583–0122.

Departmental Regulation 4300–4, ''Civil Rights Impact Analysis''

FSIS has considered under Departmental Regulation 4300–4, ''Civil Rights Impact Analysis,'' dated September 22, 1993, the potential civil rights impact of this final rule on minorities, women, and persons with disabilities.

The purpose of the final rule is to affirm the interim final rule (66 FR 22899) that included ratites and squabs under mandatory Poultry Products Inspection Regulations.

Congress mandated the inspection of ratites and squabs by April 26, 2001. The Agency promulgated an interim final rule that made all of the necessary changes to the mandatory poultry

products regulations to include ratites and squabs. This final rule affirms the interim final rule and makes two minor amendments to the regulations.

The requirements placed on the relatively small number of establishments that slaughter or process ratites or squabs are consistent with FSIS mandatory regulatory requirements for other species. The economic impacts on these establishment are in line with the benefits that the public should expect and with what the establishments should expect to recover as a result of moving from voluntary to mandatory inspection. For the overwhelming majority of establishments potentially affected by the move to mandatory inspection, the impacts will be beneficial.

Of the 7,500 Federal and State inspected meat and poultry establishments for which data are available, 317 are owned by females and 297 are owned by non-whites—or a total of about 4 percent of these establishments are female or minority owned. This compares to the 1992 Census figures for all U.S. firms which showed that minorities owned 6.3 percent and women owned 11.2 percent of businesses. No data are available at this time on the disabilities of the owners of meat and poultry establishments. Nor is any data available on the ownership of establishments that slaughter or process ratites and squabs.

There is no evidence to suggest that the establishments owned by minorities would be any more or less affected than establishments owned by non-minorities.

Neither will the final rule have a significant adverse impact on low-income consumers or minority employment. The costs associated with implementing the final rule will not be unduly burdensome to industry and will provide an economic benefit to the industry as a whole. Consumers may realize lower prices for ratites and squabs.

FSIS has used the available information to evaluate the potential impacts of the proposal on small entities and to determine civil rights impacts.

Additional Public Notice

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this final rule, FSIS will announce and provide copies of this **Federal Register** publication in the *FSIS Constituent Update*. FSIS provides a weekly *FSIS Constituent Update* via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience than would be otherwise possible. For more information or to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

List of Subjects in 9 CFR Part 381

Poultry and poultry products

Accordingly, the interim final rule published on May 7, 2001 (66 FR 22899) amending 9 CFR parts 362 and 381 is adopted as final, with the following changes:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for Part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

2. Section 381.1 (b) is amended by revising the definition of poultry to read as follows:

§ 381.1 Definition

* * * * *

Poultry. ''Poultry'' means any domesticated bird (chickens, turkeys, ducks, geese, guineas, ratites, or squabs, also termed young pigeons from one to about thirty days of age), whether live or dead.

* * * * *

3. Amend § 381.71 by revising paragraph (b) to read as follows:

§ 381.71 Coverage of all poultry and poultry products processed in official establishments.

* * * * *

(b) Dead-on-arrival ratites and ratites condemned on ante mortem inspection will be tagged ''U.S. Condemned'' by an establishment employee under FSIS supervision and disposed of by one of the methods prescribed in § 381.95.

* * * * *

4. Amend § 381.94 by revising paragraphs (a)(2)(ii), (a)(2)(iii)(B), (a)(2)(v)(A), Table 1 in paragraph (a)(5)(i), and Table 2 in paragraph (b)(1) as follows:

§ 381.94 Contamination with Microorganisms; process control verification criteria and testing; pathogen reduction standards.

(a) * * *

(2) * * *

(ii) *Sample collection.* A whole bird must be taken from the end of the chilling process. If this is impracticable, the whole bird can be taken from the end of the slaughter line. Samples must be collected by rinsing the whole carcass in an amount of buffer appropriate for that type of bird. Samples from turkeys or ratites also may be collected by sponging the carcass on the back and thigh.[1]

(iii) * * * (B) Turkeys, Ducks, Geese, Guineas, Squabs, and Ratites: 1 sample per 3,000 carcasses, but at a minimum one sample each week of operation.

* * * * *

(v) * * * (A) Very low volume establishments annually slaughter no more than 440,000 chickens, 60,000 turkeys, 60,000 ducks, 60,000 geese, 60,000 guineas, 60,000 squabs, 6,000 ratites, or a combination of all types of poultry not exceeding 60,000 turkeys and 440,000 birds total. Very low volume establishments that slaughter turkeys, ducks, geese, guineas, squabs, or ratites in the largest number must collect at least one sample during each week of operation after June 1 of each year, and continue sampling at a minimum of once each week the establishment operates until June of the following year or until 13 samples have been collected, whichever comes first.

* * * * *

(5)(i) * * *

[1] A copy of FSIS's ''Guidelines for *Escherichia coli* Testing for Process Control Verification in Poultry Slaughter Establishments,'' and ''FSIS Turkey Microbiological Procedures for Sponge Sample Collection and Methods of Analysis'' are available for inspection in the FSIS Docket Room.

TABLE 1.—EVALUATION OF E. COLI TEST RESULTS

Types of poultry	Lower limit of marginal range (m)	Upper limit of marginal range (M)	Number of samples tested (n)	Maximum number permitted in marginal range (c)
Chickens	[1] 100	[1] 1,000	13	3
Turkeys	*NA	*NA	*NA	*NA
Ducks	*NA	*NA	*NA	*NA
Geese	*NA	*NA	*NA	*NA
Guineas	*NA	*NA	*NA	*NA
Squabs	*NA	*NA	*NA	*NA
Ratites	*NA	*NA	*NA	*NA

[1] CFU/ml.
*Values will be added upon completion of data collection programs.

* * * * * * *

(b) * * *
(1) * * *

TABLE 2.—SALMONELLA PERFORMANCE STANDARDS

Class of product	Performance Standard (percent positive for salmonella) [a]	Number of samples tested (n)	Maximum number of positives to achieve standard (c)
Broilers	20.0%	51	12
Ground chicken	44.6	53	26
Ground turkey	49.9	53	29
Turkeys	[b] NA	NA	NA
Squabs	[b] NA	NA	NA
Ratites	[b] NA	NA	NA

[a] Performance Standards are FSIS's calculation of the national prevalence of Salmonella on the indicated raw products based on data developed by FSIS in its nationwide microbiological baseline data collection programs and surveys. (Copies of Reports on FSIS's Nationwide Microbiological Data Collection Programs and Nationwide Microbiological Surveys used in determining the prevalence of Salmonella on raw products are available in the FSIS Docket Room.)
[b] Not available; baseline targets for turkeys, squabs, or ratites will be added upon completion of the data collection programs for that product.

* * * * *

Done at Washington, DC, on March 18, 2002.

Margaret O'K. Glavin,

Acting Administrator.

[FR Doc. 02–6836 Filed 3–21–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–75–AD; Amendment 39–12686; AD 2002–06–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300; A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600); and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Airbus Model A300; A300–600; and A310 series airplanes. This action requires certain inspections of the airplane (including the vertical stabilizer, horizontal stabilizer, pylons, wing, and fuselage areas) following an in-flight incident resulting in extreme lateral loading. This action is necessary to detect and correct reduced structural integrity of the airplane following any future event. This action is intended to address the identified unsafe condition.

DATES: Effective April 8, 2002. Comments for inclusion in the Rules Docket must be received on or before May 21, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–75–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–75–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, ANM–116, International Branch, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On November 12, 2001, an Airbus Model A300 B4–600R series airplane was involved in an accident shortly after takeoff from John F. Kennedy Airport, Jamaica, New York. During the accident event, the vertical stabilizer and rudder departed the airplane. The cause of this accident is under investigation by the National Transportation Safety Board

(NTSB), and, although the NTSB has not determined the cause of the accident, information to date indicates that the vertical stabilizer was subjected to large aerodynamic structural loading during the accident event.

A recent review of Airbus fleet data indicated that another Airbus Model A300–600 series airplane was involved in an upset event in 1997 that may have subjected the airplane to lateral loads on the vertical stabilizer similar to those experienced on the airplane involved in the November 12, 2001, accident. The vertical stabilizer was recently removed from the airplane involved in the 1997 event, and the composite attachment lugs were subjected to ultrasonic nondestructive inspections (NDIs). The results of the NDI yielded indications consistent with composite delamination of the right-hand aft attachment lug. This type of delamination is characteristic of extreme lateral loading conditions.

Following the event, the operator performed the inspections of the airplane specified in the Airplane Maintenance Manual (AMM) that are deemed necessary by the manufacturer after an in-flight incident. However, the AMM did not include inspections for damage of the vertical stabilizer caused by extreme lateral loading. Extreme lateral load factors can occur as a consequence of severe turbulence, loss of control of the airplane involving yaw and/or roll maneuvers, hazardous system failures or other rare flight conditions. Review of service history indicates that these events only occur rarely. Such conditions, if not corrected, could result in reduced structural integrity of the airplane.

U.S. Type Certification of the Airplane

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. The FAA has coordinated this action with the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France. The DGAC plans to release a recommended bulletin to address this issue.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect and correct reduced structural integrity of the airplane following an in-flight incident resulting in extreme lateral loading. This AD requires certain inspections of the airplane (including the vertical stabilizer, horizontal stabilizer, pylons, wing, and fuselage areas), immediately following such an incident.

This AD requires inspections for extreme lateral loads exceeding 0.3g. Because no such inspection methods were defined previously, these inspections must be approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

This AD also requires reporting of these inspection results to the manufacturer, including information regarding the extreme lateral loading event. Based on this information, the manufacturer will develop any appropriate additional inspections. Upon FAA approval, these inspections are also required.

Inspections are not required for extreme lateral loading events that occur on the ground (landing, taxiing). On the ground an extreme lateral load would not be transmitted to the airplane through the vertical stabilizer.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–75–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation

Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–06–09 Airbus Industrie: Amendment 39–12686. Docket 2002–NM–75–AD.

Applicability: All Model A300; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); and A310 series airplanes; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct reduced structural integrity of the airplane following an extreme lateral loading event, accomplish the following:

Lateral Load Factor Determination

(a) As of the effective date of this AD, before further flight following an in-flight incident that results in extreme lateral loading, determine whether the lateral load factor (Ny) equaled or exceeded 0.3g. Extreme lateral loading can occur as a consequence of severe turbulence, loss of control of the aircraft involving yaw and/or roll maneuvers, hazardous systems failures, or other rare flight conditions. Then do the inspections specified in paragraph (b) or (c) of this AD, as applicable, at the time specified.

Note 2: Acceptable methods for determining if the lateral load factor equaled or exceeded 0.3g include but are not limited to: Aircraft Communication Addressing and Reporting System (ACARS), Digital Flight Data Recorder (DFDR) readout, or Quick Access Recorder (QAR). A pilot report of extreme lateral acceleration in-flight can be used to assess whether one of the previous methods should be used to determine the lateral load factor.

Note 3: The inspections specified in paragraphs (b) and (c) of this AD are not necessary if lateral load factors exceed 0.3g when the airplane is on the ground (landing, taxiing).

Inspections for Certain Lateral Load Factors

(b) For airplanes on which the lateral load factor (Ny) is greater than or equal to 0.3g, but less than 0.35g, accomplish the following actions:

(1) Before further flight, do the detailed inspections specified in paragraph (d) of this AD.

Reporting Requirement

(2) Within 5 days after accomplishing the inspections required by paragraph (b)(1) of this AD: Submit a report to Airbus, including the DFDR recording (or equivalent) of the portion of the flight when the extreme lateral loading event occurred, and other relevant information necessary to fully describe the event and develop the actual loads, including but not limited to, airplane weight, weather, and flight crew report. Submit a report of the inspection results (both positive and negative findings) to AI/SE–D32 Technical Data and Documentation Services, Airbus Industrie Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France; fax (+33) 5 61 93 28 06. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Note 4: Following accomplishment of the requirements of paragraphs (b)(1), (b)(2) and, if necessary, (e) of this AD, the airplane may be returned to service before accomplishing the inspections required by paragraph (b)(3) of this AD.

Supplementary Inspections

(3) The manufacturer will develop an airplane loads assessment and recommend, if necessary, supplementary inspections of the applicable areas of the airplane (including the vertical stabilizer, horizontal stabilizer pylons, wing, and fuselage areas). Within 30 days after the extreme lateral loading event, do the supplementary inspections of the airplane according to a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

Note 5: The loads assessment, and if necessary, supplementary inspections required by paragraph (b)(3) of this AD, will be developed and proposed by the manufacturer based on the manufacturer's analysis of the report required by paragraph (b)(2) of this AD.

Inspections for Certain Other Lateral Load Factors

(c) For airplanes on which the lateral load factor (Ny) is greater than or equal to 0.35g, accomplish the following:

(1) Before further flight, do the detailed inspections specified in paragraph (d) of this AD.

Reporting Requirement

(2) Before further flight after accomplishing the inspections required by paragraph (c)(1) of this AD: Submit a report to Airbus, including the DFDR recording (or equivalent) of the portion of the flight when the extreme lateral loading event occurred, and other relevant information necessary to fully describe the event and develop the actual loads, including but not limited to, airplane weight, weather, and flight crew report. Submit a report of the inspection results (both positive and negative findings) to AI/SE–D32 Technical Data and Documentation Services, Airbus Industrie Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France; fax (+33) 5 61 93 28 06. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Supplementary Inspections

(3) The manufacturer will develop an airplane loads assessment and recommend, if necessary, supplementary inspections of the applicable areas of the airplane (including the vertical stabilizer, horizontal stabilizer pylons, wing, and fuselage areas). Before further flight, do the supplementary inspections of the airplane according to a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

Note 6: The loads assessment, and if necessary, supplementary inspections required by paragraph (c)(3) of this AD, will be developed and proposed by the manufacturer based on the manufacturer's analysis of the report required by paragraph (c)(2) of this AD.

Detailed Inspections

(d) Do the following detailed inspections at the time specified in paragraph (b)(1) or (c)(1) of this AD, as applicable:

(1) Do the inspections as specified in and per Chapter 05–51–17 (Inspections After Flight in Excessive Turbulence or In Excess of VMO/MMO) of Airbus A300, A300–600 or A310 Airplane Maintenance Manual (AMM), as applicable. Extend the areas for these inspections as specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this AD.

(i) Extend the wing inspection area to include rib 22 through rib 29.

(ii) Extend the fuselage inspection area from the inside to include frame 84 through 87 above stringer 23, and all areas of frame 91.

(2) Do detailed inspections to find damage of the areas specified in paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this AD, according to a method approved by the Manager, International Branch, ANM–116.

(i) Inspect the fuselage external surface under the vertical stabilizer to fuselage fairing, including side load fittings and lower surface of rib 1 of the vertical stabilizer.

(ii) Inspect the rudder hinge arms and support fittings 1 through 7, and the actuator support fittings of the vertical stabilizer.

(iii) Inspect the rudder hinge fittings 1 through 7, and the actuator support fittings of the vertical stabilizer.

Note 7: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific

structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Corrective Actions

(e) If any damage is found during any inspection required by this AD: Before further flight, repair according to the method specified in the Airbus structural repair manual or according to a method approved by the Manager, International Branch, ANM–116, or by the Direction Ǵeńerale de l'Aviation Civile or its delegated agent.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, which may add comments and then send it to the Manager, International Branch, ANM–116.

Note 8: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Effective Date

(h) This amendment becomes effective on April 8, 2002.

Issued in Renton, Washington, on March 15, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6910 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–31–AD; Amendment 39–12685; AD 2002–06–08]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation (Formerly Allison Engine Company) 250–C28 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to certain Rolls-Royce Corporation (formerly Allison Engine Company) 250–C28 series engines. This amendment requires removal of third stage turbine wheels, part number (P/N) 6899383, with certain serial numbers (SN's), from service before exceeding new, reduced life limits. This amendment also establishes a drawdown program to require the removal of those turbine wheels that exceed the new lower limits. This amendment is prompted by the potential to experience uncommanded shutdown caused by fractures of third stage turbine blade tips and shrouds. The actions specified by this AD are intended to prevent uncommanded shutdown of the engine due to fractures of third stage turbine blade tips and shrouds.

DATES: Effective date April 26, 2002.

ADDRESSES: The information contained in this AD may be examined, by appointment, at the Federal Aviation Administration (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.

FOR FURTHER INFORMATION CONTACT: John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–8180; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Rolls-Royce Corporation (formerly Allison Engine Company) 250–C28, –C28B, and –C28C model engines with third stage turbine wheels part number (P/N) 6899383, listed by serial number (SN) in the proposal, was published in the **Federal Register** on November 8, 2001 (66 FR 56493). That action proposed to require removal of third stage turbine wheels, part number (P/N) 6899383, with SN's, from service before exceeding new, reduced life limits. That action also proposed to establish a drawdown program to require the removal of those turbine wheels that exceed the new lower limit.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Change Life Limits References

One commenter requests that all references to ''new, reduced life'', and ''new lower'' limits be removed and replaced with ''specified hour and cycle'' limits and ''acceptable hour and cycle'' limits.

The FAA does not agree. The preamble of the AD provides background information as to why the AD is being issued. The FAA has only one means of mandating lower life limits on a life limited part, and that is with an AD. The sole purpose of this AD is to mandate lower life limits. Removing references to ''new, reduced life'', and ''new lower'' limits in the preamble adds to confusion because those references explain why this AD is being issued.

Remove References to Reports of Five Uncommanded Shutdowns

The manufacturer requests that references to reports of five uncommanded shutdowns occurring as a result of the out-of-print condition addressed by this AD, be removed. At the time this AD action was first being considered, it was preliminarily reported that there were five uncommanded shutdowns occurring as a result of the out-of-print condition addressed by this AD. It has since been determined that those shutdowns did not have the out-of-print condition and are unrelated to the actions required by this AD. The manufacturer still supports the issuance of this AD because of the potential safety issue that remains.

The FAA agrees. Therefore, the summary in the preamble of this final rule is changed to read: ''This amendment is prompted by the potential to experience uncommanded shutdown caused by third stage turbine blade tip fractures, and turbine shroud fractures.''

Eliminate Potential Nomenclature Confusion

The manufacturer requests that the phrase ''third stage turbine shrouds'' be replaced with the word ''shrouds'' and remove reference to turbine shroud fractures, to eliminate potential nomenclature confusion. The reason for the request is that on the model 250–C28 series third stage turbine wheels, the blades and shrouds are cast together with the hub, creating a one piece unit.

The FAA agrees. Therefore, the summary in the preamble of this final rule is changed to read: ''This amendment is prompted by the potential to experience uncommanded shutdown caused by fractures of third stage turbine blade tips and shrouds.

The actions specified by this AD are intended to prevent uncommanded shutdown of the engine due to fractures of third stage turbine blade tips and shrouds.''

Change Unsafe Condition Wording

One commenter requests that the NPRM preamble wording found in the FAA's Determination of an Unsafe Condition and Proposed Actions paragraph be changed from: ''Since an unsafe condition has been identified that is likely to exist. * * *'', to ''Since an unsafe condition has been identified that may exist. * * *'' No justification was given for this change.

The FAA does not agree. AD's are issued under Part 39 of the Federal Aviation Regulations, 14 CFR part 39. The FAA must make a finding that an unsafe condition prompting the AD ''is likely to'' exist or develop in other products of the same type design.

Incorporate Additional Information

The manufacturer requests that a phrase be added to the Economic Analysis that states that not all affected third stage turbine wheels may be installed in engines.

The FAA agrees that additional information should be added to the Economic Analysis. Therefore, the Economic Analysis is modified to include the sentence: ''There are approximately 84 engines worldwide that may have an affected third stage turbine wheel installed, however, it is not known how many of those third stage turbine wheels are installed in engines.''

Add Reference to Rolls-Royce Service Bulletin

The manufacturer requests a clarification to the AD to include a reference to the Rolls-Royce Corporation service bulletin associated with this life limit change.

The FAA does not agree. There is no reason to reference the service bulletin because all the pertinent information regarding the new reduced life limits of the affected third stage turbine wheels, which includes part number, serial numbers, and drawdown schedule, are included in the AD.

Reword Discussion Information

One commenter requests changing in the discussion section the phrase '' to life limits of 1,500 hours TSN and 3,000 CSN'' to ''to life limits of 1,500 hours TSN or 3,000 CSN, whichever occurs first.'' This change request by the commenter would be appropriate if the intent of this section was to describe how to comply with the new reduced life limits. However, the intent of the discussion section is to provide background information on the various life limits and how they are changing relative to each other. Details on compliance are explained in Table 2 of the compliance section of the AD, in which the phrase ''whichever occurs earlier'' is used where appropriate, consistent with the commenter's intent.

Restructure Contents of Table 2

One commenter requests the restructuring of the contents of Table 2 in the AD.

The FAA does not agree. The information in Table 2 as published in the NPRM is accurate and concise, and therefore remains unchanged in this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 84 third stage turbine wheels of the affected design in the worldwide fleet. The FAA estimates that 42 engines installed on helicopters of U.S. registry would be affected by this AD. However, it is not known how many of those third stage turbine wheels are installed in engines. It would take approximately 44 work hours per engine to remove and replace an affected turbine wheel. The average labor rate is $60 per work hour. The cost of a new third stage turbine wheel is approximately $4,371. The FAA estimates that approximately $2,929 per wheel has been lost due to life reduction. However, the manufacturer has stated it may reduce the new wheel cost to the customer. Based on these figures, the total cost of the AD on U.S. operators is estimated to be $294,462.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–06–08 Rolls-Royce Corporation: Amendment 39–12685. Docket No. 2001–NE–31–AD.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce Corporation (formerly Allison Engine Company) 250–C28, –C28B, and –C28C model engines with third stage turbine wheels part number (P/N) 6899383, listed by serial number (SN) in the following Table 1:

TABLE 1.—SN'S OF AFFECTED THIRD STAGE TURBINE WHEELS

HX91428R	HX91489R	HX91707R
HX91456R	HX91490R	HX91708R
HX91457R	HX91492R	HX91709R
HX91458R	HX91493R	HX91710R
HX91459R	HX91494R	HX91711R
HX91461R	HX91500R	HX91712R
HX91462R	HX91501R	HX91713R
HX91464R	HX91503R	HX91714R
HX914659	HX91504R	HX91715R
HX91465R	HX91506R	HX91721R
HX91466R	HX91507R	HX91722R
HX91467R	HX91508R	HX91726R
HX91468R	HX91510R	HX91733R
HX91469R	HX91511R	HX91735R
HX91471R	HX91512R	HX91736R
HX91472R	HX91513R	HX91738R
HX91473R	HX91519R	HX91742R
HX91474R	HX91520R	HX91744R
HX91475R	HX91522R	HX91748R
HX91477R	HX91523R	HX91749R
HX91478R	HX91524R	HX91750R
HX91480R	HX91525R	HX91754R
HX91482R	HX91526R	HX91764R

TABLE 1.—SN'S OF AFFECTED THIRD STAGE TURBINE WHEELS—Continued

HX91483R	HX91527R	HX91765R
HX91485R	HX91528R	HX91766R
HX91486R	HX91529R	HX91767R
HX91487R	HX91530R	HX91768R
HX91488R	HX91706R	HX91769R

Note.—These engines are installed on, but not limited to Bell Helicopter Textron 206L–1 helicopters.

Note 1: This 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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent an uncommanded shutdown of the engine due to fractures of third stage turbine blade tips and third stage turbine shrouds, do the following:

(a) Remove from service the third stage turbine wheels, P/N 6899383, listed by SN in Table 1 of this AD, in accordance with the following Table 2:

TABLE 2.—REMOVAL SCHEDULE

For third stage turbine wheels on the effective date of this AD	Remove by
(1) With fewer than 3,000 cycles-since-new (CSN), and fewer than 1,500 hours time-since-new (TSN).	3,000 CSN or 1,500 hours TSN, whichever occurs earlier.
(2) With between 3,000 and 6,000 CSN, and fewer than 1,500 hours TSN.	200 additional cycles, after the effective date of this AD.
(3) With fewer than 3,000 CSN, and between 1,500 and 3,000 hours TSN.	100 additional hours, after the effective date of this AD.
(4) With between 3,000 and 6,000 CSN and between 1,500 and 3,000 hours TSN.	200 additional cycles or 100 additional hours, after the effective date of this AD, whichever occurs earlier.
(5) With more than 6,000 CSN, or more than 3,000 hours TSN	Before further flight.

(b) After the effective date of this AD, do not install any third stage turbine wheels listed by SN in Table 1 of this AD. Thereafter, except as provided in paragraph (c) of this AD, no alternative cyclic life limits may be approved for the turbine wheels listed in Table 1 of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Effective Date

(e) This amendment becomes effective on April 26, 2002.

Issued in Burlington, Massachusetts, on March 14, 2002.

Francis A. Favara,

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

[FR Doc. 02–6913 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–284–AD; Amendment 39–12682; AD 2002–06–05]

RIN 2120–AA64

Airworthiness Directives; Various Transport Category Airplanes Equipped With Air Traffic Control (ATC) Transponders Manufactured by Rockwell Collins, Inc.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to various transport category airplanes equipped with certain Mode C air traffic control (ATC) transponders manufactured by Rockwell Collins, Inc. This amendment requires testing each transponder; replacing certain parts in any transponder that fails the initial test with new parts and performing additional test(s); and making repairs, as necessary, so that the transponder passes the test. This amendment is prompted by reports that indicate that the equipment used to conduct earlier tests of certain transponders did not detect certain malfunctions. An airplane equipped with such malfunctioning transponders could transmit inaccurate data concerning its altitude to a nearby airplane equipped with the traffic alert and collision avoidance system (TCAS II), causing the TCAS II to issue an erroneous resolution advisory to the pilot. The actions specified by this AD are intended to prevent transmission of inaccurate data concerning altitude from one airplane to another, which could cause the pilot receiving the data to change course, either ascending or descending, and possibly lead to a mid-air collision or near mid-air collision.

DATES: Effective April 26, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 26, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Rockwell Collins, Inc., 400 Collins Road, NE., Cedar Rapids, Iowa 52498. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elizabeth Zurcher, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1674; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to various transport

category airplanes equipped with certain Mode C air traffic control (ATC) transponders manufactured by Rockwell Collins, Inc., was published in the **Federal Register** on January 5, 2001 (66 FR 1054). That action proposed to require testing each transponder; replacing certain parts in any transponder that fails the initial test and performing additional test(s); and making repairs, as necessary, so that the transponder passes the test.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. Two commenters state that the airplanes they operate are not affected by the proposed rule.

Change Paragraphs (a) and (b)

One commenter states that Rockwell Collins Service Information Letter (SIL) 00–1, dated May 25, 2000, as specified in the preamble of the proposed rule, implies that the only approved ''ramp-tester'' to test their 621A–3 transponder is the ATC–601. However, the commenter indicates that all ''approved'' transponder ramp-testers must meet the criteria set forth in Federal Aviation Regulation 91.413, Part 43, Appendix F. The commenter asks if this proposed AD will change those criteria, and states that, if not, operators should be able to use any transponder ramp-tester that meets those requirements. The commenter adds that verification that a ramp-tester meets the FAR requirements can be confirmed by the manufacturer's technical data sheets and current calibration certificates.

The FAA does not agree that ''any'' transponder ramp-tester meets the requirements in paragraphs (a) and (b) of the final rule. As specified in the preamble of the proposed rule, ''The document (SIL 00–1), subtitled '621A–3 Transponder Overhaul Manual Test Equipment Modification Recommendation,' indicates that some operators using ATC ramp tester model number 601 (ATC–601) to verify performance of Mode C transponders with single Gillham encoded altitude input were experiencing a high reject rate of the 621A–3 transponders manufactured by Rockwell Collins, Inc. The service letter states that the ATC–601 ramp tester is capable of detecting out-of-tolerance errors in the framing pulse width, whereas the ATC–600 ramp tester previously used to test the transponders did not detect these pulse width errors.'' We concur that certain other ramp-testers may be used, and we have added a new Note 2 (and renumbered subsequent notes) to this final rule that specifies ''approved'' transponder ramp-testers.

Another commenter states that, to perform the pulse width test specified in paragraph (a) of the proposed rule, a bench check of the transponder is required, and adds that operators may be removing properly operating transponders to comply with the proposed rule. The commenter asks that an option be given to allow operators to perform a functional test with a Mode S ATC test set per the applicable airplane maintenance manual. The commenter adds that, if the transponder passes the functional test, it would not be necessary to remove the transponder from the airplane for a bench check.

We partially agree with the commenter. We do not agree that a bench check of the transponder is required to perform the pulse width test; the pulse width test can be done either with the transponder on the airplane or by removing the transponder and doing a bench check, depending on the capabilities of the test equipment used. We agree that the Mode S ATC is an approved test set, and that test set is specified in Note 2 of this final rule.

The same commenter asks that the final rule specify that any bench check done on a transponder before the effective date of the final rule, in accordance with the service information specified in the proposed rule, is acceptable for compliance with the pulse width tests specified in paragraphs (a) and (b) of the proposed rule. The commenter adds that if the FAA agrees to include the bench check, submission of the reporting requirements specified in paragraph (d) of the proposed rule should be amended to allow for a compliance time of more than 60 days after completion of the bench check. The commenter recommends a 30-day grace period after the effective date of the final rule for the reporting requirement.

We agree and have added a new Note 3 to this final rule to specify that bench checks used to perform the tests per Rockwell Collins Air Transport Systems Overhaul Manual with Illustrated Parts List, Temporary Revision No. 34–44–00–38, dated April 20, 2000, are acceptable for compliance with paragraph (a) of this final rule. Additionally, we have changed the reporting requirement specified in paragraph (d) of this final rule to specify that the report may be submitted within 60 days AFTER the effective date of the AD.

Another commenter notes that paragraph (b) of the proposed rule specifies that the transmitter tube and resistor be replaced (if any malfunction is detected), per Rockwell Collins Service Bulletin 621A–3–34–21, Revision 1, dated November 14, 1975. The commenter states that the referenced service bulletin specifies removal of the resistor (only) on units having serial numbers 7192 and below. The commenter interprets paragraph (b) of the proposed rule as requiring replacement of the transmitter tube and resistor regardless of the unit serial number. The commenter recommends paragraph (b) of the proposed rule be changed to specify that resistor removal is only required on units with serial numbers 7192 and below.

We concur with the commenter and have changed paragraph (b) of the final rule to add paragraphs (b)(1) and (b)(2) to require replacement of the transmitter tube and resistor for transponders having serial numbers up to and including 7192; and replacement of the transmitter tube (only) for transponders having serial numbers 7193 and subsequent.

Credit for Transponders Previously Modified

One commenter asks if the proposed rule will apply to transponders that have already been modified using the procedures specified in Rockwell Collins, Inc. SIL 00–1, which references Rockwell Collins Service Bulletin 621A–3–34–21, Revision 1, dated November 14, 1975, cited in the proposed rule as the appropriate source of service information doing the replacement.

We agree that if the replacement required by paragraph (b) of this final rule was done prior to the effective date of the AD using the service information cited in the final rule, it is acceptable for compliance. Therefore, we have added a new Note 4 to this final rule (and renumbered subsequent notes) that specifies previous modification of the transponder is acceptable for compliance with this AD.

Change Paragraph (c)

One commenter states that paragraph (c) of the proposed rule cites the air data computer or interconnect wiring as possibly being defective. The commenter notes that this is in error because the pulse width cannot be affected by the air data computer or its wiring. The commenter adds that the pulse width can be affected by antenna/wiring faults.

We agree with the commenter and have changed paragraph (c) of this final rule to remove the references to repair of the air data computer or wiring connections.

The same commenter notes that paragraph (c) of the proposed rule specifies that, if malfunction of the transponder is detected, the transponder must be repaired prior to further flight. The commenter asks that the final rule allow for continued operation of the airplane in accordance with the Minimum Equipment List (MEL), provided the defective transponder is not operated.

Note 5 of this final rule (which was Note 2 of the proposed rule) addresses the commenter's concern. That note specifies that the airplane may be operated in accordance with the provisions and limitations specified in the FAA-approved Master Minimum Equipment List (MMEL), provided that only one Mode C transponder on the airplane is inoperative.

Delete Paragraph (c)

One commenter states that paragraphs (a) and (b) of the proposed rule discuss actions for off-wing shop tests per the transponder overhaul manual (OM), but paragraph (c) implies that an on-wing test must be accomplished. The commenter asks that paragraph (c) of the proposed rule be deleted. The commenter notes that any transponder tested in accordance with the OM will not be returned to service unless it can pass the pulse width test. The commenter adds that both the aircraft wiring and interfacing equipment were previously tested per AD 99–23–22 R1, amendment 39–11473 (64 FR 70181, December 16, 1999), which addressed concerns specific to the Rockwell Collins 621A–3 transponders. The commenter states that no additional testing should be required.

We do not agree with the commenter. Paragraph (c) of this final rule requires repair of the transponder if a malfunction is detected; no on-wing test is required by that paragraph. No change to the final rule is necessary in this regard.

Change to Final Rule

We have changed the point of contact for information concerning this final rule to Elizabeth Zurcher, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 800 airplanes with transponders with the affected part in the worldwide fleet. The FAA estimates that approximately 400 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required test, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $96,000, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–06–05 Transport Category Airplanes: Amendment 39–12682. Docket 2000–NM–284–AD.

Applicability: Transport category airplanes, certificated in any category, equipped with Rockwell Collins Mode C 621A–3 Air Traffic Control (ATC) transponder(s), part number (P/N) 522–2703–XXX (where XXX is any series number).

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

Compliance: Required as indicated, unless accomplished previously.

To prevent transmission of inaccurate data concerning altitude from one airplane to another, which could cause the pilot receiving the data to change course, either ascending or descending, and possibly lead to a mid-air collision or near mid-air collision, accomplish the following:

Testing

(a) Within 6 months after the effective date of this AD: Perform a pulse width test to detect malfunctions of any Mode C 621A–3 ATC transponder(s) equipped with P/N 522–2703–XXX, where XXX is any part number, in accordance with Rockwell Collins Air Transport Systems Overhaul Manual with Illustrated Parts List, Temporary Revision No. 34–44–00–38, dated April 20, 2000.

Note 2: Pulse width tests done using TIC–49, ATC–601, ATC–601A, or ATC–1400A ramp or bench testers meet the applicable test requirements specified in paragraphs (a) and (b) of this AD.

Note 3: Previous checks used to perform the test specified in paragraph (a) of this AD,

per Rockwell Collins Air Transport Systems Overhaul Manual with Illustrated Parts List, Temporary Revision No. 34–44–00–38, dated April 20, 2000, are considered acceptable for compliance with paragraph (a) of this AD.

Replacement

(b) If the pulse width test required by paragraph (a) of this AD detects malfunction of a transponder, prior to further flight, perform the requirements specified in paragraph (b)(1) or (b)(2) of this AD, as applicable, in accordance with Rockwell Collins Service Bulletin 621A–3–34–21, Revision 1, dated November 14, 1975.

(1) For transponders having serial numbers up to and including 7192: Replace the transmitter tube and resistor with a new tube and resistor and repeat the pulse width test required by paragraph (a) of this AD.

(2) For transponders having serial numbers 7193 and subsequent: Replace the transmitter tube with a new tube and repeat the pulse width test required by paragraph (a) of this AD.

Note 4: Accomplishment of the replacement specified in paragraph (b)(1) or (b)(2) of this AD, as applicable, prior to the effective date of this AD, per Rockwell Collins Service Information Letter (SIL) 00–1, dated May 25, 2000, is acceptable for compliance with the applicable replacement required by paragraph (b)(1) or (b)(2) of this AD.

Repair

(c) If the follow-up pulse width test required by paragraph (b) of this AD detects malfunction of a transponder: Prior to further flight, repair the transponder in accordance with the applicable Mode C transponder component maintenance manual and airplane maintenance manual. If the repair information is not available in the applicable manual, prior to further flight, repair the transponder in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Note 5: The airplane may be operated in accordance with the provisions and limitations specified in the FAA-approved Master Minimum Equipment List (MMEL), provided that only one Mode C transponder on the airplane is inoperative.

Reporting Requirement

(d) Submit a report of the results (both positive and negative) of the tests required by paragraphs (a) and (b) of this AD, at the applicable time specified in paragraph (d)(1) or (d)(2) of this AD, to: Elizabeth Zurcher, Aerospace Engineer, FAA, Seattle ACO, Systems and Equipment Branch, ANM–130S, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181. The report must include the part number of the Mode C transponder(s) and whether corrective action was required. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the pulse width test (using a bench check, if necessary) is accomplished after the effective date of this AD: Submit the report within 60 days after performing the test required by paragraph (a) or (b) of this AD, as applicable.

(2) For airplanes on which the pulse width test has been accomplished prior to the effective date of this AD: Submit the report within 60 days after the effective date of this AD.

Alternative Methods of Compliance

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

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(g) Except as provided by paragraph (c) of this AD: The actions shall be done in accordance with Rockwell Collins Air Transport Systems Overhaul Manual with Illustrated Parts List, Temporary Revision No. 34–44–00–38, dated April 20, 2000; and Rockwell Collins Service Bulletin 621A–3–34–21, Revision 1, dated November 14, 1975; as applicable. Revision 1 of Rockwell Collins Service Bulletin 621A–3–34–2 contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 4	1	Nov. 14, 1975.
2, 3, 5/6	Original	June 15, 1975.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rockwell Collins, Inc., 400 Collins Road NE; Cedar Rapids, Iowa 52498. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on April 26, 2002.

Issued in Renton, Washington, on March 13, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6793 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30301; Amdt. No. 2098]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

The amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on March 15, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

Effective Upon Publication

FDC Date	State	City	Airport	FDC No.	Subject
02/25/02	MI	HOWELL	LIVINGSTON COUNTY	2/1650	NDB RWY 13, AMDT 2
02/26/02	MI	PORT HURON	ST. CLAIR COUNTY INTL	2/1665	NDB OR GPS RWY 4, AMDT 3
02/26/02	MI	PORT HURON	ST. CLAIR COUNTY INTL	2/1666	VOR/DME RNAV OR GPS RWY 22, AMDT 2
02/26/02	MI	PORT HURON	ST. CLAIR COUNTY INTL	2/1667	VOR/DME OR GPS–A, AMDT 7
02/26/02	MI	PORT HURON	ST. CLAIR COUNTY INTL	2/1670	ILS RWY 4, AMDT 3
02/27/02	WY	GREYBULL	SOUTH BIG HORN COUNTY	2/1755	NDB OR GPS RWY 33, AMDT 1
02/27/02	WY	RIVERTON	RIVERTON REGIONAL	2/1756	VOR RWY 28, AMDT 8A
02/28/02	TN	DAYTON	MARK ANTON	2/1777	NDB OR GPS RWY 3, AMDT 1
02/28/02	CA	STOCKTON	STOCKTON METROPOLITAN	2/1778	VOR RWY 29R AMDT 18

FDC Date	State	City	Airport	FDC No.	Subject
02/28/02	HI	HILO	HILO INTL	2/1789	ILS RWY 26, AMDT 12
03/01/02	HI	HONOLULU	HONOLULU INTL	2/1811	ILS RWY 4R, AMDT 11A
03/04/02	FL	PENSACOLA	PENSACOLA REGIONAL	2/1885	VOR RWY 8, AMDT 3A
03/04/02	GA	LAWRENCEVILLE	GWINNETT COUNTY-BRISCOE FIELD.	2/1889	NDB OR GPS RWY 25, ORIG–B
03/04/02	GA	LAWRENCEVILLE	GWINNETT COUNTY-BRISCOE FIELD.	2/1891	ILS RWY 25, AMDT 1A
03/04/02	CT	WILLIMANTIC	WINDHAM	2/1904	LOC RWY 27, AMDT 2
03/04/02	CT	WILLIMANTIC	WINDHAM	2/1905	VOR OR GPS–A, AMDT 8
03/06/02	NY	BINGHAMTON	BINGHAMTON REGIONAL/EDWIN A. LINK FIELD.	2/1950	ILS RWY 16, AMDT 6A
03/06/02	CA	SACRAMENTO	SACRAMENTO INTL	2/1969	ILS RWY 16R, AMDT 13B
03/06/02	CA	SACRAMENTO	SACRAMENTO INTL	2/2010	ILS RWY 34L, AMDT 5B
03/06/02	CA	SACRAMENTO	SACRAMENTO INTL	2/2012	NDB OR GPS RWY 34L, AMDT 4A
03/06/02	CA	SACRAMENTO	SACRAMENTO INTL	2/2014	NDB OR GPS RWY 34, ORIG–A
03/07/02	TN	CLARKSVILLE	OUTLAW FIELD	2/1991	LOC RWY 35, AMDT 5D
03/07/02	TN	CLARKSVILLE	OUTLAW FIELD	2/1992	NDB OR GPS RWY 35, AMDT 5D
03/07/02	TN	CLARKSVILLE	OUTLAW FIELD	2/1993	VOR RWY 35, AMDT 15C
03/07/02	NY	OLEAN	CATTARAUGUS COUNTY-OLEAN	2/2005	VOR/DME RNAV RWY 22, AMDT 4A
03/07/02	NY	OLEAN	CATTARAUGUS COUNTY-OLEAN	2/2006	LOC RWY 22, AMDT 5
03/07/02	NY	OLEAN	CATTARAUGUS COUNTY-OLEAN	2/2007	NDB RWY 22, AMDT 12
03/07/02	NY	OLEAN	CATTARAUGUS COUNTY-OLEAN	2/2009	GPS RWY 22, ORIG
03/07/02	NY	WELLSVILLE	WELLSVILLE MUNI ARTP, TARANTINE FLD.	2/2015	NDB OR GPS RWY 28, AMDT 6A
03/07/02	NY	WELLSVILLE	WELLSVILLE MUNI ARPT, TARANTINE FLD.	2/2016	VOR OR GPS–A, AMDT 5A
03/07/02	NY	WELLSVILLE	WELLSVILLE MUNI ARPT, TARANTINE FLD.	2/2017	LOC RWY 28, AMDT 3A
03/11/02	GA	ATLANTA	DEKALB-PEACHTREE	2/2083	ILS RWY 20L, AMDT 7B
03/11/02	GA	ATLANTA	DEKALB-PEACHTREE	2/2084	VOR/DME OR GPS RWY 20L, AMDT 1A
03/11/02	GA	ATLANTA	THE WILLIAM B. HARTSFIELD ATLANTA INTL.	2/2089	RNAV (GPS) RWY 27L, ORIG
03/12/02	SD	RAPID CITY	RAPID CITY REGIONAL	2/2120	ILS RWY 32, AMDT 17A
03/12/02	SD	RAPID CITY	RAPID CITY REGIONAL	2/2121	VOR OR TACAN RWY 32, AMDT 24B
03/12/02	SD	RAPID CITY	RAPID CITY REGIONAL	2/2122	NDB RWY 32, AMDT 3B
03/12/02	SD	RAPID CITY	RAPID CITY REGIONAL	2/2123	VOR OR TACAN RWY 14, ORIG–B
03/12/02	SD	RAPID CITY	RAPID CITY REGIONAL	2/2124	RNAV (GPS) RWY 14, ORIG
03/12/02	SD	RAPID CITY	RAPID CITY REGIONAL	2/2125	RNAV (GPS) RWY 32, ORIG–A
03/13/02	AK	TALKEETNA	TALKEETNA	2/2142	VOR–A, AMDT 9B
03/13/02	AK	TALKEETNA	TALKEETNA	2/2143	GPS RWY 35, ORIG–A
03/13/02	AK	TALKEETNA	TALKEETNA	2/2143	VOR/DME RWY 36, AMDT 1B
03/13/02	TN	FAYETTEVILLE	FAYETTEVILLE MUNI	2/2164	NDB RWY 20, AMDT 3B
03/13/02	TN	FAYETTEVILLE	FAYETTEVILLE MUNI	2/2169	GPS RWY 2, ORIG
03/13/02	TN	FAYETTEVILLE	FAYETTEVILLE MUNI	2/2170	GPS RWY 20, ORIG
03/13/02	GA	METTER	METTER MUNI	2/2172	NDB OR GPS RWY 10, AMDT 2
03/13/02	TN	FAYETTEVILLE	FAYETTEVILLE MUNI	2/2175	SDF RWY 20, AMDT 2B
02/13/02	TN	FAYETTEVILLE	FAYETTEVILLE MUNI	2/2178	VOR/DME RWY 2, ORIG–B
03/13/02	ND	FARGO	HECTOR INTL	2/2184	VOR OR TACAN RWY 35, AMDT 12B
03/13/02	ND	FARGO	HECTOR INTL	2/2185	HI–VOR OR TACAN RWY 35, ORIG
03/07/02	NY	OLEAN	CATTARAUGUS COUNTY-OLEAN	2/2008	GPS RWY 4, ORIG

[FR Doc. 02–6968 Filed 3–21–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30300; Amdt. No. 2097]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

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

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

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

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

The Rule

This amendment to part 97 it effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on March 15, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701, and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective April 18, 2002*

Montgomery, AL, Montgomery Regional (Dannelly Field), NDB OR GPS RWY 10, Amdt 18C
Los Angeles, CA, Los Angeles Intl, NDB RWY 24R, Amdt 13
Los Angeles, CA, Los Angeles Intl, ILS RWY 6R, Amdt 16
Los Angeles, CA, Los Angeles Intl, ILS RWY 6L, Amdt 11
Los Angeles, CA, Los Angeles Intl, ILS RWY 7R, Amdt 4
Los Angeles, CA, Los Angeles Intl, ILS RWY 7L, Amdt 5
Los Angeles, CA, Los Angeles Intl, ILS RWY 24R, Amdt 22
Los Angeles, CA, Los Angeles Intl, ILS RWY 24L, Amdt 23
Los Angeles, CA, Los Angeles Intl, ILS RWY 25R, Amdt 14
Los Angeles, CA, Los Angeles Intl, ILS RWY 25L, Amdt 8
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 6R, Orig
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 6L, Orig
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 7R, Orig
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 7L, Orig
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 24R, Orig
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 24L, Orig
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 25R, Orig
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 25L, Orig
Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, RADAR–1, Amdt 4A, CANCELLED
Orlando, FL, Executive, RADAR–1, Amdt 25, CANCELLED
Orlando, FL, Orlando Intl, RADAR–1, Amdt 5B, CANCELLED
Springfield, MO, Springfield-Branson Regional, RNAV (GPS) RWY 32, Orig
Springfield, MO, Springfield-Branson Regional, VOR/DME OR TACAN RWY 2, Orig
Las Vegas, NV, McCarran Intl, ILS RWY 25L, Amdt 3
Las Vegas, NV, McCarran Intl, RNAV (GPS) RWY IL, Orig
Las Vegas, NV, McCarran Intl, RNAV (GPS) RWY 1R, Orig
Las Vegas, NV, McCarran Intl, GPS RWY 1R, Orig, CANCELLED
Las Vegas, NV, McCarran Intl, RNAV (GPS) RWY 19L, Orig
Las Vegas, NV, McCarran Intl, RNAV (GPS) RWY 19R, Orig
Las Vegas, NV, McCarran Intl, RNAV (GPS) RWY 25L, Orig
Lexington, NC, Davidson County, LOC/DME RWY 6, Orig
Monroe, NC, Monroe, NDB RWY 5, Amdt 3
Atlanta, TX, Hall-Miller Muni, RNAV (GPS) RWY 5, Orig
Atlanta, TX, Hall-Miller Muni, NDB RWY 5, Amdt 3
San Angelo, TX, San Angelo Regional/Mathis Field, VOR/DME OR TACAN RWY 3, Orig
San Angelo, TX, San Angelo Regional/Mathis Field, RNAV (GPS) RWY 3, Orig
San Angelo, TX, San Angelo Regional/Mathis Field, GPS RWY 3, Orig, CANCELLED

** * * Effective May 16, 2002*

Sacramento, CA, Sacramento Mather, VOR RWY 4R, Orig-D

** * * Effective June 13, 2002*

Manassas, VA, Manassas Regional/Harry P. Davis, NDB OR GPS–A, Amdt 8C, CANCELLED

The FAA published an Amendment in Docket No. 30290, Amdt. No. 2088 to Part 97 of the Federal Aviation Regulations (67 FR 3612; dated January 25, 2002) under § 97.33 effective April 18, 2002 which is hereby rescinded:

Cold Bay, AK, Cold Bay, RNAV (GPS) RWY 26, Orig

[FR Doc. 02–6967 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FRL–7161–9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; States of Kansas, Missouri and Nebraska; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction.

SUMMARY: On January 29, 2002, EPA published a direct final action approving the Commercial and Industrial Solid Waste Incineration (CISWI) negative declaration submitted by Nebraska. We are correcting a citation for the entry for Nebraska.

DATES: This action is effective April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION:

On January 29, 2002 (67 FR 4179), EPA published a direct final action approving the Commercial and Industrial Solid Waste Incineration (CISWI) negative declaration submitted by the states of Kansas, Missouri, and Nebraska.

The new entry in 40 CFR part 62, subpart CC-Nebraska contained an incorrect section numerical listing. The correct citation is: § 62.6916.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is such good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely corrects an incorrect citation in a previous action, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely corrects a citation in a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act (CAA). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing state plan submissions, our role is to approve state choices,

provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have no authority to disapprove state submissions for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews state submissions, to use VCS in place of state submissions that otherwise satisfy the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. As stated previously, we made such a good cause finding, including the reasons therefore and established an effective date of April 1, 2002. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction is not a ''major rule'' as defined by 5 U.S.C. 804 *et seq.* (2).

List of Subjects 40 CFR Part 62

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Sulfur oxides, Waste treatment and disposal.

Accordingly, 40 CFR part 62, subpart CC-Nebraska, paragraph four is corrected to read:

In rule FR Doc. 02–2119 published on January 29, 2002 (67 FR 4179), make the following correction. On page 4181, in the second column, the § number ''62.6915'' is corrected to read ''62.6916.''

Dated: March 12, 2002.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 02–6942 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7160–4]

RIN 2060–AG12

Protection of Stratospheric Ozone: Notice 16 for Significant New Alternatives Policy Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of acceptability; notice of data availability.

SUMMARY: This notice of acceptability expands the list of acceptable substitutes for ozone-depleting substances (ODS) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. The substitutes are for use in the following sectors: refrigeration and air conditioning; aerosols; and adhesives, coatings, and inks. In addition, we are notifying the public of new information available on the toxicity of HCFC–225ca and HCFC–225cb, acceptable substitutes used in solvents cleaning.

EFFECTIVE DATE: March 22, 2002.

ADDRESSES: Information relevant to this document is contained in Air Docket A–91–42, Room M–1500, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone: (202) 260–7548. You may inspect the docket between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying. Submissions to EPA for the use of the substitutes listed in this document may be found under category VI–D of EPA docket A–91–42. You can find other materials supporting the decisions in this action under category IX–B of EPA docket A–91–42.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard by telephone at (202) 564–9163, by fax at (202) 565–2155, by e-mail at *sheppard.margaret@epa.gov,* or by mail at U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to 501 3rd Street, NW., Washington, DC, 20001.

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the original SNAP rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as other EPA publications on protection of stratospheric ozone, are available from EPA's Ozone Depletion World Wide Web site at *http://www.epa.gov/ozone/* including the SNAP portion at *http://www.epa.gov/ozone/title6/snap/.*

SUPPLEMENTARY INFORMATION:

I. Listing of Acceptable Substitutes
A. Refrigeration and Air Conditioning
B. Aerosols
C. Adhesives, Coating and Inks
II. New Data Available on the Toxicity of HCFC–225ca/cb
III. Section 612 Program
A. Statutory Requirements
B. Regulatory History
Appendix A—Summary of Acceptable Decisions
Appendix B—New Information Available

I. Listing of Acceptable Substitutes

This section presents EPA's most recent acceptable listing decisions for substitutes in the following industrial sectors: refrigeration and air conditioning; aerosols; and adhesives, coatings, and inks. For copies of the full list of SNAP decisions in all industrial sectors, visit EPA's Ozone Depletion web site at *http://www.epa.gov/ozone/title6/snap/lists/index.html.*

The sections below discuss the substitute listing in detail. Appendix A contains a table summarizing today's listing decisions. The statements of further information contained in the table provide additional information, but are not legally binding under section 612 of the Clean Air Act. In addition, the ''further information'' may not be a comprehensive list of other legal obligations you may need to meet when using the substitute. Although you are not required to follow recommendations in the ''further information'' column of the table to use a substitute, EPA

strongly encourages you to apply the information when using these substitutes. In many instances, the information simply refers to standard operating practices in existing industry and/or building-code standards. Thus, many of these statements, if adopted, would not require significant changes to existing operating practices.

A. Refrigeration and Air Conditioning

1., 2., 3. and 4. PFC–1102HC, PFC–662HC, PFC–552HC and FLC–15

EPA's decision: The chemical blends submitted to EPA with the unregistered trade names PFC–1102HC, PFC–662HC, PFC–552HC and FLC–15 are acceptable for use in new equipment as substitutes for:

• CFC–13, CFC–113, CFC–114 and blends thereof in very low temperature refrigeration.

IGC Polycold Systems Inc., the submitter of the above-listed blends, claims that the compositions of these HFC blends, tailored for use in its equipment, are confidential business information. Despite the trade names of these refrigerants, they are not perfluorocarbons. You can find a version of the submission with information claimed confidential by the submitter removed, in EPA Air Docket A–91–42, item VI–D–268.

Environmental information: The ozone depletion potential (ODP) of each of these four blends is zero.

The global warming potentials (GWPs) of the blends are between 7500 and 8500; therefore, EPA strongly encourages prompt identification and repair of any leaks that may occur. EPA notes that many of the alternatives already listed as acceptable for use within the very low temperature refrigeration end use have GWPs this high or higher, and encourages the continued search for lower-GWP alternatives for this end use. The contribution of these blends to global warming will be minimized through the implementation of the venting prohibition under section 608(c)(2) of the Clean Air Act (see 40 CFR part 82, subpart F). This section and EPA's implementing regulations prohibit venting or release of substitutes for class I and class II ozone depleting substances used in refrigeration and air-conditioning and require proper handling and disposal of these substances, such as recycling or recovery.

Some components of these blends have not been exempted from listing as volatile organic compounds (VOCs) under Clean Air Act regulations for purposes of State Implementation Programs (SIPs) to control ground-level ozone.

Flammability information: These four blends are nonflammable. The individual components of the blends exhibit little to no flammability.

Toxicity and exposure data: All components in these blends have eight-hour time-weighted average occupational exposure limits, such as Workplace Environmental Exposure Levels (WEELs) from the American Industrial Hygiene Association (AIHA), of approximately 1,000 ppm. EPA expects users to follow all recommendations specified in the material safety data sheets (MSDSs) for the blends and other safety precautions common in the refrigeration and air conditioning industry.

Comparison to other refrigerants: The Polycold HFC blends reduce risk to the public compared to the ODSs they replace because they have no ODP. The other substitutes already listed as acceptable for very low temperature refrigeration either (1) have an ODP, (2) have a higher GWP than the Polycold HFC blends, (3) have lower energy efficiency compared to the Polycold HFC blends, resulting in an even higher GWP, or (4) have not been developed into a useful technology for this end use. In addition, there are relatively few acceptable substitutes in this end use with no ODP. Thus, we find that the Polycold HFC blends are acceptable because they reduce overall risk to public health and the environment in the end uses listed.

5. HFE–7000

EPA's decision: Hydrofluoroether (HFE)–7000 is acceptable for use in new and retrofit equipment as a substitute for:

• HCFC–123 in very low temperature refrigeration;
• CFC–11 and CFC–113 in industrial process refrigeration; and
• CFC–11 and CFC–113 in non-mechanical heat transfer.

3M, the submitter of the above-listed blends, indicates that this chemical is also known as HFE–301 and propane, 1,1,1,2,2,3,3 hepta fluoro-3-methoxy or 1-(methoxy)-1,1,2,2,3,3,3-heptafluoropropane. The empirical formula is C4H3F7O and it is also identified as CH3–O–CF2–CF2–CF3 and R–E347mcc1. You can find a version of the submission with information claimed confidential by the submitter removed, in EPA Air Docket A–91–42, item VI–D–272.

Environmental information: The ODP of HFE–7000 is zero. The GWP is estimated to range between 140 (World Meterological Organization estimate) and 400 (derived from Ninomiya et.al., 2000) relative to carbon dioxide, using a 100-year time horizon. The World Meteorological Organization previously estimated an atmospheric lifetime of 1.3 years, but more recent experimental data indicates a lifetime of 4.7 years (Ninomiya et.al., 2000).

This chemical has been exempted from listing as a VOC under Clean Air Act regulations.

Flammability information: This chemical is nonflammable.

Toxicity and exposure data: The manufacturer has recommended an acceptable exposure limit (AEL) of 75 ppm over an eight-hour time-weighted average. EPA believes this exposure limit will be protective of human health and safety. We expect users to follow all recommendations specified in the MSDS for this refrigerant and other safety precautions common in the refrigeration and air conditioning industry. This substitute was submitted to the Agency as part of a Premanufacture Notice (PMN) under the Toxic Substances Control Act (TSCA).

Comparison to other refrigerants: HFE–7000 is less toxic than HCFC–123 and is not an ozone depleter; thus, in the very low temperature end use, it reduces risk overall compared to CFC–11, CFC–113, and HCFC–123, the ODS it replaces. The GWP and atmospheric lifetime of HFE–7000 are lower than those of other acceptable alternatives in very low temperature refrigeration.

There are few alternatives for CFC–11 and CFC–113 in non-mechanical heat transfer, and HFE–7000 has a comparable or lower GWP than those alternatives. HFE–7000 has lower or comparable GWP and an ODP of zero, compared to most other substitutes available for industrial process refrigeration. Thus, we find that HFE–7000 is acceptable because it reduces overall risk to public health and the environment in the end uses listed.

6. ISCEON 39TC

ISCEON 39TC is acceptable for use in new and retrofit equipment as a substitute for CFC–12 in:

• Centrifugal chillers;
• Industrial process refrigeration;
• Industrial process air conditioning;
• Cold storage warehouses; and
• Ice skating rinks.

Rhodia Organique Fine Limited, the submitter of the above-listed refrigerant, claims the composition to be confidential business information. The submitter indicates that the refrigerant, also known as Centri-Cool, is a blend of two hydrofluorocarbons (HFCs).You can find a version of the submission with information claimed confidential by the

submitter removed, in EPA Air Docket A–91–42, item VI–D–279.

Environmental information: The ozone depletion potential (ODP) of ISCEON 39TC is zero. The Global Warming Potential (GWP) of each of the two components is roughly 2000 to 3000 (relative to carbon dioxide, using a 100-year time horizon).

One component of this blend has not been exempted from listing as a volatile organic compound (VOC) under Clean Air Act regulations for purposes of State implementation plans (SIP) to control ground-level ozone.

Flammability information: Neither component, nor the blend, is flammable.

Toxicity and exposure data: Both components of the blend have workplace guidance level exposure limits on the order of 1000 ppm. EPA believes this exposure limit will be protective of human health and safety. EPA expects users to follow all recommendations specified in the Material Safety Data Sheet (MSDS) for the blend and the individual components and other safety precautions common in the refrigeration and air conditioning industry.

Comparison to other refrigerants: ISCEON 39TC is not an ozone depleter; thus, it reduces risk overall compared to CFC–12, the ODS it replaces. ISCEON 39TC has a comparable or lower GWP than the other substitutes for CFC–12. Thus, we find that ISCEON 39TC is acceptable because it reduces overall risk to public health and the environment in the end uses listed.

7. R–404A

R–404A is acceptable for use in new and retrofit equipment as a substitute for HCFC–22 in:

- Industrial process refrigeration.

R–404A is a blend of 44% by weight HFC–125 (pentafluoroethane), 52% by weight HFC–143a (1,1,1-trifluoroethane) and 4% by weight HFC–134a (1,1,1,2-tetrafluoroethane). You may find the submission under EPA Air Docket A–91–42, item VI–D–283. EPA previously listed R–404A as an acceptable substitute for CFC–12 in industrial process refrigeration and other end uses in the original SNAP rule (March 18, 1994; 59 FR 13044).

Environmental information: The ozone depletion potential (ODP) of R–404A is zero. The Global Warming Potentials (GWP) of HFC–125, HFC–143a and HFC–134a are 3400, 4300 and 1300, respectively (relative to carbon dioxide, using a 100-year time horizon). The contribution of this blend to global warming will be minimized through the implementation of the venting prohibition under section 608(c)(2) of the Clean Air Act (see 40 CFR part 82, subpart F). This section and EPA's implementing regulations prohibit venting or release of substitutes for class I and class II ozone depleting substances used in refrigeration and air-conditioning and require proper handling and disposal of these substances, such as recycling or recovery.

All components of this blend have been exempted from listing as a volatile organic compound (VOC) under Clean Air Act regulations for purposes of the State implementation plan (SIP) program.

Flammability information: The component HFC–143a is moderately flammable; however, the blend is not flammable nor does it fractionate into a flammable mixture.

Toxicity and exposure data: All components of the blend have workplace environmental exposure limits (WEELs) of 1000 ppm established by the American Industrial Hygiene Association (AIHA). EPA expects users to follow all recommendations specified in the Material Safety Data Sheet (MSDS) for the blend and the individual components and other safety precautions common in the refrigeration and air conditioning industry. We also expect that users of R–404A will adhere to the AIHA's WEELs.

Comparison to other refrigerants: R–404A is not an ozone depleter; thus, it reduces risk overall compared to HCFC–22, the ODS it replaces. R–404A has a comparable or lower GWP than the other substitutes for HCFC–22 and no ODP. Thus, we find that R–404A is acceptable because it reduces overall risk to public health and the environment in the end use listed.

8. Update: Formulation of NU–22 Changed

ICOR International has indicated that it is changing the composition of NU–22. On December 18, 2000, EPA found the original formulation acceptable for a variety of end-uses. At that time, the composition was claimed as confidential business information (CBI); however, the submitter has withdrawn that claim. The original formulation was 28.1% by weight pentafluoroethane (HFC–125), 70% 1,1,1,2-tetrafluoroethane (HFC–134a) and 1.9% isobutane (HC–600a). ICOR International has indicated it will not market this formulation. We are modifying the previous acceptability determination to now list this blend by its composition [R–125/134a/600a (28.1/70.0/1.9)] (rather than as NU–22) as an acceptable substitute for HCFC–22 in new and retrofit applications in the following end-uses:

- Industrial process refrigeration and air-conditioning;
- Centrifugal chillers;
- Reciprocating chillers;
- Residential air conditioning and heat pumps;
- Residential dehumidifiers;
- Refrigerated transport;
- Motor vehicle air conditioning (buses only).

The composition of NU–22 has been changed to 46.6% by weight pentafluoroethane (HFC–125), 50% 1,1,1,2-tetrafluoroethane (HFC–134a) and 3.4% butane, also known as n-butane (HC–600). This composition is identical to that of the refrigerant ISCEON 59. The manufacturer of ISCEON 59 has applied for assignment under the American Society of Heating, Refrigerating and Air-conditioning Engineers, Inc. (ASHRAE) Standard 34. The designation of R–417A has been recommended; however, this has not yet been formally published in an addendum or revision to ASHRAE Standard 34.

EPA previously found ISCEON 59 acceptable for several end-uses on December 6, 1999 at 64 FR 68040. That finding now applies to NU–22. NU–22 [R–125/134a/600 (46.6/50.0/3.4)] is acceptable for use in new and retrofit equipment as a substitute for R–22 in:

- Household and light commercial air-conditioning
- Commercial comfort air-conditioning (centrifugal chillers; reciprocating and screw chillers)
- Industrial process refrigeration;
- Industrial process air-conditioning;
- Cold storage warehouses;
- Refrigerated transport;
- Retail food refrigeration;
- Commercial ice machines;
- Vending machines;
- Water coolers;
- Household refrigerators;
- Household freezers;
- Ice skating rinks;
- Non-mechanical heat transfer.

B. Aerosols

1. HFC–245fa

EPA's decision: *Hydrofluorocarbon-245fa is acceptable as a substitute for:*

- CFC–113 and HCFC–141b in the aerosol solvent end use.

This compound is also known as HFC–245fa or 1,1,1,3,3-pentafluoropropane. You can find a version of the submission with information claimed confidential by the submitter removed, in EPA Air Docket A–91–42, item VI-D–274. EPA has previously found HFC–245fa acceptable

for use in certain foam blowing (64 FR 68041, December 6, 1999) and refrigeration and air conditioning applications (65 FR 37901, June 19, 2000).

Environmental information: HFC–245fa has an ozone depletion potential of zero. It has a global warming potential (GWP) of 1022. This chemical has been exempted from listing as a VOC under Clean Air Act regulations.

Flammability: HFC–245fa is non-flammable.

Toxicity and exposure data: We expect users to follow all recommendations specified in the manufacturer's MSDS for HFC–245fa. We also expect that the workplace environmental exposure will not exceed the American Industrial Hygiene Association's (AIHA) workplace environmental exposure limit (WEEL) of 300 ppm.

Comparison to other aerosols: HFC–245fa's global warming potential (GWP) is similar to or lower than that of the ODSs that it would be replacing, and it has no ODP. Thus, HFC–245fa reduces risk overall compared to the substances it replaces. HFC–245fa:

(1) Is non-flammable and reduces the risk of fire compared to flammable aerosol solvents,

(2) Is less toxic than many of the non-flammable aerosol solvents, and

(3) Has a GWP comparable to or less than other substitute aerosol solvents and has no ODP.

Thus, we find that HFC–245fa is acceptable because it reduces overall risk to public health and the environment in the aerosol solvent end use.

C. Adhesives, Coatings and Inks

1. HFE–7100

EPA's decision: Hydrofluoroether-7100 is an acceptable substitute for:

- CFC–113, HCFC–141b, and methyl chloroform in adhesives, coatings, and inks.

Hydrofluoroether-7100 is also called HFE–7100; $C_4F_9OCH_3$;$C_5F_9OH_3$; methoxynonafluorobutane, iso and normal; and methyl nonafluorobutyl ether. HFE–7100 also may be used as a carrier for lubricant coatings.

Environmental information: HFE–7100 has an ozone depletion potential (ODP) of zero, a global warming potential (GWP) of 390 over a 100-year time horizon, and an atmospheric lifetime of 4.1years. This chemical has been exempted from listing as a volatile organic compound (VOC) under Clean Air Act regulations.

Flammability: HFE–7100 is non-flammable.

Toxicity and exposure data: HFE–7100 has low toxicity. HFE–7100 has a workplace environmental exposure limit (WEEL) of 750 ppm established by the American Industrial Hygiene Association (AIHA).

Comparison to other carrier solvents in adhesives, coatings, and inks: HFE–7100's GWP is similar to or lower than that of the ODSs that it would be replacing, and it has no ODP. Thus, HFE–7100 reduces risk overall compared to the substances it replaces.

HFE–7100:

(1) Is non-flammable and reduces the risk of fire compared to flammable carrier solvents,

(2) Is less toxic than the non-flammable carrier solvents, and

(3) Has a GWP comparable to or less than other substitute carrier solvents and has no ODP.

Thus, we find that HFE–7100 is acceptable because it reduces overall risk to public health and the environment in the adhesives, coatings, and inks end uses.

2. HFE–7200

EPA's decision: Hydrofluoroether-7200 is an acceptable substitute for:

- CFC–113, HCFC–141b, and methyl chloroform in adhesives, coatings, and inks.

Hydrofluoroether 7200 is also known as HFE–7200; $C_4F_9OC_2H_5$; $C_6F_9OH_5$; and ethoxynonafluorobutane, iso and normal. HFE–7200 also may be used as a carrier for lubricant coatings.

Environmental information: HFE–7200 has an ODP of zero, a GWP of 55 and an atmospheric lifetime of 0.9 years. This chemical has been exempted from listing as a VOC under Clean Air Act regulations.

Flammability: HFE–7200 has no flash point. Its flammability range in air is 2.4–12.4%.

Toxicity and exposure data: The manufacturer's recommended exposure guideline for HFE–7200 is 200 ppm over an eight-hour time-weighted average. EPA expects HFE–7200 users to follow all recommendations specified in the manufacturer's Material Safety Data Sheets (MSDSs). We also expect that users of HFE–7200 will adhere to any acceptable exposure limits set by any voluntary consensus standards organization, including the American Conference of Governmental Industrial Hygienists' (ACGIH) threshold limit values (TLVs) or the AIHA's WEELs.

Comparison to other carrier solvents in adhesives, coatings, and inks: HFE–7200's GWP is similar to or lower than that of the ODSs that it would be replacing, and it has no ODP. Thus, HFE–7200 reduces risk overall compared to the substances it replaces.

HFE–7200:

(1) Reduces the risk of fire compared to more flammable carrier solvents,

(2) Is less toxic than the non-flammable carrier solvents, and

(3) Has a GWP comparable to or less than other substitute carrier solvents and has no ODP.

Thus, we find that HFE–7200 is acceptable because it reduces overall risk to public health and the environment in the adhesives, coatings, and inks end uses.

II. New Data Available on the Toxicity of HCFC–225ca/cb

The manufacturer of HCFC–225ca/cb conducted a review of the toxicity of HCFC–225ca, HCFC–225cb, and the mixture of the two isomers. The manufacturer's new analysis indicates that exposure limits of 50 ppm, 400 ppm, and 100 ppm, respectively, for the -ca and -cb isomers and for the commercial formulation of HCFC–225ca/cb may be appropriate. The company that produces HCFC–225 ca/cb has indicated to EPA that they may petition the American Industrial Hygiene Association, a voluntary standard setting committee, to set a Workplace Environmental Exposure Level using these new data.

When EPA originally reviewed HCFC–225ca/cb, we found this substitute acceptable subject to use conditions in solvents cleaning (June 13, 1995; 60 FR 31099) and acceptable in aerosol solvents (April 28, 1999; 64 FR 22993) as a substitute for methyl chloroform and CFC–113. At the time of our determination, we stated that the company-set exposure limit of 25 ppm for the -ca isomer and 250 ppm for the -cb isomer would be protective of human health. The condition for use of HCFC–225 as a non-aerosol cleaning solvent specified that users must meet the company-set exposure limit of 25 ppm for the -ca isomer.

EPA has also done our own assessment of the toxicity using all available toxicity studies and a benchmark dose approach to arrive at an acceptable exposure limit. Our analysis indicates that the manufacturer's revised exposure limits are sufficiently protective of human health. You can find this information in a document titled, ''Recommendation of AELs for HCFC–225ca, HCFC–225cb, and HCFC–225 ca/cb.'' This document is in EPA's Air Docket #A–91–42, item IX-B–73. To obtain a copy, you can contact the EPA Air Docket at the address and phone number listed above in the **ADDRESSES**

section at the beginning of this document.

III. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. We refer to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- Rulemaking—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- Listing of Unacceptable/Acceptable Substitutes—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.
- Petition Process—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, it must publish the revised lists within an additional six months.
- 90-day Notification—Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or *existing* chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.
- Outreach—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.
- Clearinghouse—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the rulemaking (59 FR 13044) which described the process for administering the SNAP program. In the same notice, we issued the first acceptability lists for substitutes in the major industrial use sectors. These sectors include:

- Refrigeration and air conditioning;
- Foam blowing;
- Solvents cleaning;
- Fire suppression and explosion protection;
- Sterilants;
- Aerosols;
- Adhesives, coatings and inks; and
- Tobacco expansion.

These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

As described in this original rule for the SNAP program, EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substance. Therefore, by this notice we are adding substances to the list of acceptable alternatives without first requesting comment on new listings.

However, we do believe that notice-and-comment rulemaking is required to place any substance on the list of prohibited substitutes, to list a substance as acceptable only under certain conditions, to list substances as acceptable only for certain uses, or to remove a substance from the lists of prohibited or acceptable substitutes. We publish updates to these lists as separate notices of rulemaking in the **Federal Register**.

The Agency defines a ''substitute'' as any chemical, product substitute, or alternative manufacturing process, whether existing or new, intended for use as a replacement for a class I or class II substance. Anyone who produces a substitute must provide EPA with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to substitute manufacturers, but may include importers, formulators, or end-users, when they are responsible for introducing a substitute into commerce.

You can find a complete chronology of SNAP decisions and the appropriate **Federal Register** citations from the SNAP section of EPA's Ozone Depletion World Wide Web site at *www.epa.gov/ozone/title6/snap/chron.html.* This information is also available from the Air Docket (see **ADDRESSES** section above for contact information).

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: March 1, 2002.

Paul Stolpman,

Director, Office of Atmospheric Programs, Office of Air and Radiation.

Appendix A—Summary of Acceptable Decisions

REFRIGERATION AND AIR CONDITIONING

End-use	Substitute	Decision	Further information
Very low temperature refrigeration (new equipment only).	PFC–1102HC, PFC–662HC, PFC–552HC and FLC–15 as substitutes for CFC–13, CFC–113, CFC–114 and blends thereof.	Acceptable.	
Very low temperature refrigeration (retrofit and new).	Hydrofluoroether-7000 as a substitute for HCFC–123.	Acceptable.	
Industrial process refrigeration (retrofit and new).	Hydrofluoroether-7000 as a substitute for CFC–11 and CFC–113.	Acceptable.	
	ISCEON 39TC as a substitute for CFC–12.	Acceptable.	
	R–404A as a substitute for HCFC–22.	Acceptable.	
Non-mechanical heat transfer (retrofit and new).	Hydrofluoroether-7000 as a substitute for CFC–11 and CFC–113.	Acceptable.	

REFRIGERATION AND AIR CONDITIONING—Continued

End-use	Substitute	Decision	Further information
Centrifugal chillers (retrofit and new)	ISCEON 39TC as a substitute for CFC–12.	Acceptable.	
Industrial process air conditioning (retrofit and new).	ISCEON 39TC as a substitute for CFC–12.	Acceptable.	
Cold storage warehouses (retrofit and new).	ISCEON 39TC as a substitute for CFC–12.	Acceptable.	
Ice skating rinks (retrofit and new)	ISCEON 39TC as a substitute for CFC–12.	Acceptable.	
The following end-uses (retrofit and new): • Centrifugal chiller • Reciprocating chillers • Industrial process refrigeration • Industrial process air-conditioning • Refrigerated transport • Residential air conditioning and heat pumps • Residential dehumidifiers • Motor vehicle air conditioning, buses only	R125/134a/600a (28.1/70.01/1.9)] as a sustitute for HCFC–22.	Acceptable.	
The following end-uses (retrofit and new): • Household and light commercial air-conditioning • Centrifugal chiller • Reciprocating chillers • Screw chillers • Industrial process refrigeration • Industrial process air-conditioning • Cold storage warehouses • Refrigerated transport • Retail food refrigeration • Commercial ice machines • Vending machines • Water coolers • Household refrigerators • Household freezers • Ice skating rinks • Non-mechanical heat transfer	NU–22/ISCEON 59 [R–125/134a/600 (46.6/50.0/3.4] as a substitute for HCFC–22.	Acceptable	EPA expects that manufacturers, installers and servicers of refrigeration and air-conditioning systems will follow all applicable industry practices and technical standards, including but not limited to standards issued by the American Society of Heating, Refrigerating and Air-conditioning Engineers (ASHRAE), and that exposures will be kept within all applicable American Industrial Hygiene Association (AIHA) and American Conference of Governmental Industrial Hygienists (ACGIH) occupational exposure limits.
Aerosol solvents	HFC–245fa as a substitute for CFC–113 and HCFC–141b.	Acceptable	EPA expects that the workplace environmental exposure will not exceed the Workplace Environmental Exposure Limit of 300 ppm and that users will observe the manufacturer's recommendations in MSDSs.
Adhesives, Coatings, and Inks			
Adhesives, coatings, and inks	Hydrofluoroether-7100 as a substitute for CFC–113, HCFC-141b, and methyl chloroform.	Acceptable.	
Adhesives, coatings, and inks	Hydrofluoroether-7200 as a substitute for CFC–113, HCFC-141b, and methyl chloroform.	Acceptable.	

Appendix B—New Information Available

NON-AEROSOL CLEANING SOLVENTS

End-use	Substitute	Information available
Metal cleaning, Electronics cleaning, Precision cleaning.	HCFC–225ca/cb	Report on benchmark dose analysis of acceptable exposure limit for HCFC–225ca/cb, HCFC–225ca, and HCFC–225cb. See Docket A–91–42, item IX–B–73.

NON-AEROSOL CLEANING SOLVENTS—Continued

End-use	Substitute	Information available
Aerosols		
Aerosol solvents	HCFC–225ca/cb	Report on benchmark dose analysis of acceptable exposure limit for HCFC–225ca/cb, HCFC–225ca, and HCFC–225cb. See Docket A–91–42, item IX–B–73.

[FR Doc. 02–6848 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410, 411, 413, 424, and 489

[CMS–1163–CN]

RIN 0938–AK47

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects technical errors that appeared in the final rule published in the **Federal Register** on July 31, 2001 entitled ''Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update''.

EFFECTIVE DATE: This correction is effective October 1, 2001, except for certain wage index corrections that are effective December 1, 2001.

FOR FURTHER INFORMATION CONTACT: Bill Ullman, (410) 786–5667.

SUPPLEMENTARY INFORMATION: In the July 31, 2001 final rule entitled ''Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update'' (66 FR 39562), there were several technical errors in the preamble involving the SNF PPS wage index values. Accordingly, we are correcting several SNF PPS wage index values as published in Table 7.

Specifically, effective October 1, 2001, the wage index value for the Albuquerque, NM Metropolitan Statistical Area (MSA) (area 0200) is corrected from 0.9750 to 0.9759, and the wage index value for the Killeen-Temple, TX MSA (area 3810) is corrected from 0.7292 to 0.7940.

In addition, effective December 1, 2001, the wage index value for the Boston, MA MSA (area 1123) is corrected from 1.1289 to 1.1378, the wage index value for the Savannah, GA MSA (area 7520) is corrected from 0.9243 to 1.0018, and the wage index value for the Killeen-Temple, TX MSA (area 3810) is corrected again from 0.7940 (as corrected in the previous paragraph) to 0.8471.

In accordance with our longstanding policies, these technical and tabulation errors are being corrected prospectively, effective on the dates noted above. This correction notice conforms the published SNF PPS wage index values to the prospectively revised values and does not represent any changes to the policies set forth in the final rule.

The corrections appear in this document under the heading ''Correction of Errors''. The provisions in this correction notice are effective as if they had been included in the document published in the **Federal Register** on July 31, 2001, except for those wage index corrections that we specifically noted to be effective December 1, 2001.

Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before provisions of a notice such as this take effect. We can waive this procedure, however, if we find good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and its reasons in the notice issued.

We find it unnecessary to undertake notice and comment rulemaking because this notice merely provides technical corrections to the regulations and does not make any substantive changes to the regulations. Therefore, for good cause, we waive notice and comment procedures.

Correction of Errors

In FR Doc. 01–18869 of July 31, 2001 (66 FR 39562), we are making the following corrections:

Corrections to Preamble

1. On page 39572, in column 3 of Table 7, ''Wage Index for Urban Areas'', the entry of ''0.9750'' for the Albuquerque, NM MSA (area 0200) is revised to read ''0.9759''.
2. On page 39573, in column 2 of Table 7, ''Wage Index for Urban Areas'', the entry of ''1.1289'' for Boston, MA MSA (area 1123) is revised by adding ''1.1378 (effective December 1, 2001)''.
3. On page 39575, in column 3 of Table 7, ''Wage Index for Urban Areas'', the entry of ''0.7292'' for the Killeen-Temple, TX MSA (area 3810) is revised to read ''0.7940'' and by adding ''0.8471 (effective December 1, 2001)''.
4. On page 39578, in column 1 of Table 7, ''Wage Index for Urban Areas'', the entry of ''0.9243'' for the Savannah, GA MSA (area 7520) is revised by adding ''1.0018 (effective December 1, 2001)''.

(Authority: Section 1888 of the Social Security Act (42 U.S.C. 1395yy))

(Catalog of Federal Domestic Assistance Program No. 93–773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 14, 2002.

Dennis Williams,

Acting, Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 02–6757 Filed 3–21–02; 8:45 am]

BILLING CODE 4120–01–P

THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 417 and 422

[CMS–1181–F]

RIN 0938–AK90

Medicare Program; Modifications to Managed Care Rules Based on Payment Provisions of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, and Technical Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations to reflect changes in the Social Security Act (the Act), enacted in certain sections of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), relating to the Medicare+Choice (M+C) program. This final rule only makes conforming changes to the regulations that implement the sections of the BIPA, and do not have any substantive effect.

This final rule also makes technical corrections to the M+C regulation published on June 29, 2000 (65 FR 40170). The remainder of the sections of the BIPA relating to the M+C program will be addressed in a subsequent proposed rule.

DATES: This final rule is effective May 21, 2002.

FOR FURTHER INFORMATION CONTACT: Al D'Alberto, (410) 786–1100.

SUPPLEMENTARY INFORMATION:

I. Background

A. Balanced Budget Act of 1997

Section 4001 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), added sections 1851 through 1859 to the Social Security Act (the Act) to establish a new Part C of the Medicare program, known as the Medicare+Choice (M+C) program. Under section 1851(a)(1) of the Act, every individual entitled to Medicare Part A and enrolled under Part B, except for individuals with end-stage renal disease, could elect to receive benefits either through the original Medicare fee-for-service program or an M+C plan, if one was offered where he or she lived.

The primary goal of the M+C program was to provide Medicare beneficiaries with a wider range of health plan choices through which to obtain their Medicare benefits. The BBA authorized a variety of private health plan options for beneficiaries, including both the traditional managed care plans (such as those offered by health maintenance organizations (HMOs)) that had been offered under section 1876 of the Act, and new options that were not previously authorized. Three types of M+C plans were authorized under the new Part C:

- M+C coordinated care plans, including HMO plans (with or without point-of-service options), provider-sponsored organization (PSO) plans, and preferred provider organization (PPO) plans.
- M+C medical savings account (MSA) plans (that is, combinations of a high-deductible M+C health insurance plan and a contribution to an M+C MSA).
- M+C private fee-for-service plans.

The BBA also enacted new beneficiary protections and quality assurance requirements, a new methodology for paying risk contractors, and new enrollment rules.

B. Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999

The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) (Pub.L. 106–113) amended the M+C provisions of the Act. These amendments were implemented in a final rule with comment period published in the **Federal Register** on June 29, 2000 (65 FR 40170). We received 5 comments in response to that final rule, which will be part of the future rulemaking implementing discretionary provisions of the BIPA.

Section 501 of the BBRA amended section 1851(e)(4) of the Act to permit enrollees to receive certain rights ordinarily effective when an M+C plan terminates, at the time the beneficiary receives notice of the termination, as well as when the termination takes effect. These rights include an open enrollment period during which other M+C plans must be open, and the right to choose certain Medigap plans. It also amended section 1851(e)(2) to provide for continuous open enrollment for institutionalized individuals.

Section 502 amended section 1851(f)(2) of the Act to provide that if an election or change in election to an M+C plan were made after the 10th day of a calendar month, the election would be effective the first day of the second calendar month following the date the election or change in election was made, not the first calendar month. In section 503, which amended section 1876(h)(5)(B) of the Act, the BBRA also permitted the extension or renewal of Medicare cost contracts for an additional 2 years, through December 31, 2004. Section 511(a) amended section 1853(a) of the Act by revising the original risk adjustment transition schedule for calendar years (CY) 2000, 2001, and 2002.

Section 512 of the BBRA amended section 1853 of the Act by adding a new paragraph (i) to provide for new entry bonus payments to encourage M+C organizations to offer plans where there were no M+C plans serving the area. Section 513 amended section 1857(c)(4) of the Act to reduce from 5 years to 2 years the period during which an M+C organization that has terminated its M+C contract is barred from entering into a new M+C contract, and provided for a new exception to this rule in cases in which M+C payments are increased by statute or regulation subsequent to the decision to terminate.

M+C organizations were permitted to elect to apply the premium and benefit provisions of section 1854 of the Act uniformly to separate segments of a service area by the amendment in section 515 of the BBRA. The annual deadline for submission of adjusted community rate proposals was changed from May 1 to July 1 pursuant to section 516 of the BBRA, which amended section 1854(a)(1) of the Act.

The annual adjustment in the national per capita M+C growth percentage for 2002, found in section 1853(c)(6) of the Act, was revised by section 517 of the BBRA from a 0.5 percentage point reduction to a reduction of 0.3 percentage points. Section 518 of the BBRA amended section 1852(e)(4) of the Act to make changes in the procedures through which an M+C organization can be deemed by a private accreditation organization to meet certain M+C requirements, and added new categories of requirements that can be deemed to be met.

Section 1852(e)(2) of the Act was amended by section 520 of the BBRA to provide that PPO plans are required to meet only the quality assurance requirements that apply to private fee-for-service plans. Section 522 amended section 1857(e) of the Act by basing the M+C portion of the user fee on the percentage of all Medicare beneficiaries who have enrolled in M+C plans.

Finally, section 523 of the BBRA amended section 1859(e)(2) of the Act to provide that a religious fraternal benefit society could offer any type of M+C plan, and section 524 amended section 1877(b)(3) of the Act to specify that certain Medicare rules that established prohibitions on physician referrals did not apply for purposes of M+C organizations offering M+C coordinated care plans, although they would apply for purposes of M+C MSA plans and private fee-for-service plans.

C. Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000

The Medicare, Medicaid, and SCHIP Benefits Improvement Act of 2000 (BIPA) (Pub. L. 106–554), enacted December 21, 2000, amended the M+C provisions of the Act in sections 601 through 634. In this final rule, we are only making conforming changes to the regulations to reflect amendments made in sections 601, 602, 603, 607, 608, 613, 619, and 634 of the BIPA. In those sections the Congress mandated that the Secretary take certain actions by certain

deadlines, leaving no discretion in implementing these mandates. In a subsequent rulemaking, we will address the remaining sections of the BIPA that amend M+C provisions of the Act.

1. Increase in Minimum Payment Amount

Section 601 amended section 1853(c)(1)(B) of the Act by establishing new minimum payment amount rates (floor rates) in CY 2001 for months after February. The new monthly minimum rates for March through December of 2001 are as follows:

- $525 for any payment area in a Metropolitan Statistical Area (MSA) within the 50 States and the District of Columbia with a population of more than 250,000;
- $475 for any other area within the 50 States; or
- not more than 120 percent of the minimum amount rate for CY 2000 for any area outside the 50 States and the District of Columbia.

For January and February of 2001, the minimum amount rate is the minimum amount rate for the previous year increased by the national per capita M+C growth percentage, as described in § 422.254(b), for the year. Minimum amount rates for January and February 2001 are based on the M+C rate book published in the March 1, 2000 *Announcement of Calendar Year (CY) 2001 Medicare+Choice Payment Rates.* These rates are published on the Centers for Medicare & Medicaid Services (CMS) web site at *http://www.hcfa.gov/stats/hmorates/aapccpg.htm.* Minimum amount rates established by the BIPA for March through December 2001 are published in the January 4, 2001 *Revised Medicare+Choice (M+C) Payment Rates for Calendar Year (CY) 2001.* These rates are published on the CMS web site at *http://www.hcfa.gov/stats/hmorates/aapccpg/htm.*

The BIPA mandated that floor payment amounts are no longer established on a payment area basis. A single floor rate is now assigned to all payment areas (generally, a county) within MSAs of a certain size, and another floor rate is assigned to all other payment areas. If a payment area is located in an MSA with a population greater than 250,000, the BIPA changed the floor rate for that payment area, effective March 1, 2001. As a result, pre-BIPA revisions to prior years' growth estimates for that payment area cannot be linked to post-BIPA revisions for that payment area. Thus, revisions to prior years' growth estimates for area-specific rates will differ from revisions to prior years' growth estimates for floor rates. We are revising § 422.252(b) to reflect these changes.

2. Increase in Minimum Percentage Increase

Section 602 amended section 1853(c)(1)(C) of the Act by specifying that for March through December 2001, the minimum percentage increase rate is changed to 103 percent of the annual M+C capitation rate for a payment area for 2000. For January and February of 2001, for 2002, and for each succeeding year, the minimum percentage increase rate will be 102 percent of the prior year's annual M+C capitation rate. We have reflected this provision in § 422.252(c).

3. Phase-In of Risk Adjustment

Section 603 amended section 1853(a)(3)(C) of the Act by specifying that for CY 2002 and CY 2003, the risk adjustment method will be used to adjust only 10 percent of the M+C payment rate. (The BBRA provided that for 2002 the risk adjustment method would be used to adjust not more than 20 percent of the rate.) Under the BIPA, therefore, we will continue to apply the transition percentages applied in CYs 2000 and 2001, which are 90 percent demographic method and 10 percent risk adjusted method based on inpatient data, through CY 2003. This change for CY 2002 was announced in the January 12, 2001 *Advance Notice of Methodological Changes for Calendar Year (CY) 2002 Medicare+Choice (M+C) Payment Rates, which was published on our web site at http://www.hcfa.gov/stats/hmorates/45d2001.*

Under section 603 of the BIPA, for CY 2004, risk adjustment is to be based on both inpatient hospital and ambulatory data, and the percentage of the M+C payment rate that is risk adjusted is to increase to 30 percent of the capitation rate. The risk adjustment percentage is to increase to 50 percent in 2005, 75 percent in 2006, and 100 percent in 2007 and succeeding years. We are revising § 422.256 to reflect these changes.

Although the risk adjustment methodology will not be based on both inpatient hospital and ambulatory data until 2004, we have been collecting physician and hospital outpatient data since 2001. In a letter to the American Association of Health Plans, the Health Insurance Association of America, the Blue Cross and Blue Shield Association, and all M+C organizations, dated May 25, 2001, the Secretary suspended the required filing of physician and hospital outpatient department encounter data through July 1, 2002, in contemplation of a re-assessment of our approach to implementing comprehensive risk adjustment.

4. Full Implementation of Risk Adjustment for Congestive Heart Failure Enrollees for 2001

Section 607 amended section 1853(a)(3)(C) of the Act to provide for full implementation of risk adjustment for congestive heart failure enrollees for 2001. Under the BBRA, the phase-in amount for risk adjustment was 10 percent in 2001. This section of the BIPA provides for 100 percent implementation of risk adjustment in 2001 for each enrollee who, as determined under the risk adjustment methodology, has a qualifying congestive heart failure inpatient hospital discharge diagnosis that occurred July 1, 1999 through June 30, 2000. This provision only applies, however, to enrollees who are enrolled in a coordinated care plan that was the only coordinated care plan, as of January 1, 2001, offered in the area where the enrollee lives. Full implementation of risk adjustment for congestive heart failure began January 1, 2001, and is not included in the computation of the M+C capitation rates. Payments began in the spring of 2001, retroactive to January 1, 2001, and will end on December 31, 2001. We will revise § 422.256 to reflect these changes.

5. Expansion of Application of Medicare+Choice New Entry Bonus

Section 608 of the BIPA amended section 1853(i)(1) of the Act to expand the application of the new entry bonus to M+C organizations that enter payment areas (generally counties) that have been unserved since January 1 2001. The BBRA established bonus payments to encourage M+C organizations to offer plans in areas that otherwise would not have an M+C plan available. The application of the new entry bonus is governed by three factors: the definition of unserved payment area, the date a plan is first offered, and the period of application of the bonus plan.

First, the BBRA, in section 512, defined a previously unserved payment area as:

- A payment area in which an M+C plan has not been offered since 1997; or
- A payment area in which an M+C plan (or plans) had been offered since 1997, but in which every M+C organization offering an M+C plan in that payment area since then has notified CMS (no later than October 13, 1999) that it would no longer offer M+C plans in that payment area as of January 1, 2000.

Second, under our interpretation of section 608, the date on which a plan is

considered to be first offered is the date on which our contract with the M+C organization becomes effective and M+C beneficiaries may enroll in the plan. Two or more M+C organizations may be eligible for the bonus in the same previously unserved payment area if their M+C plans are first offered on the same date.

Third, the BBRA specified that the new entry bonus payments would only apply to M+C plans that are first offered during the period beginning January 1, 2000 and ending on December 31, 2001 (the period of application). This period of application is a 2-year window during which an M+C organization that enters a previously unserved payment area and offers the first M+C plan in that area will be eligible to begin receiving bonus payments.

Finally, the BBRA specified that the bonus payments to an eligible M+C organization would be 5 percent of the total monthly payment for that payment area for the first 12 months in the previously unserved payment area, and 3 percent for the second 12 months.

Section 608 of the BIPA extended by 1 year (to January 1, 2001) the time period during which an area could become an unserved payment area. The BIPA mandated that a payment area now will be considered a previously unserved payment area if:

- An M+C plan (or plans) had been offered since 1997; and
- Every M+C organization offering an M+C plan in that payment area since then has notified CMS (no later than October 3, 2000) that it would no longer offer M+C plans in that payment area as of January 1, 2001.

The effect of this section of the BIPA was to include additional payment areas in the definition of previously unserved payment area. The BBRA definition of a previously unserved payment area as a payment area in which an M+C plan has not been offered since 1997 remains unchanged.

Table 1 shows a comparison of the two different time periods in effect for the new entry bonus. Although the BIPA changed the time period defining a previously unserved payment area, it did not change the time period during which an M+C plan must first be offered (the period of application). The two time periods are the same: from January 1, 2000 through December 31, 2001.

TABLE 1.—COMPARISON OF BBRA AND BIPA PROVISIONS ON NEW ENTRY BONUS

Provision	BBRA	BIPA
Date a payment area becomes previously unserved	By January 1, 2000	By January 1, 2000 or by January 1, 2001.
Period of application (the window for M+C organizations to first offer an M+C plan in an unserved area).	January 1, 2000 through December 31, 2001.	January 1, 2000 through December 31, 2001.

We discussed the BIPA amendment to the new entry bonus in the January 12, 2001 *Advance Notice of Methodological Changes for Calendar Year 2002 Medicare+Choice Payment Rates,* published on our website at *http://www.hcfa.gov/stats/hmorates/cover01,* and in the March 1, 2001 *Announcement of Calendar Year 2002 Medicare+Choice Payment Rates.* In the March 1 announcement, we indicated that the 1-year extension in the time period defining an unserved area mandated by the BIPA also applied to the 2-year period of application. In effect, this would extend the end of the period of application window from December 31, 2001 to December 31, 2002. As a result, we stated that an M+C organization first offering a plan in a previously unserved payment area on January 1, 2002 would be eligible for the bonus payments.

After further analysis, we have determined that while the BIPA did expand the time period used to define a previously unserved payment area, it did not extend the period of application window during which an M+C organization must first offer a plan in a previously unserved area. The period of application remains January 1, 2000 through December 31, 2001. For example, an M+C organization that first offers a plan in a previously unserved payment area on January 1, 2002 would not be eligible for the new entry bonus payments. However, if the M+C organization first offers a plan in a previously unserved payment area prior to January 1, 2002, then the M+C organization would have first offered an M+C plan within the period of application and the organization would be eligible for new entry bonus payments.

We have reflected the changes in section 608 by the addition of § 422.250(g)(2)(iii).

6. Timely Approval of Marketing Material That Follows Model Marketing Language

Section 613 of the BIPA amended section 1851(h) of the Act by altering the review period for marketing materials that utilize, without modification, proposed model language as specified by us. The review period for these marketing materials was reduced from 45 days to 10 days. All other marketing materials will remain subject to the 45-day review period. We have revised § 422.80(a)(1) to reflect this change.

7. Restoring Effective Date of Elections and Changes of Elections of Medicare+Choice Plans

Section 619 of the BIPA amended section 1851(f) of the Act to reestablish the original BBA effective date of elections or changes in elections to M+C plans during an open enrollment period. The effective date for these elections in the BBA provisions establishing the M+C program was the first day of the calendar month following the election or change in election during an open enrollment period. The BBRA changed this effective date in the case of an election or change in election made after the 10th of the month. Under the BBRA, an election or change in election made after the 10th of the month during an open enrolment period was effective the first day of the second calendar month after the election or change in election. Section 619 of the BIPA reestablishes the original provision making an election or change of election made during an open enrollment period effective the first day of the calendar month following the election, regardless of the day of the month on which the election or change of election is made. We are revising § 422.68(c) to reflect this change, which was effective on June 1, 2001.

8. Service Area Expansion for Medicare Cost Contracts During Transition Period

Section 634 of the BIPA amended section 1876(h)(5) of the Act by revising the limitation on expansion of service areas for cost contracts. We must now accept and approve applications to expand the service area of cost contracts if they are submitted on or before September 1, 2003 and we determine that the organization continues to meet

the requirements applicable to the organization and to cost contracts under section 1876 of the Act. We are revising § 417.402(b) to reflect this change.

D. Technical Corrections

We are making a number of technical corrections to part 422. These corrections are technical and editorial in nature and do not alter the substance of the regulations. In some sections, they represent material that was inadvertently changed or omitted in the final rule published on June 29, 2000 (65 FR 40170). In § 422.100(d), in order to make clear that no change was intended in the final rule, we are restoring the words ''level of'' before ''cost-sharing'', as they appeared before ''cost-sharing'' in the June 26, 1998 interim final rule. This also makes the language consistent with the reference to the ''level of cost-sharing'' in § 422.304(b)(1).

In § 422.100(g)(2), we are restoring language that was inadvertently deleted in the final rule, by inserting, at the end of the sentence, before the word '';and'', the words '', promote discrimination, discourage enrollment, steer subsets of Medicare beneficiaries to particular M+C plans, or inhibit access to services.'' While these concepts arguably are captured in the reference to designing benefits to ''discriminate'' against particular beneficiaries, we want to clarify that the deletion of this language (which was not discussed in the preamble to the final rule) was not intended to make any change in our standards of review in this area.

In § 422.506(a)(4), we are correcting the number of years an M+C organization must wait to enter into a new contract with us after not renewing a contract, which is 2 years, not 5 years, as stated in the current rule. We are also making the same correction to § 422.512(e), by changing the ''5'' to a ''2'', to indicate the number of years an M+C organization must wait to enter into a new contract with us after they have terminated a contract.

II. Provisions of This Final Rule

The provisions of this final rule are as follows:

- In § 417.402, we are revising paragraph (b) to indicate that we must accept and approve service area expansion applications, provided they are submitted on or before September 1, 2003, and we determine that the organization continues to meet the requirements in section 1876 of the Act pertaining to cost contractors and the requirements in its cost contract.
- In § 422.68(c), we are indicating that for an election, or change in election, made during an open enrollment period, coverage is effective as of the first day of the first month following the month in which the election, or change in election, is made.
- In § 422.80, we are revising paragraph (a)(1) to indicate that the review period for marketing materials that utilize, without modification, proposed model language as specified by us, will be 10 days, not the 45 days required for all other marketing materials.
- In § 422.250, we are revising paragraph (g)(2) to extend the category of previously unserved payment areas to include a payment area in which every M+C organization that offered an M+C plan in that payment area notified us by October 3, 2000 that it will no longer offer an M+C plan in that payment area effective January 1, 2001. New entry bonus payments may be made to M+C organizations that first enter these payment areas from January 1, 2000 through December 31, 2001.
- In § 422.252, we are revising paragraph (b) to indicate that the minimum amount rate (floor rate) for a payment area for 1999, 2000, and January and February of 2001 is the minimum amount rate for the preceding year, increased by the national per capita growth percentage, as described in § 422.254(b), for the year. The floor rates for January and February 2001 are published in the March 1, 2000 *Announcement of Calendar Year 2001 Medicare+Choice Payment Rates (http://www.hcfa.gov/stats/hmorates/cover01*). For March through December, 2001, the minimum amount rate for any area in an MSA within the 50 States and the District of Columbia with a population of more than 250,00 is $525; and for any other area within the 50 States, it is $475. For any area outside of the 50 States and the District of Columbia, the minimum amount rate cannot exceed 120 percent of the minimum amounts for those areas for CY 2000. We will also indicate in that section that for 2002, and each succeeding year, the minimum amount rate is the minimum amount for the preceding year, increased by the national per capita growth percentage, as described in § 422.254(b), for the year.

We are also revising paragraph (c) to indicate that the minimum percentage increase for 1999, 2000, and January and February of 2001 is 102 percent of the annual M+C capitation rate for the preceding year. For March through December of 2001, the minimum percentage increase rate is 103 percent of the annual M+C capitation rate for 2000. For 2002, and for each succeeding year, the minimum percentage increase is 102 percent of the annual M+C capitation rate for the preceding year.

- In § 422.256, we are revising paragraph (d) to indicate changes to the phase-in schedule for risk adjustment. For payments beginning January 1, 2000 and ending December 31, 2003, the risk factor will be based on the inpatient hospital data and will comprise 10 percent of the monthly payment. For January 1, 2001 through December 31, 2001 only, this factor comprises 100 percent of the monthly payment for enrollees with a qualifying inpatient diagnosis of congestive heart failure who are enrolled in a coordinated care plan that is the only coordinated care plan offered on January 1, 2001 in the enrollee's county. For payments beginning January 1, 2004, and for all succeeding years, the risk factor will include both inpatient and ambulatory data. The health status risk factor will be phased in according to the following schedule: 30 percent in 2004; 50 percent in 2005; 75 percent in 2006; and 100 percent in 2007 and succeeding years.

The technical corrections in this final rule are as follows:

- In § 422.100(d)(2), we are correcting an omission by inserting the words ''level of'' before ''cost-sharing'', so that the sentence reads ''At a uniform premium, with uniform benefits and level of cost-sharing throughout the plan's service area, or segment of service area as provided in § 422.304(b)(2).''
- In § 422.100(g)(2), we are correcting an omission by inserting a phrase at the end of the section, so that it reads ''M+C organizations are not designing benefits to discriminate against beneficiaries, promote discrimination, discourage enrollment, steer subsets of Medicare beneficiaries to particular M+C plans, or inhibit access to services; and''.
- In § 422.250(g)(2)(ii), we are making a correction by deleting the word ''any'' and replacing it with the word ''all''.
- In § 422.506(a)(4), we are correcting the number of years an M+C organization must wait to enter into a new contract with us after deciding not to renew a contract by deleting the ''5'' and replacing it with a ''2''.
- In § 422.512(e), we are making the same correction by changing the ''5'' to a ''2'', to indicate the number of years an M+C organization must wait to enter into a new contract with us after terminating a contract.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60 days notice in the **Federal Register** and solicit public comment when a collection of information

requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(C)(2)(A) of the PRA requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of our estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

IV. Regulatory Impact

A. Overall Impact

We have examined this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Unfunded Mandate Reform Act (UMRA, Pub. L. 104–4), the Regulatory Flexibility Act (RFA, Pub.L. 96–354, September 19, 1980), and the Federalism Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives, and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year).

As a result of changes to the M+C regulations that reflect provisions of the BIPA specified in sections 601, 602, 603, 607, 608, 613, 619, and 634, we have determined that this final rule is a major rule with economically significant effects, as defined in Title 5, United States Code, section 804(2), and under Executive Order 12866. The BIPA provisions addressed in this final rule will result in expenditures by the Federal government of more than $100 million annually. We estimate its impact will be to increase the aggregate payments to M+C organizations by approximately $1 billion in 2001, and approximately $11 billion during the 5-year period from FY 2001 through FY 2005.

Table 2 shows the estimated expenditures under these provisions of the BIPA for this 5-year period. The estimates are rounded to the nearest $5 million, with estimates of less than $5 million represented as $0 in the table. All assumptions applied in calculating the estimates were consistent with the assumptions underlying the President's FY 2002 budget baseline. The total direct impact of approximately $7 billion does not include the additional impact of approximately $4 billion attributable to the indirect effect of increases in fee-for-service expenditures over the same 5-year period. Thus, all provisions of the BIPA addressed in this final rule are expected to increase aggregate payments to M+C organizations by approximately $11 billion over the next 5 years, beginning with $1 billion for 2001. The new payment rates are effective March 1, 2001.

TABLE 2.—ESTIMATED EXPENDITURES FOR BIPA PROVISIONS IN THIS FINAL RULE

BIPA section and provision	Additional cash expenditures, 2001–2005 (in millions)
Sec. 601:	
Increase minimum payment amounts:	
Hospital Insurance (Part A)	$610.
Supplementary Medical Insurance (Part B)	$540.
Sec. 602:	
Increase minimum % pay increase for 2001	Included in figures for Section 601.
Sections 601 and 602 Total	$1,150.
Sec. 603:	
Phase-in of risk adjustment:	
Hospital Insurance (Part A)	$3,310.
Supplementary Medical Insurance (Part B)	$2,430.
Section 603 Total	$5,740.
Sec. 607:	
Full risk adjustment in 2001 for Congestive Heart Failure enrollees:	
Hospital Insurance (Part A)	$50.
Supplementary Medical Insurance (Part B)	$40.
Section 607 Total	$90.
Sec. 608:	
Expand M+C new entry bonus	Not estimable, due to unknown number of eligible M+C organizations. Likely to be $0. (Provision is in effect less than 5 years.)
Sec. 613:	
Timely approval of marketing materials	Not applicable.
Sec. 619:	
Restore effective date of elections	Not applicable.
Sec. 634:	
Service area expansion for Medicare cost contracts	Not applicable.
Total, direct impact of the provisions in this rule	$6,980.
Total, indirect impact of increases in fee-for-service expenditures	Approximately $4,000.
Total, direct and indirect impacts	Approximately $11,000.

The distribution of expenditures for the BIPA provisions included in this final rule varies by whether or not the payment areas served by the M+C organization are floor payment areas, and which type of floor applies. Under the M+C payment methodology prescribed in the BBA, the payment rate for each payment area for a year is the highest of three amounts:

- The minimum payment rate amount, or floor rate;
- The minimum percent increase rate, which is the payment amount received during the last year plus the minimum percent increase for the current year; or
- A blended rate, which is an amount derived from blending the payment area specific rate with a national rate based on historic spending under the original Medicare fee-for-service program.

Generally, a payment area is the same as a county. Floor payment areas are payment areas that receive the minimum, or floor payment rate amounts. Under the provisions of the BIPA, there are now two categories of floor payment areas, those in MSAs with populations of 250,000 or more that receive the $525 minimum payment rate, and all other payment areas that receive the $475 minimum payment rate. The BIPA also specifies that from March through December 2001, all payment areas for which the minimum percentage rate is the highest rate (the non-floor payment areas) will receive 103 percent of the prior year's payment rate amount.

Figure 1 shows the distribution of the three types of payment rates assigned to payment areas in 2001. A high proportion of payment areas receive the $475 floor rate. This floor rate predominates in the mountain states of the Western region and the west-central sections of the Midwest. (In CY 2001, all non-floor rates are the minimum percentage increase, since no payment areas receive a blended rate.)

For most rural areas in the United States, the M+C payment rate is the floor rate. In the June 2001 Report to the Congress, MedPAC examined the differences between urban and rural areas. The report stated that in 2000, 94 percent of Medicare beneficiaries living in a Metropolitan Statistical Area (MSA) with at least 1 million people had at least one M+C HMO offered where they lived. In contrast, only 16 percent of beneficiaries living adjacent to an MSA, but in an area without a town of at least 10,000 people had the option to enroll in an M+C HMO. Only 5 percent of the beneficiaries who lived in completely rural areas (not adjacent to any large or small MSA) had an M+C HMO option available where they lived.

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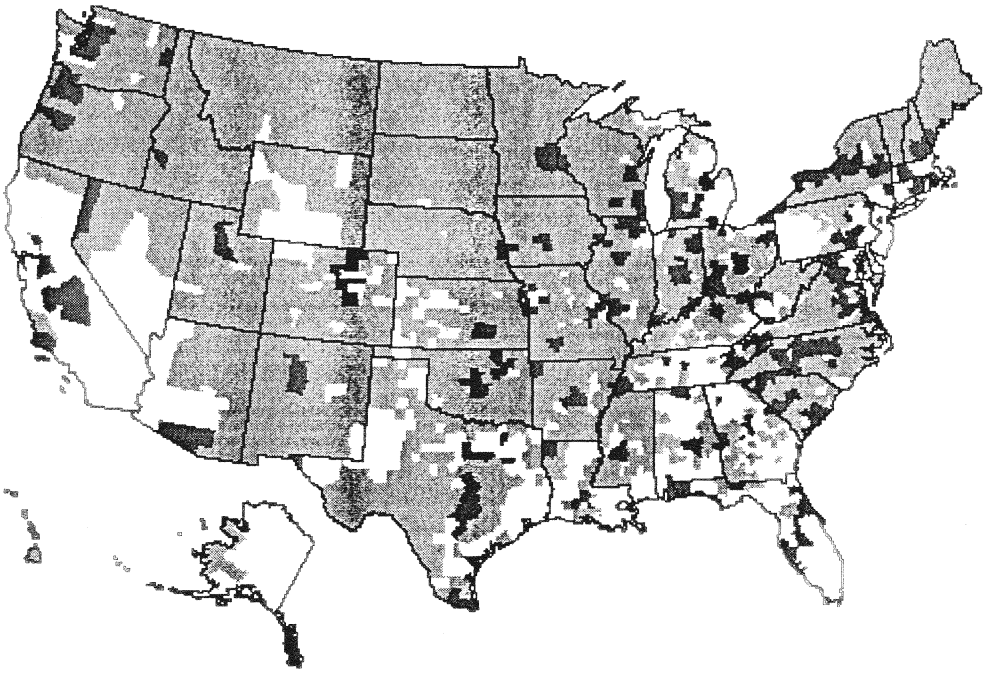
Figure 1

2001 Medicare+Choice Payment Rates, by Payment Area**



$475 floor rate
$525 floor rate
Non-floor rate

**Source: Medpac, Report to the Congress, June 2001

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Table 3 shows how the distribution of enrollees, payment areas, and payment increases varies according to the three payment categories mandated by the BIPA. Enrollment figures include all enrollees as of January 2001 and payment area figures are based on only those areas that have M+C enrollees.

Payment increases refer to the difference between pre-BIPA rates and the BIPA mandated 2001 rates that are effective March through December 2001.

Non-floor payment areas receive the smallest average payment increase of 1 percent above the pre-BIPA rates for CY 2001, and 75 percent of all M+C enrollees reside in these areas. The 53 percent of payment areas that receive the $475 floor rate for CY 2001 have payment increases, on average, of 8 percent. Two percent of all M+C enrollees live in these payment areas. The largest average increase in payment rates are in payment areas that receive the new $525 floor, where approximately one-quarter of all M+C enrollees live. The 18 percent of payment areas assigned the $525 floor receive an average payment increase of 9.7 percent.

TABLE 3.—DISTRIBUTION OF ENROLLEES AND PAYMENT INCREASES FOR 2001, BY THE BIPA PAYMENT CATEGORY

[In percent]

Payment category	Percent of M+C enrollees in payment category	Percent of payment areas in payment category	Average payment increase
$475 floor payment areas	2	55	8.3
$525 floor payment areas	23	15	9.7
Non-floor payment areas	75	30	1.0

Table 4 shows M+C enrollment by payment categories and geographical region. The table is based on January 2001 enrollment, and includes M+C enrollees in coordinated care and private fee-for-service M+C plans, but not enrollees in cost or other non-risk plans. Within each of the four Census regions, the States are ordered by size of M+C enrollment as of January 2001.

Although the map in Figure 1 may show that all three types of payment categories are present in a State, Table 4 may show that there are no M+C enrollees in 1 or 2 of the payment categories. For example, the map shows that South Dakota has at least 1 payment area that is assigned the non-floor rate, but Table 4 shows that there are no M+C enrollees in the non-floor areas.

TABLE 4.—PERCENT OF M+C ENROLLEES IN EACH STATE, BY BIPA PAYMENT CATEGORY

Enrollee residence	In percent			
	Percent enrollees in low-floor payment areas	Percent enrollees in high-floor payment areas	Percent enrollees in non-floor payment areas	Total M+C enrollees, January 2001
Nation	2	23	75	
Northeast:				
Connecticut	None	<1	100	67,051
New Jersey	None	2	98	154,100
Pennsylvania	2	4	94	507,626
Massachusetts	None	14	86	220,246
New York	2	26	72	393,403
Rhode Island	None	72	28	57,368
New Hampshire	10	90	None	1647
Maine	80	20	None	271
Vermont	100	None	None	96
Midwest:				
Michigan	<1	6	94	78,057
Illinois	4	24	72	149,886
Indiana	2	50	48	11,428
Ohio	2	52	46	237,371
Missouri	2	54	44	124,584
Kansas	<1	70	28	26,133
Iowa	8	92	None	2,446
Minnesota	2	98	None	38,804
Nebraska	2	98	None	8,305
N. Dakota	100	None	None	54
S. Dakota	100	None	None	585
Wisconsin	12	88	None	33,068
South:				
Alabama	<1	<1	100	54,285
Dist. of Columbia	None	None	100	3,715
Georgia	<1	<1	100	38,685
Louisiana	<1	<1	100	92,055
Maryland	<1	<1	100	15,220
Delaware	4	None	96	799
Florida	<1	8	92	667,825
Texas	2	8	92	203,968
W. Virginia	18	2	82	5,334
Mississippi	14	8	78	1,252

TABLE 4.—PERCENT OF M+C ENROLLEES IN EACH STATE, BY BIPA PAYMENT CATEGORY—Continued

Enrollee residence	In percent			
	Percent enrollees in low-floor payment areas	Percent enrollees in high-floor payment areas	Percent enrollees in non-floor payment areas	Total M+C enrollees, January 2001
Tennessee	2	44	52	31,930
Arkansas	34	40	26	17,722
S. Carolina	36	54	10	475
Kentucky	<1	94	6	18,642
Virginia	2	92	6	11,196
N. Carolina	16	82	2	45,192
Oklahoma	4	92	2	46,830
West:				
Alaska	2	None	98	116
California	<1	8	92	1,469,716
Arizona	2	22	76	235,366
Nevada	2	22	74	45,030
Colorado	8	54	38	130,181
Wyoming	78	None	22	97
Washington	6	88	6	149,854
Utah	38	60	2	351
Idaho	6	94	<1	5,344
New Mexico	6	94	<1	27,946
Oregon	10	90	<1	136,707
Hawaii	26	74	None	21,563
Montana	100	None	None	165

Under the BIPA, M+C organizations could qualify for higher payment rates, and the statute mandated that the increase in payments be used by the M+C organizations in the following ways:

- To reduce beneficiary premiums.
- To reduce beneficiary cost-sharing.
- To enhance benefits.
- To make contributions to a benefit stabilization fund to reserve funds for future use to offset premium increases or benefit reductions.
- To stabilize or enhance the network of health care providers.
- A combination of the above.

Table 5 describes how M+C organizations choose to use the higher payments for 2001 by showing the percentage of M+C enrollment by each type of fund use and within payment categories ($475 floor, $525 floor, and non-floor payment areas). Almost two-thirds of M+C enrollees are in M+C organizations that used the increased funds for 2001 to enhance provider networks only, and 17 percent of enrollees are in M+C organizations that selected multiple options. The largest payment rate increases went to both floor payment areas (see Table 3) and M+C organizations serving these payment areas were less likely to use the increase in funds exclusively for enhanced provider networks.

TABLE 5.—USE OF INCREASED PAYMENTS UNDER BIPA, BY PERCENT OF ENROLLMENT WITHIN PAYMENT CATEGORIES

[In percent]

M+C organizations uses of increased payment	Percent of total M+C enrollment	Percent of M+C enrollment in *$475 floor* payment areas	Percent of M+C enrollment in *$525 floor* payment areas	Percent of M+C enrollment in *non-floor* payment areas
Reduced premium or cost-sharing only	6	8.4	8.7	5.3
Added or enhanced benefits only	1	0.9	0	0.94
Used stabilization fund only	11	0	2.8	14.2
Enhanced provider network only	65	48.6	43.5	72.3
Used multiple options	17	42.1	45	7.3

The increases in payment rates also had an impact on the premiums that M+C organizations offered their enrollees for 2001. After the increase in payment rates, the national average 2001 premium for the plan with the lowest premium that had the most generous benefit package offered by an M+C organization in a payment area decreased by about $2 per month. Currently, we have enrollment data at the level of M+C organization contracts, not at the level of individual plans offered by M+C organizations. Thus, we assigned contract level enrollment data to the plan with the lowest premium that had the most generous benefit package offered by an M+C organization in a payment area in each contract. There may be several plans offered by an M+C organization in a payment area, some of which may have additional benefits available for an additional premium.

Premiums have tended to be highest in payment areas where Medicare payment rates have been the lowest. Table 6 shows the impact of the increase in payment rates on 2001 premiums.

TABLE 6.—PREMIUM LEVELS BY PAYMENT CATEGORY, PRE- AND POST-BIPA

Payment category	Pre-BIPA average 2001 premium for ''representative'' plans	Post-BIPA average 2001 premiums for ''representative'' plans	Percent change
All payment areas	$25.44	$23.44	−7.9
$475 floor areas	51.70	48.39	−6.4
$525 floor areas	37.75	31.51	−16.5
Non-floor areas	21.08	20.41	−3.2

Prior to the increase in payment rates, 20.5 percent of enrollees were paying over $50 for 2001 premiums. The increase in payment rates decreased this share by 5 percentage points, so that only 15.6 percent of enrollees pay premiums over $50 in 2001. The increase in payment rates had no effect on the percentage of enrollees in the plan with the lowest premium that had the most generous benefit package offered by an M+C organization in a payment area with a zero dollar premium for 2001. That share would remain approximately 45 percent.

Drug coverage is most common in payment areas with the highest payment rates. Few M+C organizations have used the increase in payment rates to add a drug benefit. Prior to implementation of the BIPA payment provisions, approximately 69 percent of M+C enrollees would have had drug coverage in the plan with the lowest premium that had the most generous benefit package offered by their M+C organization in the payment area in 2001. As a result of the BIPA payment increases, 70 percent of enrollees (an additional 61,000 enrollees) would have drug coverage in the plan with the lowest premium that had the most generous benefit package offered by their M+C organization in the payment area in 2001. Payment areas with the $475 floor recorded the largest change in the percent of enrollees with drug coverage in the plan with the lowest premium that had the most generous benefit package offered by an M+C organization in a payment area as a result of the changes in the BIPA, increasing from 31 percent to 38 percent.

We have not considered alternatives to lessen the impact or regulatory burden of this final rule because the provisions are mandated by the BIPA and no additional burden is imposed by us.

The RFA also requires agencies to analyze options for regulatory relief of small businesses, nonprofit organizations, and governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of between $7.5 million and $25 million annually. Individuals and States are not included in the definition of small entities.

We estimate that fewer than 5 out of 177 M+C contractors have annual revenues of $7.5 million or less. Approximately 35 percent of M+C contractors have tax-exempt status, and thus, for purposes of the RFA are considered to be small entities. We have examined the economic impact of this final rule on M+C organizations, including those that are tax-exempt, and thus small entities, and we find that overall the economic impact is significant but positive, generating an increase in payments. We have not considered alternatives to lessen the impact or regulatory burden of this final rule because the provisions are mandated by the BIPA and no burden is imposed.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital located outside of an MSA with fewer than 100 beds. Almost 2 percent of M+C enrollees reside in payment areas outside MSAs, with floor payment rates of $475 for March through December of 2001. M+C organizations in these payment areas will receive, on average, an 8.3 percent increase in payments for 2001. Assuming BIPA-related payment increases in both original Medicare and the M+C program, small rural hospitals in these payment areas could be in a better position to renegotiate their contracts with M+C organizations. This could generate a positive increase in payments to some small rural hospitals. However, information on the payment terms of contracts between M+C organizations and providers is not available, therefore, we are unable to provide data on the level of this impact.

B. The Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. This final rule would have no consequential effect on the annual expenditures of any State, local, or tribal government, or the private sector. Therefore, we have determined, and we certify, that this final regulation would not result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million.

C. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed or final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will impose no direct requirement costs on State and local governments, would not preempt State law, or have any Federalism implications.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

V. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. The notice of proposed rulemaking can be waived, however, if an agency finds good cause that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, and it incorporates a statement of the finding and its reasons in the rule issued.

Publishing a proposed rule is unnecessary because this final rule only makes conforming changes to the regulations to implement those sections of the BIPA in which the Congress allowed no discretion as to the actions to be taken and the times in which they must be completed. These changes were enacted by the Congress, and would be in effect on the date mandated by the legislation without regard to whether they are reflected in conforming changes to the regulation text, since a statute controls over a regulation. In this final rule we merely have revised the regulation text to reflect these new statutory provisions. The BIPA provisions have been incorporated virtually verbatim, with no interpretation necessary. In accordance with 5 U.S.C. 808(2), we do not believe that publishing a notice of proposed rulemaking is necessary, nor would it be practicable given that a number of the provisions have already taken effect consistent with the effective dates established under the BIPA.

Also, this final rule contains only technical corrections to a prior final rule with comment period published in the **Federal Register** on June 29, 2000 (65 FR 40170). These technical corrections are editorial in nature and do not alter the substance of the regulations.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule.

List of Subjects

42 CFR Part 417

Administrative practice and procedure, Grant programs-health, Health care, Health facilities, Health insurance, Health maintenance organizations (HMO), Loan programs-health, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 422

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare+Choice, Penalties, Privacy, Provider-sponsored organizations (PSO), Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), secs. 1301, 1306, and 1310 of the Public Health Service Act (2 U.S.C. 300e, 300e–5, 300e–9), and 31 U.S.C. 9701.

Subpart J—Qualifying Conditions for Medicare Contracts

2. In § 417.402, paragraph (b) is revised to read as follows:

§ 417.402 Effective date of initial regulations.

* * * * *

(b) The changes made to section 1876 of the Act by section 4002 of the Balanced Budget Act of 1997 (BBA) are incorporated in part 422 of this chapter, except for changes affecting section 1876 cost contracts, which are incorporated in subpart L of this part. Upon enactment of the BBA (August 5, 1998), no new cost contracts are accepted by CMS, except for current Health Care Prepayment Plans that may convert to section 1876 cost contracts. Section 1876 cost contracts may not be extended or renewed beyond December 31, 2004. CMS must accept and approve applications to modify the cost contracts in order to expand the service area, provided they are submitted on or before September 1, 2003 and CMS determines that the organization continues to meet the regulatory requirements and the requirements in its cost contract.

PART 422—MEDICARE+CHOICE PROGRAM

1. The authority citation for part 422 continues to read as follows:

Authority: Secs. 1851 and 1855 of the Social Security Act (42 U.S.C. 1395w–21, and 1395w–25).

Subpart B—Eligibility, Election, and Enrollment

2. In § 422.68, paragraph (c) is revised to read as follows:

§ 422.68 Effective dates of coverage and change of coverage.

* * * * *

(c) *Open enrollment periods*. For an election, or change in election, made during an open enrollment period, as described in § 422.62(a)(3) through (a)(6), coverage is effective as of the first day of the first calendar month following the month in which the election is made.

* * * * *

3. In § 422.80, paragraph (a)(1) is revised to read as follows:

§ 422.80 Approval of marketing materials and election forms.

(a) * * *

(1) At least 45 days (or 10 days if using marketing materials that use, without modification, proposed model language as specified by CMS) before the date of distribution the M+C organization has submitted the material or form to CMS for review under the guidelines in paragraph (c); and

* * * * *

Subpart C—Benefits and Beneficiary Protections

4. In § 422.100, paragraphs (d)(2) and (g)(2) are revised to read as follows:

§ 422.100 General requirements.

* * * * *

(d) * * *

(2) At a uniform premium, with uniform benefits and level of cost-sharing throughout the plan's service area, or segment of service area as provided in § 422.304(b)(2).

* * * * *

(g) * * *

(2) M+C organizations are not designing benefits to discriminate against beneficiaries, promote discrimination, discourage enrollment, steer subsets of Medicare beneficiaries to particular M+C plans, or inhibit access to services; and

* * * * *

Subpart F—Payments to Medicare+Choice Organizations

5. In § 422.250, the following changes are made to read as set forth below:

A. Paragraphs (g)(2)(i) and (g)(2)(ii) are revised.

B. Paragraph (g)(2) (iii) is added.

§ 422.250 General provisions.

* * * * *

(g) * * *

(1) * * *

(2) * * *

(i) A county in which no M+C plan has been offered;

(ii) A county in which an M+C plan or plans have been offered, but where all M+C organizations offering an M+C plan notified CMS by October 13, 1999, that they will no longer offer plans in the county as of January 1, 2000; or

(iii) A county in which an M+C plan or plans have been offered, but where all M+C organizations offering an M+C plan notified CMS by October 3, 2000, that they will no longer offer plans in the county as of January 1, 2001.

* * * * *

6. In § 422.252, the following changes are made to read as set forth below:

A. Paragraph (b)(2) is revised.

B. Paragraphs (b)(3) and (b)(4) are added.

C. Paragraph (c)(2) is revised.

D. Paragraphs (c)(3) and (c)(4) are added.

§ 422.252 Annual capitation rates.

* * * * *

(b) * * *

(2) For 1999, 2000, and January and February of 2001, the minimum amount rate is the minimum amount rate for the preceding year, increased by the national per capita growth percentage (specified in § 422.254(b)) for the year.

(3) For March through December, 2001—

(i) The minimum amount rate for any area in a metropolitan statistical area within the 50 States and the District of Columbia with a population of more than 250,000 is $525;

(ii) For any other area within the 50 States, it is $475; or

(iii) For any area outside the 50 States and the District of Columbia, it is not more than 120 percent of the minimum amount rates for CY 2000.

(4) For 2002 and each succeeding year, the minimum amount rate is the minimum amount for the preceding year, increased by the national per capita percentage (specified in § 422.252(b)) for the year.

(c) * * *

(2) For 1999, 2000, and January and February of 2001, the minimum percentage increase is 102 percent of the annual Medicare+Choice capitation rate for the preceding year.

(3) For March through December of 2001, the minimum percentage increase is 103 percent of the annual Medicare+Choice capitation rate for 2000.

(4) For 2002, and for each succeeding year, the minimum percentage increase is 102 percent of the annual Medicare+Choice capitation rate for the preceding year.

7. In § 422.256, paragraph (d)(2) is revised to read as follows:

§ 422.256 Adjustments to capitation rates and aggregate payments.

* * * * *

(d) * * *

(2) *Implementation.* CMS applies the risk adjustment factor as follows:

(i) For payments beginning January 1, 2001 and ending December 31, 2003, CMS applies a risk factor that incorporates inpatient hospital encounter data. The risk factor will comprise 10 percent of the monthly payment.

(ii) For payments beginning January 1, 2000 and ending December 31, 2001 only, the risk factor comprises 100 percent of the monthly payment for individuals with a qualifying inpatient diagnosis of congestive heart failure who are enrolled in a coordinated care plan that is the only coordinated care plan offered on January 1, 2001 in the area where the individual lives.

(iii) For payments beginning January 1, 2004, and for all succeeding years, CMS applies a risk factor that incorporates inpatient hospital and ambulatory encounter data. This factor is phased in as follows:

(A) 30 percent in 2004;

(B) 50 percent in 2005;

(C) 75 percent 2006; and

(D) 100 percent in 2007 and succeeding years.

* * * * *

Subpart K—Contracts With Medicare+Choice Organizations

§ 422.505 [Corrected]

8. In § 422.506, in paragraph (a)(4), the phrase ''5 years'' is removed and the phrase ''2 years'' is added in its place.

§ 422.512 [Corrected]

9. In § 422.512, in paragraph (e), the phrase ''5 years'' is removed and the phrase ''2 years'' is added in its place.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774—Medicare—Supplementary Medical Insurance Program)

Dated: August 2, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: October 16, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–6956 Filed 3–21–02; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7779]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Edward Pasterick, Division Director, Program Marketing and Partnership Division, Federal Insurance Administration and Mitigation Directorate, 500 C Street, SW., Room 411, Washington, DC 20472, (202) 646–3098.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of

the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region II				
New Jersey: Millburn, Township of, Essex County.	340187	July 23, 1971, Emerg.; August 1, 1979, Reg. March 17, 2002.	3/17/02	3/17/02
Region III				
Pennsylvania: Birmingham, Township of, Chester County.	421474	November 14, 1974, Emerg.; April 15, 1981, Reg. March 17, 2002.	3/17/02	3/17/02
East Caln, Township of, Chester County ..	421477	October 10, 1974, Emerg.; September 30, 1980, Reg. March 17, 2002.	3/17/02	3/17/02
East Brandywine, Township of, Chester County.	421476	November 21, 1975, Emerg.; February 1, 1984, Reg. March 17, 2002.	3/17/02	3/17/02
East Fallowfield, Township of, Chester County.	421479	November 3, 1975, Emerg.; June 1, 1983, Reg. March 17, 2002.	3/17/02	3/17/02
East Marlborough, Township of, Chester County.	421480	March 28, 1975, Emerg.; July 16, 1981, Reg. March 17, 2002.	3/17/02	3/17/02
Modena, Borough of, Chester County	420282	October 10, 1974, Emerg.; November 19, 1987, Reg. March 17, 2002.	3/17/02	3/17/02
South Coatesville, Borough of, Chester County.	420288	December 10, 1975, Emerg.; May 3, 1982, Reg. March 17, 2002.	3/17/02	3/17/02
Valley, Township of, Chester County	421206	May 23, 1974, Emerg.; August 1, 1984, Reg. March 17, 2002.	3/17/02	3/17/02
Wallace, Township of, Chester County	421493	February 11, 1976, Emerg.; March 11, 1983, Reg. March 17, 2002.	3/17/02	3/17/02
West Brandywine, Township of, Chester County.	421496	August 6, 1975, Emerg.; September 28, 1979, Reg. March 17, 2002.	3/17/02	3/17/02
West Marlborough, Township of, Chester County.	422279	May 20, 1975, Emerg.; January 18, 1984, Reg. March 17, 2002.	3/17/02	3/17/02

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region VIII				
Colorado: Fremont County, Unincorporated Areas.	080067	June 25, 1975, Emerg.; September 29, 1989, Reg. March 17, 2002.	3/17/02	3/17/02
South Dakota: Hot Springs, City of, Fall River County.	460027	May 7, 1973, Emerg.; June 30, 1976, Reg. March 17, 2002.	3/17/02	3/17/02

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: March 13, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance Administration and Mitigation Administration.

[FR Doc. 02–6921 Filed 3–21–02; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[CC Docket No. 96–187; CC Docket No. 98–108; DA 02–583]

Termination of Stale or Moot Docketed Proceedings; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; termination of docketed proceedings; correction.

SUMMARY: In an order adopted December 21, 2001 and released January 11, 2002, the Commission terminated stale or moot docketed proceedings (Termination Order). Inadvertently two docketed proceedings were terminated in error. This document corrects that error by reinstating to pending status CC Docket No. 96–187 and CC Docket No. 98–108.

DATES: Effective March 12, 2002.

FOR FURTHER INFORMATION CONTACT: Lynne Milne, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1520.

SUPPLEMENTARY INFORMATION: In the **Federal Register** Doc. 02–1859 published on January 25, 2002 (67 FR 3617), the Commission inadvertently terminated docketed proceedings in FCC 01–385. Make the first correction on page 3618 by removing the seventh entry of the appendix as follows: CC 96–187 Implementation of a Section of the Telecommunications Act of 1996—RO 62 FR 5757.

Make the last correction on page 3618 by removing the thirteenth entry of the appendix as follows: CC 98–108 Beehive Telephone Company, Inc., Beehive Telephone, Inc. Nevada—ON 14 FCC Rcd 8077.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–6930 Filed 3–21–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010710172–2039–02; I.D. 061301A]

RIN 0648–AL92

Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program

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

ACTION: Final rule; response to comments.

SUMMARY: NMFS issues a final rule to change the Community Development Quota (CDQ) regulations for Bering Sea/Aleutian Islands (BSAI) crab to allow the State of Alaska (State) greater flexibility in establishing CDQ fishing seasons. This action is necessary to achieve the conservation and management goals for the BSAI crab CDQ program and is intended to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crabs (FMP).

DATES: Effective on April 22, 2002.

ADDRESSES: Copies of the Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228, or *gretchen.harrington@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act, at section 305(i)(1), required the North Pacific Fishery Management Council (Council) and NMFS to establish a CDQ program. See 16 U.S.C. 1855(i). In 1998, NMFS implemented the crab CDQ program with regulations at 50 CFR 679.31 (63 FR 8356, February 19, 1998) and crab CDQ fisheries began that year. Under the Magnuson-Stevens Act, 7.5 percent of the total allowable catch of each BSAI crab fishery for 2000 and beyond is allocated to the crab CDQ program.

Under the FMP, the Council and NMFS defer management of the BSAI king and Tanner crab fisheries, including the CDQ fisheries, to the State, with Federal oversight. The State/Federal cooperative management regime established in the FMP specifies three categories of management measures that provide the framework for the State management of the crab fisheries, including the determination of the guideline harvest levels (GHLs) and fishery seasons. They are (1) Category 1: Federal Management Measures Fixed in the FMP, (2) Category 2: Framework Management Measures, and (3) Category 3: Management Measures Deferred to the State. The FMP also provides for the State management of CDQ crab harvesting activity, including times when CDQ fishermen may harvest the CDQ reserve.

The State establishes crab fishing seasons according to a shellfish management cycle, based on stock assessment surveys conducted in the summer, and the GHLs for the upcoming fall and winter fishing seasons set according to those surveys. The CDQ reserve is a portion of the GHL. Currently, CDQ crab fisheries are conducted after the regular commercial fishery. However, State regulations allow the harvest of a portion of a CDQ crab fishery before the regular commercial crab fishery begins under specific conditions.

Although Federal regulations implementing the crab CDQ reserve, at 50 CFR 679.31(d), specify that the crab CDQ reserves be allocated by calendar year, the Magnuson-Stevens Act does not dictate when the reserve is available for harvest, only that the reserve be a portion of the annual harvest amount. By allocating the crab CDQ reserve on a calendar year basis, the State is prevented from conducting a CDQ crab season before the regular commercial fishery for snow crab (*Chionoecetes opilio*) because of the timing of the snow crab fishing season. The regular commercial fishery for snow crab starts on January 15 and is open until the GHL is harvested. Additionally, State stand-down provisions prohibit vessels that intend to participate in the snow crab fishery from being on the fishing grounds 14 days prior to the opening of the fishery. Thus, a CDQ season before the regular snow crab fishery could only start in December of the previous calendar year.

Existing Federal regulations do not prevent a CDQ fishery before the regular commercial fishery for the other crab species because these crab fisheries are prosecuted at times that would allow a CDQ fishery to occur before the regular fishery in the same calendar year.

In October 1998, NMFS proposed to the Council, and the Council concurred, that the Federal regulatory language that specified crab CDQ reserves by ''calendar year'' be changed to allow the State more flexibility in managing the crab CDQ harvests.

This regulatory amendment changes the Federal regulation at 50 CFR 679.31(d) by removing the phrase ''calendar year'' from the regulatory language. The CDQ reserve will still be apportioned annually based on the GHLs derived from the annual stock assessments. However, the CDQ reserve for snow crab will be available for harvest before January 1 to follow the annual cycle for crab fisheries used by the State rather than the calendar year cycle for groundfish fisheries used by NMFS. This change is consistent with the intent of the FMP by providing the State with greater flexibility to establish CDQ fishing seasons.

This action also removes the expired CDQ reserve phase-in language at 50 CFR 679.31(d).

NMFS published a proposed rule in the **Federal Register** on July 25, 2001 (66 FR 38626), which described the proposed regulatory amendment and invited comments from the public. Comments were invited until August 24, 2001. NMFS received no public comments on the proposed rule.

Changes From Proposed to Final Rule

NMFS decided to include in this final rule a correction to the regulations at 50 CFR 679.1 concerning the FMP title. In 1998, the Council, when updating the FMP, changed the title of the FMP from the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area to the FMP for Bering Sea/Aleutian Islands King and Tanner Crabs. NMFS approved the updated FMP in March 1999 (64 FR 11390, March 9, 1999). However, the regulations at 50 CFR 679.1 were not changed to reflect the new FMP title.

Small Entity Compliance Guide

This final rule does not directly effect the management or prosecution of the BSAI crab fisheries. As explained in the FRFA, this final rule adds management flexibility for the State of Alaska to set CDQ fishing seasons according to State regulations.

Classification

The Administrator, Alaska Region, NMFS, determined that this regulatory amendment is necessary for the management of the CDQ crab fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

NMFS prepared an Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Act for this regulatory amendment that describes the management background, the purpose and need for action, the management alternatives, and the socio-economic impacts of the alternatives. NMFS also prepared an FRFA based on the IRFA. The FRFA estimates the total number of small entities that will be affected by this action, and analyzes the economic impact on those small entities as required by the Regulatory Flexibility Act (RFA). A summary of the FRFA follows.

This regulatory change will have no direct effects, in and of itself, although it is intended to provide added management flexibility. With this Federal regulatory change, the State may choose to conduct a CDQ fishing season before a regular commercial fishery for snow crab.

NMFS considers most of the fishing operations affected by this final rule to be small entities. The universe of small entities is composed of the 319 regular commercial fishermen who hold licenses to operate catcher vessels with snow crab endorsements, the 65 villages that participate in the CDQ program, and the six CDQ groups, for a total of 390 small entities. For the purposes of the FRFA, NMFS assumes that all of the catcher vessels belong to small entities, while the 29 operators of licensed catcher processors with snow crab endorsements are not small entities. At present, however, information on ownership, affiliation, and contractual relationships between and among the catcher vessels is insufficient to allow definitive enumerations of which of these operations are, or are not ''small entities'' for Regulatory Flexibility Act purposes.

NMFS considered two alternatives, status quo and the regulation change. This regulatory change is a measure to reduce the impacts of the existing regulation on small entities, specifically the CDQ groups and communities that belong to the CDQ groups. The FRFA shows that the status quo alternative adversely impacts the 65 villages and 6 CDQ groups by preventing them from realizing the full value of their snow crab CDQ allocation.

On the other hand, the 319 regular commercial fishermen may experience adverse impacts from the proposed alternative due to the potential disadvantage of fishing for snow crab after some of the GHL has been harvested. Measures to reduce the impacts on these small entities will be taken by the State in determining whether to conduct a CDQ fishery before the regular commercial fishery. These measures include limiting the amount of CDQ quota that can be harvested pre-season to 30 percent of the CDQ quota (which equals 2.25 percent of the GHL) and limiting preseason CDQ fisheries for crab stocks with GHLs above 50 million pounds.

This final rule does not contain a collection-of-information requirement subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act (PRA). This rule does not duplicate, overlap, or conflict with other Federal regulations.

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

The Assistant Administrator, NMFS, finds good cause to waive the requirement to provide prior notice and the opportunity for public comment, pursuant to authority set forth at 5 U.S.C. 553 (b)(B), on the portion of the final rule that changes the title of the FMP. NMFS has determined that such procedures would be unnecessary because changing the FMP title has no effect on the public.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 15, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

§ 679.1 [Amended]

2. In § 679.1(g), remove the words ''Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area'' and add, in their place, the words ''Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs''.

§ 679.2 [Amended]

3. In § 679.2, in the definition for *Crab species*, remove the words ''Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands'' and add, in their place, the words ''Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs''.

4. In § 679.31, paragraph (d) is revised to read as follows:

§ 679.31 CDQ reserves.

* * * * *

(d) *Crab CDQ reserves.* For those king and Tanner crab species in the Bering Sea and Aleutian Islands Area that have a guideline harvest level specified by the State of Alaska, 7.5 percent of the annual guideline harvest level for each fishery is apportioned to a crab CDQ reserve.

* * * * *

[FR Doc. 02–6748 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 56
Friday, March 22, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 134

RIN 3245–AE71

Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals; Correction

AGENCY: Small Business Administration.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the text of the proposed rule published in the **Federal Register** on March 12, 2002, (67 FR 11057) and corrected in the **Federal Register** on March 21, 2002. The rule proposes to amend SBA's regulations governing proceedings before the Office of Hearings and Appeals and to make conforming changes to several sections of the regulations governing the Small Business Size Determination program and the 8(a) Business Development (8(a) BD) program.

FOR FURTHER INFORMATION CONTACT: Michael J. Wolter, 202–401–1420.

Correction

In notice of proposed rulemaking document 02–5613 beginning on page 11057 in the issue of Tuesday, March 12, 2002, make the following corrections:

1. On page 11067, in the third column, correct § 134.313 to read as follows:

§ 134.313 Applicability of subpart B provisions.

Except where inconsistent with this subpart C, the provisions of subpart B of this part apply to appeals from size determinations and NAICS code designations.

§ 134.406 [Corrected]

2. On page 11067, in the third column, correct amendatory instruction 50.c. to read as follows:

50. c. In paragraph (c), revise the first and fourth sentences; and add a new sentence at the end.

Dated: March 19, 2002.

Gloria E. Blazsik,

Acting Assistant Administrator for Office of Hearings and Appeals.

[FR Doc. 02–6993 Filed 3–21–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–18–AD]

RIN 2120–AA64

Airworthiness Directives; Dowty Aerospace Propellers, Models R354, R375, R389, and R390 Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Dowty Aerospace Propellers, R354/4–123–F/13, R354/4–123–F/20, R375/4–123–F/21, R389/4–123–F/25, R389/4–123–F/26, and R390/4–123–F/27 propellers. This proposal would require a one-time inspection of the hub joint mating surfaces for fretting. This proposal is prompted by reports of fretting on the joint mating faces of propeller hubs. The actions specified by the proposed AD are intended to prevent failure of the hub due to loose hub through bolts.

DATES: Comments must be received by May 21, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–18–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected, by appointment, at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: ''*9-ane-adcomment@faa.gov*''. Comments sent via the Internet must contain the docket number in the subject line. The service information referenced in the proposed rule may be obtained from Dowty Aerospace Propellers, Anson Business Park, Cheltenham Road, East Gloucester GL2 9QN, UK; telephone 44 (0) 1452 716000; fax 44 (0) 1452 716001. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7158; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–18–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–18–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the FAA that an unsafe condition may exist on certain Dowty propellers. The CAA advises that it has received a number of reports of fretting damage on the joint mating faces of certain Dowty propeller hubs. The CAA believes that the cause of the damage is excessive use of joint sealant during reassembly of the hub after repair or rework of the hub.

Manufacturer's Service Information

Dowty Aerospace Propellers has issued service bulletin (SB) SF340–61–96, dated April 18, 2000, that specifies procedures for inspecting certain propeller hubs for loose hub bolts, and if found, inspecting the mating faces of the hub joint for wear. The CAA classified this SB as mandatory and issued AD 005–04–2000 in order to assure the airworthiness of these Dowty propellers in the UK.

Bilateral Agreement Information

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

Proposed Requirements of the AD

Since an unsafe condition has been identified that is likely to exist or develop on other Dowty Aerospace Propellers, R354/4–123–F/13, R354/4–123–F/20, R375/4–123–F/21, R389/4–123–F/25, R389/4–123–F/26, and R390/4–123–F/27 propellers of the same type design that are used on airplanes registered in the United States, the proposed AD would require inspection of hubs that have been disassembled since being delivered from Dowty Aerospace Propellers for loose hub through bolts within 1,800 flying hours after the effective date of the proposed AD. The proposed AD would also require inspection of the mating faces of the hub joint for wear if any loose through bolts are found. These actions would be required to be done in accordance with the service bulletin described previously.

Economic Analysis

There are approximately 418 propellers of the affected design in the worldwide fleet. The FAA estimates that 169 propellers installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 6 work hours per propeller to do the proposed actions, and that the average labor rate is $60 per work hour. There are no required parts per propeller. Based on these figures, the total cost of the proposed AD on U.S. operators is estimated to be $60,840.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dowty Aerospace Propellers: Docket No. 2000–NE–18–AD.

Applicability

This airworthiness directive (AD) is applicable to Dowty Aerospace Propellers, R354/4–123–F/13, R354/4–123–F/20, R375/4–123–F/21, R389/4–123–F/25, R389/4–123–F/26, and R390/4–123–F/27 propellers. These propellers are installed on, but not limited to, SAAB 340A and 340B airplanes.

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

Compliance

Compliance with this AD is required within 1,800 flying hours after the effective date of this AD, unless already done.

To prevent failure of the hub due to loose hub through bolts, do the following:

One-time Inspection of the Propeller Hub

(a) If the propeller hub has not been disassembled since it was received from Dowty Aerospace Propellers, no further action is required. Otherwise, do the following:

(1) Within 1,800 flying hours after the effective date of this AD, perform a one-time inspection of the hub for loose hub through bolts in accordance with 3.A.(1) through 3.A.(10) of the Accomplishment Instructions of Dowty Aerospace Propellers service bulletin (SB) SF340–61–96, dated April 18, 2000.

(2) If wear exceeds the limits specified in 3.A.(8) of the Accomplishment Instructions of Dowty Aerospace Propellers service bulletin (SB) SF340–61–96, dated April 18, 2000, replace the hub with a serviceable part.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office (ACO). Operators must submit their request through an

appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston ACO.

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

Special Flight Permits

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

Note 3: The subject of this AD is addressed in CAA airworthiness directive 005–04–2000.

Issued in Burlington, Massachusetts, on March 14, 2002.

Francis A. Favara,

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

[FR Doc. 02–6914 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 01–AGL–08]

Proposed Modification of Class E Airspace; Frankfort, MI; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This action corrects the docket number and four errors in the legal description of a NPRM that was published in the **Federal Register** on Monday, January 7, 2002 (67 FR 705). The NPRM proposed to modify Class E Airspace at Frankfort, MI.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register document 02–250 published on Monday, January 7, 2002 (67 FR 705), proposed to modify Class E Airspace at Frankfort, MI. An incorrect Airspace Docket No. 00–AGL–08 was assigned to the proposal, and in addition, the following errors were contained in the legal description: Incorrect longitude for the Frankfort Dow Memorial Field Airport, an incorrect MBL VOR/DME radial was used to describe the extension, and the latitude and longitude for the MBL VOR/DME was omitted. This action corrects these errors.

Accordingly, pursuant to the authority delegated to me, the errors for the Class E Airspace, Frankfort, MI, as published in the **Federal Register** Monday, January 7, 2002 (67 FR 705), (FR Doc. 02–250), are corrected as follows:

1. On page 705, column 2, in the heading, and column 3, under ''Comments Invited'', correct the Airspace Docket No. to read ''01–AGL–08.''

§ 71.1 [corrected]

2. On page 706, column 2, correct the legal description of the airspace designation as follows:

a. Add the following immediately below ''AGL MI E5 Frankfort, MI [REVISED]'': Manistee VOR/DME (Lat. 44°16′14″ N., long 86°15′14″ W.)

b. Correct the Frankfort Dow Memorial Field Airport longitude to read:

''Long. 86°12′02″ W.''

c. Correct ''Manistee VOR/DME 186° radial'' to read ''Manistee VOR/DME 006° radial.''

Issued in Des Plaines, Illinois on February 6, 2002.

Richard K. Petersen,

Assistant Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–5119 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 502

RIN 3141–AA10

Definitions: Electronic or Electromechanical Facsimile; Games Similar to Bingo; Electronic, Computer or Other Technologic Aid to Class II Games

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Proposed Rule for Final Comment.

SUMMARY: The National Indian Gaming Commission (Commission) proposes to clarify the regulatory definitions of three key terms in the Indian Gaming Regulatory Act, ''electronic and electromechanical facsimile'', ''games similar to bingo'' and ''electronic, computer or other technologic aid to Class II gaming''. The Commission believes that these amendments may simplify the classification of games.

DATES: Comments may be submitted on or before April 22, 2002.

FOR FURTHER INFORMATION CONTACT: Penny Coleman, at 202/632–7003 or, by fax, at 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701–2721, enacted on October 17, 1988, established the Commission. Under the Act, the Commission is charged with regulating gaming by Indian tribes. On April 9, 1992, the Commission issued a final rule defining several key terms that were not fully defined in the statute. In light of the experience that it has developed in the past ten years in working with these definitions, the Commission believes that it may be time to reevaluate some of these definitions. Accordingly, on June 22, 2001, the Commission published a Proposed Rule seeking public comment on the proposed removal of the existing definition of ''electronic or electromechanical facsimile'' from the Commission's regulations and using instead the plain language interpretation that seems to have been preferred by the courts.

The Commission received numerous comments to this proposed rule, a majority of which indicated support for the proposal. However, even many of the supportive comments expressed the view that removing the current definition was merely a first step in addressing the questions at issue. Several comments indicated that the Commission should remove the definition and replace it with another definition providing additional substantive guidance.

The Commission addresses these comments by proposing a new definition of ''electronic or electromechanical facsimile.'' In light of the comments, the Commission also proposes changes to two related definitions for which it seeks additional comment.

Regulatory Flexibility Act

To the extent that tribal gaming operations may be considered small businesses and therefore small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, this rule will not have a significant economic effect on a substantial number of small entities. Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business

Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions and does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

Takings

In accordance with Executive Order 12630, the Commission has determined that this rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of General Counsel has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. Instead, the rule is likely to decrease litigation with Indian tribes and reduce unnecessary friction between the Department of Justice and the Commission.

Paperwork Reduction Act

This regulation does not require an information collection under the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The Commission has analyzed this rule in accordance with the criteria of the National Environmental Policy Act. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is not required.

List of Subjects in 25 CFR Part 502

Gaming, Indian lands.

For the reasons set forth in the preamble, the National Indian Gaming Commission proposes to amend 25 CFR Part 502 as follows:

PART 502—DEFINITIONS OF THIS CHAPTER

Authority: 25 U.S.C. 2701 *et seq.*

1. Revise § 502.7 to read as follows:

§ 502.7 Electronic, computer or other technologic aid.

(a) Electronic, computer or other technologic aid means any machine or device, such as a computer, telephone, cable, television, screen, satellite, or bingo blower, that when used—

(1) Is not a game of chance but merely assists a player or the playing of a game;

(2) Is readily distinguishable from the playing of an electronic or electromechanical facsimile of a game of chance; and

(3) Is operated according to applicable Federal communications law.

(b) Other examples of an electronic, computer or other technologic aid may include, but are not limited to, equipment that allows communication between and among gaming sites, electronic cards (player stations) for participants in bingo games, and machines or devices that read and/or dispense pull-tabs.

2. Revise § 502.8 to read as follows:

§ 502.8 Electronic or electromechanical facsimile

Electronic or electromechanical facsimile means a game played in an electronic or electromechanical format that replicates a game of chance by incorporating all of the fundamental characteristics of the game and that is not an electronic, computer or technologic aid to a Class II game.

3. Revise § 502.9 to read as follows:

§ 502.9 Games similar to bingo

Pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo means games played with a finite deal, and established prizes, that are preprinted and use paper or other tangible medium, such as, break open or scratch off tickets.

Dated: March 15, 2002.

Elizabeth L. Homer,

Vice Chair.

Teresa E. Poust,

Commissioner.

[FR Doc. 02–6806 Filed 3–21–02; 8:45 am]

BILLING CODE 7565–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Chapter IV

[CMS–6012–NOI]

RIN 0938–AL13

Medicare Program; Establishment of Special Payment Provisions and Standards for Suppliers of Prosthetics and Certain Custom-Fabricated Orthotics; Intent to Form Negotiated Rulemaking Committee

AGENCY: Centers for Medicare and Medicaid Services, HHS.

ACTION: Notice of intent.

SUMMARY: We are statutorily mandated under section 427 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) to establish a negotiated rulemaking committee in accordance with the Negotiated Rulemaking Act and the Federal Advisory Committee Act (FACA). The committee's purpose would be to negotiate the development of a rule regarding the special payment provisions and requirements set forth in section 427 of BIPA for suppliers of prosthetics and certain custom-fabricated orthotics. The committee would consist of representatives who are likely to be significantly affected by the proposed rule. The committee would be assisted by a neutral facilitator.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on April 22, 2002.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6012-NOI, P.O. Box 8013, Baltimore, MD 21244–8013.

Mail a separate copy of written comments to the following address: Kathryn Cox, Office of Financial Management, Mail Stop C3–02–16, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays. If you prefer, you may deliver your written comments (1 original and 3 copies) by courier to one of the following addresses: Hubert H. Humphrey Building, Room 443–G, 200 Independence Avenue, SW., Washington, DC, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–6012–NOI.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Kathryn Cox, (410)786–5954; Lynn Sylvester, (202) 606–9140 or Ira Lobel, (518) 431–0130.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7197.

Background

I. Negotiated Rulemaking Act

The Negotiated Rulemaking Act (Pub. L. 101–648, 5 U.S.C. 561–570) establishes a framework for the conduct of negotiated rulemaking and encourages agencies to use negotiated rulemaking to enhance the informal rulemaking process. Under the Negotiated Rulemaking Act, the head of an agency must consider whether—

- There is a need for a rule;
- There are a limited number of identifiable interests that will be significantly affected by the rule;
- There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who can adequately represent the interests identified and are willing to negotiate in good faith to reach a consensus on the proposed rule;
- There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;
- The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of a final rule;
- The agency has adequate resources and is willing to commit those resources, including technical assistance, to the committee; and
- The agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed policy as the basis for the rule proposed by the agency for notice and comment.

Negotiations are conducted by a committee chartered under the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2). The committee includes an agency representative and is assisted by a neutral facilitator. The goal of the committee is to reach consensus on the language or issues involved in a proposed rule. If consensus is reached, the committee will transmit a report to the agency containing a proposed rule. The agency may use the report as the basis of the agency's proposed rule. The process does not affect otherwise applicable procedural requirements of FACA, the Administrative Procedure Act, and other statutes.

II. Subject and Scope of the Rule

A. Need for the Rule

Section 427 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), enacted on December 21, 2000, requires the Secretary of Health and Human Services to establish the following using negotiated rulemaking procedures:

- Standards for those who bill Medicare for prosthetics and certain custom-fabricated orthotics.
- A list of custom-fabricated orthotics that are subject to the supplier qualification set forth in section 427 of BIPA.

B. Subject and Scope of the Rule

Section 1834(h) of the Social Security Act (the Act) provides for payment of ''orthotics and prosthetics,'' that are described in section 1861(s)(9) of the Act and in our regulations (see 42 CFR 414.202). Orthotics are leg, arm, back, and neck braces. Prosthetics are defined as artificial legs, arms, and eyes, including replacements if required because of a change in the beneficiary's physical condition.

Prosthetics and orthotics which are mainly covered under Medicare Part B, must be reasonable and necessary for the diagnosis or treatment of an illness or injury or to improve a malformed body member. Historically, there has been no Medicare requirement that a supplier of prosthetics or orthotics be certified or meet educational requirements other than what a State may require. Presently, fewer than 10 States have licensing requirements for suppliers of prosthetics and orthotics.

In an OIG report, ''Medicare Orthotics,'' by Inspector General June Gibbs Brown, October 1997 (0EI–02–95–00380), the OIG recommended that we take action to improve Medicare billing for orthotics. Specifically, they recommended that we require standards for suppliers of custom-molded and custom-fabricated orthotics.

According to the Congress' mandate under section 427 of BIPA, Medicare will cover prosthetics and certain custom-fabricated orthotics only if furnished by a ''qualified practitioner'' and fabricated by a ''qualified practitioner'' or ''qualified supplier.'' A ''qualified practitioner'' is defined as—

- A physician, a qualified physical or occupational therapist, and a State-licensed orthotist or prosthetist; or
- In States that do not issue those licenses, a trained individual who is either: (1) Certified by either the American Board of Certification in Orthotics and Prosthetics, Inc. (ABC) or the Board for Orthotist/Prosthetist Certification (BOC), or (2) who is credentialed by a program that the Secretary determines, in conjunction with appropriate experts, has sufficient training and education standards.

A ''qualified supplier'' is defined as any entity that is accredited by—

- ABC or BOC; or
- A program that the Secretary determines has equivalent accreditation and approval standards.

We are required to use a negotiated rulemaking procedure to establish (1) a list of prosthetics and custom-fabricated orthotics subject to this provision, and (2) criteria for acceptable accreditation and credentialing programs for qualified practitioners and suppliers.

C. Issues and Questions To Be Resolved

We anticipate discussion on the issues outlined below. We invite public comment on other issues not identified that would be within the scope of the rule.

1. What/who will be covered by the rule?
   a. Custom-fabricated orthotics.
   b. Practitioners (who does that include?).
   c. The definition of a ''positive model'' as set forth in the statute.
   d. Interface among practitioners, facilities, and manufacturers.
2. How will practitioners obtain certification and/or credentialing?
   a. Provisions for grandfathering.
   b. Education and experience requirements.
   c. Provisions for loss of certification.
   d. State requirements.
   e. Should there be different certifications for practitioners, manufacturers, and facilities?
   f. Rural areas.
3. Who will certify?
   a. States.
   b. Professional organizations.
   c. Other (for example, educational institutions).
4. Management of the program
   a. CMS's role.
   b. Interface among CMS, the certifying bodies, and the State licensing

boards.

With regard to matters outside the scope of the rule, we do not plan to negotiate the process or procedures for updating the list of codes for custom-fabricated orthotics subject to the rule.

III. Affected Interests and Potential Participants

The convener interviewed numerous organizations to identify potential participants whose interests would be affected by the proposed rule. The description of those organizations, together with the convener's finding can be viewed at *www.hcfa.gov/medicare/enrollment/CONVRPT.htm.* The convener has proposed and we agree to accept the following organizations as negotiation participants. We believe these organizations represent an appropriate mix of interests and backgrounds:

- ABC.
- BOC.
- National Community Pharmacy (NCP).
- National Commission of Orthotic and Prosthetic Education (NCOPE).
- American Academy of Orthotists and Prosthetists.
- National Association for the Advancement of Orthotists and Prosthetists (NAAOP).
- American Physical Therapy Association (APTA).
- American Orthotic and Prosthetic Association (AOPA).
- National Orthotic Manufacturers Association (NOMA).
- International Association of Orthotics and Prosthetics (IAOP).
- Hanger Prosthetics.
- Point Health Centers.
- Coalition of Illinois and Florida certification boards.
- Coalition of State associations representing orthotists and prothetists.
- Paralyzed Veterans of America (PVA).
- National Association for Long Term Care (NALTC).

We invite comment on this list of negotiation participants. The intent in establishing the negotiating committee is that all interests are represented, not necessarily all parties. We believe this proposed list of participants represent all interests associated with the rule to be negotiated.

Groups or individuals who wish to apply for a seat on the committee should respond to this notice within 30 days of its publication. They should provide detailed information regarding the following:

- A description of the interest they represent.
- Evidence that they are authorized to represent parties related to the interests they propose to represent.
- A written commitment that they will actively participate in good faith in the development of the regulation.
- Reasons why the proposed committee could not adequately represent their interest.

IV. Schedule for the Negotiation

We have set a deadline of 6 months beginning with the date of the first meeting for the committee to complete work on the proposed rule. We intend to terminate the activities of the committee if it does not appear likely to reach consensus on a schedule that is consistent with our rulemaking needs.

The first and second meeting dates and times will be published in the **Federal Register**. The purpose of the first meeting will be to discuss in detail how the negotiations will proceed and how the committee will function. The committee will agree to ground rules for committee operation, determine how best to address the principal issues, and, if time permits, begin to address those issues.

We expect that by the second meeting, the committee can complete action on any procedural matters outstanding from the organizational meeting and either begin or continue to address the issues.

V. Formation of the Negotiating Committee

A. Procedure for Establishing an Advisory Committee

As a general rule, an agency of the Federal government is required to comply with the requirements of FACA when it establishes or uses a group that includes non-Federal members as a source of advice. Under FACA, an advisory committee is established only after both consultations with the General Services Administration and receipt of a charter. We have prepared a charter and initiated the requisite consultation process. Only upon successful completion of this process and the receipt of the approved charter will we form the committee and begin negotiations.

B. Participants

The number of participants on the committee is estimated to be 16 and should not exceed 25 participants. A number larger than this could make it difficult to conduct effective negotiations. One purpose of this notice is to help determine whether the proposed rule would significantly affect interests not adequately represented by the proposed participants. We do not believe that each potentially affected organization or individual must necessarily have its own representative. However, each interest must be adequately represented. Moreover, we must be satisfied that the committee as a whole reflects a proper balance and mix of interests.

C. Requests for Representation

If, in response to this notice, an additional individual or representative of an interest requests membership or representation on the negotiating committee, we will determine, in consultation with the facilitator, whether that individual or representative should be added to the committee. We will make that decision based on whether the individual or interest—

- Would be significantly affected by the rule; and
- Is already adequately represented in the negotiating committee.

D. Establishing the Committee

After reviewing any comments on this notice and any requests for representation, we will take the final steps to form the committee.

VI. Negotiation Procedures

When the committee is formed, the following procedures and guidelines will apply, unless they are modified as a result of comments received on this notice or during the negotiating process.

A. Facilitator

We will use a neutral facilitator. The facilitator will not be involved with the substantive development or enforcement of the regulation. The facilitator's role is to—

- Chair negotiating sessions;
- Help the negotiation process run smoothly; and
- Help participants define and reach consensus.

B. Good Faith Negotiations

Participants must be willing to negotiate in good faith and be authorized to do so. We believe this may be best accomplished by selection of senior officials as participants. We believe senior officials are best suited to represent the interests and viewpoint of their organizations. This applies to us, and we are designating Hugh H. Hill III, M.D., J.D., Medical Officer, Program Integrity Group, Office of Financial Management.

C. Administrative Support

We will supply logistical, administrative, and management

support. If it is deemed necessary and appropriate, we will provide technical support to the committee in gathering and analyzing additional data or information.

D. Meetings

Meetings will be held in the Baltimore/Washington area (or in another location) at the convenience of the committee. We will announce committee meetings and agendas in the **Federal Register**. Unless announced otherwise, meetings are open to the public.

E. Committee Procedures

Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the detailed procedures for committee meetings, which they consider most appropriate.

F. Defining Consensus

The goal of the negotiating process is consensus. Under the Negotiated Rulemaking Act, consensus generally means that each interest concurs in the result unless the committee defines the term otherwise. We expect the participants to fashion the committee's working definition of this term.

G. Failure of Advisory Committee to Reach Consensus

If the committee is unable to reach consensus, we will proceed to develop a proposed rule. Parties to the negotiation may withdraw at any time. If this happens, we and the remaining committee members will evaluate whether the committee should continue.

H. Record of Meetings

In accordance with FACA's requirements, minutes of all committee meetings will be kept. The minutes will be placed in the public rulemaking record.

I. Other Information

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 9, 2002.

Thomas A. Scully,

Administrator, Center for Medicare and Medicaid Services.

Dated: February 22, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–6952 Filed 3–21–02; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 02–10; FCC 02–18]

Procedures To Govern the Use of Satellite Earth Stations on Board Vessels in Bands Shared With Terrestrial Fixed Service

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: This document solicits comments on the authorization of satellite earth stations on board vessels (ESVs). The item contemplates that authorizing ESVs on a more clearly-defined basis, through the adoption of specific rules governing their use, may benefit potential users and service providers by creating regulatory certainty. Some ESVs are already in operation: the International Bureau (Bureau) and the Office of Engineering Technology (OET) (jointly, the Bureaus) have granted two companies waivers to operate ESVs and have granted one company Special Temporary Authorities (STAs) with conditions. However, there are existing terrestrial fixed users in some of the bands identified for ESV operations. Consequently, the Commission solicits comment on potential methods for licensing of ESVs that would help ensure that ESV operations would not cause harmful interference to, nor limit the growth of, terrestrial fixed services operating in the same band.

DATES: Submit comments on or before April 19, 2002; reply comments due on or before May 3, 2002.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Breck Blalock, International Bureau, (202) 418–8191 or Trey Hanbury, International Bureau (202) 418–0766.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Inquiry,* IB Docket No. 02–10, adopted January 23, 2002 and released February 4, 2002. The full text of this *Notice of Inquiry* is available for inspection and copying during normal business hours in the FCC Reference Room, Room CY–A257, Portals II, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (''ITS''), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Interested parties may file comments by using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998. The Commission will consider all relevant and timely comments prior to taking final action in this proceeding. To file formally, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Parties not filing via ECFS are also encouraged to file a copy of all pleadings on a 3.5-inch diskette in Word 97 format.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message: ''get form <your e-mail address.'' A sample form and directions will be sent in reply.

Synopsis

1. In this Notice of Inquiry (NOI) the Commission seeks comment on the appropriateness of and potential methods for authorizing ESVs within its existing regulatory scheme. Such an authorization would take the place of the current system of extending or creating *ad hoc* special temporary authorities (STAs)—and allow ESV operation while protecting existing fixed service (FS) operations. The Commission seeks comment on all aspects of potential licensing, including whether and how such licensing should go forward, and how interference to

terrestrial fixed licensees can be mitigated to the greatest extent possible.

2. The Bureaus have authorized two companies to operate ESVs on a waiver and STA basis since 1996: Crescomm (now known as MTN) and Qualcomm, Inc. Waivers and STAs are usually reserved for special circumstances and are not meant to circumvent normal licensing procedures. In examining the broad associated issues, the Commission seeks comment on the necessity of ESV licensing: do services exist that render ESV licensing superfluous? Do ESVs provide services that are unavailable through other means? Could MTN and other companies find other ways to offer similar service? Are there alternatives to ESV licensing, including continuing to grant waivers? The Commission seeks comment on any alternatives and whether/why the alternative is preferable to ESV licensing. As ESV service has now been operational in some form for five years, and as MTN seeks to expand the service, the Commission seeks general comment on whether the time is ripe for developing rules for licensing ESV service. Lastly, the Commission seeks comment on any other issues that commenters deem relevant as the Commission considers the wisdom of advancing ESV licensing.

(a) Regulatory Issues

3. The Commission seeks comment on all issues pertaining to the regulatory status of ESVs. An initial question to address is: in which bands could ESVs best be accommodated?

4. Specifically, the Commission seeks comment on the use of compatible and available bands for operation of ESV systems. The Commission seeks comment on the ability of bands that are currently allocated for MSS to provide for ESV systems. If MSS bands will not adequately provide for this service, the Commission seeks comment on which FSS bands should be considered for ESV operation. If the Commission were to determine that ESVs may operate in FSS networks, would the Commission need to modify the Table of Frequency Allocations to accommodate such use (e.g., through a footnote addition)? Although the 1996 *Crescomm Order* described ESVs as providing mobile-satellite service earth stations, the ITU has recognized that ESVs may operate in FSS networks.

5. ESV operators have used the C-band to date, and are now beginning to use the Ku-band. Due to the multiple modes of ESV operation, should the Commission allow Ku-band operation of ESVs either as an adjunct to C-band operation or in some cases as a replacement for the C-band? The Commission seeks comment on the continued use of C-band and any additional use of Ku-band.

6. ESV operations began in C-band because: (1) These satellite networks can provide broad coverage, which permits ships to communicate from anywhere at sea; and (2) the equipment was readily available. The problem with use of the C-band for ESV operations is that in many countries the band is heavily used by terrestrial microwave systems operating in the FS. As ESVs approach the coast, the potential for interference to FS operations increases, necessitating coordination of ESV use with FS operations so as not to cause interference. Use of the Ku-band in coastal areas is being considered in lieu of coordinating with C-band fixed-service operations. Most countries do not have terrestrial services operating in the satellite uplink portion of the Ku-band and thus coordination may be easier in those areas. The difficulty with using Ku-band is that space station antennas usually provide only spot beam coverage in coastal areas rather than the broader coverage provided in C-band. In this case, for ESVs operating well beyond the coast, communication would be impossible using only Ku-band. The Commission seeks comment on use of the Ku-band generally.

7. ESVs could use the Ku-band in a variety of ways. ESVs could operate in a dual-band mode, using both C-band and Ku-band. If dual-band operation were to be adopted and ESVs operate in C-band while operating at sea, then within some previously-defined minimum distance from shore ESVs could switch to the Ku-band. The Commission seeks comment on dual-band operation.

8. Additionally, where ESVs serve ships that travel only in an area near the coast, the Ku-band could be used exclusively. For example, if a cruise ship only travels around the Hawaiian islands, it is possible that the more limited footprint of the Ku-band would still cover that ship in all three modes: at port, at sea, and while entering or exiting port. In that case, by operating exclusively in the Ku-band, the ESV operation would not have to be coordinated with terrestrial services since such services do not operate in the Ku-band. The Commission seeks comment on whether an ESV on such a limited-range ship could be licensed in the Ku-band instead of the C-band.

(b) Appropriate Licensing Approach and Restrictions

9. The Commission seeks comment on the appropriate licensing approach and restrictions for potential ESV operations. One method for such licensing could be a special restricted class of earth stations. While the Commission is considering the use of other bands (as discussed above), we seek comment on whether ESV licensing under part 25 of the Commission's rules within FSS networks, and with certain restrictions, would be the most appropriate. The bands currently being used, C-band and Ku-band, are allocated to the FSS both domestically and internationally. If the Commission does license ESVs as a special restricted class of earth station, it seeks comment on what those restrictions should be. Alternatively, if the Commission were to license ESVs as MSS earth stations, it seeks comment on what other regulatory changes would be required? Would it be necessary to change our domestic frequency allocations table to provide a maritime mobile-satellite service allocation at C-band and Ku-band, and would any other changes be required to allow these stations to communicate through existing FSS networks? The Commission further notes that the Bureau considered ESV dockside operations in January 2000 and June 2001 and concluded that because ESVs would be operating only intermittently, the service would be better classified as a temporary-fixed service. The Commission requests further comment on the appropriate licensing of dockside operations of ESVs.

10. Other regulatory issues include potential conditions on ESV licenses. One possible restriction might be continuing the condition contained in the current STA and waiver authorizations prohibiting ESV operations from causing harmful interference to any entity operating in conformance with the Table of Frequency Allocations. In other words, if licensed, all ESV operations would be required to cease immediately upon notification of unacceptable interference being caused to a fixed service station. The Commission seeks comment on this potential condition, and on whether all ESV operators should be required to forward any complaints of radio interference to the Commission immediately, in writing. Additionally, the Commission seeks comment on whether it would be appropriate for the Commission to impose additional obligations on the FSS earth stations that provide the gateway facilities for ESVs to ensure that ESV transmissions that cause unacceptable interference are immediately terminated, whether those ESV stations are U.S.-licensed or foreign-licensed. The Commission asks

if it should adopt any additional rules that would allow us to take punitive action against FSS gateway facilities that provide service to ESV stations (whether foreign or domestic) that repeatedly cause unacceptable interference to fixed service stations. If so, what standard of proof should the Commission meet if and when it seeks to impose such sanctions on FSS gateway facility operators? What standard of proof should be required of interested parties requesting that we impose such standards? How could the Commission coordinate with foreign-licensed vessels?

11. In February 1997, MTN was granted an STA to operate its ESVs on a non-harmful interference basis when the ships it served were in or near one of four U.S. seaports. More recently, MTN was authorized to provide ESV service in motion to or from one of 17 U.S. seaports. The Commission seeks comment on whether the Commission should continue to allow in-motion operations in the future. Alternatively, would the potential for interference be significantly reduced by limiting ESV operations only to ''in or near'' U.S. seaports as initially authorized. If so, how would this affect the services currently provided by ESVs.

12. Other possible restrictions that could be placed on ESV licensees include: specifying a minimum antenna elevation angle (e.g. coordination to a specific satellite), specifying a minimum antenna diameter and maximum half-power antenna beamwidth, and also specifying the antenna tracking accuracy required for the ESV operation. The Commission could also require that ESV applicants specify the minimum amount of spectrum needed to perform the necessary service and that they limit the maximum ESV transmitter power. This would result in greater spectrum efficiency and a decreased potential for interference in bands where coordination with terrestrial services would be necessary. Additionally, the ESV licenses could be limited to a term of 1 to 3 years so that ESV operation could be closely monitored and, in bands where coordination was necessary, fixed service operational changes could be implemented efficiently. Finally, the Commission seeks comment on a requirement that ESV services be limited to receive-only. While the Commission recognizes that such a restriction may limit somewhat the commercial appeal of the ESV service, a receive-only restriction would virtually eliminate the interference issues that are of such concern, particularly in the C-band. The Commission would like to develop a record on the pros and cons of a receive-only restriction. The Commission seeks comment on these or other potential special restrictions.

13. The Commission also seek comment on coordination issues. Ultimately, the Commission's preference is to prevent interference before it occurs. Under usual coordination procedures for FSS, the entire C-band is coordinated. Similarly, the entire visible geostationary satellite orbital arc is generally coordinated. ESVs, however, use considerably less than a full band. Therefore, ESVs could be coordinated to specific satellites, which would limit their azimuth and commensurately limit the portion of the visible arc they would use. The Commission seeks comment on use of this special method of coordination and on any other regulatory issues that the Commission should consider going forward.

(c) Interference Issues

(1) Determining the Distance From Shore Beyond Which Unacceptable Interference Should Not Be Possible

14. If ESV licensing goes forward, determining the distance from shore outside of which interference from ESVs to FS operations will not occur (Distance From Shore) would be critical to successful ESV/FS coordination. The Commission seeks comment on the appropriate Distance From Shore. A Distance From Shore of 200 km may be suggested for two reasons. The current practice of the frequency coordinators requires a search of up to 125 statute miles radius (approx. 200 km) around the proposed location of a new FSS earth station to ascertain if there is potential for interference. This method has been effective for more than twenty years, preventing interference to FS from FSS. The U.S. has presented to ITU–R Working Party 4–9S a series of calculations that suggest that a distance as low as 165 km might be adequate as a coordination distance. Increasing the Distance From Shore from 165 km to 200 km would provide an added degree of protection to FS stations operating in the same band with ESVs, and would be consistent with current domestic procedures for FS–FSS coordination. The Commission seeks comment on this rationale, and on other factors, if any, that should be considered in calculating the appropriate Distance From Shore.

(2) Coordination of Operation Within a Distance Where Unacceptable Interference Might Occur

15. Once the Distance From Shore is determined, the question remains: how would operations be coordinated inside the Distance From Shore to eliminate unacceptable ESV interference to FS operations but still allow ESV operation inside the Distance From Shore? This determination, in the international context, is being addressed within the ITU–R through the calculation of a Composite Area within which interference to fixed stations from ESVs operating in motion near a coastline need to be evaluated. The Commission seeks comment on whether the use of the Composite Area calculations could also serve as the basis to determine this area in a domestic context. Commenters should address whether this method examines all of the factors relevant to determining the potential for interference to fixed stations by ESVs. The Commission seeks comment on whether the use of the Composite Area to address concerns about interference within the Distance From Shore is sufficient, or whether other factors must be considered.

16. The Commission seeks comment on the process for calculating the Composite Area. The Commission also seeks comment on, in general, the Composite Area method for evaluating the potential for interference to fixed stations from ESVs, as well as any other factors that should be considered. Finally, the Commission seeks comment on any alternatives to the Composite Area method for evaluating the potential for interference.

(3) Prevention and Resolution of Interference

17. The Commission also seeks general comment on how to handle anticipated interference issues. It is particularly interested in comments on whether the operation of existing MTN systems has in fact caused interference to other operations. The *Crescomm Order* states that ''[t]he mobile nature of the MSS stations makes it extremely difficult to prevent interference and to identify the interference source.'' Further, the fixed community has stated in an *ex parte* statement that interference from a moving ship is all but impossible to trace and that in-motion operations have not been adequately coordinated as required. The Commission believes that if it licenses ESVs, flexible, efficient and continuous coordination would be the key component to ensuring that ESVs do not cause unacceptable interference to FS stations. In order to ensure this coordination truly is successful, it would be necessary for all parties to be able to identify the ESVs that may be coming into a given port in order to effectuate such coordination, including

the precise routes and schedules used by these vessels. One approach to facilitating information exchange could be a requirement for both the ESV operators and coastal administrations to keep a publicly available list of all ESVs that have been licensed or otherwise granted authority to operate in their area. It also may facilitate communication if the harbormaster is provided this information. The Commission seeks comment on requiring real-time location tracking and that more timely information be made available (e.g., on the Internet). For example, the Commission notes that there are many tracking devices commercially available that provide very precise location based on GPS tracking. The Commission seeks comment on the feasibility and adequacy of these possible measures to ensure proper coordination.

18. Other approaches to providing the information necessary to ensure that ESVs do not cause unacceptable interference to the FS include: First, that ESV licenses indicate the name of the ESV operator and a point of contact, as well as the name of the vessel and a method by which to contact the ship directly (for instance, the ship's Inmarsat number); second, the license could list the frequencies that have been cleared for use by that ESV; and third, a website with all information on licensed ESVs could be created for the purpose of such coordination. Thus, if there were any interference reported, all parties would have information to quickly identify its source by contacting the coastal administration, the harbormaster, a website, or the ESV operator. If the ESV were a non-primary licensee, the ESV station would be required to cease operation immediately if it causes interference. The Commission seeks comment on these ideas for information exchange. In this regard, the Commission seeks comment on whether we should require an ESV system to include a means of identification and automatic mechanisms to terminate transmissions whenever the ESV operates outside its operational limits or is identified as the source of interference. How can the Commission enforce the requirements for preventing and resolving unacceptable interference? The Commission seeks comment on these and other ideas to exchange information, to prevent unacceptable interference, and to resolve interference issues should they arise.

19. Shorter license terms might also be an incentive for ESV operators to assist with the resolution of interference complaints, in that if an ESV station was reported to be interfering on a regular basis and was being in any way uncooperative with the FS station licensee, the ESV license may not be renewed. The Commission seeks comment on the appropriateness of a 1–3 year license term. The shorter terms might provide incentive for ESV operators to carefully coordinate their arrival and at-port use with FS stations. The Commission seeks comment on the concept of shorter licensing terms and other issues related to coordination.

Deadlines and Instructions for Filing Comments

Under §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the *Notice of Inquiry* on or before April 19, 2002. Reply comments are due May 3, 2002. Interested parties may file comments by using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. The Commission will consider all relevant and timely comments prior to taking final action in this proceeding. To file formally, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC. 20554. Parties not filing via ECFS are also encouraged to file a copy of all pleadings on a 3.5-inch diskette in Word 97 format.

Ordering Clause

Accordingly, *it is ordered* that pursuant to the authority contained in sections 1, 4(i), 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 308 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), 308, this *Notice of Inquiry is adopted.*

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–6917 Filed 3–21–02; 8:45 am]

BILLING CODE 6712–02–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020313058–2058–01; I.D. 030402A]

RIN 0648–AP07

Fisheries of the Northeastern United States; Proposed 2002 Specifications for the Spiny Dogfish Fishery; Regulatory Amendment

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the spiny dogfish fishery for the 2002 fishing year, which is May 1, 2002, through April 30, 2003. The implementing regulations for the Spiny Dogfish Fishery Management Plan (FMP) require NMFS to publish specifications for the upcoming fishing year and to provide an opportunity for public comment. The intent is to specify the commercial quota and other management measures, such as trip limits, to address overfishing of the spiny dogfish resource. This proposed rule would make a correction to the Spiny Dogfish regulations to indicate that the target fishing mortality rate (F) specified for the period May 1, 2003 – April 30, 2004 should be F=0.03.

DATES: Public comments must be received (see **ADDRESSES**) no later than 5 p.m. eastern standard time on April 8, 2002.

ADDRESSES: Written comments on the proposed specifications should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope, ''Comments—2002 Spiny Dogfish Specifications.'' Comments may also be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of supporting documents used by the Joint Spiny Dogfish Committee and the Spiny Dogfish Monitoring Committee; the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA); and the Essential Fish Habitat Assessment (EFHA) are available from Daniel Furlong, Executive Director, Mid-Atlantic

Fishery Management Council, Federal Building, Room 2115, 300 South Street, Dover, DE 19904. The EA, RIR, IRFA and EFHA are accessible via the Internet at *http:/www.nero.gov/ro/doc/nero.html*.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Van Pelt, Fishery Policy Analyst, (978)281-9244, fax (978)281-9135, e-mail *bonnie.l.vanpelt@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Spiny dogfish were declared overfished by NMFS on April 3, 1998, and added to that year's list of overfished stocks in the *Report on the Status of the Fisheries of the United States*, prepared pursuant to section 304 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Consequently, the Magnuson-Stevens Act required the preparation of measures to end overfishing and to rebuild the spiny dogfish stock. A joint FMP was developed by the Mid-Atlantic and New England Fishery Management Councils (Councils) during 1998 and 1999. The Mid-Atlantic Fishery Management Council (MAFMC) was designated as the administrative lead on the FMP.

The regulations implementing the FMP at 50 CFR part 648, subpart L, outline the process for specifying annually the commercial quota and other management measures (e.g., minimum or maximum fish sizes, seasons, mesh size restrictions, trip limits, and other gear restrictions) for the spiny dogfish fishery to achieve the annual target F specified in the FMP. The target F for the 2002 fishing year is 0.03.

The Spiny Dogfish Monitoring Committee (Monitoring Committee), comprised of representatives from states, MAFMC staff, New England Fishery Management Council (NEFMC) staff, NMFS staff and two non-voting, ex-officio industry representatives (one each from the MAFMC and NEFMC regions) is required to review annually the best available information and to recommend a commercial quota and other management measures necessary to achieve the target F for the upcoming fishing year. The Council's Joint Spiny Dogfish Committee (Joint Committee) then considers the Monitoring Committee's recommendations and any public comment in making its recommendation to the two Councils. Afterwards, the MAFMC and the NEFMC make their recommendations to NMFS. NMFS reviews those recommendations to assure they are consistent with the target F level, and publishes proposed measures for public comment.

Monitoring Committee Recommendations

The Monitoring Committee met on September 11, 2001, to review updated stock assessment information. Based on a 3–year average (1999–2001), fishing mortality was estimated at F= 0.27, far above the overfishing threshold level of 0.11. This level of F reflects overfishing in the fishery before the FMP was implemented. Using 1999-2001 Northeast Fisheries Science Center (NEFSC) spring survey trawl data and commercial landings data through 2000, the Monitoring Committee noted a reduction in the biomass of adult females (>80 cm) throughout the time series (1978 - 2001). The average size of female dogfish has declined from greater than 8.8 lb (4 kg) in 1987 to about 4.40 lb (2 kg) in 2000. Since 1990, the estimate of mature female biomass has declined steadily. The decline in estimated biomass of mature females and large males is consistent with cumulative removals from a slow growing stock. These results suggest that total removals have exceeded productive capacity of the stock. The 3–year average of swept area female biomass (>80 cm) for the period 1999 – 2001, has declined to about 34 percent of the recommended biomass rebuilding target (B_{msy}) of 200,000 mt (441 million lb).

NEFMC survey data show a reduction in the biomass of spiny dogfish pups based on the decline in biomass of dogfish less than 35 cm (13.8 inch). The survey indices for pups have continued to be the lowest in the 33–year time series for the past 5 consecutive years (1997 - 2001), indicating recruitment failure.

The Monitoring Committee estimated the yield associated with a F=0.03 for 2002 to be 4.0 million lb (1.81 million kg), assuming the current stock size. The Monitoring Committee recommended a 4–million pound (1.81-million kg) commercial quota for spiny dogfish for the 2002–2003 fishing season, divided into the two semi-annual periods as specified in the FMP: 57.9 percent for quota period 1 (May–October), or 2,316,000 lb (1.05 million kg), and 42.1 percent for quota period 2 (November-April), or 1,684,000 lb (763,849 kg). The Monitoring Committee also recommended maintaining a trip limit of 600 lb (272 kg) for quota period 1 and 300 lb (136 kg) for quota period 2 (vessels are prohibited from landing more than the specified amount in any one calendar day). The Monitoring Committee also expressed concern that even the current restrictive rebuilding strategy may be too liberal to accomplish the rebuilding objectives of the FMP (i.e., rebuilding to SSBmax), even in the long term.

Joint Spiny Dogfish Committee Recommendations

The Joint Spiny Dogfish Committee (Joint Committee) met on September 28, 2001, to consider the recommendations of the Monitoring Committee, and to make a recommendation to the Councils. The Joint Committee recommended that the Councils, using whatever means necessary, adopt a fishing mortality rate for the 2002-2003 fishing season that would be consistent with a commercial quota of 8.8 million lb (4 million kg). In addition, the Joint Committee recommended trip limits of 7,000 lb (3,175 kg) for both quota periods.

Alternatives Proposed by the Councils

The MAFMC and NEFMC voted upon recommendations for year four (2002-2003) management measures at their respective meetings in October and November 2001. The MAFMC adopted the Monitoring Committee recommendations for a commercial quota of 4 million lb (1.81 million kg) and trip limits of 600 lb (272 kg) for quota period 1 (May 1 - Oct. 31) and 300 lb (136 kg) for quota period 2 (Nov. 1 – April 30). The NEFMC adopted the Joint Committee recommendation for a fishing mortality rate consistent with a commercial quota of 8.8 million lb (4 million kg), and trip limits of 7,000 lb (3,175 kg) for both quota periods.

Proposed 2002 Measures

At both Council meetings NMFS noted that it was not possible to modify the FMP target F through the annual specifications as was recommended by the NEFMC, because such a change would require an FMP amendment. NMFS reviewed both Councils' recommendations and concluded that the MAFMC recommendation would assure that the target F is not exceeded. NMFS proposes a commercial spiny dogfish quota of 4 million lb (1.81 million kg) for the 2002 fishing year to be divided into two semi-annual periods as follows: 2,316,000 lb (1.05 million kg) for Quota period 1 (May 1, 2001–Oct. 31, 2001); and 1,684,000 lb (763,849 kg) for Quota period 2 (Nov. 1, 2001–April 30, 2002). In addition, NMFS proposes to maintain trip limits of 600 lb (272 kg) for Quota period 1, and 300 lb (136 kg) for Quota period 2 to discourage a directed fishery. The directed fishery has traditionally targeted large mature female spiny dogfish, the stock

component that is most in need of protection and rebuilding. A trip limit level of 7,000 lb (3,175 kg) could result in a directed fishery, which is inconsistent with the rebuilding program. Maintaining the limits of 600 lb (272 kg) and 300 lb (136 kg) for Quota period 1 and Quota period 2, respectively, would allow for the retention of spiny dogfish caught incidentally while fishing for other species, but discourage directed fishing and, therefore, provide protection for mature female spiny dogfish.

This proposed rule would also make a correction to the spiny dogfish regulations, because they mistakenly specify a target F=0.08 to begin on May 1, 2003. The FMP requires that the target of F=0.03 be maintained through the end of the fishing year 2003–2004.

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

An IRFA was prepared that describes the impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows.

The small entities considered in the analysis include 488 vessels that have reported spiny dogfish landings to NMFS in 2000 (the most recent year for which there is vessel-specific data). In addition, there are vessels that are not subject to the Federal reporting requirements because they fish exclusively in state waters. It is not possible to identify these vessels, but some number of them are likely to be impacted. There is no reason to presume the impacts on these vessels would be substantially different from the impact on Federally-permitted vessels.

Furthermore, there are a large number of vessels that have been issued Federal spiny dogfish permits, but have not fished for spiny dogfish (a total of 2,079 vessels were issued the permit in 2001). It is presumed that these vessels are interested in the fishery but have chosen not to participate under the restrictive trip limits. If any of these vessels should choose to participate in the upcoming fishing year, they might experience revenue increases associated with landings of spiny dogfish but those increases cannot be estimated.

NMFS considered three alternatives. The action recommended in this proposed rule includes a commercial quota of 4 million lb (1.81 million kg), and trip limits of 600 lb (272 kg) during Quota period 1 and 300 lb (136 kg) during Quota period 2. Alternative 2 includes a commercial quota of 8.8 million lb (4 million kg) and trip limit of 7,000 lb (3,175 kg) for both quota periods. Alternative 3 evaluates the impact of having no management measures.

The potential changes in 2002 revenues under the 4 million lb (1.81 million kg) quota were evaluated relative to landings and revenues derived during 2001: 4.6 million lb (2.08 million kg) of landings, valued at $1,012,000. The analysis is based on the last full fishing year of landings data and assumed that the revenues of the 488 vessels that landed spiny dogfish in 2000 would be reduced proportionately by the proposed action. The reduction in overall gross revenues to the fishery as a whole was estimated to be about $132,000, or about $270 per vessel, compared to fishing year 2001.

The proposed trip limits of 600 lb (272 kg) in Quota period 1, and 300 lb (136 kg) in Quota period 2 represent a continuation of the trip limits established for fishing year 2001 and have no new impact. The trip limit analysis projected that, on average, under a 600 lb (272 kg) trip limit for quota period 1, landings exceeded the semi-annual quota of 2,316,000 lb (1.05 million kg) on about September 5, 2000 (128 days into the quota period). During Quota period 2, however, if a 300-lb (136–kg) possession limit was in effect, landings were projected not to exceed the semi-annual quota of 1,684,000 lb (763,849 kg). The analysis projected landings of only 615,000 lb (278,959 kg) during quota period 2. Thus, approximately 1,069,000 lb (484,890 kg) of allowable spiny dogfish landings were projected not to be landed. Although the commercial quota is 4 million lb (1.81 million kg), total projected landings would only reach 2.93 million lb (1.33 million kg). However, the analysis does not account for behavioral changes by vessel operators that could impact the amount of landings. Also, since vessels without Federal permits are not captured in the analysis, yet their landings count towards the quota, it is likely that additional landings will occur. In fact, during the 2001 fishing year, under identical trip limits and commercial quota, period 1 was open for 52 days under a 600-lb (272-kg) trip limit and period 2 was open for 20 days under a 300-lb (136-kg) trip limit.

Under Alternative 2, the quota would increase to 8.8 million lb (4 million kg). This represents an increase from landings in fishing year 2001 of 4.2 million lb (1.91 million kg), valued at $924,000. Assuming that the increase is shared among the 488 that landed spiny dogfish in fishing year 2000, each vessel would experience revenue increases of $1,893. However, this quota is inconsistent with the target F required by the FMP.

Under Alternative 2, trip limits of 7,000 lb (3,175 kg), the semi-annual quota of 5,095,200 lb (2.31 million kg) would be exceeded on average approximately 55 days into quota period 1 and the semi-annual quota of 3,704,800 lb (1.68 million kg) would be exceeded approximately 80 days into quota period 2.

Although more vessels would find it profitable to land spiny dogfish under a trip limit of 7,000 lb (3,175 kg) while the season is open, the season would close sooner than under the lower trip limits. Vessels may still be able to make profitable trips by directing on other species and landing up to the trip limit of 600 lb (272 kg) or 300 lb (136 kg) of spiny dogfish. Revenues from spiny dogfish alone would be minimal, but the lower trip limits would likely end the directed fishery, consistent with the FMP. If major spiny dogfish markets are eliminated as a result of low supply due to a low trip limit or quick closure of the fishery, much of the revenue from the spiny dogfish fishery would also be drastically reduced.

Under Alternative 3, with no quota or management measures, landings are projected to be 24.9 million lb (11,294 mt) in 2002–2003. This represents an increase from 2001 landings of 20.3 million lb (9.2 million kg). Increases in gross revenues to vessels would be about $4.5 million. Gross revenues for vessels engaged in the spiny dogfish fishery would be expected to increase, on average, by about $9,151 per vessel in fishing year 2002. Although unrestricted fishing would result in higher short-term landings and revenues, compared to fishing year 2001, this would be inconsistent with the rebuilding program established in the FMP, as required by the Magnuson-Stevens Act.

According to 2000 landings information, the impact of the proposed specifications for the 2002 fishing year will be greatest in Massachusetts which accounted for the largest share of the landings (28.5 percent), followed by New Jersey (25.8 percent), North Carolina (14.1 percent), New Hampshire (11.5 percent) and New York (9.4 percent). The top four ports which landed spiny dogfish in 2000 included Chatham, MA (21 percent); Point Pleasant, NJ (17.4 percent); Hampton

Bay, NY (8.5 percent); and Portsmouth, NH (8.3 percent).

The proposed correction to the target F will have no impact on any business entity, since it does not modify the status quo.

It has been determined that this proposed rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

This proposed rule does not contain or involve any information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 18, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.230, paragraph (a) is revised to read as follows:

§ 648.230 Catch quotas and other restrictions.

(a) *Annual review*. The Spiny Dogfish Monitoring Committee will annually review the following data, subject to availability, to determine the total allowable level of landings (TAL) and other restrictions necessary to assure a target fishing mortality rate (F) of 0.2 in 1999 through April 30, 2000, a target F of 0.03 from May 1, 2000, through April 30, 2004, and a target F of 0.08 thereafter will not be exceeded: Commercial and recreational catch data; current estimates of F; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling data; impact of gear other than otter trawls and gill nets on the mortality of spiny dogfish; and any other relevant information.

* * * * *

[FR Doc. 02–6983 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 56
Friday, March 22, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 134

RIN 3245–AE71

Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals; Correction

AGENCY: Small Business Administration.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the text of the proposed rule published in the **Federal Register** on March 12, 2002, (67 FR 11057) and corrected in the **Federal Register** on March 21, 2002. The rule proposes to amend SBA's regulations governing proceedings before the Office of Hearings and Appeals and to make conforming changes to several sections of the regulations governing the Small Business Size Determination program and the 8(a) Business Development (8(a) BD) program.

FOR FURTHER INFORMATION CONTACT: Michael J. Wolter, 202–401–1420.

Correction

In notice of proposed rulemaking document 02–5613 beginning on page 11057 in the issue of Tuesday, March 12, 2002, make the following corrections:

1. On page 11067, in the third column, correct § 134.313 to read as follows:

§ 134.313 Applicability of subpart B provisions.

Except where inconsistent with this subpart C, the provisions of subpart B of this part apply to appeals from size determinations and NAICS code designations.

§ 134.406 [Corrected]

2. On page 11067, in the third column, correct amendatory instruction 50.c. to read as follows:

50. c. In paragraph (c), revise the first and fourth sentences; and add a new sentence at the end.

Dated: March 19, 2002.

Gloria E. Blazsik,

Acting Assistant Administrator for Office of Hearings and Appeals.

[FR Doc. 02–6993 Filed 3–21–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–18–AD]

RIN 2120–AA64

Airworthiness Directives; Dowty Aerospace Propellers, Models R354, R375, R389, and R390 Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Dowty Aerospace Propellers, R354/4–123–F/13, R354/4–123–F/20, R375/4–123–F/21, R389/4–123–F/25, R389/4–123–F/26, and R390/4–123–F/27 propellers. This proposal would require a one-time inspection of the hub joint mating surfaces for fretting. This proposal is prompted by reports of fretting on the joint mating faces of propeller hubs. The actions specified by the proposed AD are intended to prevent failure of the hub due to loose hub through bolts.

DATES: Comments must be received by May 21, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–18–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected, by appointment, at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: ''*9-ane-adcomment@faa.gov*''. Comments sent via the Internet must contain the docket number in the subject line. The service information referenced in the proposed rule may be obtained from Dowty Aerospace Propellers, Anson Business Park, Cheltenham Road, East Gloucester GL2 9QN, UK; telephone 44 (0) 1452 716000; fax 44 (0) 1452 716001. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7158; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–18–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–18–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the FAA that an unsafe condition may exist on certain Dowty propellers. The CAA advises that it has received a number of reports of fretting damage on the joint mating faces of certain Dowty propeller hubs. The CAA believes that the cause of the damage is excessive use of joint sealant during reassembly of the hub after repair or rework of the hub.

Manufacturer's Service Information

Dowty Aerospace Propellers has issued service bulletin (SB) SF340–61–96, dated April 18, 2000, that specifies procedures for inspecting certain propeller hubs for loose hub bolts, and if found, inspecting the mating faces of the hub joint for wear. The CAA classified this SB as mandatory and issued AD 005–04–2000 in order to assure the airworthiness of these Dowty propellers in the UK.

Bilateral Agreement Information

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

Proposed Requirements of the AD

Since an unsafe condition has been identified that is likely to exist or develop on other Dowty Aerospace Propellers, R354/4–123–F/13, R354/4–123–F/20, R375/4–123–F/21, R389/4–123–F/25, R389/4–123–F/26, and R390/4–123–F/27 propellers of the same type design that are used on airplanes registered in the United States, the proposed AD would require inspection of hubs that have been disassembled since being delivered from Dowty Aerospace Propellers for loose hub through bolts within 1,800 flying hours after the effective date of the proposed AD. The proposed AD would also require inspection of the mating faces of the hub joint for wear if any loose through bolts are found. These actions would be required to be done in accordance with the service bulletin described previously.

Economic Analysis

There are approximately 418 propellers of the affected design in the worldwide fleet. The FAA estimates that 169 propellers installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 6 work hours per propeller to do the proposed actions, and that the average labor rate is $60 per work hour. There are no required parts per propeller. Based on these figures, the total cost of the proposed AD on U.S. operators is estimated to be $60,840.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dowty Aerospace Propellers: Docket No. 2000–NE–18–AD.

Applicability

This airworthiness directive (AD) is applicable to Dowty Aerospace Propellers, R354/4–123–F/13, R354/4–123–F/20, R375/4–123–F/21, R389/4–123–F/25, R389/4–123–F/26, and R390/4–123–F/27 propellers. These propellers are installed on, but not limited to, SAAB 340A and 340B airplanes.

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

Compliance

Compliance with this AD is required within 1,800 flying hours after the effective date of this AD, unless already done.

To prevent failure of the hub due to loose hub through bolts, do the following:

One-time Inspection of the Propeller Hub

(a) If the propeller hub has not been disassembled since it was received from Dowty Aerospace Propellers, no further action is required. Otherwise, do the following:

(1) Within 1,800 flying hours after the effective date of this AD, perform a one-time inspection of the hub for loose hub through bolts in accordance with 3.A.(1) through 3.A.(10) of the Accomplishment Instructions of Dowty Aerospace Propellers service bulletin (SB) SF340–61–96, dated April 18, 2000.

(2) If wear exceeds the limits specified in 3.A.(8) of the Accomplishment Instructions of Dowty Aerospace Propellers service bulletin (SB) SF340–61–96, dated April 18, 2000, replace the hub with a serviceable part.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office (ACO). Operators must submit their request through an

appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston ACO.

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

Special Flight Permits

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

Note 3: The subject of this AD is addressed in CAA airworthiness directive 005–04–2000.

Issued in Burlington, Massachusetts, on March 14, 2002.

Francis A. Favara,

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

[FR Doc. 02–6914 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 01–AGL–08]

Proposed Modification of Class E Airspace; Frankfort, MI; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This action corrects the docket number and four errors in the legal description of a NPRM that was published in the **Federal Register** on Monday, January 7, 2002 (67 FR 705). The NPRM proposed to modify Class E Airspace at Frankfort, MI.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register document 02–250 published on Monday, January 7, 2002 (67 FR 705), proposed to modify Class E Airspace at Frankfort, MI. An incorrect Airspace Docket No. 00–AGL–08 was assigned to the proposal, and in addition, the following errors were contained in the legal description: Incorrect longitude for the Frankfort Dow Memorial Field Airport, an incorrect MBL VOR/DME radial was used to describe the extension, and the latitude and longitude for the MBL VOR/DME was omitted. This action corrects these errors.

Accordingly, pursuant to the authority delegated to me, the errors for the Class E Airspace, Frankfort, MI, as published in the **Federal Register** Monday, January 7, 2002 (67 FR 705), (FR Doc. 02–250), are corrected as follows:

1. On page 705, column 2, in the heading, and column 3, under ''Comments Invited'', correct the Airspace Docket No. to read ''01–AGL–08.''

§ 71.1 [corrected]

2. On page 706, column 2, correct the legal description of the airspace designation as follows:

a. Add the following immediately below ''AGL MI E5 Frankfort, MI [REVISED]'': Manistee VOR/DME (Lat. 44°16′14″ N., long 86°15′14″ W.)

b. Correct the Frankfort Dow Memorial Field Airport longitude to read:

''Long. 86°12′02″ W.''

c. Correct ''Manistee VOR/DME 186° radial'' to read ''Manistee VOR/DME 006° radial.''

Issued in Des Plaines, Illinois on February 6, 2002.

Richard K. Petersen,

Assistant Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–5119 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 502

RIN 3141–AA10

Definitions: Electronic or Electromechanical Facsimile; Games Similar to Bingo; Electronic, Computer or Other Technologic Aid to Class II Games

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Proposed Rule for Final Comment.

SUMMARY: The National Indian Gaming Commission (Commission) proposes to clarify the regulatory definitions of three key terms in the Indian Gaming Regulatory Act, ''electronic and electromechanical facsimile'', ''games similar to bingo'' and ''electronic, computer or other technologic aid to Class II gaming''. The Commission believes that these amendments may simplify the classification of games.

DATES: Comments may be submitted on or before April 22, 2002.

FOR FURTHER INFORMATION CONTACT: Penny Coleman, at 202/632–7003 or, by fax, at 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701–2721, enacted on October 17, 1988, established the Commission. Under the Act, the Commission is charged with regulating gaming by Indian tribes. On April 9, 1992, the Commission issued a final rule defining several key terms that were not fully defined in the statute. In light of the experience that it has developed in the past ten years in working with these definitions, the Commission believes that it may be time to reevaluate some of these definitions. Accordingly, on June 22, 2001, the Commission published a Proposed Rule seeking public comment on the proposed removal of the existing definition of ''electronic or electromechanical facsimile'' from the Commission's regulations and using instead the plain language interpretation that seems to have been preferred by the courts.

The Commission received numerous comments to this proposed rule, a majority of which indicated support for the proposal. However, even many of the supportive comments expressed the view that removing the current definition was merely a first step in addressing the questions at issue. Several comments indicated that the Commission should remove the definition and replace it with another definition providing additional substantive guidance.

The Commission addresses these comments by proposing a new definition of ''electronic or electromechanical facsimile.'' In light of the comments, the Commission also proposes changes to two related definitions for which it seeks additional comment.

Regulatory Flexibility Act

To the extent that tribal gaming operations may be considered small businesses and therefore small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, this rule will not have a significant economic effect on a substantial number of small entities. Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business

Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions and does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

Takings

In accordance with Executive Order 12630, the Commission has determined that this rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of General Counsel has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. Instead, the rule is likely to decrease litigation with Indian tribes and reduce unnecessary friction between the Department of Justice and the Commission.

Paperwork Reduction Act

This regulation does not require an information collection under the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The Commission has analyzed this rule in accordance with the criteria of the National Environmental Policy Act. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is not required.

List of Subjects in 25 CFR Part 502

Gaming, Indian lands.

For the reasons set forth in the preamble, the National Indian Gaming Commission proposes to amend 25 CFR Part 502 as follows:

PART 502—DEFINITIONS OF THIS CHAPTER

Authority: 25 U.S.C. 2701 *et seq.*

1. Revise § 502.7 to read as follows:

§ 502.7 Electronic, computer or other technologic aid.

(a) Electronic, computer or other technologic aid means any machine or device, such as a computer, telephone, cable, television, screen, satellite, or bingo blower, that when used—

(1) Is not a game of chance but merely assists a player or the playing of a game;

(2) Is readily distinguishable from the playing of an electronic or electromechanical facsimile of a game of chance; and

(3) Is operated according to applicable Federal communications law.

(b) Other examples of an electronic, computer or other technologic aid may include, but are not limited to, equipment that allows communication between and among gaming sites, electronic cards (player stations) for participants in bingo games, and machines or devices that read and/or dispense pull-tabs.

2. Revise § 502.8 to read as follows:

§ 502.8 Electronic or electromechanical facsimile

Electronic or electromechanical facsimile means a game played in an electronic or electromechanical format that replicates a game of chance by incorporating all of the fundamental characteristics of the game and that is not an electronic, computer or technologic aid to a Class II game.

3. Revise § 502.9 to read as follows:

§ 502.9 Games similar to bingo

Pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo means games played with a finite deal, and established prizes, that are preprinted and use paper or other tangible medium, such as, break open or scratch off tickets.

Dated: March 15, 2002.

Elizabeth L. Homer,

Vice Chair.

Teresa E. Poust,

Commissioner.

[FR Doc. 02–6806 Filed 3–21–02; 8:45 am]

BILLING CODE 7565–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Chapter IV

[CMS–6012–NOI]

RIN 0938–AL13

Medicare Program; Establishment of Special Payment Provisions and Standards for Suppliers of Prosthetics and Certain Custom-Fabricated Orthotics; Intent to Form Negotiated Rulemaking Committee

AGENCY: Centers for Medicare and Medicaid Services, HHS.

ACTION: Notice of intent.

SUMMARY: We are statutorily mandated under section 427 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) to establish a negotiated rulemaking committee in accordance with the Negotiated Rulemaking Act and the Federal Advisory Committee Act (FACA). The committee's purpose would be to negotiate the development of a rule regarding the special payment provisions and requirements set forth in section 427 of BIPA for suppliers of prosthetics and certain custom-fabricated orthotics. The committee would consist of representatives who are likely to be significantly affected by the proposed rule. The committee would be assisted by a neutral facilitator.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on April 22, 2002.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6012-NOI, P.O. Box 8013, Baltimore, MD 21244–8013.

Mail a separate copy of written comments to the following address: Kathryn Cox, Office of Financial Management, Mail Stop C3–02–16, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays. If you prefer, you may deliver your written comments (1 original and 3 copies) by courier to one of the following addresses: Hubert H. Humphrey Building, Room 443–G, 200 Independence Avenue, SW., Washington, DC, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–6012–NOI.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Kathryn Cox, (410)786–5954; Lynn Sylvester, (202) 606–9140 or Ira Lobel, (518) 431–0130.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7197.

Background

I. Negotiated Rulemaking Act

The Negotiated Rulemaking Act (Pub. L. 101–648, 5 U.S.C. 561–570) establishes a framework for the conduct of negotiated rulemaking and encourages agencies to use negotiated rulemaking to enhance the informal rulemaking process. Under the Negotiated Rulemaking Act, the head of an agency must consider whether—

- There is a need for a rule;
- There are a limited number of identifiable interests that will be significantly affected by the rule;
- There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who can adequately represent the interests identified and are willing to negotiate in good faith to reach a consensus on the proposed rule;
- There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;
- The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of a final rule;
- The agency has adequate resources and is willing to commit those resources, including technical assistance, to the committee; and
- The agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed policy as the basis for the rule proposed by the agency for notice and comment.

Negotiations are conducted by a committee chartered under the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2). The committee includes an agency representative and is assisted by a neutral facilitator. The goal of the committee is to reach consensus on the language or issues involved in a proposed rule. If consensus is reached, the committee will transmit a report to the agency containing a proposed rule. The agency may use the report as the basis of the agency's proposed rule. The process does not affect otherwise applicable procedural requirements of FACA, the Administrative Procedure Act, and other statutes.

II. Subject and Scope of the Rule

A. Need for the Rule

Section 427 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), enacted on December 21, 2000, requires the Secretary of Health and Human Services to establish the following using negotiated rulemaking procedures:

- Standards for those who bill Medicare for prosthetics and certain custom-fabricated orthotics.
- A list of custom-fabricated orthotics that are subject to the supplier qualification set forth in section 427 of BIPA.

B. Subject and Scope of the Rule

Section 1834(h) of the Social Security Act (the Act) provides for payment of ''orthotics and prosthetics,'' that are described in section 1861(s)(9) of the Act and in our regulations (see 42 CFR 414.202). Orthotics are leg, arm, back, and neck braces. Prosthetics are defined as artificial legs, arms, and eyes, including replacements if required because of a change in the beneficiary's physical condition.

Prosthetics and orthotics which are mainly covered under Medicare Part B, must be reasonable and necessary for the diagnosis or treatment of an illness or injury or to improve a malformed body member. Historically, there has been no Medicare requirement that a supplier of prosthetics or orthotics be certified or meet educational requirements other than what a State may require. Presently, fewer than 10 States have licensing requirements for suppliers of prosthetics and orthotics.

In an OIG report, ''Medicare Orthotics,'' by Inspector General June Gibbs Brown, October 1997 (0EI–02–95–00380), the OIG recommended that we take action to improve Medicare billing for orthotics. Specifically, they recommended that we require standards for suppliers of custom-molded and custom-fabricated orthotics.

According to the Congress' mandate under section 427 of BIPA, Medicare will cover prosthetics and certain custom-fabricated orthotics only if furnished by a ''qualified practitioner'' and fabricated by a ''qualified practitioner'' or ''qualified supplier.'' A ''qualified practitioner'' is defined as—

- A physician, a qualified physical or occupational therapist, and a State-licensed orthotist or prosthetist; or
- In States that do not issue those licenses, a trained individual who is either: (1) Certified by either the American Board of Certification in Orthotics and Prosthetics, Inc. (ABC) or the Board for Orthotist/Prosthetist Certification (BOC), or (2) who is credentialed by a program that the Secretary determines, in conjunction with appropriate experts, has sufficient training and education standards.

A ''qualified supplier'' is defined as any entity that is accredited by—

- ABC or BOC; or
- A program that the Secretary determines has equivalent accreditation and approval standards.

We are required to use a negotiated rulemaking procedure to establish (1) a list of prosthetics and custom-fabricated orthotics subject to this provision, and (2) criteria for acceptable accreditation and credentialing programs for qualified practitioners and suppliers.

C. Issues and Questions To Be Resolved

We anticipate discussion on the issues outlined below. We invite public comment on other issues not identified that would be within the scope of the rule.

1. What/who will be covered by the rule?
   a. Custom-fabricated orthotics.
   b. Practitioners (who does that include?).
   c. The definition of a ''positive model'' as set forth in the statute.
   d. Interface among practitioners, facilities, and manufacturers.
2. How will practitioners obtain certification and/or credentialing?
   a. Provisions for grandfathering.
   b. Education and experience requirements.
   c. Provisions for loss of certification.
   d. State requirements.
   e. Should there be different certifications for practitioners, manufacturers, and facilities?
   f. Rural areas.
3. Who will certify?
   a. States.
   b. Professional organizations.
   c. Other (for example, educational institutions).
4. Management of the program
   a. CMS's role.
   b. Interface among CMS, the certifying bodies, and the State licensing

boards.

With regard to matters outside the scope of the rule, we do not plan to negotiate the process or procedures for updating the list of codes for custom-fabricated orthotics subject to the rule.

III. Affected Interests and Potential Participants

The convener interviewed numerous organizations to identify potential participants whose interests would be affected by the proposed rule. The description of those organizations, together with the convener's finding can be viewed at *www.hcfa.gov/medicare/enrollment/CONVRPT.htm.* The convener has proposed and we agree to accept the following organizations as negotiation participants. We believe these organizations represent an appropriate mix of interests and backgrounds:

- ABC.
- BOC.
- National Community Pharmacy (NCP).
- National Commission of Orthotic and Prosthetic Education (NCOPE).
- American Academy of Orthotists and Prosthetists.
- National Association for the Advancement of Orthotists and Prosthetists (NAAOP).
- American Physical Therapy Association (APTA).
- American Orthotic and Prosthetic Association (AOPA).
- National Orthotic Manufacturers Association (NOMA).
- International Association of Orthotics and Prosthetics (IAOP).
- Hanger Prosthetics.
- Point Health Centers.
- Coalition of Illinois and Florida certification boards.
- Coalition of State associations representing orthotists and prothetists.
- Paralyzed Veterans of America (PVA).
- National Association for Long Term Care (NALTC).

We invite comment on this list of negotiation participants. The intent in establishing the negotiating committee is that all interests are represented, not necessarily all parties. We believe this proposed list of participants represent all interests associated with the rule to be negotiated.

Groups or individuals who wish to apply for a seat on the committee should respond to this notice within 30 days of its publication. They should provide detailed information regarding the following:

- A description of the interest they represent.
- Evidence that they are authorized to represent parties related to the interests they propose to represent.
- A written commitment that they will actively participate in good faith in the development of the regulation.
- Reasons why the proposed committee could not adequately represent their interest.

IV. Schedule for the Negotiation

We have set a deadline of 6 months beginning with the date of the first meeting for the committee to complete work on the proposed rule. We intend to terminate the activities of the committee if it does not appear likely to reach consensus on a schedule that is consistent with our rulemaking needs.

The first and second meeting dates and times will be published in the **Federal Register**. The purpose of the first meeting will be to discuss in detail how the negotiations will proceed and how the committee will function. The committee will agree to ground rules for committee operation, determine how best to address the principal issues, and, if time permits, begin to address those issues.

We expect that by the second meeting, the committee can complete action on any procedural matters outstanding from the organizational meeting and either begin or continue to address the issues.

V. Formation of the Negotiating Committee

A. Procedure for Establishing an Advisory Committee

As a general rule, an agency of the Federal government is required to comply with the requirements of FACA when it establishes or uses a group that includes non-Federal members as a source of advice. Under FACA, an advisory committee is established only after both consultations with the General Services Administration and receipt of a charter. We have prepared a charter and initiated the requisite consultation process. Only upon successful completion of this process and the receipt of the approved charter will we form the committee and begin negotiations.

B. Participants

The number of participants on the committee is estimated to be 16 and should not exceed 25 participants. A number larger than this could make it difficult to conduct effective negotiations. One purpose of this notice is to help determine whether the proposed rule would significantly affect interests not adequately represented by the proposed participants. We do not believe that each potentially affected organization or individual must necessarily have its own representative. However, each interest must be adequately represented. Moreover, we must be satisfied that the committee as a whole reflects a proper balance and mix of interests.

C. Requests for Representation

If, in response to this notice, an additional individual or representative of an interest requests membership or representation on the negotiating committee, we will determine, in consultation with the facilitator, whether that individual or representative should be added to the committee. We will make that decision based on whether the individual or interest—

- Would be significantly affected by the rule; and
- Is already adequately represented in the negotiating committee.

D. Establishing the Committee

After reviewing any comments on this notice and any requests for representation, we will take the final steps to form the committee.

VI. Negotiation Procedures

When the committee is formed, the following procedures and guidelines will apply, unless they are modified as a result of comments received on this notice or during the negotiating process.

A. Facilitator

We will use a neutral facilitator. The facilitator will not be involved with the substantive development or enforcement of the regulation. The facilitator's role is to—

- Chair negotiating sessions;
- Help the negotiation process run smoothly; and
- Help participants define and reach consensus.

B. Good Faith Negotiations

Participants must be willing to negotiate in good faith and be authorized to do so. We believe this may be best accomplished by selection of senior officials as participants. We believe senior officials are best suited to represent the interests and viewpoint of their organizations. This applies to us, and we are designating Hugh H. Hill III, M.D., J.D., Medical Officer, Program Integrity Group, Office of Financial Management.

C. Administrative Support

We will supply logistical, administrative, and management

support. If it is deemed necessary and appropriate, we will provide technical support to the committee in gathering and analyzing additional data or information.

D. Meetings

Meetings will be held in the Baltimore/Washington area (or in another location) at the convenience of the committee. We will announce committee meetings and agendas in the **Federal Register**. Unless announced otherwise, meetings are open to the public.

E. Committee Procedures

Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the detailed procedures for committee meetings, which they consider most appropriate.

F. Defining Consensus

The goal of the negotiating process is consensus. Under the Negotiated Rulemaking Act, consensus generally means that each interest concurs in the result unless the committee defines the term otherwise. We expect the participants to fashion the committee's working definition of this term.

G. Failure of Advisory Committee to Reach Consensus

If the committee is unable to reach consensus, we will proceed to develop a proposed rule. Parties to the negotiation may withdraw at any time. If this happens, we and the remaining committee members will evaluate whether the committee should continue.

H. Record of Meetings

In accordance with FACA's requirements, minutes of all committee meetings will be kept. The minutes will be placed in the public rulemaking record.

I. Other Information

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 9, 2002.

Thomas A. Scully,

Administrator, Center for Medicare and Medicaid Services.

Dated: February 22, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–6952 Filed 3–21–02; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 02–10; FCC 02–18]

Procedures To Govern the Use of Satellite Earth Stations on Board Vessels in Bands Shared With Terrestrial Fixed Service

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: This document solicits comments on the authorization of satellite earth stations on board vessels (ESVs). The item contemplates that authorizing ESVs on a more clearly-defined basis, through the adoption of specific rules governing their use, may benefit potential users and service providers by creating regulatory certainty. Some ESVs are already in operation: the International Bureau (Bureau) and the Office of Engineering Technology (OET) (jointly, the Bureaus) have granted two companies waivers to operate ESVs and have granted one company Special Temporary Authorities (STAs) with conditions. However, there are existing terrestrial fixed users in some of the bands identified for ESV operations. Consequently, the Commission solicits comment on potential methods for licensing of ESVs that would help ensure that ESV operations would not cause harmful interference to, nor limit the growth of, terrestrial fixed services operating in the same band.

DATES: Submit comments on or before April 19, 2002; reply comments due on or before May 3, 2002.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Breck Blalock, International Bureau, (202) 418–8191 or Trey Hanbury, International Bureau (202) 418–0766.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Inquiry,* IB Docket No. 02–10, adopted January 23, 2002 and released February 4, 2002. The full text of this *Notice of Inquiry* is available for inspection and copying during normal business hours in the FCC Reference Room, Room CY–A257, Portals II, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (''ITS''), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Interested parties may file comments by using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998. The Commission will consider all relevant and timely comments prior to taking final action in this proceeding. To file formally, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Parties not filing via ECFS are also encouraged to file a copy of all pleadings on a 3.5-inch diskette in Word 97 format.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message: ''get form <your e-mail address.'' A sample form and directions will be sent in reply.

Synopsis

1. In this Notice of Inquiry (NOI) the Commission seeks comment on the appropriateness of and potential methods for authorizing ESVs within its existing regulatory scheme. Such an authorization would take the place of the current system of extending or creating *ad hoc* special temporary authorities (STAs)—and allow ESV operation while protecting existing fixed service (FS) operations. The Commission seeks comment on all aspects of potential licensing, including whether and how such licensing should go forward, and how interference to

terrestrial fixed licensees can be mitigated to the greatest extent possible.

2. The Bureaus have authorized two companies to operate ESVs on a waiver and STA basis since 1996: Crescomm (now known as MTN) and Qualcomm, Inc. Waivers and STAs are usually reserved for special circumstances and are not meant to circumvent normal licensing procedures. In examining the broad associated issues, the Commission seeks comment on the necessity of ESV licensing: do services exist that render ESV licensing superfluous? Do ESVs provide services that are unavailable through other means? Could MTN and other companies find other ways to offer similar service? Are there alternatives to ESV licensing, including continuing to grant waivers? The Commission seeks comment on any alternatives and whether/why the alternative is preferable to ESV licensing. As ESV service has now been operational in some form for five years, and as MTN seeks to expand the service, the Commission seeks general comment on whether the time is ripe for developing rules for licensing ESV service. Lastly, the Commission seeks comment on any other issues that commenters deem relevant as the Commission considers the wisdom of advancing ESV licensing.

(a) Regulatory Issues

3. The Commission seeks comment on all issues pertaining to the regulatory status of ESVs. An initial question to address is: in which bands could ESVs best be accommodated?

4. Specifically, the Commission seeks comment on the use of compatible and available bands for operation of ESV systems. The Commission seeks comment on the ability of bands that are currently allocated for MSS to provide for ESV systems. If MSS bands will not adequately provide for this service, the Commission seeks comment on which FSS bands should be considered for ESV operation. If the Commission were to determine that ESVs may operate in FSS networks, would the Commission need to modify the Table of Frequency Allocations to accommodate such use (e.g., through a footnote addition)? Although the 1996 *Crescomm Order* described ESVs as providing mobile-satellite service earth stations, the ITU has recognized that ESVs may operate in FSS networks.

5. ESV operators have used the C-band to date, and are now beginning to use the Ku-band. Due to the multiple modes of ESV operation, should the Commission allow Ku-band operation of ESVs either as an adjunct to C-band operation or in some cases as a replacement for the C-band? The Commission seeks comment on the continued use of C-band and any additional use of Ku-band.

6. ESV operations began in C-band because: (1) These satellite networks can provide broad coverage, which permits ships to communicate from anywhere at sea; and (2) the equipment was readily available. The problem with use of the C-band for ESV operations is that in many countries the band is heavily used by terrestrial microwave systems operating in the FS. As ESVs approach the coast, the potential for interference to FS operations increases, necessitating coordination of ESV use with FS operations so as not to cause interference. Use of the Ku-band in coastal areas is being considered in lieu of coordinating with C-band fixed-service operations. Most countries do not have terrestrial services operating in the satellite uplink portion of the Ku-band and thus coordination may be easier in those areas. The difficulty with using Ku-band is that space station antennas usually provide only spot beam coverage in coastal areas rather than the broader coverage provided in C-band. In this case, for ESVs operating well beyond the coast, communication would be impossible using only Ku-band. The Commission seeks comment on use of the Ku-band generally.

7. ESVs could use the Ku-band in a variety of ways. ESVs could operate in a dual-band mode, using both C-band and Ku-band. If dual-band operation were to be adopted and ESVs operate in C-band while operating at sea, then within some previously-defined minimum distance from shore ESVs could switch to the Ku-band. The Commission seeks comment on dual-band operation.

8. Additionally, where ESVs serve ships that travel only in an area near the coast, the Ku-band could be used exclusively. For example, if a cruise ship only travels around the Hawaiian islands, it is possible that the more limited footprint of the Ku-band would still cover that ship in all three modes: at port, at sea, and while entering or exiting port. In that case, by operating exclusively in the Ku-band, the ESV operation would not have to be coordinated with terrestrial services since such services do not operate in the Ku-band. The Commission seeks comment on whether an ESV on such a limited-range ship could be licensed in the Ku-band instead of the C-band.

(b) Appropriate Licensing Approach and Restrictions

9. The Commission seeks comment on the appropriate licensing approach and restrictions for potential ESV operations. One method for such licensing could be a special restricted class of earth stations. While the Commission is considering the use of other bands (as discussed above), we seek comment on whether ESV licensing under part 25 of the Commission's rules within FSS networks, and with certain restrictions, would be the most appropriate. The bands currently being used, C-band and Ku-band, are allocated to the FSS both domestically and internationally. If the Commission does license ESVs as a special restricted class of earth station, it seeks comment on what those restrictions should be. Alternatively, if the Commission were to license ESVs as MSS earth stations, it seeks comment on what other regulatory changes would be required? Would it be necessary to change our domestic frequency allocations table to provide a maritime mobile-satellite service allocation at C-band and Ku-band, and would any other changes be required to allow these stations to communicate through existing FSS networks? The Commission further notes that the Bureau considered ESV dockside operations in January 2000 and June 2001 and concluded that because ESVs would be operating only intermittently, the service would be better classified as a temporary-fixed service. The Commission requests further comment on the appropriate licensing of dockside operations of ESVs.

10. Other regulatory issues include potential conditions on ESV licenses. One possible restriction might be continuing the condition contained in the current STA and waiver authorizations prohibiting ESV operations from causing harmful interference to any entity operating in conformance with the Table of Frequency Allocations. In other words, if licensed, all ESV operations would be required to cease immediately upon notification of unacceptable interference being caused to a fixed service station. The Commission seeks comment on this potential condition, and on whether all ESV operators should be required to forward any complaints of radio interference to the Commission immediately, in writing. Additionally, the Commission seeks comment on whether it would be appropriate for the Commission to impose additional obligations on the FSS earth stations that provide the gateway facilities for ESVs to ensure that ESV transmissions that cause unacceptable interference are immediately terminated, whether those ESV stations are U.S.-licensed or foreign-licensed. The Commission asks

if it should adopt any additional rules that would allow us to take punitive action against FSS gateway facilities that provide service to ESV stations (whether foreign or domestic) that repeatedly cause unacceptable interference to fixed service stations. If so, what standard of proof should the Commission meet if and when it seeks to impose such sanctions on FSS gateway facility operators? What standard of proof should be required of interested parties requesting that we impose such standards? How could the Commission coordinate with foreign-licensed vessels?

11. In February 1997, MTN was granted an STA to operate its ESVs on a non-harmful interference basis when the ships it served were in or near one of four U.S. seaports. More recently, MTN was authorized to provide ESV service in motion to or from one of 17 U.S. seaports. The Commission seeks comment on whether the Commission should continue to allow in-motion operations in the future. Alternatively, would the potential for interference be significantly reduced by limiting ESV operations only to ''in or near'' U.S. seaports as initially authorized. If so, how would this affect the services currently provided by ESVs.

12. Other possible restrictions that could be placed on ESV licensees include: specifying a minimum antenna elevation angle (e.g. coordination to a specific satellite), specifying a minimum antenna diameter and maximum half-power antenna beamwidth, and also specifying the antenna tracking accuracy required for the ESV operation. The Commission could also require that ESV applicants specify the minimum amount of spectrum needed to perform the necessary service and that they limit the maximum ESV transmitter power. This would result in greater spectrum efficiency and a decreased potential for interference in bands where coordination with terrestrial services would be necessary. Additionally, the ESV licenses could be limited to a term of 1 to 3 years so that ESV operation could be closely monitored and, in bands where coordination was necessary, fixed service operational changes could be implemented efficiently. Finally, the Commission seeks comment on a requirement that ESV services be limited to receive-only. While the Commission recognizes that such a restriction may limit somewhat the commercial appeal of the ESV service, a receive-only restriction would virtually eliminate the interference issues that are of such concern, particularly in the C-band. The Commission would like to develop a record on the pros and cons of a receive-only restriction. The Commission seeks comment on these or other potential special restrictions.

13. The Commission also seek comment on coordination issues. Ultimately, the Commission's preference is to prevent interference before it occurs. Under usual coordination procedures for FSS, the entire C-band is coordinated. Similarly, the entire visible geostationary satellite orbital arc is generally coordinated. ESVs, however, use considerably less than a full band. Therefore, ESVs could be coordinated to specific satellites, which would limit their azimuth and commensurately limit the portion of the visible arc they would use. The Commission seeks comment on use of this special method of coordination and on any other regulatory issues that the Commission should consider going forward.

(c) Interference Issues

(1) Determining the Distance From Shore Beyond Which Unacceptable Interference Should Not Be Possible

14. If ESV licensing goes forward, determining the distance from shore outside of which interference from ESVs to FS operations will not occur (Distance From Shore) would be critical to successful ESV/FS coordination. The Commission seeks comment on the appropriate Distance From Shore. A Distance From Shore of 200 km may be suggested for two reasons. The current practice of the frequency coordinators requires a search of up to 125 statute miles radius (approx. 200 km) around the proposed location of a new FSS earth station to ascertain if there is potential for interference. This method has been effective for more than twenty years, preventing interference to FS from FSS. The U.S. has presented to ITU–R Working Party 4–9S a series of calculations that suggest that a distance as low as 165 km might be adequate as a coordination distance. Increasing the Distance From Shore from 165 km to 200 km would provide an added degree of protection to FS stations operating in the same band with ESVs, and would be consistent with current domestic procedures for FS–FSS coordination. The Commission seeks comment on this rationale, and on other factors, if any, that should be considered in calculating the appropriate Distance From Shore.

(2) Coordination of Operation Within a Distance Where Unacceptable Interference Might Occur

15. Once the Distance From Shore is determined, the question remains: how would operations be coordinated inside the Distance From Shore to eliminate unacceptable ESV interference to FS operations but still allow ESV operation inside the Distance From Shore? This determination, in the international context, is being addressed within the ITU–R through the calculation of a Composite Area within which interference to fixed stations from ESVs operating in motion near a coastline need to be evaluated. The Commission seeks comment on whether the use of the Composite Area calculations could also serve as the basis to determine this area in a domestic context. Commenters should address whether this method examines all of the factors relevant to determining the potential for interference to fixed stations by ESVs. The Commission seeks comment on whether the use of the Composite Area to address concerns about interference within the Distance From Shore is sufficient, or whether other factors must be considered.

16. The Commission seeks comment on the process for calculating the Composite Area. The Commission also seeks comment on, in general, the Composite Area method for evaluating the potential for interference to fixed stations from ESVs, as well as any other factors that should be considered. Finally, the Commission seeks comment on any alternatives to the Composite Area method for evaluating the potential for interference.

(3) Prevention and Resolution of Interference

17. The Commission also seeks general comment on how to handle anticipated interference issues. It is particularly interested in comments on whether the operation of existing MTN systems has in fact caused interference to other operations. The *Crescomm Order* states that ''[t]he mobile nature of the MSS stations makes it extremely difficult to prevent interference and to identify the interference source.'' Further, the fixed community has stated in an *ex parte* statement that interference from a moving ship is all but impossible to trace and that in-motion operations have not been adequately coordinated as required. The Commission believes that if it licenses ESVs, flexible, efficient and continuous coordination would be the key component to ensuring that ESVs do not cause unacceptable interference to FS stations. In order to ensure this coordination truly is successful, it would be necessary for all parties to be able to identify the ESVs that may be coming into a given port in order to effectuate such coordination, including

the precise routes and schedules used by these vessels. One approach to facilitating information exchange could be a requirement for both the ESV operators and coastal administrations to keep a publicly available list of all ESVs that have been licensed or otherwise granted authority to operate in their area. It also may facilitate communication if the harbormaster is provided this information. The Commission seeks comment on requiring real-time location tracking and that more timely information be made available (e.g., on the Internet). For example, the Commission notes that there are many tracking devices commercially available that provide very precise location based on GPS tracking. The Commission seeks comment on the feasibility and adequacy of these possible measures to ensure proper coordination.

18. Other approaches to providing the information necessary to ensure that ESVs do not cause unacceptable interference to the FS include: First, that ESV licenses indicate the name of the ESV operator and a point of contact, as well as the name of the vessel and a method by which to contact the ship directly (for instance, the ship's Inmarsat number); second, the license could list the frequencies that have been cleared for use by that ESV; and third, a website with all information on licensed ESVs could be created for the purpose of such coordination. Thus, if there were any interference reported, all parties would have information to quickly identify its source by contacting the coastal administration, the harbormaster, a website, or the ESV operator. If the ESV were a non-primary licensee, the ESV station would be required to cease operation immediately if it causes interference. The Commission seeks comment on these ideas for information exchange. In this regard, the Commission seeks comment on whether we should require an ESV system to include a means of identification and automatic mechanisms to terminate transmissions whenever the ESV operates outside its operational limits or is identified as the source of interference. How can the Commission enforce the requirements for preventing and resolving unacceptable interference? The Commission seeks comment on these and other ideas to exchange information, to prevent unacceptable interference, and to resolve interference issues should they arise.

19. Shorter license terms might also be an incentive for ESV operators to assist with the resolution of interference complaints, in that if an ESV station was reported to be interfering on a regular basis and was being in any way uncooperative with the FS station licensee, the ESV license may not be renewed. The Commission seeks comment on the appropriateness of a 1–3 year license term. The shorter terms might provide incentive for ESV operators to carefully coordinate their arrival and at-port use with FS stations. The Commission seeks comment on the concept of shorter licensing terms and other issues related to coordination.

Deadlines and Instructions for Filing Comments

Under §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the *Notice of Inquiry* on or before April 19, 2002. Reply comments are due May 3, 2002. Interested parties may file comments by using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. The Commission will consider all relevant and timely comments prior to taking final action in this proceeding. To file formally, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC. 20554. Parties not filing via ECFS are also encouraged to file a copy of all pleadings on a 3.5-inch diskette in Word 97 format.

Ordering Clause

Accordingly, *it is ordered* that pursuant to the authority contained in sections 1, 4(i), 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 308 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), 308, this *Notice of Inquiry is adopted.*

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–6917 Filed 3–21–02; 8:45 am]

BILLING CODE 6712–02–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020313058–2058–01; I.D. 030402A]

RIN 0648–AP07

Fisheries of the Northeastern United States; Proposed 2002 Specifications for the Spiny Dogfish Fishery; Regulatory Amendment

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the spiny dogfish fishery for the 2002 fishing year, which is May 1, 2002, through April 30, 2003. The implementing regulations for the Spiny Dogfish Fishery Management Plan (FMP) require NMFS to publish specifications for the upcoming fishing year and to provide an opportunity for public comment. The intent is to specify the commercial quota and other management measures, such as trip limits, to address overfishing of the spiny dogfish resource. This proposed rule would make a correction to the Spiny Dogfish regulations to indicate that the target fishing mortality rate (F) specified for the period May 1, 2003 – April 30, 2004 should be F=0.03.

DATES: Public comments must be received (see **ADDRESSES**) no later than 5 p.m. eastern standard time on April 8, 2002.

ADDRESSES: Written comments on the proposed specifications should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope, ''Comments—2002 Spiny Dogfish Specifications.'' Comments may also be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of supporting documents used by the Joint Spiny Dogfish Committee and the Spiny Dogfish Monitoring Committee; the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA); and the Essential Fish Habitat Assessment (EFHA) are available from Daniel Furlong, Executive Director, Mid-Atlantic

Fishery Management Council, Federal Building, Room 2115, 300 South Street, Dover, DE 19904. The EA, RIR, IRFA and EFHA are accessible via the Internet at *http:/www.nero.gov/ro/doc/nero.html*.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Van Pelt, Fishery Policy Analyst, (978)281-9244, fax (978)281-9135, e-mail *bonnie.l.vanpelt@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Spiny dogfish were declared overfished by NMFS on April 3, 1998, and added to that year's list of overfished stocks in the *Report on the Status of the Fisheries of the United States*, prepared pursuant to section 304 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Consequently, the Magnuson-Stevens Act required the preparation of measures to end overfishing and to rebuild the spiny dogfish stock. A joint FMP was developed by the Mid-Atlantic and New England Fishery Management Councils (Councils) during 1998 and 1999. The Mid-Atlantic Fishery Management Council (MAFMC) was designated as the administrative lead on the FMP.

The regulations implementing the FMP at 50 CFR part 648, subpart L, outline the process for specifying annually the commercial quota and other management measures (e.g., minimum or maximum fish sizes, seasons, mesh size restrictions, trip limits, and other gear restrictions) for the spiny dogfish fishery to achieve the annual target F specified in the FMP. The target F for the 2002 fishing year is 0.03.

The Spiny Dogfish Monitoring Committee (Monitoring Committee), comprised of representatives from states, MAFMC staff, New England Fishery Management Council (NEFMC) staff, NMFS staff and two non-voting, ex-officio industry representatives (one each from the MAFMC and NEFMC regions) is required to review annually the best available information and to recommend a commercial quota and other management measures necessary to achieve the target F for the upcoming fishing year. The Council's Joint Spiny Dogfish Committee (Joint Committee) then considers the Monitoring Committee's recommendations and any public comment in making its recommendation to the two Councils. Afterwards, the MAFMC and the NEFMC make their recommendations to NMFS. NMFS reviews those recommendations to assure they are consistent with the target F level, and publishes proposed measures for public comment.

Monitoring Committee Recommendations

The Monitoring Committee met on September 11, 2001, to review updated stock assessment information. Based on a 3–year average (1999–2001), fishing mortality was estimated at F= 0.27, far above the overfishing threshold level of 0.11. This level of F reflects overfishing in the fishery before the FMP was implemented. Using 1999-2001 Northeast Fisheries Science Center (NEFSC) spring survey trawl data and commercial landings data through 2000, the Monitoring Committee noted a reduction in the biomass of adult females (>80 cm) throughout the time series (1978 - 2001). The average size of female dogfish has declined from greater than 8.8 lb (4 kg) in 1987 to about 4.40 lb (2 kg) in 2000. Since 1990, the estimate of mature female biomass has declined steadily. The decline in estimated biomass of mature females and large males is consistent with cumulative removals from a slow growing stock. These results suggest that total removals have exceeded productive capacity of the stock. The 3–year average of swept area female biomass (>80 cm) for the period 1999 – 2001, has declined to about 34 percent of the recommended biomass rebuilding target (B_{msy}) of 200,000 mt (441 million lb).

NEFMC survey data show a reduction in the biomass of spiny dogfish pups based on the decline in biomass of dogfish less than 35 cm (13.8 inch). The survey indices for pups have continued to be the lowest in the 33–year time series for the past 5 consecutive years (1997 - 2001), indicating recruitment failure.

The Monitoring Committee estimated the yield associated with a F=0.03 for 2002 to be 4.0 million lb (1.81 million kg), assuming the current stock size. The Monitoring Committee recommended a 4–million pound (1.81-million kg) commercial quota for spiny dogfish for the 2002–2003 fishing season, divided into the two semi-annual periods as specified in the FMP: 57.9 percent for quota period 1 (May–October), or 2,316,000 lb (1.05 million kg), and 42.1 percent for quota period 2 (November-April), or 1,684,000 lb (763,849 kg). The Monitoring Committee also recommended maintaining a trip limit of 600 lb (272 kg) for quota period 1 and 300 lb (136 kg) for quota period 2 (vessels are prohibited from landing more than the specified amount in any one calendar day). The Monitoring Committee also expressed concern that even the current restrictive rebuilding strategy may be too liberal to accomplish the rebuilding objectives of the FMP (i.e., rebuilding to SSBmax), even in the long term.

Joint Spiny Dogfish Committee Recommendations

The Joint Spiny Dogfish Committee (Joint Committee) met on September 28, 2001, to consider the recommendations of the Monitoring Committee, and to make a recommendation to the Councils. The Joint Committee recommended that the Councils, using whatever means necessary, adopt a fishing mortality rate for the 2002-2003 fishing season that would be consistent with a commercial quota of 8.8 million lb (4 million kg). In addition, the Joint Committee recommended trip limits of 7,000 lb (3,175 kg) for both quota periods.

Alternatives Proposed by the Councils

The MAFMC and NEFMC voted upon recommendations for year four (2002-2003) management measures at their respective meetings in October and November 2001. The MAFMC adopted the Monitoring Committee recommendations for a commercial quota of 4 million lb (1.81 million kg) and trip limits of 600 lb (272 kg) for quota period 1 (May 1 - Oct. 31) and 300 lb (136 kg) for quota period 2 (Nov. 1 – April 30). The NEFMC adopted the Joint Committee recommendation for a fishing mortality rate consistent with a commercial quota of 8.8 million lb (4 million kg), and trip limits of 7,000 lb (3,175 kg) for both quota periods.

Proposed 2002 Measures

At both Council meetings NMFS noted that it was not possible to modify the FMP target F through the annual specifications as was recommended by the NEFMC, because such a change would require an FMP amendment. NMFS reviewed both Councils' recommendations and concluded that the MAFMC recommendation would assure that the target F is not exceeded. NMFS proposes a commercial spiny dogfish quota of 4 million lb (1.81 million kg) for the 2002 fishing year to be divided into two semi-annual periods as follows: 2,316,000 lb (1.05 million kg) for Quota period 1 (May 1, 2001–Oct. 31, 2001); and 1,684,000 lb (763,849 kg) for Quota period 2 (Nov. 1, 2001–April 30, 2002). In addition, NMFS proposes to maintain trip limits of 600 lb (272 kg) for Quota period 1, and 300 lb (136 kg) for Quota period 2 to discourage a directed fishery. The directed fishery has traditionally targeted large mature female spiny dogfish, the stock

component that is most in need of protection and rebuilding. A trip limit level of 7,000 lb (3,175 kg) could result in a directed fishery, which is inconsistent with the rebuilding program. Maintaining the limits of 600 lb (272 kg) and 300 lb (136 kg) for Quota period 1 and Quota period 2, respectively, would allow for the retention of spiny dogfish caught incidentally while fishing for other species, but discourage directed fishing and, therefore, provide protection for mature female spiny dogfish.

This proposed rule would also make a correction to the spiny dogfish regulations, because they mistakenly specify a target F=0.08 to begin on May 1, 2003. The FMP requires that the target of F=0.03 be maintained through the end of the fishing year 2003–2004.

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

An IRFA was prepared that describes the impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows.

The small entities considered in the analysis include 488 vessels that have reported spiny dogfish landings to NMFS in 2000 (the most recent year for which there is vessel-specific data). In addition, there are vessels that are not subject to the Federal reporting requirements because they fish exclusively in state waters. It is not possible to identify these vessels, but some number of them are likely to be impacted. There is no reason to presume the impacts on these vessels would be substantially different from the impact on Federally-permitted vessels.

Furthermore, there are a large number of vessels that have been issued Federal spiny dogfish permits, but have not fished for spiny dogfish (a total of 2,079 vessels were issued the permit in 2001). It is presumed that these vessels are interested in the fishery but have chosen not to participate under the restrictive trip limits. If any of these vessels should choose to participate in the upcoming fishing year, they might experience revenue increases associated with landings of spiny dogfish but those increases cannot be estimated.

NMFS considered three alternatives. The action recommended in this proposed rule includes a commercial quota of 4 million lb (1.81 million kg), and trip limits of 600 lb (272 kg) during Quota period 1 and 300 lb (136 kg) during Quota period 2. Alternative 2 includes a commercial quota of 8.8 million lb (4 million kg) and trip limit of 7,000 lb (3,175 kg) for both quota periods. Alternative 3 evaluates the impact of having no management measures.

The potential changes in 2002 revenues under the 4 million lb (1.81 million kg) quota were evaluated relative to landings and revenues derived during 2001: 4.6 million lb (2.08 million kg) of landings, valued at $1,012,000. The analysis is based on the last full fishing year of landings data and assumed that the revenues of the 488 vessels that landed spiny dogfish in 2000 would be reduced proportionately by the proposed action. The reduction in overall gross revenues to the fishery as a whole was estimated to be about $132,000, or about $270 per vessel, compared to fishing year 2001.

The proposed trip limits of 600 lb (272 kg) in Quota period 1, and 300 lb (136 kg) in Quota period 2 represent a continuation of the trip limits established for fishing year 2001 and have no new impact. The trip limit analysis projected that, on average, under a 600 lb (272 kg) trip limit for quota period 1, landings exceeded the semi-annual quota of 2,316,000 lb (1.05 million kg) on about September 5, 2000 (128 days into the quota period). During Quota period 2, however, if a 300-lb (136–kg) possession limit was in effect, landings were projected not to exceed the semi-annual quota of 1,684,000 lb (763,849 kg). The analysis projected landings of only 615,000 lb (278,959 kg) during quota period 2. Thus, approximately 1,069,000 lb (484,890 kg) of allowable spiny dogfish landings were projected not to be landed. Although the commercial quota is 4 million lb (1.81 million kg), total projected landings would only reach 2.93 million lb (1.33 million kg). However, the analysis does not account for behavioral changes by vessel operators that could impact the amount of landings. Also, since vessels without Federal permits are not captured in the analysis, yet their landings count towards the quota, it is likely that additional landings will occur. In fact, during the 2001 fishing year, under identical trip limits and commercial quota, period 1 was open for 52 days under a 600-lb (272-kg) trip limit and period 2 was open for 20 days under a 300-lb (136-kg) trip limit.

Under Alternative 2, the quota would increase to 8.8 million lb (4 million kg). This represents an increase from landings in fishing year 2001 of 4.2 million lb (1.91 million kg), valued at $924,000. Assuming that the increase is shared among the 488 that landed spiny dogfish in fishing year 2000, each vessel would experience revenue increases of $1,893. However, this quota is inconsistent with the target F required by the FMP.

Under Alternative 2, trip limits of 7,000 lb (3,175 kg), the semi-annual quota of 5,095,200 lb (2.31 million kg) would be exceeded on average approximately 55 days into quota period 1 and the semi-annual quota of 3,704,800 lb (1.68 million kg) would be exceeded approximately 80 days into quota period 2.

Although more vessels would find it profitable to land spiny dogfish under a trip limit of 7,000 lb (3,175 kg) while the season is open, the season would close sooner than under the lower trip limits. Vessels may still be able to make profitable trips by directing on other species and landing up to the trip limit of 600 lb (272 kg) or 300 lb (136 kg) of spiny dogfish. Revenues from spiny dogfish alone would be minimal, but the lower trip limits would likely end the directed fishery, consistent with the FMP. If major spiny dogfish markets are eliminated as a result of low supply due to a low trip limit or quick closure of the fishery, much of the revenue from the spiny dogfish fishery would also be drastically reduced.

Under Alternative 3, with no quota or management measures, landings are projected to be 24.9 million lb (11,294 mt) in 2002–2003. This represents an increase from 2001 landings of 20.3 million lb (9.2 million kg). Increases in gross revenues to vessels would be about $4.5 million. Gross revenues for vessels engaged in the spiny dogfish fishery would be expected to increase, on average, by about $9,151 per vessel in fishing year 2002. Although unrestricted fishing would result in higher short-term landings and revenues, compared to fishing year 2001, this would be inconsistent with the rebuilding program established in the FMP, as required by the Magnuson-Stevens Act.

According to 2000 landings information, the impact of the proposed specifications for the 2002 fishing year will be greatest in Massachusetts which accounted for the largest share of the landings (28.5 percent), followed by New Jersey (25.8 percent), North Carolina (14.1 percent), New Hampshire (11.5 percent) and New York (9.4 percent). The top four ports which landed spiny dogfish in 2000 included Chatham, MA (21 percent); Point Pleasant, NJ (17.4 percent); Hampton

Bay, NY (8.5 percent); and Portsmouth, NH (8.3 percent).

The proposed correction to the target F will have no impact on any business entity, since it does not modify the status quo.

It has been determined that this proposed rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

This proposed rule does not contain or involve any information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 18, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.230, paragraph (a) is revised to read as follows:

§ 648.230 Catch quotas and other restrictions.

(a) *Annual review*. The Spiny Dogfish Monitoring Committee will annually review the following data, subject to availability, to determine the total allowable level of landings (TAL) and other restrictions necessary to assure a target fishing mortality rate (F) of 0.2 in 1999 through April 30, 2000, a target F of 0.03 from May 1, 2000, through April 30, 2004, and a target F of 0.08 thereafter will not be exceeded: Commercial and recreational catch data; current estimates of F; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling data; impact of gear other than otter trawls and gill nets on the mortality of spiny dogfish; and any other relevant information.

* * * * *

[FR Doc. 02–6983 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 56
Friday, March 22, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examinations.

DATES: The meeting will be held on April 15, 2002, from 8:30 AM to 5 PM.

ADDRESSES: The meeting will be held at the Franklin Court Building, Room 6001, West Tower, 1099 14th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Director of Practice and Executive Director of the Joint Board for the Enrollment of Actuaries, 202–694–1891.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at the Franklin Court Building, Room 6001, West Tower, 1099 14th Street NW., Washington, DC Monday, April 15, 2002, from 8:30 AM to 5:00 PM.

The purpose of the meeting is to discuss topics and questions, which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: March 13, 2002.

Patrick W. McDonough

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 02–6982 Filed 3–21–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on April 15, 2002, at the North Tahoe Conference Center, 8318 North Lake Blvd, Kings Beach, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held April 15, 2002, beginning at 9 a.m. and ending at 4:30 p.m.

ADDRESSES: The meeting will be held at the North Tahoe Conference Center, 8318 North Lake Blvd, Kings Beach, CA.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road, Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executive Committees. Items to be covered on the agenda include: Lands and Budget Subcommittee reports, a presentation from Sacramento Air Quality Management District, a presentation by Housing and Urban Development, review of the draft FY 2003 Restoration Act Project List, Tahoe TMDL Planning, and public comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address states above.

Dated: March 15, 2002.

Maribeth Gustafson,

Forest Supervisor.

[FR Doc. 02–6908 Filed 3–21–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on April 2, 2002 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on April 2, 2002 from 6 to 8 p.m.

ADDRESSES: The meeting will be held at the Elk Valley Rancheria Community Center, 2298 Norris Avenue, Suite B, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone (707) 441–3549. Email: *lchapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: This will be the fourth meeting of the committee, and will focus on the overall strategy for selecting Title II projects and involving the public. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: March 14, 2002.

S.E. 'Lou' Woltering,

Forest Supervisor.

[FR Doc. 02–6905 Filed 3–21–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on April 8, 2002 in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on April 8, 2002 from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Public Utilities District Conference Room, 26 Ponderosa Lane, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Joyce Andersen, Designated Federal Official, USDA, Shasta Trinity National Forests, P.O. Box 1190, Weaverville, CA 96093. Phone: (530) 623–1709. e-mail: *jandersen@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will focus on discussing Title II project priorities identified by the RAC subcommittees. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: March 14, 2002.

S.E. ''Lou'' Woltering,

Forest Supervisor.

[FR Doc. 02–6906 Filed 3–21–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on April 29, 2002 in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on April 29, 2002 from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Public Utilities District Conference Room, 26 Ponderosa Lane, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Joyce Andersen, Designated Federal Official, USDA, Shasta Trinity National Forests, P.O. Box 1190, Weaverville, CA 96093. Phone: (530) 623–1709. E-mail: *jandersen@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will focus on selecting Title II projects based on the recommendations of the RAC subcommittees. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: March 14, 2002.

S.E. ''Lou'' Woltering,

Forest Supervisor.

[FR Doc. 02–6907 Filed 3–21–02; 8:45 am]

BILLING CODE 3410–11–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 Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 22, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740

SUPPLEMENTARY INFORMATION: On January 25, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 3683) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the additions on the current or most recent contractors, the Committee has determined that the 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 service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-ODay Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is added to the Procurement List:

Services

Service Type/Location: Janitorial/Custodial, VA Medical Center, Salem Primary Care Clinic, Salem, Oregon.

NPA: The Garten Foundation, Salem, Oregon.

Contract Activity: Department of Veterans Affairs.

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.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–6945 Filed 3–21–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurment List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a product and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 22, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product and service will be required to procure the product and service 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 product and service to the Government.

2. The action will result in authorizing small entities to furnish the product and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-ODay Act (41 U.S.C.46–48c) in connection with the product and service 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 product and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

Product/NSN: Battery, Nonrechargeable, 6 Volt Alkaline/6135–01–333–6737.

NPA: Eastern Carolina Vocational Center, Inc., Greenville, North Carolina.

Contract Activity: Defense Supply Center—Richmond, Richmond, Virginia.

Service

Service Type/Location: Administrative Services, Milwaukee Federal Building and U.S. Courthouse, Milwaukee, Wisconsin.

NPA: Milwaukee Center for Independence, Inc., Milwaukee, Wisconsin.

Contract Activity: General Services Administration, Public Buildings Service.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–6946 Filed 3–21–02; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2002 Economic Census of Puerto Rico and Outlying Areas.

Form Number(s): OA–97120, OA–97220, OA–97123, OA–97223, OA–97130, OA–97230, OA–97142, OA–97242,OA–97144, OA–97244, OA–97152, OA–97252, OA–97172, OA–97272, OA–97180, OA–97280, OA–97190, OA–97290, OA–98163, OA–98173, OA–98183, OA–98193.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 55,750 hours in FY 2003.

Number of Respondents: 61,500.

Avg Hours Per Response: 55 minutes.

Needs and Uses: The Census Bureau plans to conduct the 2002 Economic Census of Puerto Rico and Island Areas, which in addition to Puerto Rico, includes Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and American Samoa, as part of the 2002 Economic Census.

The 2002 Economic Census of Puerto Rico and Island Areas will cover the following sectors (as defined by the North American Industry Classification System (NAICS)): Mining, Utilities, Construction, Manufacturing; Wholesale and Retail Trades, Transportation and Warehousing, Information; Finance and Insurance; Real Estate and Rental and Leasing; Professional, Scientific, and Technical Services; Management of Companies and Enterprises; Administrative and Support, Waste Management and Remediation Services; Educational Services; Health Care and Social Assistance; Arts, Entertainment, and Recreation; Accommodation and Food Services; and Other Services (except Public Administration). This scope is equivalent to that of the stateside economic census.

The economic census provides the only source for dependable, comparable data at a geographic level consistent with U.S. counties. The 2002 Economic Census of Puerto Rico and Island Areas is particularly important because of the rapid and varied changes taking place in the economies of these areas. The economic census is the primary source of dependable facts about the structure and functioning of the economies of Puerto Rico and each of the Island Areas, and features the only recognized source of data at a geographic level equivalent to U.S. counties. Economic census statistics serve as part of the framework for the national accounts of Puerto Rico and the Island Areas and provide essential information for government (Federal and local), business, and the general public. The governments of Puerto Rico and the Island Areas rely on the economic census as an important part of the framework for the their income and product accounts, input-output tables, economic indexes, and other composite measures that serve as the factual basis for economic policy-making, planning, and program administration. Further, the census provides benchmarks for surveys of business which track short-term economic trends, serve as economic indicators, and contribute critical source data for current estimates of the gross product of Puerto Rico and the Island Areas. In addition, industry, business, academia, and the general public use information from the economic census for evaluating markets, preparing business plans, making business decisions, developing economic models and forecasts, conducting economic research, and establishing benchmarks for their own sample surveys.

Affected Public: Businesses or other for-profit; Individuals or households; State, local, or tribal government.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 131 and 224.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202)482–3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 19, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–6959 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Special Census Program.

Form Number(s): SC–1, SC–1SUPP, SC–2, SC–920, SC–116, SC–351, SC–921(HU), SC–921(SP).

Agency Approval Number: 0607–0368.

Type of Request: Reinstatement, with change, of an expired collection.

Burden: 114,421 hours.

Number of Respondents: 851,525.

Avg Hours Per Response: 8 minutes.

Needs and Uses: Governmental units requiring current population statistics between decennial censuses request that the Census Bureau conduct special censuses. Many states distribute funds based on current population statistics. In addition, special census data are used by the local jurisdictions to plan new schools, transportation systems, housing programs, and water treatment facilities.

The Special Census Program will operate as a generic OMB clearance, including a library of forms and the operational procedures that will be used for the many special censuses we anticipate conducting this decade. The Census Bureau will establish a reimbursable agreement with a variety of potential special census customers that are unknown at this time. Prior to conducting any special census, the Census Bureau will submit documentation to OMB providing the details of the Special Census under consideration. We will also submit for OMB review and approval, under cover of change worksheet, any special-purpose questions requested by customers to be added to special census questionnaires.

Local jurisdictions use special census data to apply for available funds from both the state and Federal government. Many states distribute these funds based on current population statistics. This fact, along with local population shifts or annexations of territory, prompts local officials to request special censuses. In addition, special census data are used by the local jurisdictions to plan new schools, transportation systems, housing programs, water treatment facilities, etc. Some areas feel that additional data are required for proper planning and others must have the additional data to qualify for some sources of funding. For these reasons, local officials request special purpose questions. The Census Bureau also uses special census data as part of its local population estimates calculation and to update the Bureau's Master Address File (MAF) and Topographically Integrated Geographic Encoding and Referencing (TIGER) System.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 196.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 19, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–6961 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

Census Bureau

Current Population Survey—Basic Demographic Items

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 21, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the internet at *mclayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Gregory Weyland, Census Bureau, FOB 3, Room 3340, Washington, DC 20233–8400, (301) 457–3806.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request clearance from the Office of Management and Budget (OMB) for the collection of basic demographic information on the Current Population Survey (CPS) beginning in July 2002. The current clearance expires June 30, 2002.

The CPS has been the source of official government statistics on employment and unemployment for over 50 years. The Bureau of Labor Statistics (BLS) and the Census Bureau jointly sponsor the basic monthly survey. The Census Bureau also prepares and conducts all the field work. At the OMB's request, the Census Bureau and the BLS divide the clearance request in order to reflect the joint sponsorship and funding of the CPS program. The justification that follows is in support of the demographic data.

The demographic information collected in the CPS provides a unique set of data on selected characteristics for the civilian noninstitutional population. Some of the demographic information we collect are age, marital status, gender, Armed Forces status, education, race, origin, and family income. We use these data in conjunction with other data, particularly the monthly labor force data, as well as periodic supplement data. We use these data also independently for internal analytic research and for evaluation of other surveys. In addition, we use these data as a control to produce accurate estimates of other personal characteristics.

II. Method of Collection

The CPS basic demographic information is collected from individual households by both personal visit and telephone interviews each month. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Number: 0607–0049.

Form Number: There are no forms. We conduct all interviewing on computers.

Type of Review: Regular.

Affected Public: Households.

Estimated Number of Respondents: 57,000 per month.

Estimated Time Per Response: 1.58 minutes.

Estimated Total Annual Burden Hours: 18,012.

Estimated Total Annual Cost: There is no cost to respondents other than their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182; and Title 29, United States Code, Sections 1–9.

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 the OMB approval of this information collection; they also will become a matter of public record.

Dated: March 19, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–6958 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Current Population Survey (CPS) School Enrollment Supplement

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 21, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Karen Woods, Census Bureau, FOB 3, Room 3340, Washington, DC 20233–8400, (301) 457–3806.

SUPPLEMENTARY INFORMATION:

I. Abstract

Title 13, United States Code, Section 182, and Title 29, United States Code, Sections 1–9, authorize the collection of the CPS information. The Census Bureau and the Bureau of Labor Statistics sponsor the basic annual school enrollment questions, which have been collected annually in the CPS for 30 years.

This survey provides information on public/private elementary school, secondary school, and college enrollment, and on characteristics of private school students and their families, which is used for tracking historical trends, policy planning, and support. This years supplement contains additional questions about library use which are based on questions from the National Household Education Survey administered by the National Center for Education Statistics in 1996. Data about library staff, facilities, and resources exist as reported by libraries from other surveys; however, the questions of how and why households use these libraries are not addressed by these institutional data. The October 2002 Current Population Survey provides the opportunities to ask detailed questions about household library use. The questions are asked of each household and focus on how households use public libraries and whether public library activities are accessible to people with disabilities. This survey is the only source of national data on the age distribution and family characteristics of college students and the only source of demographic data on preprimary school enrollment. As part of the federal government's efforts to collect data and provide timely information to local governments for policymaking decisions, the survey provides national trends in enrollment and progress in school.

II. Method of Collection

The school enrollment information will be collected by both personal visit and telephone interviews in conjunction with the regular October CPS interviewing. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Number: 067–0464.

Form Number: There are no forms. We conduct all interviews on computers.

Type of Review: Regular.

Affected Public: Household.

Estimated Number of Respondents: 57,000.

Estimated Time Per Response: 4.5 minutes.

Estimated Total Annual Burden Hours: 4,275.

Estimated Total Annual Cost: The only cost to respondents is that of their time.

Respondents Obligation: Voluntary.

Legal Authority: Title 13, U.S.C., Section 182, and Title 29, U.S.C., 9.

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 the Office of Management and Budget approval of this information collection; they also will become a matter of public record.

Dated: March 19, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer. Office of the Chief Information Officer.

[FR Doc. 02–6960 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–07–M

Departmental Paperwork Clearance Officer. Office of the Chief Information Officer.

[FR Doc. 02–6960 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

Census Bureau

Current Industrial Reports Surveys—WAVE III (Mandatory and Voluntary Surveys)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 21, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to: Judy Dodds, Assistant Chief for Census and Related Programs, (301) 457–4587, Census Bureau, Manufacturing and Construction Division, Room 2101, Building #4, Washington, DC 20233 (or via the Internet at *judy.m.dodds@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts a series of monthly, quarterly, and annual surveys as part of the Current Industrial Reports (CIR) program. The CIR surveys deal mainly with the quantity and value of shipments of particular products and occasionally with data on production and inventories; unfilled orders, receipts, stocks and consumption; and comparative data on domestic production, exports, and imports of the products they cover. These surveys provide continuing and timely national statistical data on manufacturing. The results of these surveys are used extensively by individual firms, trade associations, and market analysts in planning or recommending marketing and legislative strategies.

The CIR program includes both mandatory and voluntary surveys. Typically, the monthly and quarterly surveys are conducted on a voluntary basis and annual collections are mandatory. The collection frequency of individual CIR surveys is determined by the cyclical nature of production, the need for frequent trade monitoring, or the use of data in Government economic indicator series. Some monthly and quarterly CIR surveys have an annul ''counterpart'' collection. The annual counterpart collects annual data on a mandatory basis from those firms not participating in the more frequent collection.

Due to the large number of surveys in the CIR program, for clearance purposes, the CIR surveys are divided into ''waves.'' There are three waves that include the mandatory and voluntary surveys. Mandatory and voluntary surveys are divided into separate clearance requests, making six separate clearances. We are now combining the mandatory and voluntary surveys into one clearance request, reducing the total number of clearance requests from six to three. Each year, one wave is submitted for review. This year the Census Bureau plans to submit mandatory and voluntary surveys of Wave III for clearance. Also, because this is an economic census year, all voluntary annual surveys are made mandatory. The surveys are MA311D—''Confectionery'', MA333N—''Fluid Power Products'', and MA335L—''Electric Lighting Fixtures''. MA333U—''Coin-Operated Vending Machines'' is being discontinued because of a lack of funding. The surveys in Wave III are:

Mandatory surveys	Voluntary survey
M311H—Fats and Oils (Warehouse)	*M336G—Civil Aircraft and Aircraft Engines.
M311L—Fats and Oils (Renderers)	*MQ313D—Consumption on the Woolen System and Worsted Combing.
M311M—Fats and Oils (Consumer)..	
M311N—Fats and Oils (Producers)	* These voluntary surveys have mandatory annual counterparts.
MQ313T—Broadwoven Fabrics (Gray).	
**MA311D—Confectionery.	
MA315D—Gloves and Mittens.	
MA327E—Consumer, Scientific, Technical, and Industrial Glassware.	
MA333D—Construction Machinery.	
MA333F—Mining Machinery.	
**MA333N—Fluid Power Products.	
MA334P—Communication Equipment.	
**MA335L—Electric Lighting Fixtures.	
**Voluntary annual surveys made mandatory during an economic census year.	

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect data. We ask respondents to return monthly report forms within 10 days, quarterly report forms within 15 days, and annual report forms within 30 days of the initial mailing. Telephone calls and/or letters encouraging participation will be mailed to respondents who have not responded by the designated time.

III. Data

OMB Number: 0607–0476—Mandatory Surveys 0607–0776—Voluntary & Annual Counterparts Surveys.

Form Number: See Chart Above.

Type of Review: Regular Review.

Affected Public: Businesses, or other for-profit organizations.

Estimated Number of Respondents: Total—10,756.

Estimated Time Per Response: 1.82.

Estimated Total Annual Burden: Total—9,315 hours.

Estimated Total Annual Cost: The estimate cost to respondents for all the CIR reports in Wave III for fiscal year 2003 is $142,706.

Respondent's Obligation: The CIR program includes both mandatory and voluntary surveys.

Legal Authority: Title 13, United States Code, Sections 61, 81, 131, 182, 224, and 225.

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 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: March 19, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–6962 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

2002 Company Organization Survey

ACTION: Proposed Collection; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing efforts 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 May 21, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Paul Hanczaryk, Bureau of the Census, Room 2747, Federal Building 3, Washington, DC 20233–6100; telephone (301) 457–2600.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the annual Company Organization Survey (COS) in order to update and maintain a central, multipurpose Business Register (BR), formerly known as the Standard Statistical Establishment List (SSEL). In particular, the COS supplies critical information on the composition, organizational structure, and operating characteristics of multi-establishment companies.

The BR serves two fundamental purposes:

—First and most important, it provides sampling populations and enumeration lists for the Census Bureau's economic surveys and censuses, and it serves as an integral part of the statistical foundation underlying those programs. Essential for this purpose is the BR's ability to identify all known United States business establishments and their parent companies. Further, the BR must accurately record basic business attributes needed to control sampling and enumeration. These attributes include industrial and geographic classifications, and contact information (for example, name and address).

—Second, it provides establishment data that serve as the basis for the annual County Business Patterns (CBP) statistical series. The CBP reports present data on number of establishments, first quarter payroll, annual payroll, and mid-March employment summarized by industry and employment size class for the United States, the District of Columbia, Puerto Rico, counties, and county-equivalents. No other annual or more frequent series of industry statistics provides comparable detail, particularly for small geographic areas.

II. Method of Collection

The Census Bureau will conduct the 2002 COS in conjunction with the 2002 Economic Census and will coordinate these collections so as to minimize response burden. The consolidated COS/census mail canvass will direct inquiries to the entire BR universe of multiestablishment enterprises, which comprises some 182,000 parent companies and more than 1.6 million establishments. The primary collection medium for the COS and census is paper questionnaire; however, many large enterprises will submit automated/electronic COS reports. COS data content is identical for all reporting modes.

Primary COS inquiries to each of the 182,000 multiestablishment enterprises will include questions on ownership or control by a domestic parent, ownership or control by a foreign parent, and ownership of foreign affiliates. Additional COS inquiries will apply to approximately 5,000 enterprises that operate some 25,000 establishments classified in industries that are out-of-scope to the economic census. The additional inquiries will list an inventory of those out-of-scope establishments and request updates to the inventory, including additions; deletions; and changes to Federal employer identification number, name and address, and industrial classification. Further, the additional inquiries will collect the following basic operating data for each listed establishment: end-of-year operating status, mid-March employment, first quarter payroll, and annual payroll. The economic census will collect data for all other establishments of multiestablishment enterprises, including those items listed above.

III. Data

OMB Number: 0607–0444.

Form Number: NC–99001.

Type of Review: Regular submission.

Affected Public: Business or other for-profit, not-for-profit institutions.

Estimated Number of Respondents: 182,000 enterprises.

Estimate Time Per Response: .5 hour.

Estimated Total Annual Burden Hours: 91,255.

Estimated Total Annual Cost: Included in the total annual cost of the BR, which is estimated to be $10.2 million for fiscal year 2002.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 of United States Code, Sections 131, 182, 224 and 225.

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 of 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: March 19, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–6963 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Decennial Census Advisory Committee

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, section 10(a)(b), the Bureau of the Census (Census Bureau) is giving notice of a meeting of the Decennial Census Advisory Committee. The Committee will address issues related to 2010 decennial planning, development, and testing, as well as the American Community Survey and other related decennial programs. Last-minute changes to the schedule are possible, which could prevent us from giving advance notification.

DATES: May 2–3, 2002. On May 2, the meeting will begin approximately 8:45 a.m. and end approximately 5:15 p.m. On May 3, the meeting will begin approximately 8:45 a.m. and end approximately 1:45 p.m.

ADDRESSES: The meeting will be held in the Francis Amasa Walker Conference Center, U.S. Census Bureau, 4700 Silver Hill Road, Federal Office Building 3, Suitland, MD 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Office Building 3, Washington, DC 20233, telephone 301–457–2075, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: The Decennial Census Advisory Committee is composed of a Chair, Vice-Chair, and up to 40 member organizations, all appointed by the Secretary of Commerce. The Commerce considers the goals of the decennial census and users' needs for information provided by the decennial census. The Committee provides an outside user perspective about how research and design plans for the 2010 decennial census, and the development of the American Community Survey and related programs, will realize those goals and satisfy those needs. The members of the Advisory Committee will draw on their experience with Census 2000 planning and operational processes, results of research studies, test censuses, and results of the Census 2000 evaluation program to provide input on the design and related operations of the 2010 decennial census, the American Community Survey, and other related programs.

A brief period will be set aside at the meeting for public comment. However, individuals with extensive statements for the record must submit them in writing to the Census Bureau Committee Liaison Officer, named above, at least three working days prior to the meeting. Seating is available to the public on a first-come, first-served basis.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer.

Dated: March 15, 2002.

Kathleen B. Cooper,

Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 02–6882 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Proposed Information Collection; Comment Request; National Security and Critical Technology Assessment of the U.S. Industrial Base

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice.

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 May 21, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 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 Dawnielle Battle, BXA ICB Liaison, (202) 482–0637, Department of Commerce, Room 6883, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department of Commerce/BXA, in coordination with other government agencies and private entities, conduct assessments of U.S. industries deemed critical to our national security. The information gathered is needed to assess the health and competitiveness as well as the needs of the targeted industry sector in order to maintain a strong U.S. industrial base.

II. Method of Collection

Written response.

III. Data

OMB Number: 0694–0119.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals, businesses or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 6,000.

Estimated Time Per Response: 4 hours.

Estimated Total Annual Burden Hours: 24,000.

Estimated Total Annual Cost: $0.

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 will also become a matter of public record.

Dated: March 13, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–6523 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Information Services Order Form

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the 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 May 21, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th & Constitution Avenue, NW., Washington, DC 20230 or via Internet at *MClayton@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to Joseph English, telephone 202–482–3334, fax 202–482–5362, e-mail *Joseph.English@ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. & Foreign Commercial Service Export Assistance Centers offer their clients DOC programs, market research, and services to enable the client to begin exporting or to expand existing exporting efforts.

The Information Services Order Form is used by US&FCS trade specialists in the Export Assistance Centers to collect information about clients in order to determine which programs or services would best help clients meet their export goals. This form is required for clients to order US&FCS programs and services. Certain programs are tailored for individual clients, e.g., the Agent Distributor Service, which identifies potential overseas agents or distributors for a particular U.S. manufacturer.

The form is being revised because some of the product names have changed or have been discontinued.

II. Method of Data Collection

Trade specialists gather information from clients at the Export Assistance Centers.

III. Data

OMB Number: 0625–0143.

Form Number: ITA–4096P.

Type of Review: Revision-Regular submission.

Affected Public: Companies interested in ordering export promotion products or services.

Estimated Number of Respondents: 2,675.

Estimated Time Per Response: Range from 5 to 60 minutes.

Estimated Total Annual Burden Hours: 483 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is $122,750.00 ($16,852.00 for respondents and $105,898.00 for federal government).

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 costs) 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 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: March 19, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–6964 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Commerce.

ACTION: Notice of Intent to Request a Panel Review.

SUMMARY: On February 27, 2002, The Government of Canada filed a Notice of Intent to Request A Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904.4 of the North American Free Trade Agreement. The Notice was based on the Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination regarding Certain Softwood Lumber Products from Canada, made by the United States International Trade Administration. This determinations were published in the **Federal Register**, (66 FR 56062) on November 6, 2001. The NAFTA Secretariat has assigned Case Number USA–CDA–2002–1904–02 to this Notice.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A Notice of Intent to Request A Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904.4 of the Agreement, on February 27, 2002, requesting that a panel be established in accordance with the Article outlined above.

Article 1904.4 provide in part that:

> Where the competent investigating authority of the importing Party has imposed provisional measures in an investigation, the other involved Party may provide notice of its intention to request a panel under this Article, and the Parties shall being to establish a panel at that time.

Dated: March 4, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–6883 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Commerce.

ACTION: Notice of Intent to Request A Panel Review

SUMMARY: On February 26, 2002, The Government of Canada filed a Notice of Intent to Request A Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904.4 of the North American Free Trade Agreement. The Notice was based on the Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination regarding Certain Softwood Lumber Products from Canada, made by the United States International Trade Administration. This determinations were published in the **Federal Register**, (66 FR 43186) on August 17, 2001. The NAFTA Secretariat has assigned Case Number USA–CDA–2002–1904–03 to this Notice.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A Notice of Intent to Request A Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904.4 of the Agreement, on February 27, 2002, requesting that a panel be established in accordance with the Article outlined above.

Article 1904.4 provide in part that:

> Where the competent investigating authority of the importing Party has imposed provisional measures in an investigation, the other involved Party may provide notice of its intention to request a panel under this Article, and the Parties shall being to establish a panel at that time.

Dated: March 4, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–6884 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031902C]

North Pacific Fishery Management Council; Notice of Public Meetings

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

ACTION: Meetings of the North Pacific Fishery Management Council and its advisory committees.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings April 8–17, 2002, in Anchorage, Alaska. All meetings will be held at the Anchorage Hilton Hotel.

DATES: The Council's Advisory Panel will begin at 8 a.m., Monday, April 8, and continue through Saturday, April 13, 2002. The Scientific and Statistical Committee will begin at 8 a.m. on Monday, April 8, and continue through Wednesday, April 10, 2002.

The Council will begin its plenary session at 8 a.m. on Wednesday, April 10, continuing through noon Wednesday, April 17. All meetings are open to the public except executive sessions. See **SUPPLEMENTARY INFORMATION** for a schedule of other meetings and the agenda.

ADDRESSES: Hilton Hotel, 500 W. 3rd Avenue, Anchorage, Alaska.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, Phone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

Other Committee/Workgroup Meetings Scheduled:

The *Individual Fishery Quota (IFQ) Implementation and Cost Recovery Committee* will meet Sunday, April 7, from 6:30pm to 9:30pm at the Anchorage Hilton Hotel to review regulatory amendments to the IFQ program and develop recommendations for the Council.

The *Gulf of Alaska Workgroup* will meet Tuesday, April 9, from 1 p.m.–5 p.m. at the Anchorage Hilton Hotel to continue developing recommendations for rationalization of the Gulf of Alaska groundfish fisheries.

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports:
(a) Executive Director's Report.
(b) State Fisheries Report by Alaska Dept. of Fish and Game.
(c) National Marine Fisheries Service (NMFS) Management Report.
(d) U.S. Coast Guard Enforcement and Surveillance report.
(e) Report on sea otters from the U.S. Fish &Wildlife Service.

2. Observer Program: final action on regulatory amendments and program extension.

3. Halibut/Sablefish IFQ Program: Final action on implementation regulatory amendments and community purchase of quota share amendment.

4. Halibut Subsistence:
(a) Receive report on the Proposed Rule for October 2000 Council action on halibut subsistence.
(b) Receive report from Halibut Subsistence Committee on proxy issues.
(c) Final action on amendments to October 2000 Council action on halibut subsistence.

5. Community Development Quota Policy Amendment: Identify preferred alternative.

6. Crab Management:
(a) Initial review of analysis for rationalization of Bering Sea/Aleutian Island crab fisheries.
(b) Finalize suite of alternatives for the environmental impact statement for the Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan.

7. Draft Programmatic Groundfish Supplemental Environmental Impact Statement:

(a) Review report from the Ecosystem Committee (tentative).

(b) Clarify purpose and need statement.

(c) Review alternatives for revised analysis

8. American Fisheries Act:

(a) Initial review of processor sideboards, improved retention/utilization adjustments and bycatch reduction measures.

(b) Initial review of additional Pacific cod sideboard measures.

(c) Initial review of single geographic location change, including clarification of Inshore-offshore and Catcher Vessel Operational Area regulations.

(d) Review industry proposal for pollock bycatch measures and provide direction.

9. Essential Fish Habitat (EFH):

(a) Review progress and EFH Committee report; provide direction.

(b) Review recommendations from the joint Council/Alaska Board of Fisheries Protocol Committee.

10. Gulf of Alaska Groundfish Rationalization: Review progress from working group; provide direction.

11. Steller Sea Lions: Initial review of trailing amendments.

12. Review staff tasking and provide direction.

13. Discuss annual management cycle and Council Statement of Operating Policy and Procedures.

14. Discuss and identify research priorities.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during the meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Scientific and Statistical Committee (SSC): The SSC agenda will include the following issues:

1. Election of Officers.

2. Crab Management (Item #6 on the Council agenda).

3. American Fisheries Act issues (Item #8 on the Council agenda).

4. Essential Fish Habitat (Item #9 on the Council agenda).

5. Draft Programmatic Groundfish SEIS (Item #7 on the Council agenda).

6. Steller Sea Lion trailing amendment (Item #11 on the Council agenda).

7. Research Priorities (Item #13 on the Council agenda).

Advisory Panel: The Advisory Panel will elect officer for the coming year and address the same agenda issues as the Council, with the exception of the Reports under Item 1 of the Council agenda.

Special Accommodations

These meetings are physically accessible to people with disabilities.

Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: March 19, 2002.

Richard W. Surdi,

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

[FR Doc. 02–6984 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031902B]

Pacific 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 Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet April 7–12, 2002. The Council meeting will begin on Tuesday, April 9, at 8 a.m., reconvening each day through Friday. All meetings are open to the public, except a closed session will be held from 8 a.m. until 9:30 a.m. on Tuesday, April 9 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings and hearing will be held at the DoubleTree Hotel-Columbia River, 1401 N Hayden Island Drive, Portland, OR 97217; telephone: 503–283–2111.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order

1. Opening Remarks, Introductions,

2. Roll Call

3. Executive Director's Report

4. Approve Agenda

5. Approve September and November Meeting Minutes

B. Mitchell Act

C. Salmon Management

1. Report on Federal Regulation Implementation

2. Identification of Stocks Not Meeting Escapement Goals for Three Consecutive Years

3. Methodology Reviews for 2002

4. Tentative Adoption of 2002 Ocean Salmon Management Measures for Analysis

5. Clarify Council Direction on 2002 Management Measures, (If Necessary)

6. Final Action on 2002 Measures

7. Clarification of Final Action on 2002 Measures, (If Necessary)

D. Marine Reserves

1. Status of Channel Island National Marine Sanctuary Proposal and Other Marine Reserves Processes

E. Habitat Issues

1. Essential Fish Habitat Issues

F. Groundfish Management

1. Status of NMFS Regulatory and Other Nonregulatory Activities

2. Permit Stacking Issues

3. Status of Fisheries and Consideration of Inseason Adjustments

4. Rebuilding Plan Status Report

5. Groundfish Multi-year Management Cycle

6. Stock Assessment Review Process Issues

7. Exempted Fishing Permit Applications

8. Fisheries Ecosystem Plan for Northern California

9. Yelloweye Landings in Halibut Fishery Area

10. Strategic Plan Implementation

11. Statements

12. Groundfish Fishery Management Plan Environmental Impact Statement

G. Pacific Halibut Management

1. 2002 Incidental Catch Regulations

2. Final Action on 2002 Management Measures

H. Administrative and Other Matters

1. Status of Legislation

2. Appointments to Advisory Bodies, Standing Committees, and Other Forums

3. Council's ''Statement of Organization, Practices, and Procedures'' and ''Council Operating Procedures'' Documents

4. Research and Data Needs Process and Economic Data Plan

5. Council Staff Workload Priorities

6. June 2002 Council Meeting Draft Agenda

SCHEDULE OF ANCILLARY MEETINGS

SUNDAY, APRIL 7, 2002

SCHEDULE OF ANCILLARY MEETINGS—Continued

Klamath Fishery Management Council	3 p.m.
MONDAY, APRIL 8, 2002	
Council Secretariat	7 a.m.
Salmon Advisory Subpanel	8 a.m.
Scientific and Statistical Committee	8 a.m.
Salmon Technical Team	8 a.m.
Habitat Advisory Board	10 a.m.
Groundfish Advisory Subpanel	1:30 a.m.
Groundfish Management Team	8 a.m.
Klamath Fishery Management Council	As necessary
Tribal Policy Group	As necessary
Tribal and Washington Technical Group	As necessary
TUESDAY, APRIL 9, 2002	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Scientific and Statistical Committee	8 a.m.
Klamath Fishery Management Council	As necessary
Salmon Advisory Subpanel	8 a.m.
Salmon Technical Team	8 a.m.
Tribal Policy Group	As necessary
Tribal and Washington Technical Group	As necessary
Enforcement Consultants	5 p.m.
WEDNESDAY, APRIL 10, 2002	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Klamath Fishery Management Council	As necessary
Salmon Advisory Subpanel	As necessary
Salmon Technical Team	As necessary
Tribal Policy Group	As necessary
Tribal and Washington Technical Group	As necessary
Enforcement Consultants	As necessary
THURSDAY, APRIL 11, 2002	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.

SCHEDULE OF ANCILLARY MEETINGS—Continued

Groundfish Management Team	As necessary
Salmon Advisory Subpanel	As necessary
Salmon Technical Team	As necessary
Tribal Policy Group	As necessary
Tribal and Washington Technical Group	As necessary
Enforcement Consultants	As necessary
FRIDAY, APRIL 12, 2002	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Salmon Advisory Subpanel	As necessary
Salmon Technical Team	As necessary
Tribal Policy Group	As necessary
Tribal and Washington Technical Group	As necessary
Enforcement Consultants	As necessary

Although nonemergency issues not contained in this agenda may come before this Council for discussion, 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 and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least five days prior to the meeting date.

Dated: March 19, 2002.

Richard W. Surdi,

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

[FR Doc. 02–6985 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of a Previously Announced Grace Period on Export Visa and Quota Requirements for Certain Textile Costumes Produced or Manufactured in Various Countries, Exported Before June 1, 2002, and Entered for Consumption or Withdrawn from Warehouse for Consumption Before August 1, 2002

March 18, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending a grace period on export visa and quota requirements for certain textile costumes.

SUMMARY: On March 1, 2002, the U.S. Customs Service published a notice in the **Federal Register** informing the public that certain imported textile costumes, entered for consumption or withdrawn from warehouse for consumption after March 1, 2002, are to be classified as wearing apparel in accordance with the Court of International Trade decision in *Rubie's Costume Company v. United States*. This announcement applied to imported textile costumes of the character covered by the Customs decision published in the **Federal Register** on December 4, 1998 (see 63 FR 67170). On March 4, 2002, the Committee for the Implementation of Textile Agreements published a notice and letter to the Commissioner of Customs in the **Federal Register** allowing a grace period before imposing quota and visa requirements on goods described above that are exported before April 1, 2002, and entered for consumption or withdrawn from warehouse for consumption before June 1, 2002 (see 67 FR 9706). The Committee for the Implementation of Textile Agreements has decided to extend that grace period. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to exempt from export visa and quota requirements goods described above that are exported before June 1, 2002, and entered for consumption or withdrawn from warehouse for consumption before August 1, 2002.

EFFECTIVE DATE: March 22, 2002.

FOR FURTHER INFORMATION CONTACT: Martin Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

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.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 18, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

This directive amends, but does not cancel, the directive issued to you on February 28, 2002. In that directive, the Committee for the Implementation of Textile Agreements decided to allow a grace period on the export visa and quota requirements for the textile costumes of the character covered by the Customs decision published in the **Federal Register** on December 4, 1998 (see 63 FR 67170).

Effective on March 22, 2002, you are directed to extend the exemption from export visa and quota requirements for goods as described above that are exported prior to June 1, 2002, and entered for consumption or withdrawn from warehouse for consumption prior to August 1, 2002.

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–6950 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denying Entry to Textiles and Textile Products Allegedly Produced in Certain Companies in Taiwan

March 18, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs directing Customs to deny entry to shipments allegedly manufactured in a certain companies in Taiwan.

EFFECTIVE DATE: March 22, 2002.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 12475 of May 9, 1984, as amended.

The U.S. Customs Service has conducted on-site verification of textile and textile product production in a number of foreign countries. Based on information obtained through on-site verifications and from other sources, U.S. Customs has informed CITA that certain companies were illegally transshipping, were closed, or were unable to produce records to verify production. The Chairman of CITA has directed the U.S. Customs Service to issue regulations regarding the denial of entry of shipments from such companies. (See Federal Register notice 64 FR 41395, published on July 30, 1999).

In order to secure compliance with U.S. law, including Section 204 and U.S. customs law, to carry out textile and textile product agreements, and to avoid circumvention of textile agreements, the Chairman of CITA is directing the U.S. Customs Service to deny entry to textile and textile products allegedly manufactured by Attain Enterprise Co., Ltd. and Tian Tuan Shing Co., Ltd. for two years. Customs has informed CITA that these companies were found to have been illegally transhipping, closed, or unable to produce records to verify production.

Should CITA determine that this decision should be amended, such amendment will be published in the Federal Register.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 18, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The U.S. Customs Service has conducted on-site verification of textile and textile product production in a number of foreign countries. Based on information obtained through on-site verifications and from other sources, U.S. Customs has informed CITA that certain companies were illegally transshipping, were closed, or were unable to produce records to verify production. The Chairman of CITA has directed the U.S. Customs Service to issue regulations regarding the denial of entry of shipments from such companies (see directive dated July 27, 1999 (64 FR 41395), published on July 30, 1999). In order to secure compliance with U.S. law, including Section 204 and U.S. customs law, to carry out textile and textile product agreements, and to avoid circumvention of textile agreements, the Chairman of CITA directs the U.S. Customs Service, effective for goods exported on and after March 22, 2002 and extending through March 21, 2004, to deny entry to textiles and textile products allegedly manufactured by the Taiwanese companies Attain Enterprise Co., Ltd. and Tian Tuan Shing Co., Ltd. Customs has informed CITA that these companies were found to have been illegally transshipping, closed, or unable to produce records to verify production.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–6949 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–DR–S

DELAWARE RIVER BASIN COMMISSION

Notice of Final Rule; Amendment to the Delaware River Basin Commission's Water Code and Comprehensive Plan To Establish Water Usage Reporting Requirements and Modify Water Metering Requirements

SUMMARY: At its April 19, 2001 business meeting, the Delaware River Basin Commission (''Commission'') amended its *Water Code* and *Comprehensive Plan* to establish water usage reporting requirements for source water withdrawals and water service and to modify its existing water metering requirements for consistency with the new reporting provisions. Today's notice fulfills a requirement of the Delaware River Basin Compact, Pennsylvania Act No. 268 of 1961, that rules adopted by the Commission be filed in accordance with the laws of the signatory parties.

EFFECTIVE DATE: These amendments are effective immediately.

FOR FURTHER INFORMATION CONTACT: Additional information, including background on the need for water usage reporting requirements and an account of the process by which the amendments were developed, is contained in the original Notice of Proposed Rulemaking, November 29, 2000 (65 FR 71094). The text of the new reporting requirements and the complete *Water Code* as amended are available on the Commission's web site at *http://www.DRBC.net,* or upon request from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, NJ 08628–0360. For further information, contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, Delaware River Basin Commission, (609)–883–9500 (x203).

SUPPLEMENTARY INFORMATION: On October 23, 2000 the Commission published on its web site a Notice of Proposed Rulemaking to establish water

usage reporting requirements to ensure that the Commission has the source and service information needed to evaluate how and where water is being used in the basin. Notice was published in the **Federal Register** on November 29, 2000 (65 FR 71094), the *Delaware Register of Regulations* on December 1, 2000, the *New Jersey Register* on December 4, 2000, the *New York State Register* on November 22, 2000 and the *Pennsylvania Register* on November 11, 2000. A public hearing was held on January 9, 2001. The proposed amendments were substantively revised on the basis of the written and oral testimony received, and a notice of revised proposed rulemaking was published in the **Federal Register** on March 1, 2001 (66 FR 12930), the *Delaware Register of Regulations* on March 1, 2001, the *New Jersey Register* on March 5, 2001, the *New York State Register* on February 28, 2001 and the *Pennsylvania Bulletin* on March 3, 2001. An additional comment period and public hearing were provided. The final rule was approved by the Commission at the conclusion of the hearing on April 19, 2001.

The final rule amends Section 2.50.1, ''Service Metering'' and Section 2.50.2, ''Source Metering, Recording and Reporting'' of the Commission's *Water Code* and adds a new Section 2.50.3, ''Reporting Requirements.'' The title of Section 2.50 is revised to read, ''Water Metering and Reporting Requirements.'' Section 2.50.1 is amended to authorize, rather than require, the Executive Director to enter into administrative agreements with the implementing agencies of the signatory states, whereby the appropriate state agencies will administer and enforce the provisions of the regulation. Section 2.50.1 is further amended to provide that in the absence of such an administrative agreement, the Commission shall serve as the agency for administration and enforcement. Section 2.50.2 is amended to provide that the Commission shall administer and enforce the regulation in the New York portion of the basin. New Section 2.50.3 enumerates the types of source and service data to be reported for water supply systems serving the public and for other withdrawals subject to the requirements of Section 2.50.1, Section 2.50.2 and the Commission's Ground Water Protected Area Regulations. In order to avoid redundant reporting, Section 2.50.3 enumerates different reporting requirements for the year 2000 than for subsequent years. For the year 2000, a greater one-time effort is required to initiate reporting. For subsequent years, a much smaller effort is required to continue reporting.

Dated: March 11, 2002.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 02–6219 Filed 3–21–02; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by April 8, 2002. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before May 21, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Karen_F._Lee@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: March 18, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New collection.

Title: Application Package for LEAs under the REAP Rural and Low-Income School Program (KA)

Abstract: This information collection package collection will serve as the application package for LEAs under the REAP Rural and Low-Income School Program. This application package will be used by LEAs applying for benefits under this program in States where the SEA chooses not to participate in the program.

Additional Information: The Department is requesting an emergency clearance for the LEA Application for the Rural and Low-Income School Program by March 22, 2002 due to the unanticipated event and potentially causing public harm if awards were not made in time. This is a state-administered formula grant program under the statute. The Secretary is to award formula grants to SEAs, which in turn must award subgrants to eligible LEAs either competitively or on a formula basis. However, the statute makes provisions in the event an SEA chooses not to participate in the program. In such cases, the Secretary may use the SEA's allotment to award grants directly to eligible LEAs in that State either competitively or by formula.

Eligible LEAs in non-participating States are referred to as ''specially qualified agencies'' in the legislation. Some SEAs have recently indicated that they may choose not to participate in this program. The application package that is the subject of this emergency clearance will be used to make direct grants to LEAs in those states, should it be necessary. If normal procedures were to be followed, the Department would not be able to make grant awards under this program by July 1st. The Rural and Low-Income program is one of the programs covered under the Consolidated Application provisions in the No Child Left Behind Act. The Department cannot make allocations for any applicant (either State or LEA) until all eligible applicants have submitted their allocation and eligibility data to the Department, and therefore the need for emergency processing.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 200.

Burden Hours: 2400.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting ''Browse Pending Collections'' and clicking on link number 1984. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address vivian.reese@ed.gov. Requests may also be electronically mailed to the internet address OCIO_RIMG@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at 540–776–7742. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–6916 Filed 3–21–02; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1256–000]

GA Power Marketing, L.P.; Notice of Filing

March 12, 2002.

Take notice that on March 5, 2002, GA Power Marketing, L.P. (GAPM) tendered for filing an original tariff sheet for authority to sell electricity at market-based rates under Section 205(a) of the Federal Power Act, 16 U.S.C. 824d(a), and accompanying requests for certain blanket approvals and for the waiver of certain Commission regulations.

GAPM is a limited partnership that intends to engage in wholesale electric energy purchases and sales as a power marketer. GAPM is not in the business of generating or transmitting electric power. GAPM is a limited partnership which has Global Operations Services, Inc. as its general partner. Global Operations Services, Inc. is a wholly-owned subsidiary of Global Advisors Limited which, through its affiliates, is involved primarily in investment management.

Any person desiring to intervene or to protest this filing should file 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). 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. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: March 26, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6892 Filed 3–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–79–000, et al.]

PG&E Dispersed Generating Company, LLC, et al.; Electric Rate and Corporate Regulation Filings

March 15, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. PG&E Dispersed Generating Company, LLC

[Docket No. EG02–79–000]

Take notice that on March 12, 2002, PG&E Dispersed Generating Company, LLC (PG&E Dispersed Gen) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to clarify its Application For Redetermination of Exempt Wholesale Generator Status filed with the Commission on January 31, 2002.

Comment Date: April 5, 2002.

2. Bangor Hydro-Electric Company

[Docket No. ER99–1522–001]

Take notice that on March 12, 2002, Bangor Hydro-Electric Company (Bangor Hydro) filed an updated market analysis as required by the Federal Energy Regulatory Commission's (Commission) March 12, 1999 order in Docket No. ER99–1522–000 granting Bangor Hydro market based rate authority.

Comment Date: April 2, 2002.

3. Progress Energy Inc., on behalf of, Progress Ventures, Inc.

[Docket No. ER02–1302–000]

Take notice that on March 12, 2002, Progress Ventures, Inc. (Progress Ventures) tendered for filing an executed Service Agreement between Progress Ventures and the following eligible buyer, Dynegy Power Marketing, Inc. Service to this eligible buyer will be in accordance with the terms and conditions of Progress Ventures Market-Based Rates Tariff, FERC Electric Tariff No. 1.

Progress Ventures requests an effective date of March 11, 2002 for this Service Agreement. Copies of the filing

were served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission, the Florida Public Service Commission and the Georgia Public Service Commission.

Comment Date: April 2, 2002.

4. Tampa Electric Company

[Docket No. ER02–1303–000]

Take notice that on March 12, 2002, Tampa Electric Company (Tampa Electric) tendered for filing service agreements with Reliant Energy Services, Inc. (Reliant) for firm point-to-point transmission service and non-firm point-to-point transmission service under Tampa Electric's open access transmission tariff.

Tampa Electric proposes an effective date of March 12, 2002, for the tendered service agreements, and therefore requests waiver of the Commission's notice requirement. Copies of the filing have been served on Reliant and the Florida Public Service Commission.

Comment Date: April 2, 2002.

5. West Texas Utilities Company

[Docket No. ER02–1304–000]

Take notice that on March 12, 2002, West Texas Utilities Company (WTU) filed a Second Revised Agreement for Sale and Purchase of Power and Associated Energy and Responsive Reserves (Second Revised Agreement) between WTU and Brazos Electric Power Cooperative, Inc. (Brazos). The Second Revised Agreement is being filed under WTU's Market-Based Rate Tariff and replaces, in its entirety, First Revised Service Agreement No. 25, currently on file under the Market-Based Rate Tariff. CSW Operating Companies FERC Electric Tariff, First Revised Volume No. 8. The Second Revised Agreement is designated Second Revised Service Agreement No. 25.

WTU seeks an effective date of July 31, 2001 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing have been served on Brazos and on the Public Utility Commission of Texas.

Comment Date: April 2, 2002.

6. New England Power Company

[Docket No. ER02–1305–000]

Take notice that on March 12, 2002, New England Power Company (NEP) submitted for filing First Revised Service Agreement No. 212 for service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 9 between NEP and Fitchburg Gas and Electric Light Company.

NEP states that a copy of this filing has been served upon Fitchburg and all appropriate state regulators.

Comment Date: April 2, 2002.

7. PacifiCorp

[Docket No. ER02–1306–000]

Take notice that on March 12, 2002, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations, Notice of Cancellation of Service Agreement No. 22 under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 6 for the Electric Service Agreement entered on November 21, 1996 between Blanding City, Utah and PacifiCorp.

Copies of this filing were supplied to the Utah Public Service Commission and the Public Utility Commission of Oregon.

Comment Date: April 2, 2002.

8. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1307–000]

Take notice that on March 12, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act, submitted for filing a Service Agreements for the transmission service requested by East Kentucky Power Cooperative.

A copy of this filing was sent to East Kentucky Power Cooperative.

Comment Date: April 2, 2002.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1308–000]

Take notice that on March 12, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act, submitted for filing a Service Agreements for the transmission service requested by Hutchinson Utilities Commission.

A copy of this filing was sent to Hutchinson Utilities Commission.

Comment Date: April 2, 2002.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1309–000]

Take notice that on March 12, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act, submitted for filing a Service Agreements for the transmission service requested by Municipal Energy Agency of Nebraska.

A copy of this filing was sent to Municipal Energy Agency of Nebraska.

Comment Date: April 2, 2002.

11. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1310–000]

Take notice that on March 12, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act, submitted for filing a Service Agreements for the transmission service requested by Omaha Public Power District.

A copy of this filing was sent to Omaha Public Power District.

Comment Date: April 2, 2002.

12. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1311–000]

Take notice that on March 12, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act, submitted for filing a Service Agreements for the transmission service requested by UtiliCorp United Inc.

A copy of this filing was sent to UtiliCorp United Inc.

Comment Date: April 2, 2002.

13. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1312–000]

Take notice that on March 12, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act, submitted for filing a Service Agreements for the transmission service requested by Tennessee Valley Authority.

A copy of this filing was sent to Tennessee Valley Authority.

Comment Date: April 2, 2002.

14. Niagara Mohawk Power Corporation

[Docket No. ER02–1314–000]

Take notice that on March 12, 2002, Niagara Mohawk Power Corporation (NIMO) filed two executed interconnection agreements with CH Resources, Inc. (CH Resources). The interconnection agreements set forth the terms and conditions governing the interconnection between the Niagara generating facility (Niagara Facility) and the Syracuse generating facility (Syracuse Facility), respectively, and NIMO's transmission system.

Copies of the filing were served upon CH Resources and the New York Public Service Commission.

Comment Date: April 2, 2002.

15. Eliot G. Protsch

[Docket No. ID–3594–001]

Take notice that on March 8, 2002, Eliot G. Protsch filed an Application to Hold Interlocking Positions.

Comment Date: April 8, 2002.

16. James S. Haines, Jr.

[Docket No. ID–3692–000]

On March 7, 2002, the above named individual filed with the Federal Energy Regulatory Commission an application for authority to hold interlocking positions in the Empire District Electric Co., with its principal place of business at 602 Joplin Avenue, Post Office Box 127, Joplin, Missouri, 64802–0127, and El Paso Electric Co., with its principal place of business at 123 West Mills, P.O. Box 982, El Paso, Texas, 79960.

Comment Date: April 8, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6890 Filed 3–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–12–000]

Electricity Market Design and Structure; Notice of Working Paper

March 15, 2002.

Take notice that the Commission has distributed a working paper on standardized transmission service and wholesale electric market design. The purpose of this paper is to stimulate public discussion that can guide the development of a proposed rulemaking on these issues.

The working paper is being placed in the record of this rulemaking docket. It will also be available on the Commission's website at *http://www.ferc.gov/electric/RTO/mrkt-strct-comments/discussion_paper.htm*.

Comments on this paper should be filed with the Commission by March 27, 2002. Comments may be filed in paper format or electronically. For paper filings, the original and 14 copies of the comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington D.C. 20426. For electronic filings via the Internet, see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS link. User assistance for RIMS is available at 202–208–2222, or by e-mail to *rimsmaster@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6891 Filed 3–21–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7162–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Title: Motor Vehicle Emission and Fuel Economy Compliance; Light Duty Vehicles, Light Duty Trucks and Motorcycles; OMB Control Number 2060–0104; expiration date March 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument. This ICR consolidates the following related ICRs; Motor Vehicle Exclusion Determination; OMB Control Number 2060–0124; National Low Emitting Vehicle Program; OMB Control Number 2060–0345; Selective Enforcement Audit; OMB Control Number 2060–0064; Emission Defect Information and Voluntary Emission Recall Reports for On-Highway, Light Duty Vehicles; OMB Control Number 2060–0425; Verification of Test Parameters and Parts Lists for Light Duty Vehicles and Light-Duty Trucks; OMB Control Number 2060–0094. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 22, 2002.

ADDRESSES: Send comments, referring EPAICR No. 0783.42 and OMB Control No. 2060–0104, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 260–4901, by e-mail at *auby.susan@epamail.epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0783.42. For technical questions about the ICR contact Richard W. Nash, Certification and Compliance Division, 2565 Plymouth Road, Ann Arbor MI 48103, (734) 214–4412, *nash.dick@epa.gov.*

SUPPLEMENTARY INFORMATION:

Title: Motor Vehicle Emission and Fuel Economy Compliance; Light Duty Vehicles, Light Duty Trucks and

Motorcycles; OMB Control Number 2060–0104, EPA ICR Number 0783.42, expiration date March 30, 2002. This is a request for extension of a currently approved collection.

Abstract: EPA collects product information and test results from manufactures of passenger cars, light duty trucks and motorcycles. This information is used to verify that emission standards have been met prior to the vehicles being offered for sale and that fuel economy values are accurate. It is also used in selecting vehicles for audit testing. At the conclusion of a model year production figures and test results are reviewed to determine if fuel economy standards have been met.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published October 9, 2001, oral and written comments were receive.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 7,343 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: 70.

Estimated Number of Respondents: 70.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 514,000.

Estimated Total Annualized Capital, O&M Cost Burden: $7.1 million.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 0783.42 and OMB Control No. 2060–0104 in any correspondence.

Dated: March 15, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–6996 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7162–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Institutional Controls Tracking Systems and Costs Survey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Institutional Controls Tracking Systems and Costs Survey, EPA ICR No. 2043.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 22, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 2043.01, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 260–4901, by E-mail at Auby.Susan@epa.gov, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 2043.01. For technical questions about the ICR, contact Michael E. Bellot by phone at (703) 603–8905.

SUPPLEMENTARY INFORMATION:

Title: Institutional Controls Tracking Systems and Costs Survey (EPA ICR No. 2043.01). This is a new collection.

Abstract: The Office of Emergency and Remedial Response (OERR) is currently researching the development of a system for tracking institutional controls at Superfund sites. Institutional controls are non-engineered site measures such as administrative or legal controls that minimize the potential for exposure to contamination or protect the integrity of a remedy by limiting land or resource use. Proper implementation, monitoring, and enforcement of institutional controls are critical to EPA's core mission of protecting human health and the environment. Although institutional control mechanisms are necessary parts of many site remedies, they are often implemented, monitored, or enforced by state, tribal or local governments. OERR is proposing to complete a study that includes: (1) Conducting research into the types of institutional controls tracking systems that are currently in use and evaluating their relative strengths and weaknesses; (2) developing a focused list of data collection points and definitions; (3) developing and piloting a process for the collection of data to be used to estimate data availability and the cost and time required for data acquisition; (4) developing a data entry process; and (5) researching the feasibility of sharing data and linking federal, state, tribal and local institutional control tracking in a web-based system. In a second phase of this study, OERR is planning to develop the tracking system, establish data linkages, and populate the database. This proposed ICR specifies information necessary to determine what types of institutional controls tracking systems are currently in use; their purpose, scope, and structure; the kinds of data they track; their data entry, quality assurance, administration, and access features; data querying capabilities; compatibility with a future EPA system; development, population, and operating costs; and lessons learned from developing, implementing, and operating these systems. EPA estimates that approximately 52 States, 10 Tribes, and no more than 200 local agencies (planning, zoning, and real estate recording offices) will be surveyed. If approved by OMB, respondents will have 60 days from receipt of the survey to submit their responses. In addition to the survey, this proposed ICR includes EPA requests for clarifications, questions and updates to the survey, and agency visits. Clarifications and updates will be necessary if EPA has follow-up questions regarding responses or if EPA requires more information to understand a tracking system. Up to 50 agencies may be required to submit more detailed descriptions. EPA

proposes to visit up to 20 agencies to evaluate institutional controls tracking systems. Responding to the survey is entirely voluntary. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 2, 2001 (66 FR 50182); 19 comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 10 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: States, Tribes, and Local Agencies.

Estimated Number of Respondents: 262.

Frequency of Response: One time only.

Estimated Total Annual Hour Burden: 2,620 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 2043.01 in any correspondence.

Dated: March 14, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–6997 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7162–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Requirements for Generators, Transporters, and Hazardous Waste Management Facilities Under the RCRA Hazardous Waste Manifest System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Requirements for Generators, Transporters, and Hazardous Waste Management Facilities Under the RCRA Hazardous Waste Manifest System, EPA ICR No. 0801.14, OMB Control Number 2050–0039, expiration date March 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 22, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 0801.14 and OMB Control No. 2050–0039, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susuan Auby at EPA by phone at (202) 260–2740, by E-mail at Auby.Susan@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0801.14. For technical questions about the ICR contact Bryan Groce at 703–308–8750, *groce.bryan@epa.gov*.

SUPPLEMENTARY INFORMATION:

Title: Requirements for Generators, Transporters, and Hazardous Waste Management Facilities Under the RCRA Hazardous Waste Manifest System, OMB Control No. 2050–0039, EPA ICR No. 0801.14, expiring March 31, 2002. This is a request for an extension of a currently approved collection.

Abstract: The Resource Conservation and Recovery Act (RCRA), as amended, establishes a national program to assure that hazardous waste management practices are conducted in a manner that is protective of human health and the environment. EPA's authority to require compliance with the manifest system stems primarily from RCRA section 3002(a)(5). This section mandates a hazardous waste manifest ''system'' to assure that all hazardous waste generated is designated for and arrives at the appropriate treatment, storage, and disposal facility. An essential part of this manifest system is the Uniform Hazardous Waste Manifest (Form 8700–22A). The manifest is a tracking document that accompanies the waste from its generation site to its final disposition. The manifest lists the wastes that are being shipped and the final destination of the waste. The manifest system is a self-enforcing mechanism that requires generators, transporters, and owner/operators of treatment, storage, and disposal facilities to participate in hazardous waste tracking. In addition the manifest provides information to transporters and waste management facility workers on the hazardous nature of the waste, identifies wastes so that they can be managed appropriately in the event of an accident, spill, or leak, and ensures that shipments of hazardous waste are managed properly and delivered to their designated facilities.

This system does not ordinarily involve intervention on the part of EPA unless hazardous wastes do not reach their point of disposition within a specified time frame. In most cases, RCRA-authorized States operate the manifest system, and requirements may vary among authorized States.

EPA believes manifest requirements and the resulting information collection mitigate potential hazards to human health and the environment by ensuring that hazardous waste is sent to and received by appropriate treatment, storage, and disposal facilities, by initiating appropriate response actions if a shipment does not reach its intended destination, and by providing necessary emergency response information in the event of an accident, spill, or leak during transportation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection

of information was published on November 27, 2001 (66 FR 59248); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.52 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: Hazardous Waste Generators, Transporters, and Treatment, Storage, and Disposal Facilities (TSDFs).

Estimated Number of Respondents: 145,974.

Frequency of Response: Per shipment of hazardous waste.

Estimated Total Annual Hour Burden: 3,612,539 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $ 2,416.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 0801.14 and OMB Control No. 2050–0039 in any correspondence.

Dated: March 15, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–6998 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7162–4]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement in General Electric Company v. United States Environmental Protection Agency, No. 99–1353 (D.C. Circuit). This case concerns the National Emission Standard for Hazardous Air Pollutants for Source Categories: Generic MACT Standards, 40 CFR part 63, subpart YY, published at 64 FR 34921 on June 29, 1999. The proposed settlement agreement was lodged with the United States Court of Appeals for the District of Columbia Circuit on March 13, 2002.

DATES: Written comments on the proposed settlement agreement must be received by April 22, 2002.

ADDRESSES: Written comments should be sent to Timothy D. Backstrom, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A copy of the proposed settlement agreement is available from Phyllis J. Cochran, (202) 564–7606. A copy of the proposed settlement agreement was also lodged in the case with the Clerk of the United States Court of Appeals for the District of Columbia Circuit on March 13, 2002.

SUPPLEMENTARY INFORMATION: EPA promulgated the National Emission Standard for Hazardous Air Pollutants for Source Categories: Generic MACT Standards, 40 CFR part 63, subpart YY, on June 29, 1999 (64 FR 34921). Thereafter Petitioner the General Electric Company (''GE'') filed a timely petition for review, citing an issue concerning the recordkeeping provision in 40 CFR 63.1109(c). Thereafter, GE raised additional issues pertaining to the definition of ''process vent'' in 40 CFR 63.1101, which EPA concluded could only be properly resolved in conjunction with related issues being considered with respect to some other MACT standards. The parties have now reached agreement on appropriate revisions to each of these provisions, and on some additional minor corrections as well.

The settlement requires the EPA Administrator to sign a proposed rule incorporating these changes no later than three months after the date the settlement was signed by counsel for the parties. Because EPA believes the proposed amendments are not controversial and are unlikely to elicit adverse comment, and because relatively little time remains before the compliance date for the affected standards, EPA expects to utilize a direct final rule, which will become final 60 days after publication if no adverse comments are received.

For a period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

Dated: March 14, 2002.

Richard B. Ossias,

Acting Associate General Counsel, Air and Radiation Law Office.

[FR Doc. 02–6999 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6627–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 564–7167 or *www.epa.gov/oeca/ofa.*

Weekly receipt of Environmental Impact Statements

Filed March 11, 2002 Through March 15, 2002

Pursuant to 40 CFR 1506.9.

EIS No. 020100, Draft EIS, FHW, MI, I–94 Jackson Freeway Modernization Project, Improvements between Michigan State Route 60 (M–60) and Sargent Road, Funding, NPDES and COE Section 404 Permits, Jackson County, MI, Comment Period Ends: May 06, 2002, Contact: Ronald Hatched (517) 702–1832.

EIS No. 020101, Draft Supplement, AFS, OK, AR, Vegetation Management in the Ozark/Quachita Mountains, Proposal to Clarify Direction for Conducting Project-Level Inventories for Biological Evaluations (BEs), Qzark, Quachita and St. Francis National Forests, AR and McCurtain and LeFlore Counties, OR, Comment Period Ends: May 06, 2002, Contact: Robert Wilhelm (404) 347–7076.

EIS No. 020102, Draft Supplement, AFS, GA, AL, FL, SC, LA, NC, MS, TX, Vegetation Management in the Coastal

Plain/ Piedmont, Proposal to Clarify Direction for Conducting Project-Level Inventories for Biological Evaluations (BEs), US Forest Service Southern Region, AL, GA, FL, SC, NC, LA, MS and TX, Comment Period Ends: May 06, 2002, Contact: Robert Wilhelm (404) 347–7076.

EIS No. 020103, Draft Supplement, AFS, AL, GA, KY, NC, SC, TN, VA, WV, Vegetation Management in the Appalachian Mountains, Proposal to Clarify Direction for Conducting Project-Level Inventories for Biological Evaluations (BEs), Al, GA, KY, NC, SC, TN, VA and WV, Comment Period Ends: May 06, 2002, Contact: Robert Wilhelm (404) 347–7076.

EIS No. 020104, Final EIS, NPS, DC, Mary McLeod Bethune Council House National Historic Site, Implementation, General Management Plan, Washington, DC, Comment Period Ends: April 22, 2002, Contact: Diann Jacox (202) 673–2402.

EIS No. 020105, Draft EIS, NPS, MN, Grand Portage National Monument General Management Plan, Implementation, Cook County, MN, Comment Period Ends: May 20, 2002, Contact: Tim Cochrane (218) 387–2788.

EIS No. 020106, Draft EIS, AFS, ID, Mann Creek Vegetation Management and Watershed Restoration Project, Implementation, Payette National Forest, Weiser Ranger District, Washington County, ID, Comment Period Ends May 06, 2002, Contact: Greg Lesch (208) 549–4200. This document is available on the Internet at: http://www.fs.fed.us/r4/payette/main.html.

EIS No. 020107, Draft Supplement, FTA, HI, Oahu Primary Corridor Transportation Project, Updated Information on the Refined Bus Rapid Transit (BRT) Alternative, Major Investment Study, In the City and County of Honolulu, HI, Comment Period Ends: May 07, 2002, Contact: Donna Turchie (415) 744–2737.

EIS No. 020108, Final EIS, AFS, NM, Talpa-to-Penasco Proposed to Construct and Operate 69 kV Transmission Line, Kit Carson Electric Cooperative, Carson National Forest, Camine Real Ranger District, Tasos County, NM, Wait Period Ends: April 22, 2002, Contact: Sher Churchchill (505) 758–6200. This document is available on the Internet at: http://www.fs.fed.us/r3/carson.

EIS No. 020109, Final Supplement, COE, TN, Chickamauga Dam Navigation Project, New and Updated Information concerning Cumulative Effects and Compliance with Section 106 of the Historic Preservation Act, NPDES, US Army COE Section 404 and US Coast Guard Permits Issuance, Tennessee River, Hamilton County, TN, Wait Period Ends: April 22, 2002, Contact: Wayne Easterling (615) 736–7847.

EIS No. 020110, Final EIS, USN, CA, Point Mugu Sea Range Naval Air Warfare Center Weapons Division (NAWCWPWS), Proposes To Accommodate TMD Testing and Training, Additional Training Exercises, Ventura, Los Angeles, Santa Barbara, San Diego and San Luis Obispo Counties, CA, Wait Period Ends: April 22, 2002, Contact: Gina Smith (888) 217–9045.

Amended Notices

EIS No. 020065, Draft EIS, FAA, MD, VA, DC, Potomac Consolidated Terminal (PCT) Radar Approach Control Facility (TRACON), Newly Consolidated four TRACON in Baltimore-Washington Metro Terminal Area, Possible Site is Vint Hill Farms, VA; DC, MD and VA, Comment Period Ends: May 23, 2002, Contact: William Carver (800) 762–9531. Revision of FR Notice Published on 02/22/2002: CEQ Comment Period Ending 05/28/2002 is Corrected to 05/23/2002.

Dated: March 19, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–6981 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66302; FRL–6829–5]

Ethion; Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order cancelling the registrations of all pesticide products produced by Cheminova AGRO A/S, FMC Corporation, and Micro-Flo Corporation containing O,O,O,O-tetaethyl S,S-methylene bis(phosphorodithioate) (ethion). This cancellation order follows a notice in the September 26, 2001 **Federal Register** announcing receipt of requests for cancellation of these products, and announcing the commencement of a public comment period as required by section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). EPA has received no comments, and is therefore granting the requested cancellation orders. Any distribution, sale, or use of the products subject to this cancellation order is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: Cancellation of manufacturing-use products will be effective on October 1, 2003, and cancellation of end-use products will be effective on December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Dumas,Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8015; fax number: 703–308–8041; e-mail address:dumas.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of thisdocument, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–66302. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of

the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. What Action is the Agency Taking

This notice announces the cancellation of five ethion pesticide products as requested by Cheminova A/S, FMC Corporation, and Micro-Flo Corporation. These registrations are listed in Table 1.

A. Background Information

Ethion is an organophosphate insecticide registered for use on citrus in Florida and Texas, and cattle in eartags.

On August 24, August 29, and August 31, 2001, Micro-Flo Corporation, FMC Corporation, and Cheminova A/S, respectively, signed a Memorandum of Agreement with EPA requesting cancellation pursuant of 6(f) of FIFRA of all their registrations for products containing ethion. In the **Federal Register** of September 26, 2001 (66 FR 49182) (FRL–6805–5), EPA announced its intention to accept the cancellation requests and provided for a public comment period. No comments were received in response to that notice.

B. Cancellation Order

Pursuant to section 6(f)(1)(A) of FIFRA, EPA grants the cancellation requests for the registrations identified in Table 1. Accordingly, EPA orders the cancellation of the manufacturing-use products (EPA Registration Nos. 4787–10 and 279–2280) effective October 1, 2003. EPA orders the cancellation of end-use products (279–1254, 51036–89, and 51036–90) effective December 31, 2003. Any distribution, sale or use of existing stocks of the products identified in Table 1 in a manner inconsistent with the terms of this Order or the Existing Stocks Provisions in Unit III. of this notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

TABLE 1.—CANCELED REGISTRATIONS

Company	Registration Number	Product
Cheminova A/S	4787-10	Cheminova Ethion Technical
FMC Corporation	279-1254 279-2280	Ethion 4 Miscible Ethion Technical Insecticide
Micro-Flo Corporation	51036-89 51036-90	Ethion 4 EC Ethion 8 EC

III. Provisions for Disposition of Existing Stocks

Cancellation of manufacturing-use products will be effective on October 1, 2003, and cancellation of end-use products will be effective on December 31, 2003.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action (56 FR 29362, June 26, 1991).

A. Manufacturing Use Products

As of October 1, 2003, all sale and distribution of existing stocks of ethion manufacturing use products is prohibited, unless the sale or distribution is for export or for the purpose of manufacturing a product intended for export, consistent with the requirements of FIFRA section 17, or for proper disposal.

As of December 31, 2003, all use of existing stocks of manufacturing-use products to manufacture any other product is prohibited, except for production of products intended for export consistent with the requirements of FIFRA section 17.

B. End Use Products

As of December 31, 2003, Micro-Flo Corporation, FMC Corporation, and Cheminova A/S, are prohibited from distributing or selling existing stocks of the end-use products, unless the sale or distribution is for export or for the purpose of manufacturing a product intended for export, consistent with the requirements of FIFRA section 17, or for proper disposal.

As of October 1, 2004, all sale and distribution of existing stocks of the end-use products is prohibited, unless the sale or distribution is for export or for the purpose of manufacturing a product intended for export, consistent with the requirements of FIFRA section 17, or for proper disposal.

As of December 31, 2004, all use of existing stocks of the end-use products is prohibited.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 11, 2002.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–6854 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66300A; FRL–6831–6]

Notice of Receipt of Requests to Cancel Certain Chromated Copper Arsenate (CCA) Wood Preservative Products and Amend to Terminate Certain Uses of CCA Products; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of public comment period.

SUMMARY: Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA issued a notice of receipt of requests from registrants of affected chromated copper arsenate (CCA) products to cancel certain products and to amend to terminate certain uses of other CCA products. In the notice published on February 22, 2002, the Agency provided a 30–day comment period that expires on March 25, 2002. In a letter submitted on behalf of Elementis PLC and dated March 11, 2002, an extension of the period for submission of public comments was requested. After due consideration of the registrant's request, the Agency, by

this notice, is hereby announcing that the deadline for submitting comments is extended from March 25, 2002, to April 9, 2002.

DATES: Comments on the matters announced in the February 22, 2002 **Federal Register** notice must be received on or before April 9, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION** of the February 22 **Federal Register**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–66300A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Bonaventure Akinlosotu, Antimicrobial Division, Office of Pesticide Programs (7510C), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Office location for commercial courier delivery, telephone number, and e-mail address: Rm. 308, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 605–0653; e-mail: akinlosotu.bonaventure@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information see the initial **Federal Register** notice of February 22, 2002 (67 FR 8244) (FRL–6826–8). A copy of the letter requesting the time extension has been placed in the official record of this action (docket control number OPP–66300).

I. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use CCA products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–66300. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

List of Subjects

Environmental protection.

Dated: March 18, 2002.

Frank Sanders,

Director, Antimicrobial Division, Office of Pesticide Programs.

[FR Doc. 02–6943 Filed 3–21–02; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66292A; FRL–6823–8]

Fenamiphos and Metolachlor; Registered Uses Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the use cancellations as requested by the companies that hold the registrations of pesticide end-use and manufacturing-use products containing the active ingredient (a.i.) fenamiphos and metolachlor and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up a September 20, 2001, notice of receipt of requests for voluntary cancellation of uses. EPA indicated that it would issue an order confirming the voluntary use cancellations unless the Agency received any substantive comment within the comment period that would merit its further review of these requests. Any distribution, sale, or use of fenamiphos and metolachlor products labeled for the canceled uses are only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: The cancellations are effective March 22, 2002.

FOR FURTHER INFORMATION CONTACT: By mail: Tawanda Spears, telephone number: (703) 308–8050; e-mail address: spears.tawanda@epa.gov (Fenamiphos) and Anne Overstreet, telephone number: (703) 308–8068; e-mail address: overstreet.anne@epa.gov (Metolachlor), Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use fenamiphos and/or metolachlor products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this

document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–66292A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Receipt of Requests to Cancel and Amend Registrations to Delete Uses

A. Background

EPA is publishing a single notice in response to registrants' requests to delete some uses for fenamiphos and metolachlor from their labels. (See the table in this unit for specific information regarding the cancellation requests.)

Reregistration Eligibility Decision (RED) documents summarize the findings of EPA's reregistration process for individual chemical cases, and reflect the Agency's decisions on risk assessment and risk management for uses of individual pesticides. The metolachlor RED was issued in April of 1995. However, since the Federal Food, Drug, and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act (FQPA) of 1996, the Agency is required to reconsider metolachlor tolerances consistent with the provisions of the Act. This tolerance reassessment decision is scheduled to be completed in 2002. In defining the scope of this review, Syngenta, the metolachlor registrant, has elected to voluntarily drop certain uses from their manufacturing-use product label.

For fenamiphos, an organophosphate, a RED has not been issued. Although the Agency has not yet completed its cumulative risk assessment for a RED, the Agency is issuing an interim reregistration eligibility decision (IRED) to inform the public of the Agency's completion of assessment of risks associated with the active ingredient fenamiphos alone, any unreasonable adverse effect from the exposure to fenamiphos, and mitigation measures necessary to eliminate such unreasonable adverse effects to the environment. When the Agency completes assessing the cumulative effects of pesticides sharing a common effect of toxicity with fenamiphos, the Agency will issue a final decision on the reregistration eligibility of pesticides containing fenamiphos. As part of this process, Bayer has elected to delete certain uses from its product labels rather than develop the data necessary to support reregistration.

In the **Federal Register** notice published on September 20, 2001 (66 FR 48459) (FRL–6800–3), EPA published a notice of the Agency's receipt of requests for voluntary cancellation of uses from registrants that hold the pesticide registrations containing fenamiphos and metolachlor.

B. Requests for Voluntary Cancellation of Registered Uses

Pursuant to section 6(f)(1)(A) of FIFRA, the following companies have submitted a request to amend their end-use and manufacturing-use product registrations of pesticide products containing fenamiphos and metolachlor, respectively, to delete the listed uses from the listed product(s) bearing such use. The registrations, for which amendments to delete uses were requested, are identified in the following table.

TABLE 1.—VOLUNTARY CANCELLATION OF REGISTERED USES

Chemical	PC Code	Company/Address	Nature of Action	Products Affected	Comments
Fenamiphos	100601	Bayer Corp., 8400 Hawthorne Rd., P.O. Box 4913, Kansas City, MO, 64120–0013	Cotton and pineapple use deletion	3EC[1] [3125–283] 15G[2] [3125–236]	Cancel 3EC and 15G on cotton and 15G on pineapple
Metolachlor	108801	Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300	Stone fruits and almond use deletion	100–587	

[1] Nemacur 3 (emulsifiable concentrate - 3 lb a.i./gal)
[2] 15G: Nemacur 15% (granular formulation - 15% a.i./gal)

In the **Federal Register** notice, EPA requested public comment on the voluntary cancellation and use deletion requests, and provided a 30–day comment period. The registrants requested that the Administrator waive the 180–day comment period provided under FIFRA section 6(f)(1)(C). No public comments were submitted to the docket in response to EPA's request for comments.

III. Cancellation Order

Pursuant to section 6(f) of FIFRA, EPA is approving the requested use deletions and the requested registration cancellations. The Agency orders that the registrations of the uses identified in the table are hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in the table (i.e., products bearing labeling for the canceled uses) in a manner inconsistent with the terms of this Order or the Existing Stock Provisions in Unit IV. of this **Federal Register** notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

IV. Existing Stocks Provisions

For purposes of this Order, the term ''existing stocks'' is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of

a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation. The existing stocks provisions of this Cancellation Order are as follows:

1. *Distribution or sale of manufacturing-use products by registrants.* Distribution or sale by the registrant of the existing stocks of any product identified in Table 1 will not be lawful under FIFRA after 12 months from the effective date of the cancellation order, except for the purposes of shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or proper disposal.

2. *Distribution or sale of manufacturing-use products byothers.* Distribution or sale by persons other than the registrant of the existing stocks of any product identified in Table 1 will not be lawful under FIFRA after 24 months from the effective date of the cancellation order, except for the purposes of shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or proper disposal.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 11, 2002.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–6855 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

March 13, 2002.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 22, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0289.

Title: Section 76.1705, Performance Tests (channels delivered), Section 76.601, Performance Tests.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; and State, local, or tribal government.

Number of Respondents: 10,400.

Estimated Time per Response: 0.5 to 70 hours.

Frequency of Response: Semi-annual and triennial reporting requirements; Third party disclosure.

Total Annual Burden: 277,200 hours.

Total Annual Costs: None.

Needs and Uses: 47 CFR Section 76.1705 requires cable television systems to maintain at its local office a current listing of cable television channels that the system delivers to its subscribers. 47 CFR Section 76.601 requires cable systems with over 1,000 subscribers to comply with all pertinent technical standards and to conduct semi-annual performance tests and triennial performance tests for color testing. The FCC or the local franchise authority may require additional tests to secure compliance with these technical standards. Furthermore, prior to requiring additional testing, the local franchising authority must notify the cable operator, who is then allowed 30 days to comply with any perceived signal quality problems that need correcting.

OMB Control Number: 3060–0638.

Title: Section 76.934(g), Alternative Rate Regulation Agreements.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 100.

Estimated Time per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 50 hours.

Total Annual Costs: None.

Needs and Uses: 47 CFR Sections 76.934(g) requires that local franchising authorities, certified pursuant to 47 CFR Section 76.910, and small systems operated by small cable companies may enter into an alternative rate regulation agreements affecting the basic service tier and the cable programming service tier. Small systems must file a copy of the operative alternative agreement with the FCC so that verification can be made that such agreements have been entered into and executed pursuant to the Commission's rules.

OMB Control Number: 3060–0644.

Title: Establishing Maximum Permitted Rates for Regulated Cable Services on Small Cable Systems, FCC Form 1230.

Form Numbers: FCC 1230.

Type of Review: Extension of a currently approved collection.

Respondents: State, local, or tribal government; Business or other for-profit entities; and Not-for-profit institutions.

Number of Respondents: 5.

Estimated Time per Response: 2.0 to 2.25 hours.

Frequency of Response: Annual reporting requirements; Third party disclosure.

Total Annual Burden: 211 hours.

Total Annual Costs: None.

Needs and Uses: On May 5, 1995, the FCC adopted rules that allow a small cable system owned by a small cable company to use a simplified cost-of-service procedure to set its maximum permitted rate. Pursuant to these rules, a cable system is eligible to set its maximum permitted rate with the FCC Form 1230 if it is a system with 15,000 or fewer subscribers, and it is not owned by a cable company with more than 400,000 subscribers. The FCC and the

local franchise authorities use these data to determine whether cable rates for basic service, cable programming service, and associated equipment are reasonable under FCC regulations.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–6932 Filed 3–21–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 02–376]

Commission Seeks Comment on AT&T Request To Contribute to Universal Service Based on Projected Revenues

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: This document seeks comments on AT&T request to the Commission to permit it to contribute based on its projected revenues for the current quarter, subject to true up with actual revenues, instead of contributing to universal service based on historical revenues from two quarters prior.

DATES: Comments are due on or before April 12, 2002. Reply comments are due on or before April 22, 2002.

ADDRESSES: See Supplementary Information section for where and how to file comments.

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

SUPPLEMENTARY INFORMATION: On December 13, 2001, AT&T filed a request with the Commission to contribute to universal service based on its projected revenues on a going-forward basis. Pursuant to § 54.711(c) of the Commission's rules, universal service contributions are based on a contributors' historical gross-billed end-user interstate and international telecommunications revenues, which are reported on a quarterly basis on the FCC Form 499–Q. The FCC Form 499–Q instructs contributors to report their revenues from the prior calendar quarter. These revenue data then serve as the basis for contributions assessed in the next calendar quarter. AT&T asks the Commission to permit it to contribute based on its projected revenues for the current quarter, subject to true up with actual revenues, instead of contributing to universal service based on historical revenues from two quarters prior. AT&T contends that grant of its request is warranted because the interval between reporting and assessment of contributions under the current rules, combined with AT&T's declining interstate and international revenues, force it to recover its universal service contributions from a smaller customer base than the one on which it was assessed. We seek comment on AT&T's request.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before April 12, 2002, and reply comments are due on or before April 22, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* (63 FR 24121, May 1, 1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Acting Secretary, William Caton, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Parties also must send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street SW., Room 5–A422, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 Twelfth Street, SW., Room CY–B402, Washington, DC 20554.

Pursuant to § 1.1206 of the Commission's rules, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Federal Communications Commission.

Katherine L. Schroder,

Chief, Accounting Policy Division.

[FR Doc. 02–6929 Filed 3–21–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 02–510]

Common Carrier Bureau Seeks Comment on Guam Cellular and Paging, Inc. d/b/a/ Saipancell Petition for Designation as an Eligible Telecommunications Carrier on the Island of Saipan in the Commonwealth of the Northern Mariana Islands

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: This document seeks comments on the Guam Cellular and Paging, Inc. d/b/a Saipancell (Saipancell) petition seeking designation of eligibility to receive federal universal service support for service offered on the island of Saipan in the Commonwealth of the Northern Mariana Islands.

DATES: Comments are due on April 22, 2002. Reply comments are due on May 6, 2002.

ADDRESSES: See Supplementary Information section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Anita Cheng, Assistant Chief, Accounting Policy Division, Common Carrier Bureau, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On February 19, 2002, Saipancell filed with the Commission a petition under section 214(e)(6) seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered on the island of Saipan in the Northern Mariana Islands. Specifically, Saipancell contends that the Commonwealth Utilities Corporation, which is the public utility commission of the Northern Mariana Islands, has provided an affirmative statement that it does not regulate commercial mobile

radio service carriers; Saipancell meets all the statutory and regulatory prerequisites for ETC designation; and designating Saipancell as an ETC will serve the public interest. Pursuant to § 54.207(c) of the Commission's rules, Saipancell also requests that the Commission redefine the service area of the incumbent rural local exchange carrier, Micronesian Telephone Corporation (MTC). MTC serves three islands in the Northern Mariana Islands—Saipan, Tinian, and Rota. Saipancell seeks redefinition of the MTC service area to enable Saipancell to be designated as an ETC only for the island of Saipan.

The petitioner must provide copies of its petition to the Commonwealth Utilities Corporation at the time of filing with the Commission. The Commission will also send a copy of the Public Notice to the Commonwealth Utilities Corporation by overnight express mail to ensure that the Commonwealth Utilities Corporation is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before April 12, 2002, and reply comments are due on or before April 22, 2002. An original and four copies of all comments must be filed with William F. Caton, Acting Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW–B204, Washington DC 20554. In addition, four copies of each comment must be delivered to Sheryl Todd, Common Carrier Bureau, 445 12th Street, SW., Room 5–A520, Washington, DC, 20554, and one copy to Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington DC, 20554. In accordance with the Commission's earlier Public Notice announcing that hand-delivered or messenger-delivered filings are no longer accepted at the Commission's headquarters, hand-delivered or messenger-delivered filings must be delivered to 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location will be 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service (USPS) Express Mail and Priority Mail), must be addressed to 9300 East Hampton Drive, Capitol Heights, MD 20743. This location will be open 8 a.m. to 5:30 p.m. The USPS first-class mail, Express Mail, and Priority Mail should continue to be addressed to the Commission's headquarters at 445 12th Street, SW., Washington, DC 20554. The USPS mail addressed to the Commission's headquarters actually goes to our Capitol Heights facility for screening prior to delivery at the Commission.

If you are sending this type of document or using this delivery method. . .	It should be addressed for delivery to. . .
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary.	236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002 (8 a.m. to 7 p.m.).
Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail).	9300 East Hampton Drive, Capitol Heights, MD 20743 (8 a.m. to 5:30 p.m.).
United States Postal Service first-class mail, Express Mail, and Priority Mail.	445 12th Street, SW., Washington, DC 20554.

In addition to filing paper comments, parties are encouraged also to file comments electronically using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Document in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by the Internet e-mail. To receive instructions, send an email to *ecfs@fcc.gov* and include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

Pursuant to § 1.1206 of the Commission's rules, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Federal Communications Commission.

Anita Cheng,

Assistant Chief, Accounting Policy Division.

[FR Doc. 02–6931 Filed 3–21–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: Renewal of a currently approved collection.

Title: Flood Insurance.

OMB Number: 3064–0120

Annual Burden:

Estimated annual number of respondents/recordkeepers: 5,700

Estimated number of covered transactions: 180,000

Estimated reporting hours: 9,000

Estimated recordkeeping hours: 5,700

Estimated total annual reporting and recordkeeping burden hours: 14,700

Estimated average annual burden hours per respondent/recordkeeper: 2.6 hours

Expiration Date of OMB Clearance: April 30, 2002.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4058, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before April 22, 2002, to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Each supervised lending institution is currently required to provide a notice of special flood hazards to a borrower acquiring a loan secured by a building on real property located in an area

identified by the Director of the Federal Emergency Management Administration as being subject to special flood hazards. The Riegle Community Development Act requires that each institution must also provide a copy of the notice to the servicer of the loan (if different from the originating lender).

Dated: March 18, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–6951 Filed 3–21–02; 8:45 am]

BILLING CODE 6714–01–U

FEDERAL ELECTION COMMISSION

[Notice 2002–4]

The Voting System Standards and an Opportunity to Publicly Voice Previously Submitted Comments

AGENCY: Federal Election Commission.

ACTION: Notice of public hearing.

SUMMARY: The Federal Election Commission is announcing a public hearing on the December 13, 2001, release of the Voting System Standards.

DATES: The hearing will be held at 10:00 a.m. on Wednesday, April 17, 2002. All requests to testify must be received by the Commission by April 7, 2002. Requests to testify are limited to election officials, members of the National Association of State Election Directors' Voting System Standards Board, and those parties who have previously submitted written comments to the June 16, 2001, and/or December 13, 2001, release of the Voting System Standards.

ADDRESSES: Requests to testify should be addressed to Penelope Bonsall, Director of the Office of Election Administration, and must be submitted in either written or electronic form. Due to recent delays in mail service to government offices, electronic or fax submissions are encouraged to ensure timeliness. Written requests to testify should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed requests should be sent to (202) 219–8500, with printed copy follow-up to insure legibility. Electronic mail requests should be sent to vss@fec.gov. Persons sending requests by electronic mail must include their full name, electronic mail address and postal service address within the text of the request. Commission hearings are held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Penelope Bonsall, Director of the Office of Election Administration, 999 E Street, NW., Washington, DC 20463, (202) 694–1095 or (800) 424–9530, ext. 1095.

SUPPLEMENTARY INFORMATION: The Voting System Standards (the ''Standards'') were originally promulgated in 1990. Technological and commercial innovations during the last decade have demanded that the Standards be updated, and the project to revise them was begun in 1998. The revised Standards have two volumes. Volume I provides functional and technical requirements for a number of system types and configurations. Volume II provides testing specifications for the requirements in Volume I. Both Volumes are available at the Commission's web site (*http://www.fec.gov/pages/vss/vss.html*). The Commission previously released for public comment a draft of the first volume on June 16, 2001. 66 FR 35978. During this comment period, the Commission received 38 sets of comments from 39 parties. Subsequently, the Commission released the entire draft Standards on December 13, 2001. 66 FR 65708. The comment period for the December 13, 2001, draft release ended on February 1, 2002. FR Notice 2001. Twenty-seven sets of comments from twenty-three parties were received by the Commission in response to the December 13, 2001, release. Four commenters requested to testify at a public hearing if one is held.

After considering these requests and the other comments received to date in response to the notice, the Commission believes a public hearing would be helpful in considering the issues raised by the draft Standards. The hearing will be held at 10:00 a.m. on April 17, 2002.

Dated: March 18, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–6948 Filed 3–21–02; 8:45 am]

BILLING CODE 6715–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–30]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Outcome Evaluation of HIV Prevention Programs Focusing on Prevention Case Management Interventions Implemented by the Directly-funded Community-Based Organizations (CBOs)—New—National Center for HIV, STD and Tuberculosis Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC). This evaluation is necessary to understand the impact of CDC's expenditures and efforts to support CBOs and for modifying and improving the HIV prevention case management efforts of CBOs. This data collection will provide standardized data and allow CDC to (a) assess the implementation and effectiveness of HIV prevention case management (PCM) interventions through process and outcome evaluations; (b) determine the degree of adherence to the CBOs' documented HIV PCM intervention protocol, and through quality assurance efforts, to revise program implementation as necessary; (c) understand the behavioral impact of these programs; and (d) provide useful information for CBO program planners and implementers.

Three CBOs funded under Program Announcement 01000, Community-Based Strategies to Increase HIV Testing of Persons at High Risk in Communities of Color, successfully competed for additional funds from Program Announcement 01159, Outcome Evaluation of HIV Prevention Programs with a focus on Prevention Case Management Interventions and Group-Level Interventions Implemented by CDC's Directly-funded Community-

Based Organizations, to conduct an outcome evaluation of their PCM interventions for two years. These CBOs administer baseline social-behavioral questionnaires as part of program services. Each CBO will report on the PCM program that it has implemented, and, as part of the research project, will conduct two short follow-up social-behavioral questionnaires with clients to assess changes in participant risk behaviors. Incentives will be given to CBO respondents to complete follow-up assessments. This is a two-year project; each of the three CBOs is estimated to collect data from 100 clients each year. There are no costs to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
CBO Clients (year—1)	300	1	30/60	150
CBO Clients (year—2)	300	1	30/60	150
Total				300

Dated: March 18, 2002.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–6924 Filed 3–21–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–31]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Breast, Colorectal, and Prostate Cancer Patterns of Care, Reoccurrence, and Survival (CBOs)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). Invasive cancers of the breast, colon and rectum, and prostate impose a substantial burden of disease in the United States (U.S.) and are expected to account for approximately 42 percent of the estimated 1.3 million invasive cancers that will be diagnosed during 2002. Breast and colorectal cancers are particularly of high public health importance because of current widespread activities in place for early diagnosis and treatment.

Even though these cancers are of high public importance, statewide central cancer registries are not likely to capture complete follow-up information or detailed information on treatment modalities other than surgery. Also, data on extent of disease at diagnosis are often limited. In order to expand the uses of their data to include survival and patterns of care studies and clinical research, registries may need to collect additional information. Through re-abstracting representative samples of cases from population-based, central cancer registries from 1997, this pattern of care study will assess the quality of stage and treatment data. Estimates of the proportions of patients who received the standard of care for localized breast, localized prostate, and stage III colon cancers will be determined as well. Registries participating in the study will send data to the CDC for some analyses. Data for the patterns of care study and for the CONCORD Study, a collaborative project between the CDC and cancer registries in the U.S. and Europe, will be re-abstracted from medical records at the same time. The annualized estimated cost to respondents is $2,056,000.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Physicians (M.D., D.O.)	4440	1	15/60	1,110
Total				1,110

Dated: March 18, 2002.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–6925 Filed 3–21–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 66 FR 56562–63, dated November 8, 2001) is amended to reorganize the Accounting Branch, Financial Management Office.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete the functional statement for the Accounting Branch (HCAC2) and insert the following:

(1) In conjunction with the Financial Policy and Internal Quality Assurance Activity, develops accounting and travel policies and procedures for CDC; (2) provides financial information for management purposes, effective control and accountability of all funds, and suitable integration of CDC accounting with the accounting operations of the U.S. Treasury; (3) coordinates activities of the Accounting Branch with the FMO Director, the FMO Budget Branch, the FMO Financial Services Branch, the Financial Policy and Internal Quality Assurance Activity, and the FMO Financial Systems Branch; (4) coordinates accounting and travel policy issues with the HHS Office of Financial Policy; (5) reviews and develops accounting systems to comply with requirements of HHS and the General Accounting Office and maintains an integrated system of accounts to meet the budgetary and accounting requirements of CDC; (6) reviews and implements the legal, accounting and reporting requirements of the Chief Financial Officer's Act, the Federal Managers' Financial Integrity Act, the Principles of Appropriation Law and other regulatory requirements; (7) compiles all accounting information for the 5-Year Financial Management Plan which provides CDC's financial management vision and objectives for the ensuing 5 years period; (8) develops strategies for employee training and professional development and (9) complies and submits the annual financial statements required by the Chief Financial Officers' Act.

Delete the in its entirety the title and functional statement for the Accounts Payable Section (HCAC22).

Delete the functional statement for the Cincinnati Accounting Section (HCAC23) and insert the following:

(1) Maintains a system of accounts to meet the budgetary and accounting requirements of the NIOSH accounting point; (2) provides financial information for management purposes, effective control and accountability of all accounting point funds, and integration of NIOSH accounting with the accounting and reporting operations of CDC and the U.S. Treasury; (3) coordinates the NIOSH accounting point accounts payable and receivable activities including auditing of vouchers; (4) reviews the NIOSH accounting point system for compliance with CDC, HHS and General Accounting Office requirements; and (5) reconciles NIOSH accounting point general ledger accounts including cash, property and receivables.

Delete the functional statements for the Debt and Property Management Section (HCAC24) and insert the following:

(1) Compiles and submits the quarterly HHS Debt Management report which reports the status of all unpaid debts due to CDC from the public; (2) compiles and submits the annual Treasury report of debts due to CDC; (3) performs all debt collection activities in accordance with the Debt Collection Act of 1982 and in accordance with requirements provided by HHS; (4) prepares customer billings; (5) collects and records all amounts billed to customers; (6) controls billings and collections processed on the Online Payment and Collection System (OPAC/IPAC) related to debt collection; (7) reconciles accounts receivable subsidiary records to the CDC general ledger receivable accounts; (8) coordinates CDC's debt collection activities with FMO's Financial Services Branch and with CDC program administrative offices; (9) coordinates all debt collection activities with the U.S. Justice Department and with private collection agencies; (10) prepare and controls daily deposits which are delivered to the Federal Reserve Bank; (11) performs property accounting activities including maintenance of general ledger property accounts and reconciliation with the CDC Personal Property System and (12) maintains travel advance records and reconciles subsidiary records to general ledger advance accounts.

Delete the functional statement for the General Ledger Section (HCAC25) and insert the following:

(1) Compiles and submits the Report of Budget Execution which reports the obligations incurred against the current year appropriation; (2) compiles and submits the monthly Statement of Transactions report to the U.S. Treasury which reports the CDC cash disbursements by appropriation; (3) reconciles general ledger cash accounts with the U.S. Treasury monthly disbursements and receipts; (4) performs daily maintenance on the general ledger accounts including the asset, liability, capital and budgetary accounts; (5) makes recommendations for improvements to the accounting system and monitors internal controls; (6) analyzes the general ledger accounts, prepares system-wide reconciliations and interprets the effect of transactions on the CDC's financial resources; (7) develops new reports to support budget requirements and to support the needs of CDC management; (8) controls input of all funding transactions; (9) performs daily maintenance of accounting system tables; (10) controls grant awards processed through the Payment Management System (PMS) including submission of grant obligations to PMS, recording of disbursements received from PMS and reconciliation of the general ledger accounts.

After the Financial Systems Branch (HCAC5), insert the following:

Financial Services Branch (HCAC6). (1) In conjunction with the Financial Policy and Internal Quality Assurance Activity, develops and implements policies and procedures for all accounts payable and disbursement functions at CDC; (2) coordinates activities of the Financial Services Branch with the FMO Director, FMO Accounting Branch, FMO Budget Branch, FMO Financial Policy and Internal Quality Assurance Activity, and FMO Financial Systems Branch; (3) coordinates the development of new financial systems to automate accounts payable and disbursement operations, and maintains and serves as the CDC focal point on all existing automated payment and disbursement systems; (4) reviews obligation documents and payment requests from a variety of private sector and government sources to determine the validity and legality of the requests, and provides electronic authorization to the Department of the Treasury to issue checks or electronic funds transfers for valid payment requests; (5) compiles

and submits a variety of cash management and travel reports required by the Department of the Treasury and various other outside agencies; (6) acts as liaison with the CIOs and outside customers to provide financial information, resolve problems and provide training and advice on payment, travel and disbursement issues; (7) serves as the CDC subject matter expert on all financial matters dealing with international travel, assignments and payments; and (8) analyzes internal reports to provide management information on topics such as interest expenses, workload, and various other performance indicators.

Cash Management and Quality Control Section (HCAC62). (1) Overall responsibility for policies, procedures, internal controls and systems related to section payment and disbursement activities; (2) analyzes and reconciles disbursements made for CDC by other Federal activities, and insures that disbursements are consistent with Federal Appropriations Law requirements, GAO policies, interagency elimination entry requirements, and other governing financial regulations; (3) overall responsibility for all financial matters dealing with international travel, assignments and payments; (4) serves as the focal point at CDC for vendor, employee and CIO payment and disbursement questions and resolution of payment and disbursement problems; (5) acts as CDC liaison on all payment issues related to the implementation of the Government Purchase Card Program; (6) maintains contract advance records and coordinates the recording and reconciling of subsidiary records to general ledger advance accounts; (7) serves as the CDC focal point for cashier and imprest fund issues; (8) analyzes year-end liquidated obligations for compliance with Federal Appropriations Laws and the Economy Act, and recommends funding changes to CIO's; and (9) prepares and reconciles all U.S. Treasury Department reports and transmissions and serves as the primary point of contact for all U.S. Treasury issues; (10) performs ongoing quality control reviews of various payment and disbursement processes and systems in the Financial Services Branch, including reviews to ensure compliance with the Prompt Payment Act and to validate the legality, propriety and accounting treatment of travel and non-travel payments at CDC, including reviews of payments processed by the Cincinnati office; (11) identifies recurring problems in payment processes and recommends corrective actions or identifies required training to correct the deficiency; (12) serves as the focal point for all Federal Income Tax issues for CDC payments, reconciles tax withholding general ledger accounts, and prepares all monthly, quarterly and annual reports to the Internal Revenue Service; and (13) establishes local policy and procedures on electronic payments and maintains the automated file containing vendor payment address and banking information.

Payment and Travel Services Section (HCAC63). (1) Develops and implements policies and procedures related to payment processes and systems and ensures appropriate internal controls are in place and functioning to ensure the integrity and legality of CDC payments; (2) analyzes and approves payment for all equipment, supplies, travel, transportation and services procured by CDC, and ensures the validity, legality and proper accounting treatment of expenditures processed through the Accounts Payable module of the CDC Financial Management System; (3) provides expert level guidance, oversight, and interpretation of policies, laws, rules and regulations for the CIO's on all aspects of travel procedures and policies at CDC, including the use of the automated travel system, local travel, domestic and foreign temporary duty travel, and change of station travel for civil service employees, foreign service employees, commissioned officers, CDC fellows, etc.; (4) serves as the Subject Matter Expert and focal point for the development of new financial systems to automate accounts payable operations and serves as the focal point for payment system issues for CDC; (5) researches and analysis appropriations law issues at CDC and provides guidance consistent with legal and regulatory guidelines; (6) complies and submits a variety of management and payment performance reports required by various outside agencies; (7) analyzes various internal reports to provide management information on topics such as interest expenses, workload, and various other performance indicators; (8) coordinates all aspects of CDC's Electronic Commerce Program in the Financial Services Branch; and (9) analyzes a variety of accounting and travel system reports to ensure that obligations are liquidated in a timely manner.

Dated: March 13, 2002.

David Fleming,

Acting Director.

[FR Doc. 02–6926 Filed 3–21–02; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4026–FN]

RIN 0938–ZA21

Medicare Program; Medicare+Choice Organizations—Approval of the Joint Commission on Accreditation of Healthcare Organizations for Medicare+Choice (M+C) Deeming Authority for Managed Care Organizations That Are Licensed as Health Maintenance Organizations (HMOs) or Preferred Provider Organizations (PPOs)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces the approval of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) for deeming authority of Medicare+Choice (M+C) organizations that are licensed as health maintenance organizations (HMOs) or preferred provider organizations (PPOs). We have found that the JCAHO's standards for managed care plans/integrated delivery networks/provider-sponsored organizations (networks) submitted to us and amended during the application process, meet or exceed those established by the Medicare program. Therefore, M+C organizations that are licensed as HMOs or PPOs and are accredited by JCAHO, may receive, at their request, deemed status for the M+C requirements in the six areas—Quality Assurance, Information on Advance Directives, Antidiscrimination, Access to Services, Provider Participation Rules, and Confidentiality and Accuracy of Enrollee Records—that are specified in section 1852(e)(4)(B) of the Social Security Act (the Act).

Regulations set forth in 42 CFR 422.157(b)(2) specify that the Secretary will publish a **Federal Register** notice that indicates whether an accreditation organization's request for approval has been granted and the effective date and term of the approval, which may not exceed 6 years.

FOR FURTHER INFORMATION CONTACT: Trisha Kurtz, (410) 786–4670.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services through a managed care organization that has a Medicare+Choice (M+C) contract with us. To enter into an M+C contract, the

organization must be licensed by the State as a risk-bearing entity and must meet the requirements that are set forth in 42 CFR part 422. Those regulations implement part C of title XVIII of the Social Security Act (the Act), which specifies the services that a managed care organization must provide and the requirements that the organization must meet to be an M+C contractor. Other relevant sections of the Act are parts A and B of title XVIII and part A of title XI pertaining to the provision of services by Medicare certified providers and suppliers.

Following approval of the M+C contract, we engage in routine monitoring of the M+C organization to ensure continuing compliance. The monitoring process is comprehensive and uses a written protocol that specifies the Medicare requirements the M+C organization must meet.

An M+C organization may be exempt from our monitoring of the requirements that are in the areas listed in section 1852(e)(4)(B) of the Act if the organization is accredited by a CMS-approved accrediting organization. In essence, the Secretary ''deems'' that the Medicare requirements are met based on a determination that the accrediting organization's standards are at least as stringent as Medicare requirements. Regulations for the M+C deeming program are set forth in §§ 422.156, 422.157, and 422.158. The term for which we may approve an accrediting organization may not exceed 6 years as stated in § 422.157(b)(2). For continuing approval, the accrediting organization will have to re-apply to us.

II. Provisions of the Proposed Notice

On September 18, 2001, we published a proposed notice in the **Federal Register** (66 FR 48147) announcing the receipt of an application from JCAHO for approval of deeming authority for M+C organizations that are licensed as health maintenance organizations (HMOs) or preferred provider organizations (PPOs). In the proposed notice, we provided the factors on which we would base our evaluation. In accordance with § 422.157(b)(1)(iii) of the M+C regulations, we provided a 30-day public comment period. We did not receive any public comments in response to that proposed notice.

III. Deeming Approval Review and Evaluation

As set forth in section 1852(e)(4) of the Act and our regulations at § 422.158, the review and evaluation of the JCAHO's accreditation program (including their standards and monitoring protocol) was compared to the requirements set forth in part 422 for the M+C program.

A. Components of the Review Process

The review of JCAHO's application for approval of M+C deeming authority included the following components.

1. Site Visit

A site visit to JCAHO's headquarters was conducted to assess—

- The corporate policies and procedures that relate to the network accreditation program;
- The survey, decision-making, and report-writing processes used in JCAHO's network accreditation program;
- The resources available for accreditation reviews and JCAHO's ability to financially sustain an M+C deeming program;
- The staff and surveyor training and evaluation programs;
- The communication, customer support and release of accreditation information to the public; and
- JCAHO's ability to investigate and respond appropriately to complaints against accredited networks.

2. Desk-Top Review

A desk-top review of JCAHO's network accreditation program, included the following items—

- A description of JCAHO's survey process for networks, including the frequency of surveys performed, whether the surveys are announced or unannounced, surveyor instructions, the review and accreditation status decision-making process, procedures used to notify accredited M+C organizations of deficiencies and monitoring of the correction of deficiencies, and the procedures used to enforce compliance with accreditation requirements;
- Information about the individuals who perform network accreditation reviews, including the size and composition of the survey team, the methods of compensation, the education and experience required of them, the content and frequency of the in-service training, the evaluation system used to monitor performance, and the conflict of interest requirements governing JCAHO staff;
- A description of the data management and analysis system, the types (full, partial, or denial) and categories (provisional, conditional, temporary) of accreditation offered by JCAHO, the duration of each category of accreditation, and a statement identifying the types and categories that would serve as a basis for accreditation, if we grant JCAHO M+C organization deeming authority;
- The procedures used to respond to and investigate complaints or identify other problems with accredited organizations, including any coordination of these activities with licensing bodies and ombudsmen programs;
- A description of how JCAHO provides accreditation information to the general public;
- The policies and procedures for (1) withholding, denying and removing accreditation status, and the other actions JCAHO may take in response to noncompliance with their standards and requirements; and (2) how JCAHO treats accreditation of organizations that are acquired by another organization, have merged with another organization, or that undergo a change of ownership or management;
- Lists of all (1) JCAHO-accredited M+C organizations, (2) networks surveyed by JCAHO in the past 3 years, and (3) networks that were scheduled to be surveyed by JCAHO within 3 months of submitting their application;
- A written presentation of JCAHO's ability to furnish data electronically, via telecommunications;
- A resource analysis that included financial statements for the past 3 years (audited, if possible) and the projected number of deemed status surveys for the upcoming year; and
- A statement acknowledging that, as a condition of approval, JCAHO agreed to comply with the ongoing responsibility requirements stated in § 422.157(c).

3. Assessment of JCAHO's Standards and Methods of Evaluation

As part of the application, JCAHO submitted a crosswalk that compared its standards and methods of evaluations with corresponding M+C requirements. A multicomponent team of our regional and central office staff then reviewed and evaluated JCAHO's standards and processes and compared them to the M+C requirements in six areas: Quality Assurance, Access to Services, Antidiscrimination, Information on Advance Directives, Provider Participation Rules, and Confidentiality and Accuracy of Enrollee Records.

4. Observation of a JCAHO Accreditation Survey

An observation of a JCAHO accreditation survey of a network organization allowed our staff to (1) validate that the accreditation review methods described in JCAHO's application were equal to (or exceeded) the corresponding Medicare requirements, and (2) resolve outstanding issues that were identified

during the review of JCAHO's application materials.

B. Results of the Review Process

We determined that JCAHO's current accreditation program for networks either did not address or did not ''meet or exceed'' several of the M+C requirements contained in the six categories set forth in section 1852(e)(4)(B) of the Act. To address this issue, JCAHO agreed to complement their current network accreditation program. Thus, when assessing M+C organizations (including their subcontractors and affiliates, as applicable) that seek deemed status for the Medicare requirements contained in the six categories established in the Act, JCAHO will add the requirements described below.

1. Quality Assurance (§ 422.152)

JCAHO will add to its accreditation standards requirements for M+C organizations to do the following—

- Achieve and report minimum performance levels when we establish them;
- Assess enrollee satisfaction;
- Correct significant systemic problems that come to their attention through internal surveillance, complaints or other mechanisms, such as the use of appeals and grievances;
- Conduct quality improvement projects that meet or exceed the requirements specified in § 422.152.
- Collect data related to (1) both acute and chronic conditions as related to preventive services and care outcomes, (2) the use of clinical resources for high volume services, and (3) the availability, accessibility, and cultural competency of services;
- Select quality indicators that are objective, clearly defined, based upon current research, and generally used in the public health community. Indicators must be measured over time, monitored for at least 1 year after the desired level of performance is achieved (sustained improvement), and benchmarked to targets if we specify targets;
- Designate a policymaking body and a senior official that are accountable for the quality assurance program and that encourage providers and consumers to participate actively;
- Evaluate the effectiveness of the quality assurance program strategy on an annual basis and modify as necessary.

2. Provider Participation Rules (42 CFR part 422 subpart E)

JCAHO will add to its accreditation standards requirements for M+C organizations to do the following—

- Provide physicians with (1) written notice of material changes in participation rules before the changes are put into effect, (2) written notice of participation decisions that are adverse to physicians, and (3) a process for appealing adverse participation decisions, including (a) having a majority of the members of the hearing panel be peers of the affected physician, and (b) allowing the physician the opportunity to present information on the decision;
- Provide that the participation guidelines, procedures, and Federal requirements apply equally and consistently to all physicians, and do not allow for employment or contracts with individuals excluded from the Medicare program;
- Provide (1) written notification (with specific content) when suspending or terminating an agreement under which the physician provides services to the M+C plan enrollees, and (2) notification to licensing and disciplinary bodies on quality-related suspensions or terminations;
- Provide at least 60 days written notice (applies to provider as well) before terminating a contract without cause;
- Make information available to us and to enrollees on counseling or referral services to which the M+C organization objects on moral or religious grounds;
- Distribute to each enrollee, at the time of enrollment and at least annually thereafter, a written statement that includes information on his or her right to obtain a summary description of the method of physician compensation;
- Ensure that participating providers and suppliers who provide services to Medicare enrollees are approved for participation in Medicare and that the M+C organization does not employ or contract with providers who have opted out of Medicare participation;
- Address the limitation on provider indemnification that is stated in § 422.212.

JCAHO agreed to a Physician Incentive Plan (PIP) review strategy that we proposed. M+C organizations will continue to provide PIP information directly to us. We will notify JCAHO when a M+C organization that they have deemed is ''noncompliant'' for any of the PIP requirements; JCAHO will then contact the M+C organization to inform it that it must comply with the PIP provisions. If, at the end of the accrediting organization's corrective action process, the M+C organization continues to be noncompliant, the accrediting organization will refer the case to us.

3. Information on Advance Directives (§ 422.128)

JCAHO will add to its accreditation standards requirements for M+C organizations to do the following—

- Implement written policies and procedures for advance directives for all adult patients served, and share those policies and procedures with each enrollee at the time of enrollment;
- Comply with State laws that (1) allow the provider to conscientiously object to certain types of care (including a statement of limitation, if the M+C organization cannot implement the advance directive), and (2) require information concerning health care decision-making rights to be reflected within 90 days after the effective date of the law;
- Inform individuals that complaints concerning noncompliance with the advance directive requirements may be filed with the State survey and certification agency.

4. Antidiscrimination (§ 422.110 and § 422.502(h))

JCAHO will add to its accreditation standards requirements for M+C organizations to do the following—

- Prohibit the denial, limitation or conditioning of coverage or benefits to eligible enrollees on the basis of any factor that relates to health status, except in the case of an individual with end-stage renal disease;
- Comply with all applicable laws and regulations related to discrimination and payment sources.

5. Access to Services (§ 422.112)

JCAHO will add to its accreditation standards requirements for M+C organizations to do the following—

- Instruct enrollees regarding their right to (1) access emergency services without prior authorization, (2) choose a personal provider from a panel of primary care providers accepting new enrollees, and (3) refuse care from specific providers;
- Provide information regarding treatment options in a language that the enrollee understands;
- Provide services, both clinical and nonclinical, that are readily available, accessible, and appropriate, when medically necessary (24 hours a day/7 days a week) to all enrollees, including those with limited English proficiency or reading skills and those with diverse cultural and ethnic backgrounds. Services include access to specialty care such as women's health services;
- Provide coordination-of-care programs that include (1) an initial health care needs assessment and a

follow-up process, (2) policies regarding ongoing coordination of care by primary care providers or other means, (3) procedures for the identification of, and treatment plans for, individuals with complex or serious needs, and (4) coordination of plan services with community and social services;

• Establish, monitor, and improve performance regarding standards for timeliness of access to care and member services that meet or exceed our standards;

• Conduct an ongoing program to monitor compliance with policies and procedures that ensure that information for patient care and quality review is available;

• Transmit information to the enrollee's primary care provider regarding services used under a point-of-service (POS) benefit by an enrollee.

6. Confidentiality and Accuracy of Enrollee Records (§ 422.118)

JCAHO will add to its accreditation standards requirements for M+C organizations to release original medical records only in accordance with Federal or State laws, court orders, or subpoenas; however, when permitted by law, the records must be made available to treatment providers and to organizations involved in assessing quality of care or investigating enrollee grievances.

7. Delegation Requirements (Contained in Five of Six Deeming Categories)

JCAHO will add to its accreditation standards requirements for M+C organizations to do the following—

• Oversee and be accountable for any functions or responsibilities that are described in the standards for which JCAHO received deeming authority, if that area (or standard) is delegated to another entity;

• Specify in a written agreement the delegated activities and reporting responsibilities of the entity and provide for the revocation of the delegation or other remedies for inadequate performance;

• Monitor the performance of the entity on an ongoing basis and formally review the organization at least annually.

C. Term of Approval

Regulations at § 422.157(b)(2) permit us to grant a term of approval for deeming authority for accreditation organizations of up to 6 years. We are granting this deeming authority through March 24, 2008.

IV. Paperwork Reduction Act

The requirements associated with granting and withdrawal of deeming authority to national accreditation organizations, codified in part 422, Medicare+Choice Program, are currently approved by OMB under OMB approval number 0938–0690, with an expiration date of June 30, 2002. Consequently, this notice does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA.

V. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) September 19, 1980 (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity).

The RFA requires agencies to analyze options for regulatory relief for small businesses, nonprofit organizations and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million to $25 million or less in any 1 year (for details, see the Small Business Administration's publication that set forth size standards for health care industries at 65 FR 69432). For purposes of the RFA, States and individuals are not considered small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

This notice merely recognizes JCAHO as a national accreditation organization that has approval for deeming authority for HMOs or PPOs that are participating in the M+C program. Since M+C organizations are monitored every 2 years by our regional office staff to determine compliance with M+C requirements, we believe that the M+C deeming program has the potential to reduce both the regulatory and administrative burdens associated with the Medicare+Choice program. In FY 2001, there were 179 M+C contracts and 5,578,605 enrollees. Approximately eight of those M+C organizations were accredited by JCAHO.

This notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866.

Therefore, we have determined, and the Secretary certifies, that this notice will not result in a significant impact on small entities and will not have an effect on the operations of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice has no consequential effect on State, local, or tribal governments. We believe the private sector costs of this notice fall below this threshold as well.

In accordance with Executive Order 13132, this notice will not significantly affect the rights of States and does not significantly affect State authority. This regulation describes only processes that must be undertaken to fulfill our obligation to enforce our regulations as required by the April 8, 1997 (62 FR 16985) regulation.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by OMB.

Authority: Secs. 1851 and 1855 of the Social Security Act (42 U.S.C. 1395w–21 and 42 U.S.C. 1395w–25)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 14, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–7123 Filed 3–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2138–N]

RIN 0938–ZA28

Medicare, Medicaid, and CLIA Programs; Continuance of Approval of the American Osteopathic Association (AOA) as an CLIA Accreditation Organization

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the continued approval of the American Osteopathic Association (AOA) as an accreditation organization for clinical laboratories under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) program. We have determined that the accreditation process of this organization provides reasonable assurance that the laboratories accredited by AOA meet the conditions required by CLIA statute and its implementing regulations. Consequently, laboratories that voluntarily become accredited by AOA, in lieu of direct Federal oversight, and continue to meet AOA requirements would meet the CLIA condition level requirements for laboratories and, therefore, are not subject to routine inspection by State survey agencies to determine their compliance with CLIA requirements. However, these laboratories are subject to Federal validation and complaint investigation surveys.

EFFECTIVE DATE: This notice is effective for the period March 22, 2002 through March 24, 2008.

FOR FURTHER INFORMATION CONTACT: Kathy Todd, (410) 786–3385.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

On October 31, 1988, the Congress enacted the Clinical Laboratory Improvement Amendments of 1988 (CLIA), Public Law 100–578. CLIA replaced in its entirety section 353(e)(2) of the Public Health Service Act, as enacted by the Clinical Laboratories Improvement Act of 1967. In the July 31, 1992 **Federal Register** (57 FR 33992), we issued a final rule implementing the accreditation provisions of CLIA. Under this rule, we may approve a private, nonprofit organization as an approved accreditation organization to accredit clinical laboratories under the CLIA program if the organization meets certain requirements. An organization's requirements for accredited laboratories must be equal to, or more stringent than, the applicable CLIA program requirements in 42 CFR part 493 (Laboratory Requirements). Therefore, a laboratory accredited by an approved accreditation organization that meets and continues to meet all of the accreditation organization's requirements would be considered to meet CLIA condition level requirements if it were inspected against CLIA regulations. The regulations in part 493, subpart E (Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program) specify the requirements an accreditation organization must meet in order to be an approved. We approve an accreditation organization for a period not to exceed 6 years.

In general, the approved accreditation organization must, among other conditions and requirements:

- Use inspectors qualified to evaluate laboratory performance and agree to inspect laboratories with the frequency determined by us.
- Apply standards and criteria that are equal to, or more stringent than, those condition level requirements established by us when taken as a whole.
- Provide reasonable assurance that these standards and criteria are continuously met by its accredited laboratories.
- Provide us with the name of any laboratory that has had its accreditation denied, suspended, withdrawn, limited, or revoked within 30 days of the action taken.
- Notify us at least 30 days before implementing any proposed changes in its standards.
- If we withdraw our approval, notify the accredited laboratories of the withdrawal within 10 days of the withdrawal. A laboratory can be accredited if, among other things, it meets the standards of an approved accreditation organization and authorizes the accreditation organization to submit records and other information to us as required.

In addition to requiring the promulgation of criteria for approving an accreditation organization and withdrawing this approval, CLIA regulations require us to perform an annual evaluation by inspecting a sufficient number of laboratories accredited by an approved accreditation organization, as well as, by any other means that we determine appropriate.

II. Notice of Continued Approval of AOA as an Accreditation Organization

In this notice, we approve AOA as an organization that may continue to accredit laboratories for purposes of establishing their compliance with CLIA. The Centers for Disease Control and Prevention (CDC) and CMS have examined the AOA application and all subsequent submissions to determine equivalency with the requirements under 42 CFR part 493, subpart E that an accreditation organization must meet to be granted approved status under CLIA. We have determined that AOA complied with the applicable CLIA requirements and grant AOA approval as an accreditation organization under 42 CFR part 493, subpart E, as of March 21, 2002 through March 24, 2002 for all specialty and subspecialty areas under CLIA.

As a result of this determination, any laboratory that is accredited by AOA during this time period for an approved specialty or subspecialty is deemed to meet the applicable CLIA condition level requirements for the laboratories found in part 493 and, therefore, is not subject to routine inspection by a State survey agency to determine its compliance with CLIA requirements. The accredited laboratory, however, is subject to validation and complaint investigation surveys performed by CMS, or by any other Federal State, local public agency, or nonprofit organization under an agreement with the Secretary.

III. Evaluation of American Osteopathic Association (AOA)

The following describes the process used to determine that the American Osteopathic Association (AOA), as a private, nonprofit organization, provides reasonable assurance that laboratories it accredits will meet the applicable requirements of CLIA.

A. Requirements for Approving an Accreditation

Organization Under CLIA

To determine whether we should grant approved status to AOA as a private, nonprofit organization for accrediting laboratories under CLIA for all specialty or subspecialty areas of human specimen testing it requested, we conducted a detailed and in-depth comparison of AOA's requirements for its laboratories to those of CLIA. In summary, we evaluated whether AOA meets the following requirements:

- Provides reasonable assurance to us that it requires the laboratories it accredits to meet requirements that are equal to, or more stringent than, the

CLIA condition level requirements (for the requested specialties and subspecialties) and would, therefore, meet the condition level requirements of CLIA if those laboratories had not been granted deemed status and had been inspected against condition level requirements.

• Meets the applicable requirements of part 493, subpart E.

As specified in the regulations of part 493, subpart E, the review of a private, nonprofit accreditation organization seeking approved status under CLIA includes, but is not limited to, an evaluation of the following:

• Whether the organization's requirements for its accredited laboratories are equal to, or more stringent than, the condition levels requirements of the CLIA regulations.

• The organization's inspection process to determine the following:

+ The composition of the inspection teams, qualifications of the inspectors, and the ability of the organization to provide continuing education and training to all of its inspectors.

+ The comparability of the organization's full inspection and complaint inspection requirements to the Federal requirements including, but not limited to, inspection frequency, and the ability to investigate and respond to complaints against its accredited laboratories.

+ The organization's procedures for monitoring laboratories that it has found to be out of compliance with its requirements.

+ The ability of the organization to provide us with electronic data and reports that are necessary for effective validation and assessment of the organization's inspection process.

+ The ability of the organization to provide us with electronic data related to the adverse actions resulting from unsuccessful proficiency testing (PT) participation in CMS-approved PT programs, as well as data related to the PT failures, within 30 days of the initiation of the action.

+ The ability of the organization to provide us with electronic data for all its accredited laboratories and the area of specialty and subspecialty testing.

+ The adequacy of the numbers of staff and other resources.

+ The organization's ability to provide adequate funding for performing the required inspections.

• Whether the organization has an agreement with us that requires it, among other things, to meet the following:

+ Notify us of any laboratory that has had its accreditation denied, limited, suspended, withdrawn, or revoked by the accreditation organization, or that has had any other adverse action taken against it by the accreditation organization, within 30 days of the date the action is taken.

+ Notify us within 10 days of a deficiency identified in an accredited laboratory if the deficiency poses an immediate jeopardy to the laboratory's patients or a hazard to the general public.

+ Notify us of all newly accredited laboratories, or laboratories whose areas of specialty or subspecialty are revised, within 30 days.

+ Notify each laboratory accredited by the organization within 10 days of our withdrawal of approval of the organization as an accreditation organization.

+ Provide us with inspection schedules, on request, for the purpose of conducting onsite validation inspections.

+ Provide our agent, the State survey agency, or CMS with any facility-specific data that include, but are not limited to, PT results that constitute unsuccessful participation in an approved PT program and notification of the adverse actions or corrective actions imposed by the accreditation organization as a result of unsuccessful PT participation.

+ Provide us with written notification at least 30 days in advance of the effective date of any proposed changes in its requirements.

+ Provide upon the request by any person, on a reasonable basis (under State confidentiality and disclosure requirements, if applicable), any laboratory's PT results with the explanatory information needed to assist in the interpretation of the results.

Laboratories that are accredited by an approved accreditation organization must, among other things, meet the following requirements:

• Authorize the organization to release to us all records and information required.

• Permit inspections as required by the CLIA regulations at part 493, subpart Q (Inspection).

• Obtain a certificate of accreditation under § 493.55 (Application for registration certificate and certificate of accreditation).

B. Evaluation of the AOA Request for Continued Approval as an Accreditation Organization Under CLIA

We have examined AOA's assurance that it requires the laboratories it accredits to be, and that the organization is, in compliance with the following subparts of part 493: 1. Subpart E—Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program

AOA has requested continued approval to accredit all specialties and subspecialties and has submitted the following:

• Description of its PT monitoring process, inspection processes, policies, and data management and analysis system.

• List of its inspection team size, composition, and education and experience.

• Investigative and complaint response procedures.

• Our notification agreements.

• Procedures for the removal or withdrawal of accreditation from a laboratory.

• Current list of accredited laboratories with announced or unannounced inspection process.

We have determined that AOA has complied with the requirements under CLIA for approval as an accreditation organization under this subpart.

Our evaluation identified several areas of AOA requirements that are more stringent that the CLIA requirements and apply to the laboratory when taken as a whole. Rather than include them in the appropriate subparts multiple times, we have listed them here:

• AOA lists extensive requirements for the laboratory information system (LIS) that include but are not limited to the following:

+ The laboratory must ensure that test results generated by the LIS are reported, archived and maintained in an accurate and reliable manner.

+ The laboratory must perform and document the necessary system maintenance required by the LIS manufacturer or established by and validated by the laboratory.

+ All input/output devices must be maintained to ensure accurate, clear, and interference-free transmission of reports.

+ The laboratory must validate new or revised software and/or hardware before their use.

+ LIS access must be used to limit access to only those functions the personnel are authorized to use.

plus The LIS must be protected against power and electrical interruptions.

+ The laboratory must validate and have records of that validation for all calculations performed by the LIS at least twice a year or as specified by the manufacturer.

• AOA requires the establishment of protocols to protect the confidentiality of patient-identified information and

considers all patient identified information received or generated in the laboratory as confidential information that must be so defined in laboratory protocols for employees and agents of the laboratory who have knowledge of test results.

• AOA has specific requirements for autopsy pathology that include but are not limited to the following:

+ Clinical records are reviewed with the attending physician before conducting the autopsy.

+ Written policies and procedures for the storage and release of bodies must be available and followed.

+ Written policies and procedures for the autopsy consent must be available and followed.

+ Autopsy policies and procedures must be available at nursing stations, admitting office and other appropriate places.

+ Requirements for autopsy pathology environmental conditions, equipment, materials and supplies.

+ Requirements for autopsy pathology safety.

+ Requirements for autopsy pathology reports.

2. Subpart H (regarding participation in proficiency testing)

AOA's requirements for PT are equivalent to those of CLIA.

3. Subpart J (regarding patient test management)

AOA's requirements in patient test management are equivalent to those of CLIA.

4. Subpart K (regarding quality control)

The quality control (QC) requirements of AOA have been evaluated against the applicable requirements of CLIA and its implementing regulations. We have determined that AOA's requirements, when taken as a whole, are more stringent than the CLIA requirements. Specifically, the AOA has laboratory safety requirements that are specific and detailed. AOA requires laboratories to have an appointed safety officer and maintain quarterly written safety reports. AOA also has requirements for fire safety and prevention of fire hazards, universal precautions, hazardous waste management, and environmental safety requirements to address electrical grounding and emergency power.

5. Subpart M (regarding personnel)

We have found that AOA's personnel requirements, when taken as a whole, are equal to the CLIA requirements.

6. Subpart P (regarding quality assurance)

We have determined that AOA's requirements are equal to the CLIA requirements of this subpart. AOA has adopted the CLIA quality assurance requirements in their entirety and included them in AOA's checklist.

7. Subpart Q—Inspections

AOA will continue to perform on-site inspections on a biennial basis. Therefore, we have determined that AOA's inspections are equivalent to CLIA.

8. Subpart R—Enforcement

AOA meets the requirements of subpart R to the extent that it applies to accreditation organizations. AOA policy stipulates the action it takes when laboratories it accredits do not comply with its requirements. AOA must deny, revoke, or limit accreditation of a laboratory as appropriate and report the action to us within 30 days. AOA also provides an appeal process for laboratories that have had accreditation denied, revoked, suspended, or limited.

We have determined that AOA's laboratory enforcement and appeal policies are equivalent to the requirements of this subpart as they apply to accreditation organizations.

IV. Federal Validation Inspections and Continuing Oversight

The Federal validation inspections of AOA-accredited laboratories may be conducted on a representative sample basis or in response to substantial allegations of noncompliance (complaint inspections). The outcome of those validation inspections, performed by our agent, or the State survey agency, or us, will be our principal means for verifying that the laboratories accredited by AOA remain in compliance with CLIA requirements. This Federal monitoring is an ongoing process.

V. Removal of Approval as an Accrediting Organization

Our regulations provide, in part, that we may remove the approval of an accreditation organization, such as that of AOA, for cause, before the end of the effective date of approval. If validation inspection outcomes and the comparability or validation review produce findings as described in § 493.573 (Continuing Federal oversight of private nonprofit accreditation organizations and approved State licensure programs), we will conduct a review of an approved accreditation organization's program. In addition, we will conduct a review, when the validation review findings, irrespective of the rate of disparity (as defined in § 493.2), indicate widespread or systemic problems in the organization's accreditation processes that provide evidence that the organization's requirements, taken as a whole, are no longer equivalent to the CLIA requirements, taken as a whole. If validation inspection results over a 1-year period indicate a rate of disparity of 20 percent or more between our findings and those of the organization, we will conduct a review under § 493.575(a)(4).

If we determine that AOA has failed to adopt or maintain requirements that are equal to, or more stringent than the CLIA requirements, or systematic problems exist in its inspection process, a probationary period as determined by us, not to exceed 1 year, may be given to AOA to adopt equal or more stringent requirements. We will make a final determination as to whether or not AOA retains its approved status as an accreditation organization under CLIA. If approved status is withdrawn, an accreditation organization such as AOA may resubmit its application if it revises its program to address the rationale for the denial, demonstrates that it can reasonably assure that its accredited laboratories meet CLIA condition level requirements, and resubmits its application for approval as an accreditation organization in its entirety. However, if an approved accreditation organization requests reconsideration of an adverse determination in accordance with subpart D (Reconsideration of Adverse Determinations—Deeming Authority for Accreditation Organizations and CLIA Exemption of Laboratories Under State Programs) of part 488 (Survey, Certification, and Enforcement Procedures) of our regulations, it may not submit a new application until we issue a final reconsideration determination. Should circumstances result in AOA having its approval withdrawn, we will publish a notice in the **Federal Register** explaining the basis for removing its approval.

VI. Federalism

We have reviewed this notice under the threshold criteria of Executive Order 13132, Federalism, and have determined that this notice will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

VII. OMB Review

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget did not review this notice.

Authority: Section 353 of the Public Health Service Act (42 U.S.C. 263a).

Dated: January 15, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–6953 Filed 3–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–2140–PN]

Medicare and Medicaid Programs; Application by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) for Approval of Deeming Authority for Critical Access Hospitals

AGENCY: Centers for Medicare and Medicaid Services (CMS), HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice with comment period acknowledges the receipt of an initial application by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) for consideration as a national accreditation program for critical access hospitals that wish to participate in the Medicare or Medicaid programs. Section 1865(b)(3)(A) of the Social Security Act (the Act) requires that within 60 days of receipt of an organization's complete application, we publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

DATES: Written comments will be considered if received at the appropriate address, as provided in **ADDRESSES**, no later than 5 p.m. on April 22, 2002.

ADDRESSES: Mail written comments (an original and three copies) to the following address only: Centers for Medicare and Medicaid Services, Department of Health and Human Services, Attention: CMS–2140–PN, PO Box 8010, Baltimore, MD 21244–1850.

If you prefer, you may deliver by courier your written comments (an original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or,

Room C5–14–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the indicated addresses may be delayed and could be considered late.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–2140–PN.

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the following address: 7500 Security Blvd., Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: (410) 786–7197) to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Irene H. Dustin, (410) 786–0495.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a critical access hospital (CAH) provided the hospital meets certain requirements. Sections 1820(c)(2)(B) and 1861(mm) of the Social Security Act (the Act) establish distinct criteria for facilities seeking designation as a CAH. Under this authority, the Secretary has set forth in regulations minimum requirements that a CAH must meet to participate in Medicare. The regulations at 42 CFR part 485, subpart F (Conditions of Participation: Critical Access Hospitals (CAHs)) determine the basis and scope of covered services provided by a CAH, set out rural health network specifications and establish staff qualifications. Conditions for Medicare payment for critical access services can be found at § 413.70. Applicable regulations concerning provider agreements are at 42 CFR part 489 (Provider Agreements and Supplier Approval) and those pertaining to the survey and certification of facilities are at 42 CFR part 488, (Survey, Certification and Enforcement Procedures), subparts A (General Provisions) and B (Special Requirements).

In order for a CAH to be approved for participation in or coverage under the Medicare program, the hospital must have a current provider agreement to participate in the Medicare program as a hospital. The provider agreement must be in place at the time the hospital applies for CAH designation and be in compliance with part 482 (Conditions of Participation for Hospitals), as well as part 485, subpart F (Conditions of Participation: Critical Access Hospitals (CAHs)). Generally, in order to enter into a provider agreement, a hospital must first be certified by a State survey agency as complying with the conditions or standards set forth in the statute and part 482 of our regulations. Then, the hospital is subject to regular surveys by a State survey agency to determine whether it continues to meet Medicare requirements. There is an alternative, however, to surveys by State agencies.

Exceptions are provided in the Balanced Budget Refinement Act of 1999 (Pub. L. 106–113) for rural health clinics that were previously downsized from an acute care hospital, or for a closed hospital that is requesting to reopen as a CAH. In these instances, only the provisions of 42 CFR part 485, subpart F apply.

Section 1865(b)(1) of the Act permits ''accredited'' hospitals to be exempt from routine surveys by State survey agencies to determine compliance with Medicare conditions of participation. Accreditation by an accreditation organization is voluntary and is not required for Medicare participation. Section 1865(b)(1) of the Act provides that, if a provider demonstrates through accreditation that all applicable Medicare conditions are met or exceeded, CMS shall ''deem'' the hospital as having met the requirements.

If an accrediting organization is recognized in this manner, any provider accredited by a national accrediting body approved program would be deemed to meet the Medicare conditions of participation. The American Osteopathic Association (AOA) is currently the only organization recognized with deeming authority for critical access hospitals. The final notice approving the AOA for deeming authority for CAHs was published in the **Federal Register** on September 28, 2001 (66 FR 49677).

A national accreditation organization applying for approval of deeming authority under section 488, subpart A must provide us with reasonable assurance that the accreditation organization requires the accredited providers to meet requirements that are at least as stringent as the Medicare conditions of participation.

II. Approval of Deeming Organizations

Section 1865(b)(2) of the Act requires that our findings concerning review of national accrediting organizations consider, among other factors, an accreditation organization's requirements for the following: accreditation, survey procedures, resources for conducting required surveys, capacity to furnish information for use in enforcement activities, and monitoring procedures for provider entities found not in compliance with the conditions or requirements, and ability to provide us with necessary data for validation.

Section 1865(b)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accreditation body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from our receipt of the request to publish approval or denial of the application.

The purpose of this proposed notice is to inform the public of our consideration of JCAHO's request to become a national accreditation program for CAHs. This notice also solicits public comment on the ability of JCAHO requirements to meet or exceed the Medicare conditions of participation for CAHs.

III. Evaluation of Deeming Authority Request

On February 1, 2002, JCAHO submitted all the necessary materials concerning its request for approval as a deeming organization for CAHs to enable us to make a determination. Under section 1865(b)(2) of the Act and our regulations at § 488.8 (Federal review of accreditation organizations), our review and evaluation of JCAHO will be conducted in accordance with, but not necessarily limited to, the following factors:

• The equivalency of JCAHO standards for a critical access hospital as compared with our comparable critical access hospital conditions of participation.

• JCAHO's survey process to determine the following:

—Survey team composition, surveyor qualifications, and the capacity of the organization to provide continuing surveyor training.

—The comparability of JCAHO's processes to that of State agencies, including survey frequency and the ability to investigate and respond appropriately to complaints against accredited facilities.

—JCAHO's processes and procedures for monitoring providers or suppliers found to be out of compliance with JCAHO program requirements. These monitoring procedures are used only when JCAHO identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(b)(3).

—JCAHO's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

—JCAHO's capacity to provide us with electronic data in an ASCII comparable format as well as the reports necessary for validation and assessment of the organization's survey process.

—The adequacy of JCAHO's staff and other resources, and its financial viability.

—JCAHO's capacity to adequately fund required surveys.

—JCAHO's policies with respect to whether surveys are announced or unannounced.

—JCAHO's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

IV. Response to Comments and Notice Upon Completion of Evaluation

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all public comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a final notice, we will respond to the public comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget did not review this proposed notice.

In accordance with Executive Order 13132, we have determined that this proposed notice would not have a significant affect on the right of States, local or tribal governments.

Authority: Sec. 1865(b)(3)(A) of the Social Security Act (42 U.S.C. 1395bb(b)(3)(A)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; Program No. 93.774, Medicare—Supplemental Medical Insurance Program; and Program No. 93.778, Medical Assistance Program)

Dated: March 18, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–6954 Filed 3–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3076–FN]

Medicare Program; Approval of the Indian Health Service (IHS) as a National Accreditation Organization for Accrediting American Indian and Alaska Native Entities To Furnish Outpatient Diabetes Self-Management Training

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces the approval of the Indian Health Service (IHS) as a national accreditation organization for outpatient Diabetes Self-Management Training (DSMT) services. This notice also announces the decision of the IHS to adopt the National Standards for Diabetes Self-Management Education Programs (NSDSMEP), for purposes of determining that American Indian and Alaska Native (AI/AN) entities meet the necessary quality standards to furnish outpatient diabetes self-management and training services under Part B of the Medicare program. Therefore, diabetes self-management training (DSMT) programs accredited by the IHS will receive ''deemed'' status under the Medicare program.

EFFECTIVE DATE: This accreditation is effective on March 22, 2002, for a term of 6 years.

FOR FURTHER INFORMATION CONTACT: Eva Fung, (410) 786–7539.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(qq) of the Social Security Act (the Act) provides us with the statutory authority to regulate Medicare outpatient coverage of diabetes self-management training (DSMT) services. The section also permits DSMT programs to be deemed to have met our regulatory standards if they are accredited by an organization that represents individuals with diabetes as having met standards for furnishing DSMT services. Section 1865 (b) of the Act specifies a process whereby we approve and recognize national accrediting organizations for the purpose of recognizing health care entities accredited by the organization to have met such program requirements. The regulations published in accordance with section 1865(b) have served as the model for our approval of accreditation programs.

The final rule on DSMT, published on December 29, 2000 in the **Federal Register** (65 FR 251) explicitly modeled its accreditation organization approval process after the section 1865 approval process specified in 42 CFR part 488, subpart A. The final rule states that DSMT programs interested in participating in the Medicare program must meet conditions for coverage specified in our regulations at 42 CFR part 410, subpart H. One requirement is that entities must satisfy required quality standards. Currently, one way that an entity must satisfy the quality standards under § 410.145 is to be accredited by a CMS-approved accrediting body. The regulations pertaining to the application process for national accreditation organizations for DSMT at § 410.142(a) specify that we may approve and recognize a nonprofit or not-for-profit organization with demonstrated experience in representing the interest of individuals with diabetes to accredit entities to furnish training. After we approve and recognize the accreditation organization, it may accredit an entity to meet one of the sets of quality standards described in § 410.144, and we will deem these entities to have met these standards.

II. Review Process and Findings

A. Review Process

In evaluating an application from an accrediting organization, we consider the following factors under section 1865(b)(2) of the Act and specified for DSMT purposes at § 410.142(e):

- The organization uses and enforces quality standards that CMS has determined meet or exceed the CMS quality standards described in § 410.144(a), or uses the National Standards for Diabetes Self-Management Education Programs (NSDSMEP) quality standards described in § 410.144(b);
- The organization meets the requirements for approved organizations in § 410.143;
- The organization is not owned or controlled by the entities it accredits, as defined in § 413.17(b)(2) or (b)(3); and
- The organization does not accredit any entity it owns or controls.

We are required by § 410.142(d) to publish a proposed notice in the **Federal Register** after the receipt of a written request for approval from a national accreditation organization. After review of the national accreditation organization's application, the regulations require that we publish a notice of our approval or disapproval after we receive a complete package of information and the organization's deeming application.

B. Review Findings

We received a complete application from the Indian Health Service (IHS) on September 5, 2001. On October 26, 2001, we published a proposed notice in the **Federal Register** (66 FR 54262) announcing the application of the IHS for approval as an accreditation organization for American Indian/Alaska Natives (AI/AN) diabetes self-management training programs. We reviewed the application, and our findings indicated that the IHS meets the CMS criteria as ''a nonprofit organization with demonstrated experience in representing the interests of individuals with diabetes'' to accredit entities to furnish training in § 410.142(a).

We recognize that the IHS has a solid record of well-balanced experience in representing the interest of individuals with diabetes in the past decades. The AI/AN population has the highest rate of diabetes in the world and the prevalence of diabetes is 350 percent higher than in the general U.S. population. Recognizing the size of the AI/AN population affected by diabetes, the Congress, since 1979, has funded the IHS-administered National Diabetes Program to promote collaborative strategies to combat diabetes, develop standards-of-care policies for diabetes, disseminate comprehensive information about diabetes, and advocate for the AI/AN population in the health field. The IHS has played a leadership role in the development of diabetic care surveillance and data collection in the AI/AN diabetes program. The IHS monitors the quality of the AI/AN diabetic education service through the established system and network of the IHS National Diabetes Program, the IHS Area Consultants, the IHS Model Diabetes Program, the Special Diabetes Grant Programs and the IHS Integrated Diabetes Education and Clinical Standards Recognition Program for AI/AN Communities. Additionally, the IHS works in partnership with the IHS Model Diabetes Programs to tailor educational materials, treatment programs, nutrition counseling and physical activities to accommodate cultural, physical and geographical needs.

We recognize that the traditional definition of ''nonprofit organization'' used by HHS in other contexts generally does not cover governmental entities. However, we have determined that the IHS possesses the indicia of nonprofit status because among other things, it is not formed for commercial or profit-making purposes; it does not have shares or shareholders, and it serves charitable purposes. All the health care services, including DSMT services, are furnished to the AI/AN population free of charge, and The Indian Health Care Improvement Act requires Medicare and Medicaid reimbursements be allocated back to the facilities to make improvements in the programs and maintain compliance with the applicable conditions and requirements.

We do not anticipate a conflict of interest in the deeming of AI/AN DSMT entities by IHS. The Indian Self-Determination and Education Assistance Act (ISDEAA) (25 U.S.C. 450f) authorizes the IHS to contract or compact with tribes for independent administration and operation of health services and programs in their communities. Under ISDEAA and the Public Health Service Act (42 U.S.C. section 254c–3(c)), the tribes may administer the diabetes programs funds independently from the IHS, and the agency serves in a consultative role regarding best practices. The IHS provides technical assistance to tribes on an as needed basis and has limited authority to sanction or assume a tribal health program. We therefore believe that IHS's deeming authority will be exercised in compliance with § 410.142(e) (regarding relationships with owned or controlled entities).

In the best interests of the AI/AN population, which has been affected by diabetes in alarming proportions, we have exercised our flexibility and discretion to approve the IHS application to accredit AI/AN DSMT programs. Our decision is based on the consideration of the unique relationship between the IHS National Diabetes Program, the Tribal Diabetes Program and the Special Diabetes Grant Program, as well as the distinct IHS funding structure that does not exist in other types of health care systems.

During the term of approval as an accrediting organization, IHS will: (1) Enforce the NSDSMEP for its deemed entities; (2) comply with the requirements for approved accreditation organizations under § 410.143; (3) continue to refrain from exercising administrative authority over the IHS Model Diabetes Programs, Tribal Model Diabetes Programs and the 1997 BBA Diabetes Grant Programs; and (4) continue to retain its consultative role regarding best diabetes practices.

III. Analysis of and Responses to Public Comments and Provisions of the Final Notice

During the 30-day comment period, we received one comment in support of the IHS application. We reviewed the application and determined that IHS has

demonstrated experience in representing the interests of individuals with diabetes and is therefore qualified to accredit entities to furnish training. The IHS is adopting the NSDSMEP quality standards as permitted by the statute. Therefore, we have approved the IHS' application as an accreditation organization for diabetes self-management training programs under § 410.142(d) for a term of 6 years. The IHS is the second accreditation organization that we have approved for accrediting diabetes self-management training programs.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Sections 1861(qq), 1871 of the Social Security Act (42 U.S.C. 1395(qq), 1395bb.

(Catalog of Federal Domestic Program No. 93.773, Medicare-Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: February 3, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–6955 Filed 3–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3089–N]

Medicare Program; Annual Review of the Appropriateness of Payment Amounts for New Technology Intraocular Lenses (NTIOLs) Furnished by Ambulatory Surgical Centers (ASCs)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice is soliciting interested parties to submit requests for review of the appropriateness of the payment amount for a particular intraocular lens furnished by an ambulatory surgical center.

DATES: Requests for review must be received at the address provided no later than 5 p.m. E.S.T. on April 22, 2002.

ADDRESSES: Mail requests for review (one original and three copies) to the Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: Betty Shaw, Mailstop C1–09–06, 7500 Security Blvd., Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Betty Shaw, (410) 786–6100; or Mary Stojak, (410) 786–6939.

SUPPLEMENTARY INFORMATION:

I. Background

On October 31, 1994, the Social Security Act Amendments of 1994 (SSAA 1994) (Pub. L. 103–432) were enacted. Section 141(b) of SSAA 1994 requires us to develop and implement a process under which interested parties may request, for a class of new technology intraocular lens (NTIOLs), a review of the appropriateness of the payment amount for IOLs furnished by ambulatory surgical centers (ASCs) under section 1833(i)(2)(A)(iii) of the Social Security Act (the Act).

On June 16, 1999, we published a final rule in the **Federal Register** titled ''Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers'' (64 FR 32198), which added subpart F to 42 CFR part 416. That rule set forth the process for adjusting payment amounts for NTIOLs furnished by ambulatory surgical centers (ASCs), defined the terms relevant to the process, and established a flat rate payment adjustment of $50 for intraocular lenses (IOLs) that we determine are NTIOLs. This payment adjustment is good for a 5-year period that begins when we recognize a payment adjustment for the first intraocular lens in a new subset of an existing class of intraocular lens or a new class of technology, as explained below. Any subsequent IOL with the same characteristics as the first IOL recognized for a payment adjustment will receive the adjustment for the remainder of the 5-year period established by the first recognized IOL. After July 16, 2002, we may change the $50 adjustment amount through a notice with comment period.

Review Process for Establishing Classes of New Technology Intraocular Lenses

We evaluate requests for the designation of an IOL as an NTIOL by doing the following:

(1) Publishing a notice in the **Federal Register** announcing the deadline and requirements for submitting a request for us to review payment for an IOL.

(2) Receiving requests to review the appropriateness of the payment amount for an IOL.

(3) Compiling a list of the requests we receive and identify the IOL manufacturer's name, the model number of the IOL to be reviewed, the interested party or parties that submit requests, and a summary of the interested party's grounds for requesting review of the appropriateness of the IOL payment amount.

(4) Publishing a notice in the **Federal Register** listing the requests, and giving the public 30 days to comment on the IOLs for which a review was requested.

(5) Reviewing the information submitted with the request to review, and requesting confirmation from the Food and Drug Administration (FDA) about labeling applications that have been approved on the model lens under review. We also request a recommendation from the FDA about whether or not the lens model represents a new class of technology that sets it apart from other IOLs.

Using a baseline of the date of the last determinations of new classes of intraocular lenses, the FDA states an opinion based on proof of superiority over existing lenses of the same type of material or over lenses that are classified by a predominant characteristic as reducing the risk of intraoperative or postoperative complication or trauma, or demonstrating accelerated postoperative recovery, reduced induced astigmatism, improved postoperative visual acuity, more stable postoperative vision, or other comparable clinical advantages.

(6) Determining which lenses meet the criteria to qualify for the payment adjustment based on clinical data and evidence submitted for review, the FDA's analysis, public comments on the lenses, and other available information.

(7) Designating a type of material or a predominant characteristic of an NTIOL that sets it apart from other IOLs to establish a new class.

(8) Publishing a notice in the **Federal Register** (within 120 days after we publish the notice identified in paragraph (4) of this section) announcing the IOLs that we have determined are ''new technology'' IOLs. These NTIOLs qualify for the following payment adjustment:

(a) Determinations made before July 16, 2002—$50.

(b) Determinations made after July 16, 2002—$50 or the amount announced through proposed and final rules in connection with ambulatory surgical center services.

(9) Adjusting payments effective 30 days after the publication of the notice announcing our determinations described in paragraph (8) of this section.

Who May Request a Review?

Any party who is able to furnish the information required in § 416.195 (A

request to review) may request that we review the appropriateness of the payment amount provided under section 1833(i)(2)(A)(iii) of the Act for an IOL that meets the definition of a new technology IOL in § 416.180 (Definitions).

Requests to Review

A request for review must include all of the following information:

- The name of the manufacturer, the model number, and the trade name of the IOL.
- A copy of the FDA's summary of the IOL's safety and effectiveness.
- A copy of the labeling claims of specific clinical advantages approved by the FDA for the IOL.
- A copy of the IOL's original FDA approval notification.
- Reports of modifications made after the original FDA approval.
- Other information that supports the requestor's claim (that is, clinical trials, case studies, journal articles, etc.).

Privileged or Confidential Information

To the extent that information received from an IOL manufacturer can reasonably be characterized as a trade secret or as privileged or confidential commercial or financial information, we maintain the confidentiality of the information and protect it from disclosure not otherwise authorized or required by Federal law as allowed under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and, for trade secrets, the Trade Secrets Act (18 U.S.C. 1905). We recommend that the requestor clearly identify all information that is to be characterized as confidential. The Freedom of Information Act does not prohibit the disclosure of any information; rather it allows us to withhold certain information based on identifiable harms as described above.

Application of the Payment Adjustment

We recognize the IOL(s) that define a new technology subset for purposes of subpart F of part 416 as belonging to the class of NTIOLs for a period of 5 years effective from the date that we recognize the first new technology IOL within the subset for a payment adjustment. Any IOL that we subsequently recognize as belonging to a new technology subset receives the new technology payment adjustment for the remainder of the 5-year period established with our recognition of the first NTIOL in the subset.

II. Provisions of This Notice

Under our rules at 42 CFR part 416, subpart F, we are soliciting requests for review of the appropriateness of the payment amount for intraocular lenses furnished by an ASC. Requests for review must comply with our regulations at § 416.195 and be received at the address provided by the date specified in the **DATES** section of this notice. We will announce timely requests for review in a subsequent notice that will allow for public comment. Currently, if we determine a lens as an NTIOL, the lens will be eligible for a payment adjustment of $50 or a different amount implemented through proposed and final rules.

III. Collection of Information Requirements

Because the requirements referenced in this notice will not affect 10 or more persons on an annual basis, this notice does not impose any information collection and record keeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IV. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). We have determined that this notice is not a major rule because it is merely soliciting interested parties to submit requests for review of the appropriateness of the payment amount with regard to a particular intraocular lens furnished by an ambulatory surgical center.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $25 million or less annually. We have determined that this notice will not affect small businesses.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice does not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We have determined that this notice will not have a consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State, local, or tribal governments, preempts State law, or otherwise has Federalism implications. We have determined that this notice does not have an economic impact on State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Sections 1832(a)(2)(F)(i) and 1833(i)(2)(a) of the Social Security Act (42 U.S.C. 1395k(a)(2)(F)(i) and 1395l(i)(2)(A)).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 12, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–6758 Filed 3–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Science Board to the Food and Drug Administration Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Science Board to the Food and Drug Administration.

General Function of the Committee: The board shall provide advice primarily to the agency's Senior Science Advisor and, as needed, to the Commissioner and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science; on formulating an appropriate research agenda; and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency-sponsored intramural and extramural scientific research programs.

Date and Time: The meeting will be held on April 9, 2002, from 8 a.m. to 4 p.m.

Location: 5630 Fishers Lane, rm. 1066, Rockville, MD 20852.

Contact: Susan Bond, Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane, rm. 17–35, Rockville, MD 20857, 301–827–6687, or e-mail sbond@oc.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12603. Please call the Information Line for up-to-date information on this meeting.

Agenda: Open committee discussion, 8 a.m. to 1 p.m.; open public hearing, 1 p.m. to 2 p.m.; open committee discussion, 2 p.m. to 4:30 p.m. The board will hear and discuss emerging issues in antimicrobial resistance, process analytical technologies (followup), and biomaterials innovation; and discuss the external science review for FDA's Office of Regulatory Affairs.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 3, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 3, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Susan Bond at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 15, 2002.

Bonnie Malkin,

Acting Senior Associate Commissioner for Communications and Constituent Relations.

[FR Doc. 02–6994 Filed 3–21–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Refugee Resettlement; Grant to the Virginia Office of Newcomer Services

AGENCY: Office of Refugee Resettlement, DHHS.

ACTION: Grant award announcement.

SUMMARY: Notice is hereby given that an award is being made to the Virginia Office of Newcomer Services, Richmond, Virginia in the amount of $375,000 to provide funds to refugees in need of employment assistance as a result of the September 11, 2001 attack on the Pentagon. The closure of Reagan National Airport and the rapid decline in the metropolitan Washington, DC hospitality industry caused substantial numbers of refugees to lose their jobs. Many of these refugees arrived in the United States some time ago and are no longer eligible for refugee cash assistance and refugee medical assistance.

The Virginia Office of Newcomer Services intends to provide funds for mental health services, transportation assistance, English as a Second Language, direct assistance, and State administration costs.

After the appropriate reviews, it has been determined that the need for additional services is compelling. The period of this funding will extend through March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Loren Bussert, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401–4732.

Dated: March 18, 2002.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 02–6919 Filed 3–21–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–06]

Notice of Proposed Information Collection: Comment Request; Financial Statement

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* May 21, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Lester J. West, Director, Financial Operations Center, Department of Housing and Urban Development, telephone (518) 464–4200 extension 4206 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Financial Statement.

OMB Control Number, if applicable: 2502–0098.

Description of the need for the information and proposed use: This form is used by HUD to obtain information about a debtor's ability to pay the debt in full, pay in installments, and/or compromise the debt. Failure to collect this information would result in uneducated decisions in respect to the handling of the debtor's account.

Agency form numbers, if applicable: HUD 56142.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The total number of annual hours needed to prepare the information is 800; the number of respondents is estimated to be 800; the frequency of the response is once per respondent; and the estimated time per response is one hour.

Status of the proposed information collection: Extension of a previously approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 13, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–6889 Filed 3–21–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–12]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AF: 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; DOT: Mr. Rugene Spruill,

Principal, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW, Room 2310, Washington, DC 20590; (202) 366–4246; ENERGY: Mr. Tom Knox, Department of Energy, Office of Engineering & Construction Management, CR–80, Washington, DC 20585; (202) 586–8715; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; INTERIOR: Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW, MS5512, Washington, DC 20240; (202) 219–0728: NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: March 14, 2002.

John D. Garrity,

Director, Officer of Special Needs Assistance Programs.

Suitable/Available Properties

Buildings (by State)

Alaska

Bldg. A110
ISC Kodiak
Kodiak Co: AK 99615–
Landholding Agency: DOT
Property Number: 87200210016
Status: Excess
Comment: 1316 sq. ft., presence of asbestos/lead paint, most recent use—retail/commercial

Arkansas

Social Sec. Administration
225 Hazel Street
Hot Springs Co: Garland AR 71901–
Landholding Agency: GSA
Property Number: 54200210016
Status: Surplus
Comment: 7437 sq. ft. office building
GSA Number: 7–G–AR–0560

Blytheville Fed. Ofc. Bldg.
120 North Broadway
Blytheville Co: Mississippi AR 72316–
Landholding Agency: GSA
Property Number: 54200210017
Status: Surplus
Comment: 7921 sq. ft. office building, good condition GSA Number: 7–G–0559

California

Ingalls Hall
Army Reserve Center
2400 Fifth Street
Norco Co: Riverside CA 91760–1900
Landholding Agency: GSA
Property Number: 54200210018
Status: Surplus
Comment: 64,000 sq. ft., needs rehab, presence of asbestos/lead paint, water contains magnesium
GSA Number: 9–D–CA–1561

Eickenhorst Residence
4418 State Highway One
Stinson Beach Co: Marin CA 94970–
Landholding Agency: Interior
Property Number: 61200210018
Status: Unutilized
Comment: 935 sq. ft., needs rehab, off-site use only

Connecticut

Bldgs. 2, 108, 440
Naval Submarine Base
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77200210095
Status: Unutilized
Comment: various sq.ft., need rehab, presence of asbestos/lead paint, most recent use—office/store/club, off-site use only

Guam

Bldgs. 47, 48
Naval Forces, Marianas
Dededo Co: Barrigada GU 96540–
Landholding Agency: Navy
Property Number: 77200210096
Status: Unutilized
Comment: 144 sq. ft. each, no utilities, most recent use—storage

Bldgs. 81, 82
Naval Forces, Marianas
Dededo Co: Barrigada GU 96540–
Landholding Agency: Navy
Property Number: 77200210097
Status: Unutilized
Comment: 377 sq. ft. each, no utilities, most recent use—storage

Bldgs. 449
Naval Forces, Marianas
Dededo Co: Barrigada GU 96540–
Landholding Agency: Navy
Property Number: 77200210098
Status: Unutilized
Comment: 500 sq. ft. no utilities, most recent use—small arms

Bldgs. 732
Naval Forces, Marianas
Mariana Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210099
Status: Unutilized
Comment: 7360 sq. ft. no utilities, most recent use—warehouse

Nevada

Silver Strikes Lanes
400 Highway 6
Tonopah Co: NV 89049–
Landholding Agency: GSA
Property Number: 54200210019
Status: Excess
Comment: approx. 16,080 sq. ft. single story guutted light industrial bldg. on 8.23 acres
GSA Number: 9–I–NV–514

Sandia Duplex Housing
Victoria/Thomas Streets
Tonopah Co: NV
Landholding Agency: GSA
Property Number: 54200210020
Status: Excess
Comment: 3 duplexes, 750 sq. ft per unit w/carports
GSA Number: 9–I–NV–514

New Jersey

Sandmeier House
6 Old Mine Road
Layton Co: Sussex NJ 07851–
Landholding Agency: Interior
Property Number: 61200210019
Status: Excess
Comment: 1240 sq. ft., presence of lead paint, most recent use—residence/storage, off-site use only

Sandmeier Garage
6 Old Mine Road
Layton Co: Sussex NJ 07851–
Landholding Agency: Interior
Property Number: 61200210020
Status: Excess
Comment: 1352 sq. ft., needs rehab, presence of lead paint, most recent use—residence, off-site use only

McCullough House
2 Skyline Drive
Layton Co: Sussex NJ 07851–
Landholding Agency: Interior
Property Number: 61200210023
Status: Excess
Comment: 630 sq. ft., needs major rehab, presence of lead paint, most recent use—rsidential, off-site use only

Cedzidlo House
Old Mine Road
Montague Co: Sussex NJ 07827–
Landholding Agency: Interior
Property Number: 61200210028
Status: Excess
Comment: 1680 sq. ft., presence of lead paint, most recent use—residential, off-site use only

Camp Weygadt House
Rt. #46
Columbia Co: Warren NJ 07832–
Landholding Agency: Interior
Property Number: 61200210029
Status: Excess
Comment: 1200 sq. ft., needs rehab, presence of lead paint, most recent use—residential, off-site use only

Camp Weygadt Garage
Rt. #46
Columbia Co: Warren NJ 07832–
Landholding Agency: Interior
Property Number: 61200210030
Status: Excess

Comment: 484 sq. ft., needs repair, presence of lead paint, most recent use—storage, off-site use only

Pennsylvania

Henn House
Johnny Bee Road
Dingman's Ferry Co: Pike PA 18328–
Landholding Agency: Interior
Property Number: 61200210021
Status: Excess
Comment: 1505 sq. ft., presence of lead paint, most recent use—residential, off-site use only

Henn Garage
Johnny Bee Road
Dingman's Ferry Co: Pike PA 18328–
Landholding Agency: Interior
Property Number: 61200210022
Status: Excess
Comment: 576 sq. ft., presence of lead paint, most recent use—storage, off-site use only

Donovan House
Hidden Lake Drive
Bushkill Co: Monroe PA 18324–
Landholding Agency: Interior
Property Number: 61200210024
Status: Excess
Comment: 768 sq. ft., possible lead paint, most recent use—residential, off-site use only

Michaels House
Michaels Hill Road
Bushkill Co: Pike PA 18324–
Landholding Agency: Interior
Property Number: 61200210025
Status: Excess
Comment: 1097 sq. ft., presence of lead paint, most recent use—residential, off-site use only

Smith House
Conashaugh Rd.
Milford Co: Pike PA 18337–
Landholding Agency: Interior
Property Number: 61200210026
Status: Excess
Comment: 1770 sq. ft., presence of lead paint, most recent use—residential, off-site use only

Smith Garage
Conashaugh Rd.
Milford Co: Pike PA 18337–
Landholding Agency: Interior
Property Number: 61200210027
Status: Excess
Comment: 453 sq. ft., needs repair, presence of lead paint, most recent use—storage, off-site use only

Santucci House
Johnny Bee Road
Dingman's Ferry Co: Pike PA 18328–
Landholding Agency: Interior
Property Number: 61200210031
Status: Excess
Comment: 1604 sq. ft., needs repair, presence of lead paint, most recent use—seasonal residence, off-site use only

Santucci Garage
Johnny Bee Road
Dingman's Ferry Co: Pike PA 18328–
Landholding Agency: Interior
Property Number: 612002100312
Status: Excess
Comment: 480 sq. ft., needs major repair, presence of lead paint, most recent use—storage, off-site use only

Virginia

Federal Building
1426 N. Augusta St
Staunton Co: Augusta VA 24401–2401
Landholding Agency: GSA
Property Number: 54200210022
Status: Surplus
Comment: 4084 sq. ft. office building
GSA Number: 4–G–VA–0728

Bldg. 247
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210118
Status: Excess
Comment: 4492 sq. ft., needs major repair, possible asbestos/lead paint, most recent use—support bldg., off-site use only

Bldg. 188
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210119
Status: Excess
Comment: 11,461 sq. ft., needs major repair, possible asbestos/lead paint, most recent use—outfitting facility, off-site use only

Bldg. 258
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210120
Status: Excess
Comment: 432 sq. ft., needs major repair, most recent use—warehouse, off-site use only

Bldg. 278
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210121
Status: Excess
Comment: 5820 sq. ft., needs major repair, most recent use—maintenance facility, off-site use only

Bldg. 279
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210122
Status: Excess
Comment: 5820 sq. ft., needs major repair, most recent use—maintenance facility, off-site use only

Bldg. #11A
Naval Shipyard
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210123
Status: Excess
Comment: 10687 sq. ft., needs major repair, most recent use—office, off-site use only

Unsuitable Properties

Buildings (by State)

California

Bldg. 30101
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210019
Status: Unutilized
Reason: Secured Area

Bldg. 30131, 30709
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210020
Status: Unutilized
Reason: Secured Area

Bldg. 30137, 30701
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210021
Status: Unutilized
Reason: Secured Area

Bldg. 30235
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210022
Status: Unutilized
Reason: Secured Area

Bldg. 30238, 30446
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210023
Status: Unutilized
Reason: Secured Area

Bldg. 30239, 30444
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210024
Status: Unutilized
Reason: Secured Area

Bldg. 30306, 30335, 30782

Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210025
Status: Unutilized
Reason: Secured Area

Bldg. 30339, 30340, 30341
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210026
Status: Unutilized
Reason: Secured Area

Bldg. 30447
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210027
Status: Unutilized
Reason: Secured Area

Bldg. 30524
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210028
Status: Unutilized
Reason: Secured Area

Bldg. 30647
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210029
Status: Unutilized
Reason: Secured Area

Bldg. 30710, 30717
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210030
Status: Unutilized
Reason: Secured Area

Bldg. 30718, 30607
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210031
Status: Unutilized
Reason: Secured Area

Bldg. 30722, 30735
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210032
Status: Unutilized
Reason: Secured Area

Bldg. 30775, 30777
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210033
Status: Unutilized
Reason: Secured Area

Bldg. 30830, 30837
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210034
Status: Unutilized
Reason: Secured Area

Bldg. 30839, 30844, 30854
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210035
Status: Unutilized
Reason: Secured Area

Residence & Garage
904 Eighth Street
Orland Co: Glenn CA 95963–
Landholding Agency: Interior
Property Number: 61200210012
Reason: Extensive deterioration

Jones Residence
4400 State Highway One
Stinson Beach Co: Marin CA 94970–
Landholding Agency: Interior
Property Number: 61200210013
Status: Unutilized
Reason: Extensive deterioration

Conradi Residence
4060 State Highway One
Stinson Beach Co: Marin CA 94970–
Landholding Agency: Interior
Property Number: 61200210014
Status: Unutilized
Reason: Extensive deterioration

Van Houten Residence
4412 State Highway One
Stinson Beach Co: Marin CA 94970–
Landholding Agency: Interior
Property Number: 61200210015
Status: Unutilized
Reason: Extensive deterioration

Conte Residence
4406 State Highway One
Stinson Beach Co: Marin CA 94970–
Landholding Agency: Interior
Property Number: 61200210016
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1255
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210087
Status: Excess
Reason: Extensive deterioration

Bldg. 1508
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210088
Status: Excess
Reason: Extensive deterioration

Bldg. 18417
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210089
Status: Excess
Reason: Extensive deterioration

Bldg 22159
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210090
Status: Excess
Reason: Extensive deterioration

Bldg. 41302
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210091
Status: Excess
Reason: extensive deterioration

Bldg. 52830
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210092
Status: Excess
Reason: Extensive deterioration

Bldg. 62551
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210093
Status: Excess
Reason: Extensive deterioration

Bldg. 210548
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210094
Status: Excess
Reason: Extensive deterioration

Florida

Bldg. 1345
Cape Canaveral AFS
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18200210016
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 24451
Cape Canaveral AFS
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18200210017
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 55122
Cape Canaveral AFS
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18200210018
Status: Unutilized

Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Guam

Bldg. 138
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210100
Status: Unutilized
Reason: Secured Area

Bldg. 460
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210101
Status: Unutilized
Reason: Secured Area

Bldg. 1741
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210102
Status: Unutilized
Reason: Secured Area

Bldg. 1742
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210103
Status: Underutilized
Reason: Secured Area

Bldg. 1743
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210104
Status: Underutilized
Reason: Secured Area

Bldg. 6012
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210105
Status: Underutilized
Reason: Secured Area

New Jersey

McCullough Garage
2 Skyline Drive
Layton Co: Sussex NJ 07851–
Landholding Agency: Interior
Property Number: 61200210017
Status: Excess
Reason: Extensive deterioration

New Mexico

5 Bldgs.
Kirtland AFB
Sandia Natl Lab
Albuquerque Co: Bernalillo NM 87185–
Location: 9927, 9970, 6730, 6731, 6555
Landholding Agency: Energy
Property Number: 41200210014
Status: Excess
Reason: Extensive deterioration

6 Bldgs.
Kirkland AFB
Sandia Natl Lab
Albuquerque Co: Bernalillo NM 87185–
Location: 6725, 841, 884, 892, 893, 9800
Landholding Agency: Energy
Property Number: 41200210015
Status: Excess
Reason: Extensive deterioration

Puerto Rico

Culebrita Island Lighthouse
Culebra Island Co: PR
Landholding Agency: GSA
Property Number: 54200210021
Status: Surplus
Reason: inaccessible
GSA Number: 1–T–PR–509

South Carolina

16 Bldgs.
Naval Weapons Station
Goose Creek Co: Berkeley SC 29445–
Location: 294, 297, 316, 319, 710, 991, 3510, 3534, 3542, 3550, 3590, 3580, 3582, 3584, 3588, 3592
Landholding Agency: Navy
Property Number: 77200210106
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Virginia

Bldgs. CA61, CA62, CA69
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number 77200210107
Status: Excess
Reason: Extensive deterioration

Bldgs. MC64, NH34
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200210108
Status: Excess
Reason: Extensive deterioration

3 Bldgs.
Naval Station
SDA201, SDA217, SDA277
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200210109
Status: Excess
Reason: Extensive deterioration

Bldg. 149
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210110
Status: Excess
Reason: Extensive deterioration

Bldgs. 187, 194
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210111
Status: Excess
Reason: Extensive deterioration

Bldg. 201
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210112
Status: Excess
Reason: Extensive deterioration

Bldgs. 203, 212
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210113
Status: Excess
Reason: Extensive deterioration

Bldg. 284
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210114
Status: Excess
Reason: Extensive deterioration

Bldg. 285
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210115
Status: Excess
Reason: Extensive deterioration

Bldg. 295
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210116
Status: Excess
Reason: Extensive deterioration

Bldgs. 320, 329
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210117
Status: Excess
Reason: Extensive deterioration

[FR Doc. 02–6552 Filed 3–21–02; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Mayer Family Habitat Conservation Plan, Santa Cruz County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability.

SUMMARY: Geoffrey and Susan Mayer (Applicants) have applied to the Fish and Wildlife Service (Service) for an Incidental Take Permit pursuant to

section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed permit would authorize take of the federally endangered Mount Hermon June beetle (*Polyphylla barbata*) incidental to otherwise lawful activities associated with the development of a 0.35-acre parcel (project site) near the City of Scotts Valley, Santa Cruz County, California. The Applicants have requested that the federally endangered Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*) be included as a covered species on the permit.

We request comments from the public on the permit application, which is available for review. The application includes a Low-Effect Habitat Conservation Plan (HCP), that fully describes the proposed project and the measures that the Applicants would undertake to minimize and mitigate anticipated take of the Mount Hermon June beetle, as required in Section 10(a)(2)(B) of the Act. The HCP also addresses and adverse effects to the Ben Lomond spineflower.

We also request comments on our preliminary determination that the HCP qualifies as a ''low-effect'' plan, eligible for a categorical exclusion under the National Environmental Policy Act. The basis for this determination is discussed in an Environmental Action Statement, which is also available for public review.

DATES: Written comments must be received no later than April 22, 2002.

ADDRESSES: Written comments should be addressed to Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Ventura, California 93003. Comments may also be sent by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Colleen Sculley, Fish and Wildlife Biologist, at the above address or by calling (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Document Availability

Please contact the above office if you would like copies of the application, HCP, and Environmental Action Statement. Documents also will be available for review by appointment, during normal business hours at the above address.

Background

Section 9 of the Act and Federal regulation prohibit the ''take'' of fish or wildlife species listed as endangered or threatened, respectively. Take of listed fish or wildlife is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, the Service, under limited circumstances, may issue permits to authorize incidental take; i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22, respectively. The taking prohibitions of the Act do not apply to federally listed plants on private lands unless such take would violate State law. Among other criteria, issuance of such permits must not jeopardize the existence of federally listed fish, wildlife, or plants. For these reasons, the Applicants have chosen to address the state and federally listed Ben Lomond spineflower in their HCP.

The Applicants propose to construct a single-family dwelling and associated infrastructure, including driveways, sidewalks, retaining walls, lap pool, patio, and a concrete ditch, on a 0.35-acre parcel. The project site is located at 275 Bob's Lane in a residential neighborhood referred to as Whispering Pines in an unincorporated area of the County of Santa Cruz near the southwest boundary of the City of Scotts Valley. Zoning for this parcel and the surrounding residential neighborhood is R–1–10, indicating that one single-family residence is allowed on a minimum lot size of 10,000 square feet. Most of the Whispering Pines neighborhood has been built out, with less than 30 lots remaining empty. The southwest and southeast boundaries of the parcel are bordered by existing homes, the northeast boundary borders Bobs Lane, and the northwest boundary borders an existing sand quarry. The project site is currently undeveloped and vegetated with a mixture of native and non-native species including ponderosa pine seedlings (*Pinus ponderosa*), live oaks (*Quercus agrifolia* and *Q. wislizenii*), liquidambars (*Liquidambar sp.*), silverleaf manzanita (*Arctostaphylos silvicola*), cultivated grapes (*Vitis sp.*), bracken fern (*Pteridium aquilinum* var. *pubescens*), and non-native grasses.

In 2000, biologists conducted surveys for special status plants and wildlife on the project site. Twenty-two adult males of the Mount Hermon June beetle were captured on the project site during one night of surveys. The Ben Lomond spineflower was observed growing in two areas totaling 1,406 square feet on the project site. Based on these surveys, the Service concluded that the development of the project site likely would result in take of the Mount Hermon June beetle, and adverse effects to the Ben Lomond spineflower.

The Applicants propose to implement measures to minimize and mitigate for the removal of suitable habitat for the Mount Hermon June beetle and Ben Lomond spineflower from the project site. Specifically, they propose to (1) protect in perpetuity a one-acre mitigation parcel occupied by the Mount Hermon June beetle and Ben Lomond spineflower at an off-site location via a recorded conservation easement with the Center for Natural Lands Management (CNLM); (2) provide funding for management and monitoring of the mitigation site in perpetuity in a manner that supports habitat for the Mount Hermon June beetle and Ben Lomond spineflower; and (3) undertake various measures during grading and construction activities at the project site to minimize impacts to both endangered species and their habitat.

The Service's Proposed Action consists of the issuance of an incidental take permit and implementation of the HCP, which includes measures to minimize and mitigate impacts of the project on the Mount Hermon June beetle and Ben Lomond spineflower. Two alternatives to the taking of listed species under the Proposed Action are considered in the HCP. Under the No-Action alternative the project site would not be developed and the HCP would not be implemented. Without the HCP, habitat for the Ben Lomond spineflower and Mount Hermon June beetle on the project site likely would decline further as a result of threats from existing development surrounding the site. Furthermore, no off-site habitat would be protected for the benefit of the Mount Hermon June beetle and Ben Lomond spineflower. This alternative would also result in an unnecessary economic burden on the Mayer family.

Under the Redesigned Project alternative, the development footprint for the project would be reduced or relocated to another portion of the site, thus reducing or altering the area of destroyed habitat for the Mount Hermon June beetle and Ben Lomond spineflower. Given the small size of the project site (0.35 acres), a reduction in the development envelope would not significantly improve conditions for the Mount Hermon June beetle and Ben Lomond spineflower on the site. Adverse impacts from construction, on-going use of the site, and from surrounding residential development would threaten both species, regardless of the size or type of development that occurs on the project site. As the lot is small in size, and narrow and rectangular in shape, relocation of the house and associated infrastructure is not practical. This alternative would

also result in an unnecessary economic burden on the Mayer family.

The Service has made a preliminary determination that the HCP qualifies as a ''low-effect'' plan as defined by its Habitat Conservation Planning Handbook (November 1996). Our determination that a habitat conservation plan qualifies as a low-effect plan is based on the following three criteria: (1) Implementation of the plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. As more fully explained in our Environmental Action Statement, the Applicants' proposal to construct a single-family residence qualifies as a ''low-effect'' plan for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the Ben Lomond spineflower and Mount Hermon June beetle and its habitat. The Service does not anticipate significant direct or cumulative effects to the Mount Hermon June beetle or Ben Lomond spineflower resulting from development of the project site.

2. Approval of the HCP would not have adverse effects on unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any cumulative or growth inducing impacts and, therefore, would not result in significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of the HCP would not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

The Service therefore has made a preliminary determination that approval of the HCP qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not intend to prepare further National Environmental Policy Act documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

The Service provides this notice pursuant to section 10(c) of the Endangered Species Act. We will evaluate the permit application, the HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10 (a) of the Act. If the requirements are met, the Service will issue a permit to the Mayers. We will make the final permit decision no sooner than 30 days from the date of this notice.

Dated: March 15, 2002.

D. Kenneth McDermond,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–6927 Filed 3–21–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Safe Harbor Agreement for Bull Trout in Falls Creek, Lemhi County, ID

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that John Folsom and Ben O'Neal (Applicants) have each applied to the Fish and Wildlife Service (Service) for enhancement of survival permits pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended. The permit applications include a proposed Safe Harbor Agreement (Agreement) for bull trout (*Salvelinus confluentus*) between the Applicants and the Service. The proposed permits and Agreement would remain in effect for 20 years. Three alternatives, including the proposed alternative, are described within the Environmental Assessment (EA), which is also available for public review and comment.

We (the Service) announce the opening of a 30-day comment period and request comments from the public on the Applicants' enhancement of survival permit applications, the accompanying proposed Agreement, and Environmental Assessment. All comments we receive, including names and addresses, will become part of the administrative record and may be released to the public. For further information and instructions on reviewing and commenting on this document, see the Public Comment and Document Availability section, below.

DATES: Written comments should be received on or before April 22, 2002.

ADDRESSES: Comments should be addressed to Ted Koch, Project Biologist, Fish and Wildlife Service, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709 (telephone: 208/378–5243; facsimile: 208/378–5262).

FOR FURTHER INFORMATION CONTACT: Ted Koch, (208) 378–5243.

SUPPLEMENTARY INFORMATION:

Background

Under the Services' Safe Harbor Agreement and Landowner Incentive Fund programs, participating property owners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Endangered Species Act. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subjected to additional property use restrictions in the future. Safe Harbor Agreements provide assurances to the property owner that allow alterations or modifications to property enrolled under the Agreement, even if such action results in the incidental take of a listed species or, in the future, returns the species or habitat to an originally agreed-upon baseline condition. The Landowner Incentive Fund contributes funding for these efforts. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22 and 17.32.

The Falls Creek Aquatic and Riparian Restoration Project and Bull Trout Safe Harbor Agreement in the Pahsimeroi River basin in Central Idaho are proposed to enhance the conservation of bull trout, and other aquatic and riparian species, and continue agricultural irrigation near the mouth of Falls Creek. Bull trout, a species federally listed as threatened, are negatively affected by impacts to habitat from many sources, including agricultural irrigation activities. Specific impacts include dewatering bull trout streams and entraining bull trout in unscreened agricultural irrigation ditches.

This project is expected to: (1) Restore 6 miles of stream habitat that has been dewatered for agricultural irrigation purposes for the last 80 to100 years; (2)

reconnect a population of bull trout long isolated in the headwaters of Falls Creek with reduced populations downstream in the Pahsimeroi River; (3) open new migration, spawning, and rearing habitat for this and other resident fish species; (4) restore 6 miles of riparian habitat, connecting similar existing habitats in the mountains and the valley floor; and (5) allow additional recharge of the underground aquifer in the area. Roughly 2 miles of riparian habitat adjacent to existing surface water irrigation ditches would be lost when use of the ditches for conveying water is abandoned. Irrigation of agricultural fields near the mouth of Falls Creek would continue through pumping of groundwater, while currently diverted surface water flows would be returned to the historic Falls Creek stream channel. The Bureau of Land Management (BLM) would implement stream habitat restoration actions on lands under their management to facilitate aquatic and riparian habitat restoration, and may provide technical assistance to neighboring private landowners. Due to the experimental nature of the project, the Service, BLM and others will monitor effects on bull trout, aquatic and riparian habitats, ground water resources, and adapt management as necessary.

The proposed Agreement would seek to eliminate or minimize impacts to bull trout and other aquatic and riparian dependent species from agricultural irrigation activities by facilitating the following actions: (1) Restore, as a baseline condition, 8.0 cubic feet per second (cfs) of stream flow in the 6-mile long dewatered portion of Falls Creek by transferring surface irrigation flow rights to ground water wells drilled near the mouth of Falls Creek; (2) Reconstruct the existing head box, or irrigation diversion facility, to improve flow control, ensuring appropriate surface flows are provided in the stream channel; (3) Reestablish the currently dewatered, natural Falls Creek stream channel and riparian habitat so water can flow in a defined channel to the Pahsimeroi River via Big Springs Creek; (4) Enhance ground-water recharge in the local hydrologic system; (5) Develop a new irrigation system to improve efficiency of water use; (6) Determine pre-project fisheries and riparian status in specific locations, and implement monitoring, evaluation, and adaptive management programs; and (7) Monitor effects of the new ground water wells on other wells in the valley, and the relationship between Falls Creek surface water flows and ground water pumping.

Consistent with our Safe Harbor policy, we would issue enhancement of survival permits to the Applicants authorizing incidental take of bull trout as a result of agricultural irrigation activities on their property. Additionally, as a condition of the Agreement and issuance of a 10(a)(1)(A) enhancement of survival permits, the Applicants are assured that we will not require additional conservation measures nor impose additional land, water, or resource use restrictions beyond those voluntarily agreed to. We expect that the incidental take authorized under the proposed Agreement may never occur. Any incidental take that might occur from the proposed action would result from the effects of ground water pumping on surface water flows in Falls Creek, which is expected to be minimal or non-existent. In accordance with this Agreement, the minimum baseline condition will be the Applicants' provision of 8.0 cfs of surface water flow rights to the natural stream channel in Falls Creek. Take of bull trout as a result of diverting any of the 8.0 cfs of stream flow rights will not be authorized.

In addition to the proposed Surface Water Restoration alternative described above, other alternatives considered in more detail include: A No Action Alternative that would continue to dewater Falls Creek with no habitat restoration, isolate a bull trout population in the stream's headwaters, and risk entrainment and mortality of bull trout in unscreened irrigation ditches; an Irrigator Buy-Out Alternative that would terminate irrigation in the Falls Creek area and completely restore aquatic and riparian habitat in Falls Creek; and an Increased Irrigation Efficiency alternative that would include all four irrigators on Falls Creek as permittees of the Service, and restore some stream flow and habitat to Falls Creek.

Public Comment and Document Availability

We provide this notice pursuant to section 10(c) of the Endangered Species Act and pursuant to implementing regulations for the National Environmental Policy Act (40 CFR 1506.6). We will evaluate the permit application, associated documents, and comments submitted to determine whether the permit application meets the requirements of section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations. If we determine that the requirements are met, we will sign the proposed Agreement and issue enhancement of survival permits under section 10(a)(1)(A) of the Endangered Species Act to the Applicants for take of bull trout in accordance with the terms of the Agreement. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

You may obtain copies of the documents for review by contacting the individual named above (see **ADDRESSES**). You also may make an appointment to view the documents at the above address during normal business hours (see **ADDRESSES**).

Dated: March 1, 2002.

Rowan W. Gould,

Deputy Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 02–6909 Filed 3–21–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Safe Harbor Agreement for Forster-Gill, Inc., Blue Lake Properties, Humboldt County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: This notice advises the public that Forster-Gill, Inc., has applied to the Fish and Wildlife Service (we, the Service) for an enhancement of survival permit pursuant to section 10 (a)(1)(A) of the Endangered Species Act of 1973, as amended (Act) for northern spotted owl (*Strix occidentalis caurina*). The permit application includes a Safe Harbor Agreement between Forster-Gill, Inc., and the Service. The proposed Agreement and permit would become effective upon signature of the Agreement and would remain in effect 80 and 90 years, respectively. We have made a preliminary determination that the proposed Agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). We explain the basis for this determination in an Environmental Action Statement, which is also available for public review.

We announce the opening of a 30-day comment period to receive comments from the public on the Applicant's enhancement of survival permit application, the accompanying proposed Agreement, and Environmental Action Statement. For further information and instruction on the reviewing and comment process, see Public Review and Comment section below.

DATES: Written comments must be received by April 22, 2002.

ADDRESSES: Comments should be addressed to Mr. Bruce Halstead, Project Leader, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, California, 95521; facsimile (707) 822–8411. (See Public Review and Comments section below.)

FOR FURTHER INFORMATION CONTACT: Mr. Ken Hoffman at the above address or telephone (707) 822–7201.

SUPPLEMENTARY INFORMATION:

Background

Under a Safe Harbor Agreement, participating property owners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefitting species listed under the Act. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subject to increased property use restrictions if their efforts attract listed species to their property or increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c).

We have worked with Forster-Gill, Inc., to develop a Safe Harbor Agreement for the creation and enhancement of habitat for the northern spotted owl on the Forster-Gill, Inc., properties in Blue Lake, California. There are two baseline conditions that will be maintained under this Agreement: (1) Protection of an 11.2-acre no-harvest area that will buffer the most recent active northern spotted owl nest site, but will also be maintained in the absence of a nest site; and (2) maintenance of 216 acres on the property such that the trees will always average 12 to 24 inch diameter at breast height with a canopy closure of 60 to 100 percent. The property is currently at the lower end of the diameter and canopy closure ranges. By the end of the Agreement, the property will be at the upper end of the diameter and canopy closure ranges. Under this Agreement, Forster-Gill, Inc., will: (1) Annually survey and monitor for the species location and reproductive status; (2) protect all active nest sites (locations where nesting behavior is observed during any of the previous 3 years) with a no-harvest area that buffers the nest site by no less than 300 feet and limits timber harvest operations, within 1,000 feet of an active nest site during the breeding season, to the use of existing haul roads; and (3) manage the second growth redwood timber on the property in a manner that maintains suitable northern spotted owl habitat while creating over time the multi-layered canopy structure with an older, larger tree component associated with high quality spotted owl habitat.

We anticipate that this Agreement will provide, maintain, and enhance for the 80-year life of the Agreement over 200 acres of suitable northern spotted owl habitat within a matrix of private timberland.

Consistent with Safe Harbor policy, we propose to issue a permit to Forster-Gill, Inc., authorizing incidental take of northern spotted owls which may move on to the enrolled lands, and their progeny, as a result of lawful activities on the Forster-Gill, Inc., Blue Lake Properties, so long as baseline conditions are maintained and terms of the Agreement are implemented. These activities include unintentional take of northern spotted owls from long-term timber management and related activities including the felling, skidding and transport of timber and other related forest products. As the long-term timber management and related activities proposed under this Agreement will not result in the elimination of any currently suitable spotted owl habitat, it is unlikely that take would occur in this manner. However, in the event that an owl pair moves on to, or within 300 feet of the enrolled property, the application of uneven aged timber management using single tree selection silviculture between 300 and 500 feet from an active nest site, may result in incidental take through degradation of the habitat, e.g. alteration of the microclimate within the proximity of the nest site. The development and maintenance of high quality habitat in a matrix of private timberland subject to even aged management regimes will provide a relatively stable habitat condition that we believe will provide high productivity for multiple generations of spotted owls. Therefore, the cumulative impact of the Agreement and the activities it covers, which are facilitated by the allowable incidental take, is expected to provide a net benefit to the northern spotted owl.

We provide this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6). We will evaluate the permit application, associated documents, and comments submitted therein to determine whether the permit application meets the requirements of section 10(a) of the Act and NEPA regulations. If, upon completion of the 30-day comment period, we determine that the requirements are met, we will sign the Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to Forster-Gill, Inc., for take of northern spotted owls incidental to otherwise lawful activities in accordance with the terms of the Agreement.

Public Review and Comments

Individuals wishing copies of the permit application, the Environmental Action Statement, or copies of the full text of the Agreement, including a map of the proposed permit area, references, and legal descriptions of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section above.

If you wish to comment on the permit application, Environmental Action Statement, or the Agreement, you may submit your comments to the address listed in the **ADDRESSES** section of this document. Comments and materiels received, including names and addresses of respondents, will be available for public review, by appointment, during normal business hours at the address in the **ADDRESSES** section above and will become part of the public record, pursuant to section 10(c) of the Act.

Dated: March 15, 2002.

John Engbring,

Deputy Manager, California/Nevada Operations Office., Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 02–6928 Filed 3–21–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Paperwork Reduction Act Request to Office of Management and Budget

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Information Collection Request for Bureau of Indian Affairs (BIA) Form-4432, Verification of Indian Preference for Employment in the BIA and the Indian Health Service (IHS) has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995. The BIA is soliciting public comments on the subject proposal.

DATES: Written comments must be submitted on or before April 22, 2002.

ADDRESSES: Written comments should be sent directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, 725 17th Street, NW., Washington, DC 20503. Send a copy of your comments to Duane Bird Bear, Chief, Division of Tribal Government Services, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW., MS–4660–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Carolyn Newman, 202–208–2473.

SUPPLEMENTARY INFORMATION: A 60-day notice for public comments was published in the **Federal Register** on November 21, 2001 (66 FR 58514). No comments were received on the workload burden or the form itself (OMB Control No. 1076–0160) during this public comment period. Comments were received on January 28, 2002, but they concerned substantive requirements for descendants of members of federally recognized Indian tribes but who were not themselves enrolled members of the tribe. This issue will be addressed during rule revision.

I. Abstract

The purpose of the Indian Preference Form is to encourage qualified Indians to seek preference in employment with the BIA and the IHS. BIA collects information under the proposed regulations to ensure compliance with Indian preference hiring requirements. The information collection relates only to individuals applying for employment with the BIA and the IHS. The tribe's involvement is limited to verifying membership information submitted by the applicant. The collection of information allows certain persons who are of Indian descent to receive preference when appointments are made to vacancies in positions with the BIA and IHS as well as in any unit that has been transferred intact from the BIA to a Bureau or office within the Department of the Interior, or the Department of Health and Human Services and that continues to perform the functions formerly performed as part of the BIA or the IHS. You are eligible for preference if (a) you are a member of a federally recognized Indian tribe; (b) you are a descendant of a member and you were residing within the present boundaries of any Indian reservation on June 1, 1934; (c) you are an Alaska Native; or (d) you possess one-half degree Indian blood derived from tribes that are indigenous to the United States. The information is submitted in order to obtain or retain a benefit, namely, preference in employment with the BIA and the IHS.

II. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

The Office of Management and Budget has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, comments submitted in response to this notice should be submitted to OMB within 30 days in order to assure their maximum consideration. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. If you wish us to withhold any information, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless a currently valid OMB control number is displayed. You may request copies of the information collection forms and our submission to OMB from the person listed in **FOR FURTHER INFORMATION CONTACT** section.

III. Data

Title: Verification of Indian Preference for Employment in the BIA and the IHS, BIA Form 4432.

OMB approval number: 1076–0160.

Type of Request: Extension of a currently approved collection.

Description of respondents: Qualified Indians who are seeking preference in employment with the BIA and IHS. Approximately a total of 5,000 applications for preference in employment are received annually by the BIA field offices.

Frequency: On occasion as needed.

Estimated completion time: The average burden of submitting an Indian Preference Form is 30 minutes including time for reviewing instructions, searching data sources and assembling the information needed.

Total annual burden: 5,000 × ½ hour = 2500 hours.

Estimated cost: There are no costs to consider, except postage and the cost of duplicating the original verification form, because verification of the information is already available for other reasons. The form will be used by an applicant to seek documentation of Indian descent or membership from either a tribal official or the BIA.

Dated: March 4, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–6978 Filed 3–21–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Availability of a Draft Recreation Area Management Plan for the Imperial Sand Dunes Recreation Area and Associated Draft Amendment to the California Desert Conservation Area Plan and Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of a Draft Recreation Area Management Plan (DRAMP) for the Imperial Sand Dunes Recreation Area (ISDRA) and associated Draft Amendment to the California Desert Conservation Area (CDCA) Plan and Draft Environmental Impact Statement (DEIS).

SUMMARY: The DRAMP and Draft Amendment to the CDCA Plan provide direction and guidance for the management of public lands and resources of the ISDRA, including goals and management objectives, management prescriptions in accordance with the Federal Land Policy and Management Act (FLPMA) of 1976, management direction specific to discrete areas within the ISDRA, and monitoring and evaluation requirements. The DEIS evaluates the DRAMP and alternatives to the DRAMP, including necessary amendments to the CDCA Plan.

DATES: Written comments on the DRAMP, Draft Amendment to the CDCA Plan and DEIS will be accepted until

June 28, 2002. Six (6) public meetings will be held between 7–10 p.m.

The dates and locations of the public meetings are as follows:

April 9, 2002, El Centro, CA, City Council Chambers, 1275 Main Street, El Centro, CA.

April 11, 2002, Long Beach, CA, The Grand, 4101 East Willow Street, Long Beach, CA.

April 15, 2002, Phoenix, AZ, Phoenix College, 1202 West Thomas Road, Phoenix, AZ.

April 18, 2002, Brawley, CA, Brawley City Council, 225 A Street, Brawley, CA.

April 23, 2002, Yuma, AZ, Yuma Civic and Convention Center, 1440 W Desert Hills Drive, Yuma, AZ.

April 25, 2002, San Diego, CA, Marriott Mission Valley, 8757 Rio San Diego Drive, San Diego, CA.

ADDRESSES: Comments should be sent to Greg Thomsen, Field Manager, El Centro Field Office, California Desert District, Bureau of Land Management, 1661 South 4th Street, El Centro, CA 92243. Comments also may be sent by e-mail to: *rtrost@ca.blm.gov.* Comments on the DRAMP, Draft Amendment to the CDCA Plan and DEIS, including names and addresses of respondents, will be available for public review at the El Centro Field Office during normal working hours (7:45 a.m to 4:15 p.m., except holidays), and may be published as part of the Final Environmental Impact Statement and Amendment to the CDCA Plan. Individuals may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety. The planning documents and direct supporting record for the analysis and DRAMP will be available for inspection at the El Centro Field Office during normal working hours. Some important historical records may also be posted on the BLM Internet site to facilitate public access.

FOR FURTHER INFORMATION CONTACT: Roxie Trost, Bureau of Land Management, 1661 South 4th Street, El Centro, CA 92243; (760) 337–4420.

SUPPLEMENTARY INFORMATION: The ISDRA project area, trending generally for 40 miles from the southeast to northwest, comprises approximately 208,284 acres of public lands bounded approximately to the west by the Old Coachella Canal, to the east by the Union Pacific Railroad, to the North by Mammoth Wash, and to the south by Interstate 8 and the California/Mexico border. The primary activities conducted in the ISDRA include recreational camping and use of Off-Highway Vehicles. Issues addressed in the DRAMP and DEIS include: recreation resources; biological resources (wildlife and botany); cultural resources and paleontology; land ownership and management; geology and soils; socioeconomics; and public health and safety. The DEIS also addresses water; noise; mineral resources; hazardous materials; solid waste; visual resources; energy; access; climate; topography; and air quality.

Greg Thomsen,

Field Manager, El Centro Field Office.

[FR Doc. 02–6977 Filed 3–21–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[OMB Control Number 1010–0123]

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection.

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled ''Issuing Orders Requested by Indian Lessors.''

DATES: Submit written comments on or before May 21, 2002.

ADDRESSES: Submit written comments to Carol P. Shelby, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, MMS's courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Carol P. Shelby, telephone (303) 231–3151, FAX (303) 231–3385.

SUPPLEMENTARY INFORMATION: *Title:* Issuing Orders Requested by Indian Lessors.

OMB Control Number: 1010–0123.

Bureau Form Number: None.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf. The Secretary of the Interior is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

Section 101(a) of the Federal Oil and Gas Royalty Management Act of 1982, as amended, requires that the Secretary ''establish a comprehensive inspection, collection, and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and collect and account for such amounts in a timely manner.'' In order to accomplish these tasks, Indian lessors need a procedure for requesting the Secretary to issue orders for payments or reports. The MMS developed a proposed rule, published January 12, 1999 (64 FR 1930), to add Subpart C—Requests from Indian Lessors for MMS to Issue an Order to 30 CFR Part 242—Orders. The subpart explained how Indian lessors could formally request that MMS issue an order to persons concerning the reporting of production and the reporting and payment of royalties and other payments due under their leases. A final rule codifying these provisions has not been published yet. Because OMB approval of this information collection expires April 30, 2002, we are seeking OMB approval to renew these reporting requirements until a final rule is published.

This information collection covers the hour burden associated with submitting requests to MMS to issue an order. Submission of the information in this collection is necessary for MMS to determine the validity of the request and investigate the reasons for perceived errors or underpayments. Proprietary information that is submitted is protected, and there are no questions of a sensitive nature included in this information collection.

Frequency: On occasion.

Estimated Number and Description of Respondents: 12 Indian lessors.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 180 hours.

Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden: We have identified no ''non-hour cost'' burdens.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides 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. Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request.

Public Comment Policy. We will make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: February 8, 2002.

Milton K. Dial,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. 02–6904 Filed 3–21–02; 8:45 am]

BILLING CODE 4310–MR–U

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–007]

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: April 1, 2002 at 2 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: 1. Agenda for future meeting: none.

2. Minutes

3. Ratification List

4. Inv. No. 731–TA–925 (Final) (Greenhouse Tomatoes from Canada)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before April 11, 2002.)

5. Outstanding action jackets: (1.) Document No. GC–02–029: Concerning Inv. No. 337–TA–443 (Certain Flooring Products).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: March 19, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–7124 Filed 3–20–02; 2:40 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Videotape: Interpersonal Communications in the Correctional Setting

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: The National Institute of Corrections, Jails Division, is seeking applications for the production of a betacam or digital format videotape, Interpersonal Communications in the Correctional Setting.

Background

Supervising inmates and managing their behavior are two of the primary responsibilities of correctional institutions. Effective communication with inmates is one of the most important skills correctional staff must have to maintain the safety and security of institutions. The National Institute of Corrections has an established curriculum on Interpersonal Communications in the Correctional Setting which is used to instruct correctional staff in appropriate communication skills for use with the inmates they supervise. Materials for this curriculum include an instructor's guide, participant manual, and a 60 minute instructional videotape. The current instructional videotape is outdated in terms of narrator and actor appearance, language, and use of graphics. To ensure the course remains effective NIC needs to produce an updated version of the training videotape.

Project Objectives

To produce a revised version of the existing Interpersonal Communications in the Correctional Setting training tape, using a revised script provided by the National Institute of Corrections.

Scope of Work

Videotape Length: About 60 minutes.

Videotape Audience: Correctional staff and instructors participating in the Interpersonal Communications in the Correctional Setting training program.

Use of Videotape: The videotape will be used in the Interpersonal Communications in the Correctional Setting training program. Instructors will use the videotape during the training, in conjunction with the instructor's guide and participant manual.

Videotape Distribution: NIC expects to widely distribute the videotape. It will be made available, upon request and free of charge, through the NIC Information Center. Local officials, detention practitioners, professional corrections organizations, private corrections consultants, and professionals in related fields will be able to request the use of this videotape.

Videotape Content: The National Institute of Corrections has developed a revised script for this videotape. The approximately 60 minute videotape will include an on-screen narrator, voice-over narration, music, graphics, scenarios using professional actors to portray correctional staff and inmates, and/or other strategies designed to most effectively demonstrate concepts. Scenarios will be filmed inside correctional facilities. Scenario actors will represent diverse backgrounds (ethnicity, race, age, and sex).

Project Description: The production company will see the videotape production through from beginning to end. The company is expected to provide the staff, equipment, and other resources necessary to directing, producing, filming, editing, and all other activities necessary to videotape production.

The production company is asked to assign one staff to oversee the project and work closely with NIC staff on all phases of videotape production. NIC staff will assist in identifying correctional facilities for on-site shooting. NIC staff will be available on-site during some or all of the filming. NIC staff must review and approve the treatment, creative ideas, selection of the narrator and actors, shooting days, music, graphics, animation, editing, and screening dates. NIC staff will have all editing rights and final approval of rough drafts.

NIC staff will be available to the production company to assist with questions or problems that arise. It is important, therefore, that the production company staff are readily available for in-person meetings with NIC staff in Longmont, Colorado. At a minimum, the production company must be available to meet in Longmont, Colorado for a project kick-off meeting.

The production company will videotape in betacam or digital format. Once the videotape is completed, the production company will provide NIC one betacam or digital master and 12 copies of the tape in VHS format. All videotape used in this production, including B footage, is the property of the U.S. Government and is to be delivered to NIC upon completion of this project.

Production Schedule: The list below shows the major activities required to complete the project. Videotape production will begin upon award of this agreement and must be completed twelve months after the award date. The schedule for completion of activities should include the following, at a minimum.

- Production company's kickoff meeting in Longmont, Colorado with NIC staff for a project overview;
- Production company's review of existing video and revised script provided by NIC;
- Selection of on-screen narrator, voice-over narration, and scenario actors coordinated with an approved by NIC staff;
- Selection of scenario site(s) coordinated and approved by NIC staff;
- Filming scheduled and coordinated with NIC staff;
- Filming;
- Completion of draft footage;
- Screening of draft footage by production company and NIC staff;
- Edit from screen;
- Graphics/animation/music planned, then presented to and approved by NIC staff;
- Graphics/animation/music created;
- On-screen narration and voice-over narration presented to and approved by NIC staff;
- Screening of edit(s) by production company and NIC staff;
- Review and approval of final edit by NIC staff;
- Final products delivered.

Authority: Public Law 93–415

Funds Available: The award will be limited to $85,000 (direct and indirect costs) and project activity must be completed within twelve months of the date of award. Funds may not be used for construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Jails Division.

Application Procedures

Applications must be submitted in six copies to the Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington DC 20534. At least one copy of the application must have the applicant's original signature in blue ink. A cover letter must identify the responsible audit agency for the applicant's financial accounts.

Applications must be submitted using OMB Standard Form 424, Federal Assistance, and attachments. The applications should be concisely written, typed double-spaced, and referenced to the project by the number and title given in this cooperative agreement announcement.

The narrative portion of this cooperative agreement application should include, at a minimum:

- A brief paragraph that indicates the applicant's understanding of the purpose of the videotape;
- A brief paragraph that summarizes the project goals and objectives;
- A clear description of the methodology that will be used to complete the project and achieve its goals;
- A statement or chart of measurable project milestones and time lines for the completion of each;
- A description of the staffing plan for the project, including the role of each project staff, the time commitment for each, the relationship among the staff (who reports to whom), and an indication that all required staff will be available;
- A description of the qualifications of the applicant organization and each project staff;
- A budget that details all costs for the project, shows consideration for all contingencies for this project, and notes a commitment to work within the budget proposed (budget should be divided into object class categories as shown on application Standard Form 424A).

Documentation of the principal's and associate's relevant knowledge, skills, and abilities to carry out the described tasks must be included in the application. The application must be accompanied by a resume of the applicant's work and a brief sample(s) of complete video productions. The applicant organization must specify its roles in the production of the sample videos.

Deadline for Receipt of Applications: Applications must be received by 4:00 p.m. on Tuesday, May 7, 2002. They should be addressed to Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. The NIC application number should be written on the outside of the mail or courier envelope. Applicants are encouraged to

use Federal Express, UPS, or similar service to ensure delivery by the due date as mail at the National Institute of Corrections is still being delayed due to recent events. Hand delivery applications should be brought to 500 First Street, NW., Washington, DC 20534. The front desk will call (202) 307–3106, extension 0 for pickup. Faxed or e-mailed applications will not be accepted.

Addresses and Further Information: A copy of this announcement and application forms may be obtained through the NIC Web site: *http://www.nicic.org* (click on ''Cooperative Agreements''). Requests for a hard copy of the application kit should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534 or by calling 800–995–6423, ext. 44222, 202–307–3106, ext. 44222, or e-mail: *jevens@bop.gov.* All technical and/or programmatic questions concerning this announcement should be directed to Kris Keller at 1960 Industrial Circle, Longmont, CO 80501, or by calling 800–995–6429, ext. 119 or 303–682–0382, ext. 119, or by e-mail: *kdkeller@bop.gov.*

Eligible Applicants: An eligible applicant is any state or general unit of local government, public or private agency, educational institution, organization, team, or individual with the requisite skills to successfully meet the outcome objectives of the project.

Review Considerations: Applications received under this announcement will be subjected to a NIC three to five member Peer Review Process. Among the criteria used to evaluate the applications are:

- Indication of a clear understanding of the project requirements;
- Background, experience, and expertise of the proposed project staff, including any subcontractors;
- Previous video production experience;
- Clear, concise description of all elements and tasks of the project, with sufficient and realistic time frames necessary to complete the tasks;
- Technical soundness of project design and methodology;
- Financial and administrative integrity of the proposal, including adherence to federal financial guidelines and processes;
- Sufficiently detailed budget that shows consideration of all contingencies for this project and commitment to work within the budget proposed;
- Indication of availability to meet the NIC staff at key points in videotape production (at a minimum, those listed under ''Project Description'').

Number of Awards: One (1).

NIC Application Number: 02J23. This number should appear as a reference line in your cover letter, in box 11 of Standard Form 424, and on the outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.601.

Dated: March 19, 2002.

Larry Solomon,

Deputy Director, National Institute of Corrections.

[FR Doc. 02–6995 Filed 3–21–02; 8:45 am]

BILLING CODE 4410–36–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 of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and 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 made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this date 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.

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, the following General Wage Determinations:

No. CO020018—See CO020017
No. CO020019—See CO020017
No. CO020020—See CO020010
No. CO020021—See CO020017
No. CO020022—See CO020017
No. CO020023—See CO020017
No. CO020024—See CO020017
No. CO020025—See CO020017
No. CO020026—See CO020017
No. CO020027—See CO020017
No. CO020028—See CO020016
No. OR020002—See OR020007

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' are listed by Volume and States:

Volume IV

Wisconsin
WI0020049 (Mar. 22, 2002)
WI0020050 (Mar. 22, 2002)

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA020001 (Mar. 1, 2002)
MA020002 (Mar. 1, 2002)
MA020003 (Mar. 1, 2002)
MA020005 (Mar. 1, 2002)
MA020007 (Mar. 1, 2002)
MA020012 (Mar. 1, 2002)
MA020013 (Mar. 1, 2002)
MA020017 (Mar. 1, 2002)
MA020018 (Mar. 1, 2002)
MA020019 (Mar. 1, 2002)
MA020020 (Mar. 1, 2002)
MA020021 (Mar. 1, 2002)
New York
NY020003 (Mar. 1, 2002)
NY020013 (Mar. 1, 2002)

Volume II

Delaware
DE020002 (Mar. 1, 2002)
DE020004 (Mar. 1, 2002)
DE020005 (Mar. 1, 2002)
DE020009 (Mar. 1, 2002)

Volume III

North Carolina
NC020001 (Mar. 1, 2002)
NC020003 (Mar. 1, 2002)

Volume IV

Indiana
IN020002 (Mar. 1, 2002)
IN020003 (Mar. 2, 2002)
IN020004 (Mar. 1, 2002)
IN020006 (Mar. 1, 2002)
IN020007 (Mar. 1, 2002)
IN020008 (Mar. 1, 2002)
IN020009 (Mar. 1, 2002)
IN020011 (Mar. 2, 2002)
IN020012 (Mar. 1, 2002)
IN020014 (Mar. 1, 2002)
IN020015 (Mar. 1, 2002)
IN020020 (Mar. 1, 2002)
Ohio
OH020001 (Mar. 1, 2002)
OH020002 (Mar. 2, 2002)
OH020003 (Mar. 1, 2002)
OH020004 (Mar. 1, 2002)
OH020006 (Mar. 1, 2002)
OH020008 (Mar. 1, 2002)
OH020009 (Mar. 1, 2002)
OH020012 (Mar. 1, 2002)
OH020013 (Mar. 1, 2002)
OH020018 (Mar. 1, 2002)
OH020022 (Mar. 1, 2002)
OH020023 (Mar. 1, 2002)
OH020024 (Mar. 1, 2002)
OH020026 (Mar. 1, 2002)
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OH020028 (Mar. 1, 2002)
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General Wage Determination Publication

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

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Signed at Washington, DC, this 14 day of March 2002.

Carol J. Poleskey,

Chief Branch of Construction Wage Determinations.

[FR Doc. 02–6661 Filed 3–21–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–15; Exemption Application No. D–10852, et al.]

Grant of Individual Exemptions; Rockford Corporation 401(k) Retirement Savings Plan

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition, the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Rockford Corporation 401(k) Retirement Savings Plan (the Plan) Located in Tempe, AZ

[Prohibited Transactions Exemption 2002–15; Exemption Application No. D–10852]

Exemption

The restrictions of sections 406(a)(1)(D), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(D) and (E) of the Code,[1] shall not apply, effective December 30, 1999 until March 15, 2000, to an arrangement, by Rockford Corporation (Rockford), the Plan sponsor, for the reversal of the original purchase of debt securities (the Debentures) previously issued by Rockford (the Reversal Transactions), involving the following transactions affecting the individually-directed accounts in the Plan (the Plan Accounts) of certain Plan participants (the Participants): (1) The purchase, by the Participants, from their Plan Accounts of the Debentures; (2) the distribution in kind of the Debentures by the Plan Accounts to the Participants; (3) the rollover of the Debentures, if distributed in kind to the Participants, into self-directed individual retirement accounts (the IRAs) established by the Participants; and (4) any benefit that may have inured to Rockford by not having to repurchase the Debentures held by the Plan Accounts.

This exemption is subject to the following conditions:

(a) A Form 5330 was filed by Rockford with the Internal Revenue Service (the Service) and all appropriate excise taxes were paid with respect to the Plan's acquisition and holding of the Debentures, as well as for the extension of credit by the Plan to Rockford resulting therefrom.

(b) With respect to each Debenture,

(1) Rockford offered to repurchase such Debentures from each affected Participant's account in the Plan (the Plan Account), at their fair market value, as determined by Arthur Andersen LLP, a qualified, independent appraiser; and

(2) By March 15, 2000 each Debenture was either—

(i) Repurchased by Rockford; (ii) purchased by or distributed in kind to each Participant whose Plan Account had held such Debentures; and (iii) rolled over, at the election of the Participant, into the Participant's self-directed IRA.

(c) At the time of the Reversal Transactions, each Plan Account received no less than fair market value for the Debentures, which was in excess of their initial cost.

(d) The Plan Accounts paid no fees or commissions in connection with the Reversal Transactions.

(e) Rockford advised each affected Participant in advance of any transaction of the various options available with respect to the divestment of the Debentures from the Participant's Plan Account.

(f) Rockford has maintained, or will cause to be maintained, for a period of six years from the date of such transactions, in a manner capable for audit and examination, such records as are necessary to enable the persons described below in paragraph (g) to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Rockford, the records are destroyed prior to the end of the six year period.

(g)(1) Except as provided in paragraph (2) of this section (g) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (f) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Service;

(B) Any fiduciary of the Plan or any duly authorized employee or representative of such fiduciary; and

(C) Any Participant or beneficiary or duly authorized employee or representative of such Participant or beneficiary.

(g)(2) None of the persons described in subparagraphs (g)(1)(B)–(g)(1)(C) shall be authorized to examine the trade secrets of Rockford or commercial or

[1] For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

financial information which is privileged or confidential.

EFFECTIVE DATE: This exemption is effective from December 30, 1999 until March 15, 2000.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 13, 2001 at 66 FR 64459.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, U.S. Department of Labor, (202) 693–8556. (This is not a toll-free number.)

Morgan Stanley & Co. Incorporated (MS&Co) Located in New York, New York

[Prohibited Transaction Exemption 2002–16; Exemption Application Number D–10886]

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective September 16, 1998, to the acquisition (the Acquisition), on behalf of the Central States, Southeast and Southwest Areas Pension Fund (the Fund), of certain Argentine bonds (the Bonds) from MS&Co, a party in interest with respect to the Fund, by the Capital Asset Trust (the Trust) at the direction of Alliance Capital Management L.P. (Alliance), an investment manager for the Fund, provided the following conditions are satisfied:

(a) The Acquisition was a one-time transaction for cash;

(b) The Fund paid no more than the current fair market value of the Bonds as of the date of the Acquisition;

(c) The Fund paid no commissions or expenses with respect to the Acquisition;

(d) The Acquisition and subsequent sale of the Bonds resulted in the Fund's receipt of a one-day profit totaling $147,250.01;

(e) Upon identifying the Acquisition as a ''prohibited transaction'', MS&Co and Alliance acted promptly to comply with the relevant provisions of the Act and the Code;

(f) Alliance and MS&Co took whatever actions were necessary to ensure that the Fund was adequately protected with respect to the Acquisition;

(g) Subsequent to the Acquisition, Alliance implemented an internal computer system designed to prevent transactions between client plans and named fiduciaries with respect to such plans; and

(h) The transaction was not part of an agreement, arrangement or understanding designed to benefit a party in interest.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 3, 2002 at 67 FR 351.

FOR FURTHER INFORMATION CONTACT: Christopher J. Motta of the Department, telephone (202) 693–8544. (This is not a toll-free number.)

State Farm Mutual Automobile Insurance Company and State Farm VP Management Corp.

[Prohibited Transaction Exemption 2002–17; Exemption Application No. D–10961]

Exemption

The Department of Labor is granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[2]

Section I: Transactions

The restrictions of sections 406(a)(1)(A) through (d) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4974 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the purchase or redemption of an institutional class of shares (the Institutional Shares) of State Farm mutual funds (the Fund(s)), as defined in Section III(c), below, by pension plans (the Plan(s)), as defined in Section III(h), below, which are established by:

(a) Independent contractor agents (the Agent(s)) of State Farm Mutual Automobile Insurance Company (State Farm) or its affiliates, who are also registered representatives of State Farm VP Management Corp. (SFVPMC), for themselves and their employees, and

(b) The family members of such Agents (the Family Member(s)) (as defined in Section III(e), below), provided that the conditions set forth in Section II, below are satisfied.

Section II: Conditions

(a) Neither State Farm nor its affiliates has discretionary authority or control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

(b) Plans do not pay any plan-level investment management, investment advisory, or similar fees to State Farm or its affiliates in connection with the investment of the assets of such Plans in any of the Funds.

(c) Plans do not pay any redemption fees in connection with the sale of shares of any of the Funds by such Plans.

(d) Plans do not pay any sales commissions in connection with the acquisition or sale of shares of any of the Funds, and the Agents do not receive any sales commission or any other compensation or benefit, direct or indirect, in connection with the transactions that are the subject of this exemption. In this regard, neither State Farm nor any of its affiliates provides production credit, bonus, trip, or other sales incentive to such Agents based on such transactions.

(e) All dealings between the Plans and the Funds and State Farm and its affiliates are on a basis no less favorable to such Plans than such dealings with other shareholders of the Funds.

(f) The price paid or received by a Plan for shares in a Fund is the net asset value per share, as defined, in Section III(d), below, at the time of the transaction and is the same price that would have been paid or received for such shares by any other investor in such Fund at that time.

(g) For each Plan, the combined total of all fees received by State Farm and its affiliates for the prevention of services to such Plan, and in connection with the provision of services to any of the Funds in which such Plan may invest, are not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(h) Neither State Farm nor its affiliates receive any fees payable pursuant to Rule 12b–1 under the Investment Company Act of 1940 (the 1940 Act) in connection with the transactions.

(i) The Plans are not employee benefit plans sponsored or maintained by State Farm or its affiliates for their employees.

(j)(1) Each Agent, or a Family Member of such Agent (as defined in Section III(e), below) in the case of a Plan sponsored by such Family Member, or each participant (the Participant(s)) in the case of a Plan which provides for participant investment direction, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, receives in advance of any initial investment in a Fund by such Plan (or Participant's account, in the case of a participant directed individual account plan) a full and detailed written disclosure of information concerning each Fund in which such Plan or

[2] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

Participant's account, as the case may be, is considering investing, including but not limited to:

(A) A current prospectus for such Fund;

(B) A statement describing the fees for investment advisory, investment management, or similar services, a statement describing any fees for secondary services (Secondary Services), as defined below in Section III(f), (including but not limited to fees for acting as custodian, transfer agent, or for providing administrative, brokerage, or other services) payable to State Farm or its affiliates, and all other fees to be charged to or paid by such Plan, Participant's account, or such Fund to State Farm or its affiliates;

(C) A statement regarding appropriate investments for retirement plans and explaining why such Fund would be an appropriate investment for such Plan or Participant's account, as the case may be; and

(D) Upon the request of an Agent, a Family member, or a Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, as the case may be, a copy of the proposed exemption and/or a copy of the final exemption, as such documents appear when published in the **Federal Register**.

(2) Each Participant, in the case of a Plan that does not provide for participant investment direction, receives from the fiduciary responsible for directing the investment of plan asset in advance of any initial investment in a Fund by such Plan:

(A) A statement that the Plan is investing in the Funds;

(B) The name of each Fund in which such Plan is investing; and

(C) A current prospectus for each such Fund.

(k) Any investment of the assets of a Plan (or a Participant's account in the case of a participant directed individual account plan) in each particular Fund is implemented only at the express direction of an Agent, Family Member, or Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, as appropriate, after such Agent, Family Member, or Participant, or other fiduciary of a plan who has the authority to acquire or dispose of shares of the Funds, receives the information described in paragraph (j) of Section II, above.[3]

(1) Pursuant to paragraph (k) of Section II, above, the investment of any assets of a Plan (or Participant's account, in the case of a participant directed individual account plan) in a Fund shall be terminable at will by an Agent, Family Member, or Participant, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, as appropriate, without penalty to such Plan (or Participant's account, in the case of an individually directed account plan), upon receipt by State Farm or its affiliates of a written notice of termination. A form (the Termination Form) expressly providing an election to terminate the investment in a Fund by a Plan (or Participant's account, in the case of an individually directed account plan) with instructions on the use of the form must be supplied to Agents, Family Members, or Participants, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, as the case may be, no less than annually; provided that the Termination Form need not be supplied to Agents, Family Members, or Participants, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, pursuant to this paragraph, sooner than six (6) months after such Termination Form is supplied pursuant to paragraph (m) of this Section II, below, except to the extent required by such paragraph in order to disclose an additional service or a fee increase. The instructions for the Termination Form must include a statement that the investment by a Plan in the Fund is terminable at will by a Plan (or Participant's account in the case of a participant directed individual account plan) without penalty to such Plan (or Participant's account), upon receipt by State Farm or its affiliates of written notice from the appropriate Agent, Family Member, or Participant, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds.

(m) (1) In the event of an increase in fees paid by a Fund for any service, or

(2) In the event of an addition of any Secondary Service for which a fee is charged, or

(3) In the event of an increase in the rate of any fee that results either from an increase in the rate of such fee or from the decrease in the number or kind of services performed for such fee, State Farm or its affiliates will, at least 30 days in advance of the implementation of such fee increase or a fee for an additional service or increase in the rate of a fee, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of such Fund and that explains the nature and amount of the additional service for which a fee is charged or the increase in fees or the increase in the rate of any fee) to the appropriate Agent, Family Member, or Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds. Such notice shall be accompanied by a Termination Form with instructions, as described above in paragraph (1) of this Section II, which will permit a Plan (or Participant's account, in the case of a participant directed individual account plan) to redeem shares of such Fund without penalty.

(n)(1) On an annual basis, each Agent, Family Member, or Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, receives from State Farm the following information for each Fund in which a Plan (or Participant's account, in the case of a participant directed individual account plan) invests:

(A) A copy of the current prospectus,

(B) Upon the request of the appropriate Agent, Family Member, or Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, a copy of the Statement of Additional Information that contains a description of all fees paid by such Fund to State Farm or its affiliates;

(C) A copy of the annual report prepared by State Farm or its affiliates that includes information about such Fund, as well as audit findings of an independent auditor, within 60 days of the preparation of such report; and

(D) Oral or written responses to inquiries of an Agent, Family Member, or Participant, or other fiduciary of a Plan who has the authority to acquire or

[3] The Department notes that the general standards of fiduciary conduct under the Act would apply to the investment transactions permitted by this exemption, and that satisfaction of the conditions of this exemption should not be viewed as an endorsement of any particular investment by the Department. Section 404 of the Act requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, the Department notes that the selection and the retention of any of the Funds as an investment or an investment option under a Plan is a fiduciary act. In this regard, the Department expects the fiduciary of a Plan to determine, if such selection and retention of any of the Funds by a Plan is appropriate after taking into consideration the investment performance of such Funds and the fees paid by such Funds (including advisory fees and administrative fees paid to State Farm and other persons).

dispose of shares of the Funds, as such responses arise.

(2) On an annual basis, each Participant in the case of a Plan that does not provide for participant investment direction receives from the fiduciary responsible for directing the investment of plan assets copies of the annual report for each of the Funds in which the assets of such Plan are invested.

(o) Any plan subject to this exemption that is a prototype retirement plan sponsored by State Farm or its affiliates may not require the investment of a minimum percentage of the total assets of such Plan in State Farm investment products.

(p) State Farm or its affiliates maintain for a period of six (6) years the records necessary to enable the persons described in paragraph (q) of this Section II, below, to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of State Farm or its affiliates, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest other that State Farm and its affiliates shall be subject to the civil penalty that may be assessed under Section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained or are not available for examination as required by paragraph (q) of this Section II, below.

(q)(1) Except as provided in paragraph (q)(2) of this Section II, below, and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to in paragraph (p) of this Section II, above, are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service.

(ii) Any Agent, Family Member, Participant in the case of a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of a Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (q)(1)(ii) and (iii) of this Section II, above, shall be authorized to examine trade secrets of State Farm or its affiliates, or commercial or financial information that is privileged or confidential.

Section III—Definitions

For purposes of this exemption:

(a) The term, ''affiliate'' or ''affiliates,'' means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, Family Member (as defined in paragraph (e) of this Section III, below), or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(b) The term, ''control,'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term, ''Funds or Funds,'' shall include any individual investment portfolios that are part of the State Farm Mutual Fund Trust, a diversified open-end investment company registered under the 1940 Act for which State Farm or its affiliates serve as an investment adviser and may also serve as a custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, Fund accountant, or provide some other Secondary Service (as defined in paragraph (f) of this Section III, below), which has been approved by such Fund.

(d) The term, ''net asset value,'' means the amount for purposes of pricing all purchases and sales, calculated by dividing the value of all securities (determined by a method as set forth in a Fund's prospectus and Statement of Additional Information) and other asset's belonging to such Fund, less the liabilities charged to each such Fund, by the number of outstanding shares.

(e) The term, ''Family Member or Family Members,'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(f) The term, ''Secondary Service,'' means a service other than an investment management, investment advisory, or similar service, which is provided by State Farm or its affiliates to a Fund, including custodial, accounting, brokerage, administrative, or any other service.

(g) ''Termination Form,'' means the form supplied to an Agent, Family Member, or Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, as appropriate, that expressly provides an election to terminate on behalf of a Plan (or the Participant's account in the case of a participant directed individual account plan) the investment of plan assets in a Fund. Such Termination Form may be used at will by an Agent, Family Member, or Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds to terminate the investment by a Plan in a Fund without penalty to the Plan (or the Participant's account, in the case of a participant directed individual account plan) and to notify State Farm and its affiliates in writing to effect a termination by selling the shares of a Fund held by the Plan (or Participant's account) requesting such termination within one (1) business day following receipt by State Farm or its affiliates of the form; provided that if, due to circumstances beyond control of State Farm or its affiliates, the sale cannot be executed within one (1) business day, State Farm or its affiliates shall have one (1) additional business day to complete such sale.

(h) The term, ''Plan'' or ''Plans,'' means any pension plan subject to the Act and/or the Code, including but not limited to plans that provide for participant investment direction, traditional individual retirement accounts (IRAs), SEP–IRAs, and Keogh plans.

EFFECTIVE DATE: This exemption is effective, as of May 1, 2001.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on December 13, 2001. All comments and requests for a hearing were due by January 28, 2002.

In a letter dated February 5, 2002, the applicants confirmed that State Farm had provided notice to interested persons of the pendency of the proposed exemption. The notification was provided via electronic mail (e-mail) to all State Farm agents who are registered representatives. It is represented that on December 20, 2001, the Corporate Department of State Farm sent an e-mail to all of its Agency Field Executives (AFEs or AFE) and its Agency Resource Managers (ARMs or ARM). The e-mail contained a copy of the Notice, as published in the **Federal Register,** along

with a notice to interested persons (the Supplemental Statement), as described at 29 CFR 2570.43(b)(2) of the Department's regulations. The Supplemental Statement provided that interested persons had a right to comment on the proposed exemption and/or request a hearing by January 28, 2002.

The AFEs were instructed to send to the registered representatives who report to them an e-mail containing the Supplemental Statement with the Notice attached. The AFEs were further required to ''cc'' a corporate mailbox on the e-mail to each registered representative. In any area where an AFE's position was not currently filled or an AFE was out of the office on vacation or for any other reason, ARMs were instructed to send the e-mail to the registered representatives, using the same procedure that AFEs were instructed to use.

The Corporate Department of State Farm monitored the corporate mailbox to determine whether a follow-up from the Vice President-Agency (VPA) or the ARM for the region was necessary. Through the ''cc'' to the corporate mailbox, State Farm was able to verify whether each AFE or ARM, if applicable, had forwarded the Notice and the Supplemental Statement to the registered representatives. The appropriate VPA or ARMs were instructed to take corrective action if a ''cc'' was not received from an AFE or an ARM.

Through this verification process, State Farm determined that 7,935 out of 10,175 registered representatives received the e-mail notification by December 28, 2001. State Farm was also able to confirm that the remaining 2,240 registered representatives received the e-mail notification by January 15, 2002.

Although State Farm represents that it was able to notify all of the registered representatives through the process described above, the process was slower than anticipated. In light of the fact that notification to some interested persons was delayed until January 15, 2002, and in order to allow such interested persons the benefit of the full thirty (30) day comment period, the Department required, and the applicants agreed to, an extension of the deadline within which to comment and request a hearing on the proposed exemption. In this regard, the applicants confirmed in a letter dated February 5, 2001, that all 10,175 registered representatives were sent via first class U.S. mail on January 23, 2002, notification that the comment period had been extended and that all comments and/or requests for a hearing on the proposed exemption were due by February 15, 2002.

During the comment period, the Department received one (1) comment letter in which the commentator requested a hearing. In this regard, the commentator wished to use the hearing to discuss the possibility of providing State Farm Mutual Funds for herself and her family members.

The Department has considered the request of the commentator for a hearing. In this regard, the commentator has not indicated any manner in which she or her family would be adversely affected by the exemption. Rather, the comment supports the issuance of the exemption. As the commentator will be able to purchase shares in the Funds for herself and her family members upon the publication of the exemption, the Department does not believe that any issue has been raised which would require the convening of a hearing.

During the comment period, the Department received favorable comment letters from fifty-six (56) commentators. In this regard, these commentators expressed support for the grant of the exemption.

The Department also received unfavorable comment letters from four (4) commentators. At the close of the comment period, the Department forwarded copies of all of the comment letters, both favorable and unfavorable, to the applicants. With respect to the four (4) unfavorable comment letters, the Department requested that the applicants respond in writing to the issues raised by the commentators. The concerns expressed by these commentators and the applicants response thereto are summarized below.

One commentator did not think that the exemption was necessary, not did he think that the Act should be changed to satisfy the wishes of a few individuals. In response to this commentator, the applicants point out that State Farm's exemption request has been submitted and proposed under the relevant procedures of the Department's regulations; and therefore, the granting of the proposed exemption does not change the Act, but on the contrary, is within the scope of the Act. Further, the applicants point out, as evidenced by the number of comments in favor of the proposed exemption, that many registered representative agents favor having the Funds available as investment options for their plans and the plans of their family members. If the exemption is granted, the applicants note that the exemption will in no way obligate the commentator to invest in the Funds.

Another commentator did not understand why State Farm had not previously allowed investments in the Funds by the agents' plans. In response, the applicants state that State Farm did not permit its registered representative agents to sell shares of the Funds to their plans (or those of family members) because of the possibility that such sales could be considered prohibited transactions, absent an exemption. The applicants point out that the grant of proposed exemption will allow investments in the Funds to be made available to the commentator, with appropriate safeguards, as reflected in the conditions and other terms of the exemption.

This same commentator complained that State Farm had placed a quota requirement on registered representatives. Another commentator indicated that State Farm had recently notified agents that they must produce a minimum number of sales per year or lose their license to sell State Farm products. This commentator expressed the opinion that sales of shares in the Funds would help agents and their clients who happen to be relatives.

It is the Department's view that crediting transactions subject to the exemption for purposes of satisfying a minimum number of sales per year in order to retain a license to sell State Farm products is a benefit to State Farm agents, in violation of Section II(d) of the exemption. In this regard, the applicants confirm that transactions subject to this exemption will not be credited in determining whether the requirement of a minimum number of sales per year has been met.

The fourth commentator objected to the proposed exemption because it does not permit him to be paid for his work. In response, the applicants presume that this commentator would support the exemption, if it allowed him, as an agent, to receive commissions on sales of shares in the Funds to plans established by such agent for himself and his employees or to plans established by family members of such agent. The condition that no commissions be paid in connection with the subject transactions is designed as a safeguard to protect against potential self-dealing. In this regard, Section II(d), ensures that, where the agent is a plan fiduciary, the agent's decision whether to invest plan assets in the Funds is not unduly influenced by the potential for personal gain and that personal gain will not be a motivating factor in any other transaction covered by the exemption.

The Department also received, on February 12, 2002, a comment letter

from the applicants. In their comment letter, the applicants requested certain amendments to the operant language in the exemption, as set forth in the Notice published in the **Federal Register**. The applicants' comments and the Department's response thereto are discussed in the numbered paragraphs below.

1. The applicants requested that the language of Section II(i), as published in the Notice, be revised to add the phrase, ''for their employees,'' after the word, ''affiliates.'' In this regard, State Farm wished to clarify that compliance with Section II(i) would not preclude agents or their family members from relying on the relief provided by the exemption to purchase shares of the Funds for various prototype plans sponsored by State Farm.

The Department concurs with the applicants' request and has modified Section II(i) of the exemption to read as follows: ''The Plans are not employee benefit plans sponsored or maintained by State Farm or its affiliates for their employees.''[4]

2. The applicants requested that the language of Section II(j), (k), (1), (m), (n), and Section III(g), as published in the Notice in the **Federal Register**, be amended. In this regard, State Farm requested that the phrase, ''or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds,'' be added at the end of the phrase, ''Agent, Family Member, or Participant in a participant directed individual account plan,'' each time such phrase or a variation of such phrase appears in Section II(j), (k), (m), (n), or in Section III(g). State Farms believes that in cases where a separate independent fiduciary, such as an investment committee, has been appointed to make relevant investment decisions for a plan concerning the acquisition or disposition of shares of the Funds, that it would be appropriate to include such fiduciary among the parties listed in Section II(j), (k), (m), (n), or in Section III(g).

The Department concurs with the applicants' request. Accordingly, the Department has modified the language of the exemption to add the phrase, ''or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds,'' as indicated below:

(a) in Section II(j)(1), after the word, ''direction,'' on page 64473, column 2, line 12 of the Notice;

(b) in Section II(j)(1)(D), after the word, ''plan,'' on page 64473, column 2, line 48 of the Notice;

(c) in Section II(k), after the word, ''plan,'' on page 64473, column 3, line 4 of the Notice, and after the word, ''Participant,'' on page 64473, column 3, line 6 of the Notice;

(e) in Section II(1), after the word, ''Participant,'' on page 64473, column 3, lines 15 and 49 of the Notice, and after the word, ''Participants,'' on page 64473, column 3, lines 38 and 32 of the Notice;

(f) in Section II(m)(3), after the word, ''plan,'' on page 64474, column 1, line 25 of the Notice;

(g) in Section II(n)(1), after the word, ''plan,'' on page 64474, column 1, line 37 of the Notice;

(h) in Section II(n)(1)(B), after the word, ''plan'' on page 64474, column 1, line 46 of the Notice;

(i) in Section II(n)(1)(D), after the word, ''Participant,'' on page 64474, column 1, line 60 of the Notice; and

(j) in Section III(g), after the word, ''plan,'' on page 64474, column 3, lines 57 and 67 of the Notice.

Further, in order to maintain consistency in the language of the exemption, the Department has modified Section II (q)(ii) to read as follows:

> Any Agent, Family Member, Participant in the case of a participant directed individual account plan, or [any] other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds [owned by such Plan], or any duly authorized employee or representative of such fiduciary.

3. The applicants sought clarification that the meaning of the term, ''prototype retirement plan,'' as set forth in Section II(o) of the Notice, referred only to Section 401(a) qualified plans, and does not preclude State Farm IRAs approved under the Internal Revenue Service prototype IRA program from limiting permissible investment to State Farm products only. In this regard, State Farm proposed that the term, ''prototype retirement plan,'' as set forth in Section II(o), be replaced by the phrase, ''a section 401(a) qualified prototype plan.'' Subsequently, in a letter dated February 26, 2002, the applicants withdrew this comment.

The Department has accepted the applicants' withdrawal of the comment and notes that the language of Section II(o) in the exemption remains the same as the language published in the Notice.

4. In Section III(c) of the Notice, the term, ''Fund or Funds'' is defined to include:

> Any diversified open-end investment company or companies registered under the 1940 Act for which State Farm or its affiliates serve as an investment adviser and may also serve as a custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, Fund accountant, or provide some other Secondary Service (as defined in paragraph (f) of this Section III, below), which has been approved by such Fund.

State Farm believes that this definition would be more accurate if it referred to the individual investment portfolios within the State Farm Mutual Fund Trust in light of the manner in which the terms, ''Fund and Funds,'' were used throughout the Notice. Therefore, State Farm proposes that Section III(c) be revised to read as follows:

> The term, ''Fund or Funds,'' shall include any individual investment portfolios that are part of the State Farm Mutual Fund Trust, a diversified open-end investment company [or companies] registered under the 1940 Act for which State Farm or its affiliates serve as an investment adviser and may also serve as a custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, Fund accountant, or provide some other Secondary Service (as defined in paragraph (f) of this Section III, below), which has been approved by such Fund.

The Department concurs with the applicants' request and has modified Section III(c) of he exemption, accordingly. Further, in order to maintain consistency in the language of the exemption, the Department has modified three (3) other sections of the exemption. In this regard, Section I has been modified to read as follows:

> The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the purchase or redemption of an institutional class of shares (the Institutional Shares) of State Farm mutual funds (the Fund(s)), [open-end management investment companies registered under the Investment Company Act of 1940 (the 1940 Act)] as defined in Section III(c), below, by pension plans (the Plan(s)), as defined in Section III(h), below, which are established by * * *.

Section III(d) of the exemption has been modified to read as follows:

> The term, ''net asset value,'' means the amount for purposes of pricing all purchases and sales, calculated by dividing the value of all securities (determined by a method as set forth in a Fund's prospectus and Statement of Additional Information) and other assets belonging to such Fund [or portfolio of such Fund], less the liabilities charged to each such [portfolio or] Fund, by the number of outstanding shares.

In addition, Section II(n)(1)(C) of the exemption has been modified to read as follows:

[4] Throughout this exemption words that have been stricken from the text as published in the Notice appear in closed brackets and additions to the language of text as published in the Notice appear in bold.

A copy of the annual report prepared by State Farm or its affiliates that includes information about [the portfolios in] such Fund, as well as audit findings of an independent auditor, within 60 days of the preparation of such report.

5. The applicants sought to clarify the use of the words, ''relative'' and ''Family Member or Family Members,'' as those terms are used in the Notice. In this regard, the applicants noted that the term, ''Family Member or Family Members,'' is defined solely by reference to section 3(15) of the Act in parenthetical phrases that appear in Section I(b) and Section II(j)(1) of the Notice, whereas the word, ''relative,'' as defined in Section III(e) of the Notice, references the relevant provisions of both the Act and the Code and includes within the definition of a relative—''a brother, a sister, or a spouse of a brother or a sister.'' As the term, ''Family Member or Family Members,'' appears in Section I(b) and in Sections II(j)(1); (j)(1)(D); (k); (l); (m)(3); (n)(1); an d(q)(1)(ii), in order to minimize the need to modify the text of the exemption, State Farm proposes that the term defined in Section III(e) of the Notice be changed from ''relative'' to ''Family Member or Family Members.'' Further, State Farm proposes that the parenthetical phrase, ''(as defined in section 3(15) of the Act),'' be deleted from both Section I(b) and Section II(j)(1).

The Department concurs with the applicant's request and has amended the relevant provisions of the exemption. In this regard, Section III(e) in the exemption has been modified to read, as follows:

The term, [''relative,''] ''Family Member or Family Members,'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

Section I(b) in the exemption has been modified to read, as follows:

The family members of such Agents (the Family Member(s)) (as defined in Section III(e), below [section 3(15) of the Act]), provided that the conditions set forth in Section II, below are satisfied.

Section II(j)(1) in the exemption has been modified to read, as follows:

Each Agent, or a Family Member of such Agent (as defined in Section III(e), below [section 3(15) of the Act]) in the case of a Plan sponsored by such Family Member, or each participant (the Participant(s)) in the case of a Plan which provides for participant investment direction, receives in advance of any initial investment in a Fund by such Plan (or Participant's account, in the case of a participant directed individual account plan) a full and detailed written disclosure of information concerning each Fund in which such Plan or Participant's account, as the case may be, is considering investing, including but not limited to * * *

Section III(a)(2) in the exemption has been modified to read as follows:

Any officer, director, employee, [relative] Family Member (as defined in paragraph (e) of this Section III, below), or partner in any such person.

6. Section III(g) of the exemption, sets forth the requirements for the Termination Form. The applicants sought confirmation that for this purpose, ''termination'' means the pricing and redemption of the Fund shares and does not necessarily include the actual mailing of a redemption check or other physical transfer of funds (*e.g.,* by rollover to another account). Subsequently, by letter dated February 26, 2002, the applicants withdrew this comment. In this regard, State Farm represented that in accordance with its standard operating procedures, State Farm will price and redeem shares within one business day (except when circumstances outside of State Farm's control prevent such execution) and will mail redemption checks or otherwise disburse the funds within a reasonable time thereafter.

7. The Department also wishes to correct certain typographical errors that appeared in the Notice. In this regard, in Section II(h), the word, ''receives,'' should be replaced by the word, ''receive,'' and the phrase, ''the Investment Company Act of 1940,'' should be inserted before the parenthetical, ''(the 1940 Act).'' The subparagraphs under Section II(n)(1) should be designated by capital letters, ''(A),'' ''(B),'' ''(C),'' and ''(D).'' In Section III(g), the parenthetical ''(1),'' should be inserted after the word, ''one,'' whenever that word appears in such section.

After giving full consideration to the entire record, including the written comments from the commentors, the Department has decided to grant the exemption, as amended herein. In this regard, the comment letters, both favorable and unfavorable, submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published in December 13, 2001, at 66 FR 64472.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8551 (This is not a toll-free number.)

Smart Chevrolet Co. Employees' Profit Sharing Retirement Plan (the Plan) Located in Pine Bluff, Arkansas

[Prohibited Transaction Exemption 2002–18; Exemption Application No. D–11035]

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The secured loans (the Loans) by the Plan to Motors Finance Company (Motors), a party in interest with respect to the Plan, and (2) the guaranty of such Loans (the Guaranty) by the individual partners of Motors; provided that the following conditions are met: (a) The terms and conditions of the Loans are at least as favorable as those which the Plan could have received in similar transactions with an unrelated third party; (b) an independent fiduciary negotiates, reviews, approves, and monitors the Loans and the Guaranty under the terms and conditions, as set forth in paragraph #6 of the notice of proposed exemption; and (c) the balance of all Loans will at no time exceed 15% of the assets of the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, see the notice of proposed exemption published on January 18, 2002 at 67 FR 2689.

Temporary Nature of Exemption

This exemption is temporary and will expire September 16, 2007. However, the exemption will extend until the maturity of any of the 90 day Loans made prior to September 16, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other

provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of March, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–6430 Filed 3–21–02; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–041)]

NASA Advisory Council, Space Science Advisory Committee, Education and Public Outreach Task Force; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Education and Public Outreach (E/PO) Task Force.

DATES: Thursday, April 18, 2002, 8:30 a.m. to 5:30 p.m., and Friday, April 19, 2002, 8:30 to 5:30 p.m.

ADDRESSES: Omni Shoreham Hotel, 2500 Calvert Street, NW, Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey D. Rosendhal, Code S, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2470.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Role of E/PO in Office of Space Science Program
—Role of the Office of Space Science E/PO Program in the Overall NASA Education Program
—Background on the Office of Space Science E/PO Program
—Issues to be addressed by the Task Force
—Task Force Schedule and Assignments

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–6986 Filed 3–22–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–042]

NASA Advisory Council, Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the NASA Advisory Council (NAC), Minority Business Resource Advisory Committee.

DATES: Wednesday, May 1, 2002, 9 a.m. to 4 p.m., and Thursday, May 2, 2002, 9 a.m. to 12 Noon.

ADDRESSES: NASA George C. Marshall Space Flight Center, Center Directors Conference Room, Huntsville, AL 35812.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of Previous Meeting
—Office of Small and Disadvantaged Business Utilization Update of Activities
—NAC Meeting Report
—Overview of NASA Ames Research Center
—Overview of Small Business Program
—Public Comment
—Panel Discussion and Review
—Committee Panel Reports
—Status of Open Committee Recommendations
—New Business

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–6987 Filed 3–21–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; 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: Advisory Committee for Biological Sciences (1110).

Dates/Time: April 25, 2002 8:30 a.m.–5 p.m., April 26, 2002 8:30 a.m.–3 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Open.

Contact Person: Dr. Mary E. Clutter, Assistant Director, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Tel No.: (703) 292–8400.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: 21st Century Biology—Planning and Issues Discussion.

Dated: March 19, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–6979 Filed 3–21–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–4]

Duke Energy Corporation; Notice of Docketing of the Materials License SNM–2503; Amendment Application for the Oconee Independent Spent Fuel Storage Installation

By letter dated October 31, 2001, Duke Energy Corporation (DEC) submitted an application to the Nuclear Regulatory Commission (NRC or Commission) in accordance with 10 CFR part 72 requesting an amendment of the Oconee independent spent fuel storage installation (ISFSI) license (SNM–2503) for the ISFSI located in Oconee County, South Carolina. DEC is seeking Commission approval to amend its license to change the ISFSI's technical specifications for environmental reporting to the NRC. DEC has requested to change the frequency for submitting an environmental report of radioactive effluent releases from semi-annually to annually, in accordance with current NRC environmental reporting requirements in 10 CFR 72.44(d).

This application was docketed under 10 CFR part 72; the ISFSI Docket No. is 72–4 and will remain the same for this action. The amendment of an ISFSI license is subject to the Commission's approval.

The Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or, if a determination is made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2) and provide notice of the action taken and an opportunity for interested persons to request a hearing on whether the action should be rescinded or modified.

For further details with respect to this application, see the application dated October 31, 2001, which is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD or from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML020230028. The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 12th day of March 2002.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 02–6992 Filed 3–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–293; 030–34378; and License Nos. DPR–35; 20–07626–04]

In the Matter of Entergy Nuclear Generation Company (Pilgrim Nuclear Power Station); Order Approving Transfer of Operating Authority and Conforming Amendments

I

Entergy Nuclear Generation Company (ENGC or the licensee) is the holder of Facility Operating License No. DPR–35, which authorizes ENGC to possess, use, and operate the Pilgrim Nuclear Power Station (Pilgrim Station or the facility). ENGC is also the holder of Materials License No. 20–07626–04, which authorizes ENGC to possess, use, and transport certain materials in the form of contamination on reactor components. The facility is located in Plymouth County, Massachusetts.

II

By application dated August 24, 2001, the Commission was informed that ENGC proposes to enter into an Operating Agreement with Entergy Nuclear Operations, Incorporated (ENO), and transfer operating authority to ENO. The application was supplemented by submittals dated December 20, 2001, and February 15, 2002. ENO is a direct wholly owned subsidiary of Entergy Nuclear Holding Company #2 and an indirect wholly owned subsidiary of Entergy Corporation. Under the proposed transaction, ENO will be designated as a new facility licensee exclusively authorized to operate and maintain Pilgrim Station in accordance with the terms and conditions of the facility operating license. The transaction involves no change in ENGC's ownership of the facility. The licensee requested approval of the proposed transfer of operating authority under the Pilgrim Station facility operating license and transfer of the materials license to ENO. The licensee also requested conforming amendments to reflect the transfer. The proposed amendments would essentially add ENO to the licenses and make other administrative changes to reflect that ENO is authorized to operate Pilgrim Station.

No physical changes to Pilgrim Station were proposed in the application. In addition, ENGC's entitlement to capacity and energy from Pilgrim Station will not be affected by the transfer of operating authority.

Approval of the transfer of operating authority under the operating license and the conforming license amendments was requested by ENGC pursuant to 10 CFR 50.80 and 10 CFR 50.90. The applicable provisions of the regulations governing the transfer and amendment of the materials license are 10 CFR 30.34, 30.38, 40.41, 40.44, 70.32, and 70.34. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on October 4, 2001 (66 FR 50694). No hearing requests or written comments were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Under 10 CFR 30.34, 40.41, and 70.32, no byproduct, source, or special nuclear material license shall be transferred in violation of the provisions of the Atomic Energy Act of 1954, as amended, which require, inter alia, Commission consent. After reviewing the information in the application by ENGC and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that ENO is qualified to hold the operating authority under the facility operating license and to hold the materials license, and that the transfer of the operating authority under the facility operating license and the transfer of the materials license to ENO is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954 (the Act), as amended, and the Commission's rules and regulations set forth in 10 CFR chapter 1; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities

authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied. The foregoing findings are supported by a safety evaluation dated March 15, 2002.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 30.34, 40.41, 50.80, and 70.32, *It is hereby ordered* that the transfer of the licenses, as described herein, to ENO is approved, subject to the following conditions:

(1) ENO shall, prior to completion of the transfer of operating authority for Pilgrim Station, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that ENO has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(2) After receipt of all required regulatory approvals of the transfer of operating authority to ENO, ENGC and ENO shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days and of the date of the closing of the transfer no later than 7 business days prior to the date of closing. If the transfer is not completed by March 30, 2003, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

It is further ordered that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject transfers are approved. The amendments shall be issued and made effective at the time the proposed transfers are completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated August 24, 2001, supplements dated December 20, 2001, and February 15, 2002, and the safety evaluation dated March 15, 2002, which are available for public inspection at the Commission's Public Document Room, at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html.*

Dated at Rockville, Maryland, this 15th day of March 2002.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 02–6991 Filed 3–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Joint Meeting of the ACRS Subcommittees on Materials and Metallurgy and on Plant Operations; Notice of Meeting

The ACRS Subcommittees on Materials and Metallurgy and on Plant Operations will hold a joint meeting on April 9, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Tuesday, April 9, 2002—1:00 p.m. until the conclusion of business.*

The Subcommittees will hear discussions regarding issues related to the investigation of control rod drive mechanism (CRDM) penetration cracking and reactor pressure vessel head degradation. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the Designated Federal Official, Ms. Maggalean W. Weston (telephone 301/415–3151) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: March 18, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–6988 Filed 3–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on April 9, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, April 9, 2002—11 a.m.–12:30 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as

appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the Designated Federal Official, Sam Duraiswamy (telephone: 301/415–7364) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule that may have occurred.

Dated: March 18, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–6989 Filed 3–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

Meeting of the Subcommittee on Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Reactor Fuels will hold a meeting on April 10, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, April 10, 2002—8:30 a.m. until the conclusion of business

The Subcommittee will discuss the Duke Cogema Stone & Webster construction application request for a mixed oxide fuel fabrication facility and DOE-announced changes to the request. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Ms. Maggalean W. Weston (telephone 301/415–3151) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: March 18, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–6990 Filed 3–21–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 7d–2, SEC File No. 270–464, OMB Control No. 3235–0527

Rule 237, SEC File No. 270–465, OMB Control No. 3235–0528

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

In Canada, as in the United States, individuals can invest a portion of their earnings in tax-deferred retirement savings accounts (''Canadian retirement accounts''). In cases where these individuals move to the United States, these participants (''Canadian/U.S. Participants'' or ''participants'') may not be able to manage their Canadian retirement account investments. Most securities and most investment companies (''funds'') that are ''qualified investments'' for Canadian retirement accounts are not registered under the U.S. securities laws. Those securities, therefore, generally cannot be publicly offered and sold in the United States without violating the registration requirements of the Securities Act of 1933 (''Securities Act'')[1] and, in the case of securities of an unregistered fund, the Investment Company Act of 1940 (''Investment Company Act'').[2] As a result of these registration requirements of the U.S. securities laws, Canadian/U.S. Participants, in the past, had not been able to purchase or exchange securities for their Canadian retirement accounts as needed to meet their changing investment goals or income needs.

In 2000, the Commission issued two rules that enabled Canadian/U.S. Participants to manage the assets in their Canadian retirement accounts by providing relief from the U.S. registration requirements for offers of securities of foreign issuers to Canadian/U.S. Participants and sales to their accounts.[3] Rule 237 under the Securities Act permits securities of foreign issuers, including securities of foreign funds, to be offered to Canadian/U.S. Participants and sold to their Canadian retirement accounts without being registered under the Securities Act. Rule 7d–2 under the Investment Company Act permits foreign funds to offer securities to Canadian/U.S. Participants and sell

[1] 15 U.S.C. 77.

[2] 15 U.S.C. 80a.

[3] *See* Offer and Sale of Securities to Canadian Tax-Deferred Retirement Savings Accounts, Release Nos. 33–7860, 34–42905, IC–24491 (June 7, 2000) [65 FR 37672 (June 15, 2000)].

securities to their Canadian retirement accounts without registering as investment companies under the Investment Company Act.

The provisions of rules 237 and 7d–2 are substantially identical. Rule 237 requires written offering materials for securities that are offered and sold in reliance on the rule to disclose prominently that those securities are not registered with the Commission and may not be offered or sold in the United States unless they are registered or exempt from registration under the U.S. securities laws. Rule 7d–2 requires written offering materials for securities offered or sold in reliance on that rule to make the same disclosure concerning those securities, and also to disclose prominently that the fund that issued the securities is not registered with the Commission. Neither rule 237 nor rule 7d–2 requires any documents to be filed with the Commission. The burden under either rule associated with adding this disclosure to written offering documents is minimal and is non-recurring. The foreign issuer, underwriter or broker-dealer can redraft an existing prospectus or other written offering material to add this disclosure statement, or may draft a sticker or supplement containing this disclosure to be added to existing offering materials. In either case, based on discussions with representatives of the Canadian fund industry, the staff estimates that it would take an average of 10 minutes per document to draft the requisite disclosure statement. The staff estimates the annual burden as a result of the disclosure requirements of rules 7d–2 and 237 as follows.

a. Rule 7d–2

At the time rule 7d–2 was adopted,[4] the staff estimated that there were approximately 1,300 publicly offered Canadian funds that potentially would rely on the rule to offer securities to participants and sell securities to their Canadian retirement accounts without registering under the Investment Company Act. During the first year rule 7d–2 was in effect, the staff estimates that approximately 910 (70 percent) of these Canadian funds relied on the rule. The staff further estimates that each of those 910 Canadian funds, on average, distributed 3 different written offering documents concerning those securities, for a total of 2,730 offering documents.[5]

The staff therefore estimates that during the first year that rule 7d–2 was in effect, approximately 910 respondents made 2,730 responses by adding the new disclosure statements to approximately 2,730 written offering documents. Thus, the staff estimates that the total annual burden associated with this disclosure requirement in the first year after rule 7d–2 became effective was approximately 455 hours (2,730 offering documents × 10 minutes per document). In each year following the first year that rule 7d–2 became effective, the staff estimates that approximately 65 (5 percent) additional Canadian funds may rely on the rule to offer securities to Canadian/U.S. Participants and sell securities to their Canadian retirement accounts, and that each of those funds, on average, distributes 3 different written offering documents concerning those securities, for a total of 195 offering documents. The staff therefore estimates that in each year after the first year that rule 7d–2 became effective, approximately 65 respondents would make 195 responses by adding the new disclosure statement to approximately 195 written offering documents. The staff therefore estimates that after the first year, the annual burden associated with the rule 7d–2 disclosure requirement would be approximately 32.5 hours (195 offering documents × 10 minutes per document).

b. Rule 237

Canadian Issuers Other Than Funds

The Commission understands that there are approximately 3,500 Canadian issuers other than funds that may rely on rule 237 to make an initial public offering of their securities to Canadian/U.S. Participants.[6] The staff estimates that in any given year approximately 35 (or 1 percent) of those issuers are likely to rely on rule 237 to make a public offering of their securities to participants, and that each of those 35 issuers, on average, distributes 3 different written offering documents concerning those securities, for a total of 105 offering documents.

The staff therefore estimates that during each year that rule 237 is in effect, approximately 35 respondents would be required to make 105 responses by adding the new disclosure statements to approximately 105 written offering documents. Thus, the staff estimates that the total annual burden associated with the rule 237 disclosure requirement would be approximately 17.5 hours (105 offering documents × 10 minutes per document).

Other Foreign Issuers Other Than Funds

In addition, issuers from foreign countries other than Canada could rely on rule 237 to offer securities to Canadian/U.S. Participants and sell securities to their accounts without becoming subject to the registration requirements of the Securities Act. Because Canadian law strictly limits the amount of foreign investments that may be held in a Canadian retirement account, however, the staff believes that the number of issuers from other countries that relies on rule 237, and that therefore is required to comply with the offering document disclosure requirements, is negligible.

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: March 15, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6933 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

[4] *See supra* note 3.

[5] Because Canadian tax law effectively precludes non-Canadian funds from being held in a Canadian retirement account, the Commission believes that no funds from countries other than Canada rely on rule 7d–2 to sell their shares to the Canadian retirement accounts of Canadian/U.S. Participants.

[6] Canadian funds can rely on both rule 7d–2 and rule 237 to offer securities to participants and sell securities to their Canadian retirement accounts without violating the registration requirements of the Investment Company Act or the Securities Act. Rule 237, however, does not require any disclosure in addition to that required by rule 7d–2. Thus, the disclosure requirements of rule 237 do not impose any burden on Canadian funds in addition to the burden imposed by the disclosure requirements of rule 7d–2. To avoid double-counting this burden, the staff has excluded Canadian funds from the estimate of the hourly burden associated with rule 237.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From

Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions

Rule 701, OMB Control No. 3235–0522, SEC File No. 270–306

Regulations 14D and 14E, and Schedule 14D–9, OMB Control No. 3235–0102, SEC File No. 270–114

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Securities Act Rule 701 requires when offerings in excess of $5 million are made under the employee benefit plan exemptive rule, the issuers must provide the employees with risk and financial statement disclosures among other things. The purpose of Rule 701 is to ensure that a basic level of information is available to employees and others when substantial amounts of securities are issued in compensatory agreements. Information provided under Rule 701 is mandatory. Approximately 300 companies annually rely on Rule 701 exemption and it takes an estimated .5 hours to prepare and review. It is estimated that 25% of the 600 total annual burden hours (150 hours) is prepared by the company.

Regulations 14D and 14E and Schedule 14D–9 require information important to security holders in deciding how to respond to tender offers. This information is made available to the public. Information provided on Schedule 14D–9 is mandatory. Approximately 310 issuers annually file Schedule 14D–9 and it takes 64.43 hours to prepare and review. It is estimated that 25% of the 79,803 total burden hours (19,973 burden hours) is prepared by the company.

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

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 11, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6893 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From:

Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Rule 7d–1, OMB Control No. 3235–0311, SEC File No. 270–176

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension and approval of the collections of information discussed below.

Section 7(d) of the Investment Company Act of 1940 [15 U.S.C. 80a–7(d)] (the ''Act'' or ''Investment Company Act'') requires an investment company (''fund'') organized outside the United States (''foreign fund'') to obtain an order from the Commission allowing the fund to register under the Act before making a public offering of its securities through the United States mail or any means of interstate commerce. The Commission may issue an order only if it finds that it is both legally and practically feasible effectively to enforce the provisions of the Act against the foreign fund, and that the registration of the fund is consistent with the public interest and protection of investors.

Rule 7d–1 [17 CFR 270.7d–1] under the Act, which was adopted in 1954, specifies the conditions under which a Canadian management investment company (''Canadian fund'') may request an order from the Commission permitting it to register under the Act. Although rule 7d–1 by its terms applies only to Canadian funds, other foreign funds generally have agreed to comply with the requirements of rule 7d–1 as a prerequisite to receiving an order permitting the foreign fund's registration under the Act.

The rule requires a Canadian fund proposing to register under the Act to file an application with the Commission that contains various undertakings and agreements of the fund. Certain of these undertakings and agreements, in turn, impose the following additional information collection requirements:

(1) The fund must file agreements between the fund and its directors, officers, and service providers requiring them to comply with the fund's charter and bylaws, the Act, and certain other obligations relating to the undertakings and agreements in the application;

(2) The fund and each of its directors, officers, and investment advisers that is not a U.S. resident, must file an irrevocable designation of the fund's custodian in the United States as agent for service of process;

(3) The fund's charter and bylaws must provide that (a) the fund will comply with certain provisions of the Act applicable to all funds, (b) the fund will maintain originals or copies of its books and records in the United States, and (c) the fund's contracts with its custodian, investment adviser, and principal underwriter, will contain certain terms, including a requirement that the adviser maintain originals or copies of pertinent records in the United States;

(4) The fund's contracts with service providers will require that the provider perform the contract in accordance with the Act, the Securities Act of 1933 [15 U.S.C. 77a–77z–3], and the Securities Exchange Act of 1934 [15 U.S.C. 78a–78mm], as applicable; and

(5) The fund must file, and periodically revise, a list of persons affiliated with the fund or its adviser or underwriter.

Under section 7(d) of the Act the Commission may issue an order permitting a foreign fund's registration only if the Commission finds that ''by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of the [Act].'' The information collection requirements are necessary to assure that the substantive provisions of the Act may be enforced as a matter of contract right in the United States or Canada by the fund's shareholders or by the Commission.

Certain information collection requirements in rule 7d–1 are associated with complying with the Act's provisions. These information collection

requirements are reflected in the information collection requirements applicable to those provisions for all registered funds.

The Commission believes that one fund is registered under rule 7d–1 and currently active. Apart from requirements under the Act applicable to all registered funds, rule 7d–1 imposes ongoing burdens to maintain records in the United States, and to update, as necessary, the foreign fund's list of affiliated persons. The Commission staff estimates that the rule requires a total of three responses each year. The staff estimates that a respondent would make two responses each year under the rule, one response to maintain records in the United States and one response to update its list of affiliated persons. The Commission staff further estimates that a respondent's investment adviser would make one response each year under the rule to maintain records in the United States. Commission staff estimates that each recordkeeping response would require 6.25 hours each of secretarial and compliance clerk time at a cost of $13.48 and $12.77 per hour, respectively, and the response to update the list of affiliated persons would require 0.25 hours of secretarial time, for a total annual burden of 25.25 hours at a cost of $331.49. The estimated number of 25.25 burden hours is identical to the current allocation.

If a foreign fund were to file an application under the rule, the Commission estimates that the rule would impose initial information collection burdens (for filing an application, preparing the specified charter, bylaw, and contract provisions, designations of agents for service of process, and an initial list of affiliated persons, and establishing a means of keeping records in the United States) of approximately 90 hours for the fund and its associated persons. The Commission is not including these hours in its calculation of the annual burden because no fund has applied under rule 7d–1 to register under the Act in the last three years.

After registration, a foreign fund may file a supplemental application seeking special relief designed for the fund's particular circumstances. Because rule 7d–1 does not mandate these applications and the fund determines whether to submit an application, the Commission has not allocated any burden hours for these applications.

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of Commission rules.

The Commission believes that the active registrant and its associated persons may spend (excluding the cost of burden hours) approximately $540 per year in maintaining records in the United States. These estimated costs include fees for a custodian or other agent to retain records, storage costs, and the costs of transmitting records.

If a Canadian or other foreign fund in the future applied to register under the Act under rule 7d–1, the fund initially might have capital and start-up costs (not including hourly burdens) of an estimated $17,280 to comply with the rule's initial information collection requirements. These costs include legal and processing-related fees for preparing the required documentation (such as the application, charter, bylaw, and contract provisions), designations for service of process, and the list of affiliated persons. Other related costs would include fees for establishing arrangements with a custodian or other agent for maintaining records in the United States, copying and transportation costs for records, and the costs of purchasing or leasing computer equipment, software, or other record storage equipment for records maintained in electronic or photographic form.

The Commission expects that a foreign fund and its sponsors would incur these costs immediately, and that the annualized cost of the expenditures would be $17,280 in the first year. Some expenditures might involve capital improvements, such as computer equipment, having expected useful lives for which annualized figures beyond the first year would be meaningful. These annualized figures are not provided, however, because, in most cases, the expenses would be incurred immediately rather than on an annual basis. The Commission is not including these costs in its calculation of the annualized capital/start-up costs because no investment company has applied under rule 7d–1 to register under the Act pursuant to rule 7d–1 in the last three years.

These estimates of average costs are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

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

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, Mail Stop 0–4, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 15, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6934 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following additional meeting during the week of March 18, 2002: an additional closed meeting will be held on Friday, March 22, 2002, at 11:00 a.m.

Commissioner Hunt, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled for Friday, March 22, 2002, are: formal order of private investigation; institution and settlement of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: March 19, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–7032 Filed 3–19–02; 4:26 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45566; File No. SR–Amex–2001–68]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the American Stock Exchange LLC to Adopt Sanctioning Guidelines for Violations of the Exchange's Order Handling Rules

March 15, 2002.

I. Introduction

On September 4, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt sanctioning guidelines for violations of its options order handling rules.[3] The proposed rule change was published for comment in the **Federal Register** on February 13, 2002.[4] No comments were received on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to adopt sanctioning guidelines for violations of its options rules related to firm quotes (Exchange Rule 958A), limit order display (Exchange Rule 958A),[5] priority, parity, and precedence (Exchange Rules 111, 126, 155, 950, and 958),[6] and trade reporting (Exchange Rule 992). The Exchange also proposes to adopt sanction guidelines for its rule regarding anti-competitive behavior and harassment (Exchange Rule 16).

The Exchange has developed the proposed sanction guidelines for use by the various bodies adjudicating disciplinary matters in determining appropriate sanctions.[7] These bodies include Disciplinary Panels, the Amex Adjudicatory Council and the Amex Board of Governors (''Adjudicators''). The proposed guidelines provide both a range of fines as well as non-monetary sanctions that could be assessed against offending members. Fine amounts would differ depending on the number of disciplinary actions that have been brought by the Exchange against the particular member or member organization.[8] The proposed guidelines would also allow for non-monetary sanctions such as suspension, expulsion, or other sanctions in egregious cases. The guidelines may also be used by parties to a disciplinary action in entering into a stipulation of facts and consent to penalty.

The proposed sanction guidelines contain an introductory section that explains the overall purpose of the guidelines and sets forth general principles that apply to all sanctions determinations. The proposed introductory section also includes principal considerations for determining sanctions that may be considered as aggravating or mitigating factors. The proposed sanctioning guidelines contain individual guidelines that provide specific monetary and non-monetary sanctions generally applicable to the violations at issue and list additional principal considerations for the specific violations.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with Section 6(b)(6) of the Act,[11] which requires that the rules of an exchange provide that its members be appropriately disciplined for violations of exchange rules, the Act, and rules and regulations thereunder, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

Moreover, the Commission notes that the Exchange submitted a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where such violations are identified through the Exchange's automated surveillance systems.[12] The Commission believes that the compliance thresholds proposed in this letter provide a reasonable first step and should assist the Exchange in disciplining its members for violations of the Exchange's order handling rules. The Commission expects, however, that as compliance rates improve, the Exchange will adjust the compliance thresholds accordingly. Consequently, the Commission's approval of the proposed rule change is contingent on the Exchange providing notice to the Commission's Office of Compliance Inspections and Examinations of any future changes to this letter, and to any other sanctioning guidelines not codified in the Exchange's rules.

At this time, the Commission believes the proposed sanctioning guidelines are reasonably designed to effectively enforce compliance with the options order handling rules. Nevertheless, the Commission expects the Exchange to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange filed this proposed rule change pursuant to the provisions of Section IV.B.i of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange to adopt rules establishing, or modifying existing, sanctioning guidelines such that they are reasonably designed to effectively enforce compliance with options order handling rules. *See* Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3–10282 (''Order'').

[4] *See* Securities Exchange Act Release No. 45412 (February 7, 2002), 67 FR 6777.

[5] The Exchange has an option limit order display rule filing pending with the Commission. *See* SR–Amex–00–27.

[6] According to the Exchange, it does not have an explicit definition of its members' obligation of ''best execution'' owed to its customer. The Exchange states that its rules regarding firm quotes, limit order display, priority, parity and precedence, however, collectively define the obligations of members with respect to orders and, therefore, embody the concept of best execution.

[7] The Exchange submitted to the Commission a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where the violations are identified through the Exchange's automated surveillance system. *See* letter from Richard T. Chase, Executive Vice President, Amex, to John McCarthy, Associate Director, Office of Compliance, Inspections and Examinations, Commission, dated December 24, 2001.

[8] When determining whether an action is the first disciplinary action, the Adjudicators would consider disciplinary actions with respect to violative conduct that occurred within the two years prior to the misconduct at issue. Recent acts of similar misconduct may be considered to be aggravating factors. For purposes of the proposed rule change, this two year look back provision would apply on a rolling basis.

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(6).

[12] *See supra* note 7.

continue to evaluate the adequacy of the proposed sanctioning guidelines to determine whether they do, in fact, effectively enforce compliance with the options order handling rules.[13]

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Amex–2001–68) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6899 Filed 3–21–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45576; File No. SR–Amex–2001–76]

Self-Regulatory Organizations; Order Granting Partial Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Partial Accelerated Approval of Amendment No. 3 Thereto by the American Stock Exchange LLC Relating to the Obligations of Specialists and Registered Options Traders

March 15, 2002.

I. Introduction

On September 12, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change relating to collective actions of specialists and registered options traders.[3] The Amex filed Amendment Nos. 1 and 2 to the proposed rule change on December 17, 2001[4] and January 18, 2002,[5] respectively. The **Federal Register** published the proposed rule change and Amendment Nos. 1 and 2 for comment on February 14, 2002.[6] The Exchange filed Amendment No. 3 to the proposed rule change on March 13, 2002.[7] The Commission received no comments on the proposed rule change. The Commission is publishing notice of Amendment No. 3 to solicit comments from interested persons. The Commission is also granting accelerated approval to all portions of the proposed rule change, as amended by Amendment Nos. 1, 2, and 3, except for the provision of proposed Commentary .02(b) to Amex Rule 950 that states that ''[w]ith respect to orders sent through the Exchange's order routing systems it is presumed that the member has requested a collective response.''

II. Description of Proposal

The Exchange proposes to amend Exchange Rules 950, 958, and 958A to codify its interpretation that unless otherwise provided for in Exchange rules, it is a violation of just and equitable principles of trade for specialists and registered options traders (''traders'') to determine by agreement the spreads or prices at which they will trade any option class, or the allocation of orders in any option class. The Exchange believes that there are, however, certain specific circumstances where, in order to make fair and orderly markets that are competitive with other exchanges and responsive to the needs and expectations of investors, some communication among the specialist and traders may be necessary and appropriate. According to the Exchange, these circumstances arise: (1) in connection with the specialist's establishment of parameters used by the Exchange's automated quotation updating system (known as ''X-TOPS'') to automatically generate options quotations in response to changes in the market for the underlying security or index; (2) in responding to customer requests for markets in size, such that the collective efforts of the specialist and traders are necessary in order to be able to fill any resulting order to buy or sell options; and (3) whenever the specialist and traders, in order to fulfill their obligations pursuant to Rule 11Ac1–1 under the Act and Amex Rule 958A, and to be competitive with other exchanges, collectively agree as to the best bid, best offer, and aggregate quotation size. The following is a description of the nature and extent of the joint action among the specialist and traders that is permitted under each of these circumstances.

X–TOPS Parameters

Proposed Commentary .02 to Exchange Rule 950(n) and proposed paragraph (h) to Exchange Rule 958 would (i) require the specialist to disclose to all registered option traders in an option class the variables of the formula used to generate automatically updated market quotations for each option class and/or series, and (ii) permit the specialist to receive input from the registered options traders on any one or all of these variables provided, however, that it is within the specialist's sole discretion to make the final independent decision in determining the variables to be used in the X-TOPS formula. Registered options traders would not be required to provide input into these decisions. Those specialists using an Exchange-approved proprietary system to calculate and generate quotes may be exempt by the Exchange from having to disclose proprietary information concerning the variables (but not the variables themselves) used by their systems.

Joint Responses to Requests for Markets

Proposed Commentary .02 to Exchange Rule 950(n) and proposed new paragraph (h) to Exchange Rule 958 would expressly permit a collective response to a request for a market to buy or sell option contracts in sizes larger than the greater of the Auto-Ex eligible size or the size communicated or disseminated pursuant to Exchange

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[13] The Commission's examination staff will also monitor the application of these guidelines to determine whether they do, in fact, improve member compliance with the options order handling rules.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The Amex submitted the proposed rule change pursuant to subparagraph IV.B.j of the Commission's September 11, 2000 Order, which requires in part that certain options exchanges, including the Amex, adopt new, or amend existing, rules to make express any practice or procedure ''whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class . . . .'' *See* Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

[4] The Amex submitted a new Form 19b–4, which replaces and supersedes the original filing in its entirety (''Amendment No. 1'').

[5] Letter from Claire P. McGrath, Vice President and Deputy General Counsel, Amex, to Elizabeth King, Associate Director, Division of Market Regulation (''Division''), Commission, dated January 16, 2002 (''Amendment No. 2''). Amendment No. 2 amends proposed Amex Rules 950 and 958 to clarify that ''large order'' means orders larger than the size communicated or disseminated pursuant to Exchange Rule 958 or larger than the Exchange's auto-ex eligible size. Amendment No. 2 also makes a technical correction to proposed Amex Rule 958(h)(iii).

[6] Securities Exchange Act Release No. 45413 (February 7, 2002), 67 FR 6953.

[7] Letter from Claire P. McGrath, Vice President and Deputy General Counsel, Amex, to Elizabeth King, Associate Director, Division, Commission, dated March 8, 2002 (''Amendment No. 3'').

Rule 958A,[8] provided the member requested the collective response.

In addition, the proposed rule change would permit the specialist to agree to transact the full size of the options order at a specific price unilaterally determined by the specialist and subsequently allocate portions of the order to registered options traders that wish to participate in the trade.[9] If or when a trade is executed under such circumstances, the contracts would be allocated in accordance with the Exchange's specialist and registered options traders participation policy.[10]

Finally, the Exchange proposes that with respect to orders sent through the Exchange's order routing systems that are larger than the size disseminated pursuant to Exchange Rule 958, it would be presumed that the member has requested a collective response.[11]

Firm Quote Guarantees

Currently, Amex Rule 958A obligates specialists and traders to be firm for (i) customer orders up to the quotation size being disseminated, and (ii) broker-dealer orders, up to the size established and periodically published by the Exchange. Rule 11Ac1–1 under the Act anticipates that exchanges will disseminate one automatically generated quote for a trading crowd, which necessitates collective action on behalf of the specialist and traders to communicate size to the Exchange. If or when a trade is executed, the contracts will be allocated in accordance with the Exchange's specialist and registered options traders participation policy.

III. Discussion

The Commission finds that the proposed rule change, except for the portion that states that it is presumed for orders sent through the Exchange's order routing systems that the member has requested a collective response, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] Specifically, the Commission believes that the proposed rule change, except for the portion that states that it is presumed for orders sent through the Exchange's order routing systems that the member has requested a collective response, is consistent with the Section 6(b)(8)[13] requirement that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the portion of the proposed rule change approved herein should deter collective action on the part of Exchange members by clearly establishing in the Exchange's rules that options market makers are prohibited from determining by agreement the spreads or option prices at which they will trade an issue, subject to certain specified exceptions that the Commission herein approves.[14] For instance, the proposal would permit specialists to receive input from members of the crowd in setting the parameters of the formula used to automatically update options quotations. At this time, the Commission believes it is reasonable for the Exchange's rules to permit the members of the crowd to be given a voice in setting autoquote parameters because, pursuant to the Exchange's rules, they will be obligated to execute orders at the resultant quote.

In addition, the proposed rule change would permit the specialist and registered options traders to make a collective response to a member's specific request to fill a large order, provided that a collective response is requested. The Commission believes that this exception recognizes the desire of the marketplace to provide a single price to a request to fill a large order that a single member would not be able to fill. The Commission believes that any anticompetitive effect of this exception is limited by requiring that there be a request for a single price and that the order be sufficiently large. In addition, the Commission notes that notwithstanding this exception, a single crowd participant may voice a bid or offer independently from, and differently from, the specialist and other members of a trading crowd.

At this time, the Commission is not approving the provision of proposed Commentary .02(b) to Amex Rule 950, that states that it is presumed that the member has requested a collective response for orders sent through the Exchange's order routing systems, because this proposed provision warrants further consideration.

Finally, the Commission finds that the portion of the proposed rule change that is approved herein is designed to effectively limit the circumstances in which collective action is permissible.

The Commission finds good cause for accelerating approval of the proposed rule change and Amendment Nos. 1, 2, and 3 thereto prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that the proposed rule change, as amended by Amendment Nos. 1 and 2, was published for the full comment period and the Commission is accelerating approval of the filing on the twenty-ninth day after publication of the proposed rule change, and Amendment Nos. 1 and 2, in the **Federal Register**. The Commission believes that accelerated approval will permit the Exchange to implement, and investors to benefit from, the proposed rule change without undue delay. The Commission notes that the Amendment No. 3 to the proposal clarifies the proposed rules in response to issues raised by Commission staff. Accordingly, the Commission finds that good cause exists, consistent with Sections 6(b)(8) of the Act,[15] and 19(b)(2) of the Act[16] to grant partial accelerated approval of the proposed rule change and Amendment Nos. 1, 2, and 3 thereto.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether the Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[8] *Id.* Amendment No. 3 amends proposed Amex Rules 950 and 958 to clarify that "large order" means orders larger than the greater of the size communicated or disseminated pursuant to Exchange Rule 958 or larger than the Exchange's auto-ex eligible size.

[9] *See* Amendment No. 3, *supra* note 7. Amex No. 3 codifies in proposed Amex Rules 950 and 958 that the specialist may unilaterally give a single bid (offer) in response to a request for a market and subsequently discuss with the registered options traders whether they wish to participate in the contracts executed in accordance with that bid (offer).

[10] *See* Securities Exchange Act Release No. 42964 (June 20, 2000) 65 FR 39972 (June 28, 2000) (File No. SR–Amex–00–30) which proposes to codify current practices regarding the participation in option trades executed on the Exchange by registered options traders and specialists.

[11] As noted in Section III of this order, the Commission is not approving this provision at this time.

[12] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(8).

[14] The Commission expects the Exchange to monitor the collective actions that are undertaken pursuant to the rule change approved herein for any undesirable or inappropriate anticompetitive effects. The Commission's examination staff will monitor the Exchange's efforts in this regard.

[15] 15 U.S.C. 78f(b)(8).

[16] 15 U.S.C. 78s(b)(2).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2001–76 and should be submitted by April 12, 2002.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–Amex–2001–76), as amended, except for the portion that states that it is presumed for orders sent through the Exchange's order routing systems that the member has requested a collective response, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

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[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45571; File No. SR–CBOE–2001–71]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. To Incorporate Certain Principal Considerations in Determining Sanctions and To Incorporate in the Exchange's Minor Rule Violation Plan Violations of the Exchange's Order Handling Rules

March 15, 2002.

I. Introduction

On December 26, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to adopt sanctioning guidelines and to incorporate in its Minor Rule Violation Plan violations of the Exchange's order handling rules.[3] The proposed rule change was published for comment in the **Federal Register** on February 14, 2002.[4] On March 7, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[5] No comments were received on the proposed rule change. This order granted accelerated approval to the proposed rule change and issues notice of filing and approves Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to amend CBOE Rule 17.11 (Judgment and Sanction) to incorporate certain Principal Considerations in Determining Sanctions (''Principal Considerations'') to be applied by the Exchange's BCC in determining appropriate remedial sanctions through the resolution of disciplinary matters through offers of settlement or after formal disciplinary hearings. In addition, the Exchange proposes to amend CBOE Rule 17.50 (Imposition of Fines for Minor Rule Violations) to incorporate in its MRP violations of the Exchange's order handling rules, including violations of firm quote requirements pursuant to Exchange Rule 8.51; failure to promptly book and display limit orders that would improve the disseminated quote pursuant to Exchange Rules 7.7 and 8.85(b); failure to honor the priority of marketable customer orders maintained in the Customer Limit Order Book pursuant to Exchange Rule 6.45; and failure to use due diligence in order execution pursuant to Exchange Rules 6.73 and 8.85(b). The proposed rule change would provide both a range of fines as well as non-monetary sanctions that could be assessed against offending members. Fine amounts would differ depending on the number of disciplinary actions that have been brought by the Exchange against the particular member or member organization.[6] The proposed guidelines would also allow for non-monetary sanctions such as suspension, expulsion, or other sanctions in egregious cases. Finally, the proposed rule change would also permit any member who is issued a summary fine notice to have the opportunity to submit one written offer of settlement to the BCC.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with section 6(b)(6) of the Act,[9] which requires that the rules of an exchange provide that its members be appropriately disciplined for violations of exchange rules, the Act, and rules and regulations thereunder, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

Moreover, the Commission notes that the Exchange submitted a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where such violations are identified through the Exchange's automated surveillance

[3] The Exchange filed this proposed rule change pursuant to the provisions of Section IV.B.i of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange to adopt rules establishing, or modifying existing, sanctioning guidelines such that they are reasonably designed to effectively enforce compliance with options order handling rules. *See* Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3–10282 (the ''Order'').

[4] *See* Securities Exchange Act Release No. 45427 (February 8, 2002), 67 FR 6958.

[5] *See* letter from Edward Joyce, President and Chief Operating Officer, CBOE, to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation, Commission, dated March 1, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange clarified that the Exchange would aggregate individual violations of options order handling rules and treat such violation as a single offense only where such aggregation is based on a comprehensive automated surveillance program. In addition, the Exchange clarified that a sixth and subsequent violation of the options order handling rules would be referred to the Business Conduct Committee (''BCC'') and not treated under the Exchange's Minor Rule Plan (''MRP'').

[6] The Exchange submitted to the Commission a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where the violations are identified through the Exchange's automated surveillance system. *See* letter from Mary L. Bender, Senior Vice President and Chief Regulatory Officer, CBOE, to John McCarthy, Associate Director, Office of Compliance, Inspections and Examinations, Commission, dated December 21, 2001.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(6).

systems.[10] The Commission believes that the compliance thresholds proposed in this letter provide a reasonable first step and should assist the Exchange in disciplining its members for violations of the Exchange's order handling rules. The Commission expects, however, that as compliance rates improve, the Exchange will adjust the compliance thresholds accordingly. Consequently, the Commission's approval of the proposed rule change is contingent on the Exchange providing notice to the Commission's Office of Compliance Inspections and Examinations of any future changes to this letter, and to any other sanctioning guidelines not codified in the Exchange's rules.

At this time, the Commission believes the proposed sanctioning guidelines are reasonably designed to effectively enforce compliance with the options order handling rules. Nevertheless, the Commission expects the Exchange to continue to evaluate the adequacy of the proposed sanctioning guidelines to determine whether they do, in fact, effectively enforce compliance with the options order handling rules.[11]

Furthermore, the Commission finds good cause for accelerating approval of the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that the proposed rule change was noticed for the full comment period and the Commission is accelerating approval of the filing on the twenty-ninth day after publication of the proposed rule change in the **Federal Register**. The Commission believes that accelerated approval will permit the Exchange to implement, and investors to benefit from, the proposed rule change without undue delay. Amendment No. 1 clarifies when the Exchange may aggregate multiple violations and when subsequent offenses would be referred to the Exchange's BCC and not treated under the Exchange's MRP. Amendment No. 1 also clarifies that the Exchange may aggregate multiple violations into a single offense only where such aggregation is based upon a comprehensive automated surveillance program. In addition, the Commission notes that it received no comments on the proposed rule change. For these reasons, the Commission finds good cause exists, consistent with sections 6(b)(5)[12] and 19(b)(2) of the Act,[13] to approve the proposed rule change and Amendment No. 1 thereto on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to file number SR-CBOE–2001–71 and should be submitted by April 12, 2002.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–CBOE–2001–71) and Amendment No. 1 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

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[10] *See supra* note 6.

[11] The Commission's examination staff will also monitor the application of these guidelines to determine whether they do, in fact, improve member compliance with the options order handling rules.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(2).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45577; File No. SR–CBOE–2001–64]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange Inc. Relating to AutoQuote Parameters

March 15, 2002.

I. Introduction

On December 17, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the Exchange's AutoQuote System. The **Federal Register** published the proposed rule change for comment on February 12, 2002.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of Proposal

The CBOE submitted the proposed change to Interpretation and Policy .07 to CBOE Rule 8.7 pursuant to subparagraph IV.B.j of the Commission's September 11, 2000 Order,[4] which requires in part that certain options exchanges, including the CBOE, adopt new, or amend existing, rules to make express any practice or procedure ''whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class * * *.'' The proposed amendment to Interpretation and Policy .07 to CBOE Rule 8.7 would permit market makers to coordinate in setting the components of the formula used by an automated quotation updating system, or AutoQuote.[5]

AutoQuote is the Exchange's electronic quotation system that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 45394 (February 5, 2002), 67 FR 6556.

[4] *See* Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

[5] For purposes of this filing and the proposed interpretation, the term AutoQuote is used to refer to both the Exchange's own automatic quotation system that is offered to trading crowds to generate quotes and to proprietary automated quotation updating systems that are used by trading crowds, DPMs, LMMs, SMMs, or appointed market-makers to generate quotes in lieu of or in addition to the Exchange's own AutoQuote system.

automatically monitors and updates market quotations using a mathematical formula measuring certain characteristics of the option and the underlying interest. According to the Exchange, AutoQuote provides a means to update the quotes for the tens of thousands of series the Exchange lists.[6] AutoQuote formulas require the selection and input of the following components or variables: an option pricing calculation model, volatility, interest rate, dividend, and the measure used to represent the value of the underlying.

The proposed amendment to Interpretation and Policy .07 to CBOE Rule 8.7 would set forth a more thorough description of AutoQuote. The proposed rule change also would identify who has responsibility under Exchange rules to determine a formula for generating automatically updated market quotations. For classes of options in which a DPM is appointed, the DPM would have primary responsibility to determine the formula, which includes determining the components or variables used in the AutoQuote formula.[7] For classes of options in which an LMM or SMM is appointed, such as the S&P 100 option class (''OEX''), the LMM or SMM would have primary responsibility to determine the formula for generating automatically updated market quotations.[8] For classes of options in which a DPM, LMM, or SMM has not been appointed, the appropriate Exchange Committee would be permitted to appoint one or more market makers in good standing with an appointment in the particular option class (''Appointed Market-Makers'') to determine a formula for generating automatically updated market quotations, using the Exchange's AutoQuote system or a proprietary automated quotation updating system.

Although DPMs, LMMs, SMMs, and Appointed Market-Makers would have the responsibility for determining the formula for generating automatically updated market quotations, the proposed amendment to Interpretation and Policy .07 expressly would provide that the DPM, LMM, SMM, or Appointed Market-Maker may, but is not required to, consult with and/or agree with other market makers in the trading crowd in setting the components or variables of the formula. However, members of the trading crowd would not be required to provide input to the DPM, LMM, SMM, or Appointed Market-Maker about these decisions and the decision is ultimately that of the DPM, LMM, SMM or Appointed Market-Maker in the particular class.

For classes of options in which a DPM, LMM, SMM or Appointed Market-Maker does not have the responsibility to determine a formula for generating automatically updated market quotations, the market makers would be permitted to coordinate and agree upon the variables for the AutoQuote formula. In some trading crowds, one or a few market makers may take responsibility (with the crowd's approval) for updating the AutoQuote variables without seeking input on a continual basis. The CBOE believes that such market maker coordination is necessary and appropriate because an AutoQuote system is centralized and applicable to all market participants. Thus, the obligations resulting from the quotes generated by AutoQuote, such as the firm quote obligation, are imposed on the crowd as a whole.[9] Moreover, although AutoQuote is essential to ensure that quotes are updated on the numerous series traded by the Exchange on a timely basis, individual market makers can and do compete among each other to gain a larger share of orders by verbalizing quotes that improve the AutoQuote generated quotes. These verbalized quotes by market makers override the AutoQuote generated quotes for the particular series that is the subject of the verbalized quote.

Finally, the proposed amendment to Interpretation .07 would provide that the provisions described above and set forth in the proposed amendment to Interpretation .07 would also apply to the use of automated quotation updating systems that generate indicative prices that are indications of interest and not firm quotes.[10]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] Specifically, the Commission believes that the proposed rule change is consistent with the Section 6(b)(8)[12] requirement that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the proposed rule change should deter collective action, except as authorized by the Exchange's rules, by clearly establishing in the Exchange's rules the responsibilities of, and conduct permitted by, Exchange members in setting AutoQuote parameters. For instance, the proposal would permit the DPM, LMM, or SMM, or Appointed Market-Maker, as applicable, to receive input from members of the crowd in setting the parameters of the formula used to automatically update options quotations. At this time, the Commission believes it is reasonable for the Exchange's rules to permit the members of the crowd to be given a voice in setting autoquote parameters because, pursuant to the Exchange's rules, they will be obligated to execute orders at the resultant quote. In addition, the proposal codifies a more complete description of AutoQuote, which the Commission believes should protect investors and the public interest by providing important information regarding how options prices on the Exchange are derived. Moreover, the Commission notes that individual market makers can compete among each other to gain a larger share of orders and override the AutoQuote generated quotes by verbalizing quotes that improve the AutoQuote generated

[6] Although the Exchange believes that AutoQuote is necessary, the Exchange notes that individual market makers can and do manually improve the quote themselves in order to gain a larger share of orders than competing market makers. In these instances, the manual quote overrides the AutoQuote for that particular series.

[7] *See* CBOE Rule 8.85(a)(x).

[8] On December 17, 2001, the CBOE filed SR–CBOE–2001–63 which amends CBOE Rule 8.15 to make explicit in the rule that the appropriate Market performance Committee (''MPC'') may appoint LMMs and SMMs to determine a formula for generating automatically updated market quotations and use the Exchange's AutoQuote system or a proprietary automated quotation updating system to update market quotations during the trading day in an options class for which a DPM has not been appointed. *See* Securities Exchange Act Release No. 45419 (February 7, 2002), 67 FR 6772 (February 13, 2002). The Commission is approving SR–CBOE–2001–63 simultaneously with the proposed rule change.

[9] CBOE has always used, and the applicable CBOE rules envision, a centralized autoquote system. Although it may be technologically feasible at some point in the future to have a system that would permit each individual market-maker to have his or her own automatic quote updating capability (and although CBOE may eventually develop such a model), CBOE believes that its centralized autoquote system is essential to preserving CBOE's current model of a floor-based, open-outcry market that includes joint crowd obligations pursuant to rules that have been approved by the Commission.

[10] Interpretation and Policy .10 to CBOE Rule 8.7 provides that ''[m]arket-makers may display indicative spread prices on the websites of member organizations through a system licensed from a third party, developed by the Exchange or otherwise. Such indicative prices shall not be regarded as firm quotes, and a market-maker shall not be obligated to execute at the indicative prices spread orders that are entered into the market.''

[11] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(8).

quotes, which should limit any anticompetitive effects of the proposed rule change.

The Commission notes that in its filing, the Exchange states its belief that the proposed rule change is ''procompetitive'' because it is necessary to provide for a fair and orderly market in the thousands of options series traded on the Exchange. While the Commission does not agree that the proposed rule change enhances competition, the Commission finds that the burden that the proposal imposes on competition is appropriate in furtherance of the purposes of the Act and, thus, is not inconsistent with the Act.[13] Finally, the Commission finds that the proposed rule change is designed to effectively limit the circumstances in which collective action is permissible.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–CBOE–2001–64) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6902 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

[13] The Commission expects the Exchange to monitor the collective actions that are undertaken pursuant to the rule change approved herein for any undesirable or inappropriate anticompetitive effects. The Commission's examination staff will monitor the Exchange's efforts in this regard.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45585; File No. SR–CHX–2002–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Confirming Changes Arising From the Securities Industry Transition to a Decimal Pricing Environment

March 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2002, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') 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 by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In this submission, the Exchange proposes to confirm the amendment of certain CHX rules that were impacted by the securities industry transition to a decimal pricing environment. The text of the proposed rule change is available at the Commission and at the CHX.

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 Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to confirm its amendment of certain CHX rules that were impacted by the securities industry transition to a decimal pricing environment. The amendments described in this submission consist of changes that: (1) Confirm that the Exchange's minimum trading variation is $.01; (2) delete references to the procedures and conventions that were used during the conversion from quoting in fractions to quoting in decimals; and (3) remove all fractional price increments set forth in the current version of certain CHX rules.

Minimum Price Variation. The Exchange's rules currently state that all issues quoting in decimals will quote in increments of $.01 or any other variation required by the joint decimalization implementation plan filed with the Commission. This submission confirms the $.01 quoting increment and deletes references to the joint decimalization plan.

Removing references to the conversion from fractional to decimal pricing. Article XXB of the Exchange's Rules currently contains rules relating to the transition from a fractional pricing environment to one based on decimals. Now that this process has been completed, the Exchange believes it is appropriate to formally remove this Article from its rules.

Removing other fractional references. The remaining text contained in this submission removes fractional references in other Exchange rules.

None of the changes proposed in this submission effect any substantive change in the CHX rules or the operations of the Exchange. Instead, this submission confirms that the rules that the Exchange put in place as it began its transition to quoting in decimals continue to govern its operations.[3]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange and, in particular, with the requirements of Section 6(b).[4] In particular, the proposed rule change is consistent with section 6(b)(5) of the Act[5] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 were either solicited or received.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] These changes were included in a rule change proposal submitted pursuant to section 19(b)(3)(A) of the Act, which took effect upon filing. *See* Securities Exchange Act Release No. 43256 (September 6, 2000), 65 FR 55659 (September 14, 2000) (SR–CHX–00–25). That proposal contained language that sought to remove fractional references automatically once the transition to decimal trading had been completed. In addition to confirming the Exchange's minimum trading increment, this submission recognizes that that automatic removal was not an available alternative and formally removes the fractional references from the Exchange's rules.

[4] 15 U.S.C. 78(f)(b).

[5] 15 U.S.C. 78(f)(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CHX consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–2002–06 and should be submitted by April 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6937 Filed 3–21–02; 8:45 am]

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[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45584; File No. SR–CHX–2002–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Requesting Permanent Approval of Pilot Rules Relating to the Securities Industry Transition to Decimal Pricing

March 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2002, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') 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 by the CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange requests permanent approval of pilot rule changes amending certain CHX rules that were impacted by the securities industry transition to a decimal pricing environment, including the Exchange's crossing rule. The two pilots containing these rule changes are due to expire on April 15, 2002. The text of the proposed rule change is available at the Commission and at the CHX.

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 CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange requests permanent approval of pilot rule changes amending certain CHX rules that were impacted by the securities industry transition to a decimal pricing environment, including the Exchange's crossing rule. The two pilots containing these rule changes are due to expire on April 15, 2002. The CHX is not proposing any substantive changes to the pilots.

On August 24, 2000, the Commission approved, on a pilot basis through February 28, 2001, changes proposed by the Exchange to amend certain CHX rules that would be impacted by the securities industry transition to a decimal pricing environment.[3] By a series of subsequent submissions, each pilot was extended to April 15, 2002.[4] The Exchange now requests permanent approval of the current pilots, effective as of April 15, 2002.

The Ominbus Decimal Pilot: The Omnibus Decimal Pilot for which the Exchange seeks permanent approval amended certain provisions of Article XX, Rule 37 of the Exchange's rules, which were impacted by the securities industry transition to a decimal pricing environment. Specifically, the Exchange proposes permanent approval of changes to Article XX, Rule 37 which (1) Allow specialists to elect, on an issue by issue basis, to either manually

[3] These changes were proposed in two separate CHX submissions, the second of which dealt solely with decimal-related changes to the Exchange's crossing rule, Article XX, Rule 23, *See* Securities Exchange Act Release No. 43204 (August 24, 2000), 64 FR 53065 (August 31, 2000) (SR–CHX–00–22) (approving changes to various CHX rules on a pilot basis (''Omnibus Decimal Pilot'')); *see also* Securities Exchange Act Release No. 43203 (August 24, 2000), 65 FR 53067 (August 31, 2000) (SR–CHX–00–13) approving changes to the CHX crossing rule on a pilot basis (''Crossing Rule Decimal Pilot'')).

[4] *See* Securities Exchange Act Release No. 42964 (February 16, 2000) 66 FR 11621 (February 26, 2001) (File No. SR–CHX–2001–03) (extending Omnibus Decimal Pilot through July 9, 2001); 44488 (June 28, 2001), 66 FR 35684 (July 6, 2001) (SR–CHX–2001–13) (extending Omnibus Decimal Pilot through November 5, 2001); 45059 (November 15, 2001), 66 FR 58453 (November 21, 2001) (SR–CHX–2001–20) (extending Omnibus Decimal Pilot through January 14, 2002), and 45481 (February 27, 2002), 67 FR 10244 (March 6, 2002) (SR–CHX–2002–01) (extending Omnibus Decimal Pilot through April 15, 2002; *see also,* Securities Exchange Act Release Nos. 44000 (February 23, 2001) (66 FR 13361 (March 5, 2001) (extending Crossing Rule Decimal Pilot through July 9, 2001), 45010 (November 1, 2001), 66 FR 56585 (November 8, 2001) (SR–CHX–2001–22) (extending Crossing Rule Decimal Pilot through January 14, 2002), and 45482 (February 27, 2002), 67 FR 10243 (March 6, 2002) (SR–CHX–2002–03) (extending Crossing Rule Decimal Pilot through April 15, 2002).

or automatically execute limit orders when a trade-through occurs in the primary market; (2) remove the ''pending auto-stop'' functionality from the Exchange's systems; and (3) allow a specialist, on an issue by issue basis, to establish an auto execution guarantee that is not dependent on the ITS Best Bid or Offer (''ITS BBO'') or National Best Bid or Offer (''NBBO'') size. The Exchange believes that decimal pricing is likely to continue to affect the CHX trading environment, and the interaction between the CHX and the national market system, in a manner that necessitates permanent approval of these pilot rule changes, which are designed to minimize the adverse impact of decimalization on trading operations.[5]

Manual or Automatic Execution of Limit Orders When a Trade-Through Occurs. The Exchange proposes to amend permanently Article XX, Rule 37(b)(6) to allow a specialist to elect, on an issue by issue basis, to either manually or automatically execute limit orders when a trade-through occurs in the primary market. The pre-pilot version of the rule provided that agency limit orders (that were not marketable when entered into the Exchange's MAX automatic execution system) would automatically be filled at the limit price when there was a price penetration of the limit price in the primary market for the subject security. Under the pilot rule, automatic execution of such limit orders is no longer mandated. A CHX specialist may elect to provide for automatic execution of agency limit orders at the limit price when there is a price penetration of the limit price in the primary market for the subject security or securities. The obligation to fill the order at the limit price remains the same under either election. The Exchange believes that this pilot rule reasonably addresses the impact that the decimal pricing environment has had on the national market system, where the number of small orders executed at multiple price levels has increased the number of inadvertent trade throughs that would otherwise lead to unwarranted automated executions of large orders in a CHX specialist's limit order book, exposing the specialist to substantially increased liability in the decimal pricing environment.

Removal of the Pending Auto-Stop Functionality. For similar reasons, the Exchange proposes to amend permanently Article XX, Rule 37(b)(10) to eliminate the Exchange's ''pending auto-stop'' function. Under the pre-pilot rule, all agency market orders from 100 to 599 shares that were not automatically executed, because, among other things, the order size exceeded the quantity at the ITS BBO, were designated as ''pending auto-stop orders.'' Such orders were stopped, and due an execution at the ITS BBO thirty seconds after entry into the Exchange's MAX system, unless the order had been canceled, executed, manually stopped, or put on hold during such thirty second period. Once an order was stopped, a text message to that effect was automatically sent to the order-sending firm.

The Exchange believes that this feature is not practicable in the decimal pricing environment, given the dramatic increases in quote traffic and the systems issues associated with generating administrative notifications regarding pending auto-stop. Additionally, quoting in decimals has significantly increased stock price points and, as a result, decreased the quantities associated with the ITS BBO price point and increased the rate of change in the ITS BBO price point. Both of these factors reduce a specialist's ability to offset the pending auto-stop guarantee. Under these circumstances, the Exchange believes it would be imprudent to continue to provide such a guarantee.

Changes Relating to Relationship Between Automatic Execution Guarantee and BBO Size. The rationale set forth above relating to the decrease in the quantities associated with the BBO price point also supports permanent approval of the Exchange's pilot rule change permitting CHX specialists to designate automatic execution guarantee levels that are not dependent on the BBO. Under the pre-pilot version of the CHX rule,[6] an order was not eligible for automatic execution on the Exchange if the order was larger than the then-current BBO size. Given the post-decimalization decreased quantities at each price point, the pre-pilot version of the rule would effect a corresponding decrease in the number of orders eligible for automatic execution on the Exchange. To accommodate customer demand for automatic execution, the Exchange believes that permanent approval of the pilot rule is necessary. The pilot rule permits a CHX specialist to designate, on an issue-by-issue basis, automatic execution guarantees that exceed the BBO size. Such an election is strictly voluntary and thus does not operate to increase the exposure of any specialist who desires to maintain the protections of the existing rule.

The Crossing Rule Decimal Pilot: The Exchange also proposes permanent approval of the pilot rule change to Article XX, Rule 23 of the Exchange's rules, which governs participation in crossing transactions in Nasdaq/NM securities effected on the floor of the Exchange Crossing transactions represent a significant component of Exchange volume. Under the pre-pilot rule, if a floor broker presents a crossing transaction, another member was able to participate, or ''break up,'' the transaction, by offering (after presentation of the proposed crossing transaction) to better one side of the transaction by the minimum price variation. The floor broker was then effectively prevented from consummating the transaction as a ''clean cross,'' which often operated to the detriment of the floor broker's customer(s).[7] In instances where the minimum price variation is relatively small, it is very inexpensive for a member to break up crossing transactions in this manner.

Given the post-decimalization transition to a minimum price variation of only $.01, the floor broker community, and other CHX members, remain concerned that much of the crossing business (and corresponding Exchange volume) will evaporate if the pilot rule is not amended on a permanent basis to preclude breaking up crossing transactions in the manner described above.

Under the pilot rule (which was developed by the Exchange's Decimalization Subcommittee and Floor Broker Tech Subcommittee to strike a balance of interests of those members who are impacted by crossing transactions), a floor broker is permitted to consummate crossing transactions without interference by any specialist or market maker if, prior to presenting the cross transaction, the floor broker first requests a quote for the subject

[5] This submission does not concern ''typographical'' amendments to CHX rules, where the sole change that was proposed by the Exchange was the substitution of a decimal price increment for the fractional price increment set forth in certain CHX rules. The proposed ''typographical'' amendments were the subject of a separate submission previously approved by the Commission on a permanent basis. *See* Securities Exchange Act Release No. 43256 (September 6, 2000), 65 FR 55659 (September 14, 2000) (SR–CHX–00–25).

[6] Art. XX, Rule 37(b)(11).

[7] According to the Exchange, some institutional customers prefer executing large crossing transactions at a single price and are willing to forego the opportunity to achieve the piecemeal price improvement that might result from the breakup of the cross transaction by another Exchange member. Of course, the floor broker will still retain the ability to present both sides of the order at the post if the customers so desire.

security.[8] These requests will place the specialist and other market makers on notice that the floor broker is intending to ''cross'' within the bid-offer spread. This arrangement is intended to ensure that a specialist or market maker retains the opportunity to better the cross price by updating their quote, but will preclude them from breaking up a cross transaction after the cross transaction is presented.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[9] The CHX believes the proposal is consistent with section 6(b)(5) of the Act [10] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

I. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CHX consents, the Commission will:

(A) by order approve the proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2002–05 and should be submitted by April 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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[8] These updated quotes are not directed solely to the floor broker. Anyone at the post may respond to the updated quotes.

[9] 15 U.S.C. 78(f)(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)912).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45568; File No. SR–ISE–2001–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the International Securities Exchange LLC To Increase the Minimum Quote Size for Certain Option Classes

March 15, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 16, 2001, the International Securities Exchange LLC (''ISE'' or ''Exchange'') 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 by the Exchange. The ISE amended its proposal on February 13, 2002 [3] and on March 13, 2002.[4] 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

The ISE proposes to adopt a three-month pilot program establishing greater size requirements for certain quotations in specified options. The text of the proposed rule change is available at the ISE and at the Commission.

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 ISE included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE 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

Currently, ISE market makers must establish and maintain quotations that are firm for at least 10 contracts for customers and 1 contract for non-customers. The ISE now wishes to adopt a three-month pilot program in which ISE market makers would be required to establish and maintain quotations of a larger minimum size in a limited number of option classes. Specifically, the details of the three-month pilot program are as follows:

• The pilot would apply to the following options: [5] Nasdaq 100 Trust; Sun Microsystems; EMC Corp.; Qualcomm; Wells Fargo & Co.; Oracle; Lucent; Juniper Networks; Intel; AOL

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated February 12, 2002 (''Amendment No. 1''). In Amendment No. 1, the ISE proposes to replace the original rule filing in its entirety and specifies the options to be included in the pilot program rather than allowing Primary Market Makers (''PMMs'') to choose the options to be included in the pilot.

[4] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division, Commission, dated March 12, 2002 (''Amendment No. 2''). In Amendment No. 2, the ISE proposes to clarify that, in the pilot program, new enhanced size levels would apply to customer and broker-dealer orders, but not to the orders of market makers on either the ISE or other exchanges.

[5] For the purpose of the three-month pilot program, an ''option'' refers to all put and call options on the same underlying security.

Time Warner; Tyco; Citigroup; Cisco; Applied Materials; Microsoft; General Electric; Broadcom; Nokia; and Siebel Systems.[6]

• The pilot would last for three months.

• For PMMs, the minimum size for quotes would be 100 contracts for customers and 50 contracts for broker-dealers.[7] For Competitive Market Makers (''CMMs''), the size requirements would be half of the PMM requirement: 50 contracts for customers and 25 contracts for broker-dealers. The enhanced broker-dealer size would not apply to executions against other market makers, where the minimum size would continue to be 1 contract.[8]

• These enhanced size requirements would apply only to the options series in the three months closest to expiration. Moreover, the pilot would not apply to ''deep-in-the-money'' options[9] or an option in the last three days of that option's trading. That is, the pilot would not apply for the last three days of trading during an option series' expiration week.

The ISE's intent in establishing the pilot program is to help determine the potential effect that increased minimum size requirements would have on the quality of the ISE's market and on the Exchange's ability to attract order flow. The ISE believes that it is likely that larger size guarantees would help the Exchange attract more order flow. However, the Exchange is concerned that requiring larger size could lead to a degradation of the quality of the Exchange's quotation. The Exchange believes that limiting the pilot to the specified options would tend to limit any adverse effects of the higher minimum size requirement. Specifically, the included options represent 19 of the 22 options with the highest trading volume in the industry, and thus, are the most liquid options. The Exchange chose these pilot stocks in consultation with its PMMs and CMMs.[10]

The Exchange intends to monitor the effects of the pilot closely. Prior to the expiration of the pilot, the Exchange would determine whether to end the pilot or whether to continue an enhanced size requirement in this or some other form. If the Exchange determines to continue an enhanced size requirement, it would file the appropriate rule change with the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any 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 were solicited or received with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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 written 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 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2001–32 and should be submitted by April 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6895 Filed 3–21–02; 8:45 am]

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[6] *See* Amendment No. 1, *supra* note 3.

[7] This enhanced quotation size requirement will not affect the PMM's obligation under ISE Rule 803(c)(1) to disseminate a quotation of at least 10 contracts when the quotation consists, in part, of a customer order for less than 10 contracts.

[8] *See* Amendment No. 2, *supra* note 4.

[9] The proposed rule change defines ''deep-in-the-money'' as all options with strike prices that are in the money by four or more pricing intervals in relation to the at-the-money strike price. *See* proposed Supplementary Material .03 to ISE Rule 804.

[10] Telephone conversation between Michael Simon, Senior Vice President and General Counsel, ISE, and Cyndi Nguyen, Attorney, Division, Commission, on March 15, 2002.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45563; File No. SR–MBSCC–2001–02]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Granting Approval of a Proposed Rule Change Implementing a Real-Time Trade Matching Service

March 14, 2002.

I. Introduction

On September 19, 2001, MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–MBSCC–2001–02 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1]. On September 26, 2001, MBSCC filed an amendment to the proposed rule change. Notice of the proposal was published in the **Federal Register** on January 25, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 45299, (January 17, 2002), 67 FR 3762.

granting approval of the proposed rule change.

II. Description

In furtherance of MBSCC's mission to reduce the costs and risks associated with trading in the mortgage-backed securities market, MBSCC has enhanced its services to enable its participants to submit executed trade terms and receive comparison results from MBSCC in a more timely manner. The cornerstone of this objective is the implementation of the Real-Time Trade Matching (''RTTM'') service that will replace MBSCC's current twice-daily match process with respect to trade input information. MBSCC anticipates that the RTTM service will provide more certainty, reduce execution/market risk, and eliminate the redundancy between the verbal checkout process (which is described below) and the current MBSCC matching process.[3]

MBSCC's objective in implementing the RTTM service is to match all trade input in real-time within minutes of trade execution while providing participants with the greatest flexibility and least amount of disruption in the migration towards this goal. MBSCC will retire its batch trade matching process with respect to trade input information upon implementation of the RTTM service. All trade activity for all participants, regardless of the form of trade input, will be matched solely by the RTTM service upon its implementation. Therefore, participants that increase the frequency of submission and reconciliation throughout the business day will be able to realize the benefits of the RTTM service.

MBSCC's Current Matching Process

Currently, MBSCC participants submit details of executed trades daily to MBSCC by means of terminal or batch submissions. While participants may submit trade input to MBSCC during published business hours, MBSCC performs its matching process of participant submitted data twice per day: at 10:30 a.m. (''AM Pass'') and 11:30 p.m. (''PM Pass'').

Output reports/files detailing the results of the matching process are available to participants at 11:30 a.m. (for the AM Pass) and 4:00 a.m. (for the PM Pass). The primary outputs are the ''Purchase and Sale Report'' listing submitted trades that successfully compared and the ''Transaction Summary Report'' listing, among other things, submitted trades that did not compare. The Purchase and Sale Report serves as the sole and binding confirmation of trades and provides data for Rule 10b–10 compliance purposes as well.

Given that the majority of trades are submitted after the AM Pass, the timing limitations of a twice daily matching/reporting process mean that participants generally are notified that a trade has achieved ''binding confirmation'' status at the earliest during the morning following submission to MBSCC. To overcome this time delay, participants engage in a process known as ''verbal checkout.'' Shortly after execution, participants contact each other and verbally confirm executed trade details. The verbal checkout process is important to participants because it allows them to ascertain with some degree of certainty their intraday trading positions. While generally effective, the verbal checkout process is cumbersome, error-prone, and lacks the ''binding'' status afforded by the two-sided matching and confirmation through MBSCC.

The RTTM Service and the Requisite Rules Changes

In order to provide more certainty, reduce execution/market risk, and eliminate the redundancy between the verbal checkout process and MBSCC's trade input matching process, MBSCC will offer the RTTM service. As stated above, MBSCC currently processes transaction information in two batch processing passes. One segment of that processing, the matching of trade input information, will be processed by the RTTM service. The other segments of the daily processing, including the matching of clearance information, will continue to be done in either one or both of the two existing batch processing passes.

The RTTM service will provide trade input matching for dealer-to-dealer trades and for inter-dealer broker trades. The RTTM service will support all of the trade types currently supported by MBSCC (settlement balance order destined, trade-for-trade, comparison only, and option) as well as the various trade functions such as the ''Don't Know'' or ''DK'' function used by participants.

Participants will be able to submit transaction information for processing through the RTTM service using the batch file submission method that is used today, which is called ''File Transmission Service.'' In addition, participants will also be able to use a batch file transmission method that employs SWIFT formats, the RTTM terminal service, and interactive messaging. Regardless of the input method, MBSCC will make available to participants real-time updates on all transactions entered into the system.

The following rule changes are necessary to accommodate the introduction of the RTTM service:

i. *General provisions on the RTTM service:* MBSCC is adding two provisions to its rules to provide generally for the RTTM service. One of these provisions (new Section 1 of Rule 3 of Article II) will provide that MBSCC's comparison of trade input will occur in real time, and the other (new Section 1 of Rule 4 of Article II) will distinguish the RTTM processing from the current processing passes.

ii. *New reports provided by the RTTM service:* MBSCC's RTTM processing will produce output via the RTTM terminal service as well as via interactive messages. MBSCC is adding to its definitions the term ''Report'' to encompass any type of output in any form that is provided by MBSCC to its participants. As a result specifically of RTTM processing, there will be two new ''Reports.'' The ''RTTM Compare Report''[4] will indicate the transactions whose trade input has compared, and the ''RTTM Uncompare Report'' will indicate the transactions whose trade input has not compared.

iii. *Changes to existing reports:* MBSCC will continue to provide the reports that are created as a result of its current two processing passes, with some modifications in one case. The Purchase and Sale Report details the results of the current batch trade processing, which includes the matching of trade input submissions and the matching of clearance information. No changes are proposed to the information provided by the Purchase and Sale Report. Like the Purchase and Sale Report, the Transaction Summary Report is also provided as a result of the current twice daily processing passes. Upon implementation of RTTM processing, the Transaction Summary Report will no longer provide details of unmatched trade terms. Unmatched trade terms will be available to participants via the RTTM Uncompare Reports (which as stated above will be in the form of

[3] One of the main objectives of the RTTM service is to significantly reduce the risks associated with a prolonged period of time between trade execution and achievement of legal and binding confirmation. The elapsed time between trade execution and verbal checkout, followed by a legal and binding confirmation, is a known and serious risk to the ultimate settlement of the trade for all trading organizations. Reducing the elapsed time between trade execution and achievement of a legal and binding confirmation increases certainty and reduces risk.

[4] The RTTM Compare Report will also indicate cancellataions of previously compared trades.

output provided by MBSCC via the RTTM terminal service as well as via interactive messages). MBSCC is proposing to modify its rules to delete references to the Transaction Summary Report as notification of unmatched trades and to provide for this notification to occur by means of the RTTM Uncompare Reports.

iv. *Sole and binding confirmation of trades:* MBSCC's Rules currently provide that the Purchase and Sale Report is the sole and binding confirmation of the trade. In addition, the Purchase and Sale Report currently fulfills Rule 10b-10 requirements for generation of trade confirms. As stated above, upon implementation of RTTM, the Purchase and Sale Report will continue to be produced twice daily listing matched trades. Participants will, however, have received notice of trade input matching prior to the production of the Purchase and Sale report by means of the RTTM Compare Reports. To enable participants to rely upon the results of the RTTM processing, MBSCC is amending its rules so that the RTTM Compare Reports constitute sole and binding trade confirmation of trade input. Since the Purchase and Sale Report covers the matching of clearing information (which is not covered by the RTTM processing and thus would not be reported in the RTTM Compare Reports), it will remain the sole and binding confirmation with respect to that information. The Purchase and Sale Report will remain the Rule 10b-10 compliant confirmation.

v. *Trade input submission by inter-dealer brokers (''IDBs''):* Certain RTTM trade input formats require that an IDB submit two separate transactions linked together by a common reference number per trade. Under the current trade submission format, IDBs submit two transactions on give-up trades: one identifying the buying dealer and one identifying the selling dealer. The rule on IDB trade input (currently Section 1 of Rule 3 of Article II) speaks generally in terms of trade input and does not specify the number of submissions required. MBSCC is modifying this rule to add a reference to MBSCC's Procedures, which will describe in detail the trade input submission requirements.

vi. *Retirement of maximum match mode:* MBSCC's Rules provide that each dealer must select a match mode to govern the comparison of that dealer's MBSCC-eligible transactions involving an IDB. The rules currently provide for three match modes: the ''exact match mode,'' the ''net position match mode,'' and the ''maximum match mode.'' [5] Upon implementation of the RTTM service, only the exact and net position match modes will be available. MBSCC is retiring the maximum match mode due to lack of participant demand for this option. The proposed rule change deletes all references to the maximum match mode.

vii. *Review of reports by participants:* MBSCC's Rules currently contain a provision that requires participants and limited purpose participants to review the reports that they receive from MBSCC. MBSCC is expanding the provision to cover any type of communication provided to participants by MBSCC and to require participants to inform MBSCC promptly, and in no event later than ten calendar days after receipt of the communication, if there is any error, omission, or other problem with respect to the communication. MBSCC believes that the ten-day timeframe will provide participants with a sufficient amount of time within which to detect problems in a communication from MBSCC.

viii. *New definitions:* MBSCC is adding to its definitions the following new terms: ''Real Time,'' ''RTTM Processing,'' ''RTTM Compare Report,'' ''RTTM Uncompare Report,'' and ''Report.'' Various amendments are made to existing definitions that are incidental to the changes described above.

ix. *Amendment to MBSCC's Schedule of Charges for IDBs:* MBSCC is proposing to amend its Schedule of Charges to give IDBs a service-fee based incentive to move to interactive messaging. MBSCC believes that it is important to offer the incentive to its IDB participants because their early participation is critical to a successful implementation of the RTTM service. From a dealer perspective, lack of participation by one or more of the IDBs severely dilutes the benefits dealers will gain from RTTM usage because a large percentage of the dealers' matching activity is against IDBs. The perception of reduced benefits could lead to delays in dealer participation and a protracted rollout process. Therefore, MBSCC is proposing to waive for a period of one year commencing with putting the RTTM service into production the $.25/side ''Give-Up Trade Create'' trade recording fee for IDBs that participate in MBSCC's ''beta'' (testing) phase of the RTTM service and that subsequently move to production.[6]

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of MBSCC.[7] The rule change, which allows MBSCC to implement real-time trade matching, should help MBSCC to reduce risk and provide more certainty by enabling firms to know earlier of any trades which do not compare and to have more time to resolve the problems. As a result, the proposed rule change should facilitate the prompt and accurate clearance and settlement of securities at MBSCC and should help MBSCC to protect the securities and funds in its possession or control or for which it is responsible. Therefore, the Commission finds that the rule change is consistent with Section 17A and the rules and regulations thereunder.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MBSCC–2001–02) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6936 Filed 3–21–02; 8:45 am]

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[5] The ''exact match mode'' means that trade input that matches in all other respects will be compared only if the par amount of the eligible securities reported to have been sold or purchased by the dealer for a particular transaction is identical to the par amount of a particular transaction reported by the broker. The ''net position match mode'' means that trade input that matches in all other respects will be compared only if the aggregate par amount of one or more transactions in eligible securities reported to have been sold or purchased by the dealer equals the aggregate par amount for one or more transactions reported by the broker. The ''maximum match mode'' means that trade input that matches in all other respects will be compared to the extent that the par amount of eligible securities reported to have been sold or purchased by the dealer does not exceed the aggregate par amount for one or more transactions reported by the broker with transactions reported by the broker in any excess par amount remaining uncompared.

[6] IDBs must be interactive in order to participate in the testing phase, which is scheduled to take place during the first quarter of 2002.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45559; File No. SR–NSCC–2001–17]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Revising Fees

March 14, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 17, 2001, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises NSCC's fee schedule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to revise certain fees.[3] Certain trade recording, trade comparison, and trade clearance fees are being reduced for services provided on and after January 1, 2002. Certain fixed income fees are being increased for services provided on and after January 1, 2002. A trade rejection fee for fixed income is being introduced for services provided on and after January 1, 2002. And, an account transfer rejects fee for the automated customer account transfer service (ACATS) is being introduced for services provided on and after March 1, 2002. Based upon estimated volume projections for 2002, it is anticipated that the overall effect on NSCC members of these changes will be to reduce fees paid to NSCC.

NSCC believes the proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among NSCC's particpants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC 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. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes and changes fees imposed by NSCC, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2).[5] 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 NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NSCC. All submissions should refer to the File No. SR–NSCC–2001–17 and should be submitted by April 12, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6935 Filed 3–21–02; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] [3]: NSCC's revised fee schedule is attached as Exhibit A to its filing.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45567; File No. SR–PCX–2001–23]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Pacific Exchange, Inc. To Adopt New Sanctioning Guidelines for Enforcing Compliance With the Exchange's Options Order Handling Rules

March 15, 2002.

I. Introduction

On December 26, 2001, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to adopt new sanctioning guidelines to assist the Exchange in enforcing compliance with its options order handling rules.[3] The proposed rule change was published for comment in the **Federal Register** on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The Exchange filed this proposed rule change pursuant to the requirements of Section IV.B.i of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange to adopt rules establishing, or modifying existing, sanctioning guidelines such that they are reasonably designed to effectively enforce compliance with options order handling rules. *See* Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3–10282 (''Order'').

February 13, 2002.[4] No comments were received on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

Currently, violations of the Exchange's firm quote, limit order display, and priority rules are treated as formal disciplinary actions and outside the scope of the Exchange's Minor Rule Plan (''MRP'').[5] Violations of trade reporting and best execution obligations, however, are generally handled pursuant to the Exchange's MRP. While the MRP provides general guidance with respect to fine levels to be imposed for each distinct violation, nothing in the MRP prohibits the Exchange from removing a single violation of these obligations from the MRP and enforcing it as a formal disciplinary matter. The Exchange may also initiate a formal disciplinary action if it deems that a member or member organization's conduct amounts to a pattern or practice with respect to violations of the rules covered by its MRP or if its conduct in even a single instance is particularly egregious.

The Exchange proposes to establish specific fine levels for disciplinary actions initiated as a result of violations of the Exchange's rules relating to firm quote (Rule 6.86), limit order display (Rule 6.55), obligations of market makers, priority (Rule 6.75), best execution (Rule 6.46), and trade reporting (Rule 6.69). The proposed sanctioning guidelines would be used by various Exchange bodies that adjudicate disciplinary actions, including the Ethics and Business Conduct Committee, the PCX Board of Governors, the PCX Surveillance and Enforcement Departments, for in-house adjudications (collectively, ''Adjudicatory Bodies''), in determining appropriate remedial sanctions. The proposal lists general principles that would be considered by the Adjudicatory Bodies in connection with the imposition of sanctions in all cases.[6] The proposed guidelines provide both a range of fines as well as non-monetary sanctions that could be assessed against offending members. Fine amounts would differ depending on the number of disciplinary actions that have been brought by the Exchange against the particular member or member organization.[7] The proposed guidelines would also allow for non-monetary sanctions such as suspension, expulsion, or other sanctions in egregious cases.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with Section 6(b)(6) of the Act,[10] which requires that the rules of an exchange provide that its members be appropriately disciplined for violations of exchange rules, the Act, and rules and regulations thereunder, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

Moreover, the Commission notes that the Exchange submitted a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where such violations are identified through the Exchange's automated surveillance systems[11]. The Commission believes that the compliance thresholds proposed in this letter provide a reasonable first step and should assist the Exchange in disciplining its members for violations of the Exchange's order handling rules. The Commission expects, however, that as compliance rates improve, the Exchange will adjust the compliance thresholds accordingly. Consequently, the Commission's approval of the proposed rule change is contingent on the Exchange providing notice to the Commission's Office of Compliance Inspections and Examinations of any future changes to this letter, and to any other sanctioning guidelines not codified in the Exchange's rules.

At this time, the Commission believes the proposed sanctioning guidelines are reasonably designed to effectively enforce compliance with the options order handling rules. Nevertheless, the Commission expects the Exchange to continue to evaluate the adequacy of the proposed sanctioning guidelines to determine whether they do, in fact, effectively enforce compliance with the options order handling rules.[12]

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–PCX–2001–23) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6894 Filed 3–21–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45578; File No. SR–PCX–2001–50]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Exchange, Inc. Relating to Rules on Collective Actions of Market Makers

March 15, 2002.

I. Introduction

On December 13, 2001, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'')

[4] *See* Securities Exchange Act Release No. 45416 (February 7, 2002), 67 FR 6777.

[5] *See* PCX Rule 10.13.

[6] The Exchange submitted to the Commission a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where the violations are identified through the Exchange's automated surveillance system. *See* letter from Hassan A. Abedi, Manager, Enforcement, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 21, 2001.

[7] When determining whether an action is the first disciplinary action, the Adjudicatory Body would consider disciplinary actions with respect to violative conduct that occurred within the two years prior to the misconduct at issue. Recent acts of similar misconduct may be considered to be aggravating factors. For purposes of the proposed rule change, this two-year look-back provision would apply on a rolling basis. Telephone conversation between Hassan A. Abedi, Manager, Enforcement, PCX, and Sonia Patton, Special Counsel, Division, Commission, on February 6, 2002.

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(6).

[11] See supra note 6.

[12] The Commission's examination staff will also monitor the application of these guidelines to determine whether they do, in fact, improve member compliance with the options order handling rules.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

submitted to the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to collective actions of market makers. The **Federal Register** published the proposed rule change for comment on February 12, 2002.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of Proposal

The Exchange has submitted the proposed rule change pursuant to subparagraph IV.B.j of the Commission's September 11, 2000 Order,[4] which requires in part that certain options exchanges, including the PCX, adopt new, or amend existing, rules to make express any practice or procedure whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class. The Exchange is proposing to amend PCX Rule 6.37 (''Obligation of Market Makers'') by adding a new subsection (e) to be entitled, ''Prohibited Practices and Procedures.'' Proposed subsection (e)(1) would state that any practice or procedure whereby market makers trading any particular option issue determine by agreement the spreads or option prices at which they will trade that issue is prohibited, subject to three exceptions set forth in proposed PCX Rule 6.37(f), which are described below.

Subsection (1) to proposed PCX Rule 6.37(f) would permit the Lead Market Maker (''LMM'') to receive input from the members of the trading crowd on the variables of the formula the LMM uses to generate automatically updated market quotations in each option issue, but the members of the crowd would not be required to provide feedback. In addition, it would be within the LMM's sole discretion to make the final independent decision regarding the variables to be used in operating the automated quotation system. Finally, subsection (1) would state that LMMs using Exchange-approved proprietary automated quotation updating systems are not required to disclose proprietary information concerning the variables used by those systems.

Subsection (2) of proposed PCX Rule 6.37(f) would state that the obligation of market makers to make competitive markets would not preclude the LMM and members of the trading crowd from making a collective response to a request for a market, provided the member representing the order requests such a response in order to fill a large order. A large order would be defined as an order for a number of contracts that is greater than the eligible order size for automatic execution pursuant to PCX Rule 6.87.

Subsection (3) of proposed PCX Rule 6.37(f) would state that in conjunction with their obligations as a responsible broker or dealer pursuant to PCX Rule 6.86 and SEC Rule 11Ac1–1,[5] the LMM and market makers in the trading crowd may collectively agree to the best bid, best offer and aggregate quotation size required to be communicated to the Exchange pursuant to PCX Rule 6.86(c).

The Exchange is also proposing a similar change to PCX Rule 6.82 (''Obligations of Lead Market Makers'') by adding new subsection (c)(8), which would provide that LMMs are responsible for establishing the variables in the formula used to generate automatically updated quotations in each option issue or series. It would also permit the LMM to disclose the autoquote variables to the members of the trading crowd.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] Specifically, the Commission believes that the proposed rule change is consistent with the Section 6(b)(8)[7] requirement that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the Act.

The Commission believes that the proposed rule change should deter collective action on the part of Exchange members by clearly establishing in the Exchange's rules that options market makers are prohibited from determining by agreement the spreads or option prices at which they will trade an issue, subject to certain specified exceptions that the Commission herein approves.[8] For instance, the proposal would permit LMMs to receive input from members of the crowd in setting the parameters of the formula used to automatically update options quotations. At this time, the Commission believes it is reasonable for the Exchange's rules to permit members of the crowd to be given a voice in setting autoquote parameters because, pursuant to the Exchange's rules, they will be obligated to execute orders at the resultant quote.

In addition, the proposed rule change would permit the LMM and members of the crowd to make a collective response to a request to fill a large order, provided that a collective response is requested. The Commission believes that this exception recognizes the desire of the marketplace to provide a single price to a request to fill a large order that a single member would not be able to fill. The Commission believes that any anticompetitive effect of this exception is limited by requiring that there be a member's specific request for a single price and that the order be sufficiently large. In addition, the Commission notes that notwithstanding this exception, a single crowd participant may voice a bid or offer independently from, and differently from, the LMM and other members of a trading crowd.

Finally, the Commission finds that the proposed rule change is designed to effectively limit the circumstances in which collective action is permissible.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–PCX–2001–50) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6903 Filed 3–21–02; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 45392 (February 5, 2002), 67 FR 6567.

[4] *See* Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

[5] 17 CFR 240.11Ac1–1.

[6] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(8).

[8] The Commission expects the Exchange to monitor the collective actions that are undertaken pursuant to the rule change approved herein for any undesirable or inappropriate anticompetitive effects. The Commission's examination staff will monitor the Exchange's efforts in this regard.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45575; File No. SR–Phlx–2001–25]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Exchange's Auto-Quote System

March 15, 2002.

I. Introduction

On March 5, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the Exchange's Auto-Quote System. The Phlx submitted amendments to the proposed rule change on August 29, 2001 [3] and October 31, 2001.[4] The **Federal Register** published the proposed rule change and Amendment Nos. 1 and 2 for comment on November 23, 2001.[5] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended.

II. Description of Proposal

The Phlx proposes to amend Commentary .01 to Exchange Rule 1080 to add language providing an enhanced description of Auto-Quote, the Exchange's electronic options pricing system and to permit the specialist to consult with the trading crowd in setting Auto-Quote parameters.

On September 11, 2000, the Commission issued an order [6] that requires in part that the Phlx adopt new, or amend existing, rules to include any practice or procedure, not currently authorized by rule, whereby market makers determine by agreement the spreads or option prices at which they will trade any option class.[7] The Exchange submitted the proposed rule change pursuant to this undertaking.

The proposed rule change would incorporate a more thorough description of Auto-Quote into Exchange rules. First, it would describe its various pricing models, inputs, and parameters. Second, it would provide that specialists may establish a specialized proprietary connection (''specialized quote feed'') that by-passes the Auto-Quote system. Finally, it would provide that while the specialist selects the pricing model and inputs for Auto-Quote, he or she may (but is not required to and may, for proprietary business reasons, determine not to) consult with the trading crowd on the pricing model and the inputs to be used. The proposed rule change also provides that if the specialist consults with one member of the crowd, all members of the crowd present must be given the opportunity to provide input.[8] However, members of the trading crowd would not be required to provide input to the specialist in setting Auto-Quote parameters.[9]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] Specifically, the Commission believes that the proposed rule change is consistent with the section 6(b)(8) [11] requirement that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the proposed rule change should deter collective action, except as authorized by the Exchange's rules, by clearly establishing in the Exchange's rules the responsibilities of, and conduct permitted by, Exchange members in setting Auto-Quote parameters.[12] For instance, the proposal would permit specialists to receive input from members of the crowd in setting the parameters of the formula used to automatically update options quotations. The Commission believes it is reasonable for the Exchange's rules to permit the members of the crowd to be given a voice in setting autoquote parameters because, pursuant to the Exchange's rules, they will be obligated to execute orders at the resultant quote. Finally, the Commission finds that the proposed rule change is designed to effectively limit the circumstances in which collective action is permissible.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Phlx–2001–25) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6896 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 28, 2001 (''Amendment No. 1'').

[4] Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated October 30, 2001 (''Amendment No. 2'').

[5] Securities Exchange Act Release No. 45060 (November 15, 2001), 66 FR 58771.

[6] *See* Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000) (''Order'').

[7] *See* Section IV.B.j. of the Order.

[8] *See* Amendment No. 1, *supra* note 3. Among other things, Amendment No. 1: (i) states the reasons why a specialist would wish to consult with the trading crowd about specific Auto-Quote parameters; (ii) clarifies that if a specialist decides to consult with one member of the trading crowd about the Auto-Quote parameters, all members of the crowd that are present at the time must be given the opportunity to consult; and (iii) revises proposed Commentary .01(b)(ii) to Phlx Rule 1080 to state that the specialist may determine which model to select per option, not per series, as previously stated.

[9] *See* Amendment No. 2, *supra* note 4. Amendment No. 2 revises the text of proposed Commentary .01(b)(ii) to Phlx Rule 1080 to clarify that where the specialist determines to consult with and/or agree with the trading crowd with respect to selecting the Auto Quote System model or setting the parameters, members of the trading crowd are not required to provide input to the specialist about these decisions.

[10] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(8).

[12] The Commission expects the Exchange to monitor the collective actions that are undertaken pursuant to the rule change approved herein for any undesirable or inappropriate anticompetitive effects. The Commission's examination staff will monitor the Exchange's efforts in this regard.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45570; File No. SR–Phlx–2001–114]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Aggregation of Individual Violations of Exchange Order Handling Rules and Option Floor Procedure Advices

March 15, 2002.

I. Introduction

On December 18, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to

Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 960.2(f) and Exchange Rule 970 to permit the Exchange to aggregate, or ''batch,'' individual violations of Exchange order handling rules and Option Floor Procedure Advices (''OFPAs'') and consider such ''batched'' violations as a single offense.[3] The proposed rule change was published for comment in the **Federal Register** on February 14, 2002.[4] On March 8, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[5] No comments were received on the proposed rule change. This order approves the proposed rule change on an accelerated basis and issues notice of filing and grants accelerated approval to Amendment No. 1.

II. Description of the Proposal

The proposed rule change would clarify that the Exchange may consider multiple numbers of violations of order handling rules and OFPAs[6] as one single offense, where automated surveillance is available,[7] for purposes of initiating disciplinary action under Exchange rules, or imposing fines pursuant to fine schedules set forth in the relevant OFPAs under the Exchange's Minor Rule Plan. Such aggregation of order handling violations would enable the Exchange's Market Surveillance Department to identify, through exception reporting,[8] members and member organizations that fail to meet acceptable compliance thresholds for such rules and OFPAs, and to determine whether to impose fines pursuant to the Exchange's Minor Rule Plan or refer the matter to the Business Conduct Committee (''BCC'') for consideration of formal disciplinary action.[9] In addition, as an alternative to aggregation, the Exchange may refer violations to the BCC for possible disciplinary action when the Exchange determines that there exists a pattern or practice of violative conduct without exceptional circumstances or when any single instance of violative conduct without exceptional circumstances is deemed to be egregious.[10]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with Section 6(b)(6) of the Act,[13] which requires that the rules of an exchange provide that its members be appropriately disciplined for violations of exchange rules, the Act, and rules and regulations thereunder, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

Moreover, the Commission notes that the Exchange submitted a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where such violations are identified through the Exchange's automated surveillance systems.[14] The Commission believes that the compliance thresholds proposed in this letter provide a reasonable first step and should assist the Exchange in disciplining its members for violations of the Exchange's order handling rules. The Commission expects, however, that as compliance rates improve, the Exchange will adjust the compliance thresholds accordingly. Consequently, the Commission's approval of the proposed rule change is contingent on the Exchange providing notice to the Commission's Office of Compliance Inspections and Examinations of any future changes to this letter, and to any other sanctioning guidelines not codified in the Exchange's rules.

At this time, the Commission believes the proposed sanctioning guidelines are reasonably designed to effectively enforce compliance with the options order handling rules. Nevertheless, the Commission expects the Exchange to continue to evaluate the adequacy of the proposed sanctioning guidelines to determine whether they do, in fact, effectively enforce compliance with the options order handling rules.[15]

Furthermore, the Commission finds good cause for accelerating approval of the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that the proposed rule change was noticed for the full comment period and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange filed this proposed rule change in accordance with the provisions of Section IV.B.i of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange to adopt rules establishing, or modifying existing, sanctioning guidelines such that they are reasonably designed to effectively enforce compliance with options order handling rules. *See* Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3–10282 (''Order'').

[4] *See* Securities Exchange Act Release No. 45421 (February 7, 2002), 67 FR 6961.

[5] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 7, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange clarified that ''batching'' of violations can occur only where the Exchange uses automated surveillance to detect violations.

[6] Specifically, the Exchange proposes, pursuant to its Numerical Criteria for Bringing Cases for Violations of Phlx Order Handling Rules, to ''batch'' violations of Exchange Rule 1051 (concerning the requirement that a member or member organization initiating an options transaction must report or ensure that the transaction is reported within 90 seconds of execution); Exchange Rule 1082 (concerning the requirement that quotes be firm for both price and size, and the requirement that marketable orders received in a size greater than the disseminated size be executed in their entirety or up to the disseminated size within 30 seconds); OFPA A–1 (concerning the requirement that a specialist use due diligence to ensure that the best available bid and offer is displayed for those option series in which he is assigned); OFPA F–2 (the aforementioned 90-second trade reporting requirement under the Exchange's Minor Rule Plan); and other OFPAs.

[7] *See supra* note 4.

[8] *Id.*

[9] The Exchange submitted to the Commission a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where the violations are identified through the Exchange's automated surveillance system. *See* letter from Anne Exline Starr, First Vice President Regulatory Group, Phlx, to John McCarthy, Associate Director, Office of Compliance, Inspections and Examinations (''OCIE''), Commission, and Deborah Lassman Flynn, Assistant Director, Division, Commission, dated January 30, 2002. The Exchange has informed OCIE that it will begin automated surveillance for trade reporting violations no later than April 15, 2002. In the interim period, OCIE will continue to evaluate the Exchange's surveillance, investigatory, and enforcement process to ensure that the Phlx is adequately surveilling and enforcing member compliance with its trade reporting requirements.

[10] In the event that the Exchange discovers through investigation that a single violation or a pattern or practice of violations of Exchange order handling rules is the result of intentional conduct on the part of a member organization, nothing would preclude the Exchange from referring such a matter directly to the Business Conduct Committee for possible disciplinary action.

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(6).

[14] *See supra* note 9.

[15] The Commission's examination staff will also monitor the application of these guidelines to determine whether they do, in fact, improve member compliance with the options order handling rules.

the Commission is accelerating approval of the filing on the twenty-ninth day after publication of the proposed rule change in the **Federal Register**. The Commission believes that accelerated approval will permit the Exchange to implement, and investors to benefit from, the proposed rule change without undue delay. Amendment No. 1 clarifies that ''batching'' of violations can occur only where the Exchange uses automated surveillance to detect violations. In addition, the Commission notes that it received no comments on the proposed rule change. For these reasons, the Commission finds good cause exists, consistent with Sections 6(b)(5)[16] and 19(b)(2) of the Act,[17] to approve the proposed rule change and Amendment No. 1 thereto on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to file number SR–Phlx–2001–114 and should be submitted by April 12, 2002.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–Phlx–2001–114) and Amendment No. 1 thereto are approved on an accelerated basis.

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(2).

[18] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6897 Filed 3–21–02; 8:45 am]

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[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45569; File No. SR–Phlx–2001–60]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Adopting Sanctioning Guidelines for Violations of the Exchange's Order Handling Rules

March 15, 2002.

I. Introduction

On May 31, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new sanctioning guidelines to assist the Exchange in enforcing compliance with its options order handling rules.[3] On December 18, 2001, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on February 13, 2002.[5] No comments were received on the proposed rule change. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposes to adopt sanctioning guidelines (''Guide'') to assist the various individuals involved in the Exchange's enforcement process, including the Exchange's BCC, by recommending ranges of monetary sanctions to be applied to violations of certain Exchange rules and Option Floor Procedure Advices (''OFPAs''). The Guide covers certain offenses related to the trading of options on the Exchange trading floor, with particular emphasis on options order handling rules.[6] The Guide is proposed as an internal document to be used by the BCC, hearing panels, and the Board of Governors (''Adjudicatory Bodies'') in determining appropriate sanctions to be imposed in formal disciplinary proceedings. The Exchange's enforcement staff may also refer to the Guide in negotiating settlements.

The Exchange has drafted the Guide with an introduction and matrices. The introduction explains the purpose and intent of the Guide and presents an overview of the Exchange's enforcement program, including a description of factors to be considered when sanctioning misconduct in disciplinary proceedings. The matrices cover the Exchange's options order handling rules. Each matrix outlines recommended monetary sanction ranges and specific factors for consideration when a particular options order handling rule has been violated.[7] The proposed Guide would also allow for non-monetary sanctions, such as suspension, expulsion, or other sanctions in egregious cases. The matrices are also arranged by subject matter and trading floor participant (floor broker, registered options trader, specialist).

The proposed Guide would cover only matters brought before the Exchange's BCC, which has jurisdiction over disciplinary actions pursuant to Exchange By-law Article X, Sec. 10–11

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange filed this proposed rule change pursuant to the provisions of Section IV.B.i of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange to adopt rules establishing, or modifying existing, sanctioning guidelines such that they are reasonably designed to effectively enforce compliance with options order handling rules. See Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3–10282 (the ''Order'').

[4] *See* letter from Linda S. Christie, Counsel, Phlx, to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 17, 2001 (''Amendment No. 1''). In Amendment No. 1, the Exchange amended Phlx Rule 960.10(a) to incorporate the Exchange's Enforcement Sanction Guide by reference into the Exchange's rules. The proposed new language requires the Exchange's Business Conduct Committee (''BCC'') to refer to the Enforcement Sanction Guide for factors to be considered and appropriate sanctions when imposing disciplinary sanctions for violations of the Exchange's option order handling rules.

[5] *See* Securities Exchange Act Release No. 45415 (February 7, 2002), 67 FR 6781.

[6] In addition to filing this proposed Guide, the Exchange has submitted another proposed rule change to adopt guidelines to be used in determining when it is appropriate to aggregate violations of the Exchange's options order handling rules. See Securities Exchange Act Release No. 45421 (February 7, 2002), 67 FR 6961 (February 13, 2002) (SR-Phlx-2001–114).

[7] The Exchange informed Commission staff that the Adjudicatory Bodies would be permitted to consider the entire disciplinary history of the member and, in any event, would be required to consider all violations within the past three years. Telephone conversation between Linda Christie, Counsel, Phlx, and Sonia Patton, Special Counsel, Division, Commission, on March 8, 2002.

and Exchange Rule 960.1. The Guide would not apply to violations charged under the Exchange's minor rule violation enforcement and reporting plan, which consists of Exchange Rule 970 and the corresponding OFPA.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with Section 6(b)(6) of the Act,[10] which requires that the rules of an exchange provide that its members be appropriately disciplined for violations of exchange rules, the Act, and rules and regulations thereunder, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

At this time, the Commission believes the proposed sanctioning guidelines are reasonably designed to effectively enforce compliance with the options order handling rules. Nevertheless, the Commission expects the Exchange to continue to evaluate the adequacy of the proposed sanctioning guidelines to determine whether they do, in fact, effectively enforce compliance with the options order handling rules.[11]

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–2001–60), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6900 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(6).

[11] The Commission's examination staff will also monitor the application of these guidelines to determine whether they do, in fact, improve member compliance with the options order handling rules.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45581; File No. SR–Phlx–2002–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Amending Existing Exchange Rules and Options Advices To Eliminate References to Fractional Pricing

March 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 14, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') 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 by the Phlx. The Phlx submitted an amendment to the proposed rule change on March 8, 2002.[2] 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

The Exchange proposes to amend certain Phlx rules and Phlx Options Floor Procedure Advices and Order and Decorum Regulations (''Options Advices''), to remove references to fractional pricing. The text of the proposed rule change is available at the Commission and the Phlx.

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 Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend certain existing Exchange rules and Options Advices to delete references to fractions and dual pricing in fractions and in decimals. Although references in Exchange rules to both fractional and decimal pricing were necessary during the phase-in period of decimalization since June of 2000, such references are no longer needed after full, industry-wide implementation of decimal pricing as a result of which all equity and option products are now quoted only in decimals.

In June 2000, the Commission reviewed the Decimals Implementation Plan (''Decimals Plan'')[3] submitted by the National Association of Securities Dealers and the national securities exchanges. The Decimals Plan proposed a Minimum Price Variation (''MPV'') of $.01 for equities, and an MPV of $.05 for options trading under $3.00 and $.10 for options trading at $3.00 or higher, which the Exchange implemented in Phlx Rules 125 and 1034 (''MPV rules'').[4] Because decimals pricing was instituted in several phases in the years 2000 and 2001, during which time securities were quoted in both fractional and decimal prices, the Exchange modified its MPV rules and various other rules to include references to both fractional and decimal pricing. After the implementation of full, industry-wide decimalization such that all securities now quote in decimals, references to

[1] 15 U.S.C. 78s(b)(1).

[2] The Phlx submitted a new Form 19b–4, which replaces and supersedes the original filing in its entirety.

[3] *See* Securities Exchange Release No. 42914 (June 8, 2000), 65 FR 38101 (June 19, 2000).

[4] *See* Securities Exchange Act Release No. 43421 (October 6, 2000), 65 FR 61207 (October 16, 2000). The Exchange has indicated that it believes the MPV for equities should be $.05 and not the current $.01 MPV. *See* Phlx Decimal Pricing Impact Study for Equities and Options (September 7, 2001) and Phlx comment letter to Commission sub-pennies concept release S7–14–01 (November 19, 2001), wherein Phlx suggested that the investing public and the markets would be best served by mandating a nickel MPV for equity trading. For competitive reasons, however, the Exchange intends to continue the penny MPV for equities, and the nickel/dime MPV for options. The Exchange therefore reaffirms the MPVs currently in its rules: $.01 for equities (Rule 125), and $.05 for equity and index options and Exchange-Traded Fund Shares quoting under $3.00 and $.10 for those quoting at $3.00 or higher (Rule 1034).

fractions and dual pricing in fractions and in decimals are no longer necessary in Phlx rules.

The Exchange therefore proposes to delete references to fractions and dual pricing from the following Phlx Rules of the Board of Governors:[5] 125, Variations in Bids and Offers; 229, Philadelphia Stock Exchange Automated Communication and Execution System; 245, Terms of Offering on Tape; 307 ''Part-Paid'' Securities; and 803 Criteria for Listing—Tier I.

The Exchange proposes to delete references to fractions and dual pricing from the following Phlx options rules: 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders; 1015 Quotation Guarantees; 1034 Minimum Trading Increments; 1079 FLEX Index and Equity Options;[6] 1080 Philadelphia Stock Exchange Automated Options Market (''AUTOM'') and Automatic Execution System (''AUTO–X'');[7] and 1033A, Meaning of Premium Bids and Offers.

The Exchange proposes to delete references to fractions and dual pricing from the following Options Advises: A–9, All-or-None Option Orders; A–11, Responsibility to Fill Customer Orders; and F–6, Option Quote Parameters.[8]

An example of the non-substantive changes proposed is that the language of Exchange Rules 125 and 1034 will be modified to eliminate references to fractional increments so that the remaining language will refer only to quoting in decimals. A further example is that references to fractional pricing in Exchange Rule 1080(c)(i)(C) will be eliminated so that the example of a crossed trade in the rule that currently reflects fractional pricing (2⅛ bid, 2 asked) would reflect only decimal pricing (2.10 bid, 2 asked).

According to the Exchange, the proposed amendments are non-substantive, technical changes for the purpose of conforming Exchange rules to the development of full decimalization in the securities industry.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[10] in general, and with Section 6(b)(5),[11] in particular, in that it promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule, as amended, will impose any inappropriate 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 were either solicited or received.

I. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx 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 written 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 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–05 and should be submitted by April 12, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6939 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

[5] The Exchange's Rules of the Board of Governors (numbered between 1 and 1000) are applicable to equity trading. By virtue of Phlx Rule 1000, they are also applicable to options trading except to the extent that specific options rules (numbered 1000 et. seq.) govern or unless the context otherwise requires.

[6] FLEX options are customized index options that trade on the Phlx as well as on other exchanges.

[7] AUTOM is the Exchange's electronic order routing, delivery, execution, and reporting system for equity and index options. AUTO–X, the automatic execution feature of AUTOM, automatically executes eligible public customer market and marketable limit orders in equity and index options.

[8] In addition, subsequent to an amendment of the joint exchange Intermarket Trading System (''ITS'') Plan to remove references to fractional pricing, Phlx intends to modify its Rule 2001, Intermarket Trading System, to delete such references. Phlx and the other ITS participants have substantially similar rules implementing the ITS Plan.

[9] Certain Phlx rules, such as Rule 650, Mandatory Participation in Decimalization Testing, and Rule 134, Decimal Pricing, expired automatically upon the full, industry-wide implementation of decimal pricing, and do not require any rule change.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45580; File No. SR–Phlx–2002–18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Make Permanent a PACE Automatic Price Improvement Pilot Program and a PACE Order Execution and Price Protection Pilot Program

March 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, notice is hereby given that on March 11, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') 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 by the Exchange. The Exchange has requested accelerated approval of the proposed rule change. The Commission is publishing this notice to solicit comments on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make permanent two Philadelphia Stock Exchange Automated Communication and Execution System (''PACE'')[3] pilot programs that were introduced with the advent of decimal pricing in the securities industry. The first PACE pilot program, which is found in Supplementary Material .07(c)(i) to Phlx Rule 229, consists of an automated price improvement feature that incorporates a percentage of the spread between the bid and the offer (''Price Improvement Pilot''). It has been in effect since January 30, 2001.[4]

The second PACE pilot program, which is found in Supplementary Material .05 and .07(c)(ii) to Phlx Rule 229, incorporates immediate execution of certain market orders through the Public Order Exposure System (''POES'') and mandatory double-up/double-down price protection (''Order Execution/Price Protection Pilot''). It has been in effect since August 25, 2000.[5]

The Phlx is not making any changes to the Price Improvement Pilot or the Order Execution/Price Protection Pilot, with the exception of deleting language that indicates that they are pilot programs. Upon approval of the proposed rule change, the Price Improvement Pilot and the Order Execution/Price Protection Pilot will be permanent. The text of the proposed rule change is available at the Phlx and at the Commission.

[3] PACE is the Phlx's automated order routing, delivery, execution and reporting system for equities.

[4] The price improvement pilot program was established in SR–Phlx–2001–12. *See* Securities Exchange Act Release No. 43901 (January 30, 2001), 66 FR 8988 (February 5, 2001) (SR–Phlx–2001–12). It was extended several times, currently through April 15, 2002. *See* Securities Exchange Act Release Nos. 44672 (August 9, 2001), 66 FR 43285 (August 17, 2001)(SR–Phlx–2001–67); 45078 (November 19, 2001), 66 FR 59293 (November 27, 2001) (SR–Phlx–2001–101); and 45284 (January 15, 2002), 67 FR 3253 (January 23, 2002) (SR–Phlx–2002–01).

[5] The order execution and price protection pilot program was established in SR–Phlx–00–08. *See* Securities Exchange Act Release No. 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000). It was extended several times, currently through April 15, 2002. *See* Securities Exchange Act Release Nos. 44185 (April 16, 2001), 66 FR 20511 (April 23, 2001)(SR–Phlx–2001–20); 44818 (September 19, 2001), 66 FR 49240 (September 26, 2001)(SR–Phlx–2001–81); 45079 (November 19, 2001), 66 FR 59292 (November 27, 2001)(SR–Phlx–2001–102); and 45295 (January 16, 2002), 67 FR 3624 (January 24, 2002) (SR–Phlx–2002–03).

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 Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx proposes to make permanent the Price Improvement Pilot and the Order Execution/Price Protection Pilot. No other changes are proposed to these pilot programs.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act[6] in general, and in particular, with Section 6(b)(5),[7] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by providing for automatic price improvement and automatic execution of certain market orders and mandatory double-up/double-down price protection for equities traded over the PACE system on a permanent basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate 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 were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange 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.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

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 Exhange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–18 and should be submitted by April 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6940 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending March 8, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–11783
Date Filed: March 6, 2002

Parties: Members of the International Air Transport Association
Subject:
PTC2 EUR–AFR 0146 dated 22 February 2002
TC2 Europe-Africa Expedited Resolutions r1–r6
PTC2 EUR–AFR 0147 dated 1 March 2002
TC2 Europe—Africa Resolutions r7–r47
Minutes—PTC2 EUR–AFR 0145 dated 22 February 2002
Tables—PTC2 EUR–AFR Fares 0094 dated 1 March 2002
Intended effective dates: 1 April 2002, 1 May 2002

Docket Number: OST–2002–11784
Date Filed: March 6, 2002
Parties: Members of the International Air Transport Association
Subject:
PTC2 AFR 0115 dated 19 February 2002
TC2 Within Africa Expedited Resolutions 015v, 017c
PTC2 AFR 0117 dated 26 February 2002
TC2 Within Africa Resolutions r3–r30
Minutes—PTC2 AFR 0116 dated 22 February 2002
Tables—PTC2 AFR Fares 0043 dated 1 March 2002
Intended effective dates: 1 April 2002, 1 May 2002

Docket Number: OST–2002–11793
Date Filed: March 7, 2002
Parties: Members of the International Air Transport Association
Subject:
PTC12 NMS–AFR 0129 dated 1 March 2002
TC12 South Atlantic-Africa Expedited Resolutions r1–r4
PTC12 NMS–AFR 0131 dated 1 March 2002
TC12 South Atlantic-Africa Resolution 002d r5
Intended effective dates: 15 April 2002, 30 April 2002

Docket Number: OST–2002–11794
Date Filed: March 7, 2002
Parties: Members of the International Air Transport Association
Subject:
PTC12 NMS–AFR 0128 dated 1 March 2002
North Atlantic-Africa Expedited Resolutions r1–r5
PTC12 NMS–AFR 0130 dated 1 March 2002
North Atlantic-Africa Expedited Resolutions 002a r6
Intended effective dates: 15 April 2002, 30 April 2002

Docket Number: OST–2002–11803
Date Filed: March 7, 2002
Parties: Members of the International Air Transport Association
Subject:
Mail Votes 203 and 204
PTC12 NMS–ME 0156 dated 6 February 2002
TC12 Mid Atlantic-Middle East Resolutions r1–r10
PTC12 NMS–ME 0157 dated 6 February 2002
TC12 South Atlantic-Middle East Resolutions r11–r20
PTC12 NMS–ME 0164 and 0165 dated 1 March 2002
Adoption of Mail Votes 203 and 204
Minutes—PTC12 NMS–ME 0160 dated 15 February 2002 filed with Docket OST 2002–11699
Tables—PTC12 NMS-Fares 0090 dated 5 March 2002
PTC12 NMS-Fares 0091 dated 5 March 2002
Intended effective dates: 1 April 2002

Andrea M. Jenkins,
Federal Register Liaison.
[FR Doc. 02–6965 Filed 3–21–02; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary; Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending March 8, 2002

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1997–2911.
Date Filed: March 6, 2002.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 27, 2002.
Description: Application of United Air Lines, Inc., pursuant to 49 U.S.C. Sections 41102, 41108 and Subpart B, requesting renewal of its experimental certificate of public convenience and necessity for Route 747, to engage in scheduled foreign air transportation of persons, property, and mail between a point or points in the United States, the intermediate point Frankfurt, Germany, and the coterminal points Johannesburg and Cape Town, South Africa, and beyond South Africa to Harare, Zimbabwe.

Andrea M. Jenkins,
Federal Register Liaison.
[FR Doc. 02–6966 Filed 3–21–02; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2001–9854]

Notice of Alternative Policy Options for Managing Capacity at LaGuardia Airport and Proposed Extension of the Lottery Allocation; Notice of Comment Period Closing Date

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of comment period closing date.

SUMMARY: This action establishes a new closing date for the comment period for Phase II of the notice ''Alternative Policy Options for Managing Capacity at LaGuardia Airport and Proposed Extension of the Lottery Allocation.'' The FAA indefinitely suspended the closing date for the comment period for Phase II after the terrorist attacks on September 11, 2001.

ADDRESSES: Comments should be mailed or delivered in duplicate to: U.S. Department of Transportation Dockets, Docket No. FAA–2001–9854, 400 Seventh Street, SW, Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following Internet address: DMS.dot.gov. Comments may be filed and/or examined in Room Plaza 401 between 10:00 a.m. and 5:00 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Wharff, Senior Economist, Office of Aviation Policy and Plans, 800 Independence Avenue, SW, Washington, DC 20591; telephone number 202–267–7035.

Background

On June 12, 2001, the FAA published a notice in the **Federal Register** seeking comments on a proposed extension of the slot exemption lottery allocation (Phase I) and several demand management options for LaGuardia Airport (Phase II) (66 FR 31731). Specifically, with respect to Phase II, the FAA sought comments on the feasibility and effectiveness of five different demand management options that could be used to replace the current temporary administrative limits on the

number of aircraft operations at LaGuardia Airport (LGA). These five demand management options include both administrative and market-based approaches to allocate capacity. The details of each approach are described in the notice and can be accessed electronically through the following URL: *http://api.hq.faa.gov/lga/index.htm*.

Following the aircraft hijackings and terrorist attacks on September 11, 2001, the FAA temporarily ceased all non-military flights in the United States and required the adoption of certain security measures prior to the resumption of commercial air service. Several air carriers reduced flight schedules below previously planned levels throughout the national airport system, including LGA, in order to adjust to operational changes brought on by the new security requirements and reductions in passenger demand. Given these events, the FAA suspended, by notice issued on October 12, 2001, the closing date for the comment period on Phase II until further notice (66 FR 52170). The FAA indicated in that notice that at a later date it would publish a notice setting forth the new closing date and indicate whether the scope or nature of the demand management options under consideration have changed.

Current Action

Utilization rates of slot and slot exemptions at LGA are currently below last year's levels by approximately 14 percent. However, based on projected airline schedules for LGA, it appears that operations at LGA should return to their pre-September, 2001 levels by the end of the summer of 2002. Consequently, the FAA believes that it is appropriate to resume the discussion on long-term demand management alternatives for LGA.

Additionally, several recent actions may affect commenters' view of the identified demand management options, such as the attacks of September 11, the Port Authority of New York and New Jersey's rate increase for LGA, John F. Kennedy International Airports and Newark International Airport, and the shift in fleet mix resulting in an increase number of regional jet operations at LGA since September 11. The FAA invites comments on the long-term effects of these actions on the stated options. Therefore, the comment period for Phase II will close 90 days from the publication date of this notice.

Issued on March 18, 2002 in Washington, DC.

John M. Rodgers,

Director of the Office of Aviation Policy and Plans.

[FR Doc. 02–6973 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development (R,E&D) Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development (R,E&D) Advisory Committee.

AGENCY: Federal Aviation Administration.

ACTION: Notice of meeting.

Name: Research, Engineering & Development Advisory Committee.

Time and Date: April 23—9 a.m.–5 p.m.; April 24—10 a.m.–3 p.m.

Place: Holiday Inn Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia 22209.

Purpose: The meeting agenda will include receiving recommendations from the standing Subcommittees or FAA's research and development investments in the areas of air traffic services, airports, aircraft safety, security, human factors and environment and energy.

Attendance is open to the interested public but limited to space available. Persons wishing to attend the meeting or obtain information should contact Gloria Dunderman (*gloria,ctr.dunderman@faa.gov*) at the Federal Aviation Administration, AAR–200, 800 Independence Avenue, SW., Washington, DC 20591 (202) 267–8937. Please inform us if you are in need of assistance or require a reasonable accommodation for this meeting.

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on March 18, 2002.

Herman A. Rediess,

Director, Office of Aviation Research.

[FR Doc. 02–6969 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 186 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B).

DATES: The meeting will be held April 8–12, 2002 starting at 9:00 am.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW, Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC 20035; telephone (202) 833–9339; fax (202 833–9434; web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 186 meeting. *Note: Special working group sessions will be held April 8–9 and on April 12.* The plenary agenda will include:

- April 10–11:
- Opening Plenary Session (Chairman's Introductory Remarks, Review of Meeting Agenda, Review/Approval of Previous Meeting Summary)
- SC–186 Activity Reports
- WG–1, Operations & Implementation
- WG–2, Traffic Information Service—Broadcast (TIS–B)
- WG–3, 1090 MHz Minimum Operational Performance Standard (MOPS)
- WG–4, Application Technical Requirements
- WG–5, Universal Access Transceiver (UAT) MOPS
- WG–6, Automatic Dependent Surveillance-Broadcast (ADS–B) Minimum Aviation System Performance Standard (MASPS)
- EUROCAE WG–51 Report (Sub-groups 1–3)
- Review and Approve Proposed Final Draft FTCA DO–242A, Minimum Aviation System Performance Standards for Automatic Dependent Surveillance Broadcast (ADS–B), RTCA Paper No. 044–02/SCI186–188
- UAT MOPS Review Status
- Analysis and Review of Modeling Assumptions

- TIS–B MOPS Review Status
- Closing Plenary Session (Other Business, Review Actions Items/Work Program, Date, Place and Time of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued: in Washington, DC, on March 11, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–6970 Filed 3–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 189/ EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 189/EUROCAE Working Group 53 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 189/ EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements.

DATES: The meeting will be held April 22–26, 2002 starting at 9:00 a.m.

ADDRESSES: The meeting will be held at Eurocontrol, 96 Rue de la Fusée, Brussels, Belgium.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org;* (2) Eurocontrol; telephone +32 2 729 90 11; fax +32 2 729 90 44.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 189/ EUROCAE Working Group 53 meeting. The agenda will include:

- April 22:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review/ Approval of Meeting Agenda, Review/Approval of Meeting Minutes)
  - Sub-group and related reports; Position papers planned for plenary agreement; SC–189/WG–53 co-chair progress report
- April 23–25:
  - PUB, Publications Integration Sub-group and Chair meetings
  - INTEROP, Interoperability Sub-group
  - ICSPR, Initial Continental Safety and Performance Requirements Sub-group
  - IOSPR, Initial Oceanic Safety and Performance Requirements Sub-group
- April 26:
  - Closing Plenary Session (Welcome and Introductory Remarks, Review/ Approval of Meeting Agenda)
  - Sub-group and related reports; Position papers planned for plenary agreement; SC–189/WG–53 co-chair progress report and wrap-up

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 6, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–6971 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 159: Minimum Operational Performance Standards for Airborne Navigation Equipment Using Global Positioning System (GPS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 159 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Minimum Operational Performance Standards for Airborne Navigation Equipment Using Global Positioning System (GPS).

DATES: The meeting will be held April 8–12, 2002, from 9 am to 4:30 pm (unless stated otherwise).

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW, Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 meeting.

Note: Specific working group sessions will be held April 8–11.

The plenary agenda will include:

- April 12:
- Opening Plenary Session (Welcome and Introductory Remarks, Approve Minutes of Previous Meeting)
- Review Working Group Progress and Identify Issues for Resolution
  - Global Positioning System (GPS)/ 3rd Civil Frequency (WG–1)
  - GPS/Wide Area Augmentation System (WAAS) (WG–2)
  - GPS/GLONASS (WG–2A)
  - GPS/Inertial (WG–2C)
  - GPS/Precision Landing Guidance (WG–4)
  - GPS/Airport Surface Surveillance (WG–5)
  - GPS/Interference (WG–6)
  - SC–159 Ad Hoc
- Review of EUROCAE activities
- Closing Plenary Session (Assignment/ Review of Future Work, Other Business, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 11, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–6972 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20989]

Stagecoach Group PLC and Coach USA, Inc., et al.—Control—Coach USA Indiana, Inc., and California Acquisition, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: Stagecoach Group PLC (Stagecoach) and its subsidiary, Coach USA, Inc. (Coach), noncarriers, and various subsidiaries of each (collectively, applicants), filed an application under 49 U.S.C. 14303 to control Coach USA Indiana, Inc. (Coach USA Indiana), and California Acquisition, Inc. (California Acquisition). Persons wishing to oppose this application must follow the rules under 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments are due by May 6, 2002. Applicants may file a reply by May 21, 2002. If no comments are filed by May 6, 2002, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20989 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street NW, Washington, DC 20423–0001. In addition, send one copy of any comments to applicants' representative: Betty Jo Christian, Steptoe & Johnson LLP, 1330 Connecticut Avenue, NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600 [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Stagecoach is a public limited corporation organized under the laws of Scotland.[1] With operations in several countries, Stagecoach is one of the world's largest providers of passenger transportation services. It had total revenues of $2.7 billion for the fiscal year ending April 30, 2001. Coach is a Delaware corporation that currently controls over 100 motor passenger carriers.

Stagecoach and its subsidiaries currently control Coach,[2] its noncarrier regional management subsidiaries,[3] and the motor passenger carriers jointly controlled by Coach and the management subsidiaries.[4] In previous Board decisions, Coach management subsidiaries have obtained authority to control motor passenger carriers jointly with Coach.[5]

Applicants state that Coach formed Coach USA Indiana and California Acquisition in January 2002 and that these entities, together with Coach, are party to an asset purchase transaction that contemplates that they will acquire motorcoaches and other assets from carriers currently controlled by VecTour Inc. (VecTour).[6] VecTour is presently in Chapter 11 status and the asset acquisition is therefore subject to the approval of the U.S. Bankruptcy Court for the District of Delaware.

According to applicants, Coach USA Indiana will operate assets being acquired from two motor passenger carriers controlled by VecTour: United Limo, Inc. (United Limo), and Tri-State Coach Lines, Inc. (Tri-State Coach Lines). Coach USA Indiana will initially operate approximately 39 motorcoaches and 8 minivans. Coach USA Indiana will also employ approximately 160 full-time and 40 part-time personnel. It intends to initiate carrier operations following the closing of its asset acquisition transaction, and it plans to change its corporate name to, and conduct operations as, United Limo, and also utilize the trade name Tri-State Coach Lines.[7] At the time of the filing of the application in this proceeding, Coach USA Indiana had no operating revenues.

California Acquisition will operate assets being acquired, through the same transaction to which Coach USA Indiana is a party, from VecTour of California. California Acquisition will employ approximately 100 personnel, using a fleet of approximately 70 motorcoaches. It intends to initiate carrier operations following the projected March 14, 2002 closing of its asset acquisition transaction, and it plans to change its corporate name to, and conduct operations as, Franciscan Lines, Inc.[8] At the time of the filing of the application in this proceeding, it had no operating revenues.

Coach USA Indiana and California Acquisition recently obtained federally issued operating authority from the Federal Motor Carrier Safety Administration.[9] Before these entities obtained operating authority, Coach placed the stock of each entity into a separate independent voting trust. The control transaction here will not involve any transfer of the federal operating authority held by either entity.

Applicants have submitted information, as required by 49 CFR 1182.2(a)(7), to demonstrate that the proposed acquisition of control is consistent with the public interest under 49 U.S.C. 14303(b). Applicants state that the proposed acquisition of control will not reduce competitive options or adversely impact fixed charges or the interests of the employees of either entity. They assert that granting the application will allow both prospective carriers to take advantage of economies of scale and substantial benefits offered by applicants, including interest cost savings and reduced operating costs. In addition, applicants have submitted all of the other statements and certifications required by 49 CFR 1182.2. Additional information, including a copy of the application, may be obtained from applicants' representative.

[1] Stagecoach was formerly known as Stagecoach Holdings PLC. It recently changed its name to Stagecoach Group PLC.

[2] Stagecoach controls Coach through various subsidiaries, namely, SCUSI Limited (formerly known as SUS 1 Limited); SCOTO Limited (formerly known as SUS 2 Limited); Stagecoach General Partnership; and SCH US Holdings Corp.

[3] These subsidiaries are Coach USA North Central, Inc. (Coach USA North Central) and Coach USA West, Inc. (Coach USA West).

[4] *See Stagecoach Holdings PLC—Control—USA, Inc., et al.*, STB Docket No. MC–F–20948 (STB served July 22, 1999).

[5] *See Coach USA, Inc. and Coach USA North Central, Inc.—Control—Nine Motor Carriers of Passengers*, STB Docket No. MC–F–20931, *et al.* (STB served July 14, 1999). The same approach is being followed here. Under this proposal, Coach USA Indiana would also be jointly controlled by co-applicant Coach USA North Central, and California Acquisition would also be jointly controlled by co-applicant Coach USA West.

[6] The Board has previously approved common control of the three carriers whose assets are being acquired. *See Global Passenger Services, L.C.C., et al.—Control—Bortner Bus Company, et al.*, STB Docket No. MC–F–20924 (STB served July 17, 1998); (authorizing control of Franciscan Lines, Inc., a carrier whose name was eventually changed to VecTour of California); and *Global Passenger Services, L.L.C., et al.—Control—Gongaware Tours, et al.*, STB Docket No. MC–F–20954 (STB served Sept. 16, 1999) (authorizing control of Tri-State Coach Lines, Inc., and United Limo, Inc.).

[7] Coach USA Indiana's name appears on its operating authority as ''Coach USA Indiana, Inc D/B/A Tri-State Coach Lines.''

[8] California Acquisition's name appears on its operating authority as ''California Acquisition, Inc D/B/A Franciscan Lines.''

[9] On February 27, 2002, Coach USA Indiana obtained operating authority in Docket No. MC–425233, authorizing it to provide charter and special operations between points in the United States, and regular-route operations over specified routes in Indiana, Illinois, and Wisconsin. On that same date, California Acquisition obtained operating authority in Docket No. MC–425205, authorizing it to provide charter and special operations between points in the United States.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

On the basis of the application, we find that the proposed control transaction is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. See 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed control transaction is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on May 6, 2002, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 7th Street, SW, Room 8214, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW, Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW, Washington, DC 20590.

Decided: March 18, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–6980 Filed 3–21–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 02–03]

Preemption Determination

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing its response to a written request for the OCC's opinion on whether Federal law preempts certain provisions of the Massachusetts Consumer Protection Act Relative to the Sale of Insurance by Banks and regulations promulgated pursuant to that statute (the Massachusetts Law). The OCC has determined that Federal law preempts the provisions at issue.

FOR FURTHER INFORMATION CONTACT: Michele Meyer, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090.

SUPPLEMENTARY INFORMATION:

On July 14, 2000, the OCC published in the **Federal Register** notice of a request from the Massachusetts Bankers Association (Requester) for the OCC's opinion concerning whether section 104 of the Gramm-Leach-Bliley (GLBA), Pub. L. 106–102, 113 Stat. 1338, 1352–59 (Nov. 12, 1999), preempts certain provisions of the Massachusetts Law. *See* Notice of Request for Preemption Determination, 65 FR 43827, (Notice). The OCC is publishing its response to the request as an appendix to this notice.

In the Notice, the OCC requested public comment on whether Federal law preempts the provisions of the Massachusetts Law that the Requester had identified. In response, the OCC received 110 comments. Many of these commenters, primarily banks and banking trade associations, supported preemption of the Massachusetts Law provisions. These commenters maintained generally that the Massachusetts Law provisions do not fall within the safe harbor provisions of GLBA (the Safe Harbors) and that they prevent or significantly interfere with the exercise of national banks' authority to engage in insurance sales, solicitation, or cross-marketing activities.

Commenters opposing preemption expressed several concerns. First, some commenters argued that some or all of the provisions under review fall within the Safe Harbors, or are substantially similar to the Safe Harbors, and are therefore protected from preemption. Several commenters asserted that the provisions not covered by a Safe Harbor nevertheless are protected from preemption because they do not ''prevent or significantly interfere'' with the ability of a financial institution or its affiliate to engage in any insurance sales, solicitation, or cross-marketing activity.

For the reasons described in the preemption opinion, the OCC has concluded that Federal law preempts the following provisions of the Massachusetts Law identified by the Requester:

- The Massachusetts Law provision prohibiting non-licensed bankpersonnel from referring prospective customers to a licensed insurance agent or broker except upon an inquiry initiated by the customer.
- The Massachusetts Law provision prohibiting non-licensed bank personnel from receiving any additional compensation for making a referral, even if the compensation is not conditioned upon the sale of insurance.
- The Massachusetts Law provision prohibiting banks from telling loan applicants that insurance products are available through the bank until the application is approved and, in the case of a loan secured by a mortgage on real property, until after the customer has accepted the bank's written commitment to extend credit.

The analysis used to reach these conclusions and the reasons for each conclusion are described in detail in our reply to the Requester.

Dated: March 5, 2002.

John D. Hawke, Jr.,

Comptroller of the Currency.

March 18, 2002.

Kevin F. Kiley,
Executive Vice President,
Massachusetts Bankers Association, Inc.,
73 Tremont Street, Suite 306,
Boston, MA 02108–3906.

Dear Mr. Kiley,

This letter replies to your request, on behalf of the Massachusetts Bankers Association, for the opinion of the Office of the Comptroller of the Currency (OCC) concerning whether certain provisions of the Massachusetts Consumer Protection Act Relative to the Sale of Insurance by Banks and regulations promulgated pursuant to that statute apply to national banks.[1]

The provisions you have asked us to review prohibit: (1) Non-licensed bank personnel from referring a prospective customer to a licensed insurance agent or broker except upon an inquiry initiated by the customer; (2) a bank from compensating

[1] The provisions of the Massachusetts law and implementing regulations are collectively referred to in this letter as the ''Massachusetts Law.''

an employee for such a referral; and (3) a bank from telling a loan applicant that insurance products are available through the bank until the application is approved and, in the case of a loan secured by a mortgage on real property, until after the customer has accepted the bank's written commitment to extend credit. For the reasons described in detail in this letter, we have concluded that federal law would preempt the provisions of the Massachusetts Law that you have asked us to review.

In reaching this conclusion, we have reviewed the provisions of the Massachusetts Law under the legal standards, including the provisions of the Gramm-Leach-Bliley Act (GLBA),[2] that govern the applicability of state law to national banks. We also have relied on our experience in supervising national banks that engage in insurance activities to evaluate the effects of the state law provisions under consideration here on national banks' ability to conduct an insurance agency business.

The first section of this letter provides background on the process we used to develop our opinion and addresses the significant comments that we received in response to our publication of notice of your request. Section II describes the framework that governs our legal analysis. Finally, Section III analyzes each of the provisions of the Massachusetts Law that you have asked us to review to determine whether, in our opinion, it is preempted by federal law.

I. Background and Comments

On May 22, 1998, the Commonwealth of Massachusetts enacted legislation entitled Consumer Protection Act Relative to the Sale of Insurance by Banks.[3] The Massachusetts Department of Banking and Insurance has promulgated regulations[4] pursuant to this legislation. The statute and implementing regulations impose a number of requirements that affect the insurance sales, solicitation, or cross-marketing activities of financial institutions, including national banks.

By letter dated May 30, 2000, you requested the OCC's opinion on whether the three specific provisions of the Massachusetts Law that your letter identified are preempted pursuant to section 104 of the GLBA.[5] In your request, you asserted that these state law provisions are not protected from preemption by the safe harbor provisions contained in section 104(d)(2)(B) of the GLBA (''Safe Harbors'') and that they prevent or significantly interfere with the ability of national banks to exercise their authority to engage in insurance sales, solicitation, or cross-marketing activities.

On July 14, 2000, the OCC published notice of your request in the **Federal Register** and requested comments on whether federal law preempts the Massachusetts Law provisions.[6] We received a total of 110 comments in response to the notice. Many of these commenters, primarily banks and banking trade associations, supported preemption of the Massachusetts Law provisions. These commenters maintained generally that the Massachusetts Law provisions do not fall within the Safe Harbors and that they prevent or significantly interfere with the exercise of national banks' authority to engage in insurance sales, solicitation, or cross-marketing activities. For the reasons set out in greater detail in Section III of this letter, we agree that federal law preempts each of the state laws in question.

Commenters opposing preemption expressed several concerns. First, some commenters argued that some or all of the provisions under review fall within the Safe Harbors, or are substantially similar to the Safe Harbors, and are therefore protected from preemption. Several commenters asserted that the provisions not covered by a Safe Harbor nevertheless are protected from preemption because they do not ''prevent or significantly interfere'' with the ability of a financial institution or its affiliate to engage in any insurance sales, solicitation, or cross-marketing activity. These points are addressed in detail in Section III of this letter.

Some of the commenters opposed to preemption also argued more generally that the OCC lacks the authority to determine whether federal law preempts the Massachusetts Law. As these comments suggest, federal courts, rather than the OCC, are the ultimate arbiters of whether federal law preempts state law in a particular case. Nevertheless, Congress and the federal courts have recognized that the OCC has the authority to interpret, in the first instance, federal laws affecting national bank powers. Indeed, the National Bank Act contains specific provisions governing the issuance of opinions concerning preemption of state laws by the OCC.[7] As the primary supervisor of national banks, the OCC is uniquely positioned to evaluate the effect of the Massachusetts Law on national banks' ability to exercise their federal authority to sell insurance.[8] Further, from a practical perspective, in the absence of interpretive advice, national banks that sell, or wish to sell, insurance in Massachusetts will face added cost, burden, and uncertainty. Finally, Congress clearly envisioned that the federal banking agencies would be making determinations as to whether state laws regarding insurance sales and solicitations were preempted, because section 304 of the GLBA contains detailed provisions for judicial review of conflicts between a state insurance regulator and a federal regulator arising from such a determination.[9]

A few commenters opposed to preemption asserted that the OCC should not find that federal law preempts the Massachusetts Law provisions because state insurance regulators are, pursuant to GLBA, responsible for the functional regulation of the business of insurance. The GLBA expressly provides, however, that the states' functional regulation authority over insurance activities is subject to federal preemption standards as incorporated in section 104.[10] In particular, the question whether a state insurance sales law applies to national banks is resolved by application of the federal standards to the state provision in question.[11]

Commenters also expressed concerns about the impact an OCC opinion concerning the Massachusetts Law would have on similar laws enacted in at least 30 states. These commenters noted that these state laws were the products of extensive negotiations involving state regulators and the insurance and banking industries. This letter expresses no view with respect to state laws other than those specifically addressed here. We specifically note, however, that the conclusions reached in this letter do not result in a finding that any provisions of the Model Unfair Trade Practices Act adopted by the National Association of Insurance Commissioners (NAIC) would be preempted.[12]

The commenters opposed to preemption also urged the OCC to delay issuing its opinion until the Sixth Circuit resolves the appeal of the Federal District Court's decision in *Association of Banks in Insurance, Inc.* v. *Duryee.*[13] In *Duryee,* a

[2] *See* Pub. L. No. 106–102, 113 Stat. 1338 (Nov. 12, 1999).

[3] Chapter 129 of the Acts of 1998. The provisions at issue here are codified at Mass. Gen. L. ch. 167F, § 2A.

[4] 209 CMR 49.00, *et seq.* and 211 CMR 142.00, *et seq.*

[5] GLBA § 104, 113 Stat. At 1352. Section 104 of the GLBA is codified at 15 U.S.C. 6701. In this letter, we cite section 104 of the GLBA rather than the provision as codified.

[6] *See* 65 FR 43827 (July 14, 2000).

[7] *See* 12 U.S.C. 43 (requiring, under certain circumstances, that the OCC publish notice of preemption issues as well as ''any final opinion letter'' on such issues).

[8] *See United States* v. *Mead Corp.,* 121 S. Ct. 2164, 2173 n.13 (2001) (describing the weight generally given by the courts to certain OCC interpretive opinions).

[9] *See* GLBA § 304, 113 Stat. at 1338, *codified at* 15 U.S.C. 6714.

[10] *See* GLBA § 301, 113 Stat. at 1407, *codified* at 15 U.S.C. 6711 (''The insurance activities of any person (including a national bank exercising its power to act as agency under [12 U.S.C. 92]) shall be functionally regulated by the States, *subject to section 104.*'') (emphasis added).

[11] Several commenters also asserted that under section 305 of the GLBA, state insurance customer protection statutes may only be preempted if the Federal banking agencies jointly determine that the Federal regulations enacted pursuant to section 305 provide greater consumer protection than the state law. *See* GLBA, § 305, 113 Stat. at 1410–15, codified at 12 U.S.C. 1831x. Section 305 of the GLBA directed the Federal banking agencies to promulgate certain consumer protection regulations relating to the sale, solicitation, and advertising of insurance products by depository institutions and persons selling insurance on the premises of depository institutions or otherwise on behalf of such institutions. Section 305(g)(2) explains the relationship between these regulations and state laws that are in effect in that jurisdiction. Pursuant to section 305(g)(2), these Federal regulations do not override inconsistent state laws unless the agencies jointly determine that the Federal regulations provide better consumer protections than the state provisions. The state then is given up to 3 years to override that determination. Section 305(g) relates solely to the preemptive effect that is to be given to Federal regulations promulgated under section 305(a). By its terms, it does not relate to the preemptive effect that is to be given to other Federal regulations or statutes. In the insurance sales area, this is determined pursuant to section 104 of the GLBA and the *Barnett* standards it incorporates, as explained in Section II of this letter.

[12] The Model Unfair Trade Practices Act is available on the NAIC's Web site, *www.NAIC.org.*

[13] 55 F. Supp. 2d 799 (S.D. Ohio 1999).

national bank and trade association with national bank members sought a declaratory judgment that certain Ohio insurance licensing statutes as applied to national banks are preempted by the federal statute—12 U.S.C. 92—that authorizes national banks to sell insurance from agencies based in small towns without regard to affiliation or control. The District Court granted the plaintiffs' motion for summary judgment and issued the declaratory judgment and enjoined Ohio from enforcing its licensing statutes against national banks operating from small towns in the state. Commenters here asserted that the OCC should delay opining in this matter because the appellate decision in *Duryee* would clarify the parameters of the *Barnett* standards in matters involving the application of state insurance laws to national banks. However, in the time since the commenters submitted their comments on this matter, the Sixth Circuit issued its decision in the *Duryee* appeal, affirming the grant of a declaratory judgment and the issuance of a permanent injunction against the state's enforcement of the laws against national banks.[14] The Sixth Circuit's decision in *Duryee* thus strongly supports the conclusions we reach in this letter.

The next section of this letter summarizes the federal preemption standards that apply to the state laws you have asked us to review.

II. Federal Preemption Standards: The GLBA and Barnett

In our recent letter concerning whether federal law preempts certain provisions of the West Virginia Insurance Sales Consumer Protection Act[15] (the West Virginia Letter), we set forth a detailed analysis of the GLBA preemption framework. That analysis is incorporated by reference here and is summarized below.

The GLBA establishes several different standards governing the applicability of state law to depository institutions and their affiliates, depending on whether the state law at issue affects: The institution's ability to engage in an affiliation that is ''authorized or permitted by Federal law;'' its ability to engage in activities ''authorized or permitted'' pursuant to the GLBA; or its ability to engage in insurance sales, solicitation, and cross-marketing activities.[16] With respect to *any* insurance sales, solicitation, or cross-marketing activities, section 104(d)(2) establishes the following standard governing the applicability of state law:

In accordance with the legal standards for preemption set forth in the decision of the Supreme Court of the United States in *Barnett Bank of Marion County N.A.* v. *Nelson,* 517 U.S. 25 (1996), no state may, by statute, regulation, order, interpretation, or other action, prevent or significantly interfere with the ability of a depository institution, or an affiliate thereof, to engage, directly or indirectly, either by itself or in conjunction with an affiliate or any other person, in any insurance sales, solicitation, or crossmarketing activity.[17]

However, section 104 protects from preemption under this standard 13 specified types of restrictions on insurance sales, solicitation, and cross-marketing activities—the Safe Harbors—as well as state restrictions that are ''substantially the same as but no more burdensome or restrictive than'' the Safe Harbors.[18] State laws regarding any insurance sales, solicitation, and cross-marketing activities that are not covered by a Safe Harbor are subject to the standards for preemption set forth in *Barnett,* pursuant to section 104(d)(2).

The *Barnett* standards represent an application, in the national bank context, of the analysis used by the Supreme Court to determine, under the Supremacy Clause of the U.S. Constitution, whether federal law conflicts with state law such that the state law is preempted. Under this analysis, the Court reviews whether a state law ''stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'' [19] In the national bank context, the Court applies this analysis by looking at whether the state law at issue conflicts with the exercise of a national bank's federally authorized powers. Thus, in holding that a Florida statute restricting a national bank's ability to sell insurance in that state was preempted, the Court in *Barnett* relied upon a number of its precedents holding that a particular state statute was preempted because it ''stood as an obstacle'' to a national bank's exercise of those powers.[20]

The scope of the standard is illustrated by the Court's earlier decision in the *Franklin National Bank* case, which was relied upon by the Court in *Barnett.*[21] In the *Franklin* case, the Court held that a state law that prohibited national banks from using the word ''savings'' in their advertising was preempted. The Court's rationale was not that the state statute directly precluded national banks from engaging in the business of receiving savings deposits. The statute at issue did not have that effect. Instead, the Court said that the federal law authorizing national banks to take savings deposits must be read to authorize them to engage in the ordinary incidents of that business, such as advertising. Finding a ''clear conflict'' between the state and federal laws, the Court held that the state advertising restriction was preempted. The meaning of *Franklin,* expressly confirmed in *Barnett,*[22] is that a national bank's power to engage in an activity necessarily includes the power to conduct the business effectively and competitively.

The Court recognized in *Barnett* that not every state law that affects a national bank activity ''stands as an obstacle'' to the accomplishment of the federal purpose:

In defining the pre-emptive scope of statutes and regulations granting a power to national banks, these cases take the view that normally Congress would not want States to

[14] 270 F.3d 397 (6th Cir. 2001). The Sixth Circuit remanded the case for further consideration of whether certain corporate organizational licensing requirements are preempted in light of GLBA. However, the Sixth Circuit resolved the issues of relevance to our consideration of the Massachusetts Law, namely, the legal standards to apply when considering whether a state law is preempted. As is explained further in Section II of this letter, the Sixth Circuit was clear that section 104 requires that the entire preemption test as set out in *Barnett*—and not one limited to a consideration of whether a state law ''prevents or significantly interferes'' with a federal power—is to be applied. The remand will resolve whether the corporate organizational requirements are preempted in light of *Barnett* and the anti-discrimination provision set out in section 104(e) of GLBA. However, the outcome of that remand will not affect the conclusions reached in this letter.

[15] Letter from Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel, to Sandra Murphy, Esq., dated September 24, 2001. This letter was published in the **Federal Register** at 66 FR 51502 (October 9, 2001).

[16] GLBA §§ 104(c)(1), (d)(1), and (d)(2), respectively.

[17] GLBA § 104(d)(2)(A). State statutes that were enacted after September 3, 1998, also must meet certain non-discrimination standards with respect to those provisions not covered by the Safe Harbors. *See* GLBA § 104(e). The Massachusetts Law was enacted on May 22, 1998, and therefore these nondiscrimination provisions are not applicable to this analysis.

[18] *See* GLBA §§ 104(d)(2)(B)(i)–(xiii).

[19] *Barnett,* 517 U.S. at 31, *quoting Hines* v. *Davidowitz,* 312 U.S. 52, 67 (1941). The Court's quotation from the *Hines* case came at the conclusion of a paragraph summarizing the 3 traditional bases for federal preemption under the Supremacy Clause:

Sometimes courts, when facing the pre-emption question, find language in the Federal statute that reveals an explicit congressional intent to pre-empt state law. More often, explicit pre-emption language does not appear, or does not directly answer the question. In that event, courts must consider whether the Federal statute's ''structure and purpose,'' or nonspecific statutory language, nonetheless reveal a clear, but implicit, pre-emptive intent. A Federal statute, for example, may create a scheme of Federal regulation ''so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it.'' Alternatively, Federal law may be in ''irreconcilable conflict'' with state law. Compliance with both statutes, for example, may be a ''physical impossibility,'' or, the state law may ''stan[d] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.''

Id. at 31 (citations omitted).

[20] In describing this analysis, the Court said:

[T]he Federal Statute says that its grant of authority to sell insurance is in ''addition to the *powers* now vested by law in national [banks].'' [12 U.S.C. 92] (emphasis added). In using the word ''powers,'' the statute chooses a legal concept that, in the context of national bank legislation, has a history. That history is one of interpreting grants of both enumerated and incidental ''powers'' to national banks as grants of authority not normally limited by, but rather ordinarily pre-empting, contrary state law. See, *e.g., First Nat. Bank of San Jose* v. *California,* 262 U.S. 366, 368–369 (1923) (national banks' ''power'' to receive deposits preempts contrary state escheat law); *Easton* v. *Iowa,* 188 U.S. 220, 229–230 (1903) (national banking system normally ''independent, so far as powers conferred are concerned, of state legislation'').

Barnett, 517 U.S. at 32 (parallel and ''cf.'' citations omitted).

[21] *Franklin National Bank of Franklin Square* v. *New York,* 347 U.S. 373 (1954), cited in *Barnett,* 517 U.S. at 33.

[22] *Barnett,* 517 U.S. at 35 (''Thus, the Court's discussion in *Franklin Nat. Bank,* the holding of that case, and the other precedent we have cited above, strongly argue for a similar interpretation here—a broad interpretation of the word ''may'' that does not condition federal permission upon that of the State.'').

forbid, or impair significantly, the exercise of a power that Congress explicitly granted. To say this is not to deprive States of the power to regulate national banks, where (unlike here) doing so does not prevent or significantly interfere with the national bank's exercise of its powers. See, *e.g., Anderson Nat. Bank* v. *Luckett,* 321 U.S. 233, 247–252 (1944) (state statute administering abandoned deposit accounts did not ''unlawful[ly] encroac[h] on the rights and privileges of national banks''); *McClellan* v. *Chipman,* 164 U.S. 347, 358 (1896) (application to national banks of state statute forbidding certain real estate transfers by insolvent transferees would not ''destro[y] or hampe[r]'' national bank functions); *National Bank* v. *Commonwealth,* 9 Wall. 353, 362 (1870) (national banks subject to state law that does not ''interfere with, or impair [national banks'] efficiency in performing the functions by which they are designed to serve [the Federal] Government'').[23]

In this portion of its analysis, the Court describes the boundary of the preemptive scope of the federal laws authorizing powers for national banks by describing circumstances under which a state law has been found not to stand as an obstacle to the accomplishment of the federal purpose.[24]

The variety in the language that the Supreme Court used in *Barnett* to describe the conflicts analysis that governed the result there shows that the analysis cannot be encapsulated by any one phrase. Rather, whatever words are used to describe it, the analysis requires an examination of the effect that a particular state statute has on a national bank's exercise of a federally authorized power—here, the power to sell insurance granted by federal statutes, including 12 U.S.C. 92.[25]

Section 104 of the GLBA follows this same approach. Though it specifically mentions the ''prevent or significantly interfere'' formulation quoted above, the full text of section 104(d)(1) introduces that phrase and provides its context with the words ''[i]n accordance with the legal standards for preemption set forth in [*Barnett*].'' This express reference to the *Barnett* decision in its entirety and without qualification and to its ''standards'' in the plural, rather than the singular, demonstrates that the statute imports the whole of the *Barnett* conflicts analysis as governing the preemption of state laws pertaining to insurance sales, solicitation, and cross-marketing activities. Any doubt on this point is resolved by the express preservation of the applicability of the *Barnett* case in a subsequent portion of section 104:

(C) CONSTRUCTION.—Nothing in this paragraph shall be construed—

(I) to limit the applicability of [*Barnett*] with respect to any State statute, regulation, order, interpretation, or other action that is not referred to or described in subparagraph (B) [*i.e.,* the Safe Harbors]; or

(II) to create any inference with respect to any State statute, regulation, order, interpretation, or other action that is not described in this paragraph.[26]

The effect of this language is to reaffirm, following the listing of the Safe Harbors, that both the standards that the Supreme Court articulated in the *Barnett* decision and the analysis that the Court used in that case apply to state laws that are not protected by the Safe Harbors.[27] Thus, the standards for preemption used by the Court in *Barnett* before enactment of GLBA are the same standards that apply today with respect to the application of state insurance sales, solicitation, or cross-marketing laws that are not covered by a Safe Harbor to insurance activities that are authorized for national banks under federal law.

III. Application of Federal Preemption Standards to the Massachusetts Law

Application of the principles we have discussed requires that we conduct a three-step analysis of the provisions of the Massachusetts Law that you have asked us to review. We first determine which of the several standards contained in section 104 of the GLBA applies. Since all three of the provisions you have identified pertain to insurance sales, solicitation, or cross-marketing, the analysis of each provision is governed by section 104(d)(2)(A), that is, the *Barnett* standards which are incorporated by the statute. Second, we consider whether any provision of the Massachusetts Law is protected from preemption by one or more of the Safe Harbors described in section 104(d)(2)(B). Finally, if a provision is not protected by a Safe Harbor, we apply the *Barnett* standards to determine whether, in our view, the state law conflicts with a national bank's authority to sell insurance and is therefore preempted.

A. The Massachusetts Restrictions on Referrals by Bank Personnel

The Massachusetts statute and regulations prohibit non-licensed bank personnel from referring prospective customers to a licensed insurance agent or broker except upon an inquiry initiated by the customer (the Referral Prohibition). The same statute and regulations further prohibit non-licensed bank personnel from receiving any additional compensation for making a referral, even if the compensation is not conditioned upon the sale of insurance (the Referral Fee Prohibition). The Massachusetts statute provides:

Officers, tellers and other employees of a bank who are not licensed as

[23] *Barnett,* 517 U.S. at 33–34.

[24] Thus, under *Franklin, Barnett,* and other federal cases, a conflict between a state law and federal law need not amount to a whole, or even partial, prohibition in order for the federal law to have preemptive effect. *See Barnett,* 517 U.S. at 31–32. Where a federal grant of authority is unrestricted, state law that attempts to place limits on the scope and effective exercise by a national bank of its express or incidental powers will be preempted. *See, e.g., Franklin National Bank,* 347 U.S. at 378; *Duryee,* 270 F.3d at 409 (''The intervenors' attempt to redefine 'significantly interfere' as 'effectively thwart' is unpersuasive.''); *New York Bankers Ass'n, Inc.* v. *Levin,* 999 F. Supp. 716, 719 (W.D.N.Y. 1998) (holding that a New York statute that restricted the types of insurance banks could sell to their customers was preempted on the grounds that the state law ''constitutes an interference with [banks'] rights'' to sell insurance).

[25] National banks are authorized to engage in insurance activities by a number of federal statutory provisions, including: 12 U.S.C. 24 (Seventh) (*e.g.,* credit life insurance); 12 U.S.C. 24a (authority to engage in insurance sales through a financial subsidiary); 12 U.S.C. 92 (authority to sell insurance from ''small towns''); and 15 U.S.C. 6713 (title insurance, where permissible for state banks).

[26] GLBA, § 104(d)(2)(C)(iii). The words ''this paragraph'' in the lead-in language mean paragraph (2) of subsection (d). We construe the ''no inference'' language in the second clause to mean that a state law may not be inferred to be preempted under the ''prevent or significantly interfere standard'' solely because it is excluded from coverage by one of the Safe Harbors. Accordingly, our analysis in Section III draws no such inferences.

[27] As we noted in the West Virginia Letter, the legislative history of section 104 confirms that Congress intended to incorporate the whole of *Barnett* by referencing it in that section. The Senate Report accompanying the GLBA, in commenting on a provision prescribing the ''prevent or significantly interfere'' standard, using language that was almost identical to the language of section 104(d)(2) as ultimately enacted, states that: The Committee believes that State insurance sales, solicitation, and cross-marketing laws adopted prior to September 3, 1998 should be subject to preemption under the preemption standards applicable when such laws were adopted. Thus, it is the Committee's intent that such laws may be subject to preemption under applicable case law, and the statutory preemption standard set forth in subsection 104(d)(2)(A), which is patterned after such case law. There is an extensive body of case law related to the preemption of State law. For example, in *Barnett Bank of Marion County, N.A.* v. *Nelson,* 116 S.Ct. 1103 (1996), the U.S. Supreme Court noted that Federal courts have preempted State laws that ''prevent or significantly interfere'' with a national bank's exercise of its powers; that ''unlawfully encroach'' on the rights and privileges of national banks; that ''destroy or hamper'' national banks' functions; or that ''interfere with or impair'' national banks' efficiency in performing authorized functions.

S. Rep. No. 44, 106th Cong. 1st Sess. At 13 (1999). (The limitation on the application of this standard to state laws adopted prior to September 3, 1998 was deleted in the final legislation.) The Senate Report described as affirmative preemption standards phrases that the *Barnett* Court used to describe cases in which state law was not preempted. This transposition does not change the substance of the point sought to be made in the Report, namely, that the intention of Congress was to incorporate into the statute the pre-existing standards described in the applicable caselaw and not a new standard comprising only the ''prevent or significantly interfere'' language. As we have previously described, it is the application of the conflicts analysis and not the particular words used to describe the effect of a state statute that comprise the *Barnett* standards. *See* H. Rep. 106–74 Part 3 at 139 (''Subsection 104(b)(2)(C) reiterates the underlying principles of subsection 104(b)(2)(A), affirming that the *Barnett* standard and case law continues to be applicable to insurance sales, solicitations, and cross-marketing activities that are not protected by the safe harbors set forth in subsection 104(b)(2)(B).''); and *Duryee,* 270 F.3d at 409 (noting that ''the Barnett Bank opinion cited two cases that do not support the intervenors' interpretation of the standard'').

insurance agents may refer a customer of said bank to a licensed insurance agent of the bank only when such customer initiates an inquiry relative to the availability or acquisition of insurance products. No such officer, teller or other employee shall be further or additionally compensated for making said referrals.[28]

This statutory provision is implemented in regulations set forth at 211 CMR § 142.05(3) and 209 CMR § 49.06(3). Section 142.05(3) of 211 CMR provides:

(3) Insurance sales activities conducted at the main office or at any branch location shall be conducted only by insurance agent [sic] or brokers licensed pursuant to M.G.L. c. 175, §§ 163 and 166, respectively. Non-licensed bank personnel may refer consumers to a licensed insurance agent or broker of the bank only upon an inquiry initiated by the consumer. Non-licensed bank personnel shall not be additionally compensated for such referrals.

Section 49.06(3) of 209 CMR provides:

(3) *Solicitations and Sales by Bank Personnel.* The solicitation and sale of insurance by banks shall be conducted by licensed personnel of such institutions to the extent required by applicable insurance laws and regulations. Unlicensed officers, tellers and other employees, however, may refer customers to licensed personnel only where:

(a) the customer initiates an inquiry as to the availability or acquisition of insurance products; and

(b) such unlicensed personnel are not additionally compensated for such referrals.

The Director of the Massachusetts Office of Consumer Affairs and Business Regulation (the Massachusetts Director), who oversees the Massachusetts Department of Banking and Insurance, asserted in her comment letter that the Referral Prohibition and the Referral Fee Prohibition are protected by two of the GLBA Safe Harbors.[29] Although the Massachusetts Director does not specify which Safe Harbors, there are two concerning referrals. Safe Harbor (iv) protects state laws that prohibit the payment of valuable consideration, such as referral fees, to unlicensed individuals for ''services as an insurance agent or broker.'' A referral by an unlicensed person who does not discuss specific policy terms and conditions, however, is expressly excluded from the term ''services as an insurance agent or broker.'' Safe Harbor (v) preserves state laws prohibiting referral fees based on the purchase of insurance by the customer.

As we have noted, the Safe Harbors protect state provisions that are ''substantially the same as but no more burdensome or restrictive than'' the restrictions in the federal statutory text. It is our opinion that the Referral Prohibition is not ''substantially the same as'' Safe Harbor (iv) and that it is more burdensome and restrictive than Safe Harbor (iv). The plain language of Safe Harbor (iv) protects only those state laws restricting payment for referrals by unlicensed personnel that involve discussions of specific insurance policy terms and conditions. The Massachusetts Referral Prohibition, however, restricts *all* referrals by unlicensed bank personnel (unless initiated by the customer), including those that do not involve specific insurance policy discussions. In our view, this exceeds the scope of Safe Harbor (iv), and consequently is not protected.

Similarly, in our view, the Massachusetts Referral Fee Prohibition is not protected by Safe Harbor (v). Safe Harbor (v) protects only those state restrictions on referral fees tied to a customer's purchase of insurance. The Massachusetts Referral Fee Prohibition goes further than this by prohibiting referral fees of any kind. As such, the Massachusetts Referral Fee Prohibition is more burdensome and restrictive than the restrictions contemplated in Safe Harbor (v).

Because the Referral Prohibition and Referral Fee Prohibition are not protected by the GLBA Safe Harbors, we must consider whether they are preempted by the *Barnett* standards incorporated in GLBA section 104.

The Massachusetts Referral Prohibition imposes significant limitations on a bank's ability to engage in insurance sales, solicitation, and cross-marketing activities. By limiting referrals to only those resulting from a customer's inquiry, the Massachusetts Referral Prohibition effectively deprives banks of important opportunities to offer insurance products to customers. The Referral Prohibition precludes non-licensed bank personnel, such as bank tellers and customer service personnel, from even mentioning to their customers the fact that qualified, licensed insurance agents employed by the bank are available to discuss with them their insurance needs, unless the customer happens to ask about the product. This will prevent in most cases the very bank employees likeliest to have contact with customers from engaging in the cross-marketing activities that are permissible for national banks.

By effectively eliminating cross-marketing activities by unlicensed bank staff, the Massachusetts Referral Prohibition runs afoul of the express language of section 104(d) of the GLBA. Under section 104(d)(2)(A), in accordance with the Barnett standards, no state may prevent or significantly interfere with the ability of a depository institution to engage in ''*any* . . . crossmarketing activity'' if that cross-marketing activity is not protected by the safe harbors for referrals set out in sections 104(d)(2)(B)(iv) and (v).[30] The word ''any'' in section 104(d)(2)(A) clearly encompasses a bank's ability to engage in a wide range of cross-marketing activities, including the referrals prohibited by Massachusetts.[31]

The Massachusetts Referral Fee Prohibition imposes a further, significant limitation on a bank's ability to cross-market insurance products. As many commenters noted, one effective way for a bank to cross-market it to offer a financial incentive for unlicensed bank personnel to refer a customer to qualified insurance personnel. By prohibiting a bank from offering that financial incentive, the Massachusetts Referral Fee Prohibition impermissibly prevents the bank from structuring its internal operations so that it can engage effectively in the cross-marketing activities permitted by GLBA.

Thus, in our view, both the Massachusetts Referral Prohibition and the Massachusetts Referral Fee Prohibition would be preempted under the *Barnett* standards incorporated in section 104(d)(2) because they frustrate the authority of national banks to engage in insurance activities and activities incidental thereto. National banks' ability to engage in insurance activities encompasses their ability to engage in activities incidental to those insurance activities, such as marketing the availability of the insurance products. *See* 12 U.S.C. 24(Seventh); *Franklin National Bank,* 347 U.S. at 377–378. The Massachusetts Referral Prohibition and the Massachusetts Referral Fee Prohibition conflict with these powers, in particular, with a bank's ability to engage, as described in section 104(d)(2)(A) of GLBA, in cross-marketing activities. As many commenters pointed out, the state law in question effectively deprives a bank of an important means of advertising the availability of an entire line of financial products that it is authorized to offer. Thus, consistent with the Supreme Court's holdings in *Barnett* and *Franklin National Bank,* we believe that the Massachusetts Referral Prohibition and the Massachusetts Referral Fee Prohibition are preempted because they conflict with national banks' authority to market the availability of products that the banks may offer under federal law and, therefore, to engage in the full range of

[28] MASS. GEN. L. ch. 167F, § 2A(b)(2).

[29] *See* Comment Letter from Jennifer Davis Carey, Director, Consumer Affairs and Business Regulation, Commonwealth of Massachusetts, dated August 10, 2000, at 3 (hereinafter ''Director's Letter'').

[30] GLBA § 104(d)(2)(A) (emphasis added).

[31] We note that federal law expressly contemplates that a national bank employee may make referrals, and receive compensation for making referrals, that would be prohibited under Massachusetts Law. Section 305 of the GLBA requires the OCC and the other federal banking agencies to prescribe regulations that include, among other provisions:

[s]tandards that permit any person accepting deposits from the public in an area where such transactions are routinely conducted in a depository institution to refer a customer who seeks to purchase any insurance product to a qualified person who sells such product, only if the person making the referral receives no more than a one-time nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

See also 12 CFR 14.50(b) (OCC implementing regulations). As noted above, Safe Harbor (iv) permits bank employees who are not licensed to engage in insurance activities to make referrals under certain circumstances; and Safe Harbor (v) protects from preemption only state prohibition of referral fees based on the customer's purchase of insurance. Thus, Congress clearly contemplated that bank employees would make referrals to persons in the bank licensed to sell insurance and receive compensation for doing so.

insurance activities authorized by Congress.[32]

B. The Massachusetts Restrictions on the Timing of an Insurance Solicitation

The Massachusetts statute and regulations also prohibit banks from telling loan applicants that insurance products are available through the bank until the application is approved and, in the case of a loan secured by a mortgage on real property, until after the customer has accepted the bank's written commitment to extend credit (the Waiting Period Requirement).[33] There are no limits in federal law that impose conditions on a national bank's insurance activities comparable to the limits imposed by the Waiting Period Requirement. Moreover, as the Massachusetts Director acknowledged in her letter,[34] there are no GLBA Safe Harbors that would protect this requirement. Accordingly, the Waiting Period Requirement must be analyzed under the standards for preemption set forth in *Barnett* and made applicable to national banks' insurance activities by section 104(d)(2).

In our opinion, the Waiting Period Requirement is preempted under those standards because of the requirement's impact on the ability of a depository institution to engage in insurance sales, solicitation, and cross-marketing activity. The Massachusetts Director asserts that the Waiting Period Requirement does not ''significantly interfere'' with the ability of a bank to sell insurance because the requirement merely governs *when* the bank may solicit consumers.[35] That characterization substantially understates the effect of the requirement on a bank's ability to cross-market its products, however. As we stated in the West Virginia Letter, based on our experience, restricting the timing of an insurance solicitation also restricts ''the methods by which a bank may solicit an insurance sale from a customer and thus substantively affects the bank's ability to solicit and sell insurance products.'' [36] The Massachusetts Waiting Period Requirement, like the timing provision considered in the West Virginia letter, would preclude national banks from availing themselves of a prime opportunity to cross-market insurance products, that is, when the transaction is still in process.

It also would make subsequent cross-marketing much more costly by requiring banks to develop databases to keep track of customers that have loans pending with the bank. Banks would have to institute methods of communicating this information to its sales force and of apprising the sales force of changes as they occur. The Waiting Period Requirement also would significantly hamper a bank's mass mailing efforts since bank staff would be required to remove from the mass mailing those individuals who have loans pending with the bank. The cost of developing and maintaining these procedures would impair the bank's ability to engage in insurance activities and frustrate its ability to pursue particular sales activities.[37]

IV. Conclusions

The Massachusetts Referral and Referral Fee Prohibitions frustrate the ability of national banks to cross-market insurance products, an authority specifically referenced in section 104 of GLBA and recognized by the Supreme Court as essential to the conduct of modern business. The Massachusetts Waiting Period Requirement impermissibly restricts the methods by which a bank may solicit an insurance sale from a customer and would also significantly interfere with the cross-marketing of insurance products. It is therefore our opinion that the Massachusetts Referral Prohibition, the Massachusetts Referral Fee Prohibition, and the Massachusetts Waiting Period Requirement would be preempted under the *Barnett* standards incorporated in GLBA section 104(d)(2).

Sincerely,

Julie L. Williams,

First Senior Deputy Comptroller and Chief Counsel.

[FR Doc. 02–6918 Filed 3–21–02; 8:45 am]

BILLING CODE 4810–33–P

[32] The Massachusetts Director also asserted in her letter that the Referral Prohibition and Referral Fee Prohibition should not be preempted because the provisions are ''consumer protective in nature and guard against inappropriate product recommendations, high pressure sales tactics and the sale of insurance products on the basis of compensation to the seller rather than the benefit to consumers.'' Director's Letter, *supra* note 29, at 2. As explained by the district court in the *Duryee* case, however, ''[w]here state and federal laws are inconsistent, the state law is pre-empted even if it was enacted by the state to protect its citizens or consumers.'' *Duryee,* 55 F.Supp at 802. Agreeing with this conclusion, the Sixth Circuit stated that ''the fact that the state legislature enacted the [state law at issue] to protect general insurance agents and consumers does not, for that reason alone, preclude federal preemption.'' *Duryee,* 270 F.3d at 408. *See also Franklin National Bank,* 347 U.S. at 378.

[33] **Mass. Gen. L.** 167F, § 2A(b)(4)(ii) and (iii), 209 CMR § 49.06(5)(b) and (c), and 211 CMR § 142.06(2) and (3)(b). Specifically, § 142.06(2) provides:

No solicitation for the sale of insurance in conjunction with any application for the extension of credit shall be permitted until said application has been approved, such approval and the disclosures required by 211 CMR 142.06 have been provided to said applicant in writing, and the receipt of both said approval and disclosures has been acknowledged in writing by said applicant. . . .

Section 142.06(3)(b) provides:

(3) In the instance of an application to a bank for an extension of credit to be secured by a mortgage on real estate and in which it is necessary for the applicant to obtain a policy insuring said premises against loss and designating such bank as loss payee:

* * * (b) such bank shall not, in any manner, solicit the applicant to purchase the required insurance from the bank until said commitment has been accepted by the applicant . . . .

[34] Pursuant to the Director's Letter, the Director's acknowledgement of this point ''shall [not] be construed in any way to waive or concede any issues . . . that may arise in any other proceeding regarding the Massachusetts bank insurance laws.'' Director's Letter, *supra* note 29, at 3.

[35] We note that other Federal regulations contemplate, and in some instances require, that insurance solicitations occur *prior* to loan approval. Under the Truth-in-Lending-Act regulations, a lender must disclose to a consumer the finance charge, which in some instances includes insurance costs, associated with a loan. *See* 12 CFR 226.4(d) and 226.18. The estimated finance charge disclosure in connection with a residential mortgage loan subject to the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 *et seq.,* typically is required prior to loan approval. *See* 12 CFR 226.19(a) (disclosure must be made prior to the loan's consummation or mailed within three days of receipt of the consumer's application, whichever is earlier). Similarly, a lender must make the insurance disclosures required by the GLBA Section 305 regulations ''at the time the consumer applies for an extension of credit in connection with which an insurance product is solicited, offered or sold.'' *See* 12 CFR 14.40(c)(1).

[36] West Virginia Letter at 25.

[37] The Massachusetts Director argues that preemption of the Waiting Period Requirement would interfere with Massachusetts insurance laws and other consumer protection laws that prohibit ''tying.'' We have not been asked to consider these other Massachusetts laws in this letter. We note, however, that national banks are required to comply with the significant tying restrictions imposed by federal law. Twelve U.S.C. 1972 generally prohibits a bank from extending credit, leasing or selling property, furnishing services, or fixing or varying prices of these transactions on the condition or requirement that the customer obtain additional credit, property, or service from the bank, subject to certain exceptions. Nothing in this opinion would allow national banks to engage in impermissible tying under section 1972. Moreover, section 305 of the GLBA requires that the OCC's insurance consumer protection regulations contain anti-tying provisions consistent with section 1972. *See* 12 CFR 14.30(a).

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Declaration for Unaccompanied Articles

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Declaration for Unaccompanied Articles. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C,

Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Declaration for Unaccompanied Articles.

OMB Number: 1515–0087.

Form Number: Customs form 255.

Abstract: This collection is completed by each arriving passenger for each parcel or container which is being sent from an Insular Possession at a later date. This declaration allows that traveler to claim their appropriate allowable exemption.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 7,500.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 1,250.

Estimated Total Annualized Cost on the Public: $18,750.

Dated: March 15, 2002.

Tracey Denning,

Team Leader, Information Services Group.

[FR Doc. 02–6877 Filed 3–21–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Record of Vessel Foreign Repair or Equipment Purchase

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Record of Vessel Foreign Repair or Equipment Purchase. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Record of Vessel Foreign Repair or Equipment Purchase.

OMB Number: 1515–0082.

Form Number: Customs form 226.

Abstract: This collection is required to ensure the collection of revenue (duty) required on all equipment, parts, or materials purchased, and repairs made to U.S. Flag vessels outside the United States.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 1,500.

Estimated Total Annualized Cost on the Public: $30,000.

Dated: March 15, 2002.

Tracey Denning,

Information Services Group.

[FR Doc. 02–6876 Filed 3–21–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request Report of Loss, Detention, or Accident by Bonded Carrier, Cartman, Lighterman, Foreign Trade Zone Operator, or Centralized Examination Station Operator

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Report of Loss, Detention, or Accident by Bonded Carrier, Cartman, Lighterman, Foreign Trade Zone Operator, or Centralized Examination Station Operator. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning,

1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Report of Loss, Detention, or Accident by Bonded Carrier, Cartman, Lighterman, Foreign Trade Zone Operator, or Centralized Examination Station Operator.

OMB Number: 1515–0193.

Form Number: N/A.

Abstract: This collection is required to ensure that any loss or detention of bonded merchandise, or any accident happening to a vehicle or lighter while carrying bonded merchandise shall be immediately reported by the cartman, lighterman, qualified bonded carrier, foreign trade zone operator, bonded warehouse proprietor, container station operator or centralized examination station operator are properly reported to the port director.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 37 minutes.

Estimated Total Annual Burden Hours: 154.

Estimated Total Annualized Cost on the Public: $9,000.

Dated: March 15, 2002.

Tracey Denning,

Information Services Group.

[FR Doc. 02–6878 Filed 3–21–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request North American Free Trade Agreement Duty Deferral

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the North American Free Trade Agreement Duty Deferral. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: North American Free Trade Agreement Duty Deferral.

OMB Number: 1515–0208.

Form Number: N/A.

Abstract: The North American Free Trade Agreement Duty Deferral Program prescribe the documentary and other requirements that must be followed when merchandise is withdrawn from a U.S. duty-deferral program for exportation to another NAFTA country.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 600.

Estimated Time Per Respondent: 36 hours.

Estimated Total Annual Burden Hours: 400.

Estimated Total Annualized Cost on the Public: $10,400.

Dated: March 15, 2002.

Tracey Denning,

Information Services Group.

[FR Doc. 02–6879 Filed 3–21–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Notice of Detention

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Notice of Detention. This request for comment is being made pursuant to the Paperwork

Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Notice of Detention.

OMB Number: 1515–0210.

Form Number: N/A.

Abstract: This collection requires a response to the Notice of Detention of merchandise and to provide evidence of admissibility to allow entry.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 500.

Estimated Total Annualized Cost on the Public: $12,500.

Dated: March 15, 2002.

Tracey Denning,

Team Leader, Information Services Group.

[FR Doc. 02–6880 Filed 3–21–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Lay Order Period—General Order Merchandise

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Lay Order Period—General Order Merchandise. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Lay Order Period—General Order Merchandise Cost Submissions.

OMB Number: 1515–0220.

Form Number: N/A.

Abstract: This collection is required to ensure that the operator of an arriving carrier, or transfer agent shall notify a bonded warehouse proprietor of the presence of merchandise that has remained at the place of arrival or unlading without entry beyond the time period provided for by regulation.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 300.

Estimated Time Per Respondent: 15 hours.

Estimated Total Annual Burden Hours: 7,500.

Estimated Total Annualized Cost on the Public: $103,125.

Dated: March 15, 2002.

Tracey Denning,

Information Services Group.

[FR Doc. 02–6881 Filed 3–21–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0216]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain

information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine the appropriate claimant eligibility for accrued benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 21, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0216'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Reimbursement from Accrued Amounts Due a Deceased Beneficiary, VA Form 21–601.

OMB Control Number: 2900–0216.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to file a claim for accrued benefits available at the time of the veteran's death. The information is used by the Veterans Benefits Administration to determine the appropriate claimant eligibility for accrued benefits.

Affected Public: Individuals or households and Business or other for-profit.

Estimated Annual Burden: 1,875 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 3,750.

Dated: March 14, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–6922 Filed 3–21–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0131]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine eligibility to reinstate or change government life insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 21, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0131'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Supplemental Information on Medical and Nonmedical Applications, VA Form Letter 29–615.

OMB Control Number: 2900–0131.

Type of Review: Extension of a currently approved collection.

Abstract: The form letter is used by the policyholder to apply for new issue, reinstatement or change of plan on Government Life Insurance.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 9,000.

Dated: March 14, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–6923 Filed 3–21–02; 8:45 am]

BILLING CODE 8320–01–P

Notices

Federal Register
Vol. 67, No. 56
Friday, March 22, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examinations.

DATES: The meeting will be held on April 15, 2002, from 8:30 AM to 5 PM.

ADDRESSES: The meeting will be held at the Franklin Court Building, Room 6001, West Tower, 1099 14th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Director of Practice and Executive Director of the Joint Board for the Enrollment of Actuaries, 202–694–1891.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at the Franklin Court Building, Room 6001, West Tower, 1099 14th Street NW., Washington, DC Monday, April 15, 2002, from 8:30 AM to 5:00 PM.

The purpose of the meeting is to discuss topics and questions, which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: March 13, 2002.

Patrick W. McDonough

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 02–6982 Filed 3–21–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on April 15, 2002, at the North Tahoe Conference Center, 8318 North Lake Blvd, Kings Beach, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held April 15, 2002, beginning at 9 a.m. and ending at 4:30 p.m.

ADDRESSES: The meeting will be held at the North Tahoe Conference Center, 8318 North Lake Blvd, Kings Beach, CA.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road, Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executive Committees. Items to be covered on the agenda include: Lands and Budget Subcommittee reports, a presentation from Sacramento Air Quality Management District, a presentation by Housing and Urban Development, review of the draft FY 2003 Restoration Act Project List, Tahoe TMDL Planning, and public comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address states above.

Dated: March 15, 2002.

Maribeth Gustafson,

Forest Supervisor.

[FR Doc. 02–6908 Filed 3–21–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on April 2, 2002 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on April 2, 2002 from 6 to 8 p.m.

ADDRESSES: The meeting will be held at the Elk Valley Rancheria Community Center, 2298 Norris Avenue, Suite B, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone (707) 441–3549. Email: *lchapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: This will be the fourth meeting of the committee, and will focus on the overall strategy for selecting Title II projects and involving the public. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: March 14, 2002.

S.E. 'Lou' Woltering,

Forest Supervisor.

[FR Doc. 02–6905 Filed 3–21–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on April 8, 2002 in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on April 8, 2002 from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Public Utilities District Conference Room, 26 Ponderosa Lane, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Joyce Andersen, Designated Federal Official, USDA, Shasta Trinity National Forests, P.O. Box 1190, Weaverville, CA 96093. Phone: (530) 623–1709. e-mail: *jandersen@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will focus on discussing Title II project priorities identified by the RAC subcommittees. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: March 14, 2002.

S.E. ''Lou'' Woltering,

Forest Supervisor.

[FR Doc. 02–6906 Filed 3–21–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on April 29, 2002 in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on April 29, 2002 from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Public Utilities District Conference Room, 26 Ponderosa Lane, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Joyce Andersen, Designated Federal Official, USDA, Shasta Trinity National Forests, P.O. Box 1190, Weaverville, CA 96093. Phone: (530) 623–1709. E-mail: *jandersen@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will focus on selecting Title II projects based on the recommendations of the RAC subcommittees. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: March 14, 2002.

S.E. ''Lou'' Woltering,

Forest Supervisor.

[FR Doc. 02–6907 Filed 3–21–02; 8:45 am]

BILLING CODE 3410–11–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 Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 22, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740

SUPPLEMENTARY INFORMATION: On January 25, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 3683) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the additions on the current or most recent contractors, the Committee has determined that the 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 service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-ODay Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is added to the Procurement List:

Services

Service Type/Location: Janitorial/Custodial, VA Medical Center, Salem Primary Care Clinic, Salem, Oregon.

NPA: The Garten Foundation, Salem, Oregon.

Contract Activity: Department of Veterans Affairs.

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.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–6945 Filed 3–21–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurment List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a product and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 22, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product and service will be required to procure the product and service 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 product and service to the Government.

2. The action will result in authorizing small entities to furnish the product and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-ODay Act (41 U.S.C.46–48c) in connection with the product and service 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 product and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

Product/NSN: Battery, Nonrechargeable, 6 Volt Alkaline/6135–01–333–6737.

NPA: Eastern Carolina Vocational Center, Inc., Greenville, North Carolina.

Contract Activity: Defense Supply Center—Richmond, Richmond, Virginia.

Service

Service Type/Location: Administrative Services, Milwaukee Federal Building and U.S. Courthouse, Milwaukee, Wisconsin.

NPA: Milwaukee Center for Independence, Inc., Milwaukee, Wisconsin.

Contract Activity: General Services Administration, Public Buildings Service.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–6946 Filed 3–21–02; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2002 Economic Census of Puerto Rico and Outlying Areas.

Form Number(s): OA–97120, OA–97220, OA–97123, OA–97223, OA–97130, OA–97230, OA–97142, OA–97242,OA–97144, OA–97244, OA–97152, OA–97252, OA–97172, OA–97272, OA–97180, OA–97280, OA–97190, OA–97290, OA–98163, OA–98173, OA–98183, OA–98193.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 55,750 hours in FY 2003.

Number of Respondents: 61,500.

Avg Hours Per Response: 55 minutes.

Needs and Uses: The Census Bureau plans to conduct the 2002 Economic Census of Puerto Rico and Island Areas, which in addition to Puerto Rico, includes Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and American Samoa, as part of the 2002 Economic Census.

The 2002 Economic Census of Puerto Rico and Island Areas will cover the following sectors (as defined by the North American Industry Classification System (NAICS)): Mining, Utilities, Construction, Manufacturing; Wholesale and Retail Trades, Transportation and Warehousing, Information; Finance and Insurance; Real Estate and Rental and Leasing; Professional, Scientific, and Technical Services; Management of Companies and Enterprises; Administrative and Support, Waste Management and Remediation Services; Educational Services; Health Care and Social Assistance; Arts, Entertainment, and Recreation; Accommodation and Food Services; and Other Services (except Public Administration). This scope is equivalent to that of the stateside economic census.

The economic census provides the only source for dependable, comparable data at a geographic level consistent with U.S. counties. The 2002 Economic Census of Puerto Rico and Island Areas is particularly important because of the rapid and varied changes taking place in the economies of these areas. The economic census is the primary source of dependable facts about the structure and functioning of the economies of Puerto Rico and each of the Island Areas, and features the only recognized source of data at a geographic level equivalent to U.S. counties. Economic census statistics serve as part of the framework for the national accounts of Puerto Rico and the Island Areas and provide essential information for government (Federal and local), business, and the general public. The governments of Puerto Rico and the Island Areas rely on the economic census as an important part of the framework for the their income and product accounts, input-output tables, economic indexes, and other composite measures that serve as the factual basis for economic policy-making, planning, and program administration. Further, the census provides benchmarks for surveys of business which track short-term economic trends, serve as economic indicators, and contribute critical source data for current estimates of the gross product of Puerto Rico and the Island Areas. In addition, industry, business, academia, and the general public use information from the economic census for evaluating markets, preparing business plans, making business decisions, developing economic models and forecasts, conducting economic research, and establishing benchmarks for their own sample surveys.

Affected Public: Businesses or other for-profit; Individuals or households; State, local, or tribal government.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 131 and 224.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202)482–3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 19, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–6959 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Special Census Program.

Form Number(s): SC–1, SC–1SUPP, SC–2, SC–920, SC–116, SC–351, SC–921(HU), SC–921(SP).

Agency Approval Number: 0607–0368.

Type of Request: Reinstatement, with change, of an expired collection.

Burden: 114,421 hours.

Number of Respondents: 851,525.

Avg Hours Per Response: 8 minutes.

Needs and Uses: Governmental units requiring current population statistics between decennial censuses request that the Census Bureau conduct special censuses. Many states distribute funds based on current population statistics. In addition, special census data are used by the local jurisdictions to plan new schools, transportation systems, housing programs, and water treatment facilities.

The Special Census Program will operate as a generic OMB clearance, including a library of forms and the operational procedures that will be used for the many special censuses we anticipate conducting this decade. The Census Bureau will establish a reimbursable agreement with a variety of potential special census customers that are unknown at this time. Prior to conducting any special census, the Census Bureau will submit documentation to OMB providing the details of the Special Census under consideration. We will also submit for OMB review and approval, under cover of change worksheet, any special-purpose questions requested by customers to be added to special census questionnaires.

Local jurisdictions use special census data to apply for available funds from both the state and Federal government. Many states distribute these funds based on current population statistics. This fact, along with local population shifts or annexations of territory, prompts local officials to request special censuses. In addition, special census data are used by the local jurisdictions to plan new schools, transportation systems, housing programs, water treatment facilities, etc. Some areas feel that additional data are required for proper planning and others must have the additional data to qualify for some sources of funding. For these reasons, local officials request special purpose questions. The Census Bureau also uses special census data as part of its local population estimates calculation and to update the Bureau's Master Address File (MAF) and Topographically Integrated Geographic Encoding and Referencing (TIGER) System.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 196.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 19, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–6961 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

Census Bureau

Current Population Survey—Basic Demographic Items

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 21, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the internet at *mclayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Gregory Weyland, Census Bureau, FOB 3, Room 3340, Washington, DC 20233–8400, (301) 457–3806.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request clearance from the Office of Management and Budget (OMB) for the collection of basic demographic information on the Current Population Survey (CPS) beginning in July 2002. The current clearance expires June 30, 2002.

The CPS has been the source of official government statistics on employment and unemployment for over 50 years. The Bureau of Labor Statistics (BLS) and the Census Bureau jointly sponsor the basic monthly survey. The Census Bureau also prepares and conducts all the field work. At the OMB's request, the Census Bureau and the BLS divide the clearance request in order to reflect the joint sponsorship and funding of the CPS program. The justification that follows is in support of the demographic data.

The demographic information collected in the CPS provides a unique set of data on selected characteristics for the civilian noninstitutional population. Some of the demographic information we collect are age, marital status, gender, Armed Forces status, education, race, origin, and family income. We use these data in conjunction with other data, particularly the monthly labor force data, as well as periodic supplement data. We use these data also independently for internal analytic research and for evaluation of other surveys. In addition, we use these data as a control to produce accurate estimates of other personal characteristics.

II. Method of Collection

The CPS basic demographic information is collected from individual households by both personal visit and telephone interviews each month. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Number: 0607–0049.

Form Number: There are no forms. We conduct all interviewing on computers.

Type of Review: Regular.

Affected Public: Households.

Estimated Number of Respondents: 57,000 per month.

Estimated Time Per Response: 1.58 minutes.

Estimated Total Annual Burden Hours: 18,012.

Estimated Total Annual Cost: There is no cost to respondents other than their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182; and Title 29, United States Code, Sections 1–9.

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 the OMB approval of this information collection; they also will become a matter of public record.

Dated: March 19, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–6958 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Current Population Survey (CPS) School Enrollment Supplement

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 21, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Karen Woods, Census Bureau, FOB 3, Room 3340, Washington, DC 20233–8400, (301) 457–3806.

SUPPLEMENTARY INFORMATION:

I. Abstract

Title 13, United States Code, Section 182, and Title 29, United States Code, Sections 1–9, authorize the collection of the CPS information. The Census Bureau and the Bureau of Labor Statistics sponsor the basic annual school enrollment questions, which have been collected annually in the CPS for 30 years.

This survey provides information on public/private elementary school, secondary school, and college enrollment, and on characteristics of private school students and their families, which is used for tracking historical trends, policy planning, and support. This years supplement contains additional questions about library use which are based on questions from the National Household Education Survey administered by the National Center for Education Statistics in 1996. Data about library staff, facilities, and resources exist as reported by libraries from other surveys; however, the questions of how and why households use these libraries are not addressed by these institutional data. The October 2002 Current Population Survey provides the opportunities to ask detailed questions about household library use. The questions are asked of each household and focus on how households use public libraries and whether public library activities are accessible to people with disabilities. This survey is the only source of national data on the age distribution and family characteristics of college students and the only source of demographic data on preprimary school enrollment. As part of the federal government's efforts to collect data and provide timely information to local governments for policymaking decisions, the survey provides national trends in enrollment and progress in school.

II. Method of Collection

The school enrollment information will be collected by both personal visit and telephone interviews in conjunction with the regular October CPS interviewing. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Number: 067–0464.

Form Number: There are no forms. We conduct all interviews on computers.

Type of Review: Regular.

Affected Public: Household.

Estimated Number of Respondents: 57,000.

Estimated Time Per Response: 4.5 minutes.

Estimated Total Annual Burden Hours: 4,275.

Estimated Total Annual Cost: The only cost to respondents is that of their time.

Respondents Obligation: Voluntary.

Legal Authority: Title 13, U.S.C., Section 182, and Title 29, U.S.C., 9.

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 the Office of Management and Budget approval of this information collection; they also will become a matter of public record.

Dated: March 19, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer. Office of the Chief Information Officer.

[FR Doc. 02–6960 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–07–M

Departmental Paperwork Clearance Officer. Office of the Chief Information Officer.

[FR Doc. 02–6960 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

Census Bureau

Current Industrial Reports Surveys—WAVE III (Mandatory and Voluntary Surveys)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 21, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to: Judy Dodds, Assistant Chief for Census and Related Programs, (301) 457–4587, Census Bureau, Manufacturing and Construction Division, Room 2101, Building #4, Washington, DC 20233 (or via the Internet at *judy.m.dodds@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts a series of monthly, quarterly, and annual surveys as part of the Current Industrial Reports (CIR) program. The CIR surveys deal mainly with the quantity and value of shipments of particular products and occasionally with data on production and inventories; unfilled orders, receipts, stocks and consumption; and comparative data on domestic production, exports, and imports of the products they cover. These surveys provide continuing and timely national statistical data on manufacturing. The results of these surveys are used extensively by individual firms, trade associations, and market analysts in planning or recommending marketing and legislative strategies.

The CIR program includes both mandatory and voluntary surveys. Typically, the monthly and quarterly surveys are conducted on a voluntary basis and annual collections are mandatory. The collection frequency of individual CIR surveys is determined by the cyclical nature of production, the need for frequent trade monitoring, or the use of data in Government economic indicator series. Some monthly and quarterly CIR surveys have an annul ''counterpart'' collection. The annual counterpart collects annual data on a mandatory basis from those firms not participating in the more frequent collection.

Due to the large number of surveys in the CIR program, for clearance purposes, the CIR surveys are divided into ''waves.'' There are three waves that include the mandatory and voluntary surveys. Mandatory and voluntary surveys are divided into separate clearance requests, making six separate clearances. We are now combining the mandatory and voluntary surveys into one clearance request, reducing the total number of clearance requests from six to three. Each year, one wave is submitted for review. This year the Census Bureau plans to submit mandatory and voluntary surveys of Wave III for clearance. Also, because this is an economic census year, all voluntary annual surveys are made mandatory. The surveys are MA311D—''Confectionery'', MA333N—''Fluid Power Products'', and MA335L—''Electric Lighting Fixtures''. MA333U—''Coin-Operated Vending Machines'' is being discontinued because of a lack of funding. The surveys in Wave III are:

Mandatory surveys	Voluntary survey
M311H—Fats and Oils (Warehouse)	*M336G—Civil Aircraft and Aircraft Engines.
M311L—Fats and Oils (Renderers)	*MQ313D—Consumption on the Woolen System and Worsted Combing.
M311M—Fats and Oils (Consumer)..	
M311N—Fats and Oils (Producers)	* These voluntary surveys have mandatory annual counterparts.
MQ313T—Broadwoven Fabrics (Gray).	
**MA311D—Confectionery.	
MA315D—Gloves and Mittens.	
MA327E—Consumer, Scientific, Technical, and Industrial Glassware.	
MA333D—Construction Machinery.	
MA333F—Mining Machinery.	
**MA333N—Fluid Power Products.	
MA334P—Communication Equipment.	
**MA335L—Electric Lighting Fixtures.	
**Voluntary annual surveys made mandatory during an economic census year.	

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect data. We ask respondents to return monthly report forms within 10 days, quarterly report forms within 15 days, and annual report forms within 30 days of the initial mailing. Telephone calls and/or letters encouraging participation will be mailed to respondents who have not responded by the designated time.

III. Data

OMB Number: 0607–0476—Mandatory Surveys 0607–0776—Voluntary & Annual Counterparts Surveys.

Form Number: See Chart Above.

Type of Review: Regular Review.

Affected Public: Businesses, or other for-profit organizations.

Estimated Number of Respondents: Total—10,756.

Estimated Time Per Response: 1.82.

Estimated Total Annual Burden: Total—9,315 hours.

Estimated Total Annual Cost: The estimate cost to respondents for all the CIR reports in Wave III for fiscal year 2003 is $142,706.

Respondent's Obligation: The CIR program includes both mandatory and voluntary surveys.

Legal Authority: Title 13, United States Code, Sections 61, 81, 131, 182, 224, and 225.

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 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: March 19, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–6962 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

2002 Company Organization Survey

ACTION: Proposed Collection; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing efforts 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 May 21, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Paul Hanczaryk, Bureau of the Census, Room 2747, Federal Building 3, Washington, DC 20233–6100; telephone (301) 457–2600.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the annual Company Organization Survey (COS) in order to update and maintain a central, multipurpose Business Register (BR), formerly known as the Standard Statistical Establishment List (SSEL). In particular, the COS supplies critical information on the composition, organizational structure, and operating characteristics of multi-establishment companies.

The BR serves two fundamental purposes:

—First and most important, it provides sampling populations and enumeration lists for the Census Bureau's economic surveys and censuses, and it serves as an integral part of the statistical foundation underlying those programs. Essential for this purpose is the BR's ability to identify all known United States business establishments and their parent companies. Further, the BR must accurately record basic business attributes needed to control sampling and enumeration. These attributes include industrial and geographic classifications, and contact information (for example, name and address).

—Second, it provides establishment data that serve as the basis for the annual County Business Patterns (CBP) statistical series. The CBP reports present data on number of establishments, first quarter payroll, annual payroll, and mid-March employment summarized by industry and employment size class for the United States, the District of Columbia, Puerto Rico, counties, and county-equivalents. No other annual or more frequent series of industry statistics provides comparable detail, particularly for small geographic areas.

II. Method of Collection

The Census Bureau will conduct the 2002 COS in conjunction with the 2002 Economic Census and will coordinate these collections so as to minimize response burden. The consolidated COS/census mail canvass will direct inquiries to the entire BR universe of multiestablishment enterprises, which comprises some 182,000 parent companies and more than 1.6 million establishments. The primary collection medium for the COS and census is paper questionnaire; however, many large enterprises will submit automated/electronic COS reports. COS data content is identical for all reporting modes.

Primary COS inquiries to each of the 182,000 multiestablishment enterprises will include questions on ownership or control by a domestic parent, ownership or control by a foreign parent, and ownership of foreign affiliates. Additional COS inquiries will apply to approximately 5,000 enterprises that operate some 25,000 establishments classified in industries that are out-of-scope to the economic census. The additional inquiries will list an inventory of those out-of-scope establishments and request updates to the inventory, including additions; deletions; and changes to Federal employer identification number, name and address, and industrial classification. Further, the additional inquiries will collect the following basic operating data for each listed establishment: end-of-year operating status, mid-March employment, first quarter payroll, and annual payroll. The economic census will collect data for all other establishments of multiestablishment enterprises, including those items listed above.

III. Data

OMB Number: 0607–0444.

Form Number: NC–99001.

Type of Review: Regular submission.

Affected Public: Business or other for-profit, not-for-profit institutions.

Estimated Number of Respondents: 182,000 enterprises.

Estimate Time Per Response: .5 hour.

Estimated Total Annual Burden Hours: 91,255.

Estimated Total Annual Cost: Included in the total annual cost of the BR, which is estimated to be $10.2 million for fiscal year 2002.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 of United States Code, Sections 131, 182, 224 and 225.

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 of 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: March 19, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–6963 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Decennial Census Advisory Committee

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, section 10(a)(b), the Bureau of the Census (Census Bureau) is giving notice of a meeting of the Decennial Census Advisory Committee. The Committee will address issues related to 2010 decennial planning, development, and testing, as well as the American Community Survey and other related decennial programs. Last-minute changes to the schedule are possible, which could prevent us from giving advance notification.

DATES: May 2–3, 2002. On May 2, the meeting will begin approximately 8:45 a.m. and end approximately 5:15 p.m. On May 3, the meeting will begin approximately 8:45 a.m. and end approximately 1:45 p.m.

ADDRESSES: The meeting will be held in the Francis Amasa Walker Conference Center, U.S. Census Bureau, 4700 Silver Hill Road, Federal Office Building 3, Suitland, MD 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Office Building 3, Washington, DC 20233, telephone 301–457–2075, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: The Decennial Census Advisory Committee is composed of a Chair, Vice-Chair, and up to 40 member organizations, all appointed by the Secretary of Commerce. The Commerce considers the goals of the decennial census and users' needs for information provided by the decennial census. The Committee provides an outside user perspective about how research and design plans for the 2010 decennial census, and the development of the American Community Survey and related programs, will realize those goals and satisfy those needs. The members of the Advisory Committee will draw on their experience with Census 2000 planning and operational processes, results of research studies, test censuses, and results of the Census 2000 evaluation program to provide input on the design and related operations of the 2010 decennial census, the American Community Survey, and other related programs.

A brief period will be set aside at the meeting for public comment. However, individuals with extensive statements for the record must submit them in writing to the Census Bureau Committee Liaison Officer, named above, at least three working days prior to the meeting. Seating is available to the public on a first-come, first-served basis.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer.

Dated: March 15, 2002.

Kathleen B. Cooper,

Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 02–6882 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Proposed Information Collection; Comment Request; National Security and Critical Technology Assessment of the U.S. Industrial Base

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice.

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 May 21, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 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 Dawnielle Battle, BXA ICB Liaison, (202) 482–0637, Department of Commerce, Room 6883, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department of Commerce/BXA, in coordination with other government agencies and private entities, conduct assessments of U.S. industries deemed critical to our national security. The information gathered is needed to assess the health and competitiveness as well as the needs of the targeted industry sector in order to maintain a strong U.S. industrial base.

II. Method of Collection

Written response.

III. Data

OMB Number: 0694–0119.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals, businesses or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 6,000.

Estimated Time Per Response: 4 hours.

Estimated Total Annual Burden Hours: 24,000.

Estimated Total Annual Cost: $0.

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 will also become a matter of public record.

Dated: March 13, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–6523 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Information Services Order Form

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the 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 May 21, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th & Constitution Avenue, NW., Washington, DC 20230 or via Internet at *MClayton@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to Joseph English, telephone 202–482–3334, fax 202–482–5362, e-mail *Joseph.English@ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. & Foreign Commercial Service Export Assistance Centers offer their clients DOC programs, market research, and services to enable the client to begin exporting or to expand existing exporting efforts.

The Information Services Order Form is used by US&FCS trade specialists in the Export Assistance Centers to collect information about clients in order to determine which programs or services would best help clients meet their export goals. This form is required for clients to order US&FCS programs and services. Certain programs are tailored for individual clients, e.g., the Agent Distributor Service, which identifies potential overseas agents or distributors for a particular U.S. manufacturer.

The form is being revised because some of the product names have changed or have been discontinued.

II. Method of Data Collection

Trade specialists gather information from clients at the Export Assistance Centers.

III. Data

OMB Number: 0625–0143.

Form Number: ITA–4096P.

Type of Review: Revision-Regular submission.

Affected Public: Companies interested in ordering export promotion products or services.

Estimated Number of Respondents: 2,675.

Estimated Time Per Response: Range from 5 to 60 minutes.

Estimated Total Annual Burden Hours: 483 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is $122,750.00 ($16,852.00 for respondents and $105,898.00 for federal government).

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 costs) 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 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: March 19, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–6964 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Commerce.

ACTION: Notice of Intent to Request a Panel Review.

SUMMARY: On February 27, 2002, The Government of Canada filed a Notice of Intent to Request A Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904.4 of the North American Free Trade Agreement. The Notice was based on the Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination regarding Certain Softwood Lumber Products from Canada, made by the United States International Trade Administration. This determinations were published in the **Federal Register**, (66 FR 56062) on November 6, 2001. The NAFTA Secretariat has assigned Case Number USA–CDA–2002–1904–02 to this Notice.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A Notice of Intent to Request A Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904.4 of the Agreement, on February 27, 2002, requesting that a panel be established in accordance with the Article outlined above.

Article 1904.4 provide in part that:

> Where the competent investigating authority of the importing Party has imposed provisional measures in an investigation, the other involved Party may provide notice of its intention to request a panel under this Article, and the Parties shall being to establish a panel at that time.

Dated: March 4, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–6883 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Commerce.

ACTION: Notice of Intent to Request A Panel Review

SUMMARY: On February 26, 2002, The Government of Canada filed a Notice of Intent to Request A Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904.4 of the North American Free Trade Agreement. The Notice was based on the Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination regarding Certain Softwood Lumber Products from Canada, made by the United States International Trade Administration. This determinations were published in the **Federal Register**, (66 FR 43186) on August 17, 2001. The NAFTA Secretariat has assigned Case Number USA–CDA–2002–1904–03 to this Notice.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A Notice of Intent to Request A Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904.4 of the Agreement, on February 27, 2002, requesting that a panel be established in accordance with the Article outlined above.

Article 1904.4 provide in part that:

> Where the competent investigating authority of the importing Party has imposed provisional measures in an investigation, the other involved Party may provide notice of its intention to request a panel under this Article, and the Parties shall being to establish a panel at that time.

Dated: March 4, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–6884 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031902C]

North Pacific Fishery Management Council; Notice of Public Meetings

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

ACTION: Meetings of the North Pacific Fishery Management Council and its advisory committees.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings April 8–17, 2002, in Anchorage, Alaska. All meetings will be held at the Anchorage Hilton Hotel.

DATES: The Council's Advisory Panel will begin at 8 a.m., Monday, April 8, and continue through Saturday, April 13, 2002. The Scientific and Statistical Committee will begin at 8 a.m. on Monday, April 8, and continue through Wednesday, April 10, 2002.

The Council will begin its plenary session at 8 a.m. on Wednesday, April 10, continuing through noon Wednesday, April 17. All meetings are open to the public except executive sessions. See **SUPPLEMENTARY INFORMATION** for a schedule of other meetings and the agenda.

ADDRESSES: Hilton Hotel, 500 W. 3rd Avenue, Anchorage, Alaska.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, Phone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

Other Committee/Workgroup Meetings Scheduled:

The *Individual Fishery Quota (IFQ) Implementation and Cost Recovery Committee* will meet Sunday, April 7, from 6:30pm to 9:30pm at the Anchorage Hilton Hotel to review regulatory amendments to the IFQ program and develop recommendations for the Council.

The *Gulf of Alaska Workgroup* will meet Tuesday, April 9, from 1 p.m.–5 p.m. at the Anchorage Hilton Hotel to continue developing recommendations for rationalization of the Gulf of Alaska groundfish fisheries.

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports:
(a) Executive Director's Report.
(b) State Fisheries Report by Alaska Dept. of Fish and Game.
(c) National Marine Fisheries Service (NMFS) Management Report.
(d) U.S. Coast Guard Enforcement and Surveillance report.
(e) Report on sea otters from the U.S. Fish &Wildlife Service.

2. Observer Program: final action on regulatory amendments and program extension.

3. Halibut/Sablefish IFQ Program: Final action on implementation regulatory amendments and community purchase of quota share amendment.

4. Halibut Subsistence:
(a) Receive report on the Proposed Rule for October 2000 Council action on halibut subsistence.
(b) Receive report from Halibut Subsistence Committee on proxy issues.
(c) Final action on amendments to October 2000 Council action on halibut subsistence.

5. Community Development Quota Policy Amendment: Identify preferred alternative.

6. Crab Management:
(a) Initial review of analysis for rationalization of Bering Sea/Aleutian Island crab fisheries.
(b) Finalize suite of alternatives for the environmental impact statement for the Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan.

7. Draft Programmatic Groundfish Supplemental Environmental Impact Statement:

(a) Review report from the Ecosystem Committee (tentative).

(b) Clarify purpose and need statement.

(c) Review alternatives for revised analysis

8. American Fisheries Act:

(a) Initial review of processor sideboards, improved retention/utilization adjustments and bycatch reduction measures.

(b) Initial review of additional Pacific cod sideboard measures.

(c) Initial review of single geographic location change, including clarification of Inshore-offshore and Catcher Vessel Operational Area regulations.

(d) Review industry proposal for pollock bycatch measures and provide direction.

9. Essential Fish Habitat (EFH):

(a) Review progress and EFH Committee report; provide direction.

(b) Review recommendations from the joint Council/Alaska Board of Fisheries Protocol Committee.

10. Gulf of Alaska Groundfish Rationalization: Review progress from working group; provide direction.

11. Steller Sea Lions: Initial review of trailing amendments.

12. Review staff tasking and provide direction.

13. Discuss annual management cycle and Council Statement of Operating Policy and Procedures.

14. Discuss and identify research priorities.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during the meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Scientific and Statistical Committee (SSC): The SSC agenda will include the following issues:

1. Election of Officers.

2. Crab Management (Item #6 on the Council agenda).

3. American Fisheries Act issues (Item #8 on the Council agenda).

4. Essential Fish Habitat (Item #9 on the Council agenda).

5. Draft Programmatic Groundfish SEIS (Item #7 on the Council agenda).

6. Steller Sea Lion trailing amendment (Item #11 on the Council agenda).

7. Research Priorities (Item #13 on the Council agenda).

Advisory Panel: The Advisory Panel will elect officer for the coming year and address the same agenda issues as the Council, with the exception of the Reports under Item 1 of the Council agenda.

Special Accommodations

These meetings are physically accessible to people with disabilities.

Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: March 19, 2002.

Richard W. Surdi,

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

[FR Doc. 02–6984 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031902B]

Pacific 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 Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet April 7–12, 2002. The Council meeting will begin on Tuesday, April 9, at 8 a.m., reconvening each day through Friday. All meetings are open to the public, except a closed session will be held from 8 a.m. until 9:30 a.m. on Tuesday, April 9 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings and hearing will be held at the DoubleTree Hotel-Columbia River, 1401 N Hayden Island Drive, Portland, OR 97217; telephone: 503–283–2111.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order

1. Opening Remarks, Introductions,

2. Roll Call

3. Executive Director's Report

4. Approve Agenda

5. Approve September and November Meeting Minutes

B. Mitchell Act

C. Salmon Management

1. Report on Federal Regulation Implementation

2. Identification of Stocks Not Meeting Escapement Goals for Three Consecutive Years

3. Methodology Reviews for 2002

4. Tentative Adoption of 2002 Ocean Salmon Management Measures for Analysis

5. Clarify Council Direction on 2002 Management Measures, (If Necessary)

6. Final Action on 2002 Measures

7. Clarification of Final Action on 2002 Measures, (If Necessary)

D. Marine Reserves

1. Status of Channel Island National Marine Sanctuary Proposal and Other Marine Reserves Processes

E. Habitat Issues

1. Essential Fish Habitat Issues

F. Groundfish Management

1. Status of NMFS Regulatory and Other Nonregulatory Activities

2. Permit Stacking Issues

3. Status of Fisheries and Consideration of Inseason Adjustments

4. Rebuilding Plan Status Report

5. Groundfish Multi-year Management Cycle

6. Stock Assessment Review Process Issues

7. Exempted Fishing Permit Applications

8. Fisheries Ecosystem Plan for Northern California

9. Yelloweye Landings in Halibut Fishery Area

10. Strategic Plan Implementation

11. Statements

12. Groundfish Fishery Management Plan Environmental Impact Statement

G. Pacific Halibut Management

1. 2002 Incidental Catch Regulations

2. Final Action on 2002 Management Measures

H. Administrative and Other Matters

1. Status of Legislation

2. Appointments to Advisory Bodies, Standing Committees, and Other Forums

3. Council's ''Statement of Organization, Practices, and Procedures'' and ''Council Operating Procedures'' Documents

4. Research and Data Needs Process and Economic Data Plan

5. Council Staff Workload Priorities

6. June 2002 Council Meeting Draft Agenda

SCHEDULE OF ANCILLARY MEETINGS

SUNDAY, APRIL 7, 2002

SCHEDULE OF ANCILLARY MEETINGS—Continued

Klamath Fishery Management Council	3 p.m.
MONDAY, APRIL 8, 2002	
Council Secretariat	7 a.m.
Salmon Advisory Subpanel	8 a.m.
Scientific and Statistical Committee	8 a.m.
Salmon Technical Team	8 a.m.
Habitat Advisory Board	10 a.m.
Groundfish Advisory Subpanel	1:30 a.m.
Groundfish Management Team	8 a.m.
Klamath Fishery Management Council	As necessary
Tribal Policy Group	As necessary
Tribal and Washington Technical Group	As necessary
TUESDAY, APRIL 9, 2002	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Scientific and Statistical Committee	8 a.m.
Klamath Fishery Management Council	As necessary
Salmon Advisory Subpanel	8 a.m.
Salmon Technical Team	8 a.m.
Tribal Policy Group	As necessary
Tribal and Washington Technical Group	As necessary
Enforcement Consultants	5 p.m.
WEDNESDAY, APRIL 10, 2002	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Klamath Fishery Management Council	As necessary
Salmon Advisory Subpanel	As necessary
Salmon Technical Team	As necessary
Tribal Policy Group	As necessary
Tribal and Washington Technical Group	As necessary
Enforcement Consultants	As necessary
THURSDAY, APRIL 11, 2002	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.

SCHEDULE OF ANCILLARY MEETINGS—Continued

Groundfish Management Team	As necessary
Salmon Advisory Subpanel	As necessary
Salmon Technical Team	As necessary
Tribal Policy Group	As necessary
Tribal and Washington Technical Group	As necessary
Enforcement Consultants	As necessary
FRIDAY, APRIL 12, 2002	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Salmon Advisory Subpanel	As necessary
Salmon Technical Team	As necessary
Tribal Policy Group	As necessary
Tribal and Washington Technical Group	As necessary
Enforcement Consultants	As necessary

Although nonemergency issues not contained in this agenda may come before this Council for discussion, 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 and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least five days prior to the meeting date.

Dated: March 19, 2002.

Richard W. Surdi,

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

[FR Doc. 02–6985 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of a Previously Announced Grace Period on Export Visa and Quota Requirements for Certain Textile Costumes Produced or Manufactured in Various Countries, Exported Before June 1, 2002, and Entered for Consumption or Withdrawn from Warehouse for Consumption Before August 1, 2002

March 18, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending a grace period on export visa and quota requirements for certain textile costumes.

SUMMARY: On March 1, 2002, the U.S. Customs Service published a notice in the **Federal Register** informing the public that certain imported textile costumes, entered for consumption or withdrawn from warehouse for consumption after March 1, 2002, are to be classified as wearing apparel in accordance with the Court of International Trade decision in *Rubie's Costume Company v. United States*. This announcement applied to imported textile costumes of the character covered by the Customs decision published in the **Federal Register** on December 4, 1998 (see 63 FR 67170). On March 4, 2002, the Committee for the Implementation of Textile Agreements published a notice and letter to the Commissioner of Customs in the **Federal Register** allowing a grace period before imposing quota and visa requirements on goods described above that are exported before April 1, 2002, and entered for consumption or withdrawn from warehouse for consumption before June 1, 2002 (see 67 FR 9706). The Committee for the Implementation of Textile Agreements has decided to extend that grace period. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to exempt from export visa and quota requirements goods described above that are exported before June 1, 2002, and entered for consumption or withdrawn from warehouse for consumption before August 1, 2002.

EFFECTIVE DATE: March 22, 2002.

FOR FURTHER INFORMATION CONTACT: Martin Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

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.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 18, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

This directive amends, but does not cancel, the directive issued to you on February 28, 2002. In that directive, the Committee for the Implementation of Textile Agreements decided to allow a grace period on the export visa and quota requirements for the textile costumes of the character covered by the Customs decision published in the **Federal Register** on December 4, 1998 (see 63 FR 67170).

Effective on March 22, 2002, you are directed to extend the exemption from export visa and quota requirements for goods as described above that are exported prior to June 1, 2002, and entered for consumption or withdrawn from warehouse for consumption prior to August 1, 2002.

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–6950 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denying Entry to Textiles and Textile Products Allegedly Produced in Certain Companies in Taiwan

March 18, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs directing Customs to deny entry to shipments allegedly manufactured in a certain companies in Taiwan.

EFFECTIVE DATE: March 22, 2002.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 12475 of May 9, 1984, as amended.

The U.S. Customs Service has conducted on-site verification of textile and textile product production in a number of foreign countries. Based on information obtained through on-site verifications and from other sources, U.S. Customs has informed CITA that certain companies were illegally transshipping, were closed, or were unable to produce records to verify production. The Chairman of CITA has directed the U.S. Customs Service to issue regulations regarding the denial of entry of shipments from such companies. (See Federal Register notice 64 FR 41395, published on July 30, 1999).

In order to secure compliance with U.S. law, including Section 204 and U.S. customs law, to carry out textile and textile product agreements, and to avoid circumvention of textile agreements, the Chairman of CITA is directing the U.S. Customs Service to deny entry to textile and textile products allegedly manufactured by Attain Enterprise Co., Ltd. and Tian Tuan Shing Co., Ltd. for two years. Customs has informed CITA that these companies were found to have been illegally transhipping, closed, or unable to produce records to verify production.

Should CITA determine that this decision should be amended, such amendment will be published in the Federal Register.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 18, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The U.S. Customs Service has conducted on-site verification of textile and textile product production in a number of foreign countries. Based on information obtained through on-site verifications and from other sources, U.S. Customs has informed CITA that certain companies were illegally transshipping, were closed, or were unable to produce records to verify production. The Chairman of CITA has directed the U.S. Customs Service to issue regulations regarding the denial of entry of shipments from such companies (see directive dated July 27, 1999 (64 FR 41395), published on July 30, 1999). In order to secure compliance with U.S. law, including Section 204 and U.S. customs law, to carry out textile and textile product agreements, and to avoid circumvention of textile agreements, the Chairman of CITA directs the U.S. Customs Service, effective for goods exported on and after March 22, 2002 and extending through March 21, 2004, to deny entry to textiles and textile products allegedly manufactured by the Taiwanese companies Attain Enterprise Co., Ltd. and Tian Tuan Shing Co., Ltd. Customs has informed CITA that these companies were found to have been illegally transshipping, closed, or unable to produce records to verify production.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–6949 Filed 3–21–02; 8:45 am]

BILLING CODE 3510–DR–S

DELAWARE RIVER BASIN COMMISSION

Notice of Final Rule; Amendment to the Delaware River Basin Commission's Water Code and Comprehensive Plan To Establish Water Usage Reporting Requirements and Modify Water Metering Requirements

SUMMARY: At its April 19, 2001 business meeting, the Delaware River Basin Commission (''Commission'') amended its *Water Code* and *Comprehensive Plan* to establish water usage reporting requirements for source water withdrawals and water service and to modify its existing water metering requirements for consistency with the new reporting provisions. Today's notice fulfills a requirement of the Delaware River Basin Compact, Pennsylvania Act No. 268 of 1961, that rules adopted by the Commission be filed in accordance with the laws of the signatory parties.

EFFECTIVE DATE: These amendments are effective immediately.

FOR FURTHER INFORMATION CONTACT: Additional information, including background on the need for water usage reporting requirements and an account of the process by which the amendments were developed, is contained in the original Notice of Proposed Rulemaking, November 29, 2000 (65 FR 71094). The text of the new reporting requirements and the complete *Water Code* as amended are available on the Commission's web site at *http://www.DRBC.net,* or upon request from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, NJ 08628–0360. For further information, contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, Delaware River Basin Commission, (609)–883–9500 (x203).

SUPPLEMENTARY INFORMATION: On October 23, 2000 the Commission published on its web site a Notice of Proposed Rulemaking to establish water

usage reporting requirements to ensure that the Commission has the source and service information needed to evaluate how and where water is being used in the basin. Notice was published in the **Federal Register** on November 29, 2000 (65 FR 71094), the *Delaware Register of Regulations* on December 1, 2000, the *New Jersey Register* on December 4, 2000, the *New York State Register* on November 22, 2000 and the *Pennsylvania Register* on November 11, 2000. A public hearing was held on January 9, 2001. The proposed amendments were substantively revised on the basis of the written and oral testimony received, and a notice of revised proposed rulemaking was published in the **Federal Register** on March 1, 2001 (66 FR 12930), the *Delaware Register of Regulations* on March 1, 2001, the *New Jersey Register* on March 5, 2001, the *New York State Register* on February 28, 2001 and the *Pennsylvania Bulletin* on March 3, 2001. An additional comment period and public hearing were provided. The final rule was approved by the Commission at the conclusion of the hearing on April 19, 2001.

The final rule amends Section 2.50.1, ''Service Metering'' and Section 2.50.2, ''Source Metering, Recording and Reporting'' of the Commission's *Water Code* and adds a new Section 2.50.3, ''Reporting Requirements.'' The title of Section 2.50 is revised to read, ''Water Metering and Reporting Requirements.'' Section 2.50.1 is amended to authorize, rather than require, the Executive Director to enter into administrative agreements with the implementing agencies of the signatory states, whereby the appropriate state agencies will administer and enforce the provisions of the regulation. Section 2.50.1 is further amended to provide that in the absence of such an administrative agreement, the Commission shall serve as the agency for administration and enforcement. Section 2.50.2 is amended to provide that the Commission shall administer and enforce the regulation in the New York portion of the basin. New Section 2.50.3 enumerates the types of source and service data to be reported for water supply systems serving the public and for other withdrawals subject to the requirements of Section 2.50.1, Section 2.50.2 and the Commission's Ground Water Protected Area Regulations. In order to avoid redundant reporting, Section 2.50.3 enumerates different reporting requirements for the year 2000 than for subsequent years. For the year 2000, a greater one-time effort is required to initiate reporting. For subsequent years, a much smaller effort is required to continue reporting.

Dated: March 11, 2002.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 02–6219 Filed 3–21–02; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by April 8, 2002. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before May 21, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Karen_F._Lee@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: March 18, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New collection.

Title: Application Package for LEAs under the REAP Rural and Low-Income School Program (KA)

Abstract: This information collection package collection will serve as the application package for LEAs under the REAP Rural and Low-Income School Program. This application package will be used by LEAs applying for benefits under this program in States where the SEA chooses not to participate in the program.

Additional Information: The Department is requesting an emergency clearance for the LEA Application for the Rural and Low-Income School Program by March 22, 2002 due to the unanticipated event and potentially causing public harm if awards were not made in time. This is a state-administered formula grant program under the statute. The Secretary is to award formula grants to SEAs, which in turn must award subgrants to eligible LEAs either competitively or on a formula basis. However, the statute makes provisions in the event an SEA chooses not to participate in the program. In such cases, the Secretary may use the SEA's allotment to award grants directly to eligible LEAs in that State either competitively or by formula.

Eligible LEAs in non-participating States are referred to as ''specially qualified agencies'' in the legislation. Some SEAs have recently indicated that they may choose not to participate in this program. The application package that is the subject of this emergency clearance will be used to make direct grants to LEAs in those states, should it be necessary. If normal procedures were to be followed, the Department would not be able to make grant awards under this program by July 1st. The Rural and Low-Income program is one of the programs covered under the Consolidated Application provisions in the No Child Left Behind Act. The Department cannot make allocations for any applicant (either State or LEA) until all eligible applicants have submitted their allocation and eligibility data to the Department, and therefore the need for emergency processing.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 200.

Burden Hours: 2400.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting ''Browse Pending Collections'' and clicking on link number 1984. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address vivian.reese@ed.gov. Requests may also be electronically mailed to the internet address OCIO_RIMG@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at 540–776–7742. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–6916 Filed 3–21–02; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1256–000]

GA Power Marketing, L.P.; Notice of Filing

March 12, 2002.

Take notice that on March 5, 2002, GA Power Marketing, L.P. (GAPM) tendered for filing an original tariff sheet for authority to sell electricity at market-based rates under Section 205(a) of the Federal Power Act, 16 U.S.C. 824d(a), and accompanying requests for certain blanket approvals and for the waiver of certain Commission regulations.

GAPM is a limited partnership that intends to engage in wholesale electric energy purchases and sales as a power marketer. GAPM is not in the business of generating or transmitting electric power. GAPM is a limited partnership which has Global Operations Services, Inc. as its general partner. Global Operations Services, Inc. is a wholly-owned subsidiary of Global Advisors Limited which, through its affiliates, is involved primarily in investment management.

Any person desiring to intervene or to protest this filing should file 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). 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. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: March 26, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6892 Filed 3–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–79–000, et al.]

PG&E Dispersed Generating Company, LLC, et al.; Electric Rate and Corporate Regulation Filings

March 15, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. PG&E Dispersed Generating Company, LLC

[Docket No. EG02–79–000]

Take notice that on March 12, 2002, PG&E Dispersed Generating Company, LLC (PG&E Dispersed Gen) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to clarify its Application For Redetermination of Exempt Wholesale Generator Status filed with the Commission on January 31, 2002.

Comment Date: April 5, 2002.

2. Bangor Hydro-Electric Company

[Docket No. ER99–1522–001]

Take notice that on March 12, 2002, Bangor Hydro-Electric Company (Bangor Hydro) filed an updated market analysis as required by the Federal Energy Regulatory Commission's (Commission) March 12, 1999 order in Docket No. ER99–1522–000 granting Bangor Hydro market based rate authority.

Comment Date: April 2, 2002.

3. Progress Energy Inc., on behalf of, Progress Ventures, Inc.

[Docket No. ER02–1302–000]

Take notice that on March 12, 2002, Progress Ventures, Inc. (Progress Ventures) tendered for filing an executed Service Agreement between Progress Ventures and the following eligible buyer, Dynegy Power Marketing, Inc. Service to this eligible buyer will be in accordance with the terms and conditions of Progress Ventures Market-Based Rates Tariff, FERC Electric Tariff No. 1.

Progress Ventures requests an effective date of March 11, 2002 for this Service Agreement. Copies of the filing

were served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission, the Florida Public Service Commission and the Georgia Public Service Commission.

Comment Date: April 2, 2002.

4. Tampa Electric Company

[Docket No. ER02–1303–000]

Take notice that on March 12, 2002, Tampa Electric Company (Tampa Electric) tendered for filing service agreements with Reliant Energy Services, Inc. (Reliant) for firm point-to-point transmission service and non-firm point-to-point transmission service under Tampa Electric's open access transmission tariff.

Tampa Electric proposes an effective date of March 12, 2002, for the tendered service agreements, and therefore requests waiver of the Commission's notice requirement. Copies of the filing have been served on Reliant and the Florida Public Service Commission.

Comment Date: April 2, 2002.

5. West Texas Utilities Company

[Docket No. ER02–1304–000]

Take notice that on March 12, 2002, West Texas Utilities Company (WTU) filed a Second Revised Agreement for Sale and Purchase of Power and Associated Energy and Responsive Reserves (Second Revised Agreement) between WTU and Brazos Electric Power Cooperative, Inc. (Brazos). The Second Revised Agreement is being filed under WTU's Market-Based Rate Tariff and replaces, in its entirety, First Revised Service Agreement No. 25, currently on file under the Market-Based Rate Tariff. CSW Operating Companies FERC Electric Tariff, First Revised Volume No. 8. The Second Revised Agreement is designated Second Revised Service Agreement No. 25.

WTU seeks an effective date of July 31, 2001 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing have been served on Brazos and on the Public Utility Commission of Texas.

Comment Date: April 2, 2002.

6. New England Power Company

[Docket No. ER02–1305–000]

Take notice that on March 12, 2002, New England Power Company (NEP) submitted for filing First Revised Service Agreement No. 212 for service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 9 between NEP and Fitchburg Gas and Electric Light Company.

NEP states that a copy of this filing has been served upon Fitchburg and all appropriate state regulators.

Comment Date: April 2, 2002.

7. PacifiCorp

[Docket No. ER02–1306–000]

Take notice that on March 12, 2002, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations, Notice of Cancellation of Service Agreement No. 22 under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 6 for the Electric Service Agreement entered on November 21, 1996 between Blanding City, Utah and PacifiCorp.

Copies of this filing were supplied to the Utah Public Service Commission and the Public Utility Commission of Oregon.

Comment Date: April 2, 2002.

8. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1307–000]

Take notice that on March 12, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act, submitted for filing a Service Agreements for the transmission service requested by East Kentucky Power Cooperative.

A copy of this filing was sent to East Kentucky Power Cooperative.

Comment Date: April 2, 2002.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1308–000]

Take notice that on March 12, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act, submitted for filing a Service Agreements for the transmission service requested by Hutchinson Utilities Commission.

A copy of this filing was sent to Hutchinson Utilities Commission.

Comment Date: April 2, 2002.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1309–000]

Take notice that on March 12, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act, submitted for filing a Service Agreements for the transmission service requested by Municipal Energy Agency of Nebraska.

A copy of this filing was sent to Municipal Energy Agency of Nebraska.

Comment Date: April 2, 2002.

11. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1310–000]

Take notice that on March 12, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act, submitted for filing a Service Agreements for the transmission service requested by Omaha Public Power District.

A copy of this filing was sent to Omaha Public Power District.

Comment Date: April 2, 2002.

12. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1311–000]

Take notice that on March 12, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act, submitted for filing a Service Agreements for the transmission service requested by UtiliCorp United Inc.

A copy of this filing was sent to UtiliCorp United Inc.

Comment Date: April 2, 2002.

13. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1312–000]

Take notice that on March 12, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act, submitted for filing a Service Agreements for the transmission service requested by Tennessee Valley Authority.

A copy of this filing was sent to Tennessee Valley Authority.

Comment Date: April 2, 2002.

14. Niagara Mohawk Power Corporation

[Docket No. ER02–1314–000]

Take notice that on March 12, 2002, Niagara Mohawk Power Corporation (NIMO) filed two executed interconnection agreements with CH Resources, Inc. (CH Resources). The interconnection agreements set forth the terms and conditions governing the interconnection between the Niagara generating facility (Niagara Facility) and the Syracuse generating facility (Syracuse Facility), respectively, and NIMO's transmission system.

Copies of the filing were served upon CH Resources and the New York Public Service Commission.

Comment Date: April 2, 2002.

15. Eliot G. Protsch

[Docket No. ID–3594–001]

Take notice that on March 8, 2002, Eliot G. Protsch filed an Application to Hold Interlocking Positions.

Comment Date: April 8, 2002.

16. James S. Haines, Jr.

[Docket No. ID–3692–000]

On March 7, 2002, the above named individual filed with the Federal Energy Regulatory Commission an application for authority to hold interlocking positions in the Empire District Electric Co., with its principal place of business at 602 Joplin Avenue, Post Office Box 127, Joplin, Missouri, 64802–0127, and El Paso Electric Co., with its principal place of business at 123 West Mills, P.O. Box 982, El Paso, Texas, 79960.

Comment Date: April 8, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–6890 Filed 3–21–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–12–000]

Electricity Market Design and Structure; Notice of Working Paper

March 15, 2002.

Take notice that the Commission has distributed a working paper on standardized transmission service and wholesale electric market design. The purpose of this paper is to stimulate public discussion that can guide the development of a proposed rulemaking on these issues.

The working paper is being placed in the record of this rulemaking docket. It will also be available on the Commission's website at *http://www.ferc.gov/electric/RTO/mrkt-strct-comments/discussion_paper.htm*.

Comments on this paper should be filed with the Commission by March 27, 2002. Comments may be filed in paper format or electronically. For paper filings, the original and 14 copies of the comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington D.C. 20426. For electronic filings via the Internet, see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS link. User assistance for RIMS is available at 202–208–2222, or by e-mail to *rimsmaster@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6891 Filed 3–21–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7162–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Title: Motor Vehicle Emission and Fuel Economy Compliance; Light Duty Vehicles, Light Duty Trucks and Motorcycles; OMB Control Number 2060–0104; expiration date March 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument. This ICR consolidates the following related ICRs; Motor Vehicle Exclusion Determination; OMB Control Number 2060–0124; National Low Emitting Vehicle Program; OMB Control Number 2060–0345; Selective Enforcement Audit; OMB Control Number 2060–0064; Emission Defect Information and Voluntary Emission Recall Reports for On-Highway, Light Duty Vehicles; OMB Control Number 2060–0425; Verification of Test Parameters and Parts Lists for Light Duty Vehicles and Light-Duty Trucks; OMB Control Number 2060–0094. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 22, 2002.

ADDRESSES: Send comments, referring EPAICR No. 0783.42 and OMB Control No. 2060–0104, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 260–4901, by e-mail at *auby.susan@epamail.epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0783.42. For technical questions about the ICR contact Richard W. Nash, Certification and Compliance Division, 2565 Plymouth Road, Ann Arbor MI 48103, (734) 214–4412, *nash.dick@epa.gov.*

SUPPLEMENTARY INFORMATION:

Title: Motor Vehicle Emission and Fuel Economy Compliance; Light Duty Vehicles, Light Duty Trucks and

Motorcycles; OMB Control Number 2060–0104, EPA ICR Number 0783.42, expiration date March 30, 2002. This is a request for extension of a currently approved collection.

Abstract: EPA collects product information and test results from manufactures of passenger cars, light duty trucks and motorcycles. This information is used to verify that emission standards have been met prior to the vehicles being offered for sale and that fuel economy values are accurate. It is also used in selecting vehicles for audit testing. At the conclusion of a model year production figures and test results are reviewed to determine if fuel economy standards have been met.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published October 9, 2001, oral and written comments were receive.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 7,343 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: 70.

Estimated Number of Respondents: 70.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 514,000.

Estimated Total Annualized Capital, O&M Cost Burden: $7.1 million.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 0783.42 and OMB Control No. 2060–0104 in any correspondence.

Dated: March 15, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–6996 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7162–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Institutional Controls Tracking Systems and Costs Survey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Institutional Controls Tracking Systems and Costs Survey, EPA ICR No. 2043.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 22, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 2043.01, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 260–4901, by E-mail at Auby.Susan@epa.gov, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 2043.01. For technical questions about the ICR, contact Michael E. Bellot by phone at (703) 603–8905.

SUPPLEMENTARY INFORMATION:

Title: Institutional Controls Tracking Systems and Costs Survey (EPA ICR No. 2043.01). This is a new collection.

Abstract: The Office of Emergency and Remedial Response (OERR) is currently researching the development of a system for tracking institutional controls at Superfund sites. Institutional controls are non-engineered site measures such as administrative or legal controls that minimize the potential for exposure to contamination or protect the integrity of a remedy by limiting land or resource use. Proper implementation, monitoring, and enforcement of institutional controls are critical to EPA's core mission of protecting human health and the environment. Although institutional control mechanisms are necessary parts of many site remedies, they are often implemented, monitored, or enforced by state, tribal or local governments. OERR is proposing to complete a study that includes: (1) Conducting research into the types of institutional controls tracking systems that are currently in use and evaluating their relative strengths and weaknesses; (2) developing a focused list of data collection points and definitions; (3) developing and piloting a process for the collection of data to be used to estimate data availability and the cost and time required for data acquisition; (4) developing a data entry process; and (5) researching the feasibility of sharing data and linking federal, state, tribal and local institutional control tracking in a web-based system. In a second phase of this study, OERR is planning to develop the tracking system, establish data linkages, and populate the database. This proposed ICR specifies information necessary to determine what types of institutional controls tracking systems are currently in use; their purpose, scope, and structure; the kinds of data they track; their data entry, quality assurance, administration, and access features; data querying capabilities; compatibility with a future EPA system; development, population, and operating costs; and lessons learned from developing, implementing, and operating these systems. EPA estimates that approximately 52 States, 10 Tribes, and no more than 200 local agencies (planning, zoning, and real estate recording offices) will be surveyed. If approved by OMB, respondents will have 60 days from receipt of the survey to submit their responses. In addition to the survey, this proposed ICR includes EPA requests for clarifications, questions and updates to the survey, and agency visits. Clarifications and updates will be necessary if EPA has follow-up questions regarding responses or if EPA requires more information to understand a tracking system. Up to 50 agencies may be required to submit more detailed descriptions. EPA

proposes to visit up to 20 agencies to evaluate institutional controls tracking systems. Responding to the survey is entirely voluntary. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 2, 2001 (66 FR 50182); 19 comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 10 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: States, Tribes, and Local Agencies.

Estimated Number of Respondents: 262.

Frequency of Response: One time only.

Estimated Total Annual Hour Burden: 2,620 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 2043.01 in any correspondence.

Dated: March 14, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–6997 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7162–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Requirements for Generators, Transporters, and Hazardous Waste Management Facilities Under the RCRA Hazardous Waste Manifest System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Requirements for Generators, Transporters, and Hazardous Waste Management Facilities Under the RCRA Hazardous Waste Manifest System, EPA ICR No. 0801.14, OMB Control Number 2050–0039, expiration date March 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 22, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 0801.14 and OMB Control No. 2050–0039, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susuan Auby at EPA by phone at (202) 260–2740, by E-mail at Auby.Susan@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0801.14. For technical questions about the ICR contact Bryan Groce at 703–308–8750, *groce.bryan@epa.gov*.

SUPPLEMENTARY INFORMATION:

Title: Requirements for Generators, Transporters, and Hazardous Waste Management Facilities Under the RCRA Hazardous Waste Manifest System, OMB Control No. 2050–0039, EPA ICR No. 0801.14, expiring March 31, 2002. This is a request for an extension of a currently approved collection.

Abstract: The Resource Conservation and Recovery Act (RCRA), as amended, establishes a national program to assure that hazardous waste management practices are conducted in a manner that is protective of human health and the environment. EPA's authority to require compliance with the manifest system stems primarily from RCRA section 3002(a)(5). This section mandates a hazardous waste manifest ''system'' to assure that all hazardous waste generated is designated for and arrives at the appropriate treatment, storage, and disposal facility. An essential part of this manifest system is the Uniform Hazardous Waste Manifest (Form 8700–22A). The manifest is a tracking document that accompanies the waste from its generation site to its final disposition. The manifest lists the wastes that are being shipped and the final destination of the waste. The manifest system is a self-enforcing mechanism that requires generators, transporters, and owner/operators of treatment, storage, and disposal facilities to participate in hazardous waste tracking. In addition the manifest provides information to transporters and waste management facility workers on the hazardous nature of the waste, identifies wastes so that they can be managed appropriately in the event of an accident, spill, or leak, and ensures that shipments of hazardous waste are managed properly and delivered to their designated facilities.

This system does not ordinarily involve intervention on the part of EPA unless hazardous wastes do not reach their point of disposition within a specified time frame. In most cases, RCRA-authorized States operate the manifest system, and requirements may vary among authorized States.

EPA believes manifest requirements and the resulting information collection mitigate potential hazards to human health and the environment by ensuring that hazardous waste is sent to and received by appropriate treatment, storage, and disposal facilities, by initiating appropriate response actions if a shipment does not reach its intended destination, and by providing necessary emergency response information in the event of an accident, spill, or leak during transportation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection

of information was published on November 27, 2001 (66 FR 59248); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.52 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: Hazardous Waste Generators, Transporters, and Treatment, Storage, and Disposal Facilities (TSDFs).

Estimated Number of Respondents: 145,974.

Frequency of Response: Per shipment of hazardous waste.

Estimated Total Annual Hour Burden: 3,612,539 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $ 2,416.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 0801.14 and OMB Control No. 2050–0039 in any correspondence.

Dated: March 15, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–6998 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7162–4]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement in General Electric Company v. United States Environmental Protection Agency, No. 99–1353 (D.C. Circuit). This case concerns the National Emission Standard for Hazardous Air Pollutants for Source Categories: Generic MACT Standards, 40 CFR part 63, subpart YY, published at 64 FR 34921 on June 29, 1999. The proposed settlement agreement was lodged with the United States Court of Appeals for the District of Columbia Circuit on March 13, 2002.

DATES: Written comments on the proposed settlement agreement must be received by April 22, 2002.

ADDRESSES: Written comments should be sent to Timothy D. Backstrom, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A copy of the proposed settlement agreement is available from Phyllis J. Cochran, (202) 564–7606. A copy of the proposed settlement agreement was also lodged in the case with the Clerk of the United States Court of Appeals for the District of Columbia Circuit on March 13, 2002.

SUPPLEMENTARY INFORMATION: EPA promulgated the National Emission Standard for Hazardous Air Pollutants for Source Categories: Generic MACT Standards, 40 CFR part 63, subpart YY, on June 29, 1999 (64 FR 34921). Thereafter Petitioner the General Electric Company (''GE'') filed a timely petition for review, citing an issue concerning the recordkeeping provision in 40 CFR 63.1109(c). Thereafter, GE raised additional issues pertaining to the definition of ''process vent'' in 40 CFR 63.1101, which EPA concluded could only be properly resolved in conjunction with related issues being considered with respect to some other MACT standards. The parties have now reached agreement on appropriate revisions to each of these provisions, and on some additional minor corrections as well.

The settlement requires the EPA Administrator to sign a proposed rule incorporating these changes no later than three months after the date the settlement was signed by counsel for the parties. Because EPA believes the proposed amendments are not controversial and are unlikely to elicit adverse comment, and because relatively little time remains before the compliance date for the affected standards, EPA expects to utilize a direct final rule, which will become final 60 days after publication if no adverse comments are received.

For a period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

Dated: March 14, 2002.

Richard B. Ossias,

Acting Associate General Counsel, Air and Radiation Law Office.

[FR Doc. 02–6999 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6627–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 564–7167 or *www.epa.gov/oeca/ofa.*

Weekly receipt of Environmental Impact Statements

Filed March 11, 2002 Through March 15, 2002

Pursuant to 40 CFR 1506.9.

EIS No. 020100, Draft EIS, FHW, MI, I–94 Jackson Freeway Modernization Project, Improvements between Michigan State Route 60 (M–60) and Sargent Road, Funding, NPDES and COE Section 404 Permits, Jackson County, MI, Comment Period Ends: May 06, 2002, Contact: Ronald Hatched (517) 702–1832.

EIS No. 020101, Draft Supplement, AFS, OK, AR, Vegetation Management in the Ozark/Quachita Mountains, Proposal to Clarify Direction for Conducting Project-Level Inventories for Biological Evaluations (BEs), Qzark, Quachita and St. Francis National Forests, AR and McCurtain and LeFlore Counties, OR, Comment Period Ends: May 06, 2002, Contact: Robert Wilhelm (404) 347–7076.

EIS No. 020102, Draft Supplement, AFS, GA, AL, FL, SC, LA, NC, MS, TX, Vegetation Management in the Coastal

Plain/ Piedmont, Proposal to Clarify Direction for Conducting Project-Level Inventories for Biological Evaluations (BEs), US Forest Service Southern Region, AL, GA, FL, SC, NC, LA, MS and TX, Comment Period Ends: May 06, 2002, Contact: Robert Wilhelm (404) 347–7076.

EIS No. 020103, Draft Supplement, AFS, AL, GA, KY, NC, SC, TN, VA, WV, Vegetation Management in the Appalachian Mountains, Proposal to Clarify Direction for Conducting Project-Level Inventories for Biological Evaluations (BEs), Al, GA, KY, NC, SC, TN, VA and WV, Comment Period Ends: May 06, 2002, Contact: Robert Wilhelm (404) 347–7076.

EIS No. 020104, Final EIS, NPS, DC, Mary McLeod Bethune Council House National Historic Site, Implementation, General Management Plan, Washington, DC, Comment Period Ends: April 22, 2002, Contact: Diann Jacox (202) 673–2402.

EIS No. 020105, Draft EIS, NPS, MN, Grand Portage National Monument General Management Plan, Implementation, Cook County, MN, Comment Period Ends: May 20, 2002, Contact: Tim Cochrane (218) 387–2788.

EIS No. 020106, Draft EIS, AFS, ID, Mann Creek Vegetation Management and Watershed Restoration Project, Implementation, Payette National Forest, Weiser Ranger District, Washington County, ID, Comment Period Ends May 06, 2002, Contact: Greg Lesch (208) 549–4200. This document is available on the Internet at: http://www.fs.fed.us/r4/payette/main.html.

EIS No. 020107, Draft Supplement, FTA, HI, Oahu Primary Corridor Transportation Project, Updated Information on the Refined Bus Rapid Transit (BRT) Alternative, Major Investment Study, In the City and County of Honolulu, HI, Comment Period Ends: May 07, 2002, Contact: Donna Turchie (415) 744–2737.

EIS No. 020108, Final EIS, AFS, NM, Talpa-to-Penasco Proposed to Construct and Operate 69 kV Transmission Line, Kit Carson Electric Cooperative, Carson National Forest, Camine Real Ranger District, Tasos County, NM, Wait Period Ends: April 22, 2002, Contact: Sher Churchchill (505) 758–6200. This document is available on the Internet at: http://www.fs.fed.us/r3/carson.

EIS No. 020109, Final Supplement, COE, TN, Chickamauga Dam Navigation Project, New and Updated Information concerning Cumulative Effects and Compliance with Section 106 of the Historic Preservation Act, NPDES, US Army COE Section 404 and US Coast Guard Permits Issuance, Tennessee River, Hamilton County, TN, Wait Period Ends: April 22, 2002, Contact: Wayne Easterling (615) 736–7847.

EIS No. 020110, Final EIS, USN, CA, Point Mugu Sea Range Naval Air Warfare Center Weapons Division (NAWCWPWS), Proposes To Accommodate TMD Testing and Training, Additional Training Exercises, Ventura, Los Angeles, Santa Barbara, San Diego and San Luis Obispo Counties, CA, Wait Period Ends: April 22, 2002, Contact: Gina Smith (888) 217–9045.

Amended Notices

EIS No. 020065, Draft EIS, FAA, MD, VA, DC, Potomac Consolidated Terminal (PCT) Radar Approach Control Facility (TRACON), Newly Consolidated four TRACON in Baltimore-Washington Metro Terminal Area, Possible Site is Vint Hill Farms, VA; DC, MD and VA, Comment Period Ends: May 23, 2002, Contact: William Carver (800) 762–9531. Revision of FR Notice Published on 02/22/2002: CEQ Comment Period Ending 05/28/2002 is Corrected to 05/23/2002.

Dated: March 19, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–6981 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66302; FRL–6829–5]

Ethion; Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order cancelling the registrations of all pesticide products produced by Cheminova AGRO A/S, FMC Corporation, and Micro-Flo Corporation containing O,O,O,O-tetaethyl S,S-methylene bis(phosphorodithioate) (ethion). This cancellation order follows a notice in the September 26, 2001 **Federal Register** announcing receipt of requests for cancellation of these products, and announcing the commencement of a public comment period as required by section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). EPA has received no comments, and is therefore granting the requested cancellation orders. Any distribution, sale, or use of the products subject to this cancellation order is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: Cancellation of manufacturing-use products will be effective on October 1, 2003, and cancellation of end-use products will be effective on December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Dumas,Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8015; fax number: 703–308–8041; e-mail address:dumas.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of thisdocument, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–66302. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of

the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. What Action is the Agency Taking

This notice announces the cancellation of five ethion pesticide products as requested by Cheminova A/S, FMC Corporation, and Micro-Flo Corporation. These registrations are listed in Table 1.

A. Background Information

Ethion is an organophosphate insecticide registered for use on citrus in Florida and Texas, and cattle in eartags.

On August 24, August 29, and August 31, 2001, Micro-Flo Corporation, FMC Corporation, and Cheminova A/S, respectively, signed a Memorandum of Agreement with EPA requesting cancellation pursuant of 6(f) of FIFRA of all their registrations for products containing ethion. In the **Federal Register** of September 26, 2001 (66 FR 49182) (FRL–6805–5), EPA announced its intention to accept the cancellation requests and provided for a public comment period. No comments were received in response to that notice.

B. Cancellation Order

Pursuant to section 6(f)(1)(A) of FIFRA, EPA grants the cancellation requests for the registrations identified in Table 1. Accordingly, EPA orders the cancellation of the manufacturing-use products (EPA Registration Nos. 4787–10 and 279–2280) effective October 1, 2003. EPA orders the cancellation of end-use products (279–1254, 51036–89, and 51036–90) effective December 31, 2003. Any distribution, sale or use of existing stocks of the products identified in Table 1 in a manner inconsistent with the terms of this Order or the Existing Stocks Provisions in Unit III. of this notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

TABLE 1.—CANCELED REGISTRATIONS

Company	Registration Number	Product
Cheminova A/S	4787-10	Cheminova Ethion Technical
FMC Corporation	279-1254 279-2280	Ethion 4 Miscible Ethion Technical Insecticide
Micro-Flo Corporation	51036-89 51036-90	Ethion 4 EC Ethion 8 EC

III. Provisions for Disposition of Existing Stocks

Cancellation of manufacturing-use products will be effective on October 1, 2003, and cancellation of end-use products will be effective on December 31, 2003.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action (56 FR 29362, June 26, 1991).

A. Manufacturing Use Products

As of October 1, 2003, all sale and distribution of existing stocks of ethion manufacturing use products is prohibited, unless the sale or distribution is for export or for the purpose of manufacturing a product intended for export, consistent with the requirements of FIFRA section 17, or for proper disposal.

As of December 31, 2003, all use of existing stocks of manufacturing-use products to manufacture any other product is prohibited, except for production of products intended for export consistent with the requirements of FIFRA section 17.

B. End Use Products

As of December 31, 2003, Micro-Flo Corporation, FMC Corporation, and Cheminova A/S, are prohibited from distributing or selling existing stocks of the end-use products, unless the sale or distribution is for export or for the purpose of manufacturing a product intended for export, consistent with the requirements of FIFRA section 17, or for proper disposal.

As of October 1, 2004, all sale and distribution of existing stocks of the end-use products is prohibited, unless the sale or distribution is for export or for the purpose of manufacturing a product intended for export, consistent with the requirements of FIFRA section 17, or for proper disposal.

As of December 31, 2004, all use of existing stocks of the end-use products is prohibited.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 11, 2002.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–6854 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66300A; FRL–6831–6]

Notice of Receipt of Requests to Cancel Certain Chromated Copper Arsenate (CCA) Wood Preservative Products and Amend to Terminate Certain Uses of CCA Products; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of public comment period.

SUMMARY: Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA issued a notice of receipt of requests from registrants of affected chromated copper arsenate (CCA) products to cancel certain products and to amend to terminate certain uses of other CCA products. In the notice published on February 22, 2002, the Agency provided a 30–day comment period that expires on March 25, 2002. In a letter submitted on behalf of Elementis PLC and dated March 11, 2002, an extension of the period for submission of public comments was requested. After due consideration of the registrant's request, the Agency, by

this notice, is hereby announcing that the deadline for submitting comments is extended from March 25, 2002, to April 9, 2002.

DATES: Comments on the matters announced in the February 22, 2002 **Federal Register** notice must be received on or before April 9, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION** of the February 22 **Federal Register**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–66300A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Bonaventure Akinlosotu, Antimicrobial Division, Office of Pesticide Programs (7510C), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Office location for commercial courier delivery, telephone number, and e-mail address: Rm. 308, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 605–0653; e-mail: akinlosotu.bonaventure@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information see the initial **Federal Register** notice of February 22, 2002 (67 FR 8244) (FRL–6826–8). A copy of the letter requesting the time extension has been placed in the official record of this action (docket control number OPP–66300).

I. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use CCA products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–66300. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

List of Subjects

Environmental protection.

Dated: March 18, 2002.

Frank Sanders,

Director, Antimicrobial Division, Office of Pesticide Programs.

[FR Doc. 02–6943 Filed 3–21–02; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66292A; FRL–6823–8]

Fenamiphos and Metolachlor; Registered Uses Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the use cancellations as requested by the companies that hold the registrations of pesticide end-use and manufacturing-use products containing the active ingredient (a.i.) fenamiphos and metolachlor and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up a September 20, 2001, notice of receipt of requests for voluntary cancellation of uses. EPA indicated that it would issue an order confirming the voluntary use cancellations unless the Agency received any substantive comment within the comment period that would merit its further review of these requests. Any distribution, sale, or use of fenamiphos and metolachlor products labeled for the canceled uses are only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: The cancellations are effective March 22, 2002.

FOR FURTHER INFORMATION CONTACT: By mail: Tawanda Spears, telephone number: (703) 308–8050; e-mail address: spears.tawanda@epa.gov (Fenamiphos) and Anne Overstreet, telephone number: (703) 308–8068; e-mail address: overstreet.anne@epa.gov (Metolachlor), Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use fenamiphos and/or metolachlor products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this

document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–66292A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Receipt of Requests to Cancel and Amend Registrations to Delete Uses

A. Background

EPA is publishing a single notice in response to registrants' requests to delete some uses for fenamiphos and metolachlor from their labels. (See the table in this unit for specific information regarding the cancellation requests.)

Reregistration Eligibility Decision (RED) documents summarize the findings of EPA's reregistration process for individual chemical cases, and reflect the Agency's decisions on risk assessment and risk management for uses of individual pesticides. The metolachlor RED was issued in April of 1995. However, since the Federal Food, Drug, and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act (FQPA) of 1996, the Agency is required to reconsider metolachlor tolerances consistent with the provisions of the Act. This tolerance reassessment decision is scheduled to be completed in 2002. In defining the scope of this review, Syngenta, the metolachlor registrant, has elected to voluntarily drop certain uses from their manufacturing-use product label.

For fenamiphos, an organophosphate, a RED has not been issued. Although the Agency has not yet completed its cumulative risk assessment for a RED, the Agency is issuing an interim reregistration eligibility decision (IRED) to inform the public of the Agency's completion of assessment of risks associated with the active ingredient fenamiphos alone, any unreasonable adverse effect from the exposure to fenamiphos, and mitigation measures necessary to eliminate such unreasonable adverse effects to the environment. When the Agency completes assessing the cumulative effects of pesticides sharing a common effect of toxicity with fenamiphos, the Agency will issue a final decision on the reregistration eligibility of pesticides containing fenamiphos. As part of this process, Bayer has elected to delete certain uses from its product labels rather than develop the data necessary to support reregistration.

In the **Federal Register** notice published on September 20, 2001 (66 FR 48459) (FRL–6800–3), EPA published a notice of the Agency's receipt of requests for voluntary cancellation of uses from registrants that hold the pesticide registrations containing fenamiphos and metolachlor.

B. Requests for Voluntary Cancellation of Registered Uses

Pursuant to section 6(f)(1)(A) of FIFRA, the following companies have submitted a request to amend their end-use and manufacturing-use product registrations of pesticide products containing fenamiphos and metolachlor, respectively, to delete the listed uses from the listed product(s) bearing such use. The registrations, for which amendments to delete uses were requested, are identified in the following table.

TABLE 1.—VOLUNTARY CANCELLATION OF REGISTERED USES

Chemical	PC Code	Company/Address	Nature of Action	Products Affected	Comments
Fenamiphos	100601	Bayer Corp., 8400 Hawthorne Rd., P.O. Box 4913, Kansas City, MO, 64120–0013	Cotton and pineapple use deletion	3EC[1] [3125–283] 15G[2] [3125–236]	Cancel 3EC and 15G on cotton and 15G on pineapple
Metolachlor	108801	Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300	Stone fruits and almond use deletion	100–587	

[1] Nemacur 3 (emulsifiable concentrate - 3 lb a.i./gal)
[2] 15G: Nemacur 15% (granular formulation - 15% a.i./gal)

In the **Federal Register** notice, EPA requested public comment on the voluntary cancellation and use deletion requests, and provided a 30–day comment period. The registrants requested that the Administrator waive the 180–day comment period provided under FIFRA section 6(f)(1)(C). No public comments were submitted to the docket in response to EPA's request for comments.

III. Cancellation Order

Pursuant to section 6(f) of FIFRA, EPA is approving the requested use deletions and the requested registration cancellations. The Agency orders that the registrations of the uses identified in the table are hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in the table (i.e., products bearing labeling for the canceled uses) in a manner inconsistent with the terms of this Order or the Existing Stock Provisions in Unit IV. of this **Federal Register** notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

IV. Existing Stocks Provisions

For purposes of this Order, the term ''existing stocks'' is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of

a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation. The existing stocks provisions of this Cancellation Order are as follows:

1. *Distribution or sale of manufacturing-use products by registrants.* Distribution or sale by the registrant of the existing stocks of any product identified in Table 1 will not be lawful under FIFRA after 12 months from the effective date of the cancellation order, except for the purposes of shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or proper disposal.

2. *Distribution or sale of manufacturing-use products byothers.* Distribution or sale by persons other than the registrant of the existing stocks of any product identified in Table 1 will not be lawful under FIFRA after 24 months from the effective date of the cancellation order, except for the purposes of shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or proper disposal.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 11, 2002.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–6855 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

March 13, 2002.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 22, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0289.

Title: Section 76.1705, Performance Tests (channels delivered), Section 76.601, Performance Tests.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; and State, local, or tribal government.

Number of Respondents: 10,400.

Estimated Time per Response: 0.5 to 70 hours.

Frequency of Response: Semi-annual and triennial reporting requirements; Third party disclosure.

Total Annual Burden: 277,200 hours.

Total Annual Costs: None.

Needs and Uses: 47 CFR Section 76.1705 requires cable television systems to maintain at its local office a current listing of cable television channels that the system delivers to its subscribers. 47 CFR Section 76.601 requires cable systems with over 1,000 subscribers to comply with all pertinent technical standards and to conduct semi-annual performance tests and triennial performance tests for color testing. The FCC or the local franchise authority may require additional tests to secure compliance with these technical standards. Furthermore, prior to requiring additional testing, the local franchising authority must notify the cable operator, who is then allowed 30 days to comply with any perceived signal quality problems that need correcting.

OMB Control Number: 3060–0638.

Title: Section 76.934(g), Alternative Rate Regulation Agreements.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 100.

Estimated Time per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 50 hours.

Total Annual Costs: None.

Needs and Uses: 47 CFR Sections 76.934(g) requires that local franchising authorities, certified pursuant to 47 CFR Section 76.910, and small systems operated by small cable companies may enter into an alternative rate regulation agreements affecting the basic service tier and the cable programming service tier. Small systems must file a copy of the operative alternative agreement with the FCC so that verification can be made that such agreements have been entered into and executed pursuant to the Commission's rules.

OMB Control Number: 3060–0644.

Title: Establishing Maximum Permitted Rates for Regulated Cable Services on Small Cable Systems, FCC Form 1230.

Form Numbers: FCC 1230.

Type of Review: Extension of a currently approved collection.

Respondents: State, local, or tribal government; Business or other for-profit entities; and Not-for-profit institutions.

Number of Respondents: 5.

Estimated Time per Response: 2.0 to 2.25 hours.

Frequency of Response: Annual reporting requirements; Third party disclosure.

Total Annual Burden: 211 hours.

Total Annual Costs: None.

Needs and Uses: On May 5, 1995, the FCC adopted rules that allow a small cable system owned by a small cable company to use a simplified cost-of-service procedure to set its maximum permitted rate. Pursuant to these rules, a cable system is eligible to set its maximum permitted rate with the FCC Form 1230 if it is a system with 15,000 or fewer subscribers, and it is not owned by a cable company with more than 400,000 subscribers. The FCC and the

local franchise authorities use these data to determine whether cable rates for basic service, cable programming service, and associated equipment are reasonable under FCC regulations.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–6932 Filed 3–21–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 02–376]

Commission Seeks Comment on AT&T Request To Contribute to Universal Service Based on Projected Revenues

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: This document seeks comments on AT&T request to the Commission to permit it to contribute based on its projected revenues for the current quarter, subject to true up with actual revenues, instead of contributing to universal service based on historical revenues from two quarters prior.

DATES: Comments are due on or before April 12, 2002. Reply comments are due on or before April 22, 2002.

ADDRESSES: See Supplementary Information section for where and how to file comments.

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

SUPPLEMENTARY INFORMATION: On December 13, 2001, AT&T filed a request with the Commission to contribute to universal service based on its projected revenues on a going-forward basis. Pursuant to § 54.711(c) of the Commission's rules, universal service contributions are based on a contributors' historical gross-billed end-user interstate and international telecommunications revenues, which are reported on a quarterly basis on the FCC Form 499–Q. The FCC Form 499–Q instructs contributors to report their revenues from the prior calendar quarter. These revenue data then serve as the basis for contributions assessed in the next calendar quarter. AT&T asks the Commission to permit it to contribute based on its projected revenues for the current quarter, subject to true up with actual revenues, instead of contributing to universal service based on historical revenues from two quarters prior. AT&T contends that grant of its request is warranted because the interval between reporting and assessment of contributions under the current rules, combined with AT&T's declining interstate and international revenues, force it to recover its universal service contributions from a smaller customer base than the one on which it was assessed. We seek comment on AT&T's request.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before April 12, 2002, and reply comments are due on or before April 22, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* (63 FR 24121, May 1, 1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Acting Secretary, William Caton, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Parties also must send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street SW., Room 5–A422, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 Twelfth Street, SW., Room CY–B402, Washington, DC 20554.

Pursuant to § 1.1206 of the Commission's rules, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Federal Communications Commission.

Katherine L. Schroder,

Chief, Accounting Policy Division.

[FR Doc. 02–6929 Filed 3–21–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 02–510]

Common Carrier Bureau Seeks Comment on Guam Cellular and Paging, Inc. d/b/a/ Saipancell Petition for Designation as an Eligible Telecommunications Carrier on the Island of Saipan in the Commonwealth of the Northern Mariana Islands

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: This document seeks comments on the Guam Cellular and Paging, Inc. d/b/a Saipancell (Saipancell) petition seeking designation of eligibility to receive federal universal service support for service offered on the island of Saipan in the Commonwealth of the Northern Mariana Islands.

DATES: Comments are due on April 22, 2002. Reply comments are due on May 6, 2002.

ADDRESSES: See Supplementary Information section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Anita Cheng, Assistant Chief, Accounting Policy Division, Common Carrier Bureau, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On February 19, 2002, Saipancell filed with the Commission a petition under section 214(e)(6) seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered on the island of Saipan in the Northern Mariana Islands. Specifically, Saipancell contends that the Commonwealth Utilities Corporation, which is the public utility commission of the Northern Mariana Islands, has provided an affirmative statement that it does not regulate commercial mobile

radio service carriers; Saipancell meets all the statutory and regulatory prerequisites for ETC designation; and designating Saipancell as an ETC will serve the public interest. Pursuant to § 54.207(c) of the Commission's rules, Saipancell also requests that the Commission redefine the service area of the incumbent rural local exchange carrier, Micronesian Telephone Corporation (MTC). MTC serves three islands in the Northern Mariana Islands—Saipan, Tinian, and Rota. Saipancell seeks redefinition of the MTC service area to enable Saipancell to be designated as an ETC only for the island of Saipan.

The petitioner must provide copies of its petition to the Commonwealth Utilities Corporation at the time of filing with the Commission. The Commission will also send a copy of the Public Notice to the Commonwealth Utilities Corporation by overnight express mail to ensure that the Commonwealth Utilities Corporation is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before April 12, 2002, and reply comments are due on or before April 22, 2002. An original and four copies of all comments must be filed with William F. Caton, Acting Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW–B204, Washington DC 20554. In addition, four copies of each comment must be delivered to Sheryl Todd, Common Carrier Bureau, 445 12th Street, SW., Room 5–A520, Washington, DC, 20554, and one copy to Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington DC, 20554. In accordance with the Commission's earlier Public Notice announcing that hand-delivered or messenger-delivered filings are no longer accepted at the Commission's headquarters, hand-delivered or messenger-delivered filings must be delivered to 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location will be 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service (USPS) Express Mail and Priority Mail), must be addressed to 9300 East Hampton Drive, Capitol Heights, MD 20743. This location will be open 8 a.m. to 5:30 p.m. The USPS first-class mail, Express Mail, and Priority Mail should continue to be addressed to the Commission's headquarters at 445 12th Street, SW., Washington, DC 20554. The USPS mail addressed to the Commission's headquarters actually goes to our Capitol Heights facility for screening prior to delivery at the Commission.

If you are sending this type of document or using this delivery method. . .	It should be addressed for delivery to. . .
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary.	236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002 (8 a.m. to 7 p.m.).
Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail).	9300 East Hampton Drive, Capitol Heights, MD 20743 (8 a.m. to 5:30 p.m.).
United States Postal Service first-class mail, Express Mail, and Priority Mail.	445 12th Street, SW., Washington, DC 20554.

In addition to filing paper comments, parties are encouraged also to file comments electronically using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Document in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by the Internet e-mail. To receive instructions, send an email to *ecfs@fcc.gov* and include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

Pursuant to § 1.1206 of the Commission's rules, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Federal Communications Commission.

Anita Cheng,

Assistant Chief, Accounting Policy Division.

[FR Doc. 02–6931 Filed 3–21–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: Renewal of a currently approved collection.

Title: Flood Insurance.

OMB Number: 3064–0120

Annual Burden:

Estimated annual number of respondents/recordkeepers: 5,700

Estimated number of covered transactions: 180,000

Estimated reporting hours: 9,000

Estimated recordkeeping hours: 5,700

Estimated total annual reporting and recordkeeping burden hours: 14,700

Estimated average annual burden hours per respondent/recordkeeper: 2.6 hours

Expiration Date of OMB Clearance: April 30, 2002.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4058, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before April 22, 2002, to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Each supervised lending institution is currently required to provide a notice of special flood hazards to a borrower acquiring a loan secured by a building on real property located in an area

identified by the Director of the Federal Emergency Management Administration as being subject to special flood hazards. The Riegle Community Development Act requires that each institution must also provide a copy of the notice to the servicer of the loan (if different from the originating lender).

Dated: March 18, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–6951 Filed 3–21–02; 8:45 am]

BILLING CODE 6714–01–U

FEDERAL ELECTION COMMISSION

[Notice 2002–4]

The Voting System Standards and an Opportunity to Publicly Voice Previously Submitted Comments

AGENCY: Federal Election Commission.

ACTION: Notice of public hearing.

SUMMARY: The Federal Election Commission is announcing a public hearing on the December 13, 2001, release of the Voting System Standards.

DATES: The hearing will be held at 10:00 a.m. on Wednesday, April 17, 2002. All requests to testify must be received by the Commission by April 7, 2002. Requests to testify are limited to election officials, members of the National Association of State Election Directors' Voting System Standards Board, and those parties who have previously submitted written comments to the June 16, 2001, and/or December 13, 2001, release of the Voting System Standards.

ADDRESSES: Requests to testify should be addressed to Penelope Bonsall, Director of the Office of Election Administration, and must be submitted in either written or electronic form. Due to recent delays in mail service to government offices, electronic or fax submissions are encouraged to ensure timeliness. Written requests to testify should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed requests should be sent to (202) 219–8500, with printed copy follow-up to insure legibility. Electronic mail requests should be sent to vss@fec.gov. Persons sending requests by electronic mail must include their full name, electronic mail address and postal service address within the text of the request. Commission hearings are held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Penelope Bonsall, Director of the Office of Election Administration, 999 E Street, NW., Washington, DC 20463, (202) 694–1095 or (800) 424–9530, ext. 1095.

SUPPLEMENTARY INFORMATION: The Voting System Standards (the ''Standards'') were originally promulgated in 1990. Technological and commercial innovations during the last decade have demanded that the Standards be updated, and the project to revise them was begun in 1998. The revised Standards have two volumes. Volume I provides functional and technical requirements for a number of system types and configurations. Volume II provides testing specifications for the requirements in Volume I. Both Volumes are available at the Commission's web site (*http://www.fec.gov/pages/vss/vss.html*). The Commission previously released for public comment a draft of the first volume on June 16, 2001. 66 FR 35978. During this comment period, the Commission received 38 sets of comments from 39 parties. Subsequently, the Commission released the entire draft Standards on December 13, 2001. 66 FR 65708. The comment period for the December 13, 2001, draft release ended on February 1, 2002. FR Notice 2001. Twenty-seven sets of comments from twenty-three parties were received by the Commission in response to the December 13, 2001, release. Four commenters requested to testify at a public hearing if one is held.

After considering these requests and the other comments received to date in response to the notice, the Commission believes a public hearing would be helpful in considering the issues raised by the draft Standards. The hearing will be held at 10:00 a.m. on April 17, 2002.

Dated: March 18, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–6948 Filed 3–21–02; 8:45 am]

BILLING CODE 6715–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–30]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Outcome Evaluation of HIV Prevention Programs Focusing on Prevention Case Management Interventions Implemented by the Directly-funded Community-Based Organizations (CBOs)—New—National Center for HIV, STD and Tuberculosis Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC). This evaluation is necessary to understand the impact of CDC's expenditures and efforts to support CBOs and for modifying and improving the HIV prevention case management efforts of CBOs. This data collection will provide standardized data and allow CDC to (a) assess the implementation and effectiveness of HIV prevention case management (PCM) interventions through process and outcome evaluations; (b) determine the degree of adherence to the CBOs' documented HIV PCM intervention protocol, and through quality assurance efforts, to revise program implementation as necessary; (c) understand the behavioral impact of these programs; and (d) provide useful information for CBO program planners and implementers.

Three CBOs funded under Program Announcement 01000, Community-Based Strategies to Increase HIV Testing of Persons at High Risk in Communities of Color, successfully competed for additional funds from Program Announcement 01159, Outcome Evaluation of HIV Prevention Programs with a focus on Prevention Case Management Interventions and Group-Level Interventions Implemented by CDC's Directly-funded Community-

Based Organizations, to conduct an outcome evaluation of their PCM interventions for two years. These CBOs administer baseline social-behavioral questionnaires as part of program services. Each CBO will report on the PCM program that it has implemented, and, as part of the research project, will conduct two short follow-up social-behavioral questionnaires with clients to assess changes in participant risk behaviors. Incentives will be given to CBO respondents to complete follow-up assessments. This is a two-year project; each of the three CBOs is estimated to collect data from 100 clients each year. There are no costs to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
CBO Clients (year—1)	300	1	30/60	150
CBO Clients (year—2)	300	1	30/60	150
Total				300

Dated: March 18, 2002.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–6924 Filed 3–21–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–31]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Breast, Colorectal, and Prostate Cancer Patterns of Care, Reoccurrence, and Survival (CBOs)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). Invasive cancers of the breast, colon and rectum, and prostate impose a substantial burden of disease in the United States (U.S.) and are expected to account for approximately 42 percent of the estimated 1.3 million invasive cancers that will be diagnosed during 2002. Breast and colorectal cancers are particularly of high public health importance because of current widespread activities in place for early diagnosis and treatment.

Even though these cancers are of high public importance, statewide central cancer registries are not likely to capture complete follow-up information or detailed information on treatment modalities other than surgery. Also, data on extent of disease at diagnosis are often limited. In order to expand the uses of their data to include survival and patterns of care studies and clinical research, registries may need to collect additional information. Through re-abstracting representative samples of cases from population-based, central cancer registries from 1997, this pattern of care study will assess the quality of stage and treatment data. Estimates of the proportions of patients who received the standard of care for localized breast, localized prostate, and stage III colon cancers will be determined as well. Registries participating in the study will send data to the CDC for some analyses. Data for the patterns of care study and for the CONCORD Study, a collaborative project between the CDC and cancer registries in the U.S. and Europe, will be re-abstracted from medical records at the same time. The annualized estimated cost to respondents is $2,056,000.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Physicians (M.D., D.O.)	4440	1	15/60	1,110
Total				1,110

Dated: March 18, 2002.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–6925 Filed 3–21–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 66 FR 56562–63, dated November 8, 2001) is amended to reorganize the Accounting Branch, Financial Management Office.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete the functional statement for the Accounting Branch (HCAC2) and insert the following:

(1) In conjunction with the Financial Policy and Internal Quality Assurance Activity, develops accounting and travel policies and procedures for CDC; (2) provides financial information for management purposes, effective control and accountability of all funds, and suitable integration of CDC accounting with the accounting operations of the U.S. Treasury; (3) coordinates activities of the Accounting Branch with the FMO Director, the FMO Budget Branch, the FMO Financial Services Branch, the Financial Policy and Internal Quality Assurance Activity, and the FMO Financial Systems Branch; (4) coordinates accounting and travel policy issues with the HHS Office of Financial Policy; (5) reviews and develops accounting systems to comply with requirements of HHS and the General Accounting Office and maintains an integrated system of accounts to meet the budgetary and accounting requirements of CDC; (6) reviews and implements the legal, accounting and reporting requirements of the Chief Financial Officer's Act, the Federal Managers' Financial Integrity Act, the Principles of Appropriation Law and other regulatory requirements; (7) compiles all accounting information for the 5-Year Financial Management Plan which provides CDC's financial management vision and objectives for the ensuing 5 years period; (8) develops strategies for employee training and professional development and (9) complies and submits the annual financial statements required by the Chief Financial Officers' Act.

Delete the in its entirety the title and functional statement for the Accounts Payable Section (HCAC22).

Delete the functional statement for the Cincinnati Accounting Section (HCAC23) and insert the following:

(1) Maintains a system of accounts to meet the budgetary and accounting requirements of the NIOSH accounting point; (2) provides financial information for management purposes, effective control and accountability of all accounting point funds, and integration of NIOSH accounting with the accounting and reporting operations of CDC and the U.S. Treasury; (3) coordinates the NIOSH accounting point accounts payable and receivable activities including auditing of vouchers; (4) reviews the NIOSH accounting point system for compliance with CDC, HHS and General Accounting Office requirements; and (5) reconciles NIOSH accounting point general ledger accounts including cash, property and receivables.

Delete the functional statements for the Debt and Property Management Section (HCAC24) and insert the following:

(1) Compiles and submits the quarterly HHS Debt Management report which reports the status of all unpaid debts due to CDC from the public; (2) compiles and submits the annual Treasury report of debts due to CDC; (3) performs all debt collection activities in accordance with the Debt Collection Act of 1982 and in accordance with requirements provided by HHS; (4) prepares customer billings; (5) collects and records all amounts billed to customers; (6) controls billings and collections processed on the Online Payment and Collection System (OPAC/IPAC) related to debt collection; (7) reconciles accounts receivable subsidiary records to the CDC general ledger receivable accounts; (8) coordinates CDC's debt collection activities with FMO's Financial Services Branch and with CDC program administrative offices; (9) coordinates all debt collection activities with the U.S. Justice Department and with private collection agencies; (10) prepare and controls daily deposits which are delivered to the Federal Reserve Bank; (11) performs property accounting activities including maintenance of general ledger property accounts and reconciliation with the CDC Personal Property System and (12) maintains travel advance records and reconciles subsidiary records to general ledger advance accounts.

Delete the functional statement for the General Ledger Section (HCAC25) and insert the following:

(1) Compiles and submits the Report of Budget Execution which reports the obligations incurred against the current year appropriation; (2) compiles and submits the monthly Statement of Transactions report to the U.S. Treasury which reports the CDC cash disbursements by appropriation; (3) reconciles general ledger cash accounts with the U.S. Treasury monthly disbursements and receipts; (4) performs daily maintenance on the general ledger accounts including the asset, liability, capital and budgetary accounts; (5) makes recommendations for improvements to the accounting system and monitors internal controls; (6) analyzes the general ledger accounts, prepares system-wide reconciliations and interprets the effect of transactions on the CDC's financial resources; (7) develops new reports to support budget requirements and to support the needs of CDC management; (8) controls input of all funding transactions; (9) performs daily maintenance of accounting system tables; (10) controls grant awards processed through the Payment Management System (PMS) including submission of grant obligations to PMS, recording of disbursements received from PMS and reconciliation of the general ledger accounts.

After the Financial Systems Branch (HCAC5), insert the following:

Financial Services Branch (HCAC6). (1) In conjunction with the Financial Policy and Internal Quality Assurance Activity, develops and implements policies and procedures for all accounts payable and disbursement functions at CDC; (2) coordinates activities of the Financial Services Branch with the FMO Director, FMO Accounting Branch, FMO Budget Branch, FMO Financial Policy and Internal Quality Assurance Activity, and FMO Financial Systems Branch; (3) coordinates the development of new financial systems to automate accounts payable and disbursement operations, and maintains and serves as the CDC focal point on all existing automated payment and disbursement systems; (4) reviews obligation documents and payment requests from a variety of private sector and government sources to determine the validity and legality of the requests, and provides electronic authorization to the Department of the Treasury to issue checks or electronic funds transfers for valid payment requests; (5) compiles

and submits a variety of cash management and travel reports required by the Department of the Treasury and various other outside agencies; (6) acts as liaison with the CIOs and outside customers to provide financial information, resolve problems and provide training and advice on payment, travel and disbursement issues; (7) serves as the CDC subject matter expert on all financial matters dealing with international travel, assignments and payments; and (8) analyzes internal reports to provide management information on topics such as interest expenses, workload, and various other performance indicators.

Cash Management and Quality Control Section (HCAC62). (1) Overall responsibility for policies, procedures, internal controls and systems related to section payment and disbursement activities; (2) analyzes and reconciles disbursements made for CDC by other Federal activities, and insures that disbursements are consistent with Federal Appropriations Law requirements, GAO policies, interagency elimination entry requirements, and other governing financial regulations; (3) overall responsibility for all financial matters dealing with international travel, assignments and payments; (4) serves as the focal point at CDC for vendor, employee and CIO payment and disbursement questions and resolution of payment and disbursement problems; (5) acts as CDC liaison on all payment issues related to the implementation of the Government Purchase Card Program; (6) maintains contract advance records and coordinates the recording and reconciling of subsidiary records to general ledger advance accounts; (7) serves as the CDC focal point for cashier and imprest fund issues; (8) analyzes year-end liquidated obligations for compliance with Federal Appropriations Laws and the Economy Act, and recommends funding changes to CIO's; and (9) prepares and reconciles all U.S. Treasury Department reports and transmissions and serves as the primary point of contact for all U.S. Treasury issues; (10) performs ongoing quality control reviews of various payment and disbursement processes and systems in the Financial Services Branch, including reviews to ensure compliance with the Prompt Payment Act and to validate the legality, propriety and accounting treatment of travel and non-travel payments at CDC, including reviews of payments processed by the Cincinnati office; (11) identifies recurring problems in payment processes and recommends corrective actions or identifies required training to correct the deficiency; (12) serves as the focal point for all Federal Income Tax issues for CDC payments, reconciles tax withholding general ledger accounts, and prepares all monthly, quarterly and annual reports to the Internal Revenue Service; and (13) establishes local policy and procedures on electronic payments and maintains the automated file containing vendor payment address and banking information.

Payment and Travel Services Section (HCAC63). (1) Develops and implements policies and procedures related to payment processes and systems and ensures appropriate internal controls are in place and functioning to ensure the integrity and legality of CDC payments; (2) analyzes and approves payment for all equipment, supplies, travel, transportation and services procured by CDC, and ensures the validity, legality and proper accounting treatment of expenditures processed through the Accounts Payable module of the CDC Financial Management System; (3) provides expert level guidance, oversight, and interpretation of policies, laws, rules and regulations for the CIO's on all aspects of travel procedures and policies at CDC, including the use of the automated travel system, local travel, domestic and foreign temporary duty travel, and change of station travel for civil service employees, foreign service employees, commissioned officers, CDC fellows, etc.; (4) serves as the Subject Matter Expert and focal point for the development of new financial systems to automate accounts payable operations and serves as the focal point for payment system issues for CDC; (5) researches and analysis appropriations law issues at CDC and provides guidance consistent with legal and regulatory guidelines; (6) complies and submits a variety of management and payment performance reports required by various outside agencies; (7) analyzes various internal reports to provide management information on topics such as interest expenses, workload, and various other performance indicators; (8) coordinates all aspects of CDC's Electronic Commerce Program in the Financial Services Branch; and (9) analyzes a variety of accounting and travel system reports to ensure that obligations are liquidated in a timely manner.

Dated: March 13, 2002.

David Fleming,

Acting Director.

[FR Doc. 02–6926 Filed 3–21–02; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4026–FN]

RIN 0938–ZA21

Medicare Program; Medicare+Choice Organizations—Approval of the Joint Commission on Accreditation of Healthcare Organizations for Medicare+Choice (M+C) Deeming Authority for Managed Care Organizations That Are Licensed as Health Maintenance Organizations (HMOs) or Preferred Provider Organizations (PPOs)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces the approval of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) for deeming authority of Medicare+Choice (M+C) organizations that are licensed as health maintenance organizations (HMOs) or preferred provider organizations (PPOs). We have found that the JCAHO's standards for managed care plans/integrated delivery networks/provider-sponsored organizations (networks) submitted to us and amended during the application process, meet or exceed those established by the Medicare program. Therefore, M+C organizations that are licensed as HMOs or PPOs and are accredited by JCAHO, may receive, at their request, deemed status for the M+C requirements in the six areas—Quality Assurance, Information on Advance Directives, Antidiscrimination, Access to Services, Provider Participation Rules, and Confidentiality and Accuracy of Enrollee Records—that are specified in section 1852(e)(4)(B) of the Social Security Act (the Act).

Regulations set forth in 42 CFR 422.157(b)(2) specify that the Secretary will publish a **Federal Register** notice that indicates whether an accreditation organization's request for approval has been granted and the effective date and term of the approval, which may not exceed 6 years.

FOR FURTHER INFORMATION CONTACT: Trisha Kurtz, (410) 786–4670.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services through a managed care organization that has a Medicare+Choice (M+C) contract with us. To enter into an M+C contract, the

organization must be licensed by the State as a risk-bearing entity and must meet the requirements that are set forth in 42 CFR part 422. Those regulations implement part C of title XVIII of the Social Security Act (the Act), which specifies the services that a managed care organization must provide and the requirements that the organization must meet to be an M+C contractor. Other relevant sections of the Act are parts A and B of title XVIII and part A of title XI pertaining to the provision of services by Medicare certified providers and suppliers.

Following approval of the M+C contract, we engage in routine monitoring of the M+C organization to ensure continuing compliance. The monitoring process is comprehensive and uses a written protocol that specifies the Medicare requirements the M+C organization must meet.

An M+C organization may be exempt from our monitoring of the requirements that are in the areas listed in section 1852(e)(4)(B) of the Act if the organization is accredited by a CMS-approved accrediting organization. In essence, the Secretary ''deems'' that the Medicare requirements are met based on a determination that the accrediting organization's standards are at least as stringent as Medicare requirements. Regulations for the M+C deeming program are set forth in §§ 422.156, 422.157, and 422.158. The term for which we may approve an accrediting organization may not exceed 6 years as stated in § 422.157(b)(2). For continuing approval, the accrediting organization will have to re-apply to us.

II. Provisions of the Proposed Notice

On September 18, 2001, we published a proposed notice in the **Federal Register** (66 FR 48147) announcing the receipt of an application from JCAHO for approval of deeming authority for M+C organizations that are licensed as health maintenance organizations (HMOs) or preferred provider organizations (PPOs). In the proposed notice, we provided the factors on which we would base our evaluation. In accordance with § 422.157(b)(1)(iii) of the M+C regulations, we provided a 30-day public comment period. We did not receive any public comments in response to that proposed notice.

III. Deeming Approval Review and Evaluation

As set forth in section 1852(e)(4) of the Act and our regulations at § 422.158, the review and evaluation of the JCAHO's accreditation program (including their standards and monitoring protocol) was compared to the requirements set forth in part 422 for the M+C program.

A. Components of the Review Process

The review of JCAHO's application for approval of M+C deeming authority included the following components.

1. Site Visit

A site visit to JCAHO's headquarters was conducted to assess—

- The corporate policies and procedures that relate to the network accreditation program;
- The survey, decision-making, and report-writing processes used in JCAHO's network accreditation program;
- The resources available for accreditation reviews and JCAHO's ability to financially sustain an M+C deeming program;
- The staff and surveyor training and evaluation programs;
- The communication, customer support and release of accreditation information to the public; and
- JCAHO's ability to investigate and respond appropriately to complaints against accredited networks.

2. Desk-Top Review

A desk-top review of JCAHO's network accreditation program, included the following items—

- A description of JCAHO's survey process for networks, including the frequency of surveys performed, whether the surveys are announced or unannounced, surveyor instructions, the review and accreditation status decision-making process, procedures used to notify accredited M+C organizations of deficiencies and monitoring of the correction of deficiencies, and the procedures used to enforce compliance with accreditation requirements;
- Information about the individuals who perform network accreditation reviews, including the size and composition of the survey team, the methods of compensation, the education and experience required of them, the content and frequency of the in-service training, the evaluation system used to monitor performance, and the conflict of interest requirements governing JCAHO staff;
- A description of the data management and analysis system, the types (full, partial, or denial) and categories (provisional, conditional, temporary) of accreditation offered by JCAHO, the duration of each category of accreditation, and a statement identifying the types and categories that would serve as a basis for accreditation, if we grant JCAHO M+C organization deeming authority;
- The procedures used to respond to and investigate complaints or identify other problems with accredited organizations, including any coordination of these activities with licensing bodies and ombudsmen programs;
- A description of how JCAHO provides accreditation information to the general public;
- The policies and procedures for (1) withholding, denying and removing accreditation status, and the other actions JCAHO may take in response to noncompliance with their standards and requirements; and (2) how JCAHO treats accreditation of organizations that are acquired by another organization, have merged with another organization, or that undergo a change of ownership or management;
- Lists of all (1) JCAHO-accredited M+C organizations, (2) networks surveyed by JCAHO in the past 3 years, and (3) networks that were scheduled to be surveyed by JCAHO within 3 months of submitting their application;
- A written presentation of JCAHO's ability to furnish data electronically, via telecommunications;
- A resource analysis that included financial statements for the past 3 years (audited, if possible) and the projected number of deemed status surveys for the upcoming year; and
- A statement acknowledging that, as a condition of approval, JCAHO agreed to comply with the ongoing responsibility requirements stated in § 422.157(c).

3. Assessment of JCAHO's Standards and Methods of Evaluation

As part of the application, JCAHO submitted a crosswalk that compared its standards and methods of evaluations with corresponding M+C requirements. A multicomponent team of our regional and central office staff then reviewed and evaluated JCAHO's standards and processes and compared them to the M+C requirements in six areas: Quality Assurance, Access to Services, Antidiscrimination, Information on Advance Directives, Provider Participation Rules, and Confidentiality and Accuracy of Enrollee Records.

4. Observation of a JCAHO Accreditation Survey

An observation of a JCAHO accreditation survey of a network organization allowed our staff to (1) validate that the accreditation review methods described in JCAHO's application were equal to (or exceeded) the corresponding Medicare requirements, and (2) resolve outstanding issues that were identified

during the review of JCAHO's application materials.

B. Results of the Review Process

We determined that JCAHO's current accreditation program for networks either did not address or did not ''meet or exceed'' several of the M+C requirements contained in the six categories set forth in section 1852(e)(4)(B) of the Act. To address this issue, JCAHO agreed to complement their current network accreditation program. Thus, when assessing M+C organizations (including their subcontractors and affiliates, as applicable) that seek deemed status for the Medicare requirements contained in the six categories established in the Act, JCAHO will add the requirements described below.

1. Quality Assurance (§ 422.152)

JCAHO will add to its accreditation standards requirements for M+C organizations to do the following—

- Achieve and report minimum performance levels when we establish them;
- Assess enrollee satisfaction;
- Correct significant systemic problems that come to their attention through internal surveillance, complaints or other mechanisms, such as the use of appeals and grievances;
- Conduct quality improvement projects that meet or exceed the requirements specified in § 422.152.
- Collect data related to (1) both acute and chronic conditions as related to preventive services and care outcomes, (2) the use of clinical resources for high volume services, and (3) the availability, accessibility, and cultural competency of services;
- Select quality indicators that are objective, clearly defined, based upon current research, and generally used in the public health community. Indicators must be measured over time, monitored for at least 1 year after the desired level of performance is achieved (sustained improvement), and benchmarked to targets if we specify targets;
- Designate a policymaking body and a senior official that are accountable for the quality assurance program and that encourage providers and consumers to participate actively;
- Evaluate the effectiveness of the quality assurance program strategy on an annual basis and modify as necessary.

2. Provider Participation Rules (42 CFR part 422 subpart E)

JCAHO will add to its accreditation standards requirements for M+C organizations to do the following—

- Provide physicians with (1) written notice of material changes in participation rules before the changes are put into effect, (2) written notice of participation decisions that are adverse to physicians, and (3) a process for appealing adverse participation decisions, including (a) having a majority of the members of the hearing panel be peers of the affected physician, and (b) allowing the physician the opportunity to present information on the decision;
- Provide that the participation guidelines, procedures, and Federal requirements apply equally and consistently to all physicians, and do not allow for employment or contracts with individuals excluded from the Medicare program;
- Provide (1) written notification (with specific content) when suspending or terminating an agreement under which the physician provides services to the M+C plan enrollees, and (2) notification to licensing and disciplinary bodies on quality-related suspensions or terminations;
- Provide at least 60 days written notice (applies to provider as well) before terminating a contract without cause;
- Make information available to us and to enrollees on counseling or referral services to which the M+C organization objects on moral or religious grounds;
- Distribute to each enrollee, at the time of enrollment and at least annually thereafter, a written statement that includes information on his or her right to obtain a summary description of the method of physician compensation;
- Ensure that participating providers and suppliers who provide services to Medicare enrollees are approved for participation in Medicare and that the M+C organization does not employ or contract with providers who have opted out of Medicare participation;
- Address the limitation on provider indemnification that is stated in § 422.212.

JCAHO agreed to a Physician Incentive Plan (PIP) review strategy that we proposed. M+C organizations will continue to provide PIP information directly to us. We will notify JCAHO when a M+C organization that they have deemed is ''noncompliant'' for any of the PIP requirements; JCAHO will then contact the M+C organization to inform it that it must comply with the PIP provisions. If, at the end of the accrediting organization's corrective action process, the M+C organization continues to be noncompliant, the accrediting organization will refer the case to us.

3. Information on Advance Directives (§ 422.128)

JCAHO will add to its accreditation standards requirements for M+C organizations to do the following—

- Implement written policies and procedures for advance directives for all adult patients served, and share those policies and procedures with each enrollee at the time of enrollment;
- Comply with State laws that (1) allow the provider to conscientiously object to certain types of care (including a statement of limitation, if the M+C organization cannot implement the advance directive), and (2) require information concerning health care decision-making rights to be reflected within 90 days after the effective date of the law;
- Inform individuals that complaints concerning noncompliance with the advance directive requirements may be filed with the State survey and certification agency.

4. Antidiscrimination (§ 422.110 and § 422.502(h))

JCAHO will add to its accreditation standards requirements for M+C organizations to do the following—

- Prohibit the denial, limitation or conditioning of coverage or benefits to eligible enrollees on the basis of any factor that relates to health status, except in the case of an individual with end-stage renal disease;
- Comply with all applicable laws and regulations related to discrimination and payment sources.

5. Access to Services (§ 422.112)

JCAHO will add to its accreditation standards requirements for M+C organizations to do the following—

- Instruct enrollees regarding their right to (1) access emergency services without prior authorization, (2) choose a personal provider from a panel of primary care providers accepting new enrollees, and (3) refuse care from specific providers;
- Provide information regarding treatment options in a language that the enrollee understands;
- Provide services, both clinical and nonclinical, that are readily available, accessible, and appropriate, when medically necessary (24 hours a day/7 days a week) to all enrollees, including those with limited English proficiency or reading skills and those with diverse cultural and ethnic backgrounds. Services include access to specialty care such as women's health services;
- Provide coordination-of-care programs that include (1) an initial health care needs assessment and a

follow-up process, (2) policies regarding ongoing coordination of care by primary care providers or other means, (3) procedures for the identification of, and treatment plans for, individuals with complex or serious needs, and (4) coordination of plan services with community and social services;

• Establish, monitor, and improve performance regarding standards for timeliness of access to care and member services that meet or exceed our standards;

• Conduct an ongoing program to monitor compliance with policies and procedures that ensure that information for patient care and quality review is available;

• Transmit information to the enrollee's primary care provider regarding services used under a point-of-service (POS) benefit by an enrollee.

6. Confidentiality and Accuracy of Enrollee Records (§ 422.118)

JCAHO will add to its accreditation standards requirements for M+C organizations to release original medical records only in accordance with Federal or State laws, court orders, or subpoenas; however, when permitted by law, the records must be made available to treatment providers and to organizations involved in assessing quality of care or investigating enrollee grievances.

7. Delegation Requirements (Contained in Five of Six Deeming Categories)

JCAHO will add to its accreditation standards requirements for M+C organizations to do the following—

• Oversee and be accountable for any functions or responsibilities that are described in the standards for which JCAHO received deeming authority, if that area (or standard) is delegated to another entity;

• Specify in a written agreement the delegated activities and reporting responsibilities of the entity and provide for the revocation of the delegation or other remedies for inadequate performance;

• Monitor the performance of the entity on an ongoing basis and formally review the organization at least annually.

C. Term of Approval

Regulations at § 422.157(b)(2) permit us to grant a term of approval for deeming authority for accreditation organizations of up to 6 years. We are granting this deeming authority through March 24, 2008.

IV. Paperwork Reduction Act

The requirements associated with granting and withdrawal of deeming authority to national accreditation organizations, codified in part 422, Medicare+Choice Program, are currently approved by OMB under OMB approval number 0938–0690, with an expiration date of June 30, 2002. Consequently, this notice does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA.

V. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) September 19, 1980 (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity).

The RFA requires agencies to analyze options for regulatory relief for small businesses, nonprofit organizations and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million to $25 million or less in any 1 year (for details, see the Small Business Administration's publication that set forth size standards for health care industries at 65 FR 69432). For purposes of the RFA, States and individuals are not considered small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

This notice merely recognizes JCAHO as a national accreditation organization that has approval for deeming authority for HMOs or PPOs that are participating in the M+C program. Since M+C organizations are monitored every 2 years by our regional office staff to determine compliance with M+C requirements, we believe that the M+C deeming program has the potential to reduce both the regulatory and administrative burdens associated with the Medicare+Choice program. In FY 2001, there were 179 M+C contracts and 5,578,605 enrollees. Approximately eight of those M+C organizations were accredited by JCAHO.

This notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866.

Therefore, we have determined, and the Secretary certifies, that this notice will not result in a significant impact on small entities and will not have an effect on the operations of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice has no consequential effect on State, local, or tribal governments. We believe the private sector costs of this notice fall below this threshold as well.

In accordance with Executive Order 13132, this notice will not significantly affect the rights of States and does not significantly affect State authority. This regulation describes only processes that must be undertaken to fulfill our obligation to enforce our regulations as required by the April 8, 1997 (62 FR 16985) regulation.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by OMB.

Authority: Secs. 1851 and 1855 of the Social Security Act (42 U.S.C. 1395w–21 and 42 U.S.C. 1395w–25)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 14, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–7123 Filed 3–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2138–N]

RIN 0938–ZA28

Medicare, Medicaid, and CLIA Programs; Continuance of Approval of the American Osteopathic Association (AOA) as an CLIA Accreditation Organization

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the continued approval of the American Osteopathic Association (AOA) as an accreditation organization for clinical laboratories under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) program. We have determined that the accreditation process of this organization provides reasonable assurance that the laboratories accredited by AOA meet the conditions required by CLIA statute and its implementing regulations. Consequently, laboratories that voluntarily become accredited by AOA, in lieu of direct Federal oversight, and continue to meet AOA requirements would meet the CLIA condition level requirements for laboratories and, therefore, are not subject to routine inspection by State survey agencies to determine their compliance with CLIA requirements. However, these laboratories are subject to Federal validation and complaint investigation surveys.

EFFECTIVE DATE: This notice is effective for the period March 22, 2002 through March 24, 2008.

FOR FURTHER INFORMATION CONTACT: Kathy Todd, (410) 786–3385.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

On October 31, 1988, the Congress enacted the Clinical Laboratory Improvement Amendments of 1988 (CLIA), Public Law 100–578. CLIA replaced in its entirety section 353(e)(2) of the Public Health Service Act, as enacted by the Clinical Laboratories Improvement Act of 1967. In the July 31, 1992 **Federal Register** (57 FR 33992), we issued a final rule implementing the accreditation provisions of CLIA. Under this rule, we may approve a private, nonprofit organization as an approved accreditation organization to accredit clinical laboratories under the CLIA program if the organization meets certain requirements. An organization's requirements for accredited laboratories must be equal to, or more stringent than, the applicable CLIA program requirements in 42 CFR part 493 (Laboratory Requirements). Therefore, a laboratory accredited by an approved accreditation organization that meets and continues to meet all of the accreditation organization's requirements would be considered to meet CLIA condition level requirements if it were inspected against CLIA regulations. The regulations in part 493, subpart E (Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program) specify the requirements an accreditation organization must meet in order to be an approved. We approve an accreditation organization for a period not to exceed 6 years.

In general, the approved accreditation organization must, among other conditions and requirements:

- Use inspectors qualified to evaluate laboratory performance and agree to inspect laboratories with the frequency determined by us.
- Apply standards and criteria that are equal to, or more stringent than, those condition level requirements established by us when taken as a whole.
- Provide reasonable assurance that these standards and criteria are continuously met by its accredited laboratories.
- Provide us with the name of any laboratory that has had its accreditation denied, suspended, withdrawn, limited, or revoked within 30 days of the action taken.
- Notify us at least 30 days before implementing any proposed changes in its standards.
- If we withdraw our approval, notify the accredited laboratories of the withdrawal within 10 days of the withdrawal. A laboratory can be accredited if, among other things, it meets the standards of an approved accreditation organization and authorizes the accreditation organization to submit records and other information to us as required.

In addition to requiring the promulgation of criteria for approving an accreditation organization and withdrawing this approval, CLIA regulations require us to perform an annual evaluation by inspecting a sufficient number of laboratories accredited by an approved accreditation organization, as well as, by any other means that we determine appropriate.

II. Notice of Continued Approval of AOA as an Accreditation Organization

In this notice, we approve AOA as an organization that may continue to accredit laboratories for purposes of establishing their compliance with CLIA. The Centers for Disease Control and Prevention (CDC) and CMS have examined the AOA application and all subsequent submissions to determine equivalency with the requirements under 42 CFR part 493, subpart E that an accreditation organization must meet to be granted approved status under CLIA. We have determined that AOA complied with the applicable CLIA requirements and grant AOA approval as an accreditation organization under 42 CFR part 493, subpart E, as of March 21, 2002 through March 24, 2002 for all specialty and subspecialty areas under CLIA.

As a result of this determination, any laboratory that is accredited by AOA during this time period for an approved specialty or subspecialty is deemed to meet the applicable CLIA condition level requirements for the laboratories found in part 493 and, therefore, is not subject to routine inspection by a State survey agency to determine its compliance with CLIA requirements. The accredited laboratory, however, is subject to validation and complaint investigation surveys performed by CMS, or by any other Federal State, local public agency, or nonprofit organization under an agreement with the Secretary.

III. Evaluation of American Osteopathic Association (AOA)

The following describes the process used to determine that the American Osteopathic Association (AOA), as a private, nonprofit organization, provides reasonable assurance that laboratories it accredits will meet the applicable requirements of CLIA.

A. Requirements for Approving an Accreditation

Organization Under CLIA

To determine whether we should grant approved status to AOA as a private, nonprofit organization for accrediting laboratories under CLIA for all specialty or subspecialty areas of human specimen testing it requested, we conducted a detailed and in-depth comparison of AOA's requirements for its laboratories to those of CLIA. In summary, we evaluated whether AOA meets the following requirements:

- Provides reasonable assurance to us that it requires the laboratories it accredits to meet requirements that are equal to, or more stringent than, the

CLIA condition level requirements (for the requested specialties and subspecialties) and would, therefore, meet the condition level requirements of CLIA if those laboratories had not been granted deemed status and had been inspected against condition level requirements.

• Meets the applicable requirements of part 493, subpart E.

As specified in the regulations of part 493, subpart E, the review of a private, nonprofit accreditation organization seeking approved status under CLIA includes, but is not limited to, an evaluation of the following:

• Whether the organization's requirements for its accredited laboratories are equal to, or more stringent than, the condition levels requirements of the CLIA regulations.

• The organization's inspection process to determine the following:

+ The composition of the inspection teams, qualifications of the inspectors, and the ability of the organization to provide continuing education and training to all of its inspectors.

+ The comparability of the organization's full inspection and complaint inspection requirements to the Federal requirements including, but not limited to, inspection frequency, and the ability to investigate and respond to complaints against its accredited laboratories.

+ The organization's procedures for monitoring laboratories that it has found to be out of compliance with its requirements.

+ The ability of the organization to provide us with electronic data and reports that are necessary for effective validation and assessment of the organization's inspection process.

+ The ability of the organization to provide us with electronic data related to the adverse actions resulting from unsuccessful proficiency testing (PT) participation in CMS-approved PT programs, as well as data related to the PT failures, within 30 days of the initiation of the action.

+ The ability of the organization to provide us with electronic data for all its accredited laboratories and the area of specialty and subspecialty testing.

+ The adequacy of the numbers of staff and other resources.

+ The organization's ability to provide adequate funding for performing the required inspections.

• Whether the organization has an agreement with us that requires it, among other things, to meet the following:

+ Notify us of any laboratory that has had its accreditation denied, limited, suspended, withdrawn, or revoked by the accreditation organization, or that has had any other adverse action taken against it by the accreditation organization, within 30 days of the date the action is taken.

+ Notify us within 10 days of a deficiency identified in an accredited laboratory if the deficiency poses an immediate jeopardy to the laboratory's patients or a hazard to the general public.

+ Notify us of all newly accredited laboratories, or laboratories whose areas of specialty or subspecialty are revised, within 30 days.

+ Notify each laboratory accredited by the organization within 10 days of our withdrawal of approval of the organization as an accreditation organization.

+ Provide us with inspection schedules, on request, for the purpose of conducting onsite validation inspections.

+ Provide our agent, the State survey agency, or CMS with any facility-specific data that include, but are not limited to, PT results that constitute unsuccessful participation in an approved PT program and notification of the adverse actions or corrective actions imposed by the accreditation organization as a result of unsuccessful PT participation.

+ Provide us with written notification at least 30 days in advance of the effective date of any proposed changes in its requirements.

+ Provide upon the request by any person, on a reasonable basis (under State confidentiality and disclosure requirements, if applicable), any laboratory's PT results with the explanatory information needed to assist in the interpretation of the results.

Laboratories that are accredited by an approved accreditation organization must, among other things, meet the following requirements:

• Authorize the organization to release to us all records and information required.

• Permit inspections as required by the CLIA regulations at part 493, subpart Q (Inspection).

• Obtain a certificate of accreditation under § 493.55 (Application for registration certificate and certificate of accreditation).

B. Evaluation of the AOA Request for Continued Approval as an Accreditation Organization Under CLIA

We have examined AOA's assurance that it requires the laboratories it accredits to be, and that the organization is, in compliance with the following subparts of part 493: 1. Subpart E—Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program

AOA has requested continued approval to accredit all specialties and subspecialties and has submitted the following:

• Description of its PT monitoring process, inspection processes, policies, and data management and analysis system.

• List of its inspection team size, composition, and education and experience.

• Investigative and complaint response procedures.

• Our notification agreements.

• Procedures for the removal or withdrawal of accreditation from a laboratory.

• Current list of accredited laboratories with announced or unannounced inspection process.

We have determined that AOA has complied with the requirements under CLIA for approval as an accreditation organization under this subpart.

Our evaluation identified several areas of AOA requirements that are more stringent that the CLIA requirements and apply to the laboratory when taken as a whole. Rather than include them in the appropriate subparts multiple times, we have listed them here:

• AOA lists extensive requirements for the laboratory information system (LIS) that include but are not limited to the following:

+ The laboratory must ensure that test results generated by the LIS are reported, archived and maintained in an accurate and reliable manner.

+ The laboratory must perform and document the necessary system maintenance required by the LIS manufacturer or established by and validated by the laboratory.

+ All input/output devices must be maintained to ensure accurate, clear, and interference-free transmission of reports.

+ The laboratory must validate new or revised software and/or hardware before their use.

+ LIS access must be used to limit access to only those functions the personnel are authorized to use.

plus The LIS must be protected against power and electrical interruptions.

+ The laboratory must validate and have records of that validation for all calculations performed by the LIS at least twice a year or as specified by the manufacturer.

• AOA requires the establishment of protocols to protect the confidentiality of patient-identified information and

considers all patient identified information received or generated in the laboratory as confidential information that must be so defined in laboratory protocols for employees and agents of the laboratory who have knowledge of test results.

• AOA has specific requirements for autopsy pathology that include but are not limited to the following:

+ Clinical records are reviewed with the attending physician before conducting the autopsy.

+ Written policies and procedures for the storage and release of bodies must be available and followed.

+ Written policies and procedures for the autopsy consent must be available and followed.

+ Autopsy policies and procedures must be available at nursing stations, admitting office and other appropriate places.

+ Requirements for autopsy pathology environmental conditions, equipment, materials and supplies.

+ Requirements for autopsy pathology safety.

+ Requirements for autopsy pathology reports.

2. Subpart H (regarding participation in proficiency testing)

AOA's requirements for PT are equivalent to those of CLIA.

3. Subpart J (regarding patient test management)

AOA's requirements in patient test management are equivalent to those of CLIA.

4. Subpart K (regarding quality control)

The quality control (QC) requirements of AOA have been evaluated against the applicable requirements of CLIA and its implementing regulations. We have determined that AOA's requirements, when taken as a whole, are more stringent than the CLIA requirements. Specifically, the AOA has laboratory safety requirements that are specific and detailed. AOA requires laboratories to have an appointed safety officer and maintain quarterly written safety reports. AOA also has requirements for fire safety and prevention of fire hazards, universal precautions, hazardous waste management, and environmental safety requirements to address electrical grounding and emergency power.

5. Subpart M (regarding personnel)

We have found that AOA's personnel requirements, when taken as a whole, are equal to the CLIA requirements.

6. Subpart P (regarding quality assurance)

We have determined that AOA's requirements are equal to the CLIA requirements of this subpart. AOA has adopted the CLIA quality assurance requirements in their entirety and included them in AOA's checklist.

7. Subpart Q—Inspections

AOA will continue to perform on-site inspections on a biennial basis. Therefore, we have determined that AOA's inspections are equivalent to CLIA.

8. Subpart R—Enforcement

AOA meets the requirements of subpart R to the extent that it applies to accreditation organizations. AOA policy stipulates the action it takes when laboratories it accredits do not comply with its requirements. AOA must deny, revoke, or limit accreditation of a laboratory as appropriate and report the action to us within 30 days. AOA also provides an appeal process for laboratories that have had accreditation denied, revoked, suspended, or limited.

We have determined that AOA's laboratory enforcement and appeal policies are equivalent to the requirements of this subpart as they apply to accreditation organizations.

IV. Federal Validation Inspections and Continuing Oversight

The Federal validation inspections of AOA-accredited laboratories may be conducted on a representative sample basis or in response to substantial allegations of noncompliance (complaint inspections). The outcome of those validation inspections, performed by our agent, or the State survey agency, or us, will be our principal means for verifying that the laboratories accredited by AOA remain in compliance with CLIA requirements. This Federal monitoring is an ongoing process.

V. Removal of Approval as an Accrediting Organization

Our regulations provide, in part, that we may remove the approval of an accreditation organization, such as that of AOA, for cause, before the end of the effective date of approval. If validation inspection outcomes and the comparability or validation review produce findings as described in § 493.573 (Continuing Federal oversight of private nonprofit accreditation organizations and approved State licensure programs), we will conduct a review of an approved accreditation organization's program. In addition, we will conduct a review, when the validation review findings, irrespective of the rate of disparity (as defined in § 493.2), indicate widespread or systemic problems in the organization's accreditation processes that provide evidence that the organization's requirements, taken as a whole, are no longer equivalent to the CLIA requirements, taken as a whole. If validation inspection results over a 1-year period indicate a rate of disparity of 20 percent or more between our findings and those of the organization, we will conduct a review under § 493.575(a)(4).

If we determine that AOA has failed to adopt or maintain requirements that are equal to, or more stringent than the CLIA requirements, or systematic problems exist in its inspection process, a probationary period as determined by us, not to exceed 1 year, may be given to AOA to adopt equal or more stringent requirements. We will make a final determination as to whether or not AOA retains its approved status as an accreditation organization under CLIA. If approved status is withdrawn, an accreditation organization such as AOA may resubmit its application if it revises its program to address the rationale for the denial, demonstrates that it can reasonably assure that its accredited laboratories meet CLIA condition level requirements, and resubmits its application for approval as an accreditation organization in its entirety. However, if an approved accreditation organization requests reconsideration of an adverse determination in accordance with subpart D (Reconsideration of Adverse Determinations—Deeming Authority for Accreditation Organizations and CLIA Exemption of Laboratories Under State Programs) of part 488 (Survey, Certification, and Enforcement Procedures) of our regulations, it may not submit a new application until we issue a final reconsideration determination. Should circumstances result in AOA having its approval withdrawn, we will publish a notice in the **Federal Register** explaining the basis for removing its approval.

VI. Federalism

We have reviewed this notice under the threshold criteria of Executive Order 13132, Federalism, and have determined that this notice will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

VII. OMB Review

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget did not review this notice.

Authority: Section 353 of the Public Health Service Act (42 U.S.C. 263a).

Dated: January 15, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–6953 Filed 3–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–2140–PN]

Medicare and Medicaid Programs; Application by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) for Approval of Deeming Authority for Critical Access Hospitals

AGENCY: Centers for Medicare and Medicaid Services (CMS), HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice with comment period acknowledges the receipt of an initial application by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) for consideration as a national accreditation program for critical access hospitals that wish to participate in the Medicare or Medicaid programs. Section 1865(b)(3)(A) of the Social Security Act (the Act) requires that within 60 days of receipt of an organization's complete application, we publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

DATES: Written comments will be considered if received at the appropriate address, as provided in **ADDRESSES**, no later than 5 p.m. on April 22, 2002.

ADDRESSES: Mail written comments (an original and three copies) to the following address only: Centers for Medicare and Medicaid Services, Department of Health and Human Services, Attention: CMS–2140–PN, PO Box 8010, Baltimore, MD 21244–1850.

If you prefer, you may deliver by courier your written comments (an original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or,

Room C5–14–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the indicated addresses may be delayed and could be considered late.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–2140–PN.

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the following address: 7500 Security Blvd., Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: (410) 786–7197) to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Irene H. Dustin, (410) 786–0495.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a critical access hospital (CAH) provided the hospital meets certain requirements. Sections 1820(c)(2)(B) and 1861(mm) of the Social Security Act (the Act) establish distinct criteria for facilities seeking designation as a CAH. Under this authority, the Secretary has set forth in regulations minimum requirements that a CAH must meet to participate in Medicare. The regulations at 42 CFR part 485, subpart F (Conditions of Participation: Critical Access Hospitals (CAHs)) determine the basis and scope of covered services provided by a CAH, set out rural health network specifications and establish staff qualifications. Conditions for Medicare payment for critical access services can be found at § 413.70. Applicable regulations concerning provider agreements are at 42 CFR part 489 (Provider Agreements and Supplier Approval) and those pertaining to the survey and certification of facilities are at 42 CFR part 488, (Survey, Certification and Enforcement Procedures), subparts A (General Provisions) and B (Special Requirements).

In order for a CAH to be approved for participation in or coverage under the Medicare program, the hospital must have a current provider agreement to participate in the Medicare program as a hospital. The provider agreement must be in place at the time the hospital applies for CAH designation and be in compliance with part 482 (Conditions of Participation for Hospitals), as well as part 485, subpart F (Conditions of Participation: Critical Access Hospitals (CAHs)). Generally, in order to enter into a provider agreement, a hospital must first be certified by a State survey agency as complying with the conditions or standards set forth in the statute and part 482 of our regulations. Then, the hospital is subject to regular surveys by a State survey agency to determine whether it continues to meet Medicare requirements. There is an alternative, however, to surveys by State agencies.

Exceptions are provided in the Balanced Budget Refinement Act of 1999 (Pub. L. 106–113) for rural health clinics that were previously downsized from an acute care hospital, or for a closed hospital that is requesting to reopen as a CAH. In these instances, only the provisions of 42 CFR part 485, subpart F apply.

Section 1865(b)(1) of the Act permits ''accredited'' hospitals to be exempt from routine surveys by State survey agencies to determine compliance with Medicare conditions of participation. Accreditation by an accreditation organization is voluntary and is not required for Medicare participation. Section 1865(b)(1) of the Act provides that, if a provider demonstrates through accreditation that all applicable Medicare conditions are met or exceeded, CMS shall ''deem'' the hospital as having met the requirements.

If an accrediting organization is recognized in this manner, any provider accredited by a national accrediting body approved program would be deemed to meet the Medicare conditions of participation. The American Osteopathic Association (AOA) is currently the only organization recognized with deeming authority for critical access hospitals. The final notice approving the AOA for deeming authority for CAHs was published in the **Federal Register** on September 28, 2001 (66 FR 49677).

A national accreditation organization applying for approval of deeming authority under section 488, subpart A must provide us with reasonable assurance that the accreditation organization requires the accredited providers to meet requirements that are at least as stringent as the Medicare conditions of participation.

II. Approval of Deeming Organizations

Section 1865(b)(2) of the Act requires that our findings concerning review of national accrediting organizations consider, among other factors, an accreditation organization's requirements for the following: accreditation, survey procedures, resources for conducting required surveys, capacity to furnish information for use in enforcement activities, and monitoring procedures for provider entities found not in compliance with the conditions or requirements, and ability to provide us with necessary data for validation.

Section 1865(b)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accreditation body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from our receipt of the request to publish approval or denial of the application.

The purpose of this proposed notice is to inform the public of our consideration of JCAHO's request to become a national accreditation program for CAHs. This notice also solicits public comment on the ability of JCAHO requirements to meet or exceed the Medicare conditions of participation for CAHs.

III. Evaluation of Deeming Authority Request

On February 1, 2002, JCAHO submitted all the necessary materials concerning its request for approval as a deeming organization for CAHs to enable us to make a determination. Under section 1865(b)(2) of the Act and our regulations at § 488.8 (Federal review of accreditation organizations), our review and evaluation of JCAHO will be conducted in accordance with, but not necessarily limited to, the following factors:

• The equivalency of JCAHO standards for a critical access hospital as compared with our comparable critical access hospital conditions of participation.

• JCAHO's survey process to determine the following:

—Survey team composition, surveyor qualifications, and the capacity of the organization to provide continuing surveyor training.

—The comparability of JCAHO's processes to that of State agencies, including survey frequency and the ability to investigate and respond appropriately to complaints against accredited facilities.

—JCAHO's processes and procedures for monitoring providers or suppliers found to be out of compliance with JCAHO program requirements. These monitoring procedures are used only when JCAHO identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(b)(3).

—JCAHO's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

—JCAHO's capacity to provide us with electronic data in an ASCII comparable format as well as the reports necessary for validation and assessment of the organization's survey process.

—The adequacy of JCAHO's staff and other resources, and its financial viability.

—JCAHO's capacity to adequately fund required surveys.

—JCAHO's policies with respect to whether surveys are announced or unannounced.

—JCAHO's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

IV. Response to Comments and Notice Upon Completion of Evaluation

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all public comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a final notice, we will respond to the public comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget did not review this proposed notice.

In accordance with Executive Order 13132, we have determined that this proposed notice would not have a significant affect on the right of States, local or tribal governments.

Authority: Sec. 1865(b)(3)(A) of the Social Security Act (42 U.S.C. 1395bb(b)(3)(A)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; Program No. 93.774, Medicare—Supplemental Medical Insurance Program; and Program No. 93.778, Medical Assistance Program)

Dated: March 18, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–6954 Filed 3–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3076–FN]

Medicare Program; Approval of the Indian Health Service (IHS) as a National Accreditation Organization for Accrediting American Indian and Alaska Native Entities To Furnish Outpatient Diabetes Self-Management Training

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces the approval of the Indian Health Service (IHS) as a national accreditation organization for outpatient Diabetes Self-Management Training (DSMT) services. This notice also announces the decision of the IHS to adopt the National Standards for Diabetes Self-Management Education Programs (NSDSMEP), for purposes of determining that American Indian and Alaska Native (AI/AN) entities meet the necessary quality standards to furnish outpatient diabetes self-management and training services under Part B of the Medicare program. Therefore, diabetes self-management training (DSMT) programs accredited by the IHS will receive ''deemed'' status under the Medicare program.

EFFECTIVE DATE: This accreditation is effective on March 22, 2002, for a term of 6 years.

FOR FURTHER INFORMATION CONTACT: Eva Fung, (410) 786–7539.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(qq) of the Social Security Act (the Act) provides us with the statutory authority to regulate Medicare outpatient coverage of diabetes self-management training (DSMT) services. The section also permits DSMT programs to be deemed to have met our regulatory standards if they are accredited by an organization that represents individuals with diabetes as having met standards for furnishing DSMT services. Section 1865 (b) of the Act specifies a process whereby we approve and recognize national accrediting organizations for the purpose of recognizing health care entities accredited by the organization to have met such program requirements. The regulations published in accordance with section 1865(b) have served as the model for our approval of accreditation programs.

The final rule on DSMT, published on December 29, 2000 in the **Federal Register** (65 FR 251) explicitly modeled its accreditation organization approval process after the section 1865 approval process specified in 42 CFR part 488, subpart A. The final rule states that DSMT programs interested in participating in the Medicare program must meet conditions for coverage specified in our regulations at 42 CFR part 410, subpart H. One requirement is that entities must satisfy required quality standards. Currently, one way that an entity must satisfy the quality standards under § 410.145 is to be accredited by a CMS-approved accrediting body. The regulations pertaining to the application process for national accreditation organizations for DSMT at § 410.142(a) specify that we may approve and recognize a nonprofit or not-for-profit organization with demonstrated experience in representing the interest of individuals with diabetes to accredit entities to furnish training. After we approve and recognize the accreditation organization, it may accredit an entity to meet one of the sets of quality standards described in § 410.144, and we will deem these entities to have met these standards.

II. Review Process and Findings

A. Review Process

In evaluating an application from an accrediting organization, we consider the following factors under section 1865(b)(2) of the Act and specified for DSMT purposes at § 410.142(e):

- The organization uses and enforces quality standards that CMS has determined meet or exceed the CMS quality standards described in § 410.144(a), or uses the National Standards for Diabetes Self-Management Education Programs (NSDSMEP) quality standards described in § 410.144(b);
- The organization meets the requirements for approved organizations in § 410.143;
- The organization is not owned or controlled by the entities it accredits, as defined in § 413.17(b)(2) or (b)(3); and
- The organization does not accredit any entity it owns or controls.

We are required by § 410.142(d) to publish a proposed notice in the **Federal Register** after the receipt of a written request for approval from a national accreditation organization. After review of the national accreditation organization's application, the regulations require that we publish a notice of our approval or disapproval after we receive a complete package of information and the organization's deeming application.

B. Review Findings

We received a complete application from the Indian Health Service (IHS) on September 5, 2001. On October 26, 2001, we published a proposed notice in the **Federal Register** (66 FR 54262) announcing the application of the IHS for approval as an accreditation organization for American Indian/Alaska Natives (AI/AN) diabetes self-management training programs. We reviewed the application, and our findings indicated that the IHS meets the CMS criteria as ''a nonprofit organization with demonstrated experience in representing the interests of individuals with diabetes'' to accredit entities to furnish training in § 410.142(a).

We recognize that the IHS has a solid record of well-balanced experience in representing the interest of individuals with diabetes in the past decades. The AI/AN population has the highest rate of diabetes in the world and the prevalence of diabetes is 350 percent higher than in the general U.S. population. Recognizing the size of the AI/AN population affected by diabetes, the Congress, since 1979, has funded the IHS-administered National Diabetes Program to promote collaborative strategies to combat diabetes, develop standards-of-care policies for diabetes, disseminate comprehensive information about diabetes, and advocate for the AI/AN population in the health field. The IHS has played a leadership role in the development of diabetic care surveillance and data collection in the AI/AN diabetes program. The IHS monitors the quality of the AI/AN diabetic education service through the established system and network of the IHS National Diabetes Program, the IHS Area Consultants, the IHS Model Diabetes Program, the Special Diabetes Grant Programs and the IHS Integrated Diabetes Education and Clinical Standards Recognition Program for AI/AN Communities. Additionally, the IHS works in partnership with the IHS Model Diabetes Programs to tailor educational materials, treatment programs, nutrition counseling and physical activities to accommodate cultural, physical and geographical needs.

We recognize that the traditional definition of ''nonprofit organization'' used by HHS in other contexts generally does not cover governmental entities. However, we have determined that the IHS possesses the indicia of nonprofit status because among other things, it is not formed for commercial or profit-making purposes; it does not have shares or shareholders, and it serves charitable purposes. All the health care services, including DSMT services, are furnished to the AI/AN population free of charge, and The Indian Health Care Improvement Act requires Medicare and Medicaid reimbursements be allocated back to the facilities to make improvements in the programs and maintain compliance with the applicable conditions and requirements.

We do not anticipate a conflict of interest in the deeming of AI/AN DSMT entities by IHS. The Indian Self-Determination and Education Assistance Act (ISDEAA) (25 U.S.C. 450f) authorizes the IHS to contract or compact with tribes for independent administration and operation of health services and programs in their communities. Under ISDEAA and the Public Health Service Act (42 U.S.C. section 254c–3(c)), the tribes may administer the diabetes programs funds independently from the IHS, and the agency serves in a consultative role regarding best practices. The IHS provides technical assistance to tribes on an as needed basis and has limited authority to sanction or assume a tribal health program. We therefore believe that IHS's deeming authority will be exercised in compliance with § 410.142(e) (regarding relationships with owned or controlled entities).

In the best interests of the AI/AN population, which has been affected by diabetes in alarming proportions, we have exercised our flexibility and discretion to approve the IHS application to accredit AI/AN DSMT programs. Our decision is based on the consideration of the unique relationship between the IHS National Diabetes Program, the Tribal Diabetes Program and the Special Diabetes Grant Program, as well as the distinct IHS funding structure that does not exist in other types of health care systems.

During the term of approval as an accrediting organization, IHS will: (1) Enforce the NSDSMEP for its deemed entities; (2) comply with the requirements for approved accreditation organizations under § 410.143; (3) continue to refrain from exercising administrative authority over the IHS Model Diabetes Programs, Tribal Model Diabetes Programs and the 1997 BBA Diabetes Grant Programs; and (4) continue to retain its consultative role regarding best diabetes practices.

III. Analysis of and Responses to Public Comments and Provisions of the Final Notice

During the 30-day comment period, we received one comment in support of the IHS application. We reviewed the application and determined that IHS has

demonstrated experience in representing the interests of individuals with diabetes and is therefore qualified to accredit entities to furnish training. The IHS is adopting the NSDSMEP quality standards as permitted by the statute. Therefore, we have approved the IHS' application as an accreditation organization for diabetes self-management training programs under § 410.142(d) for a term of 6 years. The IHS is the second accreditation organization that we have approved for accrediting diabetes self-management training programs.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Sections 1861(qq), 1871 of the Social Security Act (42 U.S.C. 1395(qq), 1395bb.

(Catalog of Federal Domestic Program No. 93.773, Medicare-Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: February 3, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–6955 Filed 3–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3089–N]

Medicare Program; Annual Review of the Appropriateness of Payment Amounts for New Technology Intraocular Lenses (NTIOLs) Furnished by Ambulatory Surgical Centers (ASCs)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice is soliciting interested parties to submit requests for review of the appropriateness of the payment amount for a particular intraocular lens furnished by an ambulatory surgical center.

DATES: Requests for review must be received at the address provided no later than 5 p.m. E.S.T. on April 22, 2002.

ADDRESSES: Mail requests for review (one original and three copies) to the Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: Betty Shaw, Mailstop C1–09–06, 7500 Security Blvd., Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Betty Shaw, (410) 786–6100; or Mary Stojak, (410) 786–6939.

SUPPLEMENTARY INFORMATION:

I. Background

On October 31, 1994, the Social Security Act Amendments of 1994 (SSAA 1994) (Pub. L. 103–432) were enacted. Section 141(b) of SSAA 1994 requires us to develop and implement a process under which interested parties may request, for a class of new technology intraocular lens (NTIOLs), a review of the appropriateness of the payment amount for IOLs furnished by ambulatory surgical centers (ASCs) under section 1833(i)(2)(A)(iii) of the Social Security Act (the Act).

On June 16, 1999, we published a final rule in the **Federal Register** titled ''Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers'' (64 FR 32198), which added subpart F to 42 CFR part 416. That rule set forth the process for adjusting payment amounts for NTIOLs furnished by ambulatory surgical centers (ASCs), defined the terms relevant to the process, and established a flat rate payment adjustment of $50 for intraocular lenses (IOLs) that we determine are NTIOLs. This payment adjustment is good for a 5-year period that begins when we recognize a payment adjustment for the first intraocular lens in a new subset of an existing class of intraocular lens or a new class of technology, as explained below. Any subsequent IOL with the same characteristics as the first IOL recognized for a payment adjustment will receive the adjustment for the remainder of the 5-year period established by the first recognized IOL. After July 16, 2002, we may change the $50 adjustment amount through a notice with comment period.

Review Process for Establishing Classes of New Technology Intraocular Lenses

We evaluate requests for the designation of an IOL as an NTIOL by doing the following:

(1) Publishing a notice in the **Federal Register** announcing the deadline and requirements for submitting a request for us to review payment for an IOL.

(2) Receiving requests to review the appropriateness of the payment amount for an IOL.

(3) Compiling a list of the requests we receive and identify the IOL manufacturer's name, the model number of the IOL to be reviewed, the interested party or parties that submit requests, and a summary of the interested party's grounds for requesting review of the appropriateness of the IOL payment amount.

(4) Publishing a notice in the **Federal Register** listing the requests, and giving the public 30 days to comment on the IOLs for which a review was requested.

(5) Reviewing the information submitted with the request to review, and requesting confirmation from the Food and Drug Administration (FDA) about labeling applications that have been approved on the model lens under review. We also request a recommendation from the FDA about whether or not the lens model represents a new class of technology that sets it apart from other IOLs.

Using a baseline of the date of the last determinations of new classes of intraocular lenses, the FDA states an opinion based on proof of superiority over existing lenses of the same type of material or over lenses that are classified by a predominant characteristic as reducing the risk of intraoperative or postoperative complication or trauma, or demonstrating accelerated postoperative recovery, reduced induced astigmatism, improved postoperative visual acuity, more stable postoperative vision, or other comparable clinical advantages.

(6) Determining which lenses meet the criteria to qualify for the payment adjustment based on clinical data and evidence submitted for review, the FDA's analysis, public comments on the lenses, and other available information.

(7) Designating a type of material or a predominant characteristic of an NTIOL that sets it apart from other IOLs to establish a new class.

(8) Publishing a notice in the **Federal Register** (within 120 days after we publish the notice identified in paragraph (4) of this section) announcing the IOLs that we have determined are ''new technology'' IOLs. These NTIOLs qualify for the following payment adjustment:

(a) Determinations made before July 16, 2002—$50.

(b) Determinations made after July 16, 2002—$50 or the amount announced through proposed and final rules in connection with ambulatory surgical center services.

(9) Adjusting payments effective 30 days after the publication of the notice announcing our determinations described in paragraph (8) of this section.

Who May Request a Review?

Any party who is able to furnish the information required in § 416.195 (A

request to review) may request that we review the appropriateness of the payment amount provided under section 1833(i)(2)(A)(iii) of the Act for an IOL that meets the definition of a new technology IOL in § 416.180 (Definitions).

Requests to Review

A request for review must include all of the following information:

- The name of the manufacturer, the model number, and the trade name of the IOL.
- A copy of the FDA's summary of the IOL's safety and effectiveness.
- A copy of the labeling claims of specific clinical advantages approved by the FDA for the IOL.
- A copy of the IOL's original FDA approval notification.
- Reports of modifications made after the original FDA approval.
- Other information that supports the requestor's claim (that is, clinical trials, case studies, journal articles, etc.).

Privileged or Confidential Information

To the extent that information received from an IOL manufacturer can reasonably be characterized as a trade secret or as privileged or confidential commercial or financial information, we maintain the confidentiality of the information and protect it from disclosure not otherwise authorized or required by Federal law as allowed under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and, for trade secrets, the Trade Secrets Act (18 U.S.C. 1905). We recommend that the requestor clearly identify all information that is to be characterized as confidential. The Freedom of Information Act does not prohibit the disclosure of any information; rather it allows us to withhold certain information based on identifiable harms as described above.

Application of the Payment Adjustment

We recognize the IOL(s) that define a new technology subset for purposes of subpart F of part 416 as belonging to the class of NTIOLs for a period of 5 years effective from the date that we recognize the first new technology IOL within the subset for a payment adjustment. Any IOL that we subsequently recognize as belonging to a new technology subset receives the new technology payment adjustment for the remainder of the 5-year period established with our recognition of the first NTIOL in the subset.

II. Provisions of This Notice

Under our rules at 42 CFR part 416, subpart F, we are soliciting requests for review of the appropriateness of the payment amount for intraocular lenses furnished by an ASC. Requests for review must comply with our regulations at § 416.195 and be received at the address provided by the date specified in the **DATES** section of this notice. We will announce timely requests for review in a subsequent notice that will allow for public comment. Currently, if we determine a lens as an NTIOL, the lens will be eligible for a payment adjustment of $50 or a different amount implemented through proposed and final rules.

III. Collection of Information Requirements

Because the requirements referenced in this notice will not affect 10 or more persons on an annual basis, this notice does not impose any information collection and record keeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IV. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). We have determined that this notice is not a major rule because it is merely soliciting interested parties to submit requests for review of the appropriateness of the payment amount with regard to a particular intraocular lens furnished by an ambulatory surgical center.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $25 million or less annually. We have determined that this notice will not affect small businesses.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice does not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We have determined that this notice will not have a consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State, local, or tribal governments, preempts State law, or otherwise has Federalism implications. We have determined that this notice does not have an economic impact on State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Sections 1832(a)(2)(F)(i) and 1833(i)(2)(a) of the Social Security Act (42 U.S.C. 1395k(a)(2)(F)(i) and 1395l(i)(2)(A)).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 12, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–6758 Filed 3–21–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Science Board to the Food and Drug Administration Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Science Board to the Food and Drug Administration.

General Function of the Committee: The board shall provide advice primarily to the agency's Senior Science Advisor and, as needed, to the Commissioner and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science; on formulating an appropriate research agenda; and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency-sponsored intramural and extramural scientific research programs.

Date and Time: The meeting will be held on April 9, 2002, from 8 a.m. to 4 p.m.

Location: 5630 Fishers Lane, rm. 1066, Rockville, MD 20852.

Contact: Susan Bond, Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane, rm. 17–35, Rockville, MD 20857, 301–827–6687, or e-mail sbond@oc.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12603. Please call the Information Line for up-to-date information on this meeting.

Agenda: Open committee discussion, 8 a.m. to 1 p.m.; open public hearing, 1 p.m. to 2 p.m.; open committee discussion, 2 p.m. to 4:30 p.m. The board will hear and discuss emerging issues in antimicrobial resistance, process analytical technologies (followup), and biomaterials innovation; and discuss the external science review for FDA's Office of Regulatory Affairs.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 3, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 3, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Susan Bond at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 15, 2002.

Bonnie Malkin,

Acting Senior Associate Commissioner for Communications and Constituent Relations.

[FR Doc. 02–6994 Filed 3–21–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Refugee Resettlement; Grant to the Virginia Office of Newcomer Services

AGENCY: Office of Refugee Resettlement, DHHS.

ACTION: Grant award announcement.

SUMMARY: Notice is hereby given that an award is being made to the Virginia Office of Newcomer Services, Richmond, Virginia in the amount of $375,000 to provide funds to refugees in need of employment assistance as a result of the September 11, 2001 attack on the Pentagon. The closure of Reagan National Airport and the rapid decline in the metropolitan Washington, DC hospitality industry caused substantial numbers of refugees to lose their jobs. Many of these refugees arrived in the United States some time ago and are no longer eligible for refugee cash assistance and refugee medical assistance.

The Virginia Office of Newcomer Services intends to provide funds for mental health services, transportation assistance, English as a Second Language, direct assistance, and State administration costs.

After the appropriate reviews, it has been determined that the need for additional services is compelling. The period of this funding will extend through March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Loren Bussert, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401–4732.

Dated: March 18, 2002.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 02–6919 Filed 3–21–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–06]

Notice of Proposed Information Collection: Comment Request; Financial Statement

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* May 21, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Lester J. West, Director, Financial Operations Center, Department of Housing and Urban Development, telephone (518) 464–4200 extension 4206 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Financial Statement.

OMB Control Number, if applicable: 2502–0098.

Description of the need for the information and proposed use: This form is used by HUD to obtain information about a debtor's ability to pay the debt in full, pay in installments, and/or compromise the debt. Failure to collect this information would result in uneducated decisions in respect to the handling of the debtor's account.

Agency form numbers, if applicable: HUD 56142.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The total number of annual hours needed to prepare the information is 800; the number of respondents is estimated to be 800; the frequency of the response is once per respondent; and the estimated time per response is one hour.

Status of the proposed information collection: Extension of a previously approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 13, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–6889 Filed 3–21–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–12]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AF: 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; DOT: Mr. Rugene Spruill,

Principal, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW, Room 2310, Washington, DC 20590; (202) 366–4246; ENERGY: Mr. Tom Knox, Department of Energy, Office of Engineering & Construction Management, CR–80, Washington, DC 20585; (202) 586–8715; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; INTERIOR: Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW, MS5512, Washington, DC 20240; (202) 219–0728: NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: March 14, 2002.

John D. Garrity,

Director, Officer of Special Needs Assistance Programs.

Suitable/Available Properties

Buildings (by State)

Alaska

Bldg. A110
ISC Kodiak
Kodiak Co: AK 99615–
Landholding Agency: DOT
Property Number: 87200210016
Status: Excess
Comment: 1316 sq. ft., presence of asbestos/lead paint, most recent use—retail/commercial

Arkansas

Social Sec. Administration
225 Hazel Street
Hot Springs Co: Garland AR 71901–
Landholding Agency: GSA
Property Number: 54200210016
Status: Surplus
Comment: 7437 sq. ft. office building
GSA Number: 7–G–AR–0560

Blytheville Fed. Ofc. Bldg.
120 North Broadway
Blytheville Co: Mississippi AR 72316–
Landholding Agency: GSA
Property Number: 54200210017
Status: Surplus
Comment: 7921 sq. ft. office building, good condition GSA Number: 7–G–0559

California

Ingalls Hall
Army Reserve Center
2400 Fifth Street
Norco Co: Riverside CA 91760–1900
Landholding Agency: GSA
Property Number: 54200210018
Status: Surplus
Comment: 64,000 sq. ft., needs rehab, presence of asbestos/lead paint, water contains magnesium
GSA Number: 9–D–CA–1561

Eickenhorst Residence
4418 State Highway One
Stinson Beach Co: Marin CA 94970–
Landholding Agency: Interior
Property Number: 61200210018
Status: Unutilized
Comment: 935 sq. ft., needs rehab, off-site use only

Connecticut

Bldgs. 2, 108, 440
Naval Submarine Base
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77200210095
Status: Unutilized
Comment: various sq.ft., need rehab, presence of asbestos/lead paint, most recent use—office/store/club, off-site use only

Guam

Bldgs. 47, 48
Naval Forces, Marianas
Dededo Co: Barrigada GU 96540–
Landholding Agency: Navy
Property Number: 77200210096
Status: Unutilized
Comment: 144 sq. ft. each, no utilities, most recent use—storage

Bldgs. 81, 82
Naval Forces, Marianas
Dededo Co: Barrigada GU 96540–
Landholding Agency: Navy
Property Number: 77200210097
Status: Unutilized
Comment: 377 sq. ft. each, no utilities, most recent use—storage

Bldgs. 449
Naval Forces, Marianas
Dededo Co: Barrigada GU 96540–
Landholding Agency: Navy
Property Number: 77200210098
Status: Unutilized
Comment: 500 sq. ft. no utilities, most recent use—small arms

Bldgs. 732
Naval Forces, Marianas
Mariana Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210099
Status: Unutilized
Comment: 7360 sq. ft. no utilities, most recent use—warehouse

Nevada

Silver Strikes Lanes
400 Highway 6
Tonopah Co: NV 89049–
Landholding Agency: GSA
Property Number: 54200210019
Status: Excess
Comment: approx. 16,080 sq. ft. single story guutted light industrial bldg. on 8.23 acres
GSA Number: 9–I–NV–514

Sandia Duplex Housing
Victoria/Thomas Streets
Tonopah Co: NV
Landholding Agency: GSA
Property Number: 54200210020
Status: Excess
Comment: 3 duplexes, 750 sq. ft per unit w/carports
GSA Number: 9–I–NV–514

New Jersey

Sandmeier House
6 Old Mine Road
Layton Co: Sussex NJ 07851–
Landholding Agency: Interior
Property Number: 61200210019
Status: Excess
Comment: 1240 sq. ft., presence of lead paint, most recent use—residence/storage, off-site use only

Sandmeier Garage
6 Old Mine Road
Layton Co: Sussex NJ 07851–
Landholding Agency: Interior
Property Number: 61200210020
Status: Excess
Comment: 1352 sq. ft., needs rehab, presence of lead paint, most recent use—residence, off-site use only

McCullough House
2 Skyline Drive
Layton Co: Sussex NJ 07851–
Landholding Agency: Interior
Property Number: 61200210023
Status: Excess
Comment: 630 sq. ft., needs major rehab, presence of lead paint, most recent use—rsidential, off-site use only

Cedzidlo House
Old Mine Road
Montague Co: Sussex NJ 07827–
Landholding Agency: Interior
Property Number: 61200210028
Status: Excess
Comment: 1680 sq. ft., presence of lead paint, most recent use—residential, off-site use only

Camp Weygadt House
Rt. #46
Columbia Co: Warren NJ 07832–
Landholding Agency: Interior
Property Number: 61200210029
Status: Excess
Comment: 1200 sq. ft., needs rehab, presence of lead paint, most recent use—residential, off-site use only

Camp Weygadt Garage
Rt. #46
Columbia Co: Warren NJ 07832–
Landholding Agency: Interior
Property Number: 61200210030
Status: Excess

Comment: 484 sq. ft., needs repair, presence of lead paint, most recent use—storage, off-site use only

Pennsylvania

Henn House
Johnny Bee Road
Dingman's Ferry Co: Pike PA 18328–
Landholding Agency: Interior
Property Number: 61200210021
Status: Excess
Comment: 1505 sq. ft., presence of lead paint, most recent use—residential, off-site use only

Henn Garage
Johnny Bee Road
Dingman's Ferry Co: Pike PA 18328–
Landholding Agency: Interior
Property Number: 61200210022
Status: Excess
Comment: 576 sq. ft., presence of lead paint, most recent use—storage, off-site use only

Donovan House
Hidden Lake Drive
Bushkill Co: Monroe PA 18324–
Landholding Agency: Interior
Property Number: 61200210024
Status: Excess
Comment: 768 sq. ft., possible lead paint, most recent use—residential, off-site use only

Michaels House
Michaels Hill Road
Bushkill Co: Pike PA 18324–
Landholding Agency: Interior
Property Number: 61200210025
Status: Excess
Comment: 1097 sq. ft., presence of lead paint, most recent use—residential, off-site use only

Smith House
Conashaugh Rd.
Milford Co: Pike PA 18337–
Landholding Agency: Interior
Property Number: 61200210026
Status: Excess
Comment: 1770 sq. ft., presence of lead paint, most recent use—residential, off-site use only

Smith Garage
Conashaugh Rd.
Milford Co: Pike PA 18337–
Landholding Agency: Interior
Property Number: 61200210027
Status: Excess
Comment: 453 sq. ft., needs repair, presence of lead paint, most recent use—storage, off-site use only

Santucci House
Johnny Bee Road
Dingman's Ferry Co: Pike PA 18328–
Landholding Agency: Interior
Property Number: 61200210031
Status: Excess
Comment: 1604 sq. ft., needs repair, presence of lead paint, most recent use—seasonal residence, off-site use only

Santucci Garage
Johnny Bee Road
Dingman's Ferry Co: Pike PA 18328–
Landholding Agency: Interior
Property Number: 612002100312
Status: Excess
Comment: 480 sq. ft., needs major repair, presence of lead paint, most recent use—storage, off-site use only

Virginia

Federal Building
1426 N. Augusta St
Staunton Co: Augusta VA 24401–2401
Landholding Agency: GSA
Property Number: 54200210022
Status: Surplus
Comment: 4084 sq. ft. office building
GSA Number: 4–G–VA–0728

Bldg. 247
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210118
Status: Excess
Comment: 4492 sq. ft., needs major repair, possible asbestos/lead paint, most recent use—support bldg., off-site use only

Bldg. 188
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210119
Status: Excess
Comment: 11,461 sq. ft., needs major repair, possible asbestos/lead paint, most recent use—outfitting facility, off-site use only

Bldg. 258
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210120
Status: Excess
Comment: 432 sq. ft., needs major repair, most recent use—warehouse, off-site use only

Bldg. 278
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210121
Status: Excess
Comment: 5820 sq. ft., needs major repair, most recent use—maintenance facility, off-site use only

Bldg. 279
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210122
Status: Excess
Comment: 5820 sq. ft., needs major repair, most recent use—maintenance facility, off-site use only

Bldg. #11A
Naval Shipyard
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210123
Status: Excess
Comment: 10687 sq. ft., needs major repair, most recent use—office, off-site use only

Unsuitable Properties

Buildings (by State)

California

Bldg. 30101
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210019
Status: Unutilized
Reason: Secured Area

Bldg. 30131, 30709
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210020
Status: Unutilized
Reason: Secured Area

Bldg. 30137, 30701
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210021
Status: Unutilized
Reason: Secured Area

Bldg. 30235
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210022
Status: Unutilized
Reason: Secured Area

Bldg. 30238, 30446
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210023
Status: Unutilized
Reason: Secured Area

Bldg. 30239, 30444
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210024
Status: Unutilized
Reason: Secured Area

Bldg. 30306, 30335, 30782

Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210025
Status: Unutilized
Reason: Secured Area

Bldg. 30339, 30340, 30341
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210026
Status: Unutilized
Reason: Secured Area

Bldg. 30447
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210027
Status: Unutilized
Reason: Secured Area

Bldg. 30524
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210028
Status: Unutilized
Reason: Secured Area

Bldg. 30647
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210029
Status: Unutilized
Reason: Secured Area

Bldg. 30710, 30717
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210030
Status: Unutilized
Reason: Secured Area

Bldg. 30718, 30607
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210031
Status: Unutilized
Reason: Secured Area

Bldg. 30722, 30735
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210032
Status: Unutilized
Reason: Secured Area

Bldg. 30775, 30777
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210033
Status: Unutilized
Reason: Secured Area

Bldg. 30830, 30837
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210034
Status: Unutilized
Reason: Secured Area

Bldg. 30839, 30844, 30854
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210035
Status: Unutilized
Reason: Secured Area

Residence & Garage
904 Eighth Street
Orland Co: Glenn CA 95963–
Landholding Agency: Interior
Property Number: 61200210012
Reason: Extensive deterioration

Jones Residence
4400 State Highway One
Stinson Beach Co: Marin CA 94970–
Landholding Agency: Interior
Property Number: 61200210013
Status: Unutilized
Reason: Extensive deterioration

Conradi Residence
4060 State Highway One
Stinson Beach Co: Marin CA 94970–
Landholding Agency: Interior
Property Number: 61200210014
Status: Unutilized
Reason: Extensive deterioration

Van Houten Residence
4412 State Highway One
Stinson Beach Co: Marin CA 94970–
Landholding Agency: Interior
Property Number: 61200210015
Status: Unutilized
Reason: Extensive deterioration

Conte Residence
4406 State Highway One
Stinson Beach Co: Marin CA 94970–
Landholding Agency: Interior
Property Number: 61200210016
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1255
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210087
Status: Excess
Reason: Extensive deterioration

Bldg. 1508
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210088
Status: Excess
Reason: Extensive deterioration

Bldg. 18417
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210089
Status: Excess
Reason: Extensive deterioration

Bldg 22159
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210090
Status: Excess
Reason: Extensive deterioration

Bldg. 41302
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210091
Status: Excess
Reason: extensive deterioration

Bldg. 52830
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210092
Status: Excess
Reason: Extensive deterioration

Bldg. 62551
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210093
Status: Excess
Reason: Extensive deterioration

Bldg. 210548
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200210094
Status: Excess
Reason: Extensive deterioration

Florida

Bldg. 1345
Cape Canaveral AFS
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18200210016
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 24451
Cape Canaveral AFS
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18200210017
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 55122
Cape Canaveral AFS
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18200210018
Status: Unutilized

Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Guam

Bldg. 138
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210100
Status: Unutilized
Reason: Secured Area

Bldg. 460
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210101
Status: Unutilized
Reason: Secured Area

Bldg. 1741
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210102
Status: Unutilized
Reason: Secured Area

Bldg. 1742
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210103
Status: Underutilized
Reason: Secured Area

Bldg. 1743
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210104
Status: Underutilized
Reason: Secured Area

Bldg. 6012
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210105
Status: Underutilized
Reason: Secured Area

New Jersey

McCullough Garage
2 Skyline Drive
Layton Co: Sussex NJ 07851–
Landholding Agency: Interior
Property Number: 61200210017
Status: Excess
Reason: Extensive deterioration

New Mexico

5 Bldgs.
Kirtland AFB
Sandia Natl Lab
Albuquerque Co: Bernalillo NM 87185–
Location: 9927, 9970, 6730, 6731, 6555
Landholding Agency: Energy
Property Number: 41200210014
Status: Excess
Reason: Extensive deterioration

6 Bldgs.
Kirkland AFB
Sandia Natl Lab
Albuquerque Co: Bernalillo NM 87185–
Location: 6725, 841, 884, 892, 893, 9800
Landholding Agency: Energy
Property Number: 41200210015
Status: Excess
Reason: Extensive deterioration

Puerto Rico

Culebrita Island Lighthouse
Culebra Island Co: PR
Landholding Agency: GSA
Property Number: 54200210021
Status: Surplus
Reason: inaccessible
GSA Number: 1–T–PR–509

South Carolina

16 Bldgs.
Naval Weapons Station
Goose Creek Co: Berkeley SC 29445–
Location: 294, 297, 316, 319, 710, 991, 3510, 3534, 3542, 3550, 3590, 3580, 3582, 3584, 3588, 3592
Landholding Agency: Navy
Property Number: 77200210106
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Virginia

Bldgs. CA61, CA62, CA69
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number 77200210107
Status: Excess
Reason: Extensive deterioration

Bldgs. MC64, NH34
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200210108
Status: Excess
Reason: Extensive deterioration

3 Bldgs.
Naval Station
SDA201, SDA217, SDA277
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200210109
Status: Excess
Reason: Extensive deterioration

Bldg. 149
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210110
Status: Excess
Reason: Extensive deterioration

Bldgs. 187, 194
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210111
Status: Excess
Reason: Extensive deterioration

Bldg. 201
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210112
Status: Excess
Reason: Extensive deterioration

Bldgs. 203, 212
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210113
Status: Excess
Reason: Extensive deterioration

Bldg. 284
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210114
Status: Excess
Reason: Extensive deterioration

Bldg. 285
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210115
Status: Excess
Reason: Extensive deterioration

Bldg. 295
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210116
Status: Excess
Reason: Extensive deterioration

Bldgs. 320, 329
Naval Station
St. Julian's Creek Annex
Norfolk Co: VA
Landholding Agency: Navy
Property Number: 77200210117
Status: Excess
Reason: Extensive deterioration

[FR Doc. 02–6552 Filed 3–21–02; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Mayer Family Habitat Conservation Plan, Santa Cruz County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability.

SUMMARY: Geoffrey and Susan Mayer (Applicants) have applied to the Fish and Wildlife Service (Service) for an Incidental Take Permit pursuant to

section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed permit would authorize take of the federally endangered Mount Hermon June beetle (*Polyphylla barbata*) incidental to otherwise lawful activities associated with the development of a 0.35-acre parcel (project site) near the City of Scotts Valley, Santa Cruz County, California. The Applicants have requested that the federally endangered Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*) be included as a covered species on the permit.

We request comments from the public on the permit application, which is available for review. The application includes a Low-Effect Habitat Conservation Plan (HCP), that fully describes the proposed project and the measures that the Applicants would undertake to minimize and mitigate anticipated take of the Mount Hermon June beetle, as required in Section 10(a)(2)(B) of the Act. The HCP also addresses and adverse effects to the Ben Lomond spineflower.

We also request comments on our preliminary determination that the HCP qualifies as a ''low-effect'' plan, eligible for a categorical exclusion under the National Environmental Policy Act. The basis for this determination is discussed in an Environmental Action Statement, which is also available for public review.

DATES: Written comments must be received no later than April 22, 2002.

ADDRESSES: Written comments should be addressed to Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Ventura, California 93003. Comments may also be sent by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Colleen Sculley, Fish and Wildlife Biologist, at the above address or by calling (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Document Availability

Please contact the above office if you would like copies of the application, HCP, and Environmental Action Statement. Documents also will be available for review by appointment, during normal business hours at the above address.

Background

Section 9 of the Act and Federal regulation prohibit the ''take'' of fish or wildlife species listed as endangered or threatened, respectively. Take of listed fish or wildlife is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, the Service, under limited circumstances, may issue permits to authorize incidental take; i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22, respectively. The taking prohibitions of the Act do not apply to federally listed plants on private lands unless such take would violate State law. Among other criteria, issuance of such permits must not jeopardize the existence of federally listed fish, wildlife, or plants. For these reasons, the Applicants have chosen to address the state and federally listed Ben Lomond spineflower in their HCP.

The Applicants propose to construct a single-family dwelling and associated infrastructure, including driveways, sidewalks, retaining walls, lap pool, patio, and a concrete ditch, on a 0.35-acre parcel. The project site is located at 275 Bob's Lane in a residential neighborhood referred to as Whispering Pines in an unincorporated area of the County of Santa Cruz near the southwest boundary of the City of Scotts Valley. Zoning for this parcel and the surrounding residential neighborhood is R–1–10, indicating that one single-family residence is allowed on a minimum lot size of 10,000 square feet. Most of the Whispering Pines neighborhood has been built out, with less than 30 lots remaining empty. The southwest and southeast boundaries of the parcel are bordered by existing homes, the northeast boundary borders Bobs Lane, and the northwest boundary borders an existing sand quarry. The project site is currently undeveloped and vegetated with a mixture of native and non-native species including ponderosa pine seedlings (*Pinus ponderosa*), live oaks (*Quercus agrifolia* and *Q. wislizenii*), liquidambars (*Liquidambar sp.*), silverleaf manzanita (*Arctostaphylos silvicola*), cultivated grapes (*Vitis sp.*), bracken fern (*Pteridium aquilinum* var. *pubescens*), and non-native grasses.

In 2000, biologists conducted surveys for special status plants and wildlife on the project site. Twenty-two adult males of the Mount Hermon June beetle were captured on the project site during one night of surveys. The Ben Lomond spineflower was observed growing in two areas totaling 1,406 square feet on the project site. Based on these surveys, the Service concluded that the development of the project site likely would result in take of the Mount Hermon June beetle, and adverse effects to the Ben Lomond spineflower.

The Applicants propose to implement measures to minimize and mitigate for the removal of suitable habitat for the Mount Hermon June beetle and Ben Lomond spineflower from the project site. Specifically, they propose to (1) protect in perpetuity a one-acre mitigation parcel occupied by the Mount Hermon June beetle and Ben Lomond spineflower at an off-site location via a recorded conservation easement with the Center for Natural Lands Management (CNLM); (2) provide funding for management and monitoring of the mitigation site in perpetuity in a manner that supports habitat for the Mount Hermon June beetle and Ben Lomond spineflower; and (3) undertake various measures during grading and construction activities at the project site to minimize impacts to both endangered species and their habitat.

The Service's Proposed Action consists of the issuance of an incidental take permit and implementation of the HCP, which includes measures to minimize and mitigate impacts of the project on the Mount Hermon June beetle and Ben Lomond spineflower. Two alternatives to the taking of listed species under the Proposed Action are considered in the HCP. Under the No-Action alternative the project site would not be developed and the HCP would not be implemented. Without the HCP, habitat for the Ben Lomond spineflower and Mount Hermon June beetle on the project site likely would decline further as a result of threats from existing development surrounding the site. Furthermore, no off-site habitat would be protected for the benefit of the Mount Hermon June beetle and Ben Lomond spineflower. This alternative would also result in an unnecessary economic burden on the Mayer family.

Under the Redesigned Project alternative, the development footprint for the project would be reduced or relocated to another portion of the site, thus reducing or altering the area of destroyed habitat for the Mount Hermon June beetle and Ben Lomond spineflower. Given the small size of the project site (0.35 acres), a reduction in the development envelope would not significantly improve conditions for the Mount Hermon June beetle and Ben Lomond spineflower on the site. Adverse impacts from construction, on-going use of the site, and from surrounding residential development would threaten both species, regardless of the size or type of development that occurs on the project site. As the lot is small in size, and narrow and rectangular in shape, relocation of the house and associated infrastructure is not practical. This alternative would

also result in an unnecessary economic burden on the Mayer family.

The Service has made a preliminary determination that the HCP qualifies as a ''low-effect'' plan as defined by its Habitat Conservation Planning Handbook (November 1996). Our determination that a habitat conservation plan qualifies as a low-effect plan is based on the following three criteria: (1) Implementation of the plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. As more fully explained in our Environmental Action Statement, the Applicants' proposal to construct a single-family residence qualifies as a ''low-effect'' plan for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the Ben Lomond spineflower and Mount Hermon June beetle and its habitat. The Service does not anticipate significant direct or cumulative effects to the Mount Hermon June beetle or Ben Lomond spineflower resulting from development of the project site.

2. Approval of the HCP would not have adverse effects on unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any cumulative or growth inducing impacts and, therefore, would not result in significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of the HCP would not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

The Service therefore has made a preliminary determination that approval of the HCP qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not intend to prepare further National Environmental Policy Act documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

The Service provides this notice pursuant to section 10(c) of the Endangered Species Act. We will evaluate the permit application, the HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10 (a) of the Act. If the requirements are met, the Service will issue a permit to the Mayers. We will make the final permit decision no sooner than 30 days from the date of this notice.

Dated: March 15, 2002.

D. Kenneth McDermond,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–6927 Filed 3–21–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Safe Harbor Agreement for Bull Trout in Falls Creek, Lemhi County, ID

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that John Folsom and Ben O'Neal (Applicants) have each applied to the Fish and Wildlife Service (Service) for enhancement of survival permits pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended. The permit applications include a proposed Safe Harbor Agreement (Agreement) for bull trout (*Salvelinus confluentus*) between the Applicants and the Service. The proposed permits and Agreement would remain in effect for 20 years. Three alternatives, including the proposed alternative, are described within the Environmental Assessment (EA), which is also available for public review and comment.

We (the Service) announce the opening of a 30-day comment period and request comments from the public on the Applicants' enhancement of survival permit applications, the accompanying proposed Agreement, and Environmental Assessment. All comments we receive, including names and addresses, will become part of the administrative record and may be released to the public. For further information and instructions on reviewing and commenting on this document, see the Public Comment and Document Availability section, below.

DATES: Written comments should be received on or before April 22, 2002.

ADDRESSES: Comments should be addressed to Ted Koch, Project Biologist, Fish and Wildlife Service, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709 (telephone: 208/378–5243; facsimile: 208/378–5262).

FOR FURTHER INFORMATION CONTACT: Ted Koch, (208) 378–5243.

SUPPLEMENTARY INFORMATION:

Background

Under the Services' Safe Harbor Agreement and Landowner Incentive Fund programs, participating property owners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Endangered Species Act. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subjected to additional property use restrictions in the future. Safe Harbor Agreements provide assurances to the property owner that allow alterations or modifications to property enrolled under the Agreement, even if such action results in the incidental take of a listed species or, in the future, returns the species or habitat to an originally agreed-upon baseline condition. The Landowner Incentive Fund contributes funding for these efforts. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22 and 17.32.

The Falls Creek Aquatic and Riparian Restoration Project and Bull Trout Safe Harbor Agreement in the Pahsimeroi River basin in Central Idaho are proposed to enhance the conservation of bull trout, and other aquatic and riparian species, and continue agricultural irrigation near the mouth of Falls Creek. Bull trout, a species federally listed as threatened, are negatively affected by impacts to habitat from many sources, including agricultural irrigation activities. Specific impacts include dewatering bull trout streams and entraining bull trout in unscreened agricultural irrigation ditches.

This project is expected to: (1) Restore 6 miles of stream habitat that has been dewatered for agricultural irrigation purposes for the last 80 to100 years; (2)

reconnect a population of bull trout long isolated in the headwaters of Falls Creek with reduced populations downstream in the Pahsimeroi River; (3) open new migration, spawning, and rearing habitat for this and other resident fish species; (4) restore 6 miles of riparian habitat, connecting similar existing habitats in the mountains and the valley floor; and (5) allow additional recharge of the underground aquifer in the area. Roughly 2 miles of riparian habitat adjacent to existing surface water irrigation ditches would be lost when use of the ditches for conveying water is abandoned. Irrigation of agricultural fields near the mouth of Falls Creek would continue through pumping of groundwater, while currently diverted surface water flows would be returned to the historic Falls Creek stream channel. The Bureau of Land Management (BLM) would implement stream habitat restoration actions on lands under their management to facilitate aquatic and riparian habitat restoration, and may provide technical assistance to neighboring private landowners. Due to the experimental nature of the project, the Service, BLM and others will monitor effects on bull trout, aquatic and riparian habitats, ground water resources, and adapt management as necessary.

The proposed Agreement would seek to eliminate or minimize impacts to bull trout and other aquatic and riparian dependent species from agricultural irrigation activities by facilitating the following actions: (1) Restore, as a baseline condition, 8.0 cubic feet per second (cfs) of stream flow in the 6-mile long dewatered portion of Falls Creek by transferring surface irrigation flow rights to ground water wells drilled near the mouth of Falls Creek; (2) Reconstruct the existing head box, or irrigation diversion facility, to improve flow control, ensuring appropriate surface flows are provided in the stream channel; (3) Reestablish the currently dewatered, natural Falls Creek stream channel and riparian habitat so water can flow in a defined channel to the Pahsimeroi River via Big Springs Creek; (4) Enhance ground-water recharge in the local hydrologic system; (5) Develop a new irrigation system to improve efficiency of water use; (6) Determine pre-project fisheries and riparian status in specific locations, and implement monitoring, evaluation, and adaptive management programs; and (7) Monitor effects of the new ground water wells on other wells in the valley, and the relationship between Falls Creek surface water flows and ground water pumping.

Consistent with our Safe Harbor policy, we would issue enhancement of survival permits to the Applicants authorizing incidental take of bull trout as a result of agricultural irrigation activities on their property. Additionally, as a condition of the Agreement and issuance of a 10(a)(1)(A) enhancement of survival permits, the Applicants are assured that we will not require additional conservation measures nor impose additional land, water, or resource use restrictions beyond those voluntarily agreed to. We expect that the incidental take authorized under the proposed Agreement may never occur. Any incidental take that might occur from the proposed action would result from the effects of ground water pumping on surface water flows in Falls Creek, which is expected to be minimal or non-existent. In accordance with this Agreement, the minimum baseline condition will be the Applicants' provision of 8.0 cfs of surface water flow rights to the natural stream channel in Falls Creek. Take of bull trout as a result of diverting any of the 8.0 cfs of stream flow rights will not be authorized.

In addition to the proposed Surface Water Restoration alternative described above, other alternatives considered in more detail include: A No Action Alternative that would continue to dewater Falls Creek with no habitat restoration, isolate a bull trout population in the stream's headwaters, and risk entrainment and mortality of bull trout in unscreened irrigation ditches; an Irrigator Buy-Out Alternative that would terminate irrigation in the Falls Creek area and completely restore aquatic and riparian habitat in Falls Creek; and an Increased Irrigation Efficiency alternative that would include all four irrigators on Falls Creek as permittees of the Service, and restore some stream flow and habitat to Falls Creek.

Public Comment and Document Availability

We provide this notice pursuant to section 10(c) of the Endangered Species Act and pursuant to implementing regulations for the National Environmental Policy Act (40 CFR 1506.6). We will evaluate the permit application, associated documents, and comments submitted to determine whether the permit application meets the requirements of section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations. If we determine that the requirements are met, we will sign the proposed Agreement and issue enhancement of survival permits under section 10(a)(1)(A) of the Endangered Species Act to the Applicants for take of bull trout in accordance with the terms of the Agreement. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

You may obtain copies of the documents for review by contacting the individual named above (see **ADDRESSES**). You also may make an appointment to view the documents at the above address during normal business hours (see **ADDRESSES**).

Dated: March 1, 2002.

Rowan W. Gould,

Deputy Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 02–6909 Filed 3–21–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Safe Harbor Agreement for Forster-Gill, Inc., Blue Lake Properties, Humboldt County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: This notice advises the public that Forster-Gill, Inc., has applied to the Fish and Wildlife Service (we, the Service) for an enhancement of survival permit pursuant to section 10 (a)(1)(A) of the Endangered Species Act of 1973, as amended (Act) for northern spotted owl (*Strix occidentalis caurina*). The permit application includes a Safe Harbor Agreement between Forster-Gill, Inc., and the Service. The proposed Agreement and permit would become effective upon signature of the Agreement and would remain in effect 80 and 90 years, respectively. We have made a preliminary determination that the proposed Agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). We explain the basis for this determination in an Environmental Action Statement, which is also available for public review.

We announce the opening of a 30-day comment period to receive comments from the public on the Applicant's enhancement of survival permit application, the accompanying proposed Agreement, and Environmental Action Statement. For further information and instruction on the reviewing and comment process, see Public Review and Comment section below.

DATES: Written comments must be received by April 22, 2002.

ADDRESSES: Comments should be addressed to Mr. Bruce Halstead, Project Leader, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, California, 95521; facsimile (707) 822–8411. (See Public Review and Comments section below.)

FOR FURTHER INFORMATION CONTACT: Mr. Ken Hoffman at the above address or telephone (707) 822–7201.

SUPPLEMENTARY INFORMATION:

Background

Under a Safe Harbor Agreement, participating property owners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefitting species listed under the Act. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subject to increased property use restrictions if their efforts attract listed species to their property or increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c).

We have worked with Forster-Gill, Inc., to develop a Safe Harbor Agreement for the creation and enhancement of habitat for the northern spotted owl on the Forster-Gill, Inc., properties in Blue Lake, California. There are two baseline conditions that will be maintained under this Agreement: (1) Protection of an 11.2-acre no-harvest area that will buffer the most recent active northern spotted owl nest site, but will also be maintained in the absence of a nest site; and (2) maintenance of 216 acres on the property such that the trees will always average 12 to 24 inch diameter at breast height with a canopy closure of 60 to 100 percent. The property is currently at the lower end of the diameter and canopy closure ranges. By the end of the Agreement, the property will be at the upper end of the diameter and canopy closure ranges. Under this Agreement, Forster-Gill, Inc., will: (1) Annually survey and monitor for the species location and reproductive status; (2) protect all active nest sites (locations where nesting behavior is observed during any of the previous 3 years) with a no-harvest area that buffers the nest site by no less than 300 feet and limits timber harvest operations, within 1,000 feet of an active nest site during the breeding season, to the use of existing haul roads; and (3) manage the second growth redwood timber on the property in a manner that maintains suitable northern spotted owl habitat while creating over time the multi-layered canopy structure with an older, larger tree component associated with high quality spotted owl habitat.

We anticipate that this Agreement will provide, maintain, and enhance for the 80-year life of the Agreement over 200 acres of suitable northern spotted owl habitat within a matrix of private timberland.

Consistent with Safe Harbor policy, we propose to issue a permit to Forster-Gill, Inc., authorizing incidental take of northern spotted owls which may move on to the enrolled lands, and their progeny, as a result of lawful activities on the Forster-Gill, Inc., Blue Lake Properties, so long as baseline conditions are maintained and terms of the Agreement are implemented. These activities include unintentional take of northern spotted owls from long-term timber management and related activities including the felling, skidding and transport of timber and other related forest products. As the long-term timber management and related activities proposed under this Agreement will not result in the elimination of any currently suitable spotted owl habitat, it is unlikely that take would occur in this manner. However, in the event that an owl pair moves on to, or within 300 feet of the enrolled property, the application of uneven aged timber management using single tree selection silviculture between 300 and 500 feet from an active nest site, may result in incidental take through degradation of the habitat, e.g. alteration of the microclimate within the proximity of the nest site. The development and maintenance of high quality habitat in a matrix of private timberland subject to even aged management regimes will provide a relatively stable habitat condition that we believe will provide high productivity for multiple generations of spotted owls. Therefore, the cumulative impact of the Agreement and the activities it covers, which are facilitated by the allowable incidental take, is expected to provide a net benefit to the northern spotted owl.

We provide this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6). We will evaluate the permit application, associated documents, and comments submitted therein to determine whether the permit application meets the requirements of section 10(a) of the Act and NEPA regulations. If, upon completion of the 30-day comment period, we determine that the requirements are met, we will sign the Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to Forster-Gill, Inc., for take of northern spotted owls incidental to otherwise lawful activities in accordance with the terms of the Agreement.

Public Review and Comments

Individuals wishing copies of the permit application, the Environmental Action Statement, or copies of the full text of the Agreement, including a map of the proposed permit area, references, and legal descriptions of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section above.

If you wish to comment on the permit application, Environmental Action Statement, or the Agreement, you may submit your comments to the address listed in the **ADDRESSES** section of this document. Comments and materiels received, including names and addresses of respondents, will be available for public review, by appointment, during normal business hours at the address in the **ADDRESSES** section above and will become part of the public record, pursuant to section 10(c) of the Act.

Dated: March 15, 2002.

John Engbring,

Deputy Manager, California/Nevada Operations Office., Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 02–6928 Filed 3–21–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Paperwork Reduction Act Request to Office of Management and Budget

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Information Collection Request for Bureau of Indian Affairs (BIA) Form-4432, Verification of Indian Preference for Employment in the BIA and the Indian Health Service (IHS) has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995. The BIA is soliciting public comments on the subject proposal.

DATES: Written comments must be submitted on or before April 22, 2002.

ADDRESSES: Written comments should be sent directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, 725 17th Street, NW., Washington, DC 20503. Send a copy of your comments to Duane Bird Bear, Chief, Division of Tribal Government Services, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW., MS–4660–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Carolyn Newman, 202–208–2473.

SUPPLEMENTARY INFORMATION: A 60-day notice for public comments was published in the **Federal Register** on November 21, 2001 (66 FR 58514). No comments were received on the workload burden or the form itself (OMB Control No. 1076–0160) during this public comment period. Comments were received on January 28, 2002, but they concerned substantive requirements for descendants of members of federally recognized Indian tribes but who were not themselves enrolled members of the tribe. This issue will be addressed during rule revision.

I. Abstract

The purpose of the Indian Preference Form is to encourage qualified Indians to seek preference in employment with the BIA and the IHS. BIA collects information under the proposed regulations to ensure compliance with Indian preference hiring requirements. The information collection relates only to individuals applying for employment with the BIA and the IHS. The tribe's involvement is limited to verifying membership information submitted by the applicant. The collection of information allows certain persons who are of Indian descent to receive preference when appointments are made to vacancies in positions with the BIA and IHS as well as in any unit that has been transferred intact from the BIA to a Bureau or office within the Department of the Interior, or the Department of Health and Human Services and that continues to perform the functions formerly performed as part of the BIA or the IHS. You are eligible for preference if (a) you are a member of a federally recognized Indian tribe; (b) you are a descendant of a member and you were residing within the present boundaries of any Indian reservation on June 1, 1934; (c) you are an Alaska Native; or (d) you possess one-half degree Indian blood derived from tribes that are indigenous to the United States. The information is submitted in order to obtain or retain a benefit, namely, preference in employment with the BIA and the IHS.

II. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

The Office of Management and Budget has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, comments submitted in response to this notice should be submitted to OMB within 30 days in order to assure their maximum consideration. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. If you wish us to withhold any information, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless a currently valid OMB control number is displayed. You may request copies of the information collection forms and our submission to OMB from the person listed in **FOR FURTHER INFORMATION CONTACT** section.

III. Data

Title: Verification of Indian Preference for Employment in the BIA and the IHS, BIA Form 4432.

OMB approval number: 1076–0160.

Type of Request: Extension of a currently approved collection.

Description of respondents: Qualified Indians who are seeking preference in employment with the BIA and IHS. Approximately a total of 5,000 applications for preference in employment are received annually by the BIA field offices.

Frequency: On occasion as needed.

Estimated completion time: The average burden of submitting an Indian Preference Form is 30 minutes including time for reviewing instructions, searching data sources and assembling the information needed.

Total annual burden: 5,000 × ½ hour = 2500 hours.

Estimated cost: There are no costs to consider, except postage and the cost of duplicating the original verification form, because verification of the information is already available for other reasons. The form will be used by an applicant to seek documentation of Indian descent or membership from either a tribal official or the BIA.

Dated: March 4, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–6978 Filed 3–21–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Availability of a Draft Recreation Area Management Plan for the Imperial Sand Dunes Recreation Area and Associated Draft Amendment to the California Desert Conservation Area Plan and Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of a Draft Recreation Area Management Plan (DRAMP) for the Imperial Sand Dunes Recreation Area (ISDRA) and associated Draft Amendment to the California Desert Conservation Area (CDCA) Plan and Draft Environmental Impact Statement (DEIS).

SUMMARY: The DRAMP and Draft Amendment to the CDCA Plan provide direction and guidance for the management of public lands and resources of the ISDRA, including goals and management objectives, management prescriptions in accordance with the Federal Land Policy and Management Act (FLPMA) of 1976, management direction specific to discrete areas within the ISDRA, and monitoring and evaluation requirements. The DEIS evaluates the DRAMP and alternatives to the DRAMP, including necessary amendments to the CDCA Plan.

DATES: Written comments on the DRAMP, Draft Amendment to the CDCA Plan and DEIS will be accepted until

June 28, 2002. Six (6) public meetings will be held between 7–10 p.m.

The dates and locations of the public meetings are as follows:

April 9, 2002, El Centro, CA, City Council Chambers, 1275 Main Street, El Centro, CA.

April 11, 2002, Long Beach, CA, The Grand, 4101 East Willow Street, Long Beach, CA.

April 15, 2002, Phoenix, AZ, Phoenix College, 1202 West Thomas Road, Phoenix, AZ.

April 18, 2002, Brawley, CA, Brawley City Council, 225 A Street, Brawley, CA.

April 23, 2002, Yuma, AZ, Yuma Civic and Convention Center, 1440 W Desert Hills Drive, Yuma, AZ.

April 25, 2002, San Diego, CA, Marriott Mission Valley, 8757 Rio San Diego Drive, San Diego, CA.

ADDRESSES: Comments should be sent to Greg Thomsen, Field Manager, El Centro Field Office, California Desert District, Bureau of Land Management, 1661 South 4th Street, El Centro, CA 92243. Comments also may be sent by e-mail to: *rtrost@ca.blm.gov.* Comments on the DRAMP, Draft Amendment to the CDCA Plan and DEIS, including names and addresses of respondents, will be available for public review at the El Centro Field Office during normal working hours (7:45 a.m to 4:15 p.m., except holidays), and may be published as part of the Final Environmental Impact Statement and Amendment to the CDCA Plan. Individuals may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety. The planning documents and direct supporting record for the analysis and DRAMP will be available for inspection at the El Centro Field Office during normal working hours. Some important historical records may also be posted on the BLM Internet site to facilitate public access.

FOR FURTHER INFORMATION CONTACT: Roxie Trost, Bureau of Land Management, 1661 South 4th Street, El Centro, CA 92243; (760) 337–4420.

SUPPLEMENTARY INFORMATION: The ISDRA project area, trending generally for 40 miles from the southeast to northwest, comprises approximately 208,284 acres of public lands bounded approximately to the west by the Old Coachella Canal, to the east by the Union Pacific Railroad, to the North by Mammoth Wash, and to the south by Interstate 8 and the California/Mexico border. The primary activities conducted in the ISDRA include recreational camping and use of Off-Highway Vehicles. Issues addressed in the DRAMP and DEIS include: recreation resources; biological resources (wildlife and botany); cultural resources and paleontology; land ownership and management; geology and soils; socioeconomics; and public health and safety. The DEIS also addresses water; noise; mineral resources; hazardous materials; solid waste; visual resources; energy; access; climate; topography; and air quality.

Greg Thomsen,

Field Manager, El Centro Field Office.

[FR Doc. 02–6977 Filed 3–21–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[OMB Control Number 1010–0123]

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection.

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled ''Issuing Orders Requested by Indian Lessors.''

DATES: Submit written comments on or before May 21, 2002.

ADDRESSES: Submit written comments to Carol P. Shelby, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, MMS's courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Carol P. Shelby, telephone (303) 231–3151, FAX (303) 231–3385.

SUPPLEMENTARY INFORMATION: *Title:* Issuing Orders Requested by Indian Lessors.

OMB Control Number: 1010–0123.

Bureau Form Number: None.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf. The Secretary of the Interior is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

Section 101(a) of the Federal Oil and Gas Royalty Management Act of 1982, as amended, requires that the Secretary ''establish a comprehensive inspection, collection, and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and collect and account for such amounts in a timely manner.'' In order to accomplish these tasks, Indian lessors need a procedure for requesting the Secretary to issue orders for payments or reports. The MMS developed a proposed rule, published January 12, 1999 (64 FR 1930), to add Subpart C—Requests from Indian Lessors for MMS to Issue an Order to 30 CFR Part 242—Orders. The subpart explained how Indian lessors could formally request that MMS issue an order to persons concerning the reporting of production and the reporting and payment of royalties and other payments due under their leases. A final rule codifying these provisions has not been published yet. Because OMB approval of this information collection expires April 30, 2002, we are seeking OMB approval to renew these reporting requirements until a final rule is published.

This information collection covers the hour burden associated with submitting requests to MMS to issue an order. Submission of the information in this collection is necessary for MMS to determine the validity of the request and investigate the reasons for perceived errors or underpayments. Proprietary information that is submitted is protected, and there are no questions of a sensitive nature included in this information collection.

Frequency: On occasion.

Estimated Number and Description of Respondents: 12 Indian lessors.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 180 hours.

Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden: We have identified no ''non-hour cost'' burdens.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides 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. Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request.

Public Comment Policy. We will make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: February 8, 2002.

Milton K. Dial,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. 02–6904 Filed 3–21–02; 8:45 am]

BILLING CODE 4310–MR–U

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–007]

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: April 1, 2002 at 2 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: 1. Agenda for future meeting: none.

2. Minutes

3. Ratification List

4. Inv. No. 731–TA–925 (Final) (Greenhouse Tomatoes from Canada)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before April 11, 2002.)

5. Outstanding action jackets: (1.) Document No. GC–02–029: Concerning Inv. No. 337–TA–443 (Certain Flooring Products).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: March 19, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–7124 Filed 3–20–02; 2:40 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Videotape: Interpersonal Communications in the Correctional Setting

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: The National Institute of Corrections, Jails Division, is seeking applications for the production of a betacam or digital format videotape, Interpersonal Communications in the Correctional Setting.

Background

Supervising inmates and managing their behavior are two of the primary responsibilities of correctional institutions. Effective communication with inmates is one of the most important skills correctional staff must have to maintain the safety and security of institutions. The National Institute of Corrections has an established curriculum on Interpersonal Communications in the Correctional Setting which is used to instruct correctional staff in appropriate communication skills for use with the inmates they supervise. Materials for this curriculum include an instructor's guide, participant manual, and a 60 minute instructional videotape. The current instructional videotape is outdated in terms of narrator and actor appearance, language, and use of graphics. To ensure the course remains effective NIC needs to produce an updated version of the training videotape.

Project Objectives

To produce a revised version of the existing Interpersonal Communications in the Correctional Setting training tape, using a revised script provided by the National Institute of Corrections.

Scope of Work

Videotape Length: About 60 minutes.

Videotape Audience: Correctional staff and instructors participating in the Interpersonal Communications in the Correctional Setting training program.

Use of Videotape: The videotape will be used in the Interpersonal Communications in the Correctional Setting training program. Instructors will use the videotape during the training, in conjunction with the instructor's guide and participant manual.

Videotape Distribution: NIC expects to widely distribute the videotape. It will be made available, upon request and free of charge, through the NIC Information Center. Local officials, detention practitioners, professional corrections organizations, private corrections consultants, and professionals in related fields will be able to request the use of this videotape.

Videotape Content: The National Institute of Corrections has developed a revised script for this videotape. The approximately 60 minute videotape will include an on-screen narrator, voice-over narration, music, graphics, scenarios using professional actors to portray correctional staff and inmates, and/or other strategies designed to most effectively demonstrate concepts. Scenarios will be filmed inside correctional facilities. Scenario actors will represent diverse backgrounds (ethnicity, race, age, and sex).

Project Description: The production company will see the videotape production through from beginning to end. The company is expected to provide the staff, equipment, and other resources necessary to directing, producing, filming, editing, and all other activities necessary to videotape production.

The production company is asked to assign one staff to oversee the project and work closely with NIC staff on all phases of videotape production. NIC staff will assist in identifying correctional facilities for on-site shooting. NIC staff will be available on-site during some or all of the filming. NIC staff must review and approve the treatment, creative ideas, selection of the narrator and actors, shooting days, music, graphics, animation, editing, and screening dates. NIC staff will have all editing rights and final approval of rough drafts.

NIC staff will be available to the production company to assist with questions or problems that arise. It is important, therefore, that the production company staff are readily available for in-person meetings with NIC staff in Longmont, Colorado. At a minimum, the production company must be available to meet in Longmont, Colorado for a project kick-off meeting.

The production company will videotape in betacam or digital format. Once the videotape is completed, the production company will provide NIC one betacam or digital master and 12 copies of the tape in VHS format. All videotape used in this production, including B footage, is the property of the U.S. Government and is to be delivered to NIC upon completion of this project.

Production Schedule: The list below shows the major activities required to complete the project. Videotape production will begin upon award of this agreement and must be completed twelve months after the award date. The schedule for completion of activities should include the following, at a minimum.

- Production company's kickoff meeting in Longmont, Colorado with NIC staff for a project overview;
- Production company's review of existing video and revised script provided by NIC;
- Selection of on-screen narrator, voice-over narration, and scenario actors coordinated with an approved by NIC staff;
- Selection of scenario site(s) coordinated and approved by NIC staff;
- Filming scheduled and coordinated with NIC staff;
- Filming;
- Completion of draft footage;
- Screening of draft footage by production company and NIC staff;
- Edit from screen;
- Graphics/animation/music planned, then presented to and approved by NIC staff;
- Graphics/animation/music created;
- On-screen narration and voice-over narration presented to and approved by NIC staff;
- Screening of edit(s) by production company and NIC staff;
- Review and approval of final edit by NIC staff;
- Final products delivered.

Authority: Public Law 93–415

Funds Available: The award will be limited to $85,000 (direct and indirect costs) and project activity must be completed within twelve months of the date of award. Funds may not be used for construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Jails Division.

Application Procedures

Applications must be submitted in six copies to the Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington DC 20534. At least one copy of the application must have the applicant's original signature in blue ink. A cover letter must identify the responsible audit agency for the applicant's financial accounts.

Applications must be submitted using OMB Standard Form 424, Federal Assistance, and attachments. The applications should be concisely written, typed double-spaced, and referenced to the project by the number and title given in this cooperative agreement announcement.

The narrative portion of this cooperative agreement application should include, at a minimum:

- A brief paragraph that indicates the applicant's understanding of the purpose of the videotape;
- A brief paragraph that summarizes the project goals and objectives;
- A clear description of the methodology that will be used to complete the project and achieve its goals;
- A statement or chart of measurable project milestones and time lines for the completion of each;
- A description of the staffing plan for the project, including the role of each project staff, the time commitment for each, the relationship among the staff (who reports to whom), and an indication that all required staff will be available;
- A description of the qualifications of the applicant organization and each project staff;
- A budget that details all costs for the project, shows consideration for all contingencies for this project, and notes a commitment to work within the budget proposed (budget should be divided into object class categories as shown on application Standard Form 424A).

Documentation of the principal's and associate's relevant knowledge, skills, and abilities to carry out the described tasks must be included in the application. The application must be accompanied by a resume of the applicant's work and a brief sample(s) of complete video productions. The applicant organization must specify its roles in the production of the sample videos.

Deadline for Receipt of Applications: Applications must be received by 4:00 p.m. on Tuesday, May 7, 2002. They should be addressed to Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. The NIC application number should be written on the outside of the mail or courier envelope. Applicants are encouraged to

use Federal Express, UPS, or similar service to ensure delivery by the due date as mail at the National Institute of Corrections is still being delayed due to recent events. Hand delivery applications should be brought to 500 First Street, NW., Washington, DC 20534. The front desk will call (202) 307–3106, extension 0 for pickup. Faxed or e-mailed applications will not be accepted.

Addresses and Further Information: A copy of this announcement and application forms may be obtained through the NIC Web site: *http://www.nicic.org* (click on ''Cooperative Agreements''). Requests for a hard copy of the application kit should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534 or by calling 800–995–6423, ext. 44222, 202–307–3106, ext. 44222, or e-mail: *jevens@bop.gov.* All technical and/or programmatic questions concerning this announcement should be directed to Kris Keller at 1960 Industrial Circle, Longmont, CO 80501, or by calling 800–995–6429, ext. 119 or 303–682–0382, ext. 119, or by e-mail: *kdkeller@bop.gov.*

Eligible Applicants: An eligible applicant is any state or general unit of local government, public or private agency, educational institution, organization, team, or individual with the requisite skills to successfully meet the outcome objectives of the project.

Review Considerations: Applications received under this announcement will be subjected to a NIC three to five member Peer Review Process. Among the criteria used to evaluate the applications are:

- Indication of a clear understanding of the project requirements;
- Background, experience, and expertise of the proposed project staff, including any subcontractors;
- Previous video production experience;
- Clear, concise description of all elements and tasks of the project, with sufficient and realistic time frames necessary to complete the tasks;
- Technical soundness of project design and methodology;
- Financial and administrative integrity of the proposal, including adherence to federal financial guidelines and processes;
- Sufficiently detailed budget that shows consideration of all contingencies for this project and commitment to work within the budget proposed;
- Indication of availability to meet the NIC staff at key points in videotape production (at a minimum, those listed under ''Project Description'').

Number of Awards: One (1).

NIC Application Number: 02J23. This number should appear as a reference line in your cover letter, in box 11 of Standard Form 424, and on the outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.601.

Dated: March 19, 2002.

Larry Solomon,

Deputy Director, National Institute of Corrections.

[FR Doc. 02–6995 Filed 3–21–02; 8:45 am]

BILLING CODE 4410–36–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 of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and 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 made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this date 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.

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, the following General Wage Determinations:

No. CO020018—See CO020017
No. CO020019—See CO020017
No. CO020020—See CO020010
No. CO020021—See CO020017
No. CO020022—See CO020017
No. CO020023—See CO020017
No. CO020024—See CO020017
No. CO020025—See CO020017
No. CO020026—See CO020017
No. CO020027—See CO020017
No. CO020028—See CO020016
No. OR020002—See OR020007

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' are listed by Volume and States:

Volume IV

Wisconsin
WI0020049 (Mar. 22, 2002)
WI0020050 (Mar. 22, 2002)

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA020001 (Mar. 1, 2002)
MA020002 (Mar. 1, 2002)
MA020003 (Mar. 1, 2002)
MA020005 (Mar. 1, 2002)
MA020007 (Mar. 1, 2002)
MA020012 (Mar. 1, 2002)
MA020013 (Mar. 1, 2002)
MA020017 (Mar. 1, 2002)
MA020018 (Mar. 1, 2002)
MA020019 (Mar. 1, 2002)
MA020020 (Mar. 1, 2002)
MA020021 (Mar. 1, 2002)
New York
NY020003 (Mar. 1, 2002)
NY020013 (Mar. 1, 2002)

Volume II

Delaware
DE020002 (Mar. 1, 2002)
DE020004 (Mar. 1, 2002)
DE020005 (Mar. 1, 2002)
DE020009 (Mar. 1, 2002)

Volume III

North Carolina
NC020001 (Mar. 1, 2002)
NC020003 (Mar. 1, 2002)

Volume IV

Indiana
IN020002 (Mar. 1, 2002)
IN020003 (Mar. 2, 2002)
IN020004 (Mar. 1, 2002)
IN020006 (Mar. 1, 2002)
IN020007 (Mar. 1, 2002)
IN020008 (Mar. 1, 2002)
IN020009 (Mar. 1, 2002)
IN020011 (Mar. 2, 2002)
IN020012 (Mar. 1, 2002)
IN020014 (Mar. 1, 2002)
IN020015 (Mar. 1, 2002)
IN020020 (Mar. 1, 2002)
Ohio
OH020001 (Mar. 1, 2002)
OH020002 (Mar. 2, 2002)
OH020003 (Mar. 1, 2002)
OH020004 (Mar. 1, 2002)
OH020006 (Mar. 1, 2002)
OH020008 (Mar. 1, 2002)
OH020009 (Mar. 1, 2002)
OH020012 (Mar. 1, 2002)
OH020013 (Mar. 1, 2002)
OH020018 (Mar. 1, 2002)
OH020022 (Mar. 1, 2002)
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OH020024 (Mar. 1, 2002)
OH020026 (Mar. 1, 2002)
OH020027 (Mar. 1, 2002)
OH020028 (Mar. 1, 2002)
OH020029 (Mar. 1, 2002)
Wisconsin
WI020006 (Mar. 1, 2002)
WI020007 (Mar. 1, 2002)
WI020013 (Mar. 1, 2002)

Volume V

Iowa
IA020002 (Mar. 1, 2002)
IA020004 (Mar. 1, 2002)
IA020005 (Mar. 1, 2002)
IA020013 (Mar. 1, 2002)
IA020016 (Mar. 1, 2002)
IA020032 (Mar. 1, 2002)
IA020060 (Mar. 1, 2002)

Volume VI

Alaska
AL020001 (Mar. 1, 2002)
AL020002 (Mar. 1, 2002)
AL020003 (Mar. 1, 2002)
AL020006 (Mar. 1, 2002)
Colorado
CO020002 (Mar. 1, 2002)
CO020003 (Mar. 1, 2002)
CO020011 (Mar. 1, 2002)
CO020014 (Mar. 1, 2002)
Idaho
ID020003 (Mar. 1, 2002)
ID020004 (Mar. 1, 2002)
Oregon
OR020001 (Mar. 1, 2002)
OR020003 (Mar. 1, 2002)
OR020004 (Mar. 1, 2002)
OR020007 (Mar. 1, 2002)
OR020009 (Mar. 1, 2002)
OR020013 (Mar. 1, 2002)
OR020017 (Mar. 1, 2002)
South Dakota
SD020002 (Mar. 1, 2002)
Utah
UT020004 (Mar. 1, 2002)
UT020006 (Mar. 1, 2002)
UT020007 (Mar. 1, 2002)
Washington
WA020002 (Mar. 1, 2002)
WA020008 (Mar. 1, 2002)

Volume VII

California
CA020009 (Mar. 1, 2002)
CA020019 (Mar. 1, 2002)
CA020023 (Mar. 1, 2002)
CA020025 (Mar. 1, 2002)
CA020028 (Mar. 1, 2002)
CA020029 (Mar. 1, 2002)
CA020030 (Mar. 1, 2002)
CA020031 (Mar. 1, 2002)
CA020032 (Mar. 1, 2002)
CA020033 (Mar. 1, 2002)
CA020036 (Mar. 1, 2002)
CA020037 (Mar. 1, 2002)
Nevada
NV020001 (Mar. 1, 2002)
NV020003 (Mar. 1, 2002)
NV020005 (Mar. 1, 2002)
NV020009 (Mar. 1, 2002)

General Wage Determination Publication

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service, *http://davisbacon.fedworld.gov* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscription may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 14 day of March 2002.

Carol J. Poleskey,

Chief Branch of Construction Wage Determinations.

[FR Doc. 02–6661 Filed 3–21–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–15; Exemption Application No. D–10852, et al.]

Grant of Individual Exemptions; Rockford Corporation 401(k) Retirement Savings Plan

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition, the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Rockford Corporation 401(k) Retirement Savings Plan (the Plan) Located in Tempe, AZ

[Prohibited Transactions Exemption 2002–15; Exemption Application No. D–10852]

Exemption

The restrictions of sections 406(a)(1)(D), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(D) and (E) of the Code,[1] shall not apply, effective December 30, 1999 until March 15, 2000, to an arrangement, by Rockford Corporation (Rockford), the Plan sponsor, for the reversal of the original purchase of debt securities (the Debentures) previously issued by Rockford (the Reversal Transactions), involving the following transactions affecting the individually-directed accounts in the Plan (the Plan Accounts) of certain Plan participants (the Participants): (1) The purchase, by the Participants, from their Plan Accounts of the Debentures; (2) the distribution in kind of the Debentures by the Plan Accounts to the Participants; (3) the rollover of the Debentures, if distributed in kind to the Participants, into self-directed individual retirement accounts (the IRAs) established by the Participants; and (4) any benefit that may have inured to Rockford by not having to repurchase the Debentures held by the Plan Accounts.

This exemption is subject to the following conditions:

(a) A Form 5330 was filed by Rockford with the Internal Revenue Service (the Service) and all appropriate excise taxes were paid with respect to the Plan's acquisition and holding of the Debentures, as well as for the extension of credit by the Plan to Rockford resulting therefrom.

(b) With respect to each Debenture,

(1) Rockford offered to repurchase such Debentures from each affected Participant's account in the Plan (the Plan Account), at their fair market value, as determined by Arthur Andersen LLP, a qualified, independent appraiser; and

(2) By March 15, 2000 each Debenture was either—

(i) Repurchased by Rockford; (ii) purchased by or distributed in kind to each Participant whose Plan Account had held such Debentures; and (iii) rolled over, at the election of the Participant, into the Participant's self-directed IRA.

(c) At the time of the Reversal Transactions, each Plan Account received no less than fair market value for the Debentures, which was in excess of their initial cost.

(d) The Plan Accounts paid no fees or commissions in connection with the Reversal Transactions.

(e) Rockford advised each affected Participant in advance of any transaction of the various options available with respect to the divestment of the Debentures from the Participant's Plan Account.

(f) Rockford has maintained, or will cause to be maintained, for a period of six years from the date of such transactions, in a manner capable for audit and examination, such records as are necessary to enable the persons described below in paragraph (g) to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Rockford, the records are destroyed prior to the end of the six year period.

(g)(1) Except as provided in paragraph (2) of this section (g) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (f) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Service;

(B) Any fiduciary of the Plan or any duly authorized employee or representative of such fiduciary; and

(C) Any Participant or beneficiary or duly authorized employee or representative of such Participant or beneficiary.

(g)(2) None of the persons described in subparagraphs (g)(1)(B)–(g)(1)(C) shall be authorized to examine the trade secrets of Rockford or commercial or

[1] For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

financial information which is privileged or confidential.

EFFECTIVE DATE: This exemption is effective from December 30, 1999 until March 15, 2000.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 13, 2001 at 66 FR 64459.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, U.S. Department of Labor, (202) 693–8556. (This is not a toll-free number.)

Morgan Stanley & Co. Incorporated (MS&Co) Located in New York, New York

[Prohibited Transaction Exemption 2002–16; Exemption Application Number D–10886]

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective September 16, 1998, to the acquisition (the Acquisition), on behalf of the Central States, Southeast and Southwest Areas Pension Fund (the Fund), of certain Argentine bonds (the Bonds) from MS&Co, a party in interest with respect to the Fund, by the Capital Asset Trust (the Trust) at the direction of Alliance Capital Management L.P. (Alliance), an investment manager for the Fund, provided the following conditions are satisfied:

(a) The Acquisition was a one-time transaction for cash;

(b) The Fund paid no more than the current fair market value of the Bonds as of the date of the Acquisition;

(c) The Fund paid no commissions or expenses with respect to the Acquisition;

(d) The Acquisition and subsequent sale of the Bonds resulted in the Fund's receipt of a one-day profit totaling $147,250.01;

(e) Upon identifying the Acquisition as a ''prohibited transaction'', MS&Co and Alliance acted promptly to comply with the relevant provisions of the Act and the Code;

(f) Alliance and MS&Co took whatever actions were necessary to ensure that the Fund was adequately protected with respect to the Acquisition;

(g) Subsequent to the Acquisition, Alliance implemented an internal computer system designed to prevent transactions between client plans and named fiduciaries with respect to such plans; and

(h) The transaction was not part of an agreement, arrangement or understanding designed to benefit a party in interest.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 3, 2002 at 67 FR 351.

FOR FURTHER INFORMATION CONTACT: Christopher J. Motta of the Department, telephone (202) 693–8544. (This is not a toll-free number.)

State Farm Mutual Automobile Insurance Company and State Farm VP Management Corp.

[Prohibited Transaction Exemption 2002–17; Exemption Application No. D–10961]

Exemption

The Department of Labor is granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[2]

Section I: Transactions

The restrictions of sections 406(a)(1)(A) through (d) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4974 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the purchase or redemption of an institutional class of shares (the Institutional Shares) of State Farm mutual funds (the Fund(s)), as defined in Section III(c), below, by pension plans (the Plan(s)), as defined in Section III(h), below, which are established by:

(a) Independent contractor agents (the Agent(s)) of State Farm Mutual Automobile Insurance Company (State Farm) or its affiliates, who are also registered representatives of State Farm VP Management Corp. (SFVPMC), for themselves and their employees, and

(b) The family members of such Agents (the Family Member(s)) (as defined in Section III(e), below), provided that the conditions set forth in Section II, below are satisfied.

Section II: Conditions

(a) Neither State Farm nor its affiliates has discretionary authority or control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

(b) Plans do not pay any plan-level investment management, investment advisory, or similar fees to State Farm or its affiliates in connection with the investment of the assets of such Plans in any of the Funds.

(c) Plans do not pay any redemption fees in connection with the sale of shares of any of the Funds by such Plans.

(d) Plans do not pay any sales commissions in connection with the acquisition or sale of shares of any of the Funds, and the Agents do not receive any sales commission or any other compensation or benefit, direct or indirect, in connection with the transactions that are the subject of this exemption. In this regard, neither State Farm nor any of its affiliates provides production credit, bonus, trip, or other sales incentive to such Agents based on such transactions.

(e) All dealings between the Plans and the Funds and State Farm and its affiliates are on a basis no less favorable to such Plans than such dealings with other shareholders of the Funds.

(f) The price paid or received by a Plan for shares in a Fund is the net asset value per share, as defined, in Section III(d), below, at the time of the transaction and is the same price that would have been paid or received for such shares by any other investor in such Fund at that time.

(g) For each Plan, the combined total of all fees received by State Farm and its affiliates for the prevention of services to such Plan, and in connection with the provision of services to any of the Funds in which such Plan may invest, are not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(h) Neither State Farm nor its affiliates receive any fees payable pursuant to Rule 12b–1 under the Investment Company Act of 1940 (the 1940 Act) in connection with the transactions.

(i) The Plans are not employee benefit plans sponsored or maintained by State Farm or its affiliates for their employees.

(j)(1) Each Agent, or a Family Member of such Agent (as defined in Section III(e), below) in the case of a Plan sponsored by such Family Member, or each participant (the Participant(s)) in the case of a Plan which provides for participant investment direction, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, receives in advance of any initial investment in a Fund by such Plan (or Participant's account, in the case of a participant directed individual account plan) a full and detailed written disclosure of information concerning each Fund in which such Plan or

[2] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

Participant's account, as the case may be, is considering investing, including but not limited to:

(A) A current prospectus for such Fund;

(B) A statement describing the fees for investment advisory, investment management, or similar services, a statement describing any fees for secondary services (Secondary Services), as defined below in Section III(f), (including but not limited to fees for acting as custodian, transfer agent, or for providing administrative, brokerage, or other services) payable to State Farm or its affiliates, and all other fees to be charged to or paid by such Plan, Participant's account, or such Fund to State Farm or its affiliates;

(C) A statement regarding appropriate investments for retirement plans and explaining why such Fund would be an appropriate investment for such Plan or Participant's account, as the case may be; and

(D) Upon the request of an Agent, a Family member, or a Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, as the case may be, a copy of the proposed exemption and/or a copy of the final exemption, as such documents appear when published in the **Federal Register**.

(2) Each Participant, in the case of a Plan that does not provide for participant investment direction, receives from the fiduciary responsible for directing the investment of plan asset in advance of any initial investment in a Fund by such Plan:

(A) A statement that the Plan is investing in the Funds;

(B) The name of each Fund in which such Plan is investing; and

(C) A current prospectus for each such Fund.

(k) Any investment of the assets of a Plan (or a Participant's account in the case of a participant directed individual account plan) in each particular Fund is implemented only at the express direction of an Agent, Family Member, or Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, as appropriate, after such Agent, Family Member, or Participant, or other fiduciary of a plan who has the authority to acquire or dispose of shares of the Funds, receives the information described in paragraph (j) of Section II, above.[3]

(1) Pursuant to paragraph (k) of Section II, above, the investment of any assets of a Plan (or Participant's account, in the case of a participant directed individual account plan) in a Fund shall be terminable at will by an Agent, Family Member, or Participant, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, as appropriate, without penalty to such Plan (or Participant's account, in the case of an individually directed account plan), upon receipt by State Farm or its affiliates of a written notice of termination. A form (the Termination Form) expressly providing an election to terminate the investment in a Fund by a Plan (or Participant's account, in the case of an individually directed account plan) with instructions on the use of the form must be supplied to Agents, Family Members, or Participants, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, as the case may be, no less than annually; provided that the Termination Form need not be supplied to Agents, Family Members, or Participants, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, pursuant to this paragraph, sooner than six (6) months after such Termination Form is supplied pursuant to paragraph (m) of this Section II, below, except to the extent required by such paragraph in order to disclose an additional service or a fee increase. The instructions for the Termination Form must include a statement that the investment by a Plan in the Fund is terminable at will by a Plan (or Participant's account in the case of a participant directed individual account plan) without penalty to such Plan (or Participant's account), upon receipt by State Farm or its affiliates of written notice from the appropriate Agent, Family Member, or Participant, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds.

(m) (1) In the event of an increase in fees paid by a Fund for any service, or

(2) In the event of an addition of any Secondary Service for which a fee is charged, or

(3) In the event of an increase in the rate of any fee that results either from an increase in the rate of such fee or from the decrease in the number or kind of services performed for such fee, State Farm or its affiliates will, at least 30 days in advance of the implementation of such fee increase or a fee for an additional service or increase in the rate of a fee, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of such Fund and that explains the nature and amount of the additional service for which a fee is charged or the increase in fees or the increase in the rate of any fee) to the appropriate Agent, Family Member, or Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds. Such notice shall be accompanied by a Termination Form with instructions, as described above in paragraph (1) of this Section II, which will permit a Plan (or Participant's account, in the case of a participant directed individual account plan) to redeem shares of such Fund without penalty.

(n)(1) On an annual basis, each Agent, Family Member, or Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, receives from State Farm the following information for each Fund in which a Plan (or Participant's account, in the case of a participant directed individual account plan) invests:

(A) A copy of the current prospectus,

(B) Upon the request of the appropriate Agent, Family Member, or Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, a copy of the Statement of Additional Information that contains a description of all fees paid by such Fund to State Farm or its affiliates;

(C) A copy of the annual report prepared by State Farm or its affiliates that includes information about such Fund, as well as audit findings of an independent auditor, within 60 days of the preparation of such report; and

(D) Oral or written responses to inquiries of an Agent, Family Member, or Participant, or other fiduciary of a Plan who has the authority to acquire or

[3] The Department notes that the general standards of fiduciary conduct under the Act would apply to the investment transactions permitted by this exemption, and that satisfaction of the conditions of this exemption should not be viewed as an endorsement of any particular investment by the Department. Section 404 of the Act requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, the Department notes that the selection and the retention of any of the Funds as an investment or an investment option under a Plan is a fiduciary act. In this regard, the Department expects the fiduciary of a Plan to determine, if such selection and retention of any of the Funds by a Plan is appropriate after taking into consideration the investment performance of such Funds and the fees paid by such Funds (including advisory fees and administrative fees paid to State Farm and other persons).

dispose of shares of the Funds, as such responses arise.

(2) On an annual basis, each Participant in the case of a Plan that does not provide for participant investment direction receives from the fiduciary responsible for directing the investment of plan assets copies of the annual report for each of the Funds in which the assets of such Plan are invested.

(o) Any plan subject to this exemption that is a prototype retirement plan sponsored by State Farm or its affiliates may not require the investment of a minimum percentage of the total assets of such Plan in State Farm investment products.

(p) State Farm or its affiliates maintain for a period of six (6) years the records necessary to enable the persons described in paragraph (q) of this Section II, below, to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of State Farm or its affiliates, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest other that State Farm and its affiliates shall be subject to the civil penalty that may be assessed under Section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained or are not available for examination as required by paragraph (q) of this Section II, below.

(q)(1) Except as provided in paragraph (q)(2) of this Section II, below, and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to in paragraph (p) of this Section II, above, are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service.

(ii) Any Agent, Family Member, Participant in the case of a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of a Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (q)(1)(ii) and (iii) of this Section II, above, shall be authorized to examine trade secrets of State Farm or its affiliates, or commercial or financial information that is privileged or confidential.

Section III—Definitions

For purposes of this exemption:

(a) The term, ''affiliate'' or ''affiliates,'' means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, Family Member (as defined in paragraph (e) of this Section III, below), or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(b) The term, ''control,'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term, ''Funds or Funds,'' shall include any individual investment portfolios that are part of the State Farm Mutual Fund Trust, a diversified open-end investment company registered under the 1940 Act for which State Farm or its affiliates serve as an investment adviser and may also serve as a custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, Fund accountant, or provide some other Secondary Service (as defined in paragraph (f) of this Section III, below), which has been approved by such Fund.

(d) The term, ''net asset value,'' means the amount for purposes of pricing all purchases and sales, calculated by dividing the value of all securities (determined by a method as set forth in a Fund's prospectus and Statement of Additional Information) and other asset's belonging to such Fund, less the liabilities charged to each such Fund, by the number of outstanding shares.

(e) The term, ''Family Member or Family Members,'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(f) The term, ''Secondary Service,'' means a service other than an investment management, investment advisory, or similar service, which is provided by State Farm or its affiliates to a Fund, including custodial, accounting, brokerage, administrative, or any other service.

(g) ''Termination Form,'' means the form supplied to an Agent, Family Member, or Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, as appropriate, that expressly provides an election to terminate on behalf of a Plan (or the Participant's account in the case of a participant directed individual account plan) the investment of plan assets in a Fund. Such Termination Form may be used at will by an Agent, Family Member, or Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds to terminate the investment by a Plan in a Fund without penalty to the Plan (or the Participant's account, in the case of a participant directed individual account plan) and to notify State Farm and its affiliates in writing to effect a termination by selling the shares of a Fund held by the Plan (or Participant's account) requesting such termination within one (1) business day following receipt by State Farm or its affiliates of the form; provided that if, due to circumstances beyond control of State Farm or its affiliates, the sale cannot be executed within one (1) business day, State Farm or its affiliates shall have one (1) additional business day to complete such sale.

(h) The term, ''Plan'' or ''Plans,'' means any pension plan subject to the Act and/or the Code, including but not limited to plans that provide for participant investment direction, traditional individual retirement accounts (IRAs), SEP–IRAs, and Keogh plans.

EFFECTIVE DATE: This exemption is effective, as of May 1, 2001.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on December 13, 2001. All comments and requests for a hearing were due by January 28, 2002.

In a letter dated February 5, 2002, the applicants confirmed that State Farm had provided notice to interested persons of the pendency of the proposed exemption. The notification was provided via electronic mail (e-mail) to all State Farm agents who are registered representatives. It is represented that on December 20, 2001, the Corporate Department of State Farm sent an e-mail to all of its Agency Field Executives (AFEs or AFE) and its Agency Resource Managers (ARMs or ARM). The e-mail contained a copy of the Notice, as published in the **Federal Register,** along

with a notice to interested persons (the Supplemental Statement), as described at 29 CFR 2570.43(b)(2) of the Department's regulations. The Supplemental Statement provided that interested persons had a right to comment on the proposed exemption and/or request a hearing by January 28, 2002.

The AFEs were instructed to send to the registered representatives who report to them an e-mail containing the Supplemental Statement with the Notice attached. The AFEs were further required to ''cc'' a corporate mailbox on the e-mail to each registered representative. In any area where an AFE's position was not currently filled or an AFE was out of the office on vacation or for any other reason, ARMs were instructed to send the e-mail to the registered representatives, using the same procedure that AFEs were instructed to use.

The Corporate Department of State Farm monitored the corporate mailbox to determine whether a follow-up from the Vice President-Agency (VPA) or the ARM for the region was necessary. Through the ''cc'' to the corporate mailbox, State Farm was able to verify whether each AFE or ARM, if applicable, had forwarded the Notice and the Supplemental Statement to the registered representatives. The appropriate VPA or ARMs were instructed to take corrective action if a ''cc'' was not received from an AFE or an ARM.

Through this verification process, State Farm determined that 7,935 out of 10,175 registered representatives received the e-mail notification by December 28, 2001. State Farm was also able to confirm that the remaining 2,240 registered representatives received the e-mail notification by January 15, 2002.

Although State Farm represents that it was able to notify all of the registered representatives through the process described above, the process was slower than anticipated. In light of the fact that notification to some interested persons was delayed until January 15, 2002, and in order to allow such interested persons the benefit of the full thirty (30) day comment period, the Department required, and the applicants agreed to, an extension of the deadline within which to comment and request a hearing on the proposed exemption. In this regard, the applicants confirmed in a letter dated February 5, 2001, that all 10,175 registered representatives were sent via first class U.S. mail on January 23, 2002, notification that the comment period had been extended and that all comments and/or requests for a hearing on the proposed exemption were due by February 15, 2002.

During the comment period, the Department received one (1) comment letter in which the commentator requested a hearing. In this regard, the commentator wished to use the hearing to discuss the possibility of providing State Farm Mutual Funds for herself and her family members.

The Department has considered the request of the commentator for a hearing. In this regard, the commentator has not indicated any manner in which she or her family would be adversely affected by the exemption. Rather, the comment supports the issuance of the exemption. As the commentator will be able to purchase shares in the Funds for herself and her family members upon the publication of the exemption, the Department does not believe that any issue has been raised which would require the convening of a hearing.

During the comment period, the Department received favorable comment letters from fifty-six (56) commentators. In this regard, these commentators expressed support for the grant of the exemption.

The Department also received unfavorable comment letters from four (4) commentators. At the close of the comment period, the Department forwarded copies of all of the comment letters, both favorable and unfavorable, to the applicants. With respect to the four (4) unfavorable comment letters, the Department requested that the applicants respond in writing to the issues raised by the commentators. The concerns expressed by these commentators and the applicants response thereto are summarized below.

One commentator did not think that the exemption was necessary, not did he think that the Act should be changed to satisfy the wishes of a few individuals. In response to this commentator, the applicants point out that State Farm's exemption request has been submitted and proposed under the relevant procedures of the Department's regulations; and therefore, the granting of the proposed exemption does not change the Act, but on the contrary, is within the scope of the Act. Further, the applicants point out, as evidenced by the number of comments in favor of the proposed exemption, that many registered representative agents favor having the Funds available as investment options for their plans and the plans of their family members. If the exemption is granted, the applicants note that the exemption will in no way obligate the commentator to invest in the Funds.

Another commentator did not understand why State Farm had not previously allowed investments in the Funds by the agents' plans. In response, the applicants state that State Farm did not permit its registered representative agents to sell shares of the Funds to their plans (or those of family members) because of the possibility that such sales could be considered prohibited transactions, absent an exemption. The applicants point out that the grant of proposed exemption will allow investments in the Funds to be made available to the commentator, with appropriate safeguards, as reflected in the conditions and other terms of the exemption.

This same commentator complained that State Farm had placed a quota requirement on registered representatives. Another commentator indicated that State Farm had recently notified agents that they must produce a minimum number of sales per year or lose their license to sell State Farm products. This commentator expressed the opinion that sales of shares in the Funds would help agents and their clients who happen to be relatives.

It is the Department's view that crediting transactions subject to the exemption for purposes of satisfying a minimum number of sales per year in order to retain a license to sell State Farm products is a benefit to State Farm agents, in violation of Section II(d) of the exemption. In this regard, the applicants confirm that transactions subject to this exemption will not be credited in determining whether the requirement of a minimum number of sales per year has been met.

The fourth commentator objected to the proposed exemption because it does not permit him to be paid for his work. In response, the applicants presume that this commentator would support the exemption, if it allowed him, as an agent, to receive commissions on sales of shares in the Funds to plans established by such agent for himself and his employees or to plans established by family members of such agent. The condition that no commissions be paid in connection with the subject transactions is designed as a safeguard to protect against potential self-dealing. In this regard, Section II(d), ensures that, where the agent is a plan fiduciary, the agent's decision whether to invest plan assets in the Funds is not unduly influenced by the potential for personal gain and that personal gain will not be a motivating factor in any other transaction covered by the exemption.

The Department also received, on February 12, 2002, a comment letter

from the applicants. In their comment letter, the applicants requested certain amendments to the operant language in the exemption, as set forth in the Notice published in the **Federal Register**. The applicants' comments and the Department's response thereto are discussed in the numbered paragraphs below.

1. The applicants requested that the language of Section II(i), as published in the Notice, be revised to add the phrase, ''for their employees,'' after the word, ''affiliates.'' In this regard, State Farm wished to clarify that compliance with Section II(i) would not preclude agents or their family members from relying on the relief provided by the exemption to purchase shares of the Funds for various prototype plans sponsored by State Farm.

The Department concurs with the applicants' request and has modified Section II(i) of the exemption to read as follows: ''The Plans are not employee benefit plans sponsored or maintained by State Farm or its affiliates for their employees.''[4]

2. The applicants requested that the language of Section II(j), (k), (1), (m), (n), and Section III(g), as published in the Notice in the **Federal Register**, be amended. In this regard, State Farm requested that the phrase, ''or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds,'' be added at the end of the phrase, ''Agent, Family Member, or Participant in a participant directed individual account plan,'' each time such phrase or a variation of such phrase appears in Section II(j), (k), (m), (n), or in Section III(g). State Farms believes that in cases where a separate independent fiduciary, such as an investment committee, has been appointed to make relevant investment decisions for a plan concerning the acquisition or disposition of shares of the Funds, that it would be appropriate to include such fiduciary among the parties listed in Section II(j), (k), (m), (n), or in Section III(g).

The Department concurs with the applicants' request. Accordingly, the Department has modified the language of the exemption to add the phrase, ''or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds,'' as indicated below:

(a) in Section II(j)(1), after the word, ''direction,'' on page 64473, column 2, line 12 of the Notice;

(b) in Section II(j)(1)(D), after the word, ''plan,'' on page 64473, column 2, line 48 of the Notice;

(c) in Section II(k), after the word, ''plan,'' on page 64473, column 3, line 4 of the Notice, and after the word, ''Participant,'' on page 64473, column 3, line 6 of the Notice;

(e) in Section II(1), after the word, ''Participant,'' on page 64473, column 3, lines 15 and 49 of the Notice, and after the word, ''Participants,'' on page 64473, column 3, lines 38 and 32 of the Notice;

(f) in Section II(m)(3), after the word, ''plan,'' on page 64474, column 1, line 25 of the Notice;

(g) in Section II(n)(1), after the word, ''plan,'' on page 64474, column 1, line 37 of the Notice;

(h) in Section II(n)(1)(B), after the word, ''plan'' on page 64474, column 1, line 46 of the Notice;

(i) in Section II(n)(1)(D), after the word, ''Participant,'' on page 64474, column 1, line 60 of the Notice; and

(j) in Section III(g), after the word, ''plan,'' on page 64474, column 3, lines 57 and 67 of the Notice.

Further, in order to maintain consistency in the language of the exemption, the Department has modified Section II (q)(ii) to read as follows:

> Any Agent, Family Member, Participant in the case of a participant directed individual account plan, or [any] other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds [owned by such Plan], or any duly authorized employee or representative of such fiduciary.

3. The applicants sought clarification that the meaning of the term, ''prototype retirement plan,'' as set forth in Section II(o) of the Notice, referred only to Section 401(a) qualified plans, and does not preclude State Farm IRAs approved under the Internal Revenue Service prototype IRA program from limiting permissible investment to State Farm products only. In this regard, State Farm proposed that the term, ''prototype retirement plan,'' as set forth in Section II(o), be replaced by the phrase, ''a section 401(a) qualified prototype plan.'' Subsequently, in a letter dated February 26, 2002, the applicants withdrew this comment.

The Department has accepted the applicants' withdrawal of the comment and notes that the language of Section II(o) in the exemption remains the same as the language published in the Notice.

4. In Section III(c) of the Notice, the term, ''Fund or Funds'' is defined to include:

> Any diversified open-end investment company or companies registered under the 1940 Act for which State Farm or its affiliates serve as an investment adviser and may also serve as a custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, Fund accountant, or provide some other Secondary Service (as defined in paragraph (f) of this Section III, below), which has been approved by such Fund.

State Farm believes that this definition would be more accurate if it referred to the individual investment portfolios within the State Farm Mutual Fund Trust in light of the manner in which the terms, ''Fund and Funds,'' were used throughout the Notice. Therefore, State Farm proposes that Section III(c) be revised to read as follows:

> The term, ''Fund or Funds,'' shall include any individual investment portfolios that are part of the State Farm Mutual Fund Trust, a diversified open-end investment company [or companies] registered under the 1940 Act for which State Farm or its affiliates serve as an investment adviser and may also serve as a custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, Fund accountant, or provide some other Secondary Service (as defined in paragraph (f) of this Section III, below), which has been approved by such Fund.

The Department concurs with the applicants' request and has modified Section III(c) of he exemption, accordingly. Further, in order to maintain consistency in the language of the exemption, the Department has modified three (3) other sections of the exemption. In this regard, Section I has been modified to read as follows:

> The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the purchase or redemption of an institutional class of shares (the Institutional Shares) of State Farm mutual funds (the Fund(s)), [open-end management investment companies registered under the Investment Company Act of 1940 (the 1940 Act)] as defined in Section III(c), below, by pension plans (the Plan(s)), as defined in Section III(h), below, which are established by * * *.

Section III(d) of the exemption has been modified to read as follows:

> The term, ''net asset value,'' means the amount for purposes of pricing all purchases and sales, calculated by dividing the value of all securities (determined by a method as set forth in a Fund's prospectus and Statement of Additional Information) and other assets belonging to such Fund [or portfolio of such Fund], less the liabilities charged to each such [portfolio or] Fund, by the number of outstanding shares.

In addition, Section II(n)(1)(C) of the exemption has been modified to read as follows:

[4] Throughout this exemption words that have been stricken from the text as published in the Notice appear in closed brackets and additions to the language of text as published in the Notice appear in bold.

A copy of the annual report prepared by State Farm or its affiliates that includes information about [the portfolios in] such Fund, as well as audit findings of an independent auditor, within 60 days of the preparation of such report.

5. The applicants sought to clarify the use of the words, ''relative'' and ''Family Member or Family Members,'' as those terms are used in the Notice. In this regard, the applicants noted that the term, ''Family Member or Family Members,'' is defined solely by reference to section 3(15) of the Act in parenthetical phrases that appear in Section I(b) and Section II(j)(1) of the Notice, whereas the word, ''relative,'' as defined in Section III(e) of the Notice, references the relevant provisions of both the Act and the Code and includes within the definition of a relative—''a brother, a sister, or a spouse of a brother or a sister.'' As the term, ''Family Member or Family Members,'' appears in Section I(b) and in Sections II(j)(1); (j)(1)(D); (k); (l); (m)(3); (n)(1); an d(q)(1)(ii), in order to minimize the need to modify the text of the exemption, State Farm proposes that the term defined in Section III(e) of the Notice be changed from ''relative'' to ''Family Member or Family Members.'' Further, State Farm proposes that the parenthetical phrase, ''(as defined in section 3(15) of the Act),'' be deleted from both Section I(b) and Section II(j)(1).

The Department concurs with the applicant's request and has amended the relevant provisions of the exemption. In this regard, Section III(e) in the exemption has been modified to read, as follows:

The term, [''relative,''] ''Family Member or Family Members,'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

Section I(b) in the exemption has been modified to read, as follows:

The family members of such Agents (the Family Member(s)) (as defined in Section III(e), below [section 3(15) of the Act]), provided that the conditions set forth in Section II, below are satisfied.

Section II(j)(1) in the exemption has been modified to read, as follows:

Each Agent, or a Family Member of such Agent (as defined in Section III(e), below [section 3(15) of the Act]) in the case of a Plan sponsored by such Family Member, or each participant (the Participant(s)) in the case of a Plan which provides for participant investment direction, receives in advance of any initial investment in a Fund by such Plan (or Participant's account, in the case of a participant directed individual account plan) a full and detailed written disclosure of information concerning each Fund in which such Plan or Participant's account, as the case may be, is considering investing, including but not limited to * * *

Section III(a)(2) in the exemption has been modified to read as follows:

Any officer, director, employee, [relative] Family Member (as defined in paragraph (e) of this Section III, below), or partner in any such person.

6. Section III(g) of the exemption, sets forth the requirements for the Termination Form. The applicants sought confirmation that for this purpose, ''termination'' means the pricing and redemption of the Fund shares and does not necessarily include the actual mailing of a redemption check or other physical transfer of funds (*e.g.,* by rollover to another account). Subsequently, by letter dated February 26, 2002, the applicants withdrew this comment. In this regard, State Farm represented that in accordance with its standard operating procedures, State Farm will price and redeem shares within one business day (except when circumstances outside of State Farm's control prevent such execution) and will mail redemption checks or otherwise disburse the funds within a reasonable time thereafter.

7. The Department also wishes to correct certain typographical errors that appeared in the Notice. In this regard, in Section II(h), the word, ''receives,'' should be replaced by the word, ''receive,'' and the phrase, ''the Investment Company Act of 1940,'' should be inserted before the parenthetical, ''(the 1940 Act).'' The subparagraphs under Section II(n)(1) should be designated by capital letters, ''(A),'' ''(B),'' ''(C),'' and ''(D).'' In Section III(g), the parenthetical ''(1),'' should be inserted after the word, ''one,'' whenever that word appears in such section.

After giving full consideration to the entire record, including the written comments from the commentors, the Department has decided to grant the exemption, as amended herein. In this regard, the comment letters, both favorable and unfavorable, submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published in December 13, 2001, at 66 FR 64472.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8551 (This is not a toll-free number.)

Smart Chevrolet Co. Employees' Profit Sharing Retirement Plan (the Plan) Located in Pine Bluff, Arkansas

[Prohibited Transaction Exemption 2002–18; Exemption Application No. D–11035]

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The secured loans (the Loans) by the Plan to Motors Finance Company (Motors), a party in interest with respect to the Plan, and (2) the guaranty of such Loans (the Guaranty) by the individual partners of Motors; provided that the following conditions are met: (a) The terms and conditions of the Loans are at least as favorable as those which the Plan could have received in similar transactions with an unrelated third party; (b) an independent fiduciary negotiates, reviews, approves, and monitors the Loans and the Guaranty under the terms and conditions, as set forth in paragraph #6 of the notice of proposed exemption; and (c) the balance of all Loans will at no time exceed 15% of the assets of the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, see the notice of proposed exemption published on January 18, 2002 at 67 FR 2689.

Temporary Nature of Exemption

This exemption is temporary and will expire September 16, 2007. However, the exemption will extend until the maturity of any of the 90 day Loans made prior to September 16, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other

provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of March, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–6430 Filed 3–21–02; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–041)]

NASA Advisory Council, Space Science Advisory Committee, Education and Public Outreach Task Force; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Education and Public Outreach (E/PO) Task Force.

DATES: Thursday, April 18, 2002, 8:30 a.m. to 5:30 p.m., and Friday, April 19, 2002, 8:30 to 5:30 p.m.

ADDRESSES: Omni Shoreham Hotel, 2500 Calvert Street, NW, Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey D. Rosendhal, Code S, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2470.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Role of E/PO in Office of Space Science Program
—Role of the Office of Space Science E/PO Program in the Overall NASA Education Program
—Background on the Office of Space Science E/PO Program
—Issues to be addressed by the Task Force
—Task Force Schedule and Assignments

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–6986 Filed 3–22–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–042]

NASA Advisory Council, Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the NASA Advisory Council (NAC), Minority Business Resource Advisory Committee.

DATES: Wednesday, May 1, 2002, 9 a.m. to 4 p.m., and Thursday, May 2, 2002, 9 a.m. to 12 Noon.

ADDRESSES: NASA George C. Marshall Space Flight Center, Center Directors Conference Room, Huntsville, AL 35812.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of Previous Meeting
—Office of Small and Disadvantaged Business Utilization Update of Activities
—NAC Meeting Report
—Overview of NASA Ames Research Center
—Overview of Small Business Program
—Public Comment
—Panel Discussion and Review
—Committee Panel Reports
—Status of Open Committee Recommendations
—New Business

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–6987 Filed 3–21–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; 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: Advisory Committee for Biological Sciences (1110).

Dates/Time: April 25, 2002 8:30 a.m.–5 p.m., April 26, 2002 8:30 a.m.–3 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Open.

Contact Person: Dr. Mary E. Clutter, Assistant Director, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Tel No.: (703) 292–8400.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: 21st Century Biology—Planning and Issues Discussion.

Dated: March 19, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–6979 Filed 3–21–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–4]

Duke Energy Corporation; Notice of Docketing of the Materials License SNM–2503; Amendment Application for the Oconee Independent Spent Fuel Storage Installation

By letter dated October 31, 2001, Duke Energy Corporation (DEC) submitted an application to the Nuclear Regulatory Commission (NRC or Commission) in accordance with 10 CFR part 72 requesting an amendment of the Oconee independent spent fuel storage installation (ISFSI) license (SNM–2503) for the ISFSI located in Oconee County, South Carolina. DEC is seeking Commission approval to amend its license to change the ISFSI's technical specifications for environmental reporting to the NRC. DEC has requested to change the frequency for submitting an environmental report of radioactive effluent releases from semi-annually to annually, in accordance with current NRC environmental reporting requirements in 10 CFR 72.44(d).

This application was docketed under 10 CFR part 72; the ISFSI Docket No. is 72–4 and will remain the same for this action. The amendment of an ISFSI license is subject to the Commission's approval.

The Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or, if a determination is made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2) and provide notice of the action taken and an opportunity for interested persons to request a hearing on whether the action should be rescinded or modified.

For further details with respect to this application, see the application dated October 31, 2001, which is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD or from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML020230028. The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 12th day of March 2002.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 02–6992 Filed 3–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–293; 030–34378; and License Nos. DPR–35; 20–07626–04]

In the Matter of Entergy Nuclear Generation Company (Pilgrim Nuclear Power Station); Order Approving Transfer of Operating Authority and Conforming Amendments

I

Entergy Nuclear Generation Company (ENGC or the licensee) is the holder of Facility Operating License No. DPR–35, which authorizes ENGC to possess, use, and operate the Pilgrim Nuclear Power Station (Pilgrim Station or the facility). ENGC is also the holder of Materials License No. 20–07626–04, which authorizes ENGC to possess, use, and transport certain materials in the form of contamination on reactor components. The facility is located in Plymouth County, Massachusetts.

II

By application dated August 24, 2001, the Commission was informed that ENGC proposes to enter into an Operating Agreement with Entergy Nuclear Operations, Incorporated (ENO), and transfer operating authority to ENO. The application was supplemented by submittals dated December 20, 2001, and February 15, 2002. ENO is a direct wholly owned subsidiary of Entergy Nuclear Holding Company #2 and an indirect wholly owned subsidiary of Entergy Corporation. Under the proposed transaction, ENO will be designated as a new facility licensee exclusively authorized to operate and maintain Pilgrim Station in accordance with the terms and conditions of the facility operating license. The transaction involves no change in ENGC's ownership of the facility. The licensee requested approval of the proposed transfer of operating authority under the Pilgrim Station facility operating license and transfer of the materials license to ENO. The licensee also requested conforming amendments to reflect the transfer. The proposed amendments would essentially add ENO to the licenses and make other administrative changes to reflect that ENO is authorized to operate Pilgrim Station.

No physical changes to Pilgrim Station were proposed in the application. In addition, ENGC's entitlement to capacity and energy from Pilgrim Station will not be affected by the transfer of operating authority.

Approval of the transfer of operating authority under the operating license and the conforming license amendments was requested by ENGC pursuant to 10 CFR 50.80 and 10 CFR 50.90. The applicable provisions of the regulations governing the transfer and amendment of the materials license are 10 CFR 30.34, 30.38, 40.41, 40.44, 70.32, and 70.34. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on October 4, 2001 (66 FR 50694). No hearing requests or written comments were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Under 10 CFR 30.34, 40.41, and 70.32, no byproduct, source, or special nuclear material license shall be transferred in violation of the provisions of the Atomic Energy Act of 1954, as amended, which require, inter alia, Commission consent. After reviewing the information in the application by ENGC and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that ENO is qualified to hold the operating authority under the facility operating license and to hold the materials license, and that the transfer of the operating authority under the facility operating license and the transfer of the materials license to ENO is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954 (the Act), as amended, and the Commission's rules and regulations set forth in 10 CFR chapter 1; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities

authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied. The foregoing findings are supported by a safety evaluation dated March 15, 2002.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 30.34, 40.41, 50.80, and 70.32, *It is hereby ordered* that the transfer of the licenses, as described herein, to ENO is approved, subject to the following conditions:

(1) ENO shall, prior to completion of the transfer of operating authority for Pilgrim Station, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that ENO has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(2) After receipt of all required regulatory approvals of the transfer of operating authority to ENO, ENGC and ENO shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days and of the date of the closing of the transfer no later than 7 business days prior to the date of closing. If the transfer is not completed by March 30, 2003, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

It is further ordered that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject transfers are approved. The amendments shall be issued and made effective at the time the proposed transfers are completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated August 24, 2001, supplements dated December 20, 2001, and February 15, 2002, and the safety evaluation dated March 15, 2002, which are available for public inspection at the Commission's Public Document Room, at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html.*

Dated at Rockville, Maryland, this 15th day of March 2002.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 02–6991 Filed 3–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Joint Meeting of the ACRS Subcommittees on Materials and Metallurgy and on Plant Operations; Notice of Meeting

The ACRS Subcommittees on Materials and Metallurgy and on Plant Operations will hold a joint meeting on April 9, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Tuesday, April 9, 2002—1:00 p.m. until the conclusion of business.*

The Subcommittees will hear discussions regarding issues related to the investigation of control rod drive mechanism (CRDM) penetration cracking and reactor pressure vessel head degradation. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the Designated Federal Official, Ms. Maggalean W. Weston (telephone 301/415–3151) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: March 18, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–6988 Filed 3–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on April 9, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, April 9, 2002—11 a.m.–12:30 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as

appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the Designated Federal Official, Sam Duraiswamy (telephone: 301/415–7364) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule that may have occurred.

Dated: March 18, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–6989 Filed 3–21–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

Meeting of the Subcommittee on Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Reactor Fuels will hold a meeting on April 10, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, April 10, 2002—8:30 a.m. until the conclusion of business

The Subcommittee will discuss the Duke Cogema Stone & Webster construction application request for a mixed oxide fuel fabrication facility and DOE-announced changes to the request. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Ms. Maggalean W. Weston (telephone 301/415–3151) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: March 18, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–6990 Filed 3–21–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 7d–2, SEC File No. 270–464, OMB Control No. 3235–0527

Rule 237, SEC File No. 270–465, OMB Control No. 3235–0528

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

In Canada, as in the United States, individuals can invest a portion of their earnings in tax-deferred retirement savings accounts (''Canadian retirement accounts''). In cases where these individuals move to the United States, these participants (''Canadian/U.S. Participants'' or ''participants'') may not be able to manage their Canadian retirement account investments. Most securities and most investment companies (''funds'') that are ''qualified investments'' for Canadian retirement accounts are not registered under the U.S. securities laws. Those securities, therefore, generally cannot be publicly offered and sold in the United States without violating the registration requirements of the Securities Act of 1933 (''Securities Act'')[1] and, in the case of securities of an unregistered fund, the Investment Company Act of 1940 (''Investment Company Act'').[2] As a result of these registration requirements of the U.S. securities laws, Canadian/U.S. Participants, in the past, had not been able to purchase or exchange securities for their Canadian retirement accounts as needed to meet their changing investment goals or income needs.

In 2000, the Commission issued two rules that enabled Canadian/U.S. Participants to manage the assets in their Canadian retirement accounts by providing relief from the U.S. registration requirements for offers of securities of foreign issuers to Canadian/U.S. Participants and sales to their accounts.[3] Rule 237 under the Securities Act permits securities of foreign issuers, including securities of foreign funds, to be offered to Canadian/U.S. Participants and sold to their Canadian retirement accounts without being registered under the Securities Act. Rule 7d–2 under the Investment Company Act permits foreign funds to offer securities to Canadian/U.S. Participants and sell

[1] 15 U.S.C. 77.

[2] 15 U.S.C. 80a.

[3] *See* Offer and Sale of Securities to Canadian Tax-Deferred Retirement Savings Accounts, Release Nos. 33–7860, 34–42905, IC–24491 (June 7, 2000) [65 FR 37672 (June 15, 2000)].

securities to their Canadian retirement accounts without registering as investment companies under the Investment Company Act.

The provisions of rules 237 and 7d–2 are substantially identical. Rule 237 requires written offering materials for securities that are offered and sold in reliance on the rule to disclose prominently that those securities are not registered with the Commission and may not be offered or sold in the United States unless they are registered or exempt from registration under the U.S. securities laws. Rule 7d–2 requires written offering materials for securities offered or sold in reliance on that rule to make the same disclosure concerning those securities, and also to disclose prominently that the fund that issued the securities is not registered with the Commission. Neither rule 237 nor rule 7d–2 requires any documents to be filed with the Commission. The burden under either rule associated with adding this disclosure to written offering documents is minimal and is non-recurring. The foreign issuer, underwriter or broker-dealer can redraft an existing prospectus or other written offering material to add this disclosure statement, or may draft a sticker or supplement containing this disclosure to be added to existing offering materials. In either case, based on discussions with representatives of the Canadian fund industry, the staff estimates that it would take an average of 10 minutes per document to draft the requisite disclosure statement. The staff estimates the annual burden as a result of the disclosure requirements of rules 7d–2 and 237 as follows.

a. Rule 7d–2

At the time rule 7d–2 was adopted,[4] the staff estimated that there were approximately 1,300 publicly offered Canadian funds that potentially would rely on the rule to offer securities to participants and sell securities to their Canadian retirement accounts without registering under the Investment Company Act. During the first year rule 7d–2 was in effect, the staff estimates that approximately 910 (70 percent) of these Canadian funds relied on the rule. The staff further estimates that each of those 910 Canadian funds, on average, distributed 3 different written offering documents concerning those securities, for a total of 2,730 offering documents.[5]

The staff therefore estimates that during the first year that rule 7d–2 was in effect, approximately 910 respondents made 2,730 responses by adding the new disclosure statements to approximately 2,730 written offering documents. Thus, the staff estimates that the total annual burden associated with this disclosure requirement in the first year after rule 7d–2 became effective was approximately 455 hours (2,730 offering documents × 10 minutes per document). In each year following the first year that rule 7d–2 became effective, the staff estimates that approximately 65 (5 percent) additional Canadian funds may rely on the rule to offer securities to Canadian/U.S. Participants and sell securities to their Canadian retirement accounts, and that each of those funds, on average, distributes 3 different written offering documents concerning those securities, for a total of 195 offering documents. The staff therefore estimates that in each year after the first year that rule 7d–2 became effective, approximately 65 respondents would make 195 responses by adding the new disclosure statement to approximately 195 written offering documents. The staff therefore estimates that after the first year, the annual burden associated with the rule 7d–2 disclosure requirement would be approximately 32.5 hours (195 offering documents × 10 minutes per document).

b. Rule 237

Canadian Issuers Other Than Funds

The Commission understands that there are approximately 3,500 Canadian issuers other than funds that may rely on rule 237 to make an initial public offering of their securities to Canadian/U.S. Participants.[6] The staff estimates that in any given year approximately 35 (or 1 percent) of those issuers are likely to rely on rule 237 to make a public offering of their securities to participants, and that each of those 35 issuers, on average, distributes 3 different written offering documents concerning those securities, for a total of 105 offering documents.

The staff therefore estimates that during each year that rule 237 is in effect, approximately 35 respondents would be required to make 105 responses by adding the new disclosure statements to approximately 105 written offering documents. Thus, the staff estimates that the total annual burden associated with the rule 237 disclosure requirement would be approximately 17.5 hours (105 offering documents × 10 minutes per document).

Other Foreign Issuers Other Than Funds

In addition, issuers from foreign countries other than Canada could rely on rule 237 to offer securities to Canadian/U.S. Participants and sell securities to their accounts without becoming subject to the registration requirements of the Securities Act. Because Canadian law strictly limits the amount of foreign investments that may be held in a Canadian retirement account, however, the staff believes that the number of issuers from other countries that relies on rule 237, and that therefore is required to comply with the offering document disclosure requirements, is negligible.

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: March 15, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6933 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

[4] *See supra* note 3.

[5] Because Canadian tax law effectively precludes non-Canadian funds from being held in a Canadian retirement account, the Commission believes that no funds from countries other than Canada rely on rule 7d–2 to sell their shares to the Canadian retirement accounts of Canadian/U.S. Participants.

[6] Canadian funds can rely on both rule 7d–2 and rule 237 to offer securities to participants and sell securities to their Canadian retirement accounts without violating the registration requirements of the Investment Company Act or the Securities Act. Rule 237, however, does not require any disclosure in addition to that required by rule 7d–2. Thus, the disclosure requirements of rule 237 do not impose any burden on Canadian funds in addition to the burden imposed by the disclosure requirements of rule 7d–2. To avoid double-counting this burden, the staff has excluded Canadian funds from the estimate of the hourly burden associated with rule 237.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From

Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions

Rule 701, OMB Control No. 3235–0522, SEC File No. 270–306

Regulations 14D and 14E, and Schedule 14D–9, OMB Control No. 3235–0102, SEC File No. 270–114

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Securities Act Rule 701 requires when offerings in excess of $5 million are made under the employee benefit plan exemptive rule, the issuers must provide the employees with risk and financial statement disclosures among other things. The purpose of Rule 701 is to ensure that a basic level of information is available to employees and others when substantial amounts of securities are issued in compensatory agreements. Information provided under Rule 701 is mandatory. Approximately 300 companies annually rely on Rule 701 exemption and it takes an estimated .5 hours to prepare and review. It is estimated that 25% of the 600 total annual burden hours (150 hours) is prepared by the company.

Regulations 14D and 14E and Schedule 14D–9 require information important to security holders in deciding how to respond to tender offers. This information is made available to the public. Information provided on Schedule 14D–9 is mandatory. Approximately 310 issuers annually file Schedule 14D–9 and it takes 64.43 hours to prepare and review. It is estimated that 25% of the 79,803 total burden hours (19,973 burden hours) is prepared by the company.

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

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 11, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6893 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From:

Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Rule 7d–1, OMB Control No. 3235–0311, SEC File No. 270–176

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension and approval of the collections of information discussed below.

Section 7(d) of the Investment Company Act of 1940 [15 U.S.C. 80a–7(d)] (the ''Act'' or ''Investment Company Act'') requires an investment company (''fund'') organized outside the United States (''foreign fund'') to obtain an order from the Commission allowing the fund to register under the Act before making a public offering of its securities through the United States mail or any means of interstate commerce. The Commission may issue an order only if it finds that it is both legally and practically feasible effectively to enforce the provisions of the Act against the foreign fund, and that the registration of the fund is consistent with the public interest and protection of investors.

Rule 7d–1 [17 CFR 270.7d–1] under the Act, which was adopted in 1954, specifies the conditions under which a Canadian management investment company (''Canadian fund'') may request an order from the Commission permitting it to register under the Act. Although rule 7d–1 by its terms applies only to Canadian funds, other foreign funds generally have agreed to comply with the requirements of rule 7d–1 as a prerequisite to receiving an order permitting the foreign fund's registration under the Act.

The rule requires a Canadian fund proposing to register under the Act to file an application with the Commission that contains various undertakings and agreements of the fund. Certain of these undertakings and agreements, in turn, impose the following additional information collection requirements:

(1) The fund must file agreements between the fund and its directors, officers, and service providers requiring them to comply with the fund's charter and bylaws, the Act, and certain other obligations relating to the undertakings and agreements in the application;

(2) The fund and each of its directors, officers, and investment advisers that is not a U.S. resident, must file an irrevocable designation of the fund's custodian in the United States as agent for service of process;

(3) The fund's charter and bylaws must provide that (a) the fund will comply with certain provisions of the Act applicable to all funds, (b) the fund will maintain originals or copies of its books and records in the United States, and (c) the fund's contracts with its custodian, investment adviser, and principal underwriter, will contain certain terms, including a requirement that the adviser maintain originals or copies of pertinent records in the United States;

(4) The fund's contracts with service providers will require that the provider perform the contract in accordance with the Act, the Securities Act of 1933 [15 U.S.C. 77a–77z–3], and the Securities Exchange Act of 1934 [15 U.S.C. 78a–78mm], as applicable; and

(5) The fund must file, and periodically revise, a list of persons affiliated with the fund or its adviser or underwriter.

Under section 7(d) of the Act the Commission may issue an order permitting a foreign fund's registration only if the Commission finds that ''by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of the [Act].'' The information collection requirements are necessary to assure that the substantive provisions of the Act may be enforced as a matter of contract right in the United States or Canada by the fund's shareholders or by the Commission.

Certain information collection requirements in rule 7d–1 are associated with complying with the Act's provisions. These information collection

requirements are reflected in the information collection requirements applicable to those provisions for all registered funds.

The Commission believes that one fund is registered under rule 7d–1 and currently active. Apart from requirements under the Act applicable to all registered funds, rule 7d–1 imposes ongoing burdens to maintain records in the United States, and to update, as necessary, the foreign fund's list of affiliated persons. The Commission staff estimates that the rule requires a total of three responses each year. The staff estimates that a respondent would make two responses each year under the rule, one response to maintain records in the United States and one response to update its list of affiliated persons. The Commission staff further estimates that a respondent's investment adviser would make one response each year under the rule to maintain records in the United States. Commission staff estimates that each recordkeeping response would require 6.25 hours each of secretarial and compliance clerk time at a cost of $13.48 and $12.77 per hour, respectively, and the response to update the list of affiliated persons would require 0.25 hours of secretarial time, for a total annual burden of 25.25 hours at a cost of $331.49. The estimated number of 25.25 burden hours is identical to the current allocation.

If a foreign fund were to file an application under the rule, the Commission estimates that the rule would impose initial information collection burdens (for filing an application, preparing the specified charter, bylaw, and contract provisions, designations of agents for service of process, and an initial list of affiliated persons, and establishing a means of keeping records in the United States) of approximately 90 hours for the fund and its associated persons. The Commission is not including these hours in its calculation of the annual burden because no fund has applied under rule 7d–1 to register under the Act in the last three years.

After registration, a foreign fund may file a supplemental application seeking special relief designed for the fund's particular circumstances. Because rule 7d–1 does not mandate these applications and the fund determines whether to submit an application, the Commission has not allocated any burden hours for these applications.

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of Commission rules.

The Commission believes that the active registrant and its associated persons may spend (excluding the cost of burden hours) approximately $540 per year in maintaining records in the United States. These estimated costs include fees for a custodian or other agent to retain records, storage costs, and the costs of transmitting records.

If a Canadian or other foreign fund in the future applied to register under the Act under rule 7d–1, the fund initially might have capital and start-up costs (not including hourly burdens) of an estimated $17,280 to comply with the rule's initial information collection requirements. These costs include legal and processing-related fees for preparing the required documentation (such as the application, charter, bylaw, and contract provisions), designations for service of process, and the list of affiliated persons. Other related costs would include fees for establishing arrangements with a custodian or other agent for maintaining records in the United States, copying and transportation costs for records, and the costs of purchasing or leasing computer equipment, software, or other record storage equipment for records maintained in electronic or photographic form.

The Commission expects that a foreign fund and its sponsors would incur these costs immediately, and that the annualized cost of the expenditures would be $17,280 in the first year. Some expenditures might involve capital improvements, such as computer equipment, having expected useful lives for which annualized figures beyond the first year would be meaningful. These annualized figures are not provided, however, because, in most cases, the expenses would be incurred immediately rather than on an annual basis. The Commission is not including these costs in its calculation of the annualized capital/start-up costs because no investment company has applied under rule 7d–1 to register under the Act pursuant to rule 7d–1 in the last three years.

These estimates of average costs are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

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

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, Mail Stop 0–4, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 15, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6934 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following additional meeting during the week of March 18, 2002: an additional closed meeting will be held on Friday, March 22, 2002, at 11:00 a.m.

Commissioner Hunt, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled for Friday, March 22, 2002, are: formal order of private investigation; institution and settlement of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: March 19, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–7032 Filed 3–19–02; 4:26 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45566; File No. SR–Amex–2001–68]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the American Stock Exchange LLC to Adopt Sanctioning Guidelines for Violations of the Exchange's Order Handling Rules

March 15, 2002.

I. Introduction

On September 4, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt sanctioning guidelines for violations of its options order handling rules.[3] The proposed rule change was published for comment in the **Federal Register** on February 13, 2002.[4] No comments were received on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to adopt sanctioning guidelines for violations of its options rules related to firm quotes (Exchange Rule 958A), limit order display (Exchange Rule 958A),[5] priority, parity, and precedence (Exchange Rules 111, 126, 155, 950, and 958),[6] and trade reporting (Exchange Rule 992). The Exchange also proposes to adopt sanction guidelines for its rule regarding anti-competitive behavior and harassment (Exchange Rule 16).

The Exchange has developed the proposed sanction guidelines for use by the various bodies adjudicating disciplinary matters in determining appropriate sanctions.[7] These bodies include Disciplinary Panels, the Amex Adjudicatory Council and the Amex Board of Governors (''Adjudicators''). The proposed guidelines provide both a range of fines as well as non-monetary sanctions that could be assessed against offending members. Fine amounts would differ depending on the number of disciplinary actions that have been brought by the Exchange against the particular member or member organization.[8] The proposed guidelines would also allow for non-monetary sanctions such as suspension, expulsion, or other sanctions in egregious cases. The guidelines may also be used by parties to a disciplinary action in entering into a stipulation of facts and consent to penalty.

The proposed sanction guidelines contain an introductory section that explains the overall purpose of the guidelines and sets forth general principles that apply to all sanctions determinations. The proposed introductory section also includes principal considerations for determining sanctions that may be considered as aggravating or mitigating factors. The proposed sanctioning guidelines contain individual guidelines that provide specific monetary and non-monetary sanctions generally applicable to the violations at issue and list additional principal considerations for the specific violations.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with Section 6(b)(6) of the Act,[11] which requires that the rules of an exchange provide that its members be appropriately disciplined for violations of exchange rules, the Act, and rules and regulations thereunder, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

Moreover, the Commission notes that the Exchange submitted a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where such violations are identified through the Exchange's automated surveillance systems.[12] The Commission believes that the compliance thresholds proposed in this letter provide a reasonable first step and should assist the Exchange in disciplining its members for violations of the Exchange's order handling rules. The Commission expects, however, that as compliance rates improve, the Exchange will adjust the compliance thresholds accordingly. Consequently, the Commission's approval of the proposed rule change is contingent on the Exchange providing notice to the Commission's Office of Compliance Inspections and Examinations of any future changes to this letter, and to any other sanctioning guidelines not codified in the Exchange's rules.

At this time, the Commission believes the proposed sanctioning guidelines are reasonably designed to effectively enforce compliance with the options order handling rules. Nevertheless, the Commission expects the Exchange to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange filed this proposed rule change pursuant to the provisions of Section IV.B.i of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange to adopt rules establishing, or modifying existing, sanctioning guidelines such that they are reasonably designed to effectively enforce compliance with options order handling rules. *See* Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3–10282 (''Order'').

[4] *See* Securities Exchange Act Release No. 45412 (February 7, 2002), 67 FR 6777.

[5] The Exchange has an option limit order display rule filing pending with the Commission. *See* SR–Amex–00–27.

[6] According to the Exchange, it does not have an explicit definition of its members' obligation of ''best execution'' owed to its customer. The Exchange states that its rules regarding firm quotes, limit order display, priority, parity and precedence, however, collectively define the obligations of members with respect to orders and, therefore, embody the concept of best execution.

[7] The Exchange submitted to the Commission a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where the violations are identified through the Exchange's automated surveillance system. *See* letter from Richard T. Chase, Executive Vice President, Amex, to John McCarthy, Associate Director, Office of Compliance, Inspections and Examinations, Commission, dated December 24, 2001.

[8] When determining whether an action is the first disciplinary action, the Adjudicators would consider disciplinary actions with respect to violative conduct that occurred within the two years prior to the misconduct at issue. Recent acts of similar misconduct may be considered to be aggravating factors. For purposes of the proposed rule change, this two year look back provision would apply on a rolling basis.

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(6).

[12] *See supra* note 7.

continue to evaluate the adequacy of the proposed sanctioning guidelines to determine whether they do, in fact, effectively enforce compliance with the options order handling rules.[13]

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Amex–2001–68) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6899 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45576; File No. SR–Amex–2001–76]

Self-Regulatory Organizations; Order Granting Partial Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Partial Accelerated Approval of Amendment No. 3 Thereto by the American Stock Exchange LLC Relating to the Obligations of Specialists and Registered Options Traders

March 15, 2002.

I. Introduction

On September 12, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change relating to collective actions of specialists and registered options traders.[3] The Amex filed Amendment Nos. 1 and 2 to the proposed rule change on December 17, 2001[4] and January 18, 2002,[5] respectively. The **Federal Register** published the proposed rule change and Amendment Nos. 1 and 2 for comment on February 14, 2002.[6] The Exchange filed Amendment No. 3 to the proposed rule change on March 13, 2002.[7] The Commission received no comments on the proposed rule change. The Commission is publishing notice of Amendment No. 3 to solicit comments from interested persons. The Commission is also granting accelerated approval to all portions of the proposed rule change, as amended by Amendment Nos. 1, 2, and 3, except for the provision of proposed Commentary .02(b) to Amex Rule 950 that states that ''[w]ith respect to orders sent through the Exchange's order routing systems it is presumed that the member has requested a collective response.''

II. Description of Proposal

The Exchange proposes to amend Exchange Rules 950, 958, and 958A to codify its interpretation that unless otherwise provided for in Exchange rules, it is a violation of just and equitable principles of trade for specialists and registered options traders (''traders'') to determine by agreement the spreads or prices at which they will trade any option class, or the allocation of orders in any option class. The Exchange believes that there are, however, certain specific circumstances where, in order to make fair and orderly markets that are competitive with other exchanges and responsive to the needs and expectations of investors, some communication among the specialist and traders may be necessary and appropriate. According to the Exchange, these circumstances arise: (1) in connection with the specialist's establishment of parameters used by the Exchange's automated quotation updating system (known as ''X-TOPS'') to automatically generate options quotations in response to changes in the market for the underlying security or index; (2) in responding to customer requests for markets in size, such that the collective efforts of the specialist and traders are necessary in order to be able to fill any resulting order to buy or sell options; and (3) whenever the specialist and traders, in order to fulfill their obligations pursuant to Rule 11Ac1–1 under the Act and Amex Rule 958A, and to be competitive with other exchanges, collectively agree as to the best bid, best offer, and aggregate quotation size. The following is a description of the nature and extent of the joint action among the specialist and traders that is permitted under each of these circumstances.

X–TOPS Parameters

Proposed Commentary .02 to Exchange Rule 950(n) and proposed paragraph (h) to Exchange Rule 958 would (i) require the specialist to disclose to all registered option traders in an option class the variables of the formula used to generate automatically updated market quotations for each option class and/or series, and (ii) permit the specialist to receive input from the registered options traders on any one or all of these variables provided, however, that it is within the specialist's sole discretion to make the final independent decision in determining the variables to be used in the X-TOPS formula. Registered options traders would not be required to provide input into these decisions. Those specialists using an Exchange-approved proprietary system to calculate and generate quotes may be exempt by the Exchange from having to disclose proprietary information concerning the variables (but not the variables themselves) used by their systems.

Joint Responses to Requests for Markets

Proposed Commentary .02 to Exchange Rule 950(n) and proposed new paragraph (h) to Exchange Rule 958 would expressly permit a collective response to a request for a market to buy or sell option contracts in sizes larger than the greater of the Auto-Ex eligible size or the size communicated or disseminated pursuant to Exchange

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[13] The Commission's examination staff will also monitor the application of these guidelines to determine whether they do, in fact, improve member compliance with the options order handling rules.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The Amex submitted the proposed rule change pursuant to subparagraph IV.B.j of the Commission's September 11, 2000 Order, which requires in part that certain options exchanges, including the Amex, adopt new, or amend existing, rules to make express any practice or procedure ''whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class . . . .'' *See* Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

[4] The Amex submitted a new Form 19b–4, which replaces and supersedes the original filing in its entirety (''Amendment No. 1'').

[5] Letter from Claire P. McGrath, Vice President and Deputy General Counsel, Amex, to Elizabeth King, Associate Director, Division of Market Regulation (''Division''), Commission, dated January 16, 2002 (''Amendment No. 2''). Amendment No. 2 amends proposed Amex Rules 950 and 958 to clarify that ''large order'' means orders larger than the size communicated or disseminated pursuant to Exchange Rule 958 or larger than the Exchange's auto-ex eligible size. Amendment No. 2 also makes a technical correction to proposed Amex Rule 958(h)(iii).

[6] Securities Exchange Act Release No. 45413 (February 7, 2002), 67 FR 6953.

[7] Letter from Claire P. McGrath, Vice President and Deputy General Counsel, Amex, to Elizabeth King, Associate Director, Division, Commission, dated March 8, 2002 (''Amendment No. 3'').

Rule 958A,[8] provided the member requested the collective response.

In addition, the proposed rule change would permit the specialist to agree to transact the full size of the options order at a specific price unilaterally determined by the specialist and subsequently allocate portions of the order to registered options traders that wish to participate in the trade.[9] If or when a trade is executed under such circumstances, the contracts would be allocated in accordance with the Exchange's specialist and registered options traders participation policy.[10]

Finally, the Exchange proposes that with respect to orders sent through the Exchange's order routing systems that are larger than the size disseminated pursuant to Exchange Rule 958, it would be presumed that the member has requested a collective response.[11]

Firm Quote Guarantees

Currently, Amex Rule 958A obligates specialists and traders to be firm for (i) customer orders up to the quotation size being disseminated, and (ii) broker-dealer orders, up to the size established and periodically published by the Exchange. Rule 11Ac1–1 under the Act anticipates that exchanges will disseminate one automatically generated quote for a trading crowd, which necessitates collective action on behalf of the specialist and traders to communicate size to the Exchange. If or when a trade is executed, the contracts will be allocated in accordance with the Exchange's specialist and registered options traders participation policy.

III. Discussion

The Commission finds that the proposed rule change, except for the portion that states that it is presumed for orders sent through the Exchange's order routing systems that the member has requested a collective response, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] Specifically, the Commission believes that the proposed rule change, except for the portion that states that it is presumed for orders sent through the Exchange's order routing systems that the member has requested a collective response, is consistent with the Section 6(b)(8)[13] requirement that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the portion of the proposed rule change approved herein should deter collective action on the part of Exchange members by clearly establishing in the Exchange's rules that options market makers are prohibited from determining by agreement the spreads or option prices at which they will trade an issue, subject to certain specified exceptions that the Commission herein approves.[14] For instance, the proposal would permit specialists to receive input from members of the crowd in setting the parameters of the formula used to automatically update options quotations. At this time, the Commission believes it is reasonable for the Exchange's rules to permit the members of the crowd to be given a voice in setting autoquote parameters because, pursuant to the Exchange's rules, they will be obligated to execute orders at the resultant quote.

In addition, the proposed rule change would permit the specialist and registered options traders to make a collective response to a member's specific request to fill a large order, provided that a collective response is requested. The Commission believes that this exception recognizes the desire of the marketplace to provide a single price to a request to fill a large order that a single member would not be able to fill. The Commission believes that any anticompetitive effect of this exception is limited by requiring that there be a request for a single price and that the order be sufficiently large. In addition, the Commission notes that notwithstanding this exception, a single crowd participant may voice a bid or offer independently from, and differently from, the specialist and other members of a trading crowd.

At this time, the Commission is not approving the provision of proposed Commentary .02(b) to Amex Rule 950, that states that it is presumed that the member has requested a collective response for orders sent through the Exchange's order routing systems, because this proposed provision warrants further consideration.

Finally, the Commission finds that the portion of the proposed rule change that is approved herein is designed to effectively limit the circumstances in which collective action is permissible.

The Commission finds good cause for accelerating approval of the proposed rule change and Amendment Nos. 1, 2, and 3 thereto prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that the proposed rule change, as amended by Amendment Nos. 1 and 2, was published for the full comment period and the Commission is accelerating approval of the filing on the twenty-ninth day after publication of the proposed rule change, and Amendment Nos. 1 and 2, in the **Federal Register**. The Commission believes that accelerated approval will permit the Exchange to implement, and investors to benefit from, the proposed rule change without undue delay. The Commission notes that the Amendment No. 3 to the proposal clarifies the proposed rules in response to issues raised by Commission staff. Accordingly, the Commission finds that good cause exists, consistent with Sections 6(b)(8) of the Act,[15] and 19(b)(2) of the Act[16] to grant partial accelerated approval of the proposed rule change and Amendment Nos. 1, 2, and 3 thereto.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether the Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[8] *Id.* Amendment No. 3 amends proposed Amex Rules 950 and 958 to clarify that "large order" means orders larger than the greater of the size communicated or disseminated pursuant to Exchange Rule 958 or larger than the Exchange's auto-ex eligible size.

[9] *See* Amendment No. 3, *supra* note 7. Amex No. 3 codifies in proposed Amex Rules 950 and 958 that the specialist may unilaterally give a single bid (offer) in response to a request for a market and subsequently discuss with the registered options traders whether they wish to participate in the contracts executed in accordance with that bid (offer).

[10] *See* Securities Exchange Act Release No. 42964 (June 20, 2000) 65 FR 39972 (June 28, 2000) (File No. SR–Amex–00–30) which proposes to codify current practices regarding the participation in option trades executed on the Exchange by registered options traders and specialists.

[11] As noted in Section III of this order, the Commission is not approving this provision at this time.

[12] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(8).

[14] The Commission expects the Exchange to monitor the collective actions that are undertaken pursuant to the rule change approved herein for any undesirable or inappropriate anticompetitive effects. The Commission's examination staff will monitor the Exchange's efforts in this regard.

[15] 15 U.S.C. 78f(b)(8).

[16] 15 U.S.C. 78s(b)(2).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2001–76 and should be submitted by April 12, 2002.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–Amex–2001–76), as amended, except for the portion that states that it is presumed for orders sent through the Exchange's order routing systems that the member has requested a collective response, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6901 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45571; File No. SR–CBOE–2001–71]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. To Incorporate Certain Principal Considerations in Determining Sanctions and To Incorporate in the Exchange's Minor Rule Violation Plan Violations of the Exchange's Order Handling Rules

March 15, 2002.

I. Introduction

On December 26, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to adopt sanctioning guidelines and to incorporate in its Minor Rule Violation Plan violations of the Exchange's order handling rules.[3] The proposed rule change was published for comment in the **Federal Register** on February 14, 2002.[4] On March 7, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[5] No comments were received on the proposed rule change. This order granted accelerated approval to the proposed rule change and issues notice of filing and approves Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to amend CBOE Rule 17.11 (Judgment and Sanction) to incorporate certain Principal Considerations in Determining Sanctions (''Principal Considerations'') to be applied by the Exchange's BCC in determining appropriate remedial sanctions through the resolution of disciplinary matters through offers of settlement or after formal disciplinary hearings. In addition, the Exchange proposes to amend CBOE Rule 17.50 (Imposition of Fines for Minor Rule Violations) to incorporate in its MRP violations of the Exchange's order handling rules, including violations of firm quote requirements pursuant to Exchange Rule 8.51; failure to promptly book and display limit orders that would improve the disseminated quote pursuant to Exchange Rules 7.7 and 8.85(b); failure to honor the priority of marketable customer orders maintained in the Customer Limit Order Book pursuant to Exchange Rule 6.45; and failure to use due diligence in order execution pursuant to Exchange Rules 6.73 and 8.85(b). The proposed rule change would provide both a range of fines as well as non-monetary sanctions that could be assessed against offending members. Fine amounts would differ depending on the number of disciplinary actions that have been brought by the Exchange against the particular member or member organization.[6] The proposed guidelines would also allow for non-monetary sanctions such as suspension, expulsion, or other sanctions in egregious cases. Finally, the proposed rule change would also permit any member who is issued a summary fine notice to have the opportunity to submit one written offer of settlement to the BCC.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with section 6(b)(6) of the Act,[9] which requires that the rules of an exchange provide that its members be appropriately disciplined for violations of exchange rules, the Act, and rules and regulations thereunder, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

Moreover, the Commission notes that the Exchange submitted a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where such violations are identified through the Exchange's automated surveillance

[3] The Exchange filed this proposed rule change pursuant to the provisions of Section IV.B.i of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange to adopt rules establishing, or modifying existing, sanctioning guidelines such that they are reasonably designed to effectively enforce compliance with options order handling rules. *See* Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3–10282 (the ''Order'').

[4] *See* Securities Exchange Act Release No. 45427 (February 8, 2002), 67 FR 6958.

[5] *See* letter from Edward Joyce, President and Chief Operating Officer, CBOE, to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation, Commission, dated March 1, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange clarified that the Exchange would aggregate individual violations of options order handling rules and treat such violation as a single offense only where such aggregation is based on a comprehensive automated surveillance program. In addition, the Exchange clarified that a sixth and subsequent violation of the options order handling rules would be referred to the Business Conduct Committee (''BCC'') and not treated under the Exchange's Minor Rule Plan (''MRP'').

[6] The Exchange submitted to the Commission a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where the violations are identified through the Exchange's automated surveillance system. *See* letter from Mary L. Bender, Senior Vice President and Chief Regulatory Officer, CBOE, to John McCarthy, Associate Director, Office of Compliance, Inspections and Examinations, Commission, dated December 21, 2001.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(6).

systems.[10] The Commission believes that the compliance thresholds proposed in this letter provide a reasonable first step and should assist the Exchange in disciplining its members for violations of the Exchange's order handling rules. The Commission expects, however, that as compliance rates improve, the Exchange will adjust the compliance thresholds accordingly. Consequently, the Commission's approval of the proposed rule change is contingent on the Exchange providing notice to the Commission's Office of Compliance Inspections and Examinations of any future changes to this letter, and to any other sanctioning guidelines not codified in the Exchange's rules.

At this time, the Commission believes the proposed sanctioning guidelines are reasonably designed to effectively enforce compliance with the options order handling rules. Nevertheless, the Commission expects the Exchange to continue to evaluate the adequacy of the proposed sanctioning guidelines to determine whether they do, in fact, effectively enforce compliance with the options order handling rules.[11]

Furthermore, the Commission finds good cause for accelerating approval of the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that the proposed rule change was noticed for the full comment period and the Commission is accelerating approval of the filing on the twenty-ninth day after publication of the proposed rule change in the **Federal Register**. The Commission believes that accelerated approval will permit the Exchange to implement, and investors to benefit from, the proposed rule change without undue delay. Amendment No. 1 clarifies when the Exchange may aggregate multiple violations and when subsequent offenses would be referred to the Exchange's BCC and not treated under the Exchange's MRP. Amendment No. 1 also clarifies that the Exchange may aggregate multiple violations into a single offense only where such aggregation is based upon a comprehensive automated surveillance program. In addition, the Commission notes that it received no comments on the proposed rule change. For these reasons, the Commission finds good cause exists, consistent with sections 6(b)(5)[12] and 19(b)(2) of the Act,[13] to approve the proposed rule change and Amendment No. 1 thereto on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to file number SR-CBOE–2001–71 and should be submitted by April 12, 2002.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–CBOE–2001–71) and Amendment No. 1 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6898 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

[10] *See supra* note 6.

[11] The Commission's examination staff will also monitor the application of these guidelines to determine whether they do, in fact, improve member compliance with the options order handling rules.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(2).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45577; File No. SR–CBOE–2001–64]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange Inc. Relating to AutoQuote Parameters

March 15, 2002.

I. Introduction

On December 17, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the Exchange's AutoQuote System. The **Federal Register** published the proposed rule change for comment on February 12, 2002.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of Proposal

The CBOE submitted the proposed change to Interpretation and Policy .07 to CBOE Rule 8.7 pursuant to subparagraph IV.B.j of the Commission's September 11, 2000 Order,[4] which requires in part that certain options exchanges, including the CBOE, adopt new, or amend existing, rules to make express any practice or procedure ''whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class * * *.'' The proposed amendment to Interpretation and Policy .07 to CBOE Rule 8.7 would permit market makers to coordinate in setting the components of the formula used by an automated quotation updating system, or AutoQuote.[5]

AutoQuote is the Exchange's electronic quotation system that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 45394 (February 5, 2002), 67 FR 6556.

[4] *See* Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

[5] For purposes of this filing and the proposed interpretation, the term AutoQuote is used to refer to both the Exchange's own automatic quotation system that is offered to trading crowds to generate quotes and to proprietary automated quotation updating systems that are used by trading crowds, DPMs, LMMs, SMMs, or appointed market-makers to generate quotes in lieu of or in addition to the Exchange's own AutoQuote system.

automatically monitors and updates market quotations using a mathematical formula measuring certain characteristics of the option and the underlying interest. According to the Exchange, AutoQuote provides a means to update the quotes for the tens of thousands of series the Exchange lists.[6] AutoQuote formulas require the selection and input of the following components or variables: an option pricing calculation model, volatility, interest rate, dividend, and the measure used to represent the value of the underlying.

The proposed amendment to Interpretation and Policy .07 to CBOE Rule 8.7 would set forth a more thorough description of AutoQuote. The proposed rule change also would identify who has responsibility under Exchange rules to determine a formula for generating automatically updated market quotations. For classes of options in which a DPM is appointed, the DPM would have primary responsibility to determine the formula, which includes determining the components or variables used in the AutoQuote formula.[7] For classes of options in which an LMM or SMM is appointed, such as the S&P 100 option class (''OEX''), the LMM or SMM would have primary responsibility to determine the formula for generating automatically updated market quotations.[8] For classes of options in which a DPM, LMM, or SMM has not been appointed, the appropriate Exchange Committee would be permitted to appoint one or more market makers in good standing with an appointment in the particular option class (''Appointed Market-Makers'') to determine a formula for generating automatically updated market quotations, using the Exchange's AutoQuote system or a proprietary automated quotation updating system.

Although DPMs, LMMs, SMMs, and Appointed Market-Makers would have the responsibility for determining the formula for generating automatically updated market quotations, the proposed amendment to Interpretation and Policy .07 expressly would provide that the DPM, LMM, SMM, or Appointed Market-Maker may, but is not required to, consult with and/or agree with other market makers in the trading crowd in setting the components or variables of the formula. However, members of the trading crowd would not be required to provide input to the DPM, LMM, SMM, or Appointed Market-Maker about these decisions and the decision is ultimately that of the DPM, LMM, SMM or Appointed Market-Maker in the particular class.

For classes of options in which a DPM, LMM, SMM or Appointed Market-Maker does not have the responsibility to determine a formula for generating automatically updated market quotations, the market makers would be permitted to coordinate and agree upon the variables for the AutoQuote formula. In some trading crowds, one or a few market makers may take responsibility (with the crowd's approval) for updating the AutoQuote variables without seeking input on a continual basis. The CBOE believes that such market maker coordination is necessary and appropriate because an AutoQuote system is centralized and applicable to all market participants. Thus, the obligations resulting from the quotes generated by AutoQuote, such as the firm quote obligation, are imposed on the crowd as a whole.[9] Moreover, although AutoQuote is essential to ensure that quotes are updated on the numerous series traded by the Exchange on a timely basis, individual market makers can and do compete among each other to gain a larger share of orders by verbalizing quotes that improve the AutoQuote generated quotes. These verbalized quotes by market makers override the AutoQuote generated quotes for the particular series that is the subject of the verbalized quote.

Finally, the proposed amendment to Interpretation .07 would provide that the provisions described above and set forth in the proposed amendment to Interpretation .07 would also apply to the use of automated quotation updating systems that generate indicative prices that are indications of interest and not firm quotes.[10]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] Specifically, the Commission believes that the proposed rule change is consistent with the Section 6(b)(8)[12] requirement that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the proposed rule change should deter collective action, except as authorized by the Exchange's rules, by clearly establishing in the Exchange's rules the responsibilities of, and conduct permitted by, Exchange members in setting AutoQuote parameters. For instance, the proposal would permit the DPM, LMM, or SMM, or Appointed Market-Maker, as applicable, to receive input from members of the crowd in setting the parameters of the formula used to automatically update options quotations. At this time, the Commission believes it is reasonable for the Exchange's rules to permit the members of the crowd to be given a voice in setting autoquote parameters because, pursuant to the Exchange's rules, they will be obligated to execute orders at the resultant quote. In addition, the proposal codifies a more complete description of AutoQuote, which the Commission believes should protect investors and the public interest by providing important information regarding how options prices on the Exchange are derived. Moreover, the Commission notes that individual market makers can compete among each other to gain a larger share of orders and override the AutoQuote generated quotes by verbalizing quotes that improve the AutoQuote generated

[6] Although the Exchange believes that AutoQuote is necessary, the Exchange notes that individual market makers can and do manually improve the quote themselves in order to gain a larger share of orders than competing market makers. In these instances, the manual quote overrides the AutoQuote for that particular series.

[7] *See* CBOE Rule 8.85(a)(x).

[8] On December 17, 2001, the CBOE filed SR–CBOE–2001–63 which amends CBOE Rule 8.15 to make explicit in the rule that the appropriate Market performance Committee (''MPC'') may appoint LMMs and SMMs to determine a formula for generating automatically updated market quotations and use the Exchange's AutoQuote system or a proprietary automated quotation updating system to update market quotations during the trading day in an options class for which a DPM has not been appointed. *See* Securities Exchange Act Release No. 45419 (February 7, 2002), 67 FR 6772 (February 13, 2002). The Commission is approving SR–CBOE–2001–63 simultaneously with the proposed rule change.

[9] CBOE has always used, and the applicable CBOE rules envision, a centralized autoquote system. Although it may be technologically feasible at some point in the future to have a system that would permit each individual market-maker to have his or her own automatic quote updating capability (and although CBOE may eventually develop such a model), CBOE believes that its centralized autoquote system is essential to preserving CBOE's current model of a floor-based, open-outcry market that includes joint crowd obligations pursuant to rules that have been approved by the Commission.

[10] Interpretation and Policy .10 to CBOE Rule 8.7 provides that ''[m]arket-makers may display indicative spread prices on the websites of member organizations through a system licensed from a third party, developed by the Exchange or otherwise. Such indicative prices shall not be regarded as firm quotes, and a market-maker shall not be obligated to execute at the indicative prices spread orders that are entered into the market.''

[11] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(8).

quotes, which should limit any anticompetitive effects of the proposed rule change.

The Commission notes that in its filing, the Exchange states its belief that the proposed rule change is ''procompetitive'' because it is necessary to provide for a fair and orderly market in the thousands of options series traded on the Exchange. While the Commission does not agree that the proposed rule change enhances competition, the Commission finds that the burden that the proposal imposes on competition is appropriate in furtherance of the purposes of the Act and, thus, is not inconsistent with the Act.[13] Finally, the Commission finds that the proposed rule change is designed to effectively limit the circumstances in which collective action is permissible.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–CBOE–2001–64) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6902 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

[13] The Commission expects the Exchange to monitor the collective actions that are undertaken pursuant to the rule change approved herein for any undesirable or inappropriate anticompetitive effects. The Commission's examination staff will monitor the Exchange's efforts in this regard.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45585; File No. SR–CHX–2002–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Confirming Changes Arising From the Securities Industry Transition to a Decimal Pricing Environment

March 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2002, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') 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 by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In this submission, the Exchange proposes to confirm the amendment of certain CHX rules that were impacted by the securities industry transition to a decimal pricing environment. The text of the proposed rule change is available at the Commission and at the CHX.

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 Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to confirm its amendment of certain CHX rules that were impacted by the securities industry transition to a decimal pricing environment. The amendments described in this submission consist of changes that: (1) Confirm that the Exchange's minimum trading variation is $.01; (2) delete references to the procedures and conventions that were used during the conversion from quoting in fractions to quoting in decimals; and (3) remove all fractional price increments set forth in the current version of certain CHX rules.

Minimum Price Variation. The Exchange's rules currently state that all issues quoting in decimals will quote in increments of $.01 or any other variation required by the joint decimalization implementation plan filed with the Commission. This submission confirms the $.01 quoting increment and deletes references to the joint decimalization plan.

Removing references to the conversion from fractional to decimal pricing. Article XXB of the Exchange's Rules currently contains rules relating to the transition from a fractional pricing environment to one based on decimals. Now that this process has been completed, the Exchange believes it is appropriate to formally remove this Article from its rules.

Removing other fractional references. The remaining text contained in this submission removes fractional references in other Exchange rules.

None of the changes proposed in this submission effect any substantive change in the CHX rules or the operations of the Exchange. Instead, this submission confirms that the rules that the Exchange put in place as it began its transition to quoting in decimals continue to govern its operations.[3]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange and, in particular, with the requirements of Section 6(b).[4] In particular, the proposed rule change is consistent with section 6(b)(5) of the Act[5] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 were either solicited or received.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] These changes were included in a rule change proposal submitted pursuant to section 19(b)(3)(A) of the Act, which took effect upon filing. *See* Securities Exchange Act Release No. 43256 (September 6, 2000), 65 FR 55659 (September 14, 2000) (SR–CHX–00–25). That proposal contained language that sought to remove fractional references automatically once the transition to decimal trading had been completed. In addition to confirming the Exchange's minimum trading increment, this submission recognizes that that automatic removal was not an available alternative and formally removes the fractional references from the Exchange's rules.

[4] 15 U.S.C. 78(f)(b).

[5] 15 U.S.C. 78(f)(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CHX consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–2002–06 and should be submitted by April 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6937 Filed 3–21–02; 8:45 am]

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[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45584; File No. SR–CHX–2002–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Requesting Permanent Approval of Pilot Rules Relating to the Securities Industry Transition to Decimal Pricing

March 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2002, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') 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 by the CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange requests permanent approval of pilot rule changes amending certain CHX rules that were impacted by the securities industry transition to a decimal pricing environment, including the Exchange's crossing rule. The two pilots containing these rule changes are due to expire on April 15, 2002. The text of the proposed rule change is available at the Commission and at the CHX.

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 CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange requests permanent approval of pilot rule changes amending certain CHX rules that were impacted by the securities industry transition to a decimal pricing environment, including the Exchange's crossing rule. The two pilots containing these rule changes are due to expire on April 15, 2002. The CHX is not proposing any substantive changes to the pilots.

On August 24, 2000, the Commission approved, on a pilot basis through February 28, 2001, changes proposed by the Exchange to amend certain CHX rules that would be impacted by the securities industry transition to a decimal pricing environment.[3] By a series of subsequent submissions, each pilot was extended to April 15, 2002.[4] The Exchange now requests permanent approval of the current pilots, effective as of April 15, 2002.

The Ominbus Decimal Pilot: The Omnibus Decimal Pilot for which the Exchange seeks permanent approval amended certain provisions of Article XX, Rule 37 of the Exchange's rules, which were impacted by the securities industry transition to a decimal pricing environment. Specifically, the Exchange proposes permanent approval of changes to Article XX, Rule 37 which (1) Allow specialists to elect, on an issue by issue basis, to either manually

[3] These changes were proposed in two separate CHX submissions, the second of which dealt solely with decimal-related changes to the Exchange's crossing rule, Article XX, Rule 23, *See* Securities Exchange Act Release No. 43204 (August 24, 2000), 64 FR 53065 (August 31, 2000) (SR–CHX–00–22) (approving changes to various CHX rules on a pilot basis (''Omnibus Decimal Pilot'')); *see also* Securities Exchange Act Release No. 43203 (August 24, 2000), 65 FR 53067 (August 31, 2000) (SR–CHX–00–13) approving changes to the CHX crossing rule on a pilot basis (''Crossing Rule Decimal Pilot'')).

[4] *See* Securities Exchange Act Release No. 42964 (February 16, 2000) 66 FR 11621 (February 26, 2001) (File No. SR–CHX–2001–03) (extending Omnibus Decimal Pilot through July 9, 2001); 44488 (June 28, 2001), 66 FR 35684 (July 6, 2001) (SR–CHX–2001–13) (extending Omnibus Decimal Pilot through November 5, 2001); 45059 (November 15, 2001), 66 FR 58453 (November 21, 2001) (SR–CHX–2001–20) (extending Omnibus Decimal Pilot through January 14, 2002), and 45481 (February 27, 2002), 67 FR 10244 (March 6, 2002) (SR–CHX–2002–01) (extending Omnibus Decimal Pilot through April 15, 2002; *see also,* Securities Exchange Act Release Nos. 44000 (February 23, 2001) (66 FR 13361 (March 5, 2001) (extending Crossing Rule Decimal Pilot through July 9, 2001), 45010 (November 1, 2001), 66 FR 56585 (November 8, 2001) (SR–CHX–2001–22) (extending Crossing Rule Decimal Pilot through January 14, 2002), and 45482 (February 27, 2002), 67 FR 10243 (March 6, 2002) (SR–CHX–2002–03) (extending Crossing Rule Decimal Pilot through April 15, 2002).

or automatically execute limit orders when a trade-through occurs in the primary market; (2) remove the ''pending auto-stop'' functionality from the Exchange's systems; and (3) allow a specialist, on an issue by issue basis, to establish an auto execution guarantee that is not dependent on the ITS Best Bid or Offer (''ITS BBO'') or National Best Bid or Offer (''NBBO'') size. The Exchange believes that decimal pricing is likely to continue to affect the CHX trading environment, and the interaction between the CHX and the national market system, in a manner that necessitates permanent approval of these pilot rule changes, which are designed to minimize the adverse impact of decimalization on trading operations.[5]

Manual or Automatic Execution of Limit Orders When a Trade-Through Occurs. The Exchange proposes to amend permanently Article XX, Rule 37(b)(6) to allow a specialist to elect, on an issue by issue basis, to either manually or automatically execute limit orders when a trade-through occurs in the primary market. The pre-pilot version of the rule provided that agency limit orders (that were not marketable when entered into the Exchange's MAX automatic execution system) would automatically be filled at the limit price when there was a price penetration of the limit price in the primary market for the subject security. Under the pilot rule, automatic execution of such limit orders is no longer mandated. A CHX specialist may elect to provide for automatic execution of agency limit orders at the limit price when there is a price penetration of the limit price in the primary market for the subject security or securities. The obligation to fill the order at the limit price remains the same under either election. The Exchange believes that this pilot rule reasonably addresses the impact that the decimal pricing environment has had on the national market system, where the number of small orders executed at multiple price levels has increased the number of inadvertent trade throughs that would otherwise lead to unwarranted automated executions of large orders in a CHX specialist's limit order book, exposing the specialist to substantially increased liability in the decimal pricing environment.

Removal of the Pending Auto-Stop Functionality. For similar reasons, the Exchange proposes to amend permanently Article XX, Rule 37(b)(10) to eliminate the Exchange's ''pending auto-stop'' function. Under the pre-pilot rule, all agency market orders from 100 to 599 shares that were not automatically executed, because, among other things, the order size exceeded the quantity at the ITS BBO, were designated as ''pending auto-stop orders.'' Such orders were stopped, and due an execution at the ITS BBO thirty seconds after entry into the Exchange's MAX system, unless the order had been canceled, executed, manually stopped, or put on hold during such thirty second period. Once an order was stopped, a text message to that effect was automatically sent to the order-sending firm.

The Exchange believes that this feature is not practicable in the decimal pricing environment, given the dramatic increases in quote traffic and the systems issues associated with generating administrative notifications regarding pending auto-stop. Additionally, quoting in decimals has significantly increased stock price points and, as a result, decreased the quantities associated with the ITS BBO price point and increased the rate of change in the ITS BBO price point. Both of these factors reduce a specialist's ability to offset the pending auto-stop guarantee. Under these circumstances, the Exchange believes it would be imprudent to continue to provide such a guarantee.

Changes Relating to Relationship Between Automatic Execution Guarantee and BBO Size. The rationale set forth above relating to the decrease in the quantities associated with the BBO price point also supports permanent approval of the Exchange's pilot rule change permitting CHX specialists to designate automatic execution guarantee levels that are not dependent on the BBO. Under the pre-pilot version of the CHX rule,[6] an order was not eligible for automatic execution on the Exchange if the order was larger than the then-current BBO size. Given the post-decimalization decreased quantities at each price point, the pre-pilot version of the rule would effect a corresponding decrease in the number of orders eligible for automatic execution on the Exchange. To accommodate customer demand for automatic execution, the Exchange believes that permanent approval of the pilot rule is necessary. The pilot rule permits a CHX specialist to designate, on an issue-by-issue basis, automatic execution guarantees that exceed the BBO size. Such an election is strictly voluntary and thus does not operate to increase the exposure of any specialist who desires to maintain the protections of the existing rule.

The Crossing Rule Decimal Pilot: The Exchange also proposes permanent approval of the pilot rule change to Article XX, Rule 23 of the Exchange's rules, which governs participation in crossing transactions in Nasdaq/NM securities effected on the floor of the Exchange Crossing transactions represent a significant component of Exchange volume. Under the pre-pilot rule, if a floor broker presents a crossing transaction, another member was able to participate, or ''break up,'' the transaction, by offering (after presentation of the proposed crossing transaction) to better one side of the transaction by the minimum price variation. The floor broker was then effectively prevented from consummating the transaction as a ''clean cross,'' which often operated to the detriment of the floor broker's customer(s).[7] In instances where the minimum price variation is relatively small, it is very inexpensive for a member to break up crossing transactions in this manner.

Given the post-decimalization transition to a minimum price variation of only $.01, the floor broker community, and other CHX members, remain concerned that much of the crossing business (and corresponding Exchange volume) will evaporate if the pilot rule is not amended on a permanent basis to preclude breaking up crossing transactions in the manner described above.

Under the pilot rule (which was developed by the Exchange's Decimalization Subcommittee and Floor Broker Tech Subcommittee to strike a balance of interests of those members who are impacted by crossing transactions), a floor broker is permitted to consummate crossing transactions without interference by any specialist or market maker if, prior to presenting the cross transaction, the floor broker first requests a quote for the subject

[5] This submission does not concern ''typographical'' amendments to CHX rules, where the sole change that was proposed by the Exchange was the substitution of a decimal price increment for the fractional price increment set forth in certain CHX rules. The proposed ''typographical'' amendments were the subject of a separate submission previously approved by the Commission on a permanent basis. *See* Securities Exchange Act Release No. 43256 (September 6, 2000), 65 FR 55659 (September 14, 2000) (SR–CHX–00–25).

[6] Art. XX, Rule 37(b)(11).

[7] According to the Exchange, some institutional customers prefer executing large crossing transactions at a single price and are willing to forego the opportunity to achieve the piecemeal price improvement that might result from the breakup of the cross transaction by another Exchange member. Of course, the floor broker will still retain the ability to present both sides of the order at the post if the customers so desire.

security.[8] These requests will place the specialist and other market makers on notice that the floor broker is intending to ''cross'' within the bid-offer spread. This arrangement is intended to ensure that a specialist or market maker retains the opportunity to better the cross price by updating their quote, but will preclude them from breaking up a cross transaction after the cross transaction is presented.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[9] The CHX believes the proposal is consistent with section 6(b)(5) of the Act [10] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

I. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CHX consents, the Commission will:

(A) by order approve the proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2002–05 and should be submitted by April 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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[8] These updated quotes are not directed solely to the floor broker. Anyone at the post may respond to the updated quotes.

[9] 15 U.S.C. 78(f)(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)912).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45568; File No. SR–ISE–2001–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the International Securities Exchange LLC To Increase the Minimum Quote Size for Certain Option Classes

March 15, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 16, 2001, the International Securities Exchange LLC (''ISE'' or ''Exchange'') 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 by the Exchange. The ISE amended its proposal on February 13, 2002 [3] and on March 13, 2002.[4] 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

The ISE proposes to adopt a three-month pilot program establishing greater size requirements for certain quotations in specified options. The text of the proposed rule change is available at the ISE and at the Commission.

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 ISE included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE 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

Currently, ISE market makers must establish and maintain quotations that are firm for at least 10 contracts for customers and 1 contract for non-customers. The ISE now wishes to adopt a three-month pilot program in which ISE market makers would be required to establish and maintain quotations of a larger minimum size in a limited number of option classes. Specifically, the details of the three-month pilot program are as follows:

• The pilot would apply to the following options: [5] Nasdaq 100 Trust; Sun Microsystems; EMC Corp.; Qualcomm; Wells Fargo & Co.; Oracle; Lucent; Juniper Networks; Intel; AOL

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated February 12, 2002 (''Amendment No. 1''). In Amendment No. 1, the ISE proposes to replace the original rule filing in its entirety and specifies the options to be included in the pilot program rather than allowing Primary Market Makers (''PMMs'') to choose the options to be included in the pilot.

[4] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division, Commission, dated March 12, 2002 (''Amendment No. 2''). In Amendment No. 2, the ISE proposes to clarify that, in the pilot program, new enhanced size levels would apply to customer and broker-dealer orders, but not to the orders of market makers on either the ISE or other exchanges.

[5] For the purpose of the three-month pilot program, an ''option'' refers to all put and call options on the same underlying security.

Time Warner; Tyco; Citigroup; Cisco; Applied Materials; Microsoft; General Electric; Broadcom; Nokia; and Siebel Systems.[6]

• The pilot would last for three months.

• For PMMs, the minimum size for quotes would be 100 contracts for customers and 50 contracts for broker-dealers.[7] For Competitive Market Makers (''CMMs''), the size requirements would be half of the PMM requirement: 50 contracts for customers and 25 contracts for broker-dealers. The enhanced broker-dealer size would not apply to executions against other market makers, where the minimum size would continue to be 1 contract.[8]

• These enhanced size requirements would apply only to the options series in the three months closest to expiration. Moreover, the pilot would not apply to ''deep-in-the-money'' options[9] or an option in the last three days of that option's trading. That is, the pilot would not apply for the last three days of trading during an option series' expiration week.

The ISE's intent in establishing the pilot program is to help determine the potential effect that increased minimum size requirements would have on the quality of the ISE's market and on the Exchange's ability to attract order flow. The ISE believes that it is likely that larger size guarantees would help the Exchange attract more order flow. However, the Exchange is concerned that requiring larger size could lead to a degradation of the quality of the Exchange's quotation. The Exchange believes that limiting the pilot to the specified options would tend to limit any adverse effects of the higher minimum size requirement. Specifically, the included options represent 19 of the 22 options with the highest trading volume in the industry, and thus, are the most liquid options. The Exchange chose these pilot stocks in consultation with its PMMs and CMMs.[10]

The Exchange intends to monitor the effects of the pilot closely. Prior to the expiration of the pilot, the Exchange would determine whether to end the pilot or whether to continue an enhanced size requirement in this or some other form. If the Exchange determines to continue an enhanced size requirement, it would file the appropriate rule change with the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any 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 were solicited or received with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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 written 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 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2001–32 and should be submitted by April 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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[6] *See* Amendment No. 1, *supra* note 3.

[7] This enhanced quotation size requirement will not affect the PMM's obligation under ISE Rule 803(c)(1) to disseminate a quotation of at least 10 contracts when the quotation consists, in part, of a customer order for less than 10 contracts.

[8] *See* Amendment No. 2, *supra* note 4.

[9] The proposed rule change defines ''deep-in-the-money'' as all options with strike prices that are in the money by four or more pricing intervals in relation to the at-the-money strike price. *See* proposed Supplementary Material .03 to ISE Rule 804.

[10] Telephone conversation between Michael Simon, Senior Vice President and General Counsel, ISE, and Cyndi Nguyen, Attorney, Division, Commission, on March 15, 2002.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45563; File No. SR–MBSCC–2001–02]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Granting Approval of a Proposed Rule Change Implementing a Real-Time Trade Matching Service

March 14, 2002.

I. Introduction

On September 19, 2001, MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–MBSCC–2001–02 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1]. On September 26, 2001, MBSCC filed an amendment to the proposed rule change. Notice of the proposal was published in the **Federal Register** on January 25, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 45299, (January 17, 2002), 67 FR 3762.

granting approval of the proposed rule change.

II. Description

In furtherance of MBSCC's mission to reduce the costs and risks associated with trading in the mortgage-backed securities market, MBSCC has enhanced its services to enable its participants to submit executed trade terms and receive comparison results from MBSCC in a more timely manner. The cornerstone of this objective is the implementation of the Real-Time Trade Matching (''RTTM'') service that will replace MBSCC's current twice-daily match process with respect to trade input information. MBSCC anticipates that the RTTM service will provide more certainty, reduce execution/market risk, and eliminate the redundancy between the verbal checkout process (which is described below) and the current MBSCC matching process.[3]

MBSCC's objective in implementing the RTTM service is to match all trade input in real-time within minutes of trade execution while providing participants with the greatest flexibility and least amount of disruption in the migration towards this goal. MBSCC will retire its batch trade matching process with respect to trade input information upon implementation of the RTTM service. All trade activity for all participants, regardless of the form of trade input, will be matched solely by the RTTM service upon its implementation. Therefore, participants that increase the frequency of submission and reconciliation throughout the business day will be able to realize the benefits of the RTTM service.

MBSCC's Current Matching Process

Currently, MBSCC participants submit details of executed trades daily to MBSCC by means of terminal or batch submissions. While participants may submit trade input to MBSCC during published business hours, MBSCC performs its matching process of participant submitted data twice per day: at 10:30 a.m. (''AM Pass'') and 11:30 p.m. (''PM Pass'').

Output reports/files detailing the results of the matching process are available to participants at 11:30 a.m. (for the AM Pass) and 4:00 a.m. (for the PM Pass). The primary outputs are the ''Purchase and Sale Report'' listing submitted trades that successfully compared and the ''Transaction Summary Report'' listing, among other things, submitted trades that did not compare. The Purchase and Sale Report serves as the sole and binding confirmation of trades and provides data for Rule 10b–10 compliance purposes as well.

Given that the majority of trades are submitted after the AM Pass, the timing limitations of a twice daily matching/reporting process mean that participants generally are notified that a trade has achieved ''binding confirmation'' status at the earliest during the morning following submission to MBSCC. To overcome this time delay, participants engage in a process known as ''verbal checkout.'' Shortly after execution, participants contact each other and verbally confirm executed trade details. The verbal checkout process is important to participants because it allows them to ascertain with some degree of certainty their intraday trading positions. While generally effective, the verbal checkout process is cumbersome, error-prone, and lacks the ''binding'' status afforded by the two-sided matching and confirmation through MBSCC.

The RTTM Service and the Requisite Rules Changes

In order to provide more certainty, reduce execution/market risk, and eliminate the redundancy between the verbal checkout process and MBSCC's trade input matching process, MBSCC will offer the RTTM service. As stated above, MBSCC currently processes transaction information in two batch processing passes. One segment of that processing, the matching of trade input information, will be processed by the RTTM service. The other segments of the daily processing, including the matching of clearance information, will continue to be done in either one or both of the two existing batch processing passes.

The RTTM service will provide trade input matching for dealer-to-dealer trades and for inter-dealer broker trades. The RTTM service will support all of the trade types currently supported by MBSCC (settlement balance order destined, trade-for-trade, comparison only, and option) as well as the various trade functions such as the ''Don't Know'' or ''DK'' function used by participants.

Participants will be able to submit transaction information for processing through the RTTM service using the batch file submission method that is used today, which is called ''File Transmission Service.'' In addition, participants will also be able to use a batch file transmission method that employs SWIFT formats, the RTTM terminal service, and interactive messaging. Regardless of the input method, MBSCC will make available to participants real-time updates on all transactions entered into the system.

The following rule changes are necessary to accommodate the introduction of the RTTM service:

i. *General provisions on the RTTM service:* MBSCC is adding two provisions to its rules to provide generally for the RTTM service. One of these provisions (new Section 1 of Rule 3 of Article II) will provide that MBSCC's comparison of trade input will occur in real time, and the other (new Section 1 of Rule 4 of Article II) will distinguish the RTTM processing from the current processing passes.

ii. *New reports provided by the RTTM service:* MBSCC's RTTM processing will produce output via the RTTM terminal service as well as via interactive messages. MBSCC is adding to its definitions the term ''Report'' to encompass any type of output in any form that is provided by MBSCC to its participants. As a result specifically of RTTM processing, there will be two new ''Reports.'' The ''RTTM Compare Report''[4] will indicate the transactions whose trade input has compared, and the ''RTTM Uncompare Report'' will indicate the transactions whose trade input has not compared.

iii. *Changes to existing reports:* MBSCC will continue to provide the reports that are created as a result of its current two processing passes, with some modifications in one case. The Purchase and Sale Report details the results of the current batch trade processing, which includes the matching of trade input submissions and the matching of clearance information. No changes are proposed to the information provided by the Purchase and Sale Report. Like the Purchase and Sale Report, the Transaction Summary Report is also provided as a result of the current twice daily processing passes. Upon implementation of RTTM processing, the Transaction Summary Report will no longer provide details of unmatched trade terms. Unmatched trade terms will be available to participants via the RTTM Uncompare Reports (which as stated above will be in the form of

[3] One of the main objectives of the RTTM service is to significantly reduce the risks associated with a prolonged period of time between trade execution and achievement of legal and binding confirmation. The elapsed time between trade execution and verbal checkout, followed by a legal and binding confirmation, is a known and serious risk to the ultimate settlement of the trade for all trading organizations. Reducing the elapsed time between trade execution and achievement of a legal and binding confirmation increases certainty and reduces risk.

[4] The RTTM Compare Report will also indicate cancellataions of previously compared trades.

output provided by MBSCC via the RTTM terminal service as well as via interactive messages). MBSCC is proposing to modify its rules to delete references to the Transaction Summary Report as notification of unmatched trades and to provide for this notification to occur by means of the RTTM Uncompare Reports.

iv. *Sole and binding confirmation of trades:* MBSCC's Rules currently provide that the Purchase and Sale Report is the sole and binding confirmation of the trade. In addition, the Purchase and Sale Report currently fulfills Rule 10b-10 requirements for generation of trade confirms. As stated above, upon implementation of RTTM, the Purchase and Sale Report will continue to be produced twice daily listing matched trades. Participants will, however, have received notice of trade input matching prior to the production of the Purchase and Sale report by means of the RTTM Compare Reports. To enable participants to rely upon the results of the RTTM processing, MBSCC is amending its rules so that the RTTM Compare Reports constitute sole and binding trade confirmation of trade input. Since the Purchase and Sale Report covers the matching of clearing information (which is not covered by the RTTM processing and thus would not be reported in the RTTM Compare Reports), it will remain the sole and binding confirmation with respect to that information. The Purchase and Sale Report will remain the Rule 10b-10 compliant confirmation.

v. *Trade input submission by inter-dealer brokers (''IDBs''):* Certain RTTM trade input formats require that an IDB submit two separate transactions linked together by a common reference number per trade. Under the current trade submission format, IDBs submit two transactions on give-up trades: one identifying the buying dealer and one identifying the selling dealer. The rule on IDB trade input (currently Section 1 of Rule 3 of Article II) speaks generally in terms of trade input and does not specify the number of submissions required. MBSCC is modifying this rule to add a reference to MBSCC's Procedures, which will describe in detail the trade input submission requirements.

vi. *Retirement of maximum match mode:* MBSCC's Rules provide that each dealer must select a match mode to govern the comparison of that dealer's MBSCC-eligible transactions involving an IDB. The rules currently provide for three match modes: the ''exact match mode,'' the ''net position match mode,'' and the ''maximum match mode.'' [5] Upon implementation of the RTTM service, only the exact and net position match modes will be available. MBSCC is retiring the maximum match mode due to lack of participant demand for this option. The proposed rule change deletes all references to the maximum match mode.

vii. *Review of reports by participants:* MBSCC's Rules currently contain a provision that requires participants and limited purpose participants to review the reports that they receive from MBSCC. MBSCC is expanding the provision to cover any type of communication provided to participants by MBSCC and to require participants to inform MBSCC promptly, and in no event later than ten calendar days after receipt of the communication, if there is any error, omission, or other problem with respect to the communication. MBSCC believes that the ten-day timeframe will provide participants with a sufficient amount of time within which to detect problems in a communication from MBSCC.

viii. *New definitions:* MBSCC is adding to its definitions the following new terms: ''Real Time,'' ''RTTM Processing,'' ''RTTM Compare Report,'' ''RTTM Uncompare Report,'' and ''Report.'' Various amendments are made to existing definitions that are incidental to the changes described above.

ix. *Amendment to MBSCC's Schedule of Charges for IDBs:* MBSCC is proposing to amend its Schedule of Charges to give IDBs a service-fee based incentive to move to interactive messaging. MBSCC believes that it is important to offer the incentive to its IDB participants because their early participation is critical to a successful implementation of the RTTM service. From a dealer perspective, lack of participation by one or more of the IDBs severely dilutes the benefits dealers will gain from RTTM usage because a large percentage of the dealers' matching activity is against IDBs. The perception of reduced benefits could lead to delays in dealer participation and a protracted rollout process. Therefore, MBSCC is proposing to waive for a period of one year commencing with putting the RTTM service into production the $.25/side ''Give-Up Trade Create'' trade recording fee for IDBs that participate in MBSCC's ''beta'' (testing) phase of the RTTM service and that subsequently move to production.[6]

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of MBSCC.[7] The rule change, which allows MBSCC to implement real-time trade matching, should help MBSCC to reduce risk and provide more certainty by enabling firms to know earlier of any trades which do not compare and to have more time to resolve the problems. As a result, the proposed rule change should facilitate the prompt and accurate clearance and settlement of securities at MBSCC and should help MBSCC to protect the securities and funds in its possession or control or for which it is responsible. Therefore, the Commission finds that the rule change is consistent with Section 17A and the rules and regulations thereunder.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MBSCC–2001–02) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6936 Filed 3–21–02; 8:45 am]

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[5] The ''exact match mode'' means that trade input that matches in all other respects will be compared only if the par amount of the eligible securities reported to have been sold or purchased by the dealer for a particular transaction is identical to the par amount of a particular transaction reported by the broker. The ''net position match mode'' means that trade input that matches in all other respects will be compared only if the aggregate par amount of one or more transactions in eligible securities reported to have been sold or purchased by the dealer equals the aggregate par amount for one or more transactions reported by the broker. The ''maximum match mode'' means that trade input that matches in all other respects will be compared to the extent that the par amount of eligible securities reported to have been sold or purchased by the dealer does not exceed the aggregate par amount for one or more transactions reported by the broker with transactions reported by the broker in any excess par amount remaining uncompared.

[6] IDBs must be interactive in order to participate in the testing phase, which is scheduled to take place during the first quarter of 2002.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45559; File No. SR–NSCC–2001–17]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Revising Fees

March 14, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 17, 2001, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises NSCC's fee schedule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to revise certain fees.[3] Certain trade recording, trade comparison, and trade clearance fees are being reduced for services provided on and after January 1, 2002. Certain fixed income fees are being increased for services provided on and after January 1, 2002. A trade rejection fee for fixed income is being introduced for services provided on and after January 1, 2002. And, an account transfer rejects fee for the automated customer account transfer service (ACATS) is being introduced for services provided on and after March 1, 2002. Based upon estimated volume projections for 2002, it is anticipated that the overall effect on NSCC members of these changes will be to reduce fees paid to NSCC.

NSCC believes the proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among NSCC's particpants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC 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. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes and changes fees imposed by NSCC, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2).[5] 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 NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NSCC. All submissions should refer to the File No. SR–NSCC–2001–17 and should be submitted by April 12, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6935 Filed 3–21–02; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] [3]: NSCC's revised fee schedule is attached as Exhibit A to its filing.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45567; File No. SR–PCX–2001–23]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Pacific Exchange, Inc. To Adopt New Sanctioning Guidelines for Enforcing Compliance With the Exchange's Options Order Handling Rules

March 15, 2002.

I. Introduction

On December 26, 2001, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to adopt new sanctioning guidelines to assist the Exchange in enforcing compliance with its options order handling rules.[3] The proposed rule change was published for comment in the **Federal Register** on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The Exchange filed this proposed rule change pursuant to the requirements of Section IV.B.i of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange to adopt rules establishing, or modifying existing, sanctioning guidelines such that they are reasonably designed to effectively enforce compliance with options order handling rules. *See* Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3–10282 (''Order'').

February 13, 2002.[4] No comments were received on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

Currently, violations of the Exchange's firm quote, limit order display, and priority rules are treated as formal disciplinary actions and outside the scope of the Exchange's Minor Rule Plan (''MRP'').[5] Violations of trade reporting and best execution obligations, however, are generally handled pursuant to the Exchange's MRP. While the MRP provides general guidance with respect to fine levels to be imposed for each distinct violation, nothing in the MRP prohibits the Exchange from removing a single violation of these obligations from the MRP and enforcing it as a formal disciplinary matter. The Exchange may also initiate a formal disciplinary action if it deems that a member or member organization's conduct amounts to a pattern or practice with respect to violations of the rules covered by its MRP or if its conduct in even a single instance is particularly egregious.

The Exchange proposes to establish specific fine levels for disciplinary actions initiated as a result of violations of the Exchange's rules relating to firm quote (Rule 6.86), limit order display (Rule 6.55), obligations of market makers, priority (Rule 6.75), best execution (Rule 6.46), and trade reporting (Rule 6.69). The proposed sanctioning guidelines would be used by various Exchange bodies that adjudicate disciplinary actions, including the Ethics and Business Conduct Committee, the PCX Board of Governors, the PCX Surveillance and Enforcement Departments, for in-house adjudications (collectively, ''Adjudicatory Bodies''), in determining appropriate remedial sanctions. The proposal lists general principles that would be considered by the Adjudicatory Bodies in connection with the imposition of sanctions in all cases.[6] The proposed guidelines provide both a range of fines as well as non-monetary sanctions that could be assessed against offending members. Fine amounts would differ depending on the number of disciplinary actions that have been brought by the Exchange against the particular member or member organization.[7] The proposed guidelines would also allow for non-monetary sanctions such as suspension, expulsion, or other sanctions in egregious cases.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with Section 6(b)(6) of the Act,[10] which requires that the rules of an exchange provide that its members be appropriately disciplined for violations of exchange rules, the Act, and rules and regulations thereunder, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

Moreover, the Commission notes that the Exchange submitted a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where such violations are identified through the Exchange's automated surveillance systems[11]. The Commission believes that the compliance thresholds proposed in this letter provide a reasonable first step and should assist the Exchange in disciplining its members for violations of the Exchange's order handling rules. The Commission expects, however, that as compliance rates improve, the Exchange will adjust the compliance thresholds accordingly. Consequently, the Commission's approval of the proposed rule change is contingent on the Exchange providing notice to the Commission's Office of Compliance Inspections and Examinations of any future changes to this letter, and to any other sanctioning guidelines not codified in the Exchange's rules.

At this time, the Commission believes the proposed sanctioning guidelines are reasonably designed to effectively enforce compliance with the options order handling rules. Nevertheless, the Commission expects the Exchange to continue to evaluate the adequacy of the proposed sanctioning guidelines to determine whether they do, in fact, effectively enforce compliance with the options order handling rules.[12]

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–PCX–2001–23) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6894 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45578; File No. SR–PCX–2001–50]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Exchange, Inc. Relating to Rules on Collective Actions of Market Makers

March 15, 2002.

I. Introduction

On December 13, 2001, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'')

[4] *See* Securities Exchange Act Release No. 45416 (February 7, 2002), 67 FR 6777.

[5] *See* PCX Rule 10.13.

[6] The Exchange submitted to the Commission a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where the violations are identified through the Exchange's automated surveillance system. *See* letter from Hassan A. Abedi, Manager, Enforcement, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 21, 2001.

[7] When determining whether an action is the first disciplinary action, the Adjudicatory Body would consider disciplinary actions with respect to violative conduct that occurred within the two years prior to the misconduct at issue. Recent acts of similar misconduct may be considered to be aggravating factors. For purposes of the proposed rule change, this two-year look-back provision would apply on a rolling basis. Telephone conversation between Hassan A. Abedi, Manager, Enforcement, PCX, and Sonia Patton, Special Counsel, Division, Commission, on February 6, 2002.

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(6).

[11] See supra note 6.

[12] The Commission's examination staff will also monitor the application of these guidelines to determine whether they do, in fact, improve member compliance with the options order handling rules.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

submitted to the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to collective actions of market makers. The **Federal Register** published the proposed rule change for comment on February 12, 2002.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of Proposal

The Exchange has submitted the proposed rule change pursuant to subparagraph IV.B.j of the Commission's September 11, 2000 Order,[4] which requires in part that certain options exchanges, including the PCX, adopt new, or amend existing, rules to make express any practice or procedure whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class. The Exchange is proposing to amend PCX Rule 6.37 (''Obligation of Market Makers'') by adding a new subsection (e) to be entitled, ''Prohibited Practices and Procedures.'' Proposed subsection (e)(1) would state that any practice or procedure whereby market makers trading any particular option issue determine by agreement the spreads or option prices at which they will trade that issue is prohibited, subject to three exceptions set forth in proposed PCX Rule 6.37(f), which are described below.

Subsection (1) to proposed PCX Rule 6.37(f) would permit the Lead Market Maker (''LMM'') to receive input from the members of the trading crowd on the variables of the formula the LMM uses to generate automatically updated market quotations in each option issue, but the members of the crowd would not be required to provide feedback. In addition, it would be within the LMM's sole discretion to make the final independent decision regarding the variables to be used in operating the automated quotation system. Finally, subsection (1) would state that LMMs using Exchange-approved proprietary automated quotation updating systems are not required to disclose proprietary information concerning the variables used by those systems.

Subsection (2) of proposed PCX Rule 6.37(f) would state that the obligation of market makers to make competitive markets would not preclude the LMM and members of the trading crowd from making a collective response to a request for a market, provided the member representing the order requests such a response in order to fill a large order. A large order would be defined as an order for a number of contracts that is greater than the eligible order size for automatic execution pursuant to PCX Rule 6.87.

Subsection (3) of proposed PCX Rule 6.37(f) would state that in conjunction with their obligations as a responsible broker or dealer pursuant to PCX Rule 6.86 and SEC Rule 11Ac1–1,[5] the LMM and market makers in the trading crowd may collectively agree to the best bid, best offer and aggregate quotation size required to be communicated to the Exchange pursuant to PCX Rule 6.86(c).

The Exchange is also proposing a similar change to PCX Rule 6.82 (''Obligations of Lead Market Makers'') by adding new subsection (c)(8), which would provide that LMMs are responsible for establishing the variables in the formula used to generate automatically updated quotations in each option issue or series. It would also permit the LMM to disclose the autoquote variables to the members of the trading crowd.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] Specifically, the Commission believes that the proposed rule change is consistent with the Section 6(b)(8)[7] requirement that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the Act.

The Commission believes that the proposed rule change should deter collective action on the part of Exchange members by clearly establishing in the Exchange's rules that options market makers are prohibited from determining by agreement the spreads or option prices at which they will trade an issue, subject to certain specified exceptions that the Commission herein approves.[8] For instance, the proposal would permit LMMs to receive input from members of the crowd in setting the parameters of the formula used to automatically update options quotations. At this time, the Commission believes it is reasonable for the Exchange's rules to permit members of the crowd to be given a voice in setting autoquote parameters because, pursuant to the Exchange's rules, they will be obligated to execute orders at the resultant quote.

In addition, the proposed rule change would permit the LMM and members of the crowd to make a collective response to a request to fill a large order, provided that a collective response is requested. The Commission believes that this exception recognizes the desire of the marketplace to provide a single price to a request to fill a large order that a single member would not be able to fill. The Commission believes that any anticompetitive effect of this exception is limited by requiring that there be a member's specific request for a single price and that the order be sufficiently large. In addition, the Commission notes that notwithstanding this exception, a single crowd participant may voice a bid or offer independently from, and differently from, the LMM and other members of a trading crowd.

Finally, the Commission finds that the proposed rule change is designed to effectively limit the circumstances in which collective action is permissible.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–PCX–2001–50) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6903 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 45392 (February 5, 2002), 67 FR 6567.

[4] *See* Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

[5] 17 CFR 240.11Ac1–1.

[6] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(8).

[8] The Commission expects the Exchange to monitor the collective actions that are undertaken pursuant to the rule change approved herein for any undesirable or inappropriate anticompetitive effects. The Commission's examination staff will monitor the Exchange's efforts in this regard.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45575; File No. SR–Phlx–2001–25]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Exchange's Auto-Quote System

March 15, 2002.

I. Introduction

On March 5, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the Exchange's Auto-Quote System. The Phlx submitted amendments to the proposed rule change on August 29, 2001 [3] and October 31, 2001.[4] The **Federal Register** published the proposed rule change and Amendment Nos. 1 and 2 for comment on November 23, 2001.[5] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended.

II. Description of Proposal

The Phlx proposes to amend Commentary .01 to Exchange Rule 1080 to add language providing an enhanced description of Auto-Quote, the Exchange's electronic options pricing system and to permit the specialist to consult with the trading crowd in setting Auto-Quote parameters.

On September 11, 2000, the Commission issued an order [6] that requires in part that the Phlx adopt new, or amend existing, rules to include any practice or procedure, not currently authorized by rule, whereby market makers determine by agreement the spreads or option prices at which they will trade any option class.[7] The Exchange submitted the proposed rule change pursuant to this undertaking.

The proposed rule change would incorporate a more thorough description of Auto-Quote into Exchange rules. First, it would describe its various pricing models, inputs, and parameters. Second, it would provide that specialists may establish a specialized proprietary connection (''specialized quote feed'') that by-passes the Auto-Quote system. Finally, it would provide that while the specialist selects the pricing model and inputs for Auto-Quote, he or she may (but is not required to and may, for proprietary business reasons, determine not to) consult with the trading crowd on the pricing model and the inputs to be used. The proposed rule change also provides that if the specialist consults with one member of the crowd, all members of the crowd present must be given the opportunity to provide input.[8] However, members of the trading crowd would not be required to provide input to the specialist in setting Auto-Quote parameters.[9]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] Specifically, the Commission believes that the proposed rule change is consistent with the section 6(b)(8) [11] requirement that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the proposed rule change should deter collective action, except as authorized by the Exchange's rules, by clearly establishing in the Exchange's rules the responsibilities of, and conduct permitted by, Exchange members in setting Auto-Quote parameters.[12] For instance, the proposal would permit specialists to receive input from members of the crowd in setting the parameters of the formula used to automatically update options quotations. The Commission believes it is reasonable for the Exchange's rules to permit the members of the crowd to be given a voice in setting autoquote parameters because, pursuant to the Exchange's rules, they will be obligated to execute orders at the resultant quote. Finally, the Commission finds that the proposed rule change is designed to effectively limit the circumstances in which collective action is permissible.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Phlx–2001–25) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6896 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 28, 2001 (''Amendment No. 1'').

[4] Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated October 30, 2001 (''Amendment No. 2'').

[5] Securities Exchange Act Release No. 45060 (November 15, 2001), 66 FR 58771.

[6] *See* Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000) (''Order'').

[7] *See* Section IV.B.j. of the Order.

[8] *See* Amendment No. 1, *supra* note 3. Among other things, Amendment No. 1: (i) states the reasons why a specialist would wish to consult with the trading crowd about specific Auto-Quote parameters; (ii) clarifies that if a specialist decides to consult with one member of the trading crowd about the Auto-Quote parameters, all members of the crowd that are present at the time must be given the opportunity to consult; and (iii) revises proposed Commentary .01(b)(ii) to Phlx Rule 1080 to state that the specialist may determine which model to select per option, not per series, as previously stated.

[9] *See* Amendment No. 2, *supra* note 4. Amendment No. 2 revises the text of proposed Commentary .01(b)(ii) to Phlx Rule 1080 to clarify that where the specialist determines to consult with and/or agree with the trading crowd with respect to selecting the Auto Quote System model or setting the parameters, members of the trading crowd are not required to provide input to the specialist about these decisions.

[10] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(8).

[12] The Commission expects the Exchange to monitor the collective actions that are undertaken pursuant to the rule change approved herein for any undesirable or inappropriate anticompetitive effects. The Commission's examination staff will monitor the Exchange's efforts in this regard.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45570; File No. SR–Phlx–2001–114]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Aggregation of Individual Violations of Exchange Order Handling Rules and Option Floor Procedure Advices

March 15, 2002.

I. Introduction

On December 18, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to

Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 960.2(f) and Exchange Rule 970 to permit the Exchange to aggregate, or ''batch,'' individual violations of Exchange order handling rules and Option Floor Procedure Advices (''OFPAs'') and consider such ''batched'' violations as a single offense.[3] The proposed rule change was published for comment in the **Federal Register** on February 14, 2002.[4] On March 8, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[5] No comments were received on the proposed rule change. This order approves the proposed rule change on an accelerated basis and issues notice of filing and grants accelerated approval to Amendment No. 1.

II. Description of the Proposal

The proposed rule change would clarify that the Exchange may consider multiple numbers of violations of order handling rules and OFPAs[6] as one single offense, where automated surveillance is available,[7] for purposes of initiating disciplinary action under Exchange rules, or imposing fines pursuant to fine schedules set forth in the relevant OFPAs under the Exchange's Minor Rule Plan. Such aggregation of order handling violations would enable the Exchange's Market Surveillance Department to identify, through exception reporting,[8] members and member organizations that fail to meet acceptable compliance thresholds for such rules and OFPAs, and to determine whether to impose fines pursuant to the Exchange's Minor Rule Plan or refer the matter to the Business Conduct Committee (''BCC'') for consideration of formal disciplinary action.[9] In addition, as an alternative to aggregation, the Exchange may refer violations to the BCC for possible disciplinary action when the Exchange determines that there exists a pattern or practice of violative conduct without exceptional circumstances or when any single instance of violative conduct without exceptional circumstances is deemed to be egregious.[10]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with Section 6(b)(6) of the Act,[13] which requires that the rules of an exchange provide that its members be appropriately disciplined for violations of exchange rules, the Act, and rules and regulations thereunder, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

Moreover, the Commission notes that the Exchange submitted a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where such violations are identified through the Exchange's automated surveillance systems.[14] The Commission believes that the compliance thresholds proposed in this letter provide a reasonable first step and should assist the Exchange in disciplining its members for violations of the Exchange's order handling rules. The Commission expects, however, that as compliance rates improve, the Exchange will adjust the compliance thresholds accordingly. Consequently, the Commission's approval of the proposed rule change is contingent on the Exchange providing notice to the Commission's Office of Compliance Inspections and Examinations of any future changes to this letter, and to any other sanctioning guidelines not codified in the Exchange's rules.

At this time, the Commission believes the proposed sanctioning guidelines are reasonably designed to effectively enforce compliance with the options order handling rules. Nevertheless, the Commission expects the Exchange to continue to evaluate the adequacy of the proposed sanctioning guidelines to determine whether they do, in fact, effectively enforce compliance with the options order handling rules.[15]

Furthermore, the Commission finds good cause for accelerating approval of the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that the proposed rule change was noticed for the full comment period and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange filed this proposed rule change in accordance with the provisions of Section IV.B.i of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange to adopt rules establishing, or modifying existing, sanctioning guidelines such that they are reasonably designed to effectively enforce compliance with options order handling rules. *See* Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3–10282 (''Order'').

[4] *See* Securities Exchange Act Release No. 45421 (February 7, 2002), 67 FR 6961.

[5] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 7, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange clarified that ''batching'' of violations can occur only where the Exchange uses automated surveillance to detect violations.

[6] Specifically, the Exchange proposes, pursuant to its Numerical Criteria for Bringing Cases for Violations of Phlx Order Handling Rules, to ''batch'' violations of Exchange Rule 1051 (concerning the requirement that a member or member organization initiating an options transaction must report or ensure that the transaction is reported within 90 seconds of execution); Exchange Rule 1082 (concerning the requirement that quotes be firm for both price and size, and the requirement that marketable orders received in a size greater than the disseminated size be executed in their entirety or up to the disseminated size within 30 seconds); OFPA A–1 (concerning the requirement that a specialist use due diligence to ensure that the best available bid and offer is displayed for those option series in which he is assigned); OFPA F–2 (the aforementioned 90-second trade reporting requirement under the Exchange's Minor Rule Plan); and other OFPAs.

[7] *See supra* note 4.

[8] *Id.*

[9] The Exchange submitted to the Commission a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where the violations are identified through the Exchange's automated surveillance system. *See* letter from Anne Exline Starr, First Vice President Regulatory Group, Phlx, to John McCarthy, Associate Director, Office of Compliance, Inspections and Examinations (''OCIE''), Commission, and Deborah Lassman Flynn, Assistant Director, Division, Commission, dated January 30, 2002. The Exchange has informed OCIE that it will begin automated surveillance for trade reporting violations no later than April 15, 2002. In the interim period, OCIE will continue to evaluate the Exchange's surveillance, investigatory, and enforcement process to ensure that the Phlx is adequately surveilling and enforcing member compliance with its trade reporting requirements.

[10] In the event that the Exchange discovers through investigation that a single violation or a pattern or practice of violations of Exchange order handling rules is the result of intentional conduct on the part of a member organization, nothing would preclude the Exchange from referring such a matter directly to the Business Conduct Committee for possible disciplinary action.

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(6).

[14] *See supra* note 9.

[15] The Commission's examination staff will also monitor the application of these guidelines to determine whether they do, in fact, improve member compliance with the options order handling rules.

the Commission is accelerating approval of the filing on the twenty-ninth day after publication of the proposed rule change in the **Federal Register**. The Commission believes that accelerated approval will permit the Exchange to implement, and investors to benefit from, the proposed rule change without undue delay. Amendment No. 1 clarifies that ''batching'' of violations can occur only where the Exchange uses automated surveillance to detect violations. In addition, the Commission notes that it received no comments on the proposed rule change. For these reasons, the Commission finds good cause exists, consistent with Sections 6(b)(5)[16] and 19(b)(2) of the Act,[17] to approve the proposed rule change and Amendment No. 1 thereto on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to file number SR–Phlx–2001–114 and should be submitted by April 12, 2002.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–Phlx–2001–114) and Amendment No. 1 thereto are approved on an accelerated basis.

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(2).

[18] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6897 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45569; File No. SR–Phlx–2001–60]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Adopting Sanctioning Guidelines for Violations of the Exchange's Order Handling Rules

March 15, 2002.

I. Introduction

On May 31, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new sanctioning guidelines to assist the Exchange in enforcing compliance with its options order handling rules.[3] On December 18, 2001, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on February 13, 2002.[5] No comments were received on the proposed rule change. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposes to adopt sanctioning guidelines (''Guide'') to assist the various individuals involved in the Exchange's enforcement process, including the Exchange's BCC, by recommending ranges of monetary sanctions to be applied to violations of certain Exchange rules and Option Floor Procedure Advices (''OFPAs''). The Guide covers certain offenses related to the trading of options on the Exchange trading floor, with particular emphasis on options order handling rules.[6] The Guide is proposed as an internal document to be used by the BCC, hearing panels, and the Board of Governors (''Adjudicatory Bodies'') in determining appropriate sanctions to be imposed in formal disciplinary proceedings. The Exchange's enforcement staff may also refer to the Guide in negotiating settlements.

The Exchange has drafted the Guide with an introduction and matrices. The introduction explains the purpose and intent of the Guide and presents an overview of the Exchange's enforcement program, including a description of factors to be considered when sanctioning misconduct in disciplinary proceedings. The matrices cover the Exchange's options order handling rules. Each matrix outlines recommended monetary sanction ranges and specific factors for consideration when a particular options order handling rule has been violated.[7] The proposed Guide would also allow for non-monetary sanctions, such as suspension, expulsion, or other sanctions in egregious cases. The matrices are also arranged by subject matter and trading floor participant (floor broker, registered options trader, specialist).

The proposed Guide would cover only matters brought before the Exchange's BCC, which has jurisdiction over disciplinary actions pursuant to Exchange By-law Article X, Sec. 10–11

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange filed this proposed rule change pursuant to the provisions of Section IV.B.i of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange to adopt rules establishing, or modifying existing, sanctioning guidelines such that they are reasonably designed to effectively enforce compliance with options order handling rules. See Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3–10282 (the ''Order'').

[4] *See* letter from Linda S. Christie, Counsel, Phlx, to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 17, 2001 (''Amendment No. 1''). In Amendment No. 1, the Exchange amended Phlx Rule 960.10(a) to incorporate the Exchange's Enforcement Sanction Guide by reference into the Exchange's rules. The proposed new language requires the Exchange's Business Conduct Committee (''BCC'') to refer to the Enforcement Sanction Guide for factors to be considered and appropriate sanctions when imposing disciplinary sanctions for violations of the Exchange's option order handling rules.

[5] *See* Securities Exchange Act Release No. 45415 (February 7, 2002), 67 FR 6781.

[6] In addition to filing this proposed Guide, the Exchange has submitted another proposed rule change to adopt guidelines to be used in determining when it is appropriate to aggregate violations of the Exchange's options order handling rules. See Securities Exchange Act Release No. 45421 (February 7, 2002), 67 FR 6961 (February 13, 2002) (SR-Phlx-2001–114).

[7] The Exchange informed Commission staff that the Adjudicatory Bodies would be permitted to consider the entire disciplinary history of the member and, in any event, would be required to consider all violations within the past three years. Telephone conversation between Linda Christie, Counsel, Phlx, and Sonia Patton, Special Counsel, Division, Commission, on March 8, 2002.

and Exchange Rule 960.1. The Guide would not apply to violations charged under the Exchange's minor rule violation enforcement and reporting plan, which consists of Exchange Rule 970 and the corresponding OFPA.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with Section 6(b)(6) of the Act,[10] which requires that the rules of an exchange provide that its members be appropriately disciplined for violations of exchange rules, the Act, and rules and regulations thereunder, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

At this time, the Commission believes the proposed sanctioning guidelines are reasonably designed to effectively enforce compliance with the options order handling rules. Nevertheless, the Commission expects the Exchange to continue to evaluate the adequacy of the proposed sanctioning guidelines to determine whether they do, in fact, effectively enforce compliance with the options order handling rules.[11]

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–2001–60), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6900 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(6).

[11] The Commission's examination staff will also monitor the application of these guidelines to determine whether they do, in fact, improve member compliance with the options order handling rules.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45581; File No. SR–Phlx–2002–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Amending Existing Exchange Rules and Options Advices To Eliminate References to Fractional Pricing

March 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 14, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') 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 by the Phlx. The Phlx submitted an amendment to the proposed rule change on March 8, 2002.[2] 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

The Exchange proposes to amend certain Phlx rules and Phlx Options Floor Procedure Advices and Order and Decorum Regulations (''Options Advices''), to remove references to fractional pricing. The text of the proposed rule change is available at the Commission and the Phlx.

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 Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend certain existing Exchange rules and Options Advices to delete references to fractions and dual pricing in fractions and in decimals. Although references in Exchange rules to both fractional and decimal pricing were necessary during the phase-in period of decimalization since June of 2000, such references are no longer needed after full, industry-wide implementation of decimal pricing as a result of which all equity and option products are now quoted only in decimals.

In June 2000, the Commission reviewed the Decimals Implementation Plan (''Decimals Plan'')[3] submitted by the National Association of Securities Dealers and the national securities exchanges. The Decimals Plan proposed a Minimum Price Variation (''MPV'') of $.01 for equities, and an MPV of $.05 for options trading under $3.00 and $.10 for options trading at $3.00 or higher, which the Exchange implemented in Phlx Rules 125 and 1034 (''MPV rules'').[4] Because decimals pricing was instituted in several phases in the years 2000 and 2001, during which time securities were quoted in both fractional and decimal prices, the Exchange modified its MPV rules and various other rules to include references to both fractional and decimal pricing. After the implementation of full, industry-wide decimalization such that all securities now quote in decimals, references to

[1] 15 U.S.C. 78s(b)(1).

[2] The Phlx submitted a new Form 19b–4, which replaces and supersedes the original filing in its entirety.

[3] *See* Securities Exchange Release No. 42914 (June 8, 2000), 65 FR 38101 (June 19, 2000).

[4] *See* Securities Exchange Act Release No. 43421 (October 6, 2000), 65 FR 61207 (October 16, 2000). The Exchange has indicated that it believes the MPV for equities should be $.05 and not the current $.01 MPV. *See* Phlx Decimal Pricing Impact Study for Equities and Options (September 7, 2001) and Phlx comment letter to Commission sub-pennies concept release S7–14–01 (November 19, 2001), wherein Phlx suggested that the investing public and the markets would be best served by mandating a nickel MPV for equity trading. For competitive reasons, however, the Exchange intends to continue the penny MPV for equities, and the nickel/dime MPV for options. The Exchange therefore reaffirms the MPVs currently in its rules: $.01 for equities (Rule 125), and $.05 for equity and index options and Exchange-Traded Fund Shares quoting under $3.00 and $.10 for those quoting at $3.00 or higher (Rule 1034).

fractions and dual pricing in fractions and in decimals are no longer necessary in Phlx rules.

The Exchange therefore proposes to delete references to fractions and dual pricing from the following Phlx Rules of the Board of Governors:[5] 125, Variations in Bids and Offers; 229, Philadelphia Stock Exchange Automated Communication and Execution System; 245, Terms of Offering on Tape; 307 ''Part-Paid'' Securities; and 803 Criteria for Listing—Tier I.

The Exchange proposes to delete references to fractions and dual pricing from the following Phlx options rules: 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders; 1015 Quotation Guarantees; 1034 Minimum Trading Increments; 1079 FLEX Index and Equity Options;[6] 1080 Philadelphia Stock Exchange Automated Options Market (''AUTOM'') and Automatic Execution System (''AUTO–X'');[7] and 1033A, Meaning of Premium Bids and Offers.

The Exchange proposes to delete references to fractions and dual pricing from the following Options Advises: A–9, All-or-None Option Orders; A–11, Responsibility to Fill Customer Orders; and F–6, Option Quote Parameters.[8]

An example of the non-substantive changes proposed is that the language of Exchange Rules 125 and 1034 will be modified to eliminate references to fractional increments so that the remaining language will refer only to quoting in decimals. A further example is that references to fractional pricing in Exchange Rule 1080(c)(i)(C) will be eliminated so that the example of a crossed trade in the rule that currently reflects fractional pricing (2⅛ bid, 2 asked) would reflect only decimal pricing (2.10 bid, 2 asked).

According to the Exchange, the proposed amendments are non-substantive, technical changes for the purpose of conforming Exchange rules to the development of full decimalization in the securities industry.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[10] in general, and with Section 6(b)(5),[11] in particular, in that it promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule, as amended, will impose any inappropriate 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 were either solicited or received.

I. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx 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 written 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 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–05 and should be submitted by April 12, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6939 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

[5] The Exchange's Rules of the Board of Governors (numbered between 1 and 1000) are applicable to equity trading. By virtue of Phlx Rule 1000, they are also applicable to options trading except to the extent that specific options rules (numbered 1000 et. seq.) govern or unless the context otherwise requires.

[6] FLEX options are customized index options that trade on the Phlx as well as on other exchanges.

[7] AUTOM is the Exchange's electronic order routing, delivery, execution, and reporting system for equity and index options. AUTO–X, the automatic execution feature of AUTOM, automatically executes eligible public customer market and marketable limit orders in equity and index options.

[8] In addition, subsequent to an amendment of the joint exchange Intermarket Trading System (''ITS'') Plan to remove references to fractional pricing, Phlx intends to modify its Rule 2001, Intermarket Trading System, to delete such references. Phlx and the other ITS participants have substantially similar rules implementing the ITS Plan.

[9] Certain Phlx rules, such as Rule 650, Mandatory Participation in Decimalization Testing, and Rule 134, Decimal Pricing, expired automatically upon the full, industry-wide implementation of decimal pricing, and do not require any rule change.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45580; File No. SR–Phlx–2002–18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Make Permanent a PACE Automatic Price Improvement Pilot Program and a PACE Order Execution and Price Protection Pilot Program

March 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, notice is hereby given that on March 11, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') 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 by the Exchange. The Exchange has requested accelerated approval of the proposed rule change. The Commission is publishing this notice to solicit comments on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make permanent two Philadelphia Stock Exchange Automated Communication and Execution System (''PACE'')[3] pilot programs that were introduced with the advent of decimal pricing in the securities industry. The first PACE pilot program, which is found in Supplementary Material .07(c)(i) to Phlx Rule 229, consists of an automated price improvement feature that incorporates a percentage of the spread between the bid and the offer (''Price Improvement Pilot''). It has been in effect since January 30, 2001.[4]

The second PACE pilot program, which is found in Supplementary Material .05 and .07(c)(ii) to Phlx Rule 229, incorporates immediate execution of certain market orders through the Public Order Exposure System (''POES'') and mandatory double-up/double-down price protection (''Order Execution/Price Protection Pilot''). It has been in effect since August 25, 2000.[5]

The Phlx is not making any changes to the Price Improvement Pilot or the Order Execution/Price Protection Pilot, with the exception of deleting language that indicates that they are pilot programs. Upon approval of the proposed rule change, the Price Improvement Pilot and the Order Execution/Price Protection Pilot will be permanent. The text of the proposed rule change is available at the Phlx and at the Commission.

[3] PACE is the Phlx's automated order routing, delivery, execution and reporting system for equities.

[4] The price improvement pilot program was established in SR–Phlx–2001–12. *See* Securities Exchange Act Release No. 43901 (January 30, 2001), 66 FR 8988 (February 5, 2001) (SR–Phlx–2001–12). It was extended several times, currently through April 15, 2002. *See* Securities Exchange Act Release Nos. 44672 (August 9, 2001), 66 FR 43285 (August 17, 2001)(SR–Phlx–2001–67); 45078 (November 19, 2001), 66 FR 59293 (November 27, 2001) (SR–Phlx–2001–101); and 45284 (January 15, 2002), 67 FR 3253 (January 23, 2002) (SR–Phlx–2002–01).

[5] The order execution and price protection pilot program was established in SR–Phlx–00–08. *See* Securities Exchange Act Release No. 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000). It was extended several times, currently through April 15, 2002. *See* Securities Exchange Act Release Nos. 44185 (April 16, 2001), 66 FR 20511 (April 23, 2001)(SR–Phlx–2001–20); 44818 (September 19, 2001), 66 FR 49240 (September 26, 2001)(SR–Phlx–2001–81); 45079 (November 19, 2001), 66 FR 59292 (November 27, 2001)(SR–Phlx–2001–102); and 45295 (January 16, 2002), 67 FR 3624 (January 24, 2002) (SR–Phlx–2002–03).

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 Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx proposes to make permanent the Price Improvement Pilot and the Order Execution/Price Protection Pilot. No other changes are proposed to these pilot programs.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act[6] in general, and in particular, with Section 6(b)(5),[7] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by providing for automatic price improvement and automatic execution of certain market orders and mandatory double-up/double-down price protection for equities traded over the PACE system on a permanent basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate 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 were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange 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.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

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 Exhange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–18 and should be submitted by April 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6940 Filed 3–21–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending March 8, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–11783
Date Filed: March 6, 2002

Parties: Members of the International Air Transport Association
Subject:
PTC2 EUR–AFR 0146 dated 22 February 2002
TC2 Europe-Africa Expedited Resolutions r1–r6
PTC2 EUR–AFR 0147 dated 1 March 2002
TC2 Europe—Africa Resolutions r7–r47
Minutes—PTC2 EUR–AFR 0145 dated 22 February 2002
Tables—PTC2 EUR–AFR Fares 0094 dated 1 March 2002
Intended effective dates: 1 April 2002, 1 May 2002

Docket Number: OST–2002–11784
Date Filed: March 6, 2002
Parties: Members of the International Air Transport Association
Subject:
PTC2 AFR 0115 dated 19 February 2002
TC2 Within Africa Expedited Resolutions 015v, 017c
PTC2 AFR 0117 dated 26 February 2002
TC2 Within Africa Resolutions r3–r30
Minutes—PTC2 AFR 0116 dated 22 February 2002
Tables—PTC2 AFR Fares 0043 dated 1 March 2002
Intended effective dates: 1 April 2002, 1 May 2002

Docket Number: OST–2002–11793
Date Filed: March 7, 2002
Parties: Members of the International Air Transport Association
Subject:
PTC12 NMS–AFR 0129 dated 1 March 2002
TC12 South Atlantic-Africa Expedited Resolutions r1–r4
PTC12 NMS–AFR 0131 dated 1 March 2002
TC12 South Atlantic-Africa Resolution 002d r5
Intended effective dates: 15 April 2002, 30 April 2002

Docket Number: OST–2002–11794
Date Filed: March 7, 2002
Parties: Members of the International Air Transport Association
Subject:
PTC12 NMS–AFR 0128 dated 1 March 2002
North Atlantic-Africa Expedited Resolutions r1–r5
PTC12 NMS–AFR 0130 dated 1 March 2002
North Atlantic-Africa Expedited Resolutions 002a r6
Intended effective dates: 15 April 2002, 30 April 2002

Docket Number: OST–2002–11803
Date Filed: March 7, 2002
Parties: Members of the International Air Transport Association
Subject:
Mail Votes 203 and 204
PTC12 NMS–ME 0156 dated 6 February 2002
TC12 Mid Atlantic-Middle East Resolutions r1–r10
PTC12 NMS–ME 0157 dated 6 February 2002
TC12 South Atlantic-Middle East Resolutions r11–r20
PTC12 NMS–ME 0164 and 0165 dated 1 March 2002
Adoption of Mail Votes 203 and 204
Minutes—PTC12 NMS–ME 0160 dated 15 February 2002 filed with Docket OST 2002–11699
Tables—PTC12 NMS-Fares 0090 dated 5 March 2002
PTC12 NMS-Fares 0091 dated 5 March 2002
Intended effective dates: 1 April 2002

Andrea M. Jenkins,
Federal Register Liaison.
[FR Doc. 02–6965 Filed 3–21–02; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary; Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending March 8, 2002

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1997–2911.
Date Filed: March 6, 2002.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 27, 2002.
Description: Application of United Air Lines, Inc., pursuant to 49 U.S.C. Sections 41102, 41108 and Subpart B, requesting renewal of its experimental certificate of public convenience and necessity for Route 747, to engage in scheduled foreign air transportation of persons, property, and mail between a point or points in the United States, the intermediate point Frankfurt, Germany, and the coterminal points Johannesburg and Cape Town, South Africa, and beyond South Africa to Harare, Zimbabwe.

Andrea M. Jenkins,
Federal Register Liaison.
[FR Doc. 02–6966 Filed 3–21–02; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2001–9854]

Notice of Alternative Policy Options for Managing Capacity at LaGuardia Airport and Proposed Extension of the Lottery Allocation; Notice of Comment Period Closing Date

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of comment period closing date.

SUMMARY: This action establishes a new closing date for the comment period for Phase II of the notice ''Alternative Policy Options for Managing Capacity at LaGuardia Airport and Proposed Extension of the Lottery Allocation.'' The FAA indefinitely suspended the closing date for the comment period for Phase II after the terrorist attacks on September 11, 2001.

ADDRESSES: Comments should be mailed or delivered in duplicate to: U.S. Department of Transportation Dockets, Docket No. FAA–2001–9854, 400 Seventh Street, SW, Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following Internet address: DMS.dot.gov. Comments may be filed and/or examined in Room Plaza 401 between 10:00 a.m. and 5:00 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Wharff, Senior Economist, Office of Aviation Policy and Plans, 800 Independence Avenue, SW, Washington, DC 20591; telephone number 202–267–7035.

Background

On June 12, 2001, the FAA published a notice in the **Federal Register** seeking comments on a proposed extension of the slot exemption lottery allocation (Phase I) and several demand management options for LaGuardia Airport (Phase II) (66 FR 31731). Specifically, with respect to Phase II, the FAA sought comments on the feasibility and effectiveness of five different demand management options that could be used to replace the current temporary administrative limits on the

number of aircraft operations at LaGuardia Airport (LGA). These five demand management options include both administrative and market-based approaches to allocate capacity. The details of each approach are described in the notice and can be accessed electronically through the following URL: *http://api.hq.faa.gov/lga/index.htm*.

Following the aircraft hijackings and terrorist attacks on September 11, 2001, the FAA temporarily ceased all non-military flights in the United States and required the adoption of certain security measures prior to the resumption of commercial air service. Several air carriers reduced flight schedules below previously planned levels throughout the national airport system, including LGA, in order to adjust to operational changes brought on by the new security requirements and reductions in passenger demand. Given these events, the FAA suspended, by notice issued on October 12, 2001, the closing date for the comment period on Phase II until further notice (66 FR 52170). The FAA indicated in that notice that at a later date it would publish a notice setting forth the new closing date and indicate whether the scope or nature of the demand management options under consideration have changed.

Current Action

Utilization rates of slot and slot exemptions at LGA are currently below last year's levels by approximately 14 percent. However, based on projected airline schedules for LGA, it appears that operations at LGA should return to their pre-September, 2001 levels by the end of the summer of 2002. Consequently, the FAA believes that it is appropriate to resume the discussion on long-term demand management alternatives for LGA.

Additionally, several recent actions may affect commenters' view of the identified demand management options, such as the attacks of September 11, the Port Authority of New York and New Jersey's rate increase for LGA, John F. Kennedy International Airports and Newark International Airport, and the shift in fleet mix resulting in an increase number of regional jet operations at LGA since September 11. The FAA invites comments on the long-term effects of these actions on the stated options. Therefore, the comment period for Phase II will close 90 days from the publication date of this notice.

Issued on March 18, 2002 in Washington, DC.

John M. Rodgers,

Director of the Office of Aviation Policy and Plans.

[FR Doc. 02–6973 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development (R,E&D) Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development (R,E&D) Advisory Committee.

AGENCY: Federal Aviation Administration.

ACTION: Notice of meeting.

Name: Research, Engineering & Development Advisory Committee.

Time and Date: April 23—9 a.m.–5 p.m.; April 24—10 a.m.–3 p.m.

Place: Holiday Inn Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia 22209.

Purpose: The meeting agenda will include receiving recommendations from the standing Subcommittees or FAA's research and development investments in the areas of air traffic services, airports, aircraft safety, security, human factors and environment and energy.

Attendance is open to the interested public but limited to space available. Persons wishing to attend the meeting or obtain information should contact Gloria Dunderman (*gloria,ctr.dunderman@faa.gov*) at the Federal Aviation Administration, AAR–200, 800 Independence Avenue, SW., Washington, DC 20591 (202) 267–8937. Please inform us if you are in need of assistance or require a reasonable accommodation for this meeting.

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on March 18, 2002.

Herman A. Rediess,

Director, Office of Aviation Research.

[FR Doc. 02–6969 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 186 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B).

DATES: The meeting will be held April 8–12, 2002 starting at 9:00 am.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW, Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC 20035; telephone (202) 833–9339; fax (202 833–9434; web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 186 meeting. *Note: Special working group sessions will be held April 8–9 and on April 12.* The plenary agenda will include:

- April 10–11:
- Opening Plenary Session (Chairman's Introductory Remarks, Review of Meeting Agenda, Review/Approval of Previous Meeting Summary)
- SC–186 Activity Reports
- WG–1, Operations & Implementation
- WG–2, Traffic Information Service—Broadcast (TIS–B)
- WG–3, 1090 MHz Minimum Operational Performance Standard (MOPS)
- WG–4, Application Technical Requirements
- WG–5, Universal Access Transceiver (UAT) MOPS
- WG–6, Automatic Dependent Surveillance-Broadcast (ADS–B) Minimum Aviation System Performance Standard (MASPS)
- EUROCAE WG–51 Report (Sub-groups 1–3)
- Review and Approve Proposed Final Draft FTCA DO–242A, Minimum Aviation System Performance Standards for Automatic Dependent Surveillance Broadcast (ADS–B), RTCA Paper No. 044–02/SCI186–188
- UAT MOPS Review Status
- Analysis and Review of Modeling Assumptions

- TIS–B MOPS Review Status
- Closing Plenary Session (Other Business, Review Actions Items/Work Program, Date, Place and Time of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued: in Washington, DC, on March 11, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–6970 Filed 3–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 189/ EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 189/EUROCAE Working Group 53 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 189/ EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements.

DATES: The meeting will be held April 22–26, 2002 starting at 9:00 a.m.

ADDRESSES: The meeting will be held at Eurocontrol, 96 Rue de la Fusée, Brussels, Belgium.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org;* (2) Eurocontrol; telephone +32 2 729 90 11; fax +32 2 729 90 44.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 189/ EUROCAE Working Group 53 meeting. The agenda will include:

- April 22:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review/ Approval of Meeting Agenda, Review/Approval of Meeting Minutes)
  - Sub-group and related reports; Position papers planned for plenary agreement; SC–189/WG–53 co-chair progress report
- April 23–25:
  - PUB, Publications Integration Sub-group and Chair meetings
  - INTEROP, Interoperability Sub-group
  - ICSPR, Initial Continental Safety and Performance Requirements Sub-group
  - IOSPR, Initial Oceanic Safety and Performance Requirements Sub-group
- April 26:
  - Closing Plenary Session (Welcome and Introductory Remarks, Review/ Approval of Meeting Agenda)
  - Sub-group and related reports; Position papers planned for plenary agreement; SC–189/WG–53 co-chair progress report and wrap-up

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 6, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–6971 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 159: Minimum Operational Performance Standards for Airborne Navigation Equipment Using Global Positioning System (GPS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 159 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Minimum Operational Performance Standards for Airborne Navigation Equipment Using Global Positioning System (GPS).

DATES: The meeting will be held April 8–12, 2002, from 9 am to 4:30 pm (unless stated otherwise).

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW, Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 meeting.

Note: Specific working group sessions will be held April 8–11.

The plenary agenda will include:

- April 12:
- Opening Plenary Session (Welcome and Introductory Remarks, Approve Minutes of Previous Meeting)
- Review Working Group Progress and Identify Issues for Resolution
  - Global Positioning System (GPS)/ 3rd Civil Frequency (WG–1)
  - GPS/Wide Area Augmentation System (WAAS) (WG–2)
  - GPS/GLONASS (WG–2A)
  - GPS/Inertial (WG–2C)
  - GPS/Precision Landing Guidance (WG–4)
  - GPS/Airport Surface Surveillance (WG–5)
  - GPS/Interference (WG–6)
  - SC–159 Ad Hoc
- Review of EUROCAE activities
- Closing Plenary Session (Assignment/ Review of Future Work, Other Business, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 11, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–6972 Filed 3–21–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20989]

Stagecoach Group PLC and Coach USA, Inc., et al.—Control—Coach USA Indiana, Inc., and California Acquisition, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: Stagecoach Group PLC (Stagecoach) and its subsidiary, Coach USA, Inc. (Coach), noncarriers, and various subsidiaries of each (collectively, applicants), filed an application under 49 U.S.C. 14303 to control Coach USA Indiana, Inc. (Coach USA Indiana), and California Acquisition, Inc. (California Acquisition). Persons wishing to oppose this application must follow the rules under 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments are due by May 6, 2002. Applicants may file a reply by May 21, 2002. If no comments are filed by May 6, 2002, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20989 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street NW, Washington, DC 20423–0001. In addition, send one copy of any comments to applicants' representative: Betty Jo Christian, Steptoe & Johnson LLP, 1330 Connecticut Avenue, NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600 [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Stagecoach is a public limited corporation organized under the laws of Scotland.[1] With operations in several countries, Stagecoach is one of the world's largest providers of passenger transportation services. It had total revenues of $2.7 billion for the fiscal year ending April 30, 2001. Coach is a Delaware corporation that currently controls over 100 motor passenger carriers.

Stagecoach and its subsidiaries currently control Coach,[2] its noncarrier regional management subsidiaries,[3] and the motor passenger carriers jointly controlled by Coach and the management subsidiaries.[4] In previous Board decisions, Coach management subsidiaries have obtained authority to control motor passenger carriers jointly with Coach.[5]

Applicants state that Coach formed Coach USA Indiana and California Acquisition in January 2002 and that these entities, together with Coach, are party to an asset purchase transaction that contemplates that they will acquire motorcoaches and other assets from carriers currently controlled by VecTour Inc. (VecTour).[6] VecTour is presently in Chapter 11 status and the asset acquisition is therefore subject to the approval of the U.S. Bankruptcy Court for the District of Delaware.

According to applicants, Coach USA Indiana will operate assets being acquired from two motor passenger carriers controlled by VecTour: United Limo, Inc. (United Limo), and Tri-State Coach Lines, Inc. (Tri-State Coach Lines). Coach USA Indiana will initially operate approximately 39 motorcoaches and 8 minivans. Coach USA Indiana will also employ approximately 160 full-time and 40 part-time personnel. It intends to initiate carrier operations following the closing of its asset acquisition transaction, and it plans to change its corporate name to, and conduct operations as, United Limo, and also utilize the trade name Tri-State Coach Lines.[7] At the time of the filing of the application in this proceeding, Coach USA Indiana had no operating revenues.

California Acquisition will operate assets being acquired, through the same transaction to which Coach USA Indiana is a party, from VecTour of California. California Acquisition will employ approximately 100 personnel, using a fleet of approximately 70 motorcoaches. It intends to initiate carrier operations following the projected March 14, 2002 closing of its asset acquisition transaction, and it plans to change its corporate name to, and conduct operations as, Franciscan Lines, Inc.[8] At the time of the filing of the application in this proceeding, it had no operating revenues.

Coach USA Indiana and California Acquisition recently obtained federally issued operating authority from the Federal Motor Carrier Safety Administration.[9] Before these entities obtained operating authority, Coach placed the stock of each entity into a separate independent voting trust. The control transaction here will not involve any transfer of the federal operating authority held by either entity.

Applicants have submitted information, as required by 49 CFR 1182.2(a)(7), to demonstrate that the proposed acquisition of control is consistent with the public interest under 49 U.S.C. 14303(b). Applicants state that the proposed acquisition of control will not reduce competitive options or adversely impact fixed charges or the interests of the employees of either entity. They assert that granting the application will allow both prospective carriers to take advantage of economies of scale and substantial benefits offered by applicants, including interest cost savings and reduced operating costs. In addition, applicants have submitted all of the other statements and certifications required by 49 CFR 1182.2. Additional information, including a copy of the application, may be obtained from applicants' representative.

[1] Stagecoach was formerly known as Stagecoach Holdings PLC. It recently changed its name to Stagecoach Group PLC.

[2] Stagecoach controls Coach through various subsidiaries, namely, SCUSI Limited (formerly known as SUS 1 Limited); SCOTO Limited (formerly known as SUS 2 Limited); Stagecoach General Partnership; and SCH US Holdings Corp.

[3] These subsidiaries are Coach USA North Central, Inc. (Coach USA North Central) and Coach USA West, Inc. (Coach USA West).

[4] *See Stagecoach Holdings PLC—Control—USA, Inc., et al.*, STB Docket No. MC–F–20948 (STB served July 22, 1999).

[5] *See Coach USA, Inc. and Coach USA North Central, Inc.—Control—Nine Motor Carriers of Passengers*, STB Docket No. MC–F–20931, *et al.* (STB served July 14, 1999). The same approach is being followed here. Under this proposal, Coach USA Indiana would also be jointly controlled by co-applicant Coach USA North Central, and California Acquisition would also be jointly controlled by co-applicant Coach USA West.

[6] The Board has previously approved common control of the three carriers whose assets are being acquired. *See Global Passenger Services, L.C.C., et al.—Control—Bortner Bus Company, et al.*, STB Docket No. MC–F–20924 (STB served July 17, 1998); (authorizing control of Franciscan Lines, Inc., a carrier whose name was eventually changed to VecTour of California); and *Global Passenger Services, L.L.C., et al.—Control—Gongaware Tours, et al.*, STB Docket No. MC–F–20954 (STB served Sept. 16, 1999) (authorizing control of Tri-State Coach Lines, Inc., and United Limo, Inc.).

[7] Coach USA Indiana's name appears on its operating authority as ''Coach USA Indiana, Inc D/B/A Tri-State Coach Lines.''

[8] California Acquisition's name appears on its operating authority as ''California Acquisition, Inc D/B/A Franciscan Lines.''

[9] On February 27, 2002, Coach USA Indiana obtained operating authority in Docket No. MC–425233, authorizing it to provide charter and special operations between points in the United States, and regular-route operations over specified routes in Indiana, Illinois, and Wisconsin. On that same date, California Acquisition obtained operating authority in Docket No. MC–425205, authorizing it to provide charter and special operations between points in the United States.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

On the basis of the application, we find that the proposed control transaction is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. See 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed control transaction is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on May 6, 2002, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 7th Street, SW, Room 8214, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW, Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW, Washington, DC 20590.

Decided: March 18, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–6980 Filed 3–21–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 02–03]

Preemption Determination

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing its response to a written request for the OCC's opinion on whether Federal law preempts certain provisions of the Massachusetts Consumer Protection Act Relative to the Sale of Insurance by Banks and regulations promulgated pursuant to that statute (the Massachusetts Law). The OCC has determined that Federal law preempts the provisions at issue.

FOR FURTHER INFORMATION CONTACT: Michele Meyer, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090.

SUPPLEMENTARY INFORMATION:

On July 14, 2000, the OCC published in the **Federal Register** notice of a request from the Massachusetts Bankers Association (Requester) for the OCC's opinion concerning whether section 104 of the Gramm-Leach-Bliley (GLBA), Pub. L. 106–102, 113 Stat. 1338, 1352–59 (Nov. 12, 1999), preempts certain provisions of the Massachusetts Law. *See* Notice of Request for Preemption Determination, 65 FR 43827, (Notice). The OCC is publishing its response to the request as an appendix to this notice.

In the Notice, the OCC requested public comment on whether Federal law preempts the provisions of the Massachusetts Law that the Requester had identified. In response, the OCC received 110 comments. Many of these commenters, primarily banks and banking trade associations, supported preemption of the Massachusetts Law provisions. These commenters maintained generally that the Massachusetts Law provisions do not fall within the safe harbor provisions of GLBA (the Safe Harbors) and that they prevent or significantly interfere with the exercise of national banks' authority to engage in insurance sales, solicitation, or cross-marketing activities.

Commenters opposing preemption expressed several concerns. First, some commenters argued that some or all of the provisions under review fall within the Safe Harbors, or are substantially similar to the Safe Harbors, and are therefore protected from preemption. Several commenters asserted that the provisions not covered by a Safe Harbor nevertheless are protected from preemption because they do not ''prevent or significantly interfere'' with the ability of a financial institution or its affiliate to engage in any insurance sales, solicitation, or cross-marketing activity.

For the reasons described in the preemption opinion, the OCC has concluded that Federal law preempts the following provisions of the Massachusetts Law identified by the Requester:

- The Massachusetts Law provision prohibiting non-licensed bankpersonnel from referring prospective customers to a licensed insurance agent or broker except upon an inquiry initiated by the customer.
- The Massachusetts Law provision prohibiting non-licensed bank personnel from receiving any additional compensation for making a referral, even if the compensation is not conditioned upon the sale of insurance.
- The Massachusetts Law provision prohibiting banks from telling loan applicants that insurance products are available through the bank until the application is approved and, in the case of a loan secured by a mortgage on real property, until after the customer has accepted the bank's written commitment to extend credit.

The analysis used to reach these conclusions and the reasons for each conclusion are described in detail in our reply to the Requester.

Dated: March 5, 2002.

John D. Hawke, Jr.,

Comptroller of the Currency.

March 18, 2002.

Kevin F. Kiley,
Executive Vice President,
Massachusetts Bankers Association, Inc.,
73 Tremont Street, Suite 306,
Boston, MA 02108–3906.

Dear Mr. Kiley,

This letter replies to your request, on behalf of the Massachusetts Bankers Association, for the opinion of the Office of the Comptroller of the Currency (OCC) concerning whether certain provisions of the Massachusetts Consumer Protection Act Relative to the Sale of Insurance by Banks and regulations promulgated pursuant to that statute apply to national banks.[1]

The provisions you have asked us to review prohibit: (1) Non-licensed bank personnel from referring a prospective customer to a licensed insurance agent or broker except upon an inquiry initiated by the customer; (2) a bank from compensating

[1] The provisions of the Massachusetts law and implementing regulations are collectively referred to in this letter as the ''Massachusetts Law.''

an employee for such a referral; and (3) a bank from telling a loan applicant that insurance products are available through the bank until the application is approved and, in the case of a loan secured by a mortgage on real property, until after the customer has accepted the bank's written commitment to extend credit. For the reasons described in detail in this letter, we have concluded that federal law would preempt the provisions of the Massachusetts Law that you have asked us to review.

In reaching this conclusion, we have reviewed the provisions of the Massachusetts Law under the legal standards, including the provisions of the Gramm-Leach-Bliley Act (GLBA),[2] that govern the applicability of state law to national banks. We also have relied on our experience in supervising national banks that engage in insurance activities to evaluate the effects of the state law provisions under consideration here on national banks' ability to conduct an insurance agency business.

The first section of this letter provides background on the process we used to develop our opinion and addresses the significant comments that we received in response to our publication of notice of your request. Section II describes the framework that governs our legal analysis. Finally, Section III analyzes each of the provisions of the Massachusetts Law that you have asked us to review to determine whether, in our opinion, it is preempted by federal law.

I. Background and Comments

On May 22, 1998, the Commonwealth of Massachusetts enacted legislation entitled Consumer Protection Act Relative to the Sale of Insurance by Banks.[3] The Massachusetts Department of Banking and Insurance has promulgated regulations[4] pursuant to this legislation. The statute and implementing regulations impose a number of requirements that affect the insurance sales, solicitation, or cross-marketing activities of financial institutions, including national banks.

By letter dated May 30, 2000, you requested the OCC's opinion on whether the three specific provisions of the Massachusetts Law that your letter identified are preempted pursuant to section 104 of the GLBA.[5] In your request, you asserted that these state law provisions are not protected from preemption by the safe harbor provisions contained in section 104(d)(2)(B) of the GLBA (''Safe Harbors'') and that they prevent or significantly interfere with the ability of national banks to exercise their authority to engage in insurance sales, solicitation, or cross-marketing activities.

On July 14, 2000, the OCC published notice of your request in the **Federal Register** and requested comments on whether federal law preempts the Massachusetts Law provisions.[6] We received a total of 110 comments in response to the notice. Many of these commenters, primarily banks and banking trade associations, supported preemption of the Massachusetts Law provisions. These commenters maintained generally that the Massachusetts Law provisions do not fall within the Safe Harbors and that they prevent or significantly interfere with the exercise of national banks' authority to engage in insurance sales, solicitation, or cross-marketing activities. For the reasons set out in greater detail in Section III of this letter, we agree that federal law preempts each of the state laws in question.

Commenters opposing preemption expressed several concerns. First, some commenters argued that some or all of the provisions under review fall within the Safe Harbors, or are substantially similar to the Safe Harbors, and are therefore protected from preemption. Several commenters asserted that the provisions not covered by a Safe Harbor nevertheless are protected from preemption because they do not ''prevent or significantly interfere'' with the ability of a financial institution or its affiliate to engage in any insurance sales, solicitation, or cross-marketing activity. These points are addressed in detail in Section III of this letter.

Some of the commenters opposed to preemption also argued more generally that the OCC lacks the authority to determine whether federal law preempts the Massachusetts Law. As these comments suggest, federal courts, rather than the OCC, are the ultimate arbiters of whether federal law preempts state law in a particular case. Nevertheless, Congress and the federal courts have recognized that the OCC has the authority to interpret, in the first instance, federal laws affecting national bank powers. Indeed, the National Bank Act contains specific provisions governing the issuance of opinions concerning preemption of state laws by the OCC.[7] As the primary supervisor of national banks, the OCC is uniquely positioned to evaluate the effect of the Massachusetts Law on national banks' ability to exercise their federal authority to sell insurance.[8] Further, from a practical perspective, in the absence of interpretive advice, national banks that sell, or wish to sell, insurance in Massachusetts will face added cost, burden, and uncertainty. Finally, Congress clearly envisioned that the federal banking agencies would be making determinations as to whether state laws regarding insurance sales and solicitations were preempted, because section 304 of the GLBA contains detailed provisions for judicial review of conflicts between a state insurance regulator and a federal regulator arising from such a determination.[9]

A few commenters opposed to preemption asserted that the OCC should not find that federal law preempts the Massachusetts Law provisions because state insurance regulators are, pursuant to GLBA, responsible for the functional regulation of the business of insurance. The GLBA expressly provides, however, that the states' functional regulation authority over insurance activities is subject to federal preemption standards as incorporated in section 104.[10] In particular, the question whether a state insurance sales law applies to national banks is resolved by application of the federal standards to the state provision in question.[11]

Commenters also expressed concerns about the impact an OCC opinion concerning the Massachusetts Law would have on similar laws enacted in at least 30 states. These commenters noted that these state laws were the products of extensive negotiations involving state regulators and the insurance and banking industries. This letter expresses no view with respect to state laws other than those specifically addressed here. We specifically note, however, that the conclusions reached in this letter do not result in a finding that any provisions of the Model Unfair Trade Practices Act adopted by the National Association of Insurance Commissioners (NAIC) would be preempted.[12]

The commenters opposed to preemption also urged the OCC to delay issuing its opinion until the Sixth Circuit resolves the appeal of the Federal District Court's decision in *Association of Banks in Insurance, Inc.* v. *Duryee.*[13] In *Duryee,* a

[2] *See* Pub. L. No. 106–102, 113 Stat. 1338 (Nov. 12, 1999).

[3] Chapter 129 of the Acts of 1998. The provisions at issue here are codified at Mass. Gen. L. ch. 167F, § 2A.

[4] 209 CMR 49.00, *et seq.* and 211 CMR 142.00, *et seq.*

[5] GLBA § 104, 113 Stat. At 1352. Section 104 of the GLBA is codified at 15 U.S.C. 6701. In this letter, we cite section 104 of the GLBA rather than the provision as codified.

[6] *See* 65 FR 43827 (July 14, 2000).

[7] *See* 12 U.S.C. 43 (requiring, under certain circumstances, that the OCC publish notice of preemption issues as well as ''any final opinion letter'' on such issues).

[8] *See United States* v. *Mead Corp.,* 121 S. Ct. 2164, 2173 n.13 (2001) (describing the weight generally given by the courts to certain OCC interpretive opinions).

[9] *See* GLBA § 304, 113 Stat. at 1338, *codified at* 15 U.S.C. 6714.

[10] *See* GLBA § 301, 113 Stat. at 1407, *codified* at 15 U.S.C. 6711 (''The insurance activities of any person (including a national bank exercising its power to act as agency under [12 U.S.C. 92]) shall be functionally regulated by the States, *subject to section 104.*'') (emphasis added).

[11] Several commenters also asserted that under section 305 of the GLBA, state insurance customer protection statutes may only be preempted if the Federal banking agencies jointly determine that the Federal regulations enacted pursuant to section 305 provide greater consumer protection than the state law. *See* GLBA, § 305, 113 Stat. at 1410–15, codified at 12 U.S.C. 1831x. Section 305 of the GLBA directed the Federal banking agencies to promulgate certain consumer protection regulations relating to the sale, solicitation, and advertising of insurance products by depository institutions and persons selling insurance on the premises of depository institutions or otherwise on behalf of such institutions. Section 305(g)(2) explains the relationship between these regulations and state laws that are in effect in that jurisdiction. Pursuant to section 305(g)(2), these Federal regulations do not override inconsistent state laws unless the agencies jointly determine that the Federal regulations provide better consumer protections than the state provisions. The state then is given up to 3 years to override that determination. Section 305(g) relates solely to the preemptive effect that is to be given to Federal regulations promulgated under section 305(a). By its terms, it does not relate to the preemptive effect that is to be given to other Federal regulations or statutes. In the insurance sales area, this is determined pursuant to section 104 of the GLBA and the *Barnett* standards it incorporates, as explained in Section II of this letter.

[12] The Model Unfair Trade Practices Act is available on the NAIC's Web site, *www.NAIC.org.*

[13] 55 F. Supp. 2d 799 (S.D. Ohio 1999).

national bank and trade association with national bank members sought a declaratory judgment that certain Ohio insurance licensing statutes as applied to national banks are preempted by the federal statute—12 U.S.C. 92—that authorizes national banks to sell insurance from agencies based in small towns without regard to affiliation or control. The District Court granted the plaintiffs' motion for summary judgment and issued the declaratory judgment and enjoined Ohio from enforcing its licensing statutes against national banks operating from small towns in the state. Commenters here asserted that the OCC should delay opining in this matter because the appellate decision in *Duryee* would clarify the parameters of the *Barnett* standards in matters involving the application of state insurance laws to national banks. However, in the time since the commenters submitted their comments on this matter, the Sixth Circuit issued its decision in the *Duryee* appeal, affirming the grant of a declaratory judgment and the issuance of a permanent injunction against the state's enforcement of the laws against national banks.[14] The Sixth Circuit's decision in *Duryee* thus strongly supports the conclusions we reach in this letter.

The next section of this letter summarizes the federal preemption standards that apply to the state laws you have asked us to review.

II. Federal Preemption Standards: The GLBA and Barnett

In our recent letter concerning whether federal law preempts certain provisions of the West Virginia Insurance Sales Consumer Protection Act[15] (the West Virginia Letter), we set forth a detailed analysis of the GLBA preemption framework. That analysis is incorporated by reference here and is summarized below.

The GLBA establishes several different standards governing the applicability of state law to depository institutions and their affiliates, depending on whether the state law at issue affects: The institution's ability to engage in an affiliation that is ''authorized or permitted by Federal law;'' its ability to engage in activities ''authorized or permitted'' pursuant to the GLBA; or its ability to engage in insurance sales, solicitation, and cross-marketing activities.[16] With respect to *any* insurance sales, solicitation, or cross-marketing activities, section 104(d)(2) establishes the following standard governing the applicability of state law:

In accordance with the legal standards for preemption set forth in the decision of the Supreme Court of the United States in *Barnett Bank of Marion County N.A.* v. *Nelson,* 517 U.S. 25 (1996), no state may, by statute, regulation, order, interpretation, or other action, prevent or significantly interfere with the ability of a depository institution, or an affiliate thereof, to engage, directly or indirectly, either by itself or in conjunction with an affiliate or any other person, in any insurance sales, solicitation, or crossmarketing activity.[17]

However, section 104 protects from preemption under this standard 13 specified types of restrictions on insurance sales, solicitation, and cross-marketing activities—the Safe Harbors—as well as state restrictions that are ''substantially the same as but no more burdensome or restrictive than'' the Safe Harbors.[18] State laws regarding any insurance sales, solicitation, and cross-marketing activities that are not covered by a Safe Harbor are subject to the standards for preemption set forth in *Barnett,* pursuant to section 104(d)(2).

The *Barnett* standards represent an application, in the national bank context, of the analysis used by the Supreme Court to determine, under the Supremacy Clause of the U.S. Constitution, whether federal law conflicts with state law such that the state law is preempted. Under this analysis, the Court reviews whether a state law ''stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'' [19] In the national bank context, the Court applies this analysis by looking at whether the state law at issue conflicts with the exercise of a national bank's federally authorized powers. Thus, in holding that a Florida statute restricting a national bank's ability to sell insurance in that state was preempted, the Court in *Barnett* relied upon a number of its precedents holding that a particular state statute was preempted because it ''stood as an obstacle'' to a national bank's exercise of those powers.[20]

The scope of the standard is illustrated by the Court's earlier decision in the *Franklin National Bank* case, which was relied upon by the Court in *Barnett.*[21] In the *Franklin* case, the Court held that a state law that prohibited national banks from using the word ''savings'' in their advertising was preempted. The Court's rationale was not that the state statute directly precluded national banks from engaging in the business of receiving savings deposits. The statute at issue did not have that effect. Instead, the Court said that the federal law authorizing national banks to take savings deposits must be read to authorize them to engage in the ordinary incidents of that business, such as advertising. Finding a ''clear conflict'' between the state and federal laws, the Court held that the state advertising restriction was preempted. The meaning of *Franklin,* expressly confirmed in *Barnett,*[22] is that a national bank's power to engage in an activity necessarily includes the power to conduct the business effectively and competitively.

The Court recognized in *Barnett* that not every state law that affects a national bank activity ''stands as an obstacle'' to the accomplishment of the federal purpose:

In defining the pre-emptive scope of statutes and regulations granting a power to national banks, these cases take the view that normally Congress would not want States to

[14] 270 F.3d 397 (6th Cir. 2001). The Sixth Circuit remanded the case for further consideration of whether certain corporate organizational licensing requirements are preempted in light of GLBA. However, the Sixth Circuit resolved the issues of relevance to our consideration of the Massachusetts Law, namely, the legal standards to apply when considering whether a state law is preempted. As is explained further in Section II of this letter, the Sixth Circuit was clear that section 104 requires that the entire preemption test as set out in *Barnett*—and not one limited to a consideration of whether a state law ''prevents or significantly interferes'' with a federal power—is to be applied. The remand will resolve whether the corporate organizational requirements are preempted in light of *Barnett* and the anti-discrimination provision set out in section 104(e) of GLBA. However, the outcome of that remand will not affect the conclusions reached in this letter.

[15] Letter from Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel, to Sandra Murphy, Esq., dated September 24, 2001. This letter was published in the **Federal Register** at 66 FR 51502 (October 9, 2001).

[16] GLBA §§ 104(c)(1), (d)(1), and (d)(2), respectively.

[17] GLBA § 104(d)(2)(A). State statutes that were enacted after September 3, 1998, also must meet certain non-discrimination standards with respect to those provisions not covered by the Safe Harbors. *See* GLBA § 104(e). The Massachusetts Law was enacted on May 22, 1998, and therefore these nondiscrimination provisions are not applicable to this analysis.

[18] *See* GLBA §§ 104(d)(2)(B)(i)–(xiii).

[19] *Barnett,* 517 U.S. at 31, *quoting Hines* v. *Davidowitz,* 312 U.S. 52, 67 (1941). The Court's quotation from the *Hines* case came at the conclusion of a paragraph summarizing the 3 traditional bases for federal preemption under the Supremacy Clause:

Sometimes courts, when facing the pre-emption question, find language in the Federal statute that reveals an explicit congressional intent to pre-empt state law. More often, explicit pre-emption language does not appear, or does not directly answer the question. In that event, courts must consider whether the Federal statute's ''structure and purpose,'' or nonspecific statutory language, nonetheless reveal a clear, but implicit, pre-emptive intent. A Federal statute, for example, may create a scheme of Federal regulation ''so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it.'' Alternatively, Federal law may be in ''irreconcilable conflict'' with state law. Compliance with both statutes, for example, may be a ''physical impossibility,'' or, the state law may ''stan[d] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.''

Id. at 31 (citations omitted).

[20] In describing this analysis, the Court said:

[T]he Federal Statute says that its grant of authority to sell insurance is in ''addition to the *powers* now vested by law in national [banks].'' [12 U.S.C. 92] (emphasis added). In using the word ''powers,'' the statute chooses a legal concept that, in the context of national bank legislation, has a history. That history is one of interpreting grants of both enumerated and incidental ''powers'' to national banks as grants of authority not normally limited by, but rather ordinarily pre-empting, contrary state law. See, *e.g., First Nat. Bank of San Jose* v. *California,* 262 U.S. 366, 368–369 (1923) (national banks' ''power'' to receive deposits preempts contrary state escheat law); *Easton* v. *Iowa,* 188 U.S. 220, 229–230 (1903) (national banking system normally ''independent, so far as powers conferred are concerned, of state legislation'').

Barnett, 517 U.S. at 32 (parallel and ''cf.'' citations omitted).

[21] *Franklin National Bank of Franklin Square* v. *New York,* 347 U.S. 373 (1954), cited in *Barnett,* 517 U.S. at 33.

[22] *Barnett,* 517 U.S. at 35 (''Thus, the Court's discussion in *Franklin Nat. Bank,* the holding of that case, and the other precedent we have cited above, strongly argue for a similar interpretation here—a broad interpretation of the word ''may'' that does not condition federal permission upon that of the State.'').

forbid, or impair significantly, the exercise of a power that Congress explicitly granted. To say this is not to deprive States of the power to regulate national banks, where (unlike here) doing so does not prevent or significantly interfere with the national bank's exercise of its powers. See, *e.g., Anderson Nat. Bank* v. *Luckett,* 321 U.S. 233, 247–252 (1944) (state statute administering abandoned deposit accounts did not ''unlawful[ly] encroac[h] on the rights and privileges of national banks''); *McClellan* v. *Chipman,* 164 U.S. 347, 358 (1896) (application to national banks of state statute forbidding certain real estate transfers by insolvent transferees would not ''destro[y] or hampe[r]'' national bank functions); *National Bank* v. *Commonwealth,* 9 Wall. 353, 362 (1870) (national banks subject to state law that does not ''interfere with, or impair [national banks'] efficiency in performing the functions by which they are designed to serve [the Federal] Government'').[23]

In this portion of its analysis, the Court describes the boundary of the preemptive scope of the federal laws authorizing powers for national banks by describing circumstances under which a state law has been found not to stand as an obstacle to the accomplishment of the federal purpose.[24]

The variety in the language that the Supreme Court used in *Barnett* to describe the conflicts analysis that governed the result there shows that the analysis cannot be encapsulated by any one phrase. Rather, whatever words are used to describe it, the analysis requires an examination of the effect that a particular state statute has on a national bank's exercise of a federally authorized power—here, the power to sell insurance granted by federal statutes, including 12 U.S.C. 92.[25]

Section 104 of the GLBA follows this same approach. Though it specifically mentions the ''prevent or significantly interfere'' formulation quoted above, the full text of section 104(d)(1) introduces that phrase and provides its context with the words ''[i]n accordance with the legal standards for preemption set forth in [*Barnett*].'' This express reference to the *Barnett* decision in its entirety and without qualification and to its ''standards'' in the plural, rather than the singular, demonstrates that the statute imports the whole of the *Barnett* conflicts analysis as governing the preemption of state laws pertaining to insurance sales, solicitation, and cross-marketing activities. Any doubt on this point is resolved by the express preservation of the applicability of the *Barnett* case in a subsequent portion of section 104:

(C) CONSTRUCTION.—Nothing in this paragraph shall be construed—

(I) to limit the applicability of [*Barnett*] with respect to any State statute, regulation, order, interpretation, or other action that is not referred to or described in subparagraph (B) [*i.e.,* the Safe Harbors]; or

(II) to create any inference with respect to any State statute, regulation, order, interpretation, or other action that is not described in this paragraph.[26]

The effect of this language is to reaffirm, following the listing of the Safe Harbors, that both the standards that the Supreme Court articulated in the *Barnett* decision and the analysis that the Court used in that case apply to state laws that are not protected by the Safe Harbors.[27] Thus, the standards for preemption used by the Court in *Barnett* before enactment of GLBA are the same standards that apply today with respect to the application of state insurance sales, solicitation, or cross-marketing laws that are not covered by a Safe Harbor to insurance activities that are authorized for national banks under federal law.

III. Application of Federal Preemption Standards to the Massachusetts Law

Application of the principles we have discussed requires that we conduct a three-step analysis of the provisions of the Massachusetts Law that you have asked us to review. We first determine which of the several standards contained in section 104 of the GLBA applies. Since all three of the provisions you have identified pertain to insurance sales, solicitation, or cross-marketing, the analysis of each provision is governed by section 104(d)(2)(A), that is, the *Barnett* standards which are incorporated by the statute. Second, we consider whether any provision of the Massachusetts Law is protected from preemption by one or more of the Safe Harbors described in section 104(d)(2)(B). Finally, if a provision is not protected by a Safe Harbor, we apply the *Barnett* standards to determine whether, in our view, the state law conflicts with a national bank's authority to sell insurance and is therefore preempted.

A. The Massachusetts Restrictions on Referrals by Bank Personnel

The Massachusetts statute and regulations prohibit non-licensed bank personnel from referring prospective customers to a licensed insurance agent or broker except upon an inquiry initiated by the customer (the Referral Prohibition). The same statute and regulations further prohibit non-licensed bank personnel from receiving any additional compensation for making a referral, even if the compensation is not conditioned upon the sale of insurance (the Referral Fee Prohibition). The Massachusetts statute provides:

Officers, tellers and other employees of a bank who are not licensed as

[23] *Barnett,* 517 U.S. at 33–34.

[24] Thus, under *Franklin, Barnett,* and other federal cases, a conflict between a state law and federal law need not amount to a whole, or even partial, prohibition in order for the federal law to have preemptive effect. *See Barnett,* 517 U.S. at 31–32. Where a federal grant of authority is unrestricted, state law that attempts to place limits on the scope and effective exercise by a national bank of its express or incidental powers will be preempted. *See, e.g., Franklin National Bank,* 347 U.S. at 378; *Duryee,* 270 F.3d at 409 (''The intervenors' attempt to redefine 'significantly interfere' as 'effectively thwart' is unpersuasive.''); *New York Bankers Ass'n, Inc.* v. *Levin,* 999 F. Supp. 716, 719 (W.D.N.Y. 1998) (holding that a New York statute that restricted the types of insurance banks could sell to their customers was preempted on the grounds that the state law ''constitutes an interference with [banks'] rights'' to sell insurance).

[25] National banks are authorized to engage in insurance activities by a number of federal statutory provisions, including: 12 U.S.C. 24 (Seventh) (*e.g.,* credit life insurance); 12 U.S.C. 24a (authority to engage in insurance sales through a financial subsidiary); 12 U.S.C. 92 (authority to sell insurance from ''small towns''); and 15 U.S.C. 6713 (title insurance, where permissible for state banks).

[26] GLBA, § 104(d)(2)(C)(iii). The words ''this paragraph'' in the lead-in language mean paragraph (2) of subsection (d). We construe the ''no inference'' language in the second clause to mean that a state law may not be inferred to be preempted under the ''prevent or significantly interfere standard'' solely because it is excluded from coverage by one of the Safe Harbors. Accordingly, our analysis in Section III draws no such inferences.

[27] As we noted in the West Virginia Letter, the legislative history of section 104 confirms that Congress intended to incorporate the whole of *Barnett* by referencing it in that section. The Senate Report accompanying the GLBA, in commenting on a provision prescribing the ''prevent or significantly interfere'' standard, using language that was almost identical to the language of section 104(d)(2) as ultimately enacted, states that: The Committee believes that State insurance sales, solicitation, and cross-marketing laws adopted prior to September 3, 1998 should be subject to preemption under the preemption standards applicable when such laws were adopted. Thus, it is the Committee's intent that such laws may be subject to preemption under applicable case law, and the statutory preemption standard set forth in subsection 104(d)(2)(A), which is patterned after such case law. There is an extensive body of case law related to the preemption of State law. For example, in *Barnett Bank of Marion County, N.A.* v. *Nelson,* 116 S.Ct. 1103 (1996), the U.S. Supreme Court noted that Federal courts have preempted State laws that ''prevent or significantly interfere'' with a national bank's exercise of its powers; that ''unlawfully encroach'' on the rights and privileges of national banks; that ''destroy or hamper'' national banks' functions; or that ''interfere with or impair'' national banks' efficiency in performing authorized functions.

S. Rep. No. 44, 106th Cong. 1st Sess. At 13 (1999). (The limitation on the application of this standard to state laws adopted prior to September 3, 1998 was deleted in the final legislation.) The Senate Report described as affirmative preemption standards phrases that the *Barnett* Court used to describe cases in which state law was not preempted. This transposition does not change the substance of the point sought to be made in the Report, namely, that the intention of Congress was to incorporate into the statute the pre-existing standards described in the applicable caselaw and not a new standard comprising only the ''prevent or significantly interfere'' language. As we have previously described, it is the application of the conflicts analysis and not the particular words used to describe the effect of a state statute that comprise the *Barnett* standards. *See* H. Rep. 106–74 Part 3 at 139 (''Subsection 104(b)(2)(C) reiterates the underlying principles of subsection 104(b)(2)(A), affirming that the *Barnett* standard and case law continues to be applicable to insurance sales, solicitations, and cross-marketing activities that are not protected by the safe harbors set forth in subsection 104(b)(2)(B).''); and *Duryee,* 270 F.3d at 409 (noting that ''the Barnett Bank opinion cited two cases that do not support the intervenors' interpretation of the standard'').

insurance agents may refer a customer of said bank to a licensed insurance agent of the bank only when such customer initiates an inquiry relative to the availability or acquisition of insurance products. No such officer, teller or other employee shall be further or additionally compensated for making said referrals.[28]

This statutory provision is implemented in regulations set forth at 211 CMR § 142.05(3) and 209 CMR § 49.06(3). Section 142.05(3) of 211 CMR provides:

(3) Insurance sales activities conducted at the main office or at any branch location shall be conducted only by insurance agent [sic] or brokers licensed pursuant to M.G.L. c. 175, §§ 163 and 166, respectively. Non-licensed bank personnel may refer consumers to a licensed insurance agent or broker of the bank only upon an inquiry initiated by the consumer. Non-licensed bank personnel shall not be additionally compensated for such referrals.

Section 49.06(3) of 209 CMR provides:

(3) *Solicitations and Sales by Bank Personnel.* The solicitation and sale of insurance by banks shall be conducted by licensed personnel of such institutions to the extent required by applicable insurance laws and regulations. Unlicensed officers, tellers and other employees, however, may refer customers to licensed personnel only where:

(a) the customer initiates an inquiry as to the availability or acquisition of insurance products; and

(b) such unlicensed personnel are not additionally compensated for such referrals.

The Director of the Massachusetts Office of Consumer Affairs and Business Regulation (the Massachusetts Director), who oversees the Massachusetts Department of Banking and Insurance, asserted in her comment letter that the Referral Prohibition and the Referral Fee Prohibition are protected by two of the GLBA Safe Harbors.[29] Although the Massachusetts Director does not specify which Safe Harbors, there are two concerning referrals. Safe Harbor (iv) protects state laws that prohibit the payment of valuable consideration, such as referral fees, to unlicensed individuals for ''services as an insurance agent or broker.'' A referral by an unlicensed person who does not discuss specific policy terms and conditions, however, is expressly excluded from the term ''services as an insurance agent or broker.'' Safe Harbor (v) preserves state laws prohibiting referral fees based on the purchase of insurance by the customer.

As we have noted, the Safe Harbors protect state provisions that are ''substantially the same as but no more burdensome or restrictive than'' the restrictions in the federal statutory text. It is our opinion that the Referral Prohibition is not ''substantially the same as'' Safe Harbor (iv) and that it is more burdensome and restrictive than Safe Harbor (iv). The plain language of Safe Harbor (iv) protects only those state laws restricting payment for referrals by unlicensed personnel that involve discussions of specific insurance policy terms and conditions. The Massachusetts Referral Prohibition, however, restricts *all* referrals by unlicensed bank personnel (unless initiated by the customer), including those that do not involve specific insurance policy discussions. In our view, this exceeds the scope of Safe Harbor (iv), and consequently is not protected.

Similarly, in our view, the Massachusetts Referral Fee Prohibition is not protected by Safe Harbor (v). Safe Harbor (v) protects only those state restrictions on referral fees tied to a customer's purchase of insurance. The Massachusetts Referral Fee Prohibition goes further than this by prohibiting referral fees of any kind. As such, the Massachusetts Referral Fee Prohibition is more burdensome and restrictive than the restrictions contemplated in Safe Harbor (v).

Because the Referral Prohibition and Referral Fee Prohibition are not protected by the GLBA Safe Harbors, we must consider whether they are preempted by the *Barnett* standards incorporated in GLBA section 104.

The Massachusetts Referral Prohibition imposes significant limitations on a bank's ability to engage in insurance sales, solicitation, and cross-marketing activities. By limiting referrals to only those resulting from a customer's inquiry, the Massachusetts Referral Prohibition effectively deprives banks of important opportunities to offer insurance products to customers. The Referral Prohibition precludes non-licensed bank personnel, such as bank tellers and customer service personnel, from even mentioning to their customers the fact that qualified, licensed insurance agents employed by the bank are available to discuss with them their insurance needs, unless the customer happens to ask about the product. This will prevent in most cases the very bank employees likeliest to have contact with customers from engaging in the cross-marketing activities that are permissible for national banks.

By effectively eliminating cross-marketing activities by unlicensed bank staff, the Massachusetts Referral Prohibition runs afoul of the express language of section 104(d) of the GLBA. Under section 104(d)(2)(A), in accordance with the Barnett standards, no state may prevent or significantly interfere with the ability of a depository institution to engage in ''*any* . . . crossmarketing activity'' if that cross-marketing activity is not protected by the safe harbors for referrals set out in sections 104(d)(2)(B)(iv) and (v).[30] The word ''any'' in section 104(d)(2)(A) clearly encompasses a bank's ability to engage in a wide range of cross-marketing activities, including the referrals prohibited by Massachusetts.[31]

The Massachusetts Referral Fee Prohibition imposes a further, significant limitation on a bank's ability to cross-market insurance products. As many commenters noted, one effective way for a bank to cross-market it to offer a financial incentive for unlicensed bank personnel to refer a customer to qualified insurance personnel. By prohibiting a bank from offering that financial incentive, the Massachusetts Referral Fee Prohibition impermissibly prevents the bank from structuring its internal operations so that it can engage effectively in the cross-marketing activities permitted by GLBA.

Thus, in our view, both the Massachusetts Referral Prohibition and the Massachusetts Referral Fee Prohibition would be preempted under the *Barnett* standards incorporated in section 104(d)(2) because they frustrate the authority of national banks to engage in insurance activities and activities incidental thereto. National banks' ability to engage in insurance activities encompasses their ability to engage in activities incidental to those insurance activities, such as marketing the availability of the insurance products. *See* 12 U.S.C. 24(Seventh); *Franklin National Bank,* 347 U.S. at 377–378. The Massachusetts Referral Prohibition and the Massachusetts Referral Fee Prohibition conflict with these powers, in particular, with a bank's ability to engage, as described in section 104(d)(2)(A) of GLBA, in cross-marketing activities. As many commenters pointed out, the state law in question effectively deprives a bank of an important means of advertising the availability of an entire line of financial products that it is authorized to offer. Thus, consistent with the Supreme Court's holdings in *Barnett* and *Franklin National Bank,* we believe that the Massachusetts Referral Prohibition and the Massachusetts Referral Fee Prohibition are preempted because they conflict with national banks' authority to market the availability of products that the banks may offer under federal law and, therefore, to engage in the full range of

[28] MASS. GEN. L. ch. 167F, § 2A(b)(2).

[29] *See* Comment Letter from Jennifer Davis Carey, Director, Consumer Affairs and Business Regulation, Commonwealth of Massachusetts, dated August 10, 2000, at 3 (hereinafter ''Director's Letter'').

[30] GLBA § 104(d)(2)(A) (emphasis added).

[31] We note that federal law expressly contemplates that a national bank employee may make referrals, and receive compensation for making referrals, that would be prohibited under Massachusetts Law. Section 305 of the GLBA requires the OCC and the other federal banking agencies to prescribe regulations that include, among other provisions:

[s]tandards that permit any person accepting deposits from the public in an area where such transactions are routinely conducted in a depository institution to refer a customer who seeks to purchase any insurance product to a qualified person who sells such product, only if the person making the referral receives no more than a one-time nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

See also 12 CFR 14.50(b) (OCC implementing regulations). As noted above, Safe Harbor (iv) permits bank employees who are not licensed to engage in insurance activities to make referrals under certain circumstances; and Safe Harbor (v) protects from preemption only state prohibition of referral fees based on the customer's purchase of insurance. Thus, Congress clearly contemplated that bank employees would make referrals to persons in the bank licensed to sell insurance and receive compensation for doing so.

insurance activities authorized by Congress.[32]

B. The Massachusetts Restrictions on the Timing of an Insurance Solicitation

The Massachusetts statute and regulations also prohibit banks from telling loan applicants that insurance products are available through the bank until the application is approved and, in the case of a loan secured by a mortgage on real property, until after the customer has accepted the bank's written commitment to extend credit (the Waiting Period Requirement).[33] There are no limits in federal law that impose conditions on a national bank's insurance activities comparable to the limits imposed by the Waiting Period Requirement. Moreover, as the Massachusetts Director acknowledged in her letter,[34] there are no GLBA Safe Harbors that would protect this requirement. Accordingly, the Waiting Period Requirement must be analyzed under the standards for preemption set forth in *Barnett* and made applicable to national banks' insurance activities by section 104(d)(2).

In our opinion, the Waiting Period Requirement is preempted under those standards because of the requirement's impact on the ability of a depository institution to engage in insurance sales, solicitation, and cross-marketing activity. The Massachusetts Director asserts that the Waiting Period Requirement does not ''significantly interfere'' with the ability of a bank to sell insurance because the requirement merely governs *when* the bank may solicit consumers.[35] That characterization substantially understates the effect of the requirement on a bank's ability to cross-market its products, however. As we stated in the West Virginia Letter, based on our experience, restricting the timing of an insurance solicitation also restricts ''the methods by which a bank may solicit an insurance sale from a customer and thus substantively affects the bank's ability to solicit and sell insurance products.'' [36] The Massachusetts Waiting Period Requirement, like the timing provision considered in the West Virginia letter, would preclude national banks from availing themselves of a prime opportunity to cross-market insurance products, that is, when the transaction is still in process.

It also would make subsequent cross-marketing much more costly by requiring banks to develop databases to keep track of customers that have loans pending with the bank. Banks would have to institute methods of communicating this information to its sales force and of apprising the sales force of changes as they occur. The Waiting Period Requirement also would significantly hamper a bank's mass mailing efforts since bank staff would be required to remove from the mass mailing those individuals who have loans pending with the bank. The cost of developing and maintaining these procedures would impair the bank's ability to engage in insurance activities and frustrate its ability to pursue particular sales activities.[37]

IV. Conclusions

The Massachusetts Referral and Referral Fee Prohibitions frustrate the ability of national banks to cross-market insurance products, an authority specifically referenced in section 104 of GLBA and recognized by the Supreme Court as essential to the conduct of modern business. The Massachusetts Waiting Period Requirement impermissibly restricts the methods by which a bank may solicit an insurance sale from a customer and would also significantly interfere with the cross-marketing of insurance products. It is therefore our opinion that the Massachusetts Referral Prohibition, the Massachusetts Referral Fee Prohibition, and the Massachusetts Waiting Period Requirement would be preempted under the *Barnett* standards incorporated in GLBA section 104(d)(2).

Sincerely,

Julie L. Williams,

First Senior Deputy Comptroller and Chief Counsel.

[FR Doc. 02–6918 Filed 3–21–02; 8:45 am]

BILLING CODE 4810–33–P

[32] The Massachusetts Director also asserted in her letter that the Referral Prohibition and Referral Fee Prohibition should not be preempted because the provisions are ''consumer protective in nature and guard against inappropriate product recommendations, high pressure sales tactics and the sale of insurance products on the basis of compensation to the seller rather than the benefit to consumers.'' Director's Letter, *supra* note 29, at 2. As explained by the district court in the *Duryee* case, however, ''[w]here state and federal laws are inconsistent, the state law is pre-empted even if it was enacted by the state to protect its citizens or consumers.'' *Duryee,* 55 F.Supp at 802. Agreeing with this conclusion, the Sixth Circuit stated that ''the fact that the state legislature enacted the [state law at issue] to protect general insurance agents and consumers does not, for that reason alone, preclude federal preemption.'' *Duryee,* 270 F.3d at 408. *See also Franklin National Bank,* 347 U.S. at 378.

[33] **Mass. Gen. L.** 167F, § 2A(b)(4)(ii) and (iii), 209 CMR § 49.06(5)(b) and (c), and 211 CMR § 142.06(2) and (3)(b). Specifically, § 142.06(2) provides:

No solicitation for the sale of insurance in conjunction with any application for the extension of credit shall be permitted until said application has been approved, such approval and the disclosures required by 211 CMR 142.06 have been provided to said applicant in writing, and the receipt of both said approval and disclosures has been acknowledged in writing by said applicant. . . .

Section 142.06(3)(b) provides:

(3) In the instance of an application to a bank for an extension of credit to be secured by a mortgage on real estate and in which it is necessary for the applicant to obtain a policy insuring said premises against loss and designating such bank as loss payee:

* * * (b) such bank shall not, in any manner, solicit the applicant to purchase the required insurance from the bank until said commitment has been accepted by the applicant . . . .

[34] Pursuant to the Director's Letter, the Director's acknowledgement of this point ''shall [not] be construed in any way to waive or concede any issues . . . that may arise in any other proceeding regarding the Massachusetts bank insurance laws.'' Director's Letter, *supra* note 29, at 3.

[35] We note that other Federal regulations contemplate, and in some instances require, that insurance solicitations occur *prior* to loan approval. Under the Truth-in-Lending-Act regulations, a lender must disclose to a consumer the finance charge, which in some instances includes insurance costs, associated with a loan. *See* 12 CFR 226.4(d) and 226.18. The estimated finance charge disclosure in connection with a residential mortgage loan subject to the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 *et seq.,* typically is required prior to loan approval. *See* 12 CFR 226.19(a) (disclosure must be made prior to the loan's consummation or mailed within three days of receipt of the consumer's application, whichever is earlier). Similarly, a lender must make the insurance disclosures required by the GLBA Section 305 regulations ''at the time the consumer applies for an extension of credit in connection with which an insurance product is solicited, offered or sold.'' *See* 12 CFR 14.40(c)(1).

[36] West Virginia Letter at 25.

[37] The Massachusetts Director argues that preemption of the Waiting Period Requirement would interfere with Massachusetts insurance laws and other consumer protection laws that prohibit ''tying.'' We have not been asked to consider these other Massachusetts laws in this letter. We note, however, that national banks are required to comply with the significant tying restrictions imposed by federal law. Twelve U.S.C. 1972 generally prohibits a bank from extending credit, leasing or selling property, furnishing services, or fixing or varying prices of these transactions on the condition or requirement that the customer obtain additional credit, property, or service from the bank, subject to certain exceptions. Nothing in this opinion would allow national banks to engage in impermissible tying under section 1972. Moreover, section 305 of the GLBA requires that the OCC's insurance consumer protection regulations contain anti-tying provisions consistent with section 1972. *See* 12 CFR 14.30(a).

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Declaration for Unaccompanied Articles

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Declaration for Unaccompanied Articles. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C,

Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Declaration for Unaccompanied Articles.

OMB Number: 1515–0087.

Form Number: Customs form 255.

Abstract: This collection is completed by each arriving passenger for each parcel or container which is being sent from an Insular Possession at a later date. This declaration allows that traveler to claim their appropriate allowable exemption.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 7,500.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 1,250.

Estimated Total Annualized Cost on the Public: $18,750.

Dated: March 15, 2002.

Tracey Denning,

Team Leader, Information Services Group.

[FR Doc. 02–6877 Filed 3–21–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Record of Vessel Foreign Repair or Equipment Purchase

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Record of Vessel Foreign Repair or Equipment Purchase. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Record of Vessel Foreign Repair or Equipment Purchase.

OMB Number: 1515–0082.

Form Number: Customs form 226.

Abstract: This collection is required to ensure the collection of revenue (duty) required on all equipment, parts, or materials purchased, and repairs made to U.S. Flag vessels outside the United States.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 1,500.

Estimated Total Annualized Cost on the Public: $30,000.

Dated: March 15, 2002.

Tracey Denning,

Information Services Group.

[FR Doc. 02–6876 Filed 3–21–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request Report of Loss, Detention, or Accident by Bonded Carrier, Cartman, Lighterman, Foreign Trade Zone Operator, or Centralized Examination Station Operator

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Report of Loss, Detention, or Accident by Bonded Carrier, Cartman, Lighterman, Foreign Trade Zone Operator, or Centralized Examination Station Operator. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning,

1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Report of Loss, Detention, or Accident by Bonded Carrier, Cartman, Lighterman, Foreign Trade Zone Operator, or Centralized Examination Station Operator.

OMB Number: 1515–0193.

Form Number: N/A.

Abstract: This collection is required to ensure that any loss or detention of bonded merchandise, or any accident happening to a vehicle or lighter while carrying bonded merchandise shall be immediately reported by the cartman, lighterman, qualified bonded carrier, foreign trade zone operator, bonded warehouse proprietor, container station operator or centralized examination station operator are properly reported to the port director.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 37 minutes.

Estimated Total Annual Burden Hours: 154.

Estimated Total Annualized Cost on the Public: $9,000.

Dated: March 15, 2002.

Tracey Denning,

Information Services Group.

[FR Doc. 02–6878 Filed 3–21–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request North American Free Trade Agreement Duty Deferral

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the North American Free Trade Agreement Duty Deferral. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: North American Free Trade Agreement Duty Deferral.

OMB Number: 1515–0208.

Form Number: N/A.

Abstract: The North American Free Trade Agreement Duty Deferral Program prescribe the documentary and other requirements that must be followed when merchandise is withdrawn from a U.S. duty-deferral program for exportation to another NAFTA country.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 600.

Estimated Time Per Respondent: 36 hours.

Estimated Total Annual Burden Hours: 400.

Estimated Total Annualized Cost on the Public: $10,400.

Dated: March 15, 2002.

Tracey Denning,

Information Services Group.

[FR Doc. 02–6879 Filed 3–21–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Notice of Detention

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Notice of Detention. This request for comment is being made pursuant to the Paperwork

Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Notice of Detention.

OMB Number: 1515–0210.

Form Number: N/A.

Abstract: This collection requires a response to the Notice of Detention of merchandise and to provide evidence of admissibility to allow entry.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 500.

Estimated Total Annualized Cost on the Public: $12,500.

Dated: March 15, 2002.

Tracey Denning,

Team Leader, Information Services Group.

[FR Doc. 02–6880 Filed 3–21–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Lay Order Period—General Order Merchandise

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Lay Order Period—General Order Merchandise. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 21, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Lay Order Period—General Order Merchandise Cost Submissions.

OMB Number: 1515–0220.

Form Number: N/A.

Abstract: This collection is required to ensure that the operator of an arriving carrier, or transfer agent shall notify a bonded warehouse proprietor of the presence of merchandise that has remained at the place of arrival or unlading without entry beyond the time period provided for by regulation.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 300.

Estimated Time Per Respondent: 15 hours.

Estimated Total Annual Burden Hours: 7,500.

Estimated Total Annualized Cost on the Public: $103,125.

Dated: March 15, 2002.

Tracey Denning,

Information Services Group.

[FR Doc. 02–6881 Filed 3–21–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0216]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain

information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine the appropriate claimant eligibility for accrued benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 21, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0216'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Reimbursement from Accrued Amounts Due a Deceased Beneficiary, VA Form 21–601.

OMB Control Number: 2900–0216.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to file a claim for accrued benefits available at the time of the veteran's death. The information is used by the Veterans Benefits Administration to determine the appropriate claimant eligibility for accrued benefits.

Affected Public: Individuals or households and Business or other for-profit.

Estimated Annual Burden: 1,875 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 3,750.

Dated: March 14, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–6922 Filed 3–21–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0131]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine eligibility to reinstate or change government life insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 21, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0131'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Supplemental Information on Medical and Nonmedical Applications, VA Form Letter 29–615.

OMB Control Number: 2900–0131.

Type of Review: Extension of a currently approved collection.

Abstract: The form letter is used by the policyholder to apply for new issue, reinstatement or change of plan on Government Life Insurance.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 9,000.

Dated: March 14, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–6923 Filed 3–21–02; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
March 22, 2002

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412 et al.

Medicare Program; Prospective Payment System for Long-Term Care Hospitals: Proposed Implementation and FY 2003 Rates; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412, 413, and 476

[CMS–1177–P]

RIN 0938–AK69

Medicare Program; Prospective Payment System for Long-Term Care Hospitals: Proposed Implementation and FY 2003 Rates

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a prospective payment system for Medicare payment of inpatient hospital services furnished by long-term care hospitals (LTCHs) described in section 1886(d)(1)(B)(iv) of the Social Security Act (the Act). This proposed rule would implement section 123 of the Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act (BBRA) of 1999 and section 307(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000. Section 123 of the BBRA directs the Secretary to develop and implement a prospective payment system for LTCHs. The prospective payment system described in this proposed rule would replace the reasonable cost-based payment system under which the LTCHs are currently paid.

DATES: Comments will be considered if received at the appropriate address, as provided below, no later than 5 p.m. on May 21, 2002.

ADDRESSES: Mail written comments (an original and three copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1177–P, P.O. Box 8013, Baltimore, MD 21244–8013.

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FOR FURTHER INFORMATION CONTACT:

Tzvi Hefter, (410) 786–4487, or Judy Richter, (410) 786–2590 (General information, transition payments, payment adjustments)

Michele Hudson, (410) 786–5490 (Calculation of the payment rates, relative weights/case-mix index, update factors, payment adjustments)

Ann Fagan, (410) 786–5662 (Patient classification system)

SUPPLEMENTARY INFORMATION:

Inspection of Public Comment

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Acronyms

Because of the many terms to which we refer by acronym in this proposed rule, we are listing the acronyms used and their corresponding terms in alphabetical order below:

APR–DRGs All patient-defined, diagnosis-related groups.
BBA Balanced Budget Act of 1997, Public Law 105–33.
BBRA Medicare, Medicaid and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999, Public Law 106–113.
BIPA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Benefits Improvement and Protection Act of 2000, Public Law 106–554.
CMGs Case-mix groups.
CMI Case-mix index.
CMS Centers for Medicare & Medicaid Services.
DRGs Diagnosis-related groups.
FY Federal fiscal year.
HCRIS Hospital Cost Report Information System.
HHA Home health agency.
HIPAA Health Insurance Portability and Accountability Act, Public Law 104–191.
IRF Inpatient rehabilitation facility.
LTC–DRG Long-term care diagnosis-related group.
LTCH Long-term care hospital.
MDCN Medicare Data Collection Network.
MedPAC Medicare Payment Advisory Commission.
MedPAR Medicare provider analysis and review file.
ProPAC Prospective Payment Assessment Commission.
SNF Skilled nursing facility.
TEFRA Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248.

I. Background

When the Medicare statute was originally enacted in 1965, Medicare payment for hospital inpatient services was based on the reasonable costs incurred in furnishing services to Medicare beneficiaries. Section 223 of the Social Security Act Amendments of 1972 (Pub. L. 92–603) amended section 1861(v)(1) of the Social Security Act (the Act) to set forth limits on reasonable costs for hospital inpatient services. Section 101(a) of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) amended the Medicare statute to limit payment by placing a cap on allowable costs per discharge. Section 601 of the Social Security Amendments of 1983 (Pub. L. 98–21) added section 1886(d) to the Act that replaced the reasonable cost-based payment system for most hospital inpatient services. Section 1886(d) of the Act provides for a prospective payment system for the operating costs of acute care hospital inpatient stays, effective with hospital cost reporting periods beginning on or after October 1, 1983.

Although most hospital inpatient services became subject to the prospective payment system, certain specialty hospitals are excluded from that system and continue to be paid their reasonable costs subject to the cap established under TEFRA. These hospitals included long-term care hospitals (LTCHs), rehabilitation and psychiatric hospitals, rehabilitation and psychiatric units of acute care hospitals, and children's hospitals. Cancer hospitals were added to the list of excluded hospitals by section 6004(a) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239).

Subsequent to the implementation of the acute care hospital inpatient prospective payment system, both the number of excluded hospitals and Medicare payments to these hospitals grew rapidly.

Congress enacted various provisions in the Balanced Budget Act (BBA) (Pub. L. 105–33), the Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act (BBRA) (Pub. L. 106–113), and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) (Pub. L. 106–554) to provide for the development and implementation of a prospective payment system for the following excluded hospitals:

- Rehabilitation hospitals (including units in acute care hospitals).
- Psychiatric hospitals (including units in acute care hospitals).
- LTCHs.

Section 4422 of the BBA mandated that the Secretary develop a legislative proposal, for presentation to Congress by October 1, 1999, for a case-mix adjusted LTCH prospective payment

system under the Medicare program. This system was to include an adequate patient classification system that reflects the differences in patient resource use and costs among LTCHs. Furthermore, in developing the legislative proposal for the prospective payment system, the Secretary was to consider several payment methodologies, including the feasibility of an expansion of the acute care inpatient hospital prospective payment system (diagnosis-related group (DRG) based system) established under section 1886(d) of the Act.

In the interim, section 4414 of the BBA imposed national limits (or caps) on hospital-specific target amounts (that is, annual per discharge limit) for these hospitals until cost reporting periods beginning on or after October 1, 2002. At the same time that Congress modified the payment system based on limits on target amounts, it also included in the BBA a provision to require the Secretary to develop a legislative proposal for establishing a prospective payment system for LTCHs.

With the passage of the BBRA in November 1999, in section 122, Congress refined some policies of the BBA prior to the implementation of prospective payment systems for LTCHs and psychiatric hospitals and units. Section 123 of the BBRA further requires that the Secretary develop a per discharge, DRG-based system for LTCHs and requires that this system be described in a report to the Congress by October 1, 2001, and be in place by October 1, 2002. Section 307(b)(1) of BIPA modified the BBRA's requirements for the prospective payment system for LTCHs by mandating that the Secretary ''* * * shall examine the feasibility and the impact of basing payment under such a system on the use of existing (or refined) hospital diagnosis-related groups (DRGs) that have been modified to account for different resource use of long-term care hospital patients as well as the use of the most recently available hospital discharge data.'' Furthermore, section 307(b)(1) of BIPA provided that the Secretary ''* * * shall examine and may provide for appropriate adjustments to the long-term hospital prospective payment system, including adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment * * *.'' In the event that the Secretary is unable to implement the LTCH prospective payment system by October 1, 2002, section 307(b)(2) of BIPA requires the Secretary to implement a prospective payment system using the existing hospital DRGs, modified where feasible to account for resource use by LTCHs.

In this proposed rule, we set forth the proposed Medicare prospective payment system for LTCHs as authorized under the BBRA and BIPA. Below, we discuss the development, proposed policies, and proposed implementation of the proposed LTCH prospective payment system. These discussions include the following:

- An overview of the current payment system for LTCHs.
- A discussion of the statutory requirements for developing and implementing a LTCH prospective payment system.
- A discussion of research findings on LTCHs.
- A detailed discussion of the proposed LTCH prospective payment system, including the patient classification system, relative weights, payment rates, additional payments, and the budget neutrality requirements mandated by section 123 of Public Law 106–113.
- An analysis of the estimated impact of the proposed LTCH prospective payment system on the Federal budget and LTCHs.
- Proposed changes to existing regulations and the establishment of proposed regulations in 42 CFR Chapter IV to implement the proposed LTCH prospective payment system.

A. Overview of Current Payment System for LTCHs

1. Exclusion of Certain Facilities From the Acute Care Hospital Inpatient Prospective Payment System

Although payment for operating costs of most hospital inpatient services became subject to a prospective payment system under the Social Security Amendments of 1983 (Pub. L. 98–21) which added section 1886(d) to the Act, certain types of hospitals and units were excluded from that payment system. Section 1886(d)(1)(B) of the Act lists the following classes of excluded hospitals:

- Psychiatric hospitals and units.
- Rehabilitation hospitals and units.
- LTCHs.
- Children's hospitals.

Effective with cost reporting periods beginning on or after October 1, 1989, cancer hospitals were added to this list by section 6004(a) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239).

The hospital inpatient prospective payment system is a system of average-based payments that assumes that some patient stays will consume more resources than the typical stay, while others will demand fewer resources. Therefore, an efficiently operated hospital should be able to deliver care to its Medicare patients for an overall cost that is at or below the amount paid under the hospital inpatient prospective payment system. In a report to the Congress, Hospital Prospective Payment for Medicare (1982), the Department of Health and Human Services stated that the ''467 DRGs were not designed to account for these types of treatment'' found in the four classes of excluded hospitals, and noted that ''including these hospitals will result in criticism and their application to these hospitals would be inaccurate and unfair.''

The Congress excluded these hospitals from the hospital inpatient prospective payment system because they typically treated cases that involved stays that were, on average, longer or more costly than would be predicted by the DRG system. The legislative history of the 1983 Social Security Amendments stated that the ''DRG system was developed for short-term acute care general hospitals and as currently constructed does not adequately take into account special circumstances of diagnoses requiring long stays.'' (Report of the Committee on Ways and Means, U.S. House of Representatives, to Accompany HR 1900, H.R. Rept. No. 98–25, at 141 (1983)). Therefore, these hospitals could be systemically underpaid if the same DRG system were applied to them.

Following enactment in April 1983 of the Social Security Amendments of 1983, we implemented the hospital inpatient prospective payment system on October 1, 1983, including the initial publication in the **Federal Register** of the rules and regulations for the hospital inpatient prospective payment system—the September 1, 1983 interim final rule (48 FR 39752) and the January 3, 1984 final rule (49 FR 234). Updates and modifications of the regulations have been published annually in the **Federal Register**. We also developed payment policy for hospitals that were seeking to be excluded from the hospital inpatient prospective payment system. The regulations concerning exclusion of LTCHs from the hospital inpatient prospective payment system are found in 42 CFR part 412, subpart B.

2. Requirements for LTCHs To Be Excluded From the Acute Care Hospital Inpatient Prospective Payment System

Under section 1886(d)(1)(B) of the Act, the prospective payment system for hospital inpatient operating costs set forth in section 1886(d) of the Act does not apply to several specified types of hospitals, including LTCHs defined in section 1886(d)(1)(B)(iv)(I) of the Act as ''* * * a hospital which has an average

inpatient length of stay (as determined by the Secretary) of greater than 25 days.'' Public Law 105–33 added section 1886(d)(1)(B)(iv)(II) to the Act, which also provides another definition of LTCHs, specifically, a hospital that was first excluded in 1986 which has an average inpatient length of stay (as determined by the Secretary) of greater than 20 days and has 80 percent or more of its annual Medicare inpatient discharges with a principal diagnosis of neoplastic disease in the 12-month cost reporting period ending in FY 1997.

Implementing regulations at § 405.471(c)(5) (now § 412.23(e)) require the facility to have a provider agreement with Medicare to participate as a hospital, and an average inpatient length of stay greater than 25 days as calculated under the following formula: The average length of stay is calculated by dividing the total number of inpatient days (excluding leave of absence or pass days) for all patients by the total number of discharges for the hospital's most recent complete cost reporting period. The determination of whether or not a hospital qualifies as an LTCH is based on the hospital's most recently filed cost report, or if a change in the hospital's average length of stay is indicated, by the same method for the immediately preceding 6-month period (§ 412.23(e)(3)). (Requirements for hospitals seeking classification as LTCHs that have undergone a change in ownership, as described in § 489.18, are set forth in § 412.23(e)(3)(iii).)

3. Payment System Requirements Prior to the BBA

Hospitals that are excluded from the hospital inpatient prospective payment system under section 1886(d)(1)(B) of the Act are paid for inpatient operating costs under the provisions of Public Law 97–248 (TEFRA) that are found in section 1886(b) of the Act and implemented in regulations at 42 CFR part 413. Public Law 97–248 established payments based on hospital-specific limits for inpatient operating costs. A ceiling on payments to hospitals excluded from the acute care hospital inpatient prospective payment system is determined by calculating the product of a facility's base year costs (the year on which its target reimbursement limit is based) per discharge, updated to the current year by a rate-of-increase percentage, and multiplied by the number of total current year discharges. (A detailed discussion of target amount payment limits under Public Law 97–248 can be found in the September 1, 1983 final rule published in the **Federal Register** (48 FR 39746).)

The base year for a facility varied, depending on when the facility was initially determined to be a prospective payment system-excluded provider. The base year for facilities that were established prior to the implementation of Public Law 97–248 was 1982, when Public Law 97–248 was enacted. For facilities established after implementation of Public Law 97–248 (section 1886(b) of the Act), we originally provided in the regulations for payment to these facilities for their full ''reasonable'' costs for their first 3 cost reporting years, and allowed the facilities to choose which of those years would be used in the future to determine their target limit. This ''new provider'' period was later shortened to 2 cost reporting years (§ 413.40(f)(1) (1992)), and we designated the second cost reporting year as the cost reporting year used to determine the hospital's per discharge target amount.

Excluded facilities whose costs were below their target amounts received bonus payments equal to the lesser of half of the difference between costs and the target amount, up to a maximum of 5 percent of the target amount, or the hospital's costs. For excluded facilities whose costs exceeded their target amounts, Medicare provided relief payments equal to half of the amount by which the hospital's costs exceeded the target amount up to 10 percent of the target amount. Excluded facilities that experienced a more significant increase in patient acuity could also apply for an additional amount under the regulations for Medicare exception payments (§ 413.40(d)).

4. Effect of the Current Payment System

Utilization of post-acute care services has grown rapidly in recent years since the implementation of the acute care hospital inpatient prospective payment system. Average length of stay in acute care hospitals has decreased, and patients are increasingly being discharged to post-acute care settings such as LTCHs, skilled nursing facilities (SNFs), home health agencies (HHAs), and inpatient rehabilitation facilities (IRFs) to complete their course of treatment. The increased utilization of post-acute care providers, including hospitals excluded from the prospective payment system, has resulted in the rapid growth in Medicare payments to these hospitals in recent years. In addition, there has been a significant increase in the number of LTCHs. In 1991, there were 91 LTCHs; in 1994, 155 LTCHs; in 1999, 225 LTCHs; in December 2000, 252 LTCHs; and in November 2001, 270 LTCHs. Payments to post-acute care providers were among the fastest growing providers under the Medicare program throughout the 1990s. (Prospective Payment Assessment Commission (ProPAC) June 1996 Report to Congress, p. 91.)

LTCHs have experienced faster growth in the number of facilities and Medicare program payments than any other category of prospective payment system-excluded provider. In its June 1996 Report to Congress, ProPAC found that, from 1990 to 1993, payment to rehabilitation facilities rose about 25 percent per year, while payments to LTCHs increased 33 percent annually (p. 92). ProPAC also found that, from 1991 to 1995, the number of rehabilitation facilities increased 21 percent (from 852 in 1991 to 1,029 in 1995), while the number of LTCHs increased 93 percent (from 91 in 1991 to 176 in 1995) (p. 93). Furthermore, the best available Hospital Cost Report Information System (HCRIS) data indicate $398 million in payments for inpatient operating services to 105 LTCHs in FY 1993 and $1.05 billion in payments for inpatient operating services to 206 LTCHs in FY 1998. This is more than a 96 percent increase in the number of LTCHs and a 164 percent increase in payments to LTCHs in 5 years.

In its March 1999 report to the Congress, the Medicare Payment Advisory Commission (MedPAC) (formerly ProPAC) stated that: ''[The] TEFRA system has remained in effect longer than expected partly because of difficulties in accounting for the variation in resource use across patients in exempted facilities. The unintended consequences of sustaining that system have been a steady growth in the number of prospective payment system-exempt facilities and a substantial payment inequity between older and newer facilities. In particular, the payment system encouraged new exempt facilities to maximize their costs in the base year to establish high cost limits. Once subject to its relatively high limit, a recent entrant could reduce its costs below its limit, resulting in reimbursement of its full costs plus bonus payment. By contrast, facilities that existed before they became subject to TEFRA could not influence their cost limits. Given the relatively low limits of older facilities, they are more likely to incur costs above their limits and thus receive payments less than their costs.'' (p. 72)

To address concerns regarding the historical growth in payments and the disparity in payments to existing and newly excluded hospitals and units, the BBA mandated several changes to the existing payment system. These changes

are outlined in section I.B.1. of this preamble.

5. Research and Discussion of a Prospective Payment System for LTCHs Prior to the BBA

Section 603(a)(2)(C)(ii) of Public Law 98–21 required the Secretary to include the results of research studies on whether and how excluded hospitals and units can be paid on a prospective basis, in the 1985 Report to the Congress on the Impact of Prospective Payment Methodology. HCFA (now CMS) undertook and funded a wide range of research projects that resulted in 1987 in a report to the Congress entitled ''Developing a Prospective Payment System for Excluded Hospitals.'' In that report, the Secretary presented an examination of the then current state of the four classes of excluded hospitals and units and offered recommendations for the development of a prospective payment system. ''Long-term'' or ''chronic disease'' hospitals, the report noted, ''are the least understood of the excluded hospital types'' (p. 3–51).

The following information was clear—there were a relatively small number of facilities (94 at that time); LTCHs were not dispersed throughout the country and, therefore, potential long-term care patients were receiving necessary care elsewhere; LTCHs, as defined by the greater than 25-day average length of stay, constituted a diverse set that closely resembled other hospitals, both included (acute care) and excluded (psychiatric, rehabilitation, and children's) under the prospective payment system (pp. 3–51 through 3–63). The Report concluded with the following discussion: ''Because this class of hospitals treats a very heterogeneous patient population and does not share a common set of facility characteristics, the development of a separate classification system for prospective payment purposes would appear to be both infeasible and undesirable. At the same time, as part of HCFA's [now CMS's] impact analysis, we were investigating the feasibility of including LTCHs under the current prospective payment system, where their cases would be expected to be paid predominantly under the prospective payment system outlier policy.'' (pp. 3–63 through 3–64)

The 1987 report further noted that present and future research on LTCHs would focus on acquiring a broader understanding of LTCHs, long-term care patients, and other treatment settings and on the preliminary financial impact of a prospective payment system on both LTCHs and the Medicare system. An initial inquiry was also planned ''into the role of those hospitals as a component of the continuum of care between acute care hospitals and skilled nursing facilities, as a general first step in developing a classification system for patients in these facilities. * * *'' (p. 3–54)

ProPAC's March 1996 Report to Congress endorsed the concept of prospective payment systems for all post-acute services, emphasizing consistent payment methods across all classes of facilities in order to encourage provider efficiency (p. 75). ProPAC's extensive analysis of ''patients using post-acute care providers and in these providers' treatment patterns'' based on FY 1994 data discussed in the June 1996 Report to Congress, concluded that ''[a]lthough there was significant overlap in the hospital assigned DRGs across settings, other patient characteristics, such as medical complexity or functional status, may influence which patients use a particular site.'' (p. 110)

In ProPAC's March 1, 1997 report, ProPAC's Recommendation 33, entitled ''Coordinating Post-Acute Care Provider Payment Methods'' stated that ''the Commission urges the Congress and the Secretary to consider the overlap in services and beneficiaries across post-acute care providers as they modify Medicare payment policies.'' (p. 60)

The passage of Public Law 105–33 (the BBA) provided for the establishment of separate and distinct prospective payment systems for post-acute care providers: SNFs (section 4432(a)), IRFs (section 4421), and HHAs (section 4603(b)). In addition, Congress directed the Secretary to develop a legislative proposal to pay LTCHs prospectively as well (section 4422).

B. Requirements of the BBA, BBRA, and BIPA for LTCHs

1. Provisions of the Current Payment System

a. BBA. The BBA amendments to section 1886(b) of the Act significantly altered the payment provisions for excluded hospitals and units and also added other qualifying criteria for certain hospitals excluded from the hospital inpatient prospective payment system (sections 4411, 4412, 4413, 4414, 4415, 4416, 4417, 4418, and 4419). Provisions of these amendments that related to the current payment system were explained in detail and implemented in our final rule published in the **Federal Register** on August 29, 1997 (62 FR 45966).

Section 4411 of the BBA amended section 1886(b)(3)(B) of the Act and restricted the rate-of-increase percentages that are applied to each provider's target amount so that excluded hospitals and units experiencing lower inpatient operating costs relative to their target amounts receive lower rates of increase.

Section 4412 amended section 1886(g) of the Act to establish a 15-percent reduction in capital payments for excluded psychiatric and rehabilitation hospitals and units and LTCHs, for portions of cost reporting periods occurring during the period of October 1, 1997, through September 30, 2002.

Section 4413(b) of Public Law 105–33 amended section 1886(b)(3) of the Act to permit certain LTCHs to elect a rebasing of the target amount for the 12-month cost reporting period beginning during FY 1996.

Section 4414 of the BBA amended section 1886(b)(3) of the Act to establish caps on the target amounts for excluded hospitals and units at the 75th percentile of target amounts for similar facilities for cost reporting periods beginning on or after October 1, 1997, through September 30, 2002. These caps on the target amounts apply only to psychiatric and rehabilitation hospitals and units and LTCHs. Payments for these excluded hospitals and units are based on the lesser of a provider's cost per discharge or its hospital-specific cost per discharge, subject to this cap.

Section 4415 of the BBA amended section 1886(b)(1) of the Act by revising the percentage factors used to determine the amount of bonus and relief payments, and establishing continuous improvement bonus payments for cost reporting periods beginning on or after October 1, 1997 for hospitals and units excluded from the prospective payment system that meet specified criteria. If a hospital is eligible for the continuous improvement bonus, the bonus payment is equal to the lesser of: (1) 50 percent of the amount by which operating cost are less than expected costs; or (2) 1 percent of the target amount.

Sections 4416 and 4419 of the BBA amended section 1886(b) of the Act to establish a new framework for payments for new excluded providers. Section 4416 added a new section 1886(b)(7) to the Act that established a new statutory methodology for new psychiatric and rehabilitation hospitals and units and LTCHs. Prior to this change, new hospitals excluded from the acute care hospital inpatient prospective payment system were exempted from the target amount per discharge ceiling until the end of the first cost reporting period ending at least 2 years after they accepted their first patient. This new provider ''exemption'' was eliminated from all classes of excluded providers

except children's hospitals for cost reporting periods beginning on or after October 1, 1997, by section 4419(a) of the BBA. Under section 4416, payment to these new excluded providers for their first two cost reporting periods is limited to the lesser of the operating costs per case, or 110 percent of the national median of target amounts, as adjusted for differences in wage levels, for the same class of hospital for cost reporting periods ending during FY 1996, updated to the applicable period.

It is important to note that prior to enactment of the BBA, the payment provisions for excluded hospitals and units applied consistently to all classes of excluded providers (that is, psychiatric, rehabilitation, long-term care, children's, and cancer). However, effective for cost reporting periods beginning on or after October 1, 1997, there are specific payment provisions for certain classes of excluded providers, as well as modifications for all excluded providers.

b. BBRA. With the enactment of the BBRA of 1999, Congress refined some of the policies mandated by the BBA for hospitals excluded from the acute care hospital inpatient prospective payment system. The provisions of the BBRA, which amended section 1886(b)(3)(H) of the Act relating to the current payment system for excluded hospitals, were explained in detail and implemented in our interim final rule published in the **Federal Register** on August 1, 2000 (65 FR 47026) and in our final rule also published on August 1, 2000 (65 FR 47054).

Section 4414 of the BBA had provided for caps on target amounts for excluded hospitals and units for cost reporting periods beginning on or after October 1, 1997. Section 121 of the BBRA amended section 1886(b)(3)(H) of the Act to provide for an appropriate wage adjustment to these caps on the target amounts for existing psychiatric and rehabilitation hospitals and units and LTCHs, effective for cost reporting periods beginning on or after October 1, 1999 through September 30, 2002.

Section 122 of BBRA provided for an increase in the continuous improvement bonus for eligible LTCHs and psychiatric hospitals and units for cost reporting periods beginning on or after October 1, 2000 and before September 30, 2002.

c. BIPA. Two provisions of BIPA that amended section 1886(b)(3) of the Act were directed at LTCHs. Section 307(a) of BIPA provided for a 2-percent increase to the wage-adjusted 75th percentile cap on the target amount for existing LTCHs, effective for cost reporting periods beginning during FY 2001. Section 307(a) also provided a 25-percent increase to the hospital-specific target amounts for existing LTCHs for cost reporting periods beginning in FY 2001, subject to the wage-adjusted national cap.

2. Provisions for a LTCH Prospective Payment System

a. BBA. In section 4422 of the BBA, the Congress mandated that the Secretary develop a legislative proposal for a case-mix adjusted prospective payment system under the Medicare program, for submission by October 1999 based on consideration of several payment methodologies, including the feasibility of expanding the current DRGs and the prospective payment system currently in place for acute care hospitals.

b. BBRA. Section 123 of the BBRA specifically requires that the prospective payment system for LTCHs be designed as a per discharge system with a DRG-based patient classification system that reflects the differences in patient resources and costs in LTCHs while maintaining budget neutrality. Section 123 also requires that a report be submitted to the Congress describing the system design of the mandated LTCH prospective payment system no later than October 1, 2001, and that the system be implemented for cost reporting periods beginning on or after October 1, 2002.

c. BIPA. The BIPA reiterated the dates of implementation of the LTCH prospective payment system set forth in the BBRA. This statute also directs the Secretary to examine the following specific payment adjustments: adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment. Furthermore, if the Secretary is unable to implement the prospective payment system by October 1, 2002, the BIPA mandates that a default LTCH prospective payment system be implemented, based on existing DRGs, modified where feasible to account for the specific resource use of long-term care patients.

C. Research Supporting the Establishment of the LTCH Prospective Payment System: Legislative Requirements

Section 4422 of the BBA required us to formulate a legislative proposal on the development of a prospective payment system for LTCHs for submission to the Congress by October 1, 1999. To prepare for this proposal, we awarded a contract to The Urban Institute (Urban) following the enactment of the BBA for a multifaceted analysis of LTCHs, including a description of facilities and patients, as well as exploration of a variety of classification and payment system options.

In section 123(a) of the BBRA, Congress mandated a per-discharge, DRG-based model for the prospective payment system for LTCHs. Our basic objective remained unchanged—to arrive at a clearer understanding of the universe of LTCHs in relation to facility characteristics; beneficiary utilization; and beneficiary characteristics such as diagnoses, treatment, and discharge patterns.

Under the terms of our original contract with Urban, 3M Health Information Systems (3M) was subcontracted to provide an analysis and assessment of alternative classification systems for use in LTCHs in keeping with variables such as treatment patterns, patient demographics, and diagnoses and procedure codes for patients at LTCHs and acute care hospitals.

After the enactment of section 123 of the BBRA, we instructed 3M to limit its analyses to several DRG-driven classification systems, using the database constructed by Urban describing LTCHs, patients at LTCHs, and patients with the same diagnoses as LTCH patients treated in other facilities. We also contracted with 3M to develop and analyze the data necessary for us to design and develop the proposed Medicare LTCH prospective payment system based on DRGs.

D. Description of Sources of Research Data

The records for all Medicare hospital inpatient discharges (including discharges for LTCHs) are contained in the Medicare provider analysis and review file (MedPAR), which includes patient demographics (age, gender, race, and residence zip code), clinical characteristics (diagnoses and procedures), and hospitalization characteristics. (Beneficiary data were encrypted to prevent the identification of specific Medicare beneficiaries.) The Medicare cost report data constitute the HCRIS, and includes information on facility characteristics, utilization data, and cost and charge data by cost center.

The description of the universe of LTCHs in section I.E. of this proposed rule is based on calendar year (CY) 1997 MedPAR, the HCRIS file containing the best available cost data for cost reporting periods that began during FYs 1996 and 1997, and 1997 data from the Online Survey Certification and Reporting System (OSCAR).

The 1997 OSCAR data provided information from the State survey and certification process to identify and characterize providers that participate in Medicare and Medicaid and includes a list of all hospitals that were designated as LTCHs by Medicare. OSCAR data included the number of employees of various types and the number of different types of beds and care units, as well as variables on certification date, type of control, geographic region, and hospital size.

E. The Universe of LTCHs

1. Background Issues

LTCHs typically furnish extended medical and rehabilitative care for patients who are clinically complex and have multiple acute or chronic conditions. Generally, Medicare patients in LTCHs have been transferred from acute care hospitals and receive a range of ''post-acute care'' services at LTCHs, including comprehensive rehabilitation, cancer treatment, head trauma treatment, and pain management. (MedPAC March 1999 Report to Congress, p. 95.) A LTCH must be certified as an acute care hospital that meets criteria set forth in section 1861(e) of the Act in order to participate as a hospital in the Medicare program. Generally, under Medicare, hospitals are paid as LTCHs if they have an inpatient average length of stay greater than 25 days.

LTCHs are a heterogeneous group of facilities ranging from old tuberculosis and chronic disease hospitals to newer facilities designed primarily to care for ventilator-dependent patients. They are unevenly distributed across the United States, with one-third (72 of 203 in 1997) located in Massachusetts, Texas, and Louisiana. As of 1997, 203 facilities were determined by Medicare to be LTCHs; by early 2000, 239 facilities were determined by Medicare to be LTCHs; and as of November 2001, OSCAR had data on 270 LTCHs.

LTCHs constitute a relatively small provider group in the Medicare program and have not been widely studied. Only limited information has been published about their characteristics in terms of types of patients served and resources used. As stated earlier in section I.C. of this preamble, the primary goal of the initial research contract with Urban was to increase our knowledge about LTCHs and their patients. In addition to describing the providers and patients, the study was expected to provide insight into the ways in which LTCHs differ from other Medicare post-acute care providers. In the following summary and tables, we provide a description of Urban's findings that formed the basis for the design of the proposed prospective payment system for LTCHs presented in this proposed rule.

2. General Medicare Policies

Inpatient stays at LTCHs are covered under the Part A hospital benefit and include room and board, medical and nursing services, laboratory tests, X-rays, pharmaceuticals, supplies, and other diagnostic or therapeutic services (§§ 409.10 and 412.50). LTCHs can offer specialized services (for example, physical rehabilitation or ventilator-dependent care) or can provide more generalized services (for example, chronic disease care).

Hospital services are covered for up to 90 days during a Medicare-defined ''benefit period,'' which is a period that begins with admission as an inpatient to an acute care or other hospital and ends when the beneficiary has spent 60 consecutive days outside of an inpatient facility (§ 409.60). There are 60 additional covered lifetime reserve days that may be used over a beneficiary's lifetime. One inpatient deductible payment ($792 in 2002) is required for each benefit period, so a beneficiary generally does not have to make a new deductible payment for a LTCH stay unless the LTCH stay is not preceded by another hospital stay. A patient with a long LTCH stay, however, is subject to a coinsurance payment ($198 in 2002) for days 61 through 90 of hospital use during a benefit period. For the lifetime reserve days, the Medicare beneficiary is subject to a daily coinsurance amount ($396 in 2002) (§ 409.61). LTCHs must meet State licensure requirements for acute care hospitals and must have a provider agreement with Medicare in order to receive Medicare payment. Intermediaries verify that LTCHs meet the required average length of stay of greater than 25 days.

3. Exclusion From the Acute Care Hospital Inpatient Prospective Payment System

As discussed more fully in section I.A.2 of this preamble, LTCHs were excluded from the FY 1984 implementation of the acute care hospital inpatient prospective payment system and continued to be paid based on their cost per discharge, subject to per discharge limits.

4. Geographic Distribution

Overall, 203 LTCHs filed Medicare claims in 1997. This number translates into an average of approximately one facility per 200,000 Medicare enrollees. As can be seen in Table 1, LTCHs are not distributed across all States in proportion to the number of Medicare enrollees in those States. They are unevenly distributed across the United States, with one-third (72 of 203) located in Massachusetts, Texas, and Louisiana. These three States together account for 36 percent of the LTCHs, but only fewer than 10 percent of Medicare enrollees. Furthermore, 13 small States have no LTCHs, although they account for approximately 7 percent of Medicare enrollees. In contrast, the three largest Medicare States (California, Florida, and New York) account for 24.1 percent of Medicare enrollees together, but only 13.8 percent of LTCHs.

TABLE 1.—PERCENTAGE DISTRIBUTION OF NUMBER OF LONG-TERM CARE HOSPITALS (LTCHS), MEDICARE ENROLLEES, AND CERTIFIED BEDS, BY STATE, 1997

State	Number of LTCHs	Percent of LTCHs	Number of medicare enrollees	Percent of medicare enrollees	Number of certified beds	Percent of certified beds
Alabama	1	0.5	696,586	1.8	191	1.0
Alaska	0	0.0	38,570	0.1	0	0.0
Arizona	4	2.0	667,226	1.7	187	1.0
Arkansas	0	0.0	453,195	1.1	0	0.0
California	12	5.9	3,920,674	9.9	1,304	7.1
Colorado	4	2.0	464,299	1.2	277	1.5
Connecticut	4	2.0	531,805	1.3	716	3.9
Delaware	0	0.0	111,171	0.3	0	0.0
District of Columbia	1	0.5	80,028	0.2	23	0.1
Florida	11	5.4	2,853,420	7.2	805	4.4

TABLE 1.—PERCENTAGE DISTRIBUTION OF NUMBER OF LONG-TERM CARE HOSPITALS (LTCHS), MEDICARE ENROLLEES, AND CERTIFIED BEDS, BY STATE, 1997—Continued

State	Number of LTCHs	Percent of LTCHs	Number of medicare enrollees	Percent of medicare enrollees	Number of certified beds	Percent of certified beds
Georgia	6	3.0	915,577	2.3	557	3.0
Hawaii	1	0.5	163,217	0.4	13	0.1
Idaho	0	0.0	163,303	0.4	0	0.0
Illinois	5	2.5	1,701,123	4.3	703	3.8
Indiana	11	5.4	877,656	2.2	434	2.4
Iowa	0	0.0	498,288	1.3	0	0.0
Kansas	3	1.5	406,752	1.0	74	0.4
Kentucky	1	0.5	633,802	1.6	337	1.8
Louisiana	19	9.4	622,805	1.6	1,288	7.0
Maine	0	0.0	218,265	0.6	0	0.0
Maryland	4	2.0	651,710	1.7	465	2.5
Massachusetts	17	8.4	991,641	2.5	3,077	16.8
Michigan	3	1.5	1,435,420	3.6	280	1.5
Minnesota	2	1.0	669,708	1.7	313	1.7
Mississippi	2	1.0	428,729	1.1	65	0.4
Missouri	3	1.5	888,959	2.3	317	1.7
Montana	0	0.0	139,392	0.4	0	0.0
Nebraska	1	0.5	263,287	0.7	25	0.1
Nevada	3	1.5	225,152	0.6	106	0.6
New Hampshire	0	0.0	170,031	0.4	0	0.0
New Jersey	3	1.5	1,239,890	3.1	212	1.2
New Mexico	2	1.0	231,517	0.6	86	0.5
New York	5	2.5	2,780,994	7.0	1,262	6.9
North Carolina	1	0.5	1,129,329	2.9	59	0.3
North Dakota	0	0.0	107,628	0.3	0	0.0
Ohio	7	3.4	1,766,266	4.5	653	3.6
Oklahoma	8	3.9	523,358	1.3	294	1.6
Oregon	0	0.0	500,035	1.3	0	0.0
Pennsylvania	6	3.0	2,183,850	5.5	412	2.3
Rhode Island	1	0.5	177,247	0.4	700	3.8
South Carolina	2	1.0	562,732	1.4	0	0.0
South Dakota	0	0.0	123,401	0.3	211	1.2
Tennessee	6	3.0	838,357	2.1	210	1.1
Texas	36	17.7	2,275,673	5.8	1,818	9.9
Utah	1	0.5	204,525	0.5	39	0.2
Vermont	0	0.0	89,821	0.2	0	0.0
Virginia	3	1.5	893,602	2.3	664	3.6
Washington	2	1.0	742,589	1.9	97	0.5
West Virginia	0	0.0	349,684	0.9	0	0.0
Wisconsin	1	0.5	806,951	2.0	34	0.2
Wyoming	1	0.5	65,699	0.2	3	0.0
Total	195	100.00	36,322,068	100.00	18,311	100.00

Source: 1997 Online Survey and Certification Reporting System (OSCAR).

Although the distribution of certified beds generally tracks the distribution of LTCHs across States, there is not always a direct relationship between the number of LTCHs and the bed capacity in a given State. For instance, Massachusetts has only 8.4 percent of LTCHs, but 16.8 percent of Medicare-certified beds. In contrast, Texas has 17.7 percent of LTCHs, but only 9.9 percent of the certified beds.

5. Characteristics by Date of Medicare Participation

The OSCAR program provided data captured by the State survey and certification process that can be used to identify and characterize providers participating in Medicare and Medicaid. The following analyses were based on LTCHs for which data were available. Eight facilities, which account for only 1 percent of all LTCH stays and 1.3 percent of certified beds, were excluded from the analysis since 1997 OSCAR records were not available for these facilities.

Given the known payment variations for old and new facilities that were excluded facilities paid under the target amount methodology, we divided the LTCHs by age (the date of the LTCH's first Medicare participation, as reported by OSCAR) to gain a sense of the variation among the existing LTCHs in 1997. A strong correlation is found between the age of a LTCH and other key characteristics, such as location and ownership control, as well as operating costs and Medicare payments. For analytical purposes, therefore, the total sample of LTCHs was stratified based on age (''old,'' ''middle,'' or ''new''). Of the 195 LTCHs in OSCAR in 1997, 20 percent were in existence before the hospital inpatient prospective payment system and hospital inpatient prospective payment system exclusions went into effect in October 1983 (old LTCHs); 30 percent were determined to be LTCHs between October 1983 and September 1993 (middle LTCHs); and 50 percent were determined to be LTCHs between October 1993 and September 1997 (new LTCHs). This pattern is consistent with reports of the large growth in the number of LTCHs in recent years. (As of November 2001, OSCAR had data on 270 LTCHs, which indicate that the growth has continued.)

Old LTCHs are generally located in the northeast region of the United States, while newer LTCHs are typically located in the southern region. Most notably, the ownership of the LTCHs that began Medicare participation before and after the implementation of the acute care hospital inpatient prospective payment system is quite different. Old LTCHs are either government controlled (about 63 percent) or nonprofit (about 37 percent). In contrast, one-half of the LTCHs that began participation in Medicare between 1983 and 1993, and two-thirds of those that began participation in Medicare in FY 1994 or later, are proprietary facilities. Virtually no new LTCHs are government controlled.

6. Hospitals-Within-Hospitals and Satellite Facilities

The Medicare statute does not contemplate the recognition of ''LTCH units'' of prospective payment system acute care hospitals; the statute does reference rehabilitation and psychiatric units. Long-term care units of prospective payment system hospitals are not allowed in part because of the concern that transfers of acute care patients into the LTCH units could inappropriately maximize prospective payments under the hospital inpatient prospective payment system. The presence of a long-term care ''unit'', excluded from the hospital inpatient prospective payment system and co-located in an acute care hospital, could enable the acute care hospital to shift patients to the long-term care ''unit'' without completing the full course of treatment. These patient transfers could result in inappropriate payments under Medicare since the acute care hospital would make money in those cases where it received a full DRG payment without providing the full course of treatment to the beneficiary and could avoid losing any money for other more costly patients by prematurely discharging them to the LTCH. Since payments to hospitals under the hospital inpatient prospective payment system were based on hospital costs that included the costs of patients with longer lengths of stay, such a patient shift would result in an ''overpayment'' to the acute care hospital and the LTCH would receive an additional payment for that same patient.

Nonetheless, in the mid-1990s, of the roughly 150 LTCHs in existence at the time, about 12 recently established LTCHs were, in fact, LTCHs located in the buildings or on the campuses of acute care hospitals. In order to prevent the gaming of the Medicare system that would result from inappropriate transfers between the inpatient acute care hospital and the LTCH located within the acute care hospital, we have implemented additional qualifying criteria at § 412.22(e) for these entities. These criteria require that in order to be excluded from the prospective payment system, a hospital located in or on the campus of an acute care hospital (referred to as a ''hospital-within-a-hospital'') must have a separate governing body, chief executive officer, chief medical officer, and medical staff. In addition, the hospital must perform basic functions independently from the host hospital, incur no more than 15 percent of its total inpatient operating costs for items and services supplied by the hospital in which it is located, and have an inpatient load of which at least 75 percent of patients are admitted from sources other than the host hospital. Originally, these regulations were effective as of October 1994. However, section 4417(a) of the BBA amended section 1886(d)(1)(B) of the Act to provide that a hospital that was excluded from the prospective payment system on or before September 30, 1995, as an LTCH, shall continue to be so classified, notwithstanding that it is located in the same building or in one or more buildings located on the same campus as another hospital. (See § 412.22(f).)

In the late 1990s, we became aware of a newly developing entity that was physically similar, but legally unrelated, to a hospital-within-a-hospital. These entities were hospital-within-hospital type facilities (in the buildings or on the campuses of acute care hospitals) owned by a separate existing LTCH. We identified these facilities as ''long-term care hospital satellites.''

In the July 30, 1999 **Federal Register** (64 FR 41540), we revised § 412.22(h) to require that in order to be excluded from the hospital inpatient prospective payment system, a satellite of a hospital: (1) Must maintain admission and discharge records that are separately identified from those of the hospital in which it is located; (2) cannot commingle beds with beds of the hospital in which it is located; (3) must be serviced by the same fiscal intermediary as the hospital of which it is a part; (4) Must be treated as a separate cost center of the hospital of which it is a part; (5) for cost reporting purposes, must use an accounting system that properly allocates costs and maintains adequate data to support the basis of allocation; and (6) must report costs in the cost report of the hospital of which it is a part, covering the same fiscal period and using the same method of apportionment as that hospital. In addition, the satellite facility must independently comply with the qualifying criteria for exclusion from the hospital inpatient prospective payment system. The total number of State-licensed and Medicare-certified beds (including those of the satellite facility) for a hospital that was excluded from the prospective payment system for the most recent cost reporting period beginning before October 1, 1997, may not exceed the hospital's number of beds on the last day of that cost reporting period.

7. Specialty Groups of LTCHs by Patient Mix

There is a widely held view that the population of LTCHs is heterogeneous. We believe that understanding the composition of this population and identifying and classifying subgroups within it are fundamental to designing a prospective payment system for LTCHs.

Broad categories of conditions as defined by major diagnostic categories (MDCs), the principal diagnostic categorization tool used under the hospital inpatient prospective payment system, were used to classify LTCHs according to the medical conditions of their patient caseloads. (MDCs were formed by dividing all possible principal diagnoses into 25 mutually exclusive categories. Most MDCs correspond to a major organ system, though a few correspond to etiology.)

We also explored the possibility of grouping patients by DRGs or by selected individual diagnoses. These attempts resulted in creating groups too small for any effective characterization. However, the analysis did reveal that while some LTCHs treat a wide range of conditions, others specialize in one or two types of conditions. In order to analyze a grouping based on patient mix, under its contract with us, Urban first examined the proportion of facilities' caseloads in specific MDCs. There are five MDCs in which at least one LTCH has a majority (that is, more than 50 percent) of its cases. Patients with respiratory system problems are the most common caseload concentration—in 1997, 13 percent of LTCHs have a caseload concentration of 50 percent to 75 percent, and another 7 percent of LTCHs have more than 75 percent of their cases in this MDC.

The other three MDCs that make up a majority of at least one LTCH's patient caseload (nervous system MDC, musculoskeletal and connective tissue disorders MDC, and factors influencing health status MDC) are all related to rehabilitation needs. (Because rehabilitation-related DRGs are common

to LTCHs and fall into the ''Factors Influencing Status'' MDC, we are proposing to classify all cases in this MDC as rehabilitation services for the purpose of this analysis.) Seven percent of LTCHs have a majority of their caseload in an MDC related to rehabilitation-related services. A significantly less common concentration is seen in the 2 percent of LTCHs that have a majority of their patients in the mental diseases and disorders MDC. All but two LTCHs in our analysis have some share of patients with respiratory system problems. Similarly, all but five LTCHs have some patients with circulatory problems.

Based on these findings, we developed a grouping that consists of four broad categories of LTCHs based on patient caseload. Facilities with greater than 50 percent of their cases in the respiratory MDC were assigned to a ''respiratory specialty'' group for the purpose of this analysis. Similarly, all facilities with over 50 percent of their caseload in the mental MDC were designated as ''mental specialty'' facilities. The three rehabilitation-related MDCs were combined into one ''rehabilitation-related MDC'' category and grouped into a ''rehabilitation specialty'' group. All remaining facilities (that did not have high concentrations of patients in the respiratory MDC, the mental MDC, or the rehabilitation-related MDCs category) were placed into a ''multispecialty'' facility group. LTCHs in this category provide care to a wider range of patient types than LTCHs in the first three categories.

To better understand the relatively large number of multispecialty LTCHs, we explored their MDC composition. Not unexpectedly, most of these facilities have high proportions of cases in the respiratory MDC and the rehabilitation-related MDCs category, although some LTCHs do not serve either of these populations in great numbers. Few LTCHs do not have a significant share of their caseload in either the respiratory MDC or the rehabilitation-related MDCs category. Only 2 percent of multispecialty LTCHs have less than 25 percent of their caseload in either specialty group. Similarly, only 7 percent of multispecialty facilities have less than 35 percent of their caseload in either of the two groups. In contrast, about 60 percent of LTCHs have at least half of their caseload in either the respiratory MDC or the rehabilitation-related MDCs category. This high share demonstrates that, despite their assignment to the multispecialty category, most LTCHs serve a high percentage of patients with respiratory or rehabilitation problems, or both.

Although respiratory and rehabilitation specialty facilities are prevalent in the LTCH population, there are also some ''niche'' LTCHs that have unique patient populations or provide uncommon services. These hospitals include, for example, a large hospital where most admitted individuals (90 percent) die in the facility.

Several LTCHs provide services for special populations. One facility provides services for a prison population. A large share of this facility's funding is through Medicaid; cost report data show Medicaid covers two-thirds of its patient stays.

Some other facilities work with similarly specialized populations and have very small Medicare caseloads. In particular, two facilities that focus on developmentally disabled children and younger adults had fewer than 10 Medicare stays in 1997. Cost reports show that one of these facilities, which provides rehabilitation for its Medicare patients, has few discharges (under 100) regardless of payer source. The other, which provides mostly psychiatric services, relies on public funding for only a small share of its discharge payments.

Although there are a few niche facilities in the LTCH population, our analysis indicates that a preponderance of the LTCHs can be classified in distinct specialty groups that focus on adult rehabilitation and respiratory system care.

8. Sources and Destinations of LTCH Patients

Another useful perspective on LTCHs is the pattern of sources from which patients are admitted to LTCHs and destinations to which LTCH patients are discharged. This information shows how such transition patterns differ among the specialty groups. In general, the findings are consistent with the notion that LTCHs as a group are heterogeneous in terms of the patients they serve.

The vast majority (70 percent) of LTCH patients are admitted from acute care hospitals. Within this group, acute care patients whose stays are designated as ''outlier'' stays, as defined by section 1886(d)(5)(A)(i) of the Act and implemented in § 412.80, were identified separately. Sixteen percent of LTCH admissions were acute care hospital outlier patients, while 54 percent were admitted from acute care hospitals but did not have extraordinarily long acute care stays. After acute care hospitals, direct admission from the community is the next most common source of admissions (14 percent) to LTCHs.

The admission patterns vary somewhat by LTCH specialty type. Notably, 85 percent of admissions to respiratory specialty LTCHs are from acute care hospitals, including 22 percent that are acute care hospital outlier cases. A very small percentage (7 percent) of admissions to respiratory specialty LTCHs are from the community. In contrast, the admission sources for the rehabilitation specialty LTCHs are more similar to that of the multispecialty LTCHs. Notably, a higher than average share of patients come from SNFs (8 percent) and HHAs (6 percent) and a lower percentage of patients transition from acute care hospital outlier stays (12 percent). A relatively large share (11 percent) of patients at rehabilitation specialty LTCHs are admitted directly from the community compared to patients at respiratory specialty LTCHs (7 percent). These findings suggest that patients admitted to rehabilitation specialty LTCHs might present a less medically intensive clinical picture than patients admitted to respiratory specialty LTCHs.

The admission pattern of patients admitted to the mental specialty LTCHs is quite different from those of the other specialties. A relatively small percentage (31 percent) of patients are admitted from acute care hospitals and only 2 percent are admitted after being acute care hospital outliers. In contrast, large proportions are admitted directly from the community (40 percent) or from some other type of Medicare provider (27 percent).

An analysis of the pattern of discharge destinations for LTCHs shows that, overall, 38 percent of LTCH stays are discharged to the community without additional Medicare services. Equal percentages (18 percent) are discharged to SNFs and acute care hospitals, and 21 percent of patients are discharged to HHAs.

Some variations in discharge destination patterns exist among LTCHs by specialty. Relative to the overall sample, the respiratory specialty LTCHs have higher than average percentages of patients discharged to SNFs (24 percent versus 18 percent), and lower percentages discharged to HHAs (14 percent versus 21 percent). Rehabilitation specialty facilities, however, have a relatively high proportion of cases (34 percent) discharged to HHAs, and a lower than average proportion discharged to the community without additional Medicare services (28 percent versus 38 percent). Finally, mental specialty hospitals have an unusually high

percent of cases (71 percent) discharged to the community without additional Medicare services. These findings suggest that patients served by respiratory specialty LTCHs are more likely to require extended care in institutional settings (for example, SNFs), while patients discharged from rehabilitation specialty facilities also require extended care, but not necessarily in institutional settings.

9. LTCHs and Patterns Among Post-Acute Care Facilities

Urban's research also produced data regarding a comparison of LTCHs with other post-acute care settings in order to provide us with the broadest possible understanding of the universe of LTCHs. The findings were only preliminary comparisons of patients among and across post-acute settings because of the nature of each category of post-acute care providers. Even though data suggest substantial clinical differences among the providers with some areas of overlap, because of some similarities we found it useful to draw parallels and distinctions among post-acute care providers. Moreover, findings from this research supported conclusions published in several reports to the Congress produced by ProPAC and MedPAC over the past decade.

Most patients in LTCHs have several diagnosis codes on their Medicare claims, indicating that they have multiple comorbidities and are probably less stable upon admission than patients admitted to other post-acute care settings. Relative to IRFs, LTCHs have a higher proportion of patient costs attributable to ancillary services (for example, pharmacy, laboratory, and radiology charges) (MedPAC March 1999 Report to Congress, p. 95). LTCHs also provide care to a disproportionately large number of Medicare beneficiaries who are eligible because of disability. While individuals with disabilities make up about 10 percent of the Medicare population, they make up 17 percent of LTCH patients.

Urban's analysis also explored the demographic characteristics of LTCH patients compared to IRF patients. The proportion of LTCH patients who are under 65 years of age (18 percent) is twice that of IRF patients (9 percent). The share of LTCH patients over 85 years old is slightly higher (18 percent) compared to IRF patients (14 percent). LTCHs also have a higher proportion of male patients and a lower proportion of white patients than IRFs. LTCHs have long median lengths of stay: 21 days versus 16 days for IRFs. About one-third of the LTCH Medicare stays are by beneficiaries who are also eligible for Medicaid, compared to fewer Medicaid-eligible beneficiary stays at IRFs (17 percent). It has been widely documented that dually eligible beneficiaries are generally much sicker than non-Medicaid eligible Medicare beneficiaries.

Urban's analysis also included a description of the demographic characteristics of LTCH patient stays by admission sources—outlier acute care hospital, nonoutlier acute care hospital, and other. Those with prior outlier acute care hospital stays seem to be the most distinctive group in terms of length of stay, gender, race, and poverty: they have the highest mean and median length of stay in the LTCH, the highest proportion male, the highest proportion white, and the lowest proportion of Medicaid-eligible patients. However, in terms of age, those with prior hospital stays (whether outlier or nonoutlier) are quite different from those with other admission sources. Those without a prior acute care hospital stay are younger and about twice as many are under age 65, whose mean age is about 5 and 3 years lower than those with a prior outlier stay and those with a prior nonoutlier stay, respectively. Among those with an acute care hospital stay, the nonoutliers are slightly older on average, with higher percentages in the oldest groups (75 to 84 and 85 plus) and the highest median age of all three groups.

The policies that we are proposing in this proposed rule were determined in part based on analysis of the above data and information gathered on LTCHs and their Medicare patients.

F. Overview of System Analysis for the Proposed LTCH Prospective Payment System

For the systems analysis, 3M used the MedPAR (FY 1999 through FY 2000), OSCAR (FY 2000), and HCRIS (FYs 1998 and early 1999) files. Specifically, for this proposed rule, 3M performed the following tasks:

- Construction of an updated data file, using the most recent data available from CMS.
- Analysis of issues, factors, or variables and presentation of options for possible use in the design and implementation of the proposed prospective payment system.
- Data simulation of various system features to analyze their impact on the design of the proposed prospective payment system.

A data file was constructed to serve as the basis of our proposed patient classification system and the development of proposed payment weight rates and proposed payment adjustments. The analysis of this data file helped us regarding the structure of the proposed prospective payment system in this proposed rule. We relied upon patient charge data from FY 2000 MedPAR for setting proposed LTC-DRG weights and upon costs data from FY 1998 and FY 1999 cost reports for proposed payment rates. We expect that the availability of updated FY 2000 MedPAR data and updated FY 1999 HCRIS data, further analysis of the data file, and review of the comments that we receive in response to this proposed rule may result in refinements to our proposed policies, particularly in the areas of weights and rates.

G. Evaluation of DRG-Based Patient Classification Systems

Section 307(b) of Public Law 106–554 modified the requirements of section 123 of Public Law 106–113 by specifically requiring that the Secretary examine ''the feasibility and the impact of basing payment under such a system [the LTCH prospective payment system] on the use of existing (or refined) hospital diagnosis-related groups (DRGs) that have been modified to account for different resource use of long-term care hospital patients as well as the use of the most recently available hospital discharge data.''

In order to comply with statutory mandates, our evaluation of DRG-based patient classification systems focused on two models—the LTC-all patient-refined DRGs (LTC–APR–DRGs Version, 1.0), a severity-based case-mix classification system developed specifically for LTCHs; and the LTC–CMS–DRGs, a modification of the DRG system used in the acute care hospital inpatient prospective payment system.

The LTC–APR–DRGs, a condensed version of 3M's all-patient refined DRGs (APR–DRGs) for acute care hospitals, was developed by Dr. Norbert Goldfield, Clinical Director of 3M Health Information Systems for exclusive use in LTCHs. The LTC–APR–DRG system was designed to reflect the clinical characteristics of LTCH patients. This case-mix classification model contains 26 base LTC–APR–DRGs, subdivided by 4 severity of illness levels to yield 104 classification levels. In this system, the patient's secondary diagnoses, their interaction, and their clinical impact on the primary diagnosis determine the severity level assigned to each of the 26 LTC–APR–DRGs.

The LTC–CMS–DRGs are based on research done by The Lewin Group (Developing a Long-Term Hospital Prospective Payment System Using Currently Available Administrative Data for the National Association of Long-

Term Hospitals (NALTH), July 1999.) This model uses our existing hospital inpatient DRGs with weights that accounted for the difference in resource use by patients exhibiting the case complexity and multiple medical problems characteristic of LTCHs. In order to deal with the large number of low volume DRGs (all DRGs with fewer than 25 cases), the LTC–CMS–DRG model groups low volume DRGs into 5 quintiles based on average charge per discharge. The result was 184 classification groups (179 DRG-based and 5 charge-based payment groups) based on patient data from FYs 1994 and 1995. (CMS updated this analysis using patient data from FYs 1999 and 2000 for purposes of system evaluations.)

Under either classification system, DRG weights would be based on data for the population of LTCH discharges, reflecting the fact that LTCH patients represent a different patient mix than patients in short-term acute care hospitals. GROUPER software programs enabled us to examine the most recent LTCH and acute care hospital inpatient prospective payment system patient discharge data in light of the features of each system. Using regression analyses and simulations, the impact of each patient classification system on potential adjustment features for the prospective payment system was assessed. (Data files used in these analyses are specified in section I.C.2.) Our medical staff as well as physicians involved in treatment of patients at LTCHs provided additional input from the standpoint of clinical coherence and practical applicability.

The system that we are proposing for the LTCH prospective payment system is the LTC–CMS–DRG GROUPER that is based on the Lewin model because we believe it accurately predicts costs without the problems that we believe could be inherent with the APR–DRG system. (In section III. of this proposed rule, which describes the functioning of the classification system as a component of the proposed LTCH prospective payment system, the LTC–CMS–DRGs are referred to as the proposed LTC–DRGs.)

It is important to note that we have analyzed both systems based on MedPAR files generated by LTCH patient data, using the best available data. Since the TEFRA payment system, under which LTCHs are currently paid, is not tied to patient diagnoses, the coding data from LTCHs have not been used for payment. Nevertheless, data analyses indicated that there was a minimal difference in both systems' abilities to predict costs. (The difference in the R^2, a statistical measure of how much variation in resource use among cases is explained by the models, was only 0.0313.)

We believe that either classification system would result in more equitable payments for LTCHs compared to current payment methods. The proposed LTCH prospective payment system would generally improve the accuracy of payments for more clinically complex patients. (*See* our discussion of the TEFRA payment system in section I.A. of this proposed rule.) As the Congress intended, the DRG weights under the proposed LTCH prospective payment system would reflect the ''* * * different resource use of long-term care hospital patients.'' Patients requiring more intensive complex services would be classified in LTC–DRGs with higher relative weights and hospitals would receive appropriately higher payments for these patients. We solicit comments on the impact one system may have over another as it applies to different kinds of LTCHs.

Although either system would result in more equitable payments to LTCHs, we have several interrelated concerns about adopting the LTC–APR–DRG system based upon its complexity, its clinical subjectivity, and its utility as it relates to other Medicare prospective payment systems. The LTC–APR–DRG model provides a clinical description of the population of LTCHs, patients exhibiting a range of severity of illness with multiple comorbidities as indicated by secondary diagnoses. The clinical interaction of the primary diagnosis with these comorbidities determines the severity level of the primary diagnoses, resulting in the final assignment to a LTC–APR–DRG by the GROUPER software designed for this system.

One aspect of our examination of the LTC–APR–DRG system included clinical review of actual case studies provided by physicians at several LTCHs and evaluations of the LTC–APR–DRG assignments that would have resulted based on the clinical logic of the APR–DRG GROUPER. A review of a number of those cases by different medical professionals resulted in different possible classifications for the GROUPER program. Looking at the same case, different views were held as to which APR–DRG category or to which level of severity the case should be grouped. Given the array of specialization at different LTCHs reflecting a range of services and patient types, as described in section I.E.7. of this preamble, we believe that we lack sufficient data, at this point in time, to definitely determine the effect of particular comorbidities on patient resource needs in LTCHs. Furthermore, it appears that depending on how many of the diagnoses are coded, medical judgement suggests that it could be possible to classify the same patient in more than one group or level of severity. Because of these concerns, we believe that payments under such a policy could be insufficiently well-defined, given currently available data, to ensure consistently appropriate Medicare payments.

We are aware that the forthcoming prospective payment system for IRFs is based on a patient classification system that includes a measure of comorbidities, the combination of the case-mix group (CMG) and comorbidity tier. In general, most IRF patients are treated for one primary rehabilitation condition (for example, a hip replacement) that is associated with functional measures and sometimes age. The CMGs constructed for IRF patients account for diagnostic, functional, and age variables. These variables are used to explain the variability in the cost among the various CMGs. Some of the remaining variability in cost could then be further explained by selected comorbidities which the inpatient rehabilitation data showed were statistically significant.

In contrast, determining whether particular comorbidities increase the cost of a case for a LTCH patient is complicated by the nature of the clinical characteristics of these patients. More specifically, many LTCH patients have numerous conditions that may not all be relevant to the cost of care for a particular discharge. Although the patient actually has a specific condition, including this condition among secondary diagnoses coded under the LTC–APR–DRG system, may assign an inaccurate severity level to the primary diagnosis and result in inappropriate LTC–APR–DRG payment. We also believe that reliance on existing comorbidity information submitted on LTCH bills could result in significant variation in the assignment of the specific LTC–APR–DRGs.

The LTC–CMS–DRG system is a system that is familiar to hospitals because it is based on the current DRG system under the acute care hospital inpatient prospective payment system. We believe that the familiarity of the LTC–CMS–DRG model may best facilitate the transition from the cost-based system to the prospective payment system as well as providing continuity in payment methodology across related sites of care (for example,

an acute care hospitalization for a patient with a chronic condition.).

We further wish to note that the adoption of severity-adjusted DRGs will be explored by CMS for use under the hospital inpatient prospective payment system. In its June 2000 Report to Congress, MedPAC recommended that the Secretary ''* * * improve the hospital inpatient prospective payment system by adopting, as soon as practicable, diagnosis related group refinements that more fully capture differences in severity of illness among patients.'' (Recommendation 3A, p. 63.) Although we are not proposing LTC–APR–DRGs in this proposed rule, we are interested in receiving comments on this issue. We also wish to note that in the event the LTCH prospective payment system is implemented using LTC–DRGs, we could have the opportunity to propose a severity-adjusted patient classification for LTCHs in the future, particularly if the acute care hospital inpatient prospective payment system moves in this direction.

H. Recommendations by MedPAC for a LTCH Prospective Payment System

As we noted in the section I.A.5. of this proposed rule, since the establishment of the acute care hospital inpatient prospective payment system in 1983, the topic of post-acute care payments under Medicare has been addressed in reports to the Congress prepared by ProPAC and its successor, MedPAC. Recommendations in these reports encouraged modifications to Medicare payment policies, examined the differences among post-acute care providers and within each category of providers, and reiterated the goal of eventually implementing prospective payment systems for providers being paid under the target amount payment methodology.

In its March 1, 1996 Report and Recommendations to the Congress, ProPAC recommended that ''prospective payment systems should be implemented for all post-acute services. The payment method for each service should be consistent across delivery sites. The Secretary should explore methods to control the volume of post-acute service use, such as bundling services for a single payment.'' (Recommendation 20, p. 75)

The following year, in its March 1, 1997 Report and Recommendations to the Congress, ProPAC recommended ''* * * the Congress and the Secretary to consider the overlap in services and beneficiaries across post-acute care providers as they modify Medicare payment policies. Changes to one provider's payment method could shift utilization to other sites and thus fail to curb overall spending. To this end, ProPAC commends HCFA's (now CMS's) efforts to identify elements common to the various facility-specific patient classification systems to use in comparing beneficiaries across settings.'' Ultimately, Medicare should move towards more uniform payment policies across sites, the Report continued, and ''payment amounts should vary depending on the intensity and nature of the services beneficiaries require, rather than on the setting. Further, providers should have incentives to coordinate services or an episode * * *'' (p. 60)

However, with enactment of the BBA, the Congress enacted legislation to provide for distinct prospective payment systems for HHAs (section 4603(b)), SNFs (section 4432(a)), and IRFs (section 4421). The BBA further required the development of a legislative proposal for the case-mix adjusted LTCH prospective payment system. Section 123 of the BBRA requires the Secretary to develop a per discharge DRG-based system for LTCHs, and section 307(a) of BIPA mandates that the Secretary examine the feasibility and impact of basing payments to LTCHs using the existing DRGs, modified to account for the resource use of LTCH patients. Thus, Congress mandated systems that would result in different payments, depending on the site of service, and not a system that is uniform across sites.

Notwithstanding the mandate to establish post-acute care prospective payment systems, MedPAC continued to articulate concern regarding the overlap of services among post-acute providers. In its June 1998 Report to Congress, MedPAC stated that ''all of these policy changes, in combination with the fact that similar services can be provided in multiple post-acute settings, indicate the need for continued monitoring and analysis of post-acute providers, policies, and service utilization.'' (p. 90)

In its March 1999 Report to Congress, MedPAC encouraged the Secretary to ''* * * collect a core set of patient assessment information across all post-acute care settings.'' (Recommendation 5A, p. 82)

Section 123 of BBRA specifically mandated a per discharge, DRG-based prospective payment system for LTCHs and established a timetable for the presentation of the proposed system in a report to the Congress by October 1, 2001 and for implementation of the actual prospective payment system by October 1, 2002. Further direction for a distinct prospective payment system for LTCHs was indicated in section 307(b) of BIPA, which directed the Secretary to examine a number of payment adjustment factors and establishes a default system if the Secretary is unable to meet the implementation timetable.

As we develop the prospective payment system for LTCHs described in this proposed rule, however, we wish to state that we do not believe that the establishment of distinct prospective payment systems for each post-acute care provider group eliminates the need to monitor payments and services across all service settings. We endorse MedPAC's Recommendation 3G, in its March 2000 Report to Congress, that encourages the Secretary to ''assess important aspects of the care uniquely provided in a particular setting, compare certain processes and outcomes of care provided in alternative settings, and evaluate the quality of care furnished in multiple-provider episodes of post-acute care.'' (p. 65). We intend to monitor the appropriateness of LTCH stays by tracking the number of LTCH patients and SNF patients and the frequency of subsequent admissions to an acute care hospital. We believe this data will be valuable in assessing the outcome of care provided in these settings.

Furthermore, we strongly support the additional research that will be required to choose or to develop an assessment instrument that will evaluate the quality of services delivered to beneficiaries in post-acute settings.

I. Evaluated Options for the Proposed Prospective Payment System for LTCHs

Section 123 of BBRA and section 307(b) of BIPA establish the statutory authority for the development of the proposed prospective payment system for LTCHs that is discussed in this proposed rule. Under the BBRA, we are required to:

- Develop a per discharge prospective payment system for inpatient hospital services furnished by LTCHs described in section 1886(d)(1)(B)(iv) of the Act.
- Include an adequate patient classification system that is based on DRGs that reflect the differences in patient resource use and costs.
- Maintain budget neutrality.
- Submit a report to the Congress describing this system by October 1, 2001.
- Implement this system for cost reporting periods beginning on or after October 1, 2002.

Section 307(b) of BIPA modified the requirements of section 123 of the BBRA by requiring the Secretary to—

- Examine the feasibility and the impact of basing payment under the prospective payment system on the use

of existing (or refined) DRGs that have been modified to account for different resource use of LTCH patients, as well as the use of the most recently available hospital data.

• Examine appropriate adjustments to LTCH prospective payments, including adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment.

In the event that we are unable to meet the implementation deadline of October 1, 2002, a default system will be implemented in which the payment is based on existing hospital DRGs, modified where feasible to account for resource use of LTCH patients. This default system would be based on the most recently available hospital discharge data for such services furnished on or after that date.

Although the statutory mandate for development of the LTCH prospective payment system established in the BBRA and the BIPA requires a per discharge, DRG-based system, generally the statute gives the Secretary broad discretion in designing the prospective payment system. The design of any prospective payment system requires decisions on the following issues:

• The categories used to classify services such as DRGs.

• The methodology for calculating the relative weights that are assigned to each patient category to reflect the relative difference in resource use across DRGs (these are relative values in economic terminology).

• The methodology for calculating the base rate, which is the basis for determining the DRG-based Federal payment rates. It is a standardized payment amount that is based on average costs from a base period and also reflects the combined aggregate effects of the payment weights and various facility and case level adjustments. Operating and capital-related costs may be combined in this base rate or may be treated separately.

• Adjustments to the base rate to reflect cost differences across providers, such as disproportionate share adjustments, indirect graduate medical education programs, and outliers.

• Finally, a procedure for the transition from the current system to the DRG-based prospective payment system must be established.

We pursued a two-pronged strategy as we developed the proposed prospective payment system for LTCHs. First, we analyzed the data and empirical facts about LTCH patients and providers summarized in section I.E. of this proposed rule. Secondly, in light of this information, we analyzed each option based on regressions and simulations, using the data sets described in section I.D. of this preamble.

Both technical and proposed policy considerations were important in these design proposals. We reviewed features of other recent prospective payment systems designed or implemented by CMS for other post-acute care providers to determine the feasibility of including features in the LTCH prospective payment system and to identify modifications that might enhance their application for this system. In addition, we considered factors that were important to the development of Medicare's acute care hospital inpatient prospective payment system, such as urban and rural location, and whether the hospital served a disproportionate share of low-income patients. We also analyzed clinical significance, administrative simplicity, availability of data, and consistency with other Medicare payment policies.

In addition to satisfying statutory requirements, the design of the proposed prospective payment system for LTCHs presented in this proposed rule is the result of the following factors:

• Our empirical understanding of the ''universe'' of LTCHs and long-term care patients, as set forth in section I.E. of this preamble.

• Our experience with the acute care hospital inpatient prospective payment system.

• Consideration of recommendations in MedPAC's reports to Congress on post-acute care.

• Our monitoring of the establishment and continuing development and refinement of prospective payment systems for IRFs, SNFs, and HHAs.

Additionally, as we deliberated on the choice of the specific model of DRG-based system we are proposing to use for the LTCH prospective payment system, we consulted with LTCH physicians and LTCH representatives.

II. General Discussion of the Proposed LTCH Prospective Payment System

A. Goals of the Proposed LTCH Prospective Payment System

We have designed the proposed prospective payment system for LTCHs in this proposed rule with the following objectives:

• To base the prospective payment system on an analysis of the best information and data available.

• To establish a payment model using our experience in implementing other prospective payment systems.

• To provide incentives to control costs and to furnish services as efficiently as possible.

• To base payment on clinically coherent categories and to appropriately reflect average resource needs across different categories.

• To minimize opportunities and incentives for inappropriately maximizing Medicare payments.

• To establish a system that is beneficiary centered by formulating procedures for quality monitoring.

• To develop a system that is administratively feasible.

B. Applicability of the Proposed LTCH Prospective Payment System

Our existing regulations at 42 CFR Part 482, Subparts A through D set forth the general conditions that hospitals must meet to qualify to participate in Medicare. There are no additional conditions for LTCHs as there are for psychiatric facilities.

Criteria for classification as a LTCH for purposes of payment are set forth in existing § 412.23(e), which provides that a LTCH must—

• Have a provider agreement to participate as a hospital and an average inpatient length of stay greater than 25 days or for cost reporting periods beginning on or after August 5, 1997, for a hospital that was first excluded from the prospective payment system in 1986, have an average inpatient length of stay of greater than 20 days and demonstrate that at least 80 percent of its annual Medicare inpatient discharges in the 12-month cost reporting period ending in FY 1997 have a principal diagnosis that reflects a finding of neoplastic disease, as defined in regulations. The calculation of the average inpatient length of stay is calculated by dividing the number of total inpatient days (less leave or pass days) by the number of total discharges for the hospital's most recent complete cost reporting period.

• Meet the additional criteria specified in § 412.22(e) if it is to be classified as a hospital-within-a-hospital and to be excluded from the acute care hospital inpatient prospective payment system.

• Meet the additional criteria specified in § 412.22(h) if it is to be classified as a satellite facility and to be excluded from the acute care hospital inpatient prospective payment system.

Results of our research on LTCHs, as set forth in section I.D. of this preamble, have suggested the following particular issue that we have evaluated and are proposing to address concurrent with the proposed implementation of the proposed LTCH prospective payment system:

Proposed Change in the Average 25-Day Total Inpatient Stay Requirement. Section 1886(d)(1)(B)(iv)(I) of the Act describes a LTCH generally as ''a hospital which has an average inpatient length of stay (as determined by the Secretary) of greater than 25 days.'' Thus, the statute gives the Secretary extremely broad discretion in determining the average inpatient length of stay for hospitals for purposes of determining whether a hospital warrants exclusion from the prospective payment system in section 1886(d) of the Act. Existing Medicare regulations at § 412.23(e)(1) and (e)(2) include all hospital inpatients in this calculation of the average inpatient length of stay.

Our data have revealed that approximately 52 percent of Medicare patients at LTCHs have lengths of stay of less than ⅔ of the average length of stay for the proposed LTC–DRGs in this proposed rule, and 20 percent have a length of stay of even less than 8 days. This means that some hospitals, while currently qualifying as LTCH by averaging non-Medicare long stay patients to maintain a length of stay of over 25 days, do not furnish ''long-term care'' on average to their Medicare patients. In these situations, many of the hospitals' short stay Medicare patients could be receiving appropriate services as patients at acute care hospitals. Under the proposed LTCH prospective payment system, the proposed LTC–DRG weights and proposed standard Federal payment rate are based on the charges and costs of LTCH patients, which are typically more medically complex and more costly than acute care hospital patients.

Since the proposed LTCH prospective payment system would result in higher per discharge payments for LTCHs than payments under the acute care hospital inpatient prospective payment system for patients that would group into identical DRGs under each system, we believe that under current policy, which factors in non-Medicare patients' lengths of stay in determining LTCH status, could result in inappropriately higher payments for those Medicare short-stay patients who happen to be treated in a LTCH instead of an acute care hospital. This is the case since if the average length of stay of patients at a hospital would not reach the mandatory 25-days threshold for designation as a LTCH unless non-Medicare patients are included in the calculation, the hospital would be paid for its Medicare patients under the acute care hospital inpatient prospective payment system. Therefore, if a hospital is not treating Medicare patients that, on average, require the more costly services offered at LTCHs that differentiate these hospitals from acute care hospitals, we believe that Medicare payments should be determined under the acute care hospital inpatient prospective payment system. Such payments would be lower for each DRG than would be paid for under the LTC–DRG system, reflecting the lower costs of acute care hospitals.

Under the current TEFRA reasonable cost-based reimbursement system, Medicare payments to LTCHs are commensurate with the actual reasonable costs incurred by the hospital. Therefore, under that system, Medicare payments for shorter lengths of stay patients reflect the lower costs of those patients. However, under the proposed LTCH prospective payment system, which is based on average costs of treatment for particular diagnosis, the hospital would receive prospective payments based on such average costs for these much shorter length of stay patients. Even under our proposed short-stay outlier policy, as described in section IV.B.2. of this proposed rule, the hospital would have the opportunity to be paid 150 percent of its costs.

Therefore, under our broad authority in the statute to determine the average inpatient length of stay, we are proposing to specify that we would include the hospital's Medicare patients, but not non-Medicare patients, in determining the average inpatient length of stay (proposed § 412.23(e)(2)) for purposes of section 1886(d)(1)(B)(iv)(I) of the Act. In proposing this change in policy, we believe there would be a strong incentive for LTCHs not to admit many short-stay Medicare patients since doing so could jeopardize their status as a LTCH. Instead, those patients could receive appropriate care at an acute care hospital and the care would be paid under the hospital inpatient prospective payment system. Furthermore, changing the methodology for determining the average inpatient length of stay to be based only on Medicare patients is consistent with the intent of our proposed very short-stay discharge policy (described in section IV.B.1. of this proposed rule) and our proposed short-stay outlier policy (described in section IV.B.2. of this proposed rule), which are also intended to discourage LTCHs under the proposed prospective payment system from treating Medicare patients that do not require the more costly resources of LTCHs and who could reasonably be treated in acute care hospitals.

We would monitor the types of hospitals that would qualify as LTCHs based on this proposed definition. It is possible that hospitals that currently qualify as either rehabilitation hospitals or psychiatric hospitals would also qualify as LTCHs under this proposed revised criteria, and could be paid as LTCHs in order to maximize Medicare payments. We also would monitor whether the proposed change in methodology for measuring the average length of stay in LTCHs would result in unanticipated shifts of patients to those settings. If a pattern of these behaviors is observed, we believe it may be appropriate that Congress address the issues raised through a legislative change.

As indicated above, pursuant to our broad authority in the statute, we are proposing to change the methodology for determining the average inpatient length of stay for purposes of section 1886(d)(1)(B)(iv)(I) of the Act, but we are not proposing to change the methodology for purposes of section 1886(d)(1)(B)(iv)(II) of the Act (proposed § 412.23(e)). For purposes of the latter provision (subclause (II)), we are proposing to retain the current methodology (which includes non-Medicare as well as Medicare patients) because we believe that the considerations underlying the proposed change in methodology for subclause (I) are not present under subclause (II). As discussed above, we are proposing to revise the methodology for purposes of the general definition of LTCH under subclause (I) because it has come to our attention that some hospitals that might not warrant exclusion from the prospective payment system have nevertheless obtained status as excluded hospitals under the current methodology. We believe that excluding non-Medicare patients in determining the average inpatient length of stay for purposes of subclause (I) would be more appropriate in identifying the hospitals that warrant exclusion under the general definition of LTCH in subclause (I). However, in enacting subclause (II), Congress provided an exception to the general definition of LTCH under subclause (I), and we have no reason to believe that the proposed change in methodology for determining the average inpatient length of stay would better identify the hospitals that Congress intended to exclude under subclause (II). Therefore, at this time, we are proposing to retain the current methodology for purposes of subclause (II).

C. LTCHs Not Subject to the Proposed LTCH Prospective Payment System

We are proposing that only hospitals qualifying as LTCHs under the proposed revised criteria described in section II.B.

of this proposed rule and in proposed revised § 412.23(e) by October 1, 2002, would be subject to the proposed LTCH prospective payment system. (This proposed system is summarized below in section II.D. and described in detail in section IV. of this proposed rule.) Our proposed treatment of hospitals first qualifying as LTCHs after October 1, 2002, is addressed in section IV.H. of this proposed rule.

The following hospitals are paid under special payment provisions, as described in existing § 412.22(c) and, therefore, would not be subject to the proposed LTCH prospective payment system rules:

- Veterans Administration hospitals.
- Hospitals that are reimbursed under State cost control systems approved under 42 CFR part 403.
- Hospitals that are reimbursed in accordance with demonstration projects authorized under section 402(a) of Public Law 90–248 (42 U.S.C. 1395b–1) or section 222(a) of Public Law 92–603 (42 U.S.C. 1395b–1 (note)).
- Nonparticipating hospitals furnishing emergency services to Medicare beneficiaries.

D. Summary Description of the Proposed LTCH Prospective Payment System

In accordance with the requirements of section 123 of Public Law 106–113, as modified by section 307(b) of Public Law 106–554, we are proposing to implement a prospective payment system for LTCHs that would replace the current reasonable cost-based payment system under TEFRA. The proposed prospective payment system would utilize information from LTCH patient records to classify patients into distinct DRGs based on clinical characteristics and expected resource needs. Separate payments would be calculated for each DRG with additional adjustments applied, as described below.

1. Procedures

We are proposing that, upon the discharge of the patient from a LTCH, the LTCH would assign appropriate diagnosis and procedure codes from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM). The LTCH would then enter these codes on the current Medicare claims form and submit the completed claims form to its Medicare fiscal intermediary. At present, the standard Medicare claims form is the UB–92. Under a requirement of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, electronic health care claims, including Medicare claims, will be required to be in the new national standard claims format and medical data code sets in accordance with regulations at 45 CFR Parts 160 and 162. The Medicare fiscal intermediary would enter the information into its claims processing systems and subject it to a series of edits called the Medicare Code Editor (MCE). This editor is designed to identify cases that would require further review before classification into a proposed LTC–DRG (described in sections II.D.2. and III. of this proposed rule).

After screening through the MCE, each claim would be classified into the appropriate LTC–DRG by the Medicare LTCH GROUPER. The LTCH GROUPER is specialized computer software based on the GROUPER utilized by the acute care hospital inpatient prospective payment system, which was developed as a means of classifying each case into a DRG on the basis of diagnosis and procedure codes and other demographic information (age, sex, and discharge status). Following the LTC–DRG assignment, the Medicare fiscal intermediary would determine the prospective payment by using the Medicare PRICER program, which accounts for hospital-specific adjustments.

As provided for under the acute care hospital inpatient prospective payment system, we are proposing to provide opportunity for the LTCH to review the LTC–DRG assignments made by the fiscal intermediary (proposed § 412.513(c)). A hospital would have 60 days after the date of the notice of the initial assignment of a discharge to a LTC–DRG to request a review of that assignment. The hospital would be allowed to submit additional information as part of its request. The fiscal intermediary would review that hospital's request and any additional information and would decide whether a change in the LTC–DRG assignment is appropriate. If the intermediary decides that a different LTC–DRG should be assigned, the case would be reviewed by the appropriate Peer Review Organization (PRO) as specified in § 476.71(c)(2). Following this 60-day period, the hospital would not be able to submit additional information with respect to the LTC–DRG assignment or otherwise revise its claim.

The operational aspects and instructions for completing and submitting Medicare claims under the LTCH prospective payment system will be addressed in a Medicare Program Memorandum once the final system requirements are developed and implemented.

2. Patient Classification Provisions

We are proposing a patient classification system called long-term care diagnosis-related groups (LTC–DRGs). The LTC–DRGs would classify patient discharges based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. We began the development of the proposed LTC–DRGs by using the CMS DRGs under the acute care hospital inpatient prospective payment system with the most recent data available. We address the issue of the use of proposed low volume LTC–DRGs (less than 25 LTCH cases) in determining the LTC–DRG weights. Further details of the proposed LTC–DRG classification system are discussed in section III. of this proposed rule.

3. Payment Rates

In accordance with section 123(a)(1) of Public Law 106–113, we are proposing to use a discharge as the payment unit for the proposed LTCH prospective payment system for Medicare patients. We would update these per discharge payment amounts annually. The proposed payment rates would encompass both inpatient operating and capital-related costs of furnishing covered inpatient LTCH services, including routine and ancillary costs, but not the costs of bad debts, approved educational activities, blood clotting factors, anesthesia services furnished by hospital-employed nonphysician anesthetists or obtained under arrangement, or the costs of photocopying and mailing medical records requested by a PRO, which are costs paid outside the prospective payment system. Consistent with current policy, beneficiaries may be charged only for deductibles, coinsurance, and noncovered services (for example, telephone and television). They may not be charged for the differences between the hospital's cost of providing covered care and the proposed Medicare LTCH prospective payment amount.

We are proposing to determine the LTCH prospective payment rates using relative weights to account for the variation in resource use among LTC–DRGs. During FY 2003, the LTCH prospective payment system would be ''budget neutral'' in accordance with section 123(a)(1) of Public Law 106–113. That is, total payments for LTCHs during FY 2003 would be projected to equal payments that would have been paid for operating and capital-related costs of LTCHs had this proposed new

payment system not been enacted. Budget neutrality is discussed in detail in section IV. of this preamble.

Based on our analysis of the data, we are proposing to make additional payments to LTCHs for discharges meeting specified criteria as ''outliers.'' For purposes of this proposed rule, outliers are cases that have unusually high costs, exceeding the LTC–DRG payment plus the fixed loss amount as discussed in section IV.D. of this proposed rule. In conjunction with a high cost outlier policy, we are proposing payment policies regarding very short-stay discharges, short-stay outliers, and interrupted stays. A detailed description of these proposed policies appears in section IV.B. of this preamble.

4. Limitation on Charges to Beneficiaries

In accordance with existing regulations and for consistency with other established hospital prospective payment systems policies, we are proposing to specify that a LTCH may not charge a beneficiary for any services for which payment is made by Medicare, even if the hospital's costs of furnishing services to that beneficiary are greater than the amount the hospital would be paid under the proposed LTCH prospective payment system (proposed § 412.507). We also are proposing to specify under proposed § 412.507 that a LTCH receiving a prospective payment for a covered hospital stay (that is, a stay that includes at least one covered day) may charge the Medicare beneficiary or other person only for the applicable deductible and coinsurance amounts under §§ 409.82, 409.83, and 409.87 of the existing regulations, and for items or services specified under § 489.20(a) of the existing regulations.

5. Medical Review Requirements

In accordance with existing regulations at §§ 412.44, 412.46, and 412.48 and for consistency with other established hospital prospective payment systems policies, we are proposing to specify that a LTCH must have an agreement with a PRO to have the PRO review, on an ongoing basis, the medical necessity, reasonableness, and appropriateness of hospital admissions and discharges and of inpatient hospital care for which outlier payments are sought; the validity of the hospital's diagnostic and procedural information; the completeness, adequacy, and quality of the services furnished in the hospital; and other medical or other practices with respect to beneficiaries or billing for services furnished to beneficiaries (proposed § 412.508(a)). In addition, we are proposing to require that, because payment under the proposed prospective payment system is based in part on each patient's principal and secondary diagnoses and major procedures performed, as evidenced by the physician's entries in the patient's medical record, physicians must complete an acknowledgement statement to that effect. We are proposing to apply the existing hospital requirements for the contents and filing of the physician acknowledgment statement (proposed § 412.508(b)).

Also, consistent with existing established hospital prospective payment system policies, we are proposing that if CMS determines, on the basis of information supplied by the PRO, that a hospital has misrepresented admissions, discharges, or billing information or has taken an action that results in the unnecessary admission or multiple admission of individuals entitled to Part A benefits or other inappropriate medical or other practices, CMS may deny payment (in whole or in part) for inpatient hospital services related to the unnecessary or subsequent readmission of an individual or require the hospital to take actions necessary to prevent or correct the inappropriate practice. Notice and appeal of a denial of payment would be provided under procedures established to implement section 1155 of the Act. In addition, a determination of a pattern of inappropriate admissions and billing practices that has the effect of circumventing the prospective payment system would be referred to the Department's Office of Inspector General, for handling in accordance with 42 CFR 1001.301.

6. Furnishing of Inpatient Hospital Services Directly or Under Arrangements

In accordance with existing regulations at § 414.15(m) and for consistency with other established hospital prospective payment systems policies, we are proposing that a LTCH must furnish covered services to Medicare beneficiaries either directly or under arrangements. Under proposed § 412.509, we are proposing that the LTCH prospective payment would be payment in full for all inpatient hospital services, as defined in § 409.10 of the existing regulations. We also are proposing that we would not pay any provider or supplier other than the LTCH for services furnished to a Medicare beneficiary who is an inpatient of the LTCH, except for those services that are not included as inpatient hospital services that are listed under existing § 412.50 (that is, physicians' services that meet the requirements of § 415.102(a) for payment on a fee schedule basis; physician assistant services as defined in section 1861(s)(2)(K)(i) of the Act; nurse practitioners and clinical nurse specialist services, as defined in section 1861 (s)(2)(K)(ii) of the Act; certified nurse midwife services, as defined in section 1861(gg) of the Act; qualified psychologist services, as defined in section 1861(ii) of the Act; and services of an anesthetist, as defined in § 410.69).

7. Reporting and Recordkeeping Requirements

We are proposing to impose the same recordkeeping and cost reporting requirements of §§ 413.20 and 413.24 of the existing regulations on all LTCHs that would participate in the proposed LTCH prospective payment system (proposed § 412.511).

8. Implementation of the Proposed Prospective Payment System

We are proposing a 5-year transition period from cost-based reimbursement to prospective payment for LTCHs as discussed in section IV.G. of this proposed rule. During this period, two payment percentages would be used to determine a LTCH's total payment under the prospective payment system. The proposed blend percentages are as follows:

Cost reporting periods beginning on or after	Prospective payment federal rate percentage	Cost-based reimbursement percentage
October 1, 2002	20	80
October 1, 2003	40	60
October 1, 2004	60	40
October 1, 2005	80	20
October 1, 2006	100	0

Therefore, for a cost reporting period beginning on or after October 1, 2002, and before October 1, 2003, the total prospective payment would consist of 80 percent of the amount based on the current cost-based reimbursement system and 20 percent of the proposed Federal prospective payment rate. The percentage of payment based on the LTCH prospective payment Federal rate would increase by 20 percent and the cost-based reimbursement rate percentage would decrease by 20 percent for each of the remaining 4 fiscal years in the transition period. For cost reporting periods beginning on or after October 1, 2006, Medicare payment to LTCHs would be determined entirely under the proposed Federal prospective payment system methodology. Furthermore, we are proposing that

LTCHs would have the option to elect to be paid 100 percent of the Federal rate and not be subject to the 5-year transition. (See section IV.G. of this proposed rule.)

III. Long-Term Care Diagnosis-Related Group (LTC-DRG) Classifications

Section 307(b) of Public Law 106–554 requires that the Secretary examine ''the feasibility and the impact of basing payment under such a system (the LTCH prospective payment system) on the use of existing (or refined) hospital diagnosis-related groups (DRGs) that have been modified to account for different resource use of long-term care hospital patients as well as the use of the most recently available hospital discharge data.'' The DRG-based patient classification system described in this section for the proposed LTCH prospective payment system would be based on the existing CMS DRG system used in the acute care hospital inpatient prospective payment system, modified where feasible to reflect the fact that LTCH patients represent a different patient mix from patients in short-term acute care hospitals, as required by section 307(b) of Public Law 106–554. Therefore, an understanding of pertinent facts about the CMS DRG system is essential to an understanding of the proposed LTC-DRGs that would be employed in the proposed LTCH prospective payment system.

A. Background

The design and development of DRGs began in the late 1960s at Yale University. The initial motivation for developing the DRGs was the creation of an effective framework for monitoring the quality of care and the utilization of services in a hospital setting. The first large-scale application of the DRGs as a basis for payments was in the late 1970s in New Jersey. New Jersey's State Department of Health used DRGs as the basis of a prospective payment system in which hospitals were reimbursed a fixed DRG-specific amount for each patient treated. In 1972, section 223 of Public Law 92–603 originally authorized the Secretary to set limits on costs reimbursed under Medicare for inpatient hospital services. In 1982, section 101(b)(3) of Public Law 97–248 required the Secretary to develop a legislative proposal for Medicare payments to hospitals, SNFs, and, to the extent feasible, other providers on a prospective basis. (See the September 1, 1983 **Federal Register** (48 FR 39754).) In 1983, Title VI of Public Law 98–21 added section 1886(d) to the Act, which established a national DRG-based hospital prospective payment system for Medicare inpatient acute care services. (See the January 3, 1984 **Federal Register** (49 FR 234).)

B. Historical Exclusion of LTCHs

Since the hospital inpatient DRG system had been developed from the cost and utilization experience of general acute care hospitals, it did not account for the resource costs for the types of patients treated in hospitals such as rehabilitation, psychiatric, and children's hospitals, as well as LTCHs and rehabilitation and psychiatric units of acute care hospitals. Therefore, the statute (section 1886(d)(1)(B) of the Act) excluded these classes of hospitals and units from the prospective payment system for general acute care hospitals. The excluded hospitals and units continued to receive payments based on costs subject to a cap on each facility's per discharge costs during a base year, with a yearly update as set forth in Public Law 97–248. (Cancer hospitals were added to the list of excluded hospitals by section 6004(a) of Pub. L. 101–239.)

C. Patient Classifications by DRGs

1. Objectives of the Classification System

The DRGs are a patient classification system that provides a means of relating the type of patients treated by a hospital (that is, its case-mix) to the costs incurred by the hospital. In other words, DRGs relate a hospital's case-mix to the resource demands and associated costs experienced by the hospital. Therefore, a hospital that has a more complex case-mix treats patients who require more hospital resources.

While each patient is unique, groups of patients have demographic, diagnostic, and therapeutic attributes in common that determine their level of resource intensity. Given that the purpose of DRGs is to relate a hospital's case-mix to its resource intensity, it was necessary to develop a way of determining the types of patients treated and to relate each patient type to the resources they consumed. In the development of the existing CMS DRGs, in order to aggregate patients into meaningful patient classes, it was essential to develop clinically similar groups of patients with similar resource intensity. The characteristics of a practical and meaningful DRG system were distilled into the following objectives:

- The patient characteristics should be limited to information routinely collected on hospital abstract systems.
- There should be a manageable number of DRGs encompassing all patients.
- Each DRG should contain patients with a similar pattern of resource intensity.
- DRGs should be clinically coherent, that is, containing patients who are similar from a clinical perspective.

Under a DRG-based system, patient information routinely collected include the following six data items: principal diagnosis, secondary or additional diagnoses, procedures, age, gender, and discharge status. All hospitals routinely collect this information; therefore, a classification system based on these elements could be applied uniformly across hospitals.

Limiting the number of DRGs to a manageable total (that is, hundreds of patient classes instead of thousands) ensures that, for most of the DRGs, hospital discharge data would allow for meaningful comparative analysis to be performed. If a hospital has a sufficient number of cases in particular DRGs, this will allow for evaluations and comparisons of resource consumption by patients grouped to those DRGs as compared to resources consumed by patients grouped to other DRGs. A large number of DRGs with only a few patients in each group would not provide useful patterns of case-mix complexity and cost performance.

The resource intensity of the patients in each DRG must be similar in order to establish a relationship between the case-mix of a hospital and the resources it consumes. (Similar resource intensity means that the resources used are relatively consistent across the patients in each DRG.) In implementing the original DRGs for the acute care hospital inpatient prospective payment system, we recognized that some variation in resource intensity would be present among the patients in each DRG, but the level of variation would be identifiable and predictable.

The last characteristic for an effective patient classification system is that the patients in a DRG are similar from a clinical perspective; that is, the definition of a DRG has to be clinically coherent. This objective requires that the patient characteristics included in the definition of each DRG be related to a common organ system or etiology, and that a specific medical specialty should typically provide care to the patients in a particular DRG.

2. DRGs and Medicare Payments

The LTC–DRGs that we are proposing as the patient classification component of the proposed LTCH prospective payment system would correspond to

the DRGs in the acute care hospital inpatient prospective payment system. As discussed in section IV.A.2. of this proposed rule, we are proposing to modify the CMS DRGs for the proposed LTCH prospective payment system by developing LTCH-specific relative weights to account for the fact that LTCHs generally treat patients with multiple medical problems. Therefore, we are presenting a brief review of the DRG patient classification system in the acute care hospital inpatient prospective payment system.

Generally, under the prospective payment system for short-term acute care hospital inpatient services, Medicare payment is made at a predetermined, specific rate for each discharge; that payment varies by the DRG to which a beneficiary's stay is assigned. Cases are classified into DRGs for payment based on the following six data elements:

(1) Principal diagnosis.
(2) Up to eight additional diagnoses.
(3) Up to six procedures performed.
(4) Age.
(5) Sex.
(6) Discharge status of the patient.

The diagnostic and procedure information from the patient's hospital record is reported by the hospital using ICD–9–CM codes on the uniform billing form currently in use.

Medicare fiscal intermediaries enter the clinical and demographic information into their claims processing systems and subject it to a front-end automated screening process called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before assignment into a DRG can be made. During this process, cases such as the following are selected for further development:

- Cases that are improperly coded (for example, diagnoses are shown that are inappropriate, given the sex of the patient. Code 68.6, Radical abdominal hysterectomy, would be an inappropriate code for a male.).
- Cases including surgical procedures not covered under Medicare (for example, organ transplant in a nonapproved transplant center).
- Cases requiring more information. (For example, ICD–9–CM codes are required to be entered at their highest level of specificity. There are valid 3-digit, 4-digit, and 5-digit codes. That is, code 136.3, Pneumocystosis, contains all appropriate digits, but if it is reported with either fewer or more than 4 digits, it will be rejected by the MCE as invalid.)
- Cases with principal diagnoses that do not usually justify admission to the hospital. (For example, 437.9, Unspecified cerebrovascular disease. While this code is valid according to the ICD–9–CM coding scheme, a more precise code should be used for the principal diagnosis.)

After screening through the MCE and any further development of the claims, cases are classified into the appropriate DRG by a software program called the GROUPER using the six data elements noted above.

The GROUPER is used both to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment. The records for all Medicare hospital inpatient discharges are maintained in the MedPAR file. The data in this file are used to evaluate possible DRG classification changes and to recalibrate the DRG weights during our annual update.

The DRGs are organized into 25 Major Diagnostic Categories (MDCs), most of which are based on a particular organ system of the body; the remainder involve multiple organ systems (such as MDC 22, Burns). Accordingly, the principal diagnosis determines MDC assignment. Within most MDCs, cases are then divided into surgical DRGs and medical DRGs. While we do not anticipate large numbers of surgical cases in LTCHs, surgical DRGs are assigned based on a surgical hierarchy that orders individual procedures or groups of procedures by resource intensity. Generally, the GROUPER does not recognize certain other procedures; that is, those procedures not surgical (for example, EKG), or minor surgical procedures generally not performed in an operating room and, therefore, not considered as surgical by the GROUPER (for example, 86.11, Biopsy of skin and subcutaneous tissue).

The medical DRGs are generally differentiated on the basis of diagnosis. Both medical and surgical DRGs may be further differentiated based on age, discharge status, and presence or absence of complications or comorbidities (CC). It should be noted that CCs are defined by certain secondary diagnoses not related to or inherently a part of the disease process identified by the principal diagnosis (for example, the GROUPER would not recognize a code from the 800.0x series, Skull fracture, as a comorbidity or complication when combined with principal diagnosis 850.4, Concussion with prolonged loss of consciousness, without return to pre-existing conscious level). Additionally, we would note that the presence of additional diagnoses does not automatically generate a CC, as not all DRGs recognize a comorbid or complicating condition in their definition. (For example, DRG 466, Aftercare without History of Malignancy as Secondary Diagnosis, is based solely on the principal diagnosis, without consideration of additional diagnoses for DRG determination.)

D. Proposed LTC–DRG Classification System for LTCHs

Unless otherwise noted, our analysis of a per discharge DRG-based patient classification system is based on LTCH data from the FY 2000 MedPAR file which contains hospital bills received through May 31, 2001, for discharges in FY 2000.

The proposed patient classification system for the proposed LTCH prospective payment system would be based on the hospital inpatient prospective payment system currently used for Medicare beneficiaries, as described in section III.C. of this proposed rule. Within the LTCH data set, as identified by provider number, we would classify all cases to the CMS DRGs. We identified individual LTCH cases with a length of stay equal to or less than 7 days (see section IV.B.1. of this preamble for a discussion of the proposed very short-stay discharge policy under § 412.527) and grouped them into two proposed very short-stay LTC–DRGs; one for psychiatric cases and one for all other cases. Therefore, the proposed patient classification system would consist of 501 DRGs that would form the basis of the proposed FY 2003 LTCH prospective payment system GROUPER. The 501 proposed LTC–DRGs include two DRGs for very short-stay discharges (*see* section IV.B.1.) and two error DRGs. The other 497 proposed LTC–DRGs are the same DRGs used in the hospital inpatient prospective payment system GROUPER for FY 2002 (version 18). Cases submitted to the fiscal intermediaries would be processed using the data elements, MCE, and the GROUPER system already in place for the acute care hospital inpatient prospective payment system as described above.

There is one significant difference in this proposed system that sets it apart from the concept of DRG definition based on clinical coherence. As noted above, cases with a length of stay equal to or less than 7 days (referred to hereafter as ''very short-stay'') were identified and grouped together in two separate LTC–DRGs.

We are proposing to group cases that stayed 7 days or fewer that would otherwise be grouped into DRGs 424 through 432 in MDC 19 (Mental

Diseases and Disorders) or DRGs 433 through 437 in MDC 20 (Alcohol/Drug Use and Alcohol/Drug-Induced Organic Mental Disorders) into a new proposed psychiatric very short-stay group. We are proposing to classify all other cases that stayed 7 days or fewer, that is, very short-stay cases not classified into MDC 19 or 20, into the second new proposed very short-stay, nonpsychiatric group. Additionally, as in the acute care hospital inpatient prospective payment system, we are proposing to include two ''error DRGs'' in the LTC–DRG system where cases that cannot be assigned to valid DRGs will be grouped. These are DRG 469 (Principal diagnosis invalid as a discharge diagnosis) and DRG 470 (Ungroupable). (*See* 66 FR 40062, August 1, 2001.) Therefore, the LTC–DRG system that we are proposing would include 4 nonclinical categories into which LTCH patients can be grouped.

E. ICD–9–CM Coding System

1. Historical Use of ICD–9–CM Codes

The Ninth Revision of the International Classification of Diseases, Clinical Modification, was adapted for use in the United States in 1979. This coding system is the basis for the CMS DRGs, upon which the proposed LTC–DRGs would be based. Additionally, the Standards for Electronic Transactions (65 FR 50312) designates the ICD–9–CM volumes 1 and 2 (including the official ICD–9–CM Guidelines for Coding and Reporting) as the standard medical data code set for capturing diseases, injuries, impairments, other health-related problems and their manifestations and causes. The ICD–9–CM volume 3 procedures (including the Official ICD–9–CM Guidelines for Coding and Reporting) have been adopted as the HIPAA standard code set for prevention, diagnosis, treatment, and management of actions taken for diseases, injuries, and impairments on hospital inpatients. These guidelines are available through a number of sources, including the following Web site: *http://www.cdc.gov/nchs/data/icdguide.pdf.*

(We note that should the Secretary, in the future, adopt a different medical data code set for capturing diseases, injuries, or impairments, hospitals participating in the Medicare program would be required to use those codes.)

2. Uniform Hospital Discharge Data Set (UHDDS) Definitions

Because the assignment of a case to a particular proposed LTC–DRG would determine the amount that would be paid for the case, it is important that the coding is accurate. We are proposing that classifications and terminology used in the proposed LTCH prospective payment system would be consistent with the ICD–9–CM and the UHDDS, as recommended to the Secretary by the National Committee on Vital and Health Statistics (Uniform Hospital Discharge Data: Minimum Data Set, National Center for Health Statistics, April 1980) and as revised in 1984 by the Health Information Policy Council (HIPC) of the U.S. Department of Health and Human Services.

We wish to point out that the ICD–9–CM coding terminology and the definitions of principal and other diagnoses of the UHDDS are consistent with the requirements of the HIPPA Administrative Simplification Act of 1996 (see 45 CFR part 162). Furthermore, the UHDDS has been used as a standard for the development of policies and programs related to hospital discharge statistics by both governmental and nongovernmental sectors for over 30 years. Additionally, the following definitions (as described in the 1984 Revision of the Uniform Hospital Discharge Data Set, approved by the Secretary of Health and Human Services for use starting January 1986) are requirements of the ICD–9–CM coding system, and have been used as a standard for the development of the CMS DRGs:

- Diagnoses include all diagnoses that affect the current hospital stay.
- Principal diagnosis is defined as the condition established after study to be chiefly responsible for occasioning the admission of the patient to the hospital for care.
- Other diagnoses (also called secondary diagnoses or additional diagnoses) are defined as all conditions that coexist at the time of admission, that develop subsequently, or that affect the treatment received or the length of stay or both. Diagnoses that relate to an earlier episode of care that have no bearing on the current hospital stay are excluded.

All procedures performed would be reported. This includes those that are surgical in nature, carry a procedural risk, carry an anesthetic risk, or require specialized training.

As discussed in section II.D.l. of this proposed rule and consistent with the procedures for review of CMS DRGs under the acute care hospital inpatient prospective payment system, we are proposing to provide LTCHs with a 60-day window after the date of the notice of the initial LTC–DRG assignment to request review of that assignment. Additional information may be provided by the LTCH to the fiscal intermediary as part of that review.

3. Maintenance of ICD–9–CM System

In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee, co-chaired by the National Center for Health Statistics (NCHS) and CMS, charged with maintaining and updating the ICD–9–CM system. The committee is jointly responsible for approving coding changes, and developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in the Tabular List and Alphabetic Index for Diseases, while CMS has lead responsibility for the ICD–9–CM procedure codes included in the Tabular List and Alphabetic Index for Procedures.

The 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 field, such as the American Health Information Management Association (AHIMA) (formerly American Medical Record Association (AMRA)), the American Hospital Association (AHA), and various physician specialty groups, as well as physicians, medical record administrators, health information management professionals, and other members of the public to contribute ideas on coding matters. After considering the opinions expressed at the public meetings and in writing, the committee formulates recommendations, which then must be approved by the agencies.

The committee presents proposals for coding changes at two public meetings per year held at the CMS Central Office located in Baltimore, Maryland. The agenda and date of the meeting can be accessed on the CMS Web site at: *http://www.cms.gov/medicare/icd9cm.htm.*

After consideration of public comments received at both meetings, as well as in writing, coding changes are published by CMS in the annual proposed and final rules in the **Federal**

Register on Medicare program changes to the short-term acute care hospital inpatient prospective payment systems. For example, new codes effective for discharges on or after October 1, 2001, can be found in Tables 6A through 6F of the August 1, 2001 hospital inpatient prospective payment system and rates for FY 2002 final rule (66 FR 40063 through 40066).

All changes to the ICD–9–CM coding system that affect DRG assignment are addressed annually in the acute care hospital inpatient prospective payment system proposed and final rules. Since the proposed DRG-based patient classification system for the proposed LTCH prospective payments system is based on the acute care hospital inpatient prospective payment system DRGs, these changes would also affect the proposed LTCH prospective payment system DRG patient classification system. As coding changes may have an impact on DRG assignment, LTCHs would be encouraged to obtain and correctly use the most current edition of the ICD–9–CM codes. The official version of the ICD–9–CM is available on CD–ROM from the U.S. Government Printing Office. The FY 2002 version can be ordered by contacting the Superintendent of Documents, U.S. Government Printing Office, Dept. 50, Washington, DC 20402–9329, telephone: (202) 512–1800. The stock number is 017–022–01510–2, and the price is $22.00. In addition, private vendors also publish the ICD–9–CM.

Copies of the Coordination and Maintenance Committee minutes can be obtained from the CMS Web site at: *http://www.cms.gov/medicare/icd9cm.htm.* We encourage commenters to address suggestions on coding issues involving diagnosis codes to: Donna Pickett, Co-Chairperson, ICD–9–CM Coordination and Maintenance Committee, NCHS Room 1100, 6525 Belcrest Road, Hyattsville, MD 20782. Comments may be sent by e-mail to: *dfp4@cdc.gov.*

Questions and comments concerning the procedure codes should be addressed to: Patricia E. Brooks, Co-Chairperson, ICD–9–CM Coordination and Maintenance Committee, CMS, Center for Medicare Management, Purchasing Policy Group, Division of Acute Care, Mail Stop C4–08–06, 7500 Security Boulevard, Baltimore, MD 21244–1850. Comments may be sent by e-mail to: *pbrooks@cms.hhs.gov.*

As noted above, the ICD–9–CM code changes that have been approved would become effective at the beginning of the Federal fiscal year, October 1. Of particular note to LTCHs would be the invalid diagnosis codes (Table 6C) and the invalid procedure codes (Table 6D). Use of invalid codes would cause claims to fail the MCE screens.

4. Coding Rules and Use of ICD–9–CM in LTCHs

The emphasis on the need for proper coding cannot be overstated. Inappropriate coding of cases can adversely affect the uniformity of cases in each LTC–DRG and produce inappropriate weighting factors at recalibration.

Because of our concern with correct coding practice, we have been working with the AHA editorial advisory board for its publication ''Coding Clinic for ICD–9–CM'' since 1984. Coding Clinic was developed to improve the accuracy and uniformity of medical record coding and is recognized in the industry as the definitive source of coding instruction. In 1987, the AHA created the cooperating parties, who have final approval of the coding advice provided in Coding Clinic. The cooperating parties consist of the AHA, the AHIMA (formerly the AMRA), CMS (formerly HCFA), and NCHS. As we participate on the editorial advisory board and are one of the cooperating parties, we support the use of Coding Clinic for coding advice for LTCHs. Information about Coding Clinic can be obtained from the American Hospital Association, Central Office on ICD–9–CM, One North Franklin, Chicago, IL 60606, or at its Web site at *http://www.ahacentraloffice.org.*

Even though we recognize that the **Federal Register** may not be the most efficient vehicle for coding instruction, we believe it is important to briefly review some of the basic instructions for coding. Our compelling need is based on the review of the data submitted by LTCHs. We note that the logic of the care patterns or place of treatment should not be considered in reviewing the following scenarios. Rather, we are attempting to present simplistic examples to illustrate correct coding practice.

- Principal diagnosis—As noted above, the specific definition for principal diagnosis established by the 1984 Revision of the Uniform Hospital Discharge Data Set is ''the condition established after study to be chiefly responsible for occasioning the admission of the patient to the hospital for care.'' When a patient is discharged from an acute care facility and admitted to a LTCH, the appropriate principal diagnosis at the LTCH is not necessarily the same diagnosis for which the patient received care at the acute care hospital. For example, a patient who suffers a stroke (code 436, Acute, but ill-defined, cerebrovascular disease) is admitted to an acute hospital for diagnosis and treatment. The patient is then transferred to a LTCH for further treatment of left-sided hemiparesis and dysphasia. The appropriate principal diagnosis at the LTCH would be a code from section 438 (Late effects of cerebrovascular disease), such as 438.20 (Late effects of cerebrovascular disease, Hemiplegia affecting unspecified side) or 438.12 (Late effects of cerebrovascular disease, Dysphasia).

Coding guidelines state that the residual condition is sequenced first followed by the cause of the late effect. In the case of cerebrovascular disease, the combination code describes both the residual of the stroke (for example, speech or language deficits or paralysis), and the cause of the residual (the stroke)). Code 436 would only be used for the first (initial) episode of care for the stroke that was in the acute care setting.

- Other diagnoses—Secondary diagnoses that have no bearing on the LTCH stay would not be coded. For example, a patient who has recovered from pneumonia during a previous episode of care would not have a diagnosis code for pneumonia included in his or her list of discharge diagnoses. The pneumonia was not treated during this LTCH admission and, therefore, has no bearing on this case.
- Procedures—Codes reflecting procedures provided during a previous acute care hospital stay would not be included because the procedure was not performed during this LTCH admission. For example, a patient with several chronic illnesses is admitted to an acute care hospital with a diagnosis of appendicitis for which he or she receives an appendectomy. The patient subsequently is transferred to a LTCH for medical treatment following surgery, and as a result of the multiple secondary conditions, the patient needs a higher level of care than he or she could receive at a SNF or at home with an HHA. In this situation, appendicitis would not be coded because this condition was resolved with the removal of the appendix. The procedure code for appendectomy would not be used on the LTCH record, as the procedure was performed in the acute care setting, not during the LTCH admission.

We would train fiscal intermediaries and providers on the new system prior to its implementation. We also would issue manuals containing procedures as well as coding instructions to LTCHs and fiscal intermediaries following the publication of the final rule.

IV. Proposed Payment System for LTCHs

The LTCH prospective payment system proposed in this rule would use Federal prospective payment rates across 501 proposed distinct LTC–DRGs. We are proposing to establish a standard Federal payment rate based on the best available LTCH cost data. LTC–DRG relative weights would be applied to the standard Federal rate to account for the relative differences in resource use across the LTC–DRGs. The proposed system would also include an adjustment for very short-stay discharges, short-stay outliers, and high-cost outlier cases, as described in section IV.B. of this preamble.

The proposed standard Federal prospective payment rate, which is the basis for determining proposed Federal payment rates for each proposed LTC–DRG, would be determined based on average costs from a base period, and also would reflect the combined aggregate effects of the proposed payment weights and other proposed policies discussed in this section. In discussing the proposed methodology, we begin by describing the various adjustments and factors that would serve as the input used in establishing the proposed standard Federal prospective payment rate. Accordingly, we are proposing to develop prospective payments for LTCHs using the following major steps:

- Develop the LTC–DRG relative weights.
- Determine appropriate payment system adjustments.
- Calculate the budget neutral standard Federal prospective payment rate.
- Calculate the Federal LTC–DRG prospective payments.

A detailed description of each step and a discussion of our proposed policies for special cases, phase-in implementation, and other policies follows.

A. Development of the Proposed LTC–DRG Relative Weights

1. Overview of Development of the Proposed LTC–DRG Relative Weights

As previously stated, one of the primary goals for the implementation of the proposed LTCH prospective payment system would be to pay each LTCH an appropriate amount for the efficient delivery of care to Medicare patients. The system must be able to account adequately for each LTCH's case-mix in order to ensure both fair distribution of Medicare payments and access to adequate care for beneficiaries whose care is more costly. To accomplish these goals, we are proposing to adjust the standard Federal prospective payment system rate by the LTC–DRG relative weights in determining payment to LTCHs for each case.

In this proposed payment system, relative weights for each LTC–DRG would be a primary element used to account for the variations in cost per discharge and resource utilization among the payment groups (proposed § 412.515). To ensure that Medicare patients classified to each proposed LTC–DRG would have access to an appropriate level of services and to encourage efficiency, we are proposing to calculate a relative weight for each LTC–DRG that represents the resources needed by an average inpatient LTCH case in that LTC–DRG. For example, cases in a LTC–DRG with a relative weight of 2 would, on average, cost twice as much as cases in a LTC–DRG with a weight of 1.

To calculate the proposed relative weights, we obtained charges from FY 2000 Medicare bill data in the June 2001 update of the MedPAR and we used version 18.0 of the CMS GROUPER (used under the hospital inpatient prospective payment system for FY 2001). In the final rule, we would recalculate the relative weights based on the most recent MedPAR data and version 19.0 of the CMS GROUPER (used under the hospital inpatient prospective payment system for FY 2002). By nature LTCHs often specialize in certain areas, such as ventilator-dependent patients and rehabilitation and wound care. Some case types (DRGs) may be treated, to a large extent, in hospitals that have, from a perspective of charges, relatively high (or low) charges. Such nonarbitrary distribution of cases with relatively high (or low) charges in specific LTC–DRGs has the potential to inappropriately distort the measure of average charges. To account for the fact that cases may not be randomly distributed across LTCHs, we are proposing to use a hospital-specific relative value method to calculate relative weights. We believe this method would remove this hospital-specific source of bias in measuring average charges. Specifically, we would reduce the impact of the variation in charges across providers on any particular LTC–DRG relative weight by converting each LTCH's charge for a case to a relative value based on that LTCH's average charge. As MedPAC noted in its June 2000 Report to Congress, the hospital-specific relative value method eliminates distortion in the weights due to systematic differences among hospitals in the level of charge markups or costs (p. 58). The case-mix index is the average case weight (adjusted to eliminate the effect of short-stay outliers that are described in section IV.B.2. of this preamble) for cases at each LTCH.

Under the hospital-specific relative value method, we would standardize charges for each LTCH by converting its charges for each case to hospital-specific relative charge values and then adjusting those values for the LTCH's case-mix. The adjustment for case-mix is needed to rescale the hospital-specific relative charge values (which average 1.0 for each LTCH by definition). The average relative weight for a LTCH is its case-mix, so it is reasonable to scale each LTCH's average relative charge value by its case-mix. In this way, each LTCH's relative charge values will be adjusted by its case-mix to an average that reflects the complexity of the cases it treats relative to the complexity of the cases treated by all other LTCHs (the average case-mix of all LTCHs).

We would standardize charges for each case by first dividing the adjusted charge for the case (adjusted for short-stay outliers as described in section IV.B.2. of this proposed rule) by the average adjusted charge for all cases at the LTCH in which the case was treated. The average adjusted charge would reflect the average intensity of the health care services delivered by a particular LTCH and the average cost level of that LTCH. The resulting ratio would be multiplied by that LTCH's case-mix index to determine the standardized charge for the case.

Multiplying by the LTCH's case-mix index accounts for the fact that the same relative charges are given greater weight in a hospital with higher average costs than they would at a LTCH with low average costs in order to adjust each LTCH's relative charge value to reflect its case-mix relative to the average case-mix for all LTCHs. Because we are proposing to standardize charges in this manner, we would count charges for a Medicare patient at a LTCH with high average charges as less resource intensive than they would be at a LTCH with low average charges. For example, a $10,000 charge for a case in a LTCH with an average adjusted charge of $17,500 reflects a higher level of relative resource use than a $10,000 charge for a case in a LTCH with the same case-mix, but an average adjusted charge of $35,000. We believe that the adjusted charge of an individual case would more accurately reflect actual resource use for an individual LTCH because the variation in charges due to systematic differences in the markup of charges among LTCHs is taken into account.

As explained in section III. of this proposed rule, we would group cases with a 7-day or fewer length of stay (very short-stay discharges under proposed § 412.527 described in section IV.B.1. of this preamble) into one of two proposed groups. We are proposing that discharges with a 7-day or fewer length of stay that would otherwise be grouped into DRGs 424 through 432 in MDC 19 (Mental Diseases and Disorders) or DRGs 433 through 437 in MDC 20 (Alcohol/Drug Use and Alcohol/Drug Induced Organic Mental Disorders) would be grouped into a proposed psychiatric very short-stay discharge group. All other very short-stay discharges would be grouped into the second very short-stay discharge, nonpsychiatric group. Each of these very short-stay discharge groups would have its own relative weight and an average length of stay computed using the same methodology used to determine the relative weights for the ''regular'' (length of stay greater than 7 days) LTC–DRGs.

In addition, in order to account for LTC–DRGs with low volume (that is, with fewer than 25 LTCH cases), we would group those low volume LTC–DRGs into one of five categories (quintiles) based on average charges, for the purposes of determining relative weights. Using LTCH cases from the June 2001 update of the FY 2000 MedPAR, we identified 188 LTC–DRGs that contained between 1 and 24 cases. This list of LTC–DRGs was then divided into one of the five low volume quintiles, each containing a minimum of 37 LTC–DRGs (188/5 = 37 with 3 LTC–DRGs as a remainder). We made an assignment to a specific quintile by sorting the 188 low volume DRGs in ascending order by average charge. Since the number of LTC–DRGs with less than 25 LTCH cases is not evenly divisible by five, the average charge of the low volume LTC–DRG was used to determine which quintiles received an additional LTC–DRG. After sorting the 188 volume LTC–DRGs in ascending order, the first fifth of low volume (37) LTC–DRGs with the lowest average charge are grouped into Quintile 1. Since the average charge of the next LTC–DRG (38th in the sorted list) is closer to the previous LTC–DRG's average charge (assigned to Quintile 1) than to the average charge of the 39th LTC–DRG on the sorted list (to be assigned to Quintile 2), it is placed into Quintile 1. This process was repeated through the remaining low volume LTC–DRGs so that 3 quintiles contained 38 LTC–DRGs and 2 quintiles contained 37 LTC–DRGs. The highest average charge cases would be grouped into Quintile 5. In order to determine the proposed relative weights for the 188 LTC–DRGs with low volume, we used the five low volume quintiles described above. The composition of each of the five low volume quintiles shown below in Table 2 would be used in determining the proposed LTC–DRG relative weights. We would determine a proposed relative weight and average length of stay for each of the proposed five low volume quintiles using the formula applied to the regular LTC–DRGs (25 or more cases), as described in section IV.A.2 of this proposed rule. We would assign the same relative weight and average length of stay to each of the proposed LTC–DRGs that make up that proposed low volume quintile. We note that as this proposed system is dynamic, it is entirely possible that the number and specific type of LTC–DRGs with a low volume of LTCH cases would vary in the future. We would use the best available claims data in the MedPAR to identify low volume LTC–DRGs and to calculate the relative weights based on our proposed methodology.

TABLE 2.—COMPOSITION OF PROPOSED LOW VOLUME QUINTILES

LTC–DRG	Description
Proposed Quintile 1	
45	NEUROLOGICAL EYE DISORDERS
47	OTHER DISORDERS OF THE EYE AGE >17 W/O CC
53	SINUS & MASTOID PROCEDURES AGE >17
55	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES
69	OTITIS MEDIA & URI AGE >17 W/O CC
149	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC
158	ANAL & STOMAL PROCEDURES W/O CC
160	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC
161	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC
171	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC
178	UNCOMPLICATED PEPTIC ULCER W/O CC
219	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC
252	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0–17
257	TOTAL MASTECTOMY FOR MALIGNANCY W CC
258	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC
282	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0–17
290	THYROID PROCEDURES
295	DIABETES AGE 0–35
299	INBORN ERRORS OF METABOLISM
305	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON–NEOPL W/O CC
307	PROSTATECTOMY W/O CC
326	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC
336	TRANSURETHRAL PROSTATECTOMY W CC
337	TRANSURETHRAL PROSTATECTOMY W/O CC
344	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY
353	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY
355	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC
356	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES
358	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC
359	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC
396	RED BLOOD CELL DISORDERS AGE 0–17
419**	FEVER OF UNKNOWN ORIGIN AGE >17 W CC
436	ALC/DRUG DEPENDENCE W REHABILITATION THERAPY

TABLE 2.—COMPOSITION OF PROPOSED LOW VOLUME QUINTILES—Continued

LTC–DRG	Description
437	ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY
447	ALLERGIC REACTIONS AGE >17
450	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC
467	OTHER FACTORS INFLUENCING HEALTH STATUS
494	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC
Proposed Quintile 2	
21	VIRAL MENINGITIS
46	OTHER DISORDERS OF THE EYE AGE >17 W CC
74	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0–17
95	PNEUMOTHORAX W/O CC
117	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT
124**	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG
128	DEEP VEIN THROMBOPHLEBITIS
129	CARDIAC ARREST, UNEXPLAINED
206	DISORDERS OF LIVER EXCEPT MALIG, CIRR, ALC HEPA W/O CC
208	DISORDERS OF THE BILIARY TRACT W/O CC
211	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC
224	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC
232	ARTHROSCOPY
273	MAJOR SKIN DISORDERS W/O CC
276	NON-MALIGANT BREAST DISORDERS
284	MINOR SKIN DISORDERS W/O CC
288	O.R. PROCEDURES FOR OBESITY
301	ENDOCRINE DISORDERS W/O CC
306	PROSTATECTOMY W CC
309	MINOR BLADDER PROCEDURES W/O CC
311	TRANSURETHRAL PROCEDURES W/O CC
324	URINARY STONES W/O CC
328	URETHRAL STRICTURE AGE >17 W CC
338	TESTES PROCEDURES, FOR MALIGNANCY
347	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC
348	BENIGN PROSTATIC HYPERTROPHY W CC
349*	BENIGN PROSTATIC HYPERTROPHY W/O CC
360	VAGINA, CERVIX & VULVA PROCEDURES
369	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS
399	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC
408	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R. PROC
419*	FEVER OF UNKNOWN ORIGIN AGE >17 W CC
420	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC
449	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC
454	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC
455	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC
465	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS
507	FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA
509	FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA
511	NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA
Proposed Quintile 3	
4	SPINAL PROCEDURES
8	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC
22	HYPERTENSIVE ENCEPHALOPATHY
32	CONCUSSION AGE >17 W/O CC
66	EPISTAXIS
81	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0–17
84	MAJOR CHEST TRAUMA W/O CC
157	ANAL & STOMAL PROCEDURES W CC
177	UNCOMPLICATED PEPTIC ULCER W CC
197	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE
225	FOOT PROCEDURES
228	MAJOR THUMB OR JOINT PROC, OR OTH HAND OR WRIST PROC W CC
229	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC
255	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE 0–17
261	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION
279	CELLULITIS AGE 0–17
298	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0–17
304	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC
308	MINOR BLADDER PROCEDURES W CC
319	KIDNEY & URINARY TRACT NEOPLASMS W/O CC

TABLE 2.—COMPOSITION OF PROPOSED LOW VOLUME QUINTILES—Continued

LTC–DRG	Description
322	KIDNEY & URINARY TRACT INFECTIONS AGE 0–17
323	URINARY STONES W CC, &/OR ESW LITHOTRIPSY
341	PENIS PROCEDURES
349**	BENIGN PROSTATIC HYPERTROPHY W/O CC
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM
385	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY
390	NEONATE W OTHER SIGNIFICANT PROBLEMS
401	LYMPHOMA & NON–ACUTE LEUKEMIA W OTHER O.R. PROC W CC
409	RADIOTHERAPY
421	VIRAL ILLNESS AGE >17
427	NEUROSES EXCEPT DEPRESSIVE
432	OTHER MENTAL DISORDER DIAGNOSES
493	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC
497	SPINAL FUSION W CC
508	FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA
510	NON–EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA
Proposed Quintile 4	
1	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA
5	EXTRACRANIAL VASCULAR PROCEDURES
91	SIMPLE PNEUMONIA & PLEURISY AGE 0–17
104	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W CARDIAC CATH
105	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W/O CARDIAC CATH
110	MAJOR CARDIOVASCULAR PROCEDURES W CC
115	PRM CARD PACEM IMPL W AMI, HRT FAIL OR SHK, OR AICD LEAD OR GNRTR P
118	CARDIAC PACEMAKER DEVICE REPLACEMENT
124*	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG
125*	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG
148	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC
150	PERITONEAL ADHESIOLYSIS W CC
159	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC
184	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0–17
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17
191	PANCREAS, LIVER & SHUNT PROCEDURES W CC
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC
218	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W CC
223	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC
231	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR
285	AMPUTAT OF LOWER LIMB FOR ENDOCRINE, NUTRIT, & METABOL DISORDERS
292	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC
293*	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC
310	TRANSURETHRAL PROCEDURES W CC
312	URETHRAL PROCEDURES, AGE >17 W CC
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES
363	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY
400	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE
410	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS
424	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS
439	SKIN GRAFTS FOR INJURIES
443	OTHER O.R. PROCEDURES FOR INJURIES W/O CC
482	TRACHEOSTOMY FOR FACE, MOUTH & NECK DIAGNOSES
492	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS
500	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC
503	KNEE PROCEDURES W/O PDX OF INFECTION
504	EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT
505	EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT
506	FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA
Proposed Quintile 5	
2	CRANIOTOMY FOR TRAUMA AGE >17
31	CONCUSSION AGE >17 W CC
44	ACUTE MAJOR EYE INFECTIONS
63	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES
75	MAJOR CHEST PROCEDURES
77	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC
112	PERCUTANEOUS CARDIOVASCULAR PROCEDURES
116	OTH PERM CARD PACEMAK IMPL OR PTCA W CORONARY ARTERY STENT IMPLNT
125**	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG
152	MINOR SMALL & LARGE BOWEL PROCEDURES W CC

TABLE 2.—COMPOSITION OF PROPOSED LOW VOLUME QUINTILES—Continued

LTC–DRG	Description
154	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC
155	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC
193	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC
199	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY
201	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES
209	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY
226	SOFT TISSUE PROCEDURES W CC
227	SOFT TISSUE PROCEDURES W/O CC
230	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC
265	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC
266	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC
267	PERIANAL & PILONIDAL PROCEDURES
268	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES
293**	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC
303	KIDNEY, URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM
333	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0–17
339	TESTES PROCEDURES, NON-MALIGNANCY AGE >17
345	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY
365	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES
394	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS
406	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R. PROC W CC
417	SEPTICEMIA AGE 0–17
479***	OTHER VASCULAR PROCEDURES W/O CC
486	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA
488	HIV W EXTENSIVE O.R. PROCEDURE
499	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC
501	KNEE PROCEDURES W PDX OF INFECTION W CC

*One of the original 188 low volume LTC-DRGs initially assigned to a different low volume quintile; reassigned to this low volume quintile in addressing nonmonotonicity (see step 4 below).

**One of the original 188 low volume LTC-DRGs initially assigned to this low volume quintile; reassigned to a different low volume quintile in addressing nonmonotonicity (see step 4 below).

***One of the original 188 low volume LTC-DRGs initially assigned to this low volume quintile; removed from the low volume quintiles in addressing nonmonotonicity (see step 4 below).

After grouping the cases in the appropriate proposed LTC–DRG, we calculate the proposed relative weights in this proposed rule by first adjusting the number of cases in each LTC–DRG for the effect of short-stay outlier cases under proposed § 412.529. The short-stay adjusted discharges and corresponding charges would be used to calculate proposed ''relative adjusted weights'' in each LTC–DRG using the hospital-specific relative value method described above. We describe each of these steps in greater detail below.

2. Steps for Calculating the Proposed Relative Weights

Step 1—Adjust charges for the effects of short-stay outliers. The first step in the calculation of the relative weights is to adjust each LTCH's charges per discharge for short-stay outlier cases (that is, a patient with a length of stay in excess of 7 days, but below two-thirds the average length of stay of the LTC–DRG as described in section IV.B.2. of this proposed rule).

We would make this adjustment by counting a short-stay outlier as a fraction of a discharge based on the ratio of the length of stay of the case to the average length of stay for the LTC–DRG for nonshort-stay outlier cases. This would have the effect of proportionately reducing the impact of the lower charges for the short-stay outlier cases in calculating the average charge for the LTC–DRG. This process produces the same result as if the actual charges per discharge of a short-stay outlier case would be adjusted to what they would have been had the patient's length of stay been equal to the average length of stay of the LTC–DRG.

Counting short-stay outlier cases as full discharges with no adjustment in determining the relative weights would lower the relative weight for affected LTC–DRGs because the relatively lower charges of the short-stay outlier cases bring down the average charge for all cases within a LTC–DRG. This would result in an ''underpayment'' to nonshort-stay outlier cases and an ''overpayment'' to short-stay outlier cases. Therefore, adjusting for short-stay outlier cases in this manner would result in more appropriate payments for all LTCH cases. The result of step 1 is that each LTCH's average cost per discharge is adjusted for short-stay outliers (as described above) before removing statistical outliers (step 2) and calculating the LTC–DRG relative weights on an iterative basis (step 3) using the hospital-specific relative value method.

Step 2—Remove statistical outliers. We are proposing to define statistical outliers as cases that are outside of 3.0 standard deviations from the mean of the log distribution of both charges per case and the charges per day for each proposed LTC–DRG. After adjusting each LTCH's discharges for short-stay outlier cases (see step 1), these statistical outliers would be removed prior to calculating the proposed relative weights. We believe that they may represent aberrations in the data that would distort the measure of average resource use. Including those cases in the calculation of the relative weights could result in an inaccurate weight that does not truly reflect relative resource use among the proposed LTC–DRGs. Thus, removing statistical outliers would result in more appropriate payments. These adjusted charges per discharge for each proposed LTC–DRG are then used to calculate the average adjusted charge of all cases at the LTCH in determining the proposed relative weight for the proposed LTC–DRGs.

Step 3—Calculate the LTC–DRG relative weights on an iterative basis. The process of calculating the LTC–DRG relative weights would be iterative. First, for each case, we would calculate a hospital-specific relative charge value by dividing the short-stay outlier adjusted charge per discharge (see step 1) of the case (after removing the statistical outlier (see step 2)) by the average charge per discharge for the LTCH in which the case occurred. The resulting ratio is then multiplied by the LTCH's case-mix index to produce an adjusted hospital-specific relative charge value for the case. An initial case-mix index value of 1.0 is used for each LTCH.

For each LTC–DRG, the proposed LTC–DRG relative weight would then be calculated by dividing the average of the adjusted hospital-specific relative charge values (from above) for the LTC–DRG by the overall average hospital-specific relative charge value across all cases for all LTCHs. Using these recalculated LTC–DRG relative weights, each LTCH's average relative weight for all of its cases (case-mix) would be calculated by dividing the sum of all the LTCH's LTC–DRG relative weights by its total number of cases. The LTCHs' hospital-specific relative charge values above would be multiplied by these hospital specific case-mix indexes. These hospital-specific case-mix adjusted relative charge values are then used to calculate a new set of LTC–DRG relative weights across all LTCHs. This iterative process would be continued until there is convergence between the weights produced at adjacent steps, for example, when the maximum difference is less than 0.0001.

Step 4—Adjust the LTC–DRG relative weights to account for nonmonotonically increasing relative weights. As explained in section III.C. of this proposed rule, the proposed LTC–DRGs would contain ''pairs'' that are differentiated based on the presence or absence of CCs. Proposed LTC–DRGs with CCs are defined by certain secondary diagnoses not related to or inherently a part of the disease process identified by the principal diagnosis, but the presence of additional diagnoses does not automatically generate a CC. The value of monotonically increasing relative weights rises as the resource use increases (for example, from uncomplicated to more complicated). The presence of CCs in a LTC–DRG means that cases classified into a ''without CC'' LTC–DRG are expected to have lower resource use (and lower costs). In other words, resource use (and costs) are expected to decrease across ''with CC''/''without CC'' pairs of LTC–DRGs. For a case to be assigned to a proposed LTC–DRG with CCs, more coded information is called for (that is, at least one relevant secondary diagnosis), than for a case to be assigned to a proposed LTC–DRG without CCs (which is based on only one primary diagnosis and no relevant secondary diagnoses). Currently, the database includes both accurately coded cases without complications and cases that have complications (and cost more) but were not coded completely. Both types of cases would be grouped to a proposed LTC–DRG ''without CCs'' since only one primary diagnosis was coded. Since LTCHs are currently paid under cost-based reimbursement, which is not based on patient diagnoses, LTCHs' coding for these cases may not have been as detailed as possible.

Thus, in developing the proposed relative weights for the LTCH prospective payment system, we found on occasion that the data suggested that cases classified to the proposed LTC–DRG ''with CCs'' of a ''with CC''/''without CC'' pair had a lower average charge than the corresponding proposed LTC–DRG ''without CCs.'' We believe this anomaly may be due to coding that may not have fully reflected all comorbidities that were present. Specifically, LTCHs may have failed to code relevant secondary diagnoses, which resulted in cases that actually had complications and comorbidities being classified into a ''without CC'' LTC–DRG. It would not make sense to pay a lower amount for the ''with CC'' LTC–DRG, so we are proposing to group both the cases ''with CCs'' and ''without CCs'' together for the purpose of calculating the proposed relative weights for the proposed LTC–DRGs until we have adequate data to calculate appropriate separate weights for these anomalous DRG pairs. We expect that, as was the case when we first implemented the acute care hospital inpatient prospective payment system, this problem will be self-correcting, as LTCHs submit more completely coded data in the future.

Using the LTCH cases in the June 2001 update of the FY 2000 MedPAR, we identified three types of ''with CC'' and ''without CC'' pairs of proposed LTC–DRGs that are nonmonotonic, that is, where the ''without CC'' LTC–DRG would have a higher average charge than the ''with CC'' LTC–DRG.

The first category of nonmonotonically increasing relative weights for LTC–DRG pairs ''with and without CCs'' contains 5 pairs of LTC–DRGs in which both the LTC–DRG ''with CCs'' and the LTC–DRG ''without CCs'' had 25 or more LTCH cases and, therefore, did not fall into one of the 5 quintiles. For each pair of LTC–DRGs, we would combine the cases and compute a new relative weight based on the case-weighted average of the combined cases of the LTC–DRGs. The case-weighted average charge would be determined by dividing the total charges for all cases by the total number of cases for the combined LTC–DRG. This new relative weight would be assigned to both of the LTC–DRGs in the pair. For the proposed FY 2003 implementation of the LTCH prospective payment system, the following proposed LTC–DRGs would be in this category: LTC–DRGs 10 and 11, 89 and 90, 138 and 139, 141 and 142, and 274 and 275.

The second category of nonmonotonically increasing relative weights for proposed LTC–DRG pairs with and without CCs consists of 4 pairs of LTC–DRGs that have fewer than 25 cases and are both grouped to different quintiles in which the ''without CC'' LTC–DRG would be in a higher-weighted quintile than the ''with CC'' LTC–DRG. For each pair, we would combine the cases and determine the case-weighted average charge for all cases. The case-weighted average charge would be determined by dividing the total charges for all cases by the total number of cases for the combined LTC–DRG. Based on the case-weighted average charge, we determined which quintile the ''combined LTC–DRG'' would be grouped. Both LTC–DRGs in the pair would then be grouped into the same quintile, and thus have the same proposed relative weight. For the proposed FY 2003 implementation of the LTCH prospective payment system, the following proposed LTC–DRGs would be in this category: 124 and 125 (low volume quintile 4), 292 and 293 (low volume quintile 4), 348 and 349 (low volume quintile 2), and 419 and 420 (low volume quintile 2).

The third category of nonmonotonically increasing relative weights for proposed LTC–DRG pairs with and without CCs has one pair of LTC–DRGs where one of the LTC–DRGs has fewer than 25 LTCH cases and is grouped to a quintile and the other LTC–DRG has 25 or more LTCH cases and would have its own LTC–DRG weight, and the LTC–DRG ''without CCs'' would have the higher weight. We would remove the low volume pair LTC–DRG from the quintile and combine it with the other pair LTC–DRG for the computation of a new relative weight for each of these LTC–DRGs. This proposed new relative weight would be assigned to both LTC–DRGs, so they would each have the same relative weight. For the proposed FY

2003 implementation of the LTCH prospective payment system, proposed LTC–DRGs 478 and 479 would be in this category.

In addition, for the FY 2003 implementation of the LTCH prospective payment system, we are proposing to determine the relative weight for each LTC–DRG using charges reported on the June 2001 update of the FY 2000 MedPAR. Of the proposed 501 LTC–DRGs in the proposed CMS LTCH prospective payment system, we identified 111 LTC–DRGs for which there were no LTCH cases in the database. That is, based on the FY 2000 MedPAR, no patients who would have been classified to those DRGs were treated in LTCHs during FY 2000 and, therefore, no charge data were reported for those DRGs. Thus, in the process of determining the relative weights of proposed LTC–DRGs, we were unable to determine weights for these 111 LTC–DRGs using the method described above. However, since patients with a number of the diagnoses under these LTC–DRGs may be treated at LTCHs beginning in FY 2003 when the LTCH prospective payment system would be implemented, we are proposing to assign relative weights to each of the 111 ''no volume'' LTC–DRGs based on clinical similarity and relative costliness to one of the remaining 390 (501 − 111 = 390) LTC–DRGs for which we are able to determine relative weights, based on FY 2000 charge data.

As there are currently no LTCH cases in these ''no volume'' LTC–DRGs, we are proposing to establish relative weights for the 111 LTC–DRGs with no LTCH cases in the FY 2000 MedPAR by grouping them to the appropriate low volume quintile. This methodology would be consistent with our methodology used in determining relative weights to account for low volume LTC–DRGs described above.

Our proposed methodology for determining relative weights for the ''no volume'' LTC–DRGs is as follows: First, we would cross-walk the no volume LTC–DRGs by matching them to other similar LTC–DRGs for which there were LTCH cases in the FY 2000 MedPAR based on clinical similarity and intensity of use of resources as determined by care provided during the period of time surrounding surgery, surgical approach (if applicable), length of time of surgical procedure, post-operative care, and length of stay. We would assign the weight for the applicable quintile to the no volume LTC–DRG if the LTC–DRG to which it would be cross-walked was grouped to one of the low volume quintiles. If the LTC–DRG to which the no volume LTC–DRG would be cross-walked was not one of the LTC–DRGs grouped to one of the low volume quintiles, we would compare the weight of the LTC–DRG to which the no volume LTC–DRG would be cross-walked to the weights of each of the five quintiles and assign the no volume LTC–DRG the relative weight of the quintile with the closest weight. A list of the proposed no volume LTC–DRGs and the LTC–DRG to which it would be crosswalked in order to determine the appropriate low volume quintile for the assignment of a relative weight is shown below in Table 3.

TABLE 3.—PROPOSED NO VOLUME LTC–DRG CROSSWALK AND PROPOSED QUINTILE ASSIGNMENT [1]

LTC–DRG	Description	Cross-walked LTC–DRG	Low volume quintile assigned
3	CRANIOTOMY AGE 0–17	1	Quintile 4.
6	CARPAL TUNNEL RELEASE	8	Quintile 3.
26	SEIZURE & HEADACHE AGE 0–17	25	Quintile 2.
30	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0–17	29	Quintile 3.
33	CONCUSSION AGE 0–17	32	Quintile 3.
36	RETINAL PROCEDURES	47	Quintile 1.
37	ORBITAL PROCEDURES	47	Quintile 1.
38	PRIMARY IRIS PROCEDURES	47	Quintile 1.
39	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	47	Quintile 1.
40	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	47	Quintile 1.
41	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0–17	47	Quintile 1.
42	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	47	Quintile 1.
43	HYPHEMA	47	Quintile 1.
48	OTHER DISORDERS OF THE EYE AGE 0–17	47	Quintile 1.
49	MAJOR HEAD & NECK PROCEDURES	73	Quintile 3.
50	SIALOADENECTOMY	73	Quintile 3.
51	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	73	Quintile 3.
52	CLEFT LIP & PALATE REPAIR	53	Quintile 1.
56	RHINOPLASTY	55	Quintile 1.
57	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	55	Quintile 1.
58	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17	55	Quintile 1.
59	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	55	Quintile 1.
60	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17	55	Quintile 1.
61	MYRINGOTOMY W TUBE INSERTION AGE >17	55	Quintile 1.
62	MYRINGOTOMY W TUBE INSERTION AGE 0–17	55	Quintile 1.
67	EPIGLOTTITIS	73	Quintile 3.
70	OTITIS MEDIA & URI AGE 0–17	69	Quintile 1.
71	LARYNGOTRACHEITIS	69	Quintile 1.
72	NASAL TRAUMA & DEFORMITY	69	Quintile 1.
98	BRONCHITIS & ASTHMA AGE 0–17	97	Quintile 1.
106	CORONARY BYPASS W PTCA	104	Quintile 4.
107	CORONARY BYPASS W CARDIAC CATH	104	Quintile 4.
108	OTHER CARDIOTHORACIC PROCEDURES	104	Quintile 4.
109	CORONARY BYPASS W/O PTCA OR CARDIAC CATH	104	Quintile 4.
119	VEIN LIGATION & STRIPPING	131	Quintile 2.
137	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0–17	136	Quintile 2.
146	RECTAL RESECTION W CC	148	Quintile 4.
147	RECTAL RESECTION W/O CC	148	Quintile 4.

TABLE 3.—PROPOSED NO VOLUME LTC–DRG CROSSWALK AND PROPOSED QUINTILE ASSIGNMENT [1]—Continued

LTC–DRG	Description	Cross-walked LTC–DRG	Low volume quintile as-signed
156	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0–17	155	Quintile 5.
163	HERNIA PROCEDURES AGE 0–17	160	Quintile 1.
164	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	157	Quintile 3.
165	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	158	Quintile 1.
166	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	158	Quintile 1.
167	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	158	Quintile 1.
168	MOUTH PROCEDURES W CC	185	Quintile 4.
169	MOUTH PROCEDURES W/O CC	185	Quintile 4.
187	DENTAL EXTRACTIONS & RESTORATIONS	185	Quintile 4.
190	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0–17	189	Quintile 3.
195	CHOLECYSTECTOMY W C.D.E. W CC	191	Quintile 4.
196	CHOLECYSTECTOMY W C.D.E. W/O CC	197	Quintile 3.
200	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	199	Quintile 5.
212	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0–17	211	Quintile 2.
220	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0–17	219	Quintile 1.
259	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	257	Quintile 1.
260	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	258	Quintile 1.
262	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	258	Quintile 1.
286	ADRENAL & PITUITARY PROCEDURES	292	Quintile 4.
289	PARATHYROID PROCEDURES	290	Quintile 1.
291	THYROGLOSSAL PROCEDURES	290	Quintile 1.
317	ADMIT FOR RENAL DIALYSIS	316	Quintile 3.
327	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0–17	326	Quintile 1.
334	MAJOR MALE PELVIC PROCEDURES W CC	354	Quintile 5.
335	MAJOR MALE PELVIC PROCEDURES W/O CC	354	Quintile 5.
340	TESTES PROCEDURES, NON-MALIGNANCY AGE 0–17	347	Quintile 2.
342	CIRCUMCISION AGE >17	344	Quintile 1.
343	CIRCUMCISION AGE 0–17	344	Quintile 1.
351	STERILIZATION, MALE	344	Quintile 1.
357	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	346	Quintile 3.
361	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	367	Quintile 3.
362	ENDOSCOPIC TUBAL INTERRUPTION	367	Quintile 3.
364	D&C, CONIZATION EXCEPT FOR MALIGNANCY	360	Quintile 2.
370	CESAREAN SECTION W CC	365	Quintile 5.
371	CESAREAN SECTION W/O CC	365	Quintile 5.
372	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	359	Quintile 1.
373	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	359	Quintile 1.
374	VAGINAL DELIVERY W STERILIZATION &/OR D&C	359	Quintile 1.
375	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	359	Quintile 1.
376	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	359	Quintile 1.
377	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	359	Quintile 1.
378	ECTOPIC PREGNANCY	359	Quintile 1.
379	THREATENED ABORTION	359	Quintile 1.
380	ABORTION W/O D&C	359	Quintile 1.
381	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	359	Quintile 1.
382	FALSE LABOR	359	Quintile 1.
383	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	359	Quintile 1.
384	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	359	Quintile 1.
386	EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	385	Quintile 3.
387	PREMATURITY W MAJOR PROBLEMS	385	Quintile 3.
388	PREMATURITY W/O MAJOR PROBLEMS	385	Quintile 3.
389	FULL TERM NEONATE W MAJOR PROBLEMS	385	Quintile 3.
391	NORMAL NEWBORN	390	Quintile 3.
392	SPLENECTOMY AGE >17	197	Quintile 3.
393	SPLENECTOMY AGE 0–17	197	Quintile 3.
405	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0–17	416	Quintile 3.
411	HISTORY OF MALIGNANCY W/O ENDOSCOPY	171	Quintile 1.
412	HISTORY OF MALIGNANCY W ENDOSCOPY	171	Quintile 1.
422	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0–17	421	Quintile 3.
441	HAND PROCEDURES FOR INJURIES	229	Quintile 3.
446	TRAUMATIC INJURY AGE 0–17	445	Quintile 3.
448	ALLERGIC REACTIONS AGE 0–17	447	Quintile 1.
451	POISONING & TOXIC EFFECTS OF DRUGS AGE 0–17	450	Quintile 1.
471	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	209	Quintile 5.
481	BONE MARROW TRANSPLANT	394	Quintile 5.
484	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	2	Quintile 5.
485	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TR	486	Quintile 5.
491	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY	486	Quintile 5.
496	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION	497	Quintile 3.

[1] This table does not reflect the four transplant LTC–DRGs, for which we propose to assign a relative weight of 0.0000.

To illustrate the methodology we are proposing for determining relative weights for the 111 LTC–DRGs with no LTCH cases, we are providing the following examples, which refer to the no volume LTC–DRGs crosswalk information provided above in Table 3:

Example 1: There were no cases in the FY 2000 MedPAR file for LTC–DRG 3 (Craniotomy Age 0–17). Since the period of time surrounding the surgery and the post-operative care are similar in resource use and the length and complexity of the surgical procedures and the length of stay are similar, we determined that LTC–DRG 1 (Craniotomy Age > 17 Except for Trauma), which is assigned to low volume quintile 4 for the purpose of determining the proposed relative weights, displayed similar clinical and resource use. Therefore, we are proposing to assign the same relative weight of LTC–DRG 1 of 1.3735 (quintile 4) (see Table 4 below) to LTC–DRG 3.

Example 2: There were no LTCH cases in the FY 2000 MedPAR file for LTC–DRG 98 (Bronchitis & Asthma Age 0–17). Since the severity of illness in patients with bronchitis and asthma are similar in patients regardless of age, we determined that LTC–DRG 97 (Bronchitis & Asthma Age>17 W/O CC) displayed similar clinical and resource use characteristics and have a similar length of stay to LTC–DRG 98. There were over 25 cases in LTC–DRG 97. Therefore, it is not assigned to a low volume quintile for the purpose of determining the relative weights. However, under our proposed methodology, LTC–DRG 98, with no LTCH cases, needs to be grouped to a low volume quintile. We identified that the quintile with the closest weight to LTC–DRG 97 (0.5239; see Table 4 below) was quintile 3 (0.5268; see Table 4 below). Therefore, we are proposing to assign LTC–DRG 98 a relative weight of 0.5268.

Furthermore, we are proposing to establish LTC–DRG relative weights of 0.0000 for heart, kidney, liver, and lung transplants (proposed LTC–DRGs 103, 302, 480, and 495, respectively) because Medicare will only cover these procedures if they are performed at a hospital that has been certified for the specific procedures by Medicare. We are only proposing to include these four transplant LTC–DRGs in the GROUPER program for administrative purposes. Since we are proposing to use the same GROUPER program for LTCHs as is used under the acute care hospital inpatient prospective payment system, removing these DRGs would be administratively burdensome. For further discussion of the Medicare coverage of heart, kidney, liver, and lung transplants, see the following **Federal Register** documents: February 2, 1995 final rule (60 FR 6537); April 12, 1991 final rule (56 FR 15006); and April 6, 1987 final rule (52 FR 10935). Based on our research, we found that most LTCHs only perform minor surgeries, such as minor small and large bowel procedures, if any surgeries at all. Given the extensive criteria that must be met to become certified as a transplant center for Medicare, we do not believe that any LTCHs would become certified as a transplant center. In fact, in the nearly 20 years since the implementation of the hospital inpatient prospective payment system, there has never been a LTCH that even expressed an interest in becoming a transplant center. We specifically solicit comments on whether there is a need for CMS to address determining relative weights (other than zero) for transplant LTC–DRGs. We are proposing to assign proposed LTC–DRGs 103, 302, 480, and 495 a relative weight of zero, as shown in Table 4 below.

Again, we note that as this proposed system is dynamic, it is entirely possible that the number of LTC–DRGs with a zero volume of LTCH cases based on the system we are proposing would vary in the future. We would use the best available claims data in the MedPAR to identify zero volume LTC–DRGs and to determine the relative weights in the final rule.

Table 4 lists the proposed LTC–DRGs and their proposed respective relative weights and arithmetic mean length of stay.

TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
1	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA [4]	1.3735	36.5	13
2	CRANIOTOMY FOR TRAUMA AGE >17 [5]	2.1422	48.3	1
3	CRANIOTOMY AGE 0–17 [4*]	1.3735	36.5	0
4	SPINAL PROCEDURES [3]	0.9568	30.0	10
5	EXTRACRANIAL VASCULAR PROCEDURES [4]	1.3735	36.5	2
6	CARPAL TUNNEL RELEASE [3*]	0.9568	30.0	0
7	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	1.8690	46.3	60
8	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC [3]	0.9568	30.0	2
9	SPINAL DISORDERS & INJURIES	1.5321	41.1	180
10	NERVOUS SYSTEM NEOPLASMS W CC	1.0668	31.8	162
11	NERVOUS SYSTEM NEOPLASMS W/O CC	1.0668	31.8	69
12	DEGENERATIVE NERVOUS SYSTEM DISORDERS	0.9289	32.6	1,955
13	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	0.7511	25.4	126
14	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.0143	30.9	2,678
15	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	0.8800	27.6	182
16	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.1461	29.8	114
17	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	0.8295	25.9	28
18	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	0.9063	28.9	138
19	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	0.8609	30.5	72
20	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.5115	36.4	189
21	VIRAL MENINGITIS [2]	0.7107	24.5	2
22	HYPERTENSIVE ENCEPHALOPATHY [3]	0.9568	30.0	8
23	NONTRAUMATIC STUPOR & COMA	1.2866	36.1	71
24	SEIZURE & HEADACHE AGE >17 W CC	0.9144	29.2	141
25	SEIZURE & HEADACHE AGE >17 W/O CC	0.6727	25.1	74
26	SEIZURE & HEADACHE AGE 0–17 [2]	0.7107	24.5	0
27	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.5525	38.6	54
28	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	1.0679	29.7	134
29	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	0.8326	27.2	95
30	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0–17 [3]	0.9568	30.0	0
31	CONCUSSION AGE >17 W CC [5]	2.1422	48.3	2
32	CONCUSSION AGE >17 W/O CC [3]	0.9568	30.0	2

TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
33	CONCUSSION AGE 0–17 [3]	0.9568	30.0	0
34	OTHER DISORDERS OF NERVOUS SYSTEM W CC	1.1042	30.8	518
35	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	0.9505	30.3	190
36	RETINAL PROCEDURES [1*]	0.5239	18.2	0
37	ORBITAL PROCEDURES [1*]	0.5239	18.2	0
38	PRIMARY IRIS PROCEDURES [1*]	0.5239	18.2	0
39	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY [1*]	0.5239	18.2	0
40	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17 [1*]	0.5239	18.2	0
41	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0–17 [1*]	0.5239	18.2	0
42	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS [1*]	0.5239	18.2	0
43	HYPHEMA [1*]	0.5239	18.2	0
44	ACUTE MAJOR EYE INFECTIONS [5]	2.1422	48.3	3
45	NEUROLOGICAL EYE DISORDERS [1]	0.5239	18.2	6
46	OTHER DISORDERS OF THE EYE AGE >17 W CC [2]	0.7107	24.5	9
47	OTHER DISORDERS OF THE EYE AGE >17 W/O CC [1]	0.5239	18.2	3
48	OTHER DISORDERS OF THE EYE AGE 0–17 [1*]	0.5239	18.2	0
49	MAJOR HEAD & NECK PROCEDURES [3*]	0.9568	30.0	0
50	SIALOADENECTOMY [3*]	0.9568	30.0	0
51	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY [3*]	0.9568	30.0	0
52	CLEFT LIP & PALATE REPAIR [1*]	0.5239	18.2	0
53	SINUS & MASTOID PROCEDURES AGE >17 [1]	0.5239	18.2	1
54	SINUS & MASTOID PROCEDURES AGE 0–17 [1]	0.5239	18.2	0
55	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES [1]	0.5239	18.2	1
56	RHINOPLASTY [1*]	0.5239	18.2	0
57	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17 [1*].	0.5239	18.2	0
58	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17 [1*].	0.5239	18.2	0
59	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17 [1*]	0.5239	18.2	0
60	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17 [1*]	0.5239	18.2	0
61	MYRINGOTOMY W TUBE INSERTION AGE >17 [1*]	0.5239	18.2	0
62	MYRINGOTOMY W TUBE INSERTION AGE 0–17 [1*]	0.5239	18.2	0
63	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES [5]	2.1422	48.3	5
64	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.4108	35.1	144
65	DYSEQUILIBRIUM	0.7130	27.0	25
66	EPISTAXIS [3]	0.9568	30.0	3
67	EPIGLOTTITIS [3]	0.9568	30.0	0
68	OTITIS MEDIA & URI AGE >17 W CC	0.8959	23.7	25
69	OTITIS MEDIA & URI AGE >17 W/O CC [1]	0.5239	18.2	7
70	OTITIS MEDIA & URI AGE 0–17 [1*]	0.5239	18.2	0
71	LARYNGOTRACHEITIS [1*]	0.5239	18.2	0
72	NASAL TRAUMA & DEFORMITY [1*]	0.5239	18.2	0
73	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	1.0917	33.3	31
74	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0–17 [2]	0.7107	24.5	1
75	MAJOR CHEST PROCEDURES [5]	2.1422	48.3	19
76	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.7153	50.7	327
77	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC [5]	2.1422	48.3	13
78	PULMONARY EMBOLISM	0.8294	24.8	122
79	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	1.2588	31.5	2,047
80	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	1.0733	30.0	204
81	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0–17 [3]	0.9568	30.0	10
82	RESPIRATORY NEOPLASMS	0.9690	26.9	755
83	MAJOR CHEST TRAUMA W CC	0.9797	24.8	33
84	MAJOR CHEST TRAUMA W/O CC [3]	0.9568	30.0	10
85	PLEURAL EFFUSION W CC	1.2406	30.1	132
86	PLEURAL EFFUSION W/O CC	0.7529	25.0	30
87	PULMONARY EDEMA & RESPIRATORY FAILURE	2.4202	44.1	5,741
88	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	0.9390	25.3	4,229
89	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	0.9740	27.2	2,387
90	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	0.9740	27.2	554
91	SIMPLE PNEUMONIA & PLEURISY AGE 0–17 [4]	1.3735	36.5	21
92	INTERSTITIAL LUNG DISEASE W CC	0.8885	24.8	181
93	INTERSTITIAL LUNG DISEASE W/O CC	0.7284	23.8	38
94	PNEUMOTHORAX W CC	0.9341	28.3	43
95	PNEUMOTHORAX W/O CC [2]	0.7107	24.5	5
96	BRONCHITIS & ASTHMA AGE >17 W CC	0.8855	24.4	139
97	BRONCHITIS & ASTHMA AGE >17 W/O CC	0.5268	17.8	67
98	BRONCHITIS & ASTHMA AGE 0–17 [1*]	0.5239	18.2	0
99	RESPIRATORY SIGNS & SYMPTOMS W CC	1.4609	32.1	384
100	RESPIRATORY SIGNS & SYMPTOMS W/O CC	1.0387	27.9	156

TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
101	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	1.3776	30.9	164
102	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	0.6568	22.0	34
103	HEART TRANSPLANT [6]	0.0000	0.0	0
104	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W CARDIAC CATH [4].	1.3735	36.5	2
105	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W/O CARDIAC CATH [4].	1.3735	36.5	2
106	CORONARY BYPASS W PTCA [4]*	1.3735	36.5	0
107	CORONARY BYPASS W CARDIAC CATH [4]*	1.3735	36.5	0
108	OTHER CARDIOTHORACIC PROCEDURES [4]*	1.3735	36.5	0
109	CORONARY BYPASS W/O PTCA OR CARDIAC CATH [4]*	1.3735	36.5	0
110	MAJOR CARDIOVASCULAR PROCEDURES W CC [4]	1.3735	36.5	1
111	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	1.3735	36.5	0
112	PERCUTANEOUS CARDIOVASCULAR PROCEDURES [5]	2.1422	48.3	3
113	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	1.5915	43.7	109
114	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.7160	46.5	31
115	PRM CARD PACEM IMPL W AMI, HRT FAIL OR SHK, OR AICD LEAD OR GNRTR P [4].	1.3735	36.5	3
116	OTH PERM CARD PACEMAK IMPL OR PTCA W CORONARY ARTERY STENT IMPLNT [5].	2.1422	48.3	4
117	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT [2]	0.7107	24.5	1
118	CARDIAC PACEMAKER DEVICE REPLACEMENT [4]	1.3735	36.5	11
119	VEIN LIGATION & STRIPPING [2]*	0.7107	24.5	0
120	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	1.3748	41.6	167
121	CIRCULATORY DISORDERS W AMI & MAJOR COMP, DISCHARGED ALIVE	0.8843	24.1	191
122	CIRCULATORY DISORDERS W AMI W/O MAJOR COMP, DISCHARGED ALIVE	0.6762	22.4	64
123	CIRCULATORY DISORDERS W AMI, EXPIRED	1.1855	23.7	58
124	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG [4]	1.3735	36.5	7
125	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG [4].	1.3735	36.5	4
126	ACUTE & SUBACUTE ENDOCARDITIS	1.0442	31.2	193
127	HEART FAILURE & SHOCK	0.8658	25.8	2,434
128	DEEP VEIN THROMBOPHLEBITIS [2]	0.7107	24.5	16
129	CARDIAC ARREST, UNEXPLAINED [2]	0.7107	24.5	22
130	PERIPHERAL VASCULAR DISORDERS W CC	0.9391	29.3	1,139
131	PERIPHERAL VASCULAR DISORDERS W/O CC	0.7878	27.4	279
132	ATHEROSCLEROSIS W CC	0.8672	23.6	641
133	ATHEROSCLEROSIS W/O CC	0.8388	25.3	195
134	HYPERTENSION	0.8482	28.8	136
135	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	0.9344	24.7	152
136	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	0.7211	24.2	42
137	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0–17 [2]*	0.7107	24.5	0
138	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	0.8712	28.1	273
139	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	0.8712	28.1	104
140	ANGINA PECTORIS	0.6919	23.5	85
141	SYNCOPE & COLLAPSE W CC	0.6732	24.4	84
142	SYNCOPE & COLLAPSE W/O CC	0.6732	24.4	71
143	CHEST PAIN	0.6017	20.4	50
144	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	0.9035	25.2	579
145	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	0.6545	20.6	97
146	RECTAL RESECTION W CC [4]*	1.3735	36.5	0
147	RECTAL RESECTION W/O CC [4]*	1.3735	36.5	0
148	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC [4]	1.3735	36.5	12
149	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC [1]	0.5239	18.2	3
150	PERITONEAL ADHESIOLYSIS W CC [4]	1.3735	36.5	2
151	PERITONEAL ADHESIOLYSIS W/O CC [4]	1.3735	36.5	0
152	MINOR SMALL & LARGE BOWEL PROCEDURES W CC [5]	2.1422	48.3	4
153	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC [5]	2.1422	48.3	0
154	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC [5]	2.1422	48.3	1
155	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC [5]	2.1422	48.3	1
156	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0–17 [5]*	2.1422	48.3	0
157	ANAL & STOMAL PROCEDURES W CC [3]	0.9568	30.0	3
158	ANAL & STOMAL PROCEDURES W/O CC [1]	0.5239	18.2	1
159	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC [4]	1.3735	36.5	1
160	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC [1]	0.5239	18.2	1
161	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC [1]	0.5239	18.2	2
162	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC [1]	0.5239	18.2	0
163	HERNIA PROCEDURES AGE 0–17 [1]*	0.5239	18.2	0
164	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC [3]*	0.9568	30.0	0
165	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC [1]*	0.5239	18.2	0

TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
166	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC [1]*	0.5239	18.2	0
167	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC [1]*	0.5239	18.2	0
168	MOUTH PROCEDURES W CC [4]*	1.3735	36.5	0
169	MOUTH PROCEDURES W/O CC	1.3735	36.5	0
170	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	1.8984	42.4	25
171	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC [1]	0.5239	18.2	1
172	DIGESTIVE MALIGNANCY W CC	1.0289	27.9	520
173	DIGESTIVE MALIGNANCY W/O CC	1.0177	28.9	140
174	G.I. HEMORRHAGE W CC	0.9592	26.9	270
175	G.I. HEMORRHAGE W/O CC	0.9181	28.3	62
176	COMPLICATED PEPTIC ULCER	0.9934	24.3	48
177	UNCOMPLICATED PEPTIC ULCER W CC [3]	0.9568	30.0	16
178	UNCOMPLICATED PEPTIC ULCER W/O CC [1]	0.5239	18.2	7
179	INFLAMMATORY BOWEL DISEASE	1.0571	24.0	40
180	G.I. OBSTRUCTION W CC	1.0191	27.8	212
181	G.I. OBSTRUCTION W/O CC	0.9831	24.8	49
182	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE > 17 W CC	0.9781	28.3	375
183	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE > 17 W/O CC	0.7925	24.4	149
184	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0–17 [4]	1.3735	36.5	2
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE > 17 [4]	1.3735	36.5	16
186	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0–17 [4]	1.3735	36.5	0
187	DENTAL EXTRACTIONS & RESTORATIONS [4]*	1.3735	36.5	0
188	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE > 17 W CC	1.1863	29.5	476
189	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE > 17 W/O CC	1.0223	25.1	74
190	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0–17 [3]*	0.9568	30.0	0
191	PANCREAS, LIVER & SHUNT PROCEDURES W CC [4]	1.3735	36.5	1
192	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC [4]	1.3735	36.5	0
193	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC [5]	2.1422	48.3	2
194	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC [5]	2.1422	48.3	0
195	CHOLECYSTECTOMY W C.D.E. W CC [4]*	1.3735	36.5	0
196	CHOLECYSTECTOMY W C.D.E. W/O CC [3]*	0.9568	30.0	0
197	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC [3]	0.9568	30.0	2
198	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC [3]	0.9568	30.0	0
199	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY [5]	2.1422	48.3	1
200	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY [5]*	2.1422	48.3	0
201	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES [5]	2.1422	48.3	4
202	CIRRHOSIS & ALCOHOLIC HEPATITIS	0.8110	26.6	128
203	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	0.8782	25.5	247
204	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.0512	26.0	205
205	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	0.9764	26.5	99
206	DISORDERS OF LIVER EXCEPT MALIG, CIRR, ALC HEPA W/O CC [2]	0.7107	24.5	24
207	DISORDERS OF THE BILIARY TRACT W CC	0.7691	25.8	62
208	DISORDERS OF THE BILIARY TRACT W/O CC [2]	0.7107	24.5	16
209	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY [5].	2.1422	48.3	10
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC [4]	1.3735	36.5	9
211	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC [2]	0.7107	24.5	2
212	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0–17 [2]*	0.7107	24.5	0
213	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS.	1.4379	41.5	35
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE [3]	0.9568	30.0	9
217	WND DEBRID & SKN GRFT EXCEPT HAND, FOR MUSCSKELET & CONN TISS DIS.	1.5497	43.6	185
218	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W CC [4].	1.3735	36.5	1
219	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC [1].	0.5239	18.2	1
220	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0–17 [1]*	0.5239	18.2	0
223	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC [4].	1.3735	36.5	1
224	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC [2].	0.7107	24.5	1
225	FOOT PROCEDURES [3]	0.9568	30.0	17
226	SOFT TISSUE PROCEDURES W CC [5]	2.1422	48.3	7
227	SOFT TISSUE PROCEDURES W/O CC [5]	2.1422	48.3	1
228	MAJOR THUMB OR JOINT PROC, OR OTH HAND OR WRIST PROC W CC [3]	0.9568	30.0	2
229	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC [3]	0.9568	30.0	1
230	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR [5]	2.1422	48.3	1
231	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR [4]	1.3735	36.5	13
232	ARTHROSCOPY [2]	0.7107	24.5	1

TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC [5]	2.1422	48.3	10
234	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC [5]	2.1422	48.3	0
235	FRACTURES OF FEMUR	0.9608	34.9	157
236	FRACTURES OF HIP & PELVIS	0.8221	28.8	1,638
237	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	0.6749	24.3	26
238	OSTEOMYELITIS	1.0920	34.5	962
239	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY.	0.8876	29.2	259
240	CONNECTIVE TISSUE DISORDERS W CC	1.0327	28.8	93
241	CONNECTIVE TISSUE DISORDERS W/O CC	0.8174	28.3	39
242	SEPTIC ARTHRITIS	0.8899	30.8	140
243	MEDICAL BACK PROBLEMS	0.7222	25.4	860
244	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	0.6953	25.5	232
245	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	0.4845	19.3	396
246	NON-SPECIFIC ARTHROPATHIES	0.7693	27.5	35
247	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	0.7016	24.9	343
248	TENDONITIS, MYOSITIS & BURSITIS	0.7110	24.6	449
249	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	0.9154	30.4	333
250	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC	0.8878	30.6	34
251	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	0.8341	29.2	41
252	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0–17 [1]	0.5239	18.2	1
253	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W CC	0.9364	31.9	245
254	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W/O CC	0.7816	28.7	160
255	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE 0–17 [3]	0.9568	30.0	2
256	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	0.9541	30.3	310
257	TOTAL MASTECTOMY FOR MALIGNANCY W CC [1]	0.5239	18.2	1
258	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC [1]	0.5239	18.2	1
259	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC [1*]	0.5239	18.2	0
260	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC [1*]	0.5239	18.2	0
261	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION [3]	0.9568	30.0	1
262	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY [1*]	0.5239	18.2	0
263	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	1.6894	51.6	657
264	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.4650	49.2	110
265	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC [5]	2.1422	48.3	11
266	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC [5].	2.1422	48.3	1
267	PERIANAL & PILONIDAL PROCEDURES [5]	2.1422	48.3	3
268	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES [5]	2.1422	48.3	4
269	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.5586	45.1	143
270	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	1.2594	40.1	26
271	SKIN ULCERS	1.2354	39.1	4,021
272	MAJOR SKIN DISORDERS W CC	0.9667	29.9	50
273	MAJOR SKIN DISORDERS W/O CC [2]	0.7107	24.5	11
274	MALIGNANT BREAST DISORDERS W CC	1.2025	32.9	118
275	MALIGNANT BREAST DISORDERS W/O CC	1.2025	32.9	32
276	NON-MALIGANT BREAST DISORDERS [2]	0.7107	24.5	7
277	CELLULITIS AGE >17 W CC	0.8857	28.3	816
278	CELLULITIS AGE >17 W/O CC	0.7680	26.0	359
279	CELLULITIS AGE 0–17 [3]	0.9568	30.0	8
280	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	0.9550	30.7	132
281	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	0.7586	25.2	74
282	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0–17 [1]	0.5239	18.2	0
283	MINOR SKIN DISORDERS W CC	0.9649	29.9	53
284	MINOR SKIN DISORDERS W/O CC [2]	0.7107	24.5	17
285	AMPUTAT OF LOWER LIMB FOR ENDOCRINE, NUTRIT, & METABOL DISORDERS [4].	1.3735	36.5	18
286	ADRENAL & PITUITARY PROCEDURES [4*]	1.3735	36.5	0
287	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	1.5168	42.1	32
288	O.R. PROCEDURES FOR OBESITY [2]	0.7107	24.5	1
289	PARATHYROID PROCEDURES [1*]	0.5239	18.2	0
290	THYROID PROCEDURES [1]	0.5239	18.2	1
291	THYROGLOSSAL PROCEDURES [1*]	0.5239	18.2	0
292	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC [4]	1.3735	36.5	14
293	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC [4]	1.3735	36.5	1
294	DIABETES AGE >35	0.8786	28.2	443
295	DIABETES AGE 0–35 [1]	0.5239	18.2	4
296	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	0.9448	28.2	665
297	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	0.7716	24.5	206
298	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0–17 [3]	0.9568	30.0	5
299	INBORN ERRORS OF METABOLISM [1]	0.5239	18.2	4

TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
300	ENDOCRINE DISORDERS W CC	0.8315	27.4	66
301	ENDOCRINE DISORDERS W/O CC [2]	0.7107	24.5	12
302	KIDNEY TRANSPLANT [6]	0.0000	na	0
303	KIDNEY, URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM [5]	2.1422	48.3	2
304	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC [3]	0.9568	30.0	2
305	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC [1]	0.5239	18.2	2
306	PROSTATECTOMY W CC [2]	0.7107	24.5	1
307	PROSTATECTOMY W/O CC [1]	0.5239	18.2	2
308	MINOR BLADDER PROCEDURES W CC [3]	0.9568	30.0	4
309	MINOR BLADDER PROCEDURES W/O CC [2]	0.7107	24.5	1
310	TRANSURETHRAL PROCEDURES W CC [4]	1.3735	36.5	7
311	TRANSURETHRAL PROCEDURES W/O CC [2]	0.7107	24.5	5
312	URETHRAL PROCEDURES, AGE >17 W CC [4]	1.3735	36.5	2
313	URETHRAL PROCEDURES, AGE >17 W/O CC [4]	1.3735	36.5	0
314	URETHRAL PROCEDURES, AGE 0–17	1.3735	36.5	0
315	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	1.8305	40.6	99
316	RENAL FAILURE	1.1553	29.1	1,721
317	ADMIT FOR RENAL DIALYSIS [3]*	0.9568	30.0	0
318	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.1129	33.0	118
319	KIDNEY & URINARY TRACT NEOPLASMS W/O CC [3]	0.9568	30.0	24
320	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	0.8814	28.7	730
321	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	0.7213	25.6	202
322	KIDNEY & URINARY TRACT INFECTIONS AGE 0–17 [3]	0.9568	30.0	7
323	URINARY STONES W CC, &/OR ESW LITHOTRIPSY [3]	0.9568	30.0	14
324	URINARY STONES W/O CC [2]	0.7107	24.5	4
325	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	0.5862	21.2	25
326	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC [1]	0.5239	18.2	18
327	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0–17 [1]*	0.5239	18.2	0
328	URETHRAL STRICTURE AGE >17 W CC [2]	0.7107	24.5	1
329	URETHRAL STRICTURE AGE >17 W/O CC [2]	0.7107	24.5	0
330	URETHRAL STRICTURE AGE 0–17 [2]	0.7107	24.5	0
331	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	0.9193	26.7	293
332	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	0.8284	24.8	69
333	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0–17 [5]	2.1422	48.3	1
334	MAJOR MALE PELVIC PROCEDURES W CC [5]*	2.1422	48.3	0
335	MAJOR MALE PELVIC PROCEDURES W/O CC [5]	2.1422	48.3	0
336	TRANSURETHRAL PROSTATECTOMY W CC [1]	0.5239	18.2	1
337	TRANSURETHRAL PROSTATECTOMY W/O CC [1]	0.5239	18.2	3
338	TESTES PROCEDURES, FOR MALIGNANCY [2]	0.7107	24.5	1
339	TESTES PROCEDURES, NON-MALIGNANCY AGE >17 [5]	2.1422	48.3	1
340	TESTES PROCEDURES, NON-MALIGNANCY AGE 0–17 [2]*	0.7107	24.5	0
341	PENIS PROCEDURES [3]	0.9568	30.0	2
342	CIRCUMCISION AGE >17 [1]*	0.5239	18.2	0
343	CIRCUMCISION AGE 0–17 [1]*	0.5239	18.2	0
344	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY [1].	0.5239	18.2	1
345	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY [5].	2.1422	48.3	3
346	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	0.9607	29.7	154
347	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC [2]	0.7107	24.5	21
348	BENIGN PROSTATIC HYPERTROPHY W CC [2]	0.7107	24.5	5
349	BENIGN PROSTATIC HYPERTROPHY W/O CC [2]	0.7107	24.5	1
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM [4]	1.3735	36.5	24
351	STERILIZATION, MALE [1]*	0.5239	18.2	0
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES [4]	1.3735	36.5	15
353	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY [1].	0.5239	18.2	1
354	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC [1]	0.5239	18.2	0
355	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC [1]	0.5239	18.2	1
356	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES [1]	0.5239	18.2	5
357	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY [3]	0.9568	30.0	0
358	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC [1]	0.5239	18.2	1
359	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC [1]	0.5239	18.2	4
360	VAGINA, CERVIX & VULVA PROCEDURES [2]	0.7107	24.5	1
361	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION [3]*	0.9568	30.0	0
362	ENDOSCOPIC TUBAL INTERRUPTION [3]*	0.9568	30.0	0
363	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY [4]	1.3735	36.5	1
364	D&C, CONIZATION EXCEPT FOR MALIGNANCY [2]*	0.7107	24.5	0
365	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES [5]	2.1422	48.3	5
366	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	0.9694	29.5	134

TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
367	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	0.8881	30.4	43
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM [3]	0.9568	30.0	22
369	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS [2]	0.7107	24.5	14
370	*CESAREAN SECTION W CC [5*]	2.1422	48.3	0
371	CESAREAN SECTION W/O CC [5*]	2.1422	48.3	0
372	VAGINAL DELIVERY W COMPLICATING DIAGNOSES [1*]	0.5239	18.2	0
373	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES [1*]	0.5239	18.2	0
374	VAGINAL DELIVERY W STERILIZATION &/OR D&C [1*]	0.5239	18.2	0
375	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C [1*]	0.5239	18.2	0
376	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE [1*]	0.5239	18.2	0
377	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE [1*]	0.5239	18.2	0
378	ECTOPIC PREGNANCY [1*]	0.5239	18.2	0
379	THREATENED ABORTION [1*]	0.5239	18.2	0
380	ABORTION W/O D&C [1*]	0.5239	18.2	0
381	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY [1*]	0.5239	18.2	0
382	FALSE LABOR [1*]	0.5239	18.2	0
383	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS [1*]	0.5239	18.2	0
384	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS [1*]	0.5239	18.2	0
385	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY [3*].	0.9568	30.0	2
386	EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE [3*].	0.9568	30.0	0
387	PREMATURITY W MAJOR PROBLEMS [3*]	0.9568	30.0	0
388	PREMATURITY W/O MAJOR PROBLEMS [3*]	0.9568	30.0	0
389	FULL TERM NEONATE W MAJOR PROBLEMS [3*]	0.9568	30.0	0
390	NEONATE W OTHER SIGNIFICANT PROBLEMS [3]	0.9568	30.0	2
391	NORMAL NEWBORN [3*]	0.9568	30.0	0
392	SPLENECTOMY AGE >17 [3*]	0.9568	30.0	0
393	SPLENECTOMY AGE 0–17 [3*]	0.9568	30.0	0
394	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS [5]	2.1422	48.3	1
395	RED BLOOD CELL DISORDERS AGE >17	0.8709	25.8	144
396	RED BLOOD CELL DISORDERS AGE 0–17 [1]	0.5239	18.2	2
397	COAGULATION DISORDERS	1.3069	29.5	43
398	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	0.8361	25.4	36
399	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC [2]	0.7107	24.5	10
400	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE [4]	1.3735	36.5	2
401	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC [3]	0.9568	30.0	3
402	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC [3]	0.9568	30.0	0
403	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.1242	29.4	280
404	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	0.8288	24.7	88
405	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0–17 [3*]	0.9568	30.0	0
406	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC [5]	2.1422	48.3	1
407	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC [5]	2.1422	48.3	0
408	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC [2]	0.7107	24.5	3
409	RADIOTHERAPY [3]	0.9568	30.0	24
410	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS [4]	1.3735	36.5	14
411	HISTORY OF MALIGNANCY W/O ENDOSCOPY [1*]	0.5239	18.2	0
412	HISTORY OF MALIGNANCY W ENDOSCOPY [1*]	0.5239	18.2	0
413	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	0.9832	26.7	49
414	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	0.8681	29.7	30
415	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	1.9075	44.1	227
416	SEPTICEMIA AGE >17	1.1222	29.4	1,695
417	SEPTICEMIA AGE 0–17 [5]	2.1422	48.3	5
418	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	1.0078	28.4	522
419	FEVER OF UNKNOWN ORIGIN AGE >17 W CC [2]	0.7107	24.5	17
420	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC [2]	0.7107	24.5	11
421	VIRAL ILLNESS AGE >17 [3]	0.9568	30.0	14
422	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0–17 [3*]	0.9568	30.0	0
423	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.0906	31.9	272
424	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS [4]	1.3735	36.5	15
425	ACUTE ADJUSTMENT REACTION & PSYCHOLOGICAL DYSFUNCTION	0.7912	30.5	63
426	DEPRESSIVE NEUROSES	0.6290	25.5	92
427	NEUROSES EXCEPT DEPRESSIVE [3]	0.9568	30.0	20
428	DISORDERS OF PERSONALITY & IMPULSE CONTROL	0.7423	31.6	31
429	ORGANIC DISTURBANCES & MENTAL RETARDATION	0.6401	27.9	957
430	PSYCHOSES	0.5602	26.4	2,396
431	CHILDHOOD MENTAL DISORDERS	0.5023	23.0	50
432	OTHER MENTAL DISORDER DIAGNOSES [3]	0.9568	30.0	7
433	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	0.2778	12.6	59
434	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W CC	0.5051	22.2	145
435	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W/O CC	0.4378	20.2	179

TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
436	ALC/DRUG DEPENDENCE W REHABILITATION THERAPY [1]	0.5239	18.2	4
437	ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY [1]	0.5239	18.2	2
439	SKIN GRAFTS FOR INJURIES [4]	1.3735	36.5	13
440	WOUND DEBRIDEMENTS FOR INJURIES	1.2503	39.8	40
441	HAND PROCEDURES FOR INJURIES [3]*	0.9568	30.0	0
442	OTHER O.R. PROCEDURES FOR INJURIES W CC	1.3777	38.6	28
443	OTHER O.R. PROCEDURES FOR INJURIES W/O CC [4]	1.3735	36.5	3
444	TRAUMATIC INJURY AGE >17 W CC	1.2206	34.5	169
445	TRAUMATIC INJURY AGE >17 W/O CC	0.9130	28.0	86
446	TRAUMATIC INJURY AGE 0–17 [3]*	0.9568	30.0	0
447	ALLERGIC REACTIONS AGE >17 [1]	0.5239	18.2	2
448	ALLERGIC REACTIONS AGE 0–17 [1]*	0.5239	18.2	0
449	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC [2]	0.7107	24.5	19
450	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC [1]	0.5239	18.2	11
451	POISONING & TOXIC EFFECTS OF DRUGS AGE 0–17 [1]*	0.5239	18.2	0
452	COMPLICATIONS OF TREATMENT W CC	1.3070	33.1	311
453	COMPLICATIONS OF TREATMENT W/O CC	0.7486	23.6	61
454	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC [2]	0.7107	24.5	11
455	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC [2]	0.7107	24.5	5
461	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	1.5801	43.2	197
462	REHABILITATION	0.7802	28.3	7,505
463	SIGNS & SYMPTOMS W CC	0.8474	29.7	859
464	SIGNS & SYMPTOMS W/O CC	0.7091	28.1	478
465	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS [2]	0.7107	24.5	20
466	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	1.2446	32.0	273
467	OTHER FACTORS INFLUENCING HEALTH STATUS [1]	0.5239	18.2	7
468	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2.3052	49.6	429
469	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	0.0000	na	0
470	UNGROUPABLE	0.0000	na	0
471	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY [5]*	2.1422	48.3	0
473	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	1.2549	25.3	39
475	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	2.3043	38.9	4,182
476	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.5835	41.1	26
477	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.9253	46.5	162
478	OTHER VASCULAR PROCEDURES W CC	1.8876	42.6	42
479	OTHER VASCULAR PROCEDURES W/O CC	1.8876	42.6	4
480	LIVER TRANSPLANT [6]	0.0000	na	0
481	BONE MARROW TRANSPLANT [5]*	2.1422	48.3	0
482	TRACHEOSTOMY FOR FACE, MOUTH & NECK DIAGNOSES [4]	1.3735	36.5	2
483	TRACHEOSTOMY EXCEPT FOR FACE, MOUTH & NECK DIAGNOSES	3.2118	51.4	326
484	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA [5]*	2.1422	48.3	0
485	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TR [5]*.	2.1422	48.3	0
486	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA [5]	2.1422	48.3	2
487	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.3111	35.9	77
488	HIV W EXTENSIVE O.R. PROCEDURE [5]	2.1422	48.3	2
489	HIV W MAJOR RELATED CONDITION	1.5141	38.5	106
490	HIV W OR W/O OTHER RELATED CONDITION	1.4702	36.4	48
491	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY [5]*.	2.1422	48.3	0
492	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS [4]	1.3735	36.5	1
493	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC [3]	0.9568	30.0	6
494	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC [1]	0.5239	18.2	1
495	LUNG TRANSPLANT [6]	0.0000	na	0
496	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION [3]*	0.9568	30.0	0
497	SPINAL FUSION W CC [3]	0.9568	30.0	4
498	SPINAL FUSION W/O CC [3]	0.9568	30.0	0
499	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC [5]	2.1422	48.3	4
500	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC [4]	1.3735	36.5	1
501	KNEE PROCEDURES W PDX OF INFECTION W CC [5]	2.1422	48.3	2
502	KNEE PROCEDURES W PDX OF INFECTION W/O CC [5]	2.1422	48.3	0
503	KNEE PROCEDURES W/O PDX OF INFECTION [4]	1.3735	36.5	3
504	EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT [4]	1.3735	36.5	2
505	EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT [4]	1.3735	36.5	4
506	FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA [4].	1.3735	36.5	9
507	FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA [2].	0.7107	24.5	2
508	FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA [3].	0.9568	30.0	24

TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
509	FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA [2].	0.7107	24.5	9
510	NON-EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA [3]	0.9568	30.0	23
511	NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA [2]	0.7107	24.5	10
601	VERY SHORT-STAY ADMISSION NON-PSYCHIATRIC DIAGNOSES [7]	0.1546	4.3	543
602	VERY SHORT-STAY ADMISSION PSYCHIATRIC DIAGNOSES [8]	0.0827	4.5	10,361

* Proposed relative weights for these LTC–DRGs were determined by assigning these cases to the appropriate low volume quintile because they had no LTCH cases in the FY 2000 MedPAR.
[1] Proposed relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 1.
[2] Proposed relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 2.
[3] Proposed relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 3.
[4] Proposed relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 4.
[5] Proposed relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 5.
[6] Proposed relative weights for these LTC–DRGs were assigned a value of 0.0.
[7] Proposed relative weights for these LTC–DRGs were determined by combining LTCH cases in MDC 19 or 20 with a length of stay 7 days or fewer.
[8] Proposed relative weights for these LTC–DRGs were determined by combining LTCH cases in MDCs other than 19 or 20 with a length of stay 7 days or fewer.

B. Special Cases

Under section 123 of Public Law 106–113, the Secretary generally has broad authority in developing the prospective payment system for LTCHs. Thus, the Secretary generally has broad authority in determining whether (and how) to make adjustments to prospective payment system payments. Section 307 of Public Law 106–554 directs the Secretary to ''examine'' appropriate adjustments to the prospective payment system, including certain specific adjustments, but under that section the Secretary continues to have discretion as to whether to provide for adjustments to reflect variations in the necessary costs of treatment among LTCHs.

Generally, LTCHs, as described in section 1886(d)(1)(B)(iv) of the Act, are distinguished from other inpatient hospital settings by an average length of stay greater than 25 days. Certain ''special'' cases that have stays of considerably less than the average length of stay and that receive significantly less than the full course of treatment for a specific LTC–DRG would be paid inappropriately if the hospital were to receive the full LTC–DRG payment. Further, because of the budget neutrality requirement of section 123(a)(1) of Public Law 106–113, ''overpayment'' for these cases would reduce payments for all other cases that warrant full payment based on the LTCH services delivered. We discuss the special cases below in terms of proposed definitions, policy rationale, and proposed payment methodology. The three proposed subsets are very short-stay discharges, short-stay outliers, and interrupted stays.

1. Very Short-Stay Discharges

We are proposing, under § 412.527, to define a very short-stay discharge as a discharge that has a length of stay of 7 days or fewer (regardless of the LTC–DRG assignment), irrespective of the discharge designation (including cases where the patient expires). A very short-stay discharge often occurs when it is determined, following admission to a LTCH, that the beneficiary would receive more appropriate care in another setting, such as a patient who experiences an acute episode or requires more intensive rehabilitation therapy than is available at the LTCH. These patients may be discharged to another site of care and then subsequently readmitted to the LTCH following that stay if they require LTCH treatment (see the interrupted stay policy in section IV.B.3 of this preamble for further clarification regarding length of stay criteria), or they may be discharged and not subsequently readmitted because they no longer require LTCH treatment. Other circumstances that would warrant classification as a very short-stay discharge would involve patients who are either discharged to their home or who expire within the first 7 days of being admitted to a LTCH.

Since LTCHs are defined by statute as generally having an average length of stay greater than 25 days, we are proposing to make an adjustment for very short-stay discharges in order to make appropriate payment to cases that may not necessarily require the type of services intended to be provided at a LTCH. Further, we believe that providing a special payment for very short-stay discharges neither encourages hospitals to admit patients for whom they knowingly are unable to provide complete treatment in order to maximize payment, nor severely penalizes providers that, in good faith, admit a patient and provide some services before realizing that the beneficiary would receive more appropriate treatment at another site of care.

In considering the appropriate upper day threshold for identifying very short-stay discharges, we found in our analysis that, from a clinical perspective, it takes about 3 days to evaluate the appropriateness of the admission and typically an additional 3 to 4 days for any treatment to begin to have any impact on the patient's health status. Therefore, we believe that patient cases with 7 days or less treatment in a LTCH are different than the typical LTCH patient cases and generally the patients are not in the hospital long enough to clinically receive full LTCH treatment. We believe that establishing a special payment for these types of cases addresses the problem of an extremely short length of stay that is inherent in a discharge-based prospective payment system. Furthermore, because the rates are set to be budget neutral, if we did not propose to make this adjustment, providing a full prospective payment system payment for very short-stay cases would reduce payments for nonshort-stay LTCH cases.

We are proposing to pay a very short-stay discharge case under a LTC–DRG-specific per diem methodology. Analysis of payment-to-cost ratios indicates that the accuracy of the payments could be improved if we categorize very short-stay discharge cases into two categories based on the primary diagnosis—one for psychiatric

cases and one for all other types of cases. We believe it would be appropriate to separate very short-stay discharge cases into psychiatric and nonpsychiatric categories because our analysis shows that the resources used to treat these two types of patients during the first 7 days differ significantly. In our simulations, combining psychiatric very short-stay discharge cases with all other very short-stay discharge cases resulted in a considerable ''overpayment'' of the very short-stay discharge psychiatric cases and a substantial ''underpayment'' of all other (nonpsychiatric) very short-stay discharge cases. As shown in Table 4 above, the proposed relative weight of LTC–DRG 602 for very short-stay discharge psychiatric cases (0.0827) is almost half the proposed relative weight of LTC–DRG 601 (0.1546) for very short-stay discharge nonpsychiatric cases. This means that the average charge for cases with a stay of 7 days or less in nonpsychiatric LTC–DRGs is almost twice the average charge for cases with a stay of 7 days or less in psychiatric LTC–DRGs. Therefore, for payment of very short-stay discharge cases, we are proposing under § 412.527(c)(1), to categorize a discharge into either a very short-stay discharge psychiatric LTC–DRG or a very short-stay discharge nonpsychiatric LTC–DRG. Additional analysis of nonpsychiatric cases with a length of stay of 7 days or fewer indicates that there is not a significant difference in the resource use across other ''categories'' of LTCH very short-stay discharge cases and the equity of the payment system would not be improved. Thus, we do not believe further distinctions among very short-stay discharge nonpsychiatric cases would be necessary or appropriate.

The relative weight for each of these two very short-stay discharge LTC–DRGs would be based on the average charge for all very short-stay discharge psychiatric cases and all nonpsychiatric cases, respectively, relative to all other LTC–DRGs (excluding all very short-stay discharge cases). We computed the proposed relative weights for the very short-stay discharge psychiatric LTC–DRG and very short-stay discharge nonpsychiatric LTC–DRG by identifying all cases in which the length of stay is 7 days or fewer and categorizing those cases as either psychiatric or nonpsychiatric based on the primary diagnosis of the discharge. Very short-stay discharge psychiatric cases were identified based on the primary ICD–9–CM diagnosis code that would otherwise be classified in LTC–DRGs 424 through 432 in MDC 19 (Mental Diseases and Disorders) or LTC–DRGs 433 through 437 in MDC 20 (Alcohol/Drug Use and Alcohol/Drug-Induced Organic Mental Disorders) in the absence of a very short stay discharge policy. The proposed relative weights for these two very short-stay discharge LTC–DRGs would be calculated in the same manner discussed previously, using the hospital-specific relative value methodology. Each very short-stay discharge LTC–DRG per diem amount would be determined by dividing the applicable Federal payment rate (Federal payment rate x LTC–DRG weight) by 7 days (proposed § 412.527(c)(2)).

2. Short-Stay Outliers

We believe that considerations similar to those underlying the proposed very short-stay discharge policy also apply to short-stay cases with a length of stay greater than 7 days. More specifically, we note that some Medicare patients may have slightly longer lengths of stay, but are still well below the average length of stay of greater than the 25-day threshold specified in the statute, reflecting the fact that these beneficiaries may not require the type of care generally provided in a LTCH or may require urgent treatment at another site of care. Therefore, we also are proposing a short-stay outlier policy that would encompass cases with a length of stay beyond the 7 days that are addressed by the proposed very short-stay discharge policy.

A short-stay outlier case may occur when a beneficiary receives less than the full course of treatment at the LTCH before being discharged. These patients may be discharged to another site of care and be readmitted to the LTCH if they require subsequent LTCH treatment (see the interrupted stay policy in section IV.B.3. of this preamble for further clarification regarding length of stay criteria), or they may be discharged and not readmitted because they no longer require LTCH treatment.

Furthermore, patients may expire early in their LTCH stay. As noted above, generally LTCHs are defined by statute as having an average length of stay of greater than 25 days. Therefore, we believe that a payment adjustment for short-stay outlier cases would result in more appropriate payments since these cases most likely would not receive a full course of treatment in such a short period of time and a full LTC–DRG payment may not always be appropriate. Payment-to-cost ratios for the cases described above show that if LTCHs receive a full LTC–DRG payment for those cases, they would be significantly ''overpaid'' for the resources they have actually expended.

We also believe that providing a reduced payment for short-stay outlier cases neither encourages hospitals to admit patients for whom they knowingly are unable to provide complete treatment in order to maximize payment, nor severely penalizes providers that, in good faith, admit a patient and provide some services before realizing that the beneficiary would receive more appropriate treatment at another site of care or before the beneficiary is discharged to go home. Establishing a short-stay outlier payment for these types of cases addresses the incentives inherent in a discharge-based prospective payment system for treating patients with a short length of stay. One of the primary objectives of a prospective payment system is to provide incentives for hospitals to become more efficient and, in doing so, to ensure that they can still receive adequate and appropriate payments. Because the rates are set to be budget neutral, providing a full prospective payment system payment for those cases that do not actually require the full course of treatment would reduce payments for cases that warrant full payment based on the LTCH services furnished. Therefore, we believe that a short-stay outlier policy would permit more equitable payment.

In considering possible short-stay outlier policies, we sought to balance appropriate payments to shorter stay cases, which are generally less expensive than the average case in each LTC–DRG, and payments to inlier cases in each LTC–DRG. In the absence of a short-stay outlier policy, based on analysis of payment-to-cost ratios, the full LTC–DRG payment would ''overpay'' the short-stay cases and ''underpay'' the inlier cases. A short-stay outlier policy that results in payment-to-cost ratios that are at (or close to) 1.0 would ensure appropriate payments to both short-stay and inlier cases within a LTC–DRG because, on average, payments would closely match costs for these cases under this proposed prospective payment system.

With no short-stay outlier policy, we estimate that payment-to-cost ratios would be greater than 2.0 for cases with lengths of stays below the average length of stay for the LTC–DRG. We considered three alternative short-stay outlier policies in which payment would be based:

- The least of 100 percent of the cost of the case, 100 percent of the LTC–DRG specific per diem amount multiplied by the length of stay, or the full LTC–DRG

payment for cases with a length of stay between 8 days and the average length of stay of the LTC–DRG;

• The least of 150 percent of the cost of the case, 150 percent of the LTC–DRG specific per diem amount multiplied by the length of stay, or the full LTC–DRG payment for cases with a length of stay between 8 days and two-thirds of the average length of stay of the LTC–DRG; or

• The least of 200 percent of the cost of the case, 200 percent of the LTC–DRG specific per diem amount multiplied by the length of stay, or the full LTC–DRG payment for cases with a length of stay between 8 days and half of the average length of stay of the LTC–DRG.

In each of the three alternatives examined, the short-stay outlier day threshold corresponds to the day where the full LTC–DRG payment would be reached by paying the specified percentage of the per diem amount for the LTC–DRG. This would result in a gradual increase in payment as the length of stay increases without producing a ''payment cliff'', which would provide an incentive to discharge a patient one day later because there would be a significant increase in the payment. For example, in a LTC–DRG with an average length of stay of 24 days and a full LTC–DRG payment of $24,000, the per diem amount would be $1,000 per day ($24,000/24 days). At 150 percent of the per diem amount (1.5 × $1,000 = $1,500 per day), the full LTC–DRG payment ($24,000) would be reached on day 16 (16 days × $1,500 per day = $24,000), which is equal to two-thirds of the average length of stay for the LTC–DRG (2/3 × 24 days = 16 days). Thus, under the second alternative, the upper day threshold is two-thirds of the average length of stay and a case with a length of stay between 8 and 16 would be paid as a short-stay outlier in this example.

Our analysis of the three alternative short-stay outlier policies described above showed that a short-stay outlier policy that would pay the least of 100 percent of cost, 100 percent of the LTC–DRG per diem amount, or the full LTC–DRG payment with a length of stay between 8 days and the average length of stay for the LTC–DRG would result in an average payment-to-cost ratio of slightly less than 1.0 for cases identified as short-stay outliers and a payment-to-cost ratio of just over 1.0 for cases that exceeded the average length of stay. Such a short-stay outlier policy would slightly ''underpay'' most inlier cases while ''overpaying'', and thus reducing the incentives for efficiency in the delivery of care of, longer stay cases.

Our analysis also showed that a short-stay outlier policy that would pay the least of 200 percent of cost, 200 percent of the LTC–DRG per diem amount, or the full LTC–DRG payment for cases that stayed between 8 days and half of the average length of stay for the LTC–DRG would result in an average payment-to-cost ratio of greater than 1.5 for those cases identified as short-stay outliers. Such a short-stay outlier policy would result in significant overpayment to those cases identified as short-stay outliers.

Our analysis of a short-stay outlier policy that would pay the least of 150 percent of cost, 150 percent of the LTC–DRG per diem amount, or the full LTC–DRG payment for cases that stayed between 8 days and two-thirds of the average length of stay for the LTC–DRG showed that payment-to-cost ratios for both cases that would be identified as short-stay outliers and inlier cases (that are below the high-cost outlier threshold) would be at or slightly above 1.0. We believe that this alternative would most appropriately pay cases identified as short-stay outliers, inlier cases, and longer stay cases without an incentive to provide inefficient care.

Payment simulations showed that, of the LTCH cases in the FY 2000 MedPAR with a length of stay between 8 days and two-thirds of the average length of stay of the LTC–DRG under the proposed system, payment to 60.8 percent of those cases would be capped at 150 percent of cost. While we acknowledge that under any prospective payment system, hospitals have the opportunity to make a profit on discharges, particularly to help cover the expenses of their extraordinarily costly Medicare patients, we believe that a payment limited to 150 percent of costs or 150 percent of the LTC–DRG per diem payment amount would allow LTCHs to make a reasonable, but not excessive, profit for these short-stay patients.

Based on the analysis described above, we are proposing, under § 412.529, to define a short-stay outlier as a case that has a length of stay between 8 days and two-thirds of the arithmetic average length of stay for each LTC–DRG. We also are proposing to pay a short-stay outlier case defined in proposed § 412.529(a) the least of—(1) 150 percent of the LTC–DRG specific per diem based payment; (2) 150 percent of the cost of the case; or (3) the full LTC–DRG payment (proposed § 412.529(c)(1)).

The LTC–DRG specific per diem based payment would be determined using the proposed standard Federal payment rate (Federal payment rate × LTC–DRG weight) and the arithmetic mean length of stay of the specific LTC–DRG (proposed § 412.529(c)(2)). The cost of a case would be determined using the hospital-specific cost-to-charge ratio and the Medicare allowable charges for the case (proposed § 412.529(c)(3)).

3. Interrupted Stay

We are proposing, under § 412.531, to define interrupted stay cases as those cases in which a LTCH patient is discharged to an inpatient acute care hospital, an IRF, or a SNF for treatment or services not available at the LTCH for a period that is within (less than or equal to) one standard deviation from the arithmetic average length of stay for the DRG assigned for the inpatient acute care hospital stay, one standard deviation from the arithmetic average length of stay for the CMG and the comorbidity tier assigned for the IRF stay, or within 45 days in a SNF (that is, one standard deviation from the average length of stay for all Medicare SNF cases), followed by readmittance to the same LTCH. In considering an appropriate interrupted stay threshold, we attempted to balance the payment incentives of both the LTCH and the acute care hospital, IRF, or SNF to which the LTCH patient is discharged before being readmitted to the LTCH. In order to assure that discharges from LTCHs are based on clinical considerations and not financial incentives, we are proposing that the proposed interrupted stay day threshold would only pay the LTCH for more than one discharge if the patient's length of stay at the acute care hospital, IRF, or SNF exceeds one standard deviation from the average length of stay for the DRG, the combination of the CMG and the comorbidity tier, or for all Medicare SNF cases, respectively. This would, therefore, make it more difficult for a LTCH to find a prospectively paid acute care hospital, IRF, or SNF that would admit a LTCH patient just to allow the LTCH to receive two separate LTC–DRG payments.

We believe that an interrupted stay day threshold of one standard deviation from the average length of stay for either the acute care hospital DRG, the IRF combination of the CMG and the comorbidity tier, or for all Medicare SNF cases provides the appropriate disincentive since cases that stay significantly longer than the average length of stay are more costly than the average case. Since the SNF prospective payment system is a per diem system, not a per discharge system, we are proposing the same threshold for all SNF cases regardless of the resource utilization group (RUG) classification.

We believe that the proposed interrupted stay threshold is appropriate because, in general, the average length of stay plus one standard deviation would capture the majority of the discharges that are similar to the average length of stay for the respective DRG, combination CMG and comorbidity tier, or for all Medicare SNF cases. In addition, this is consistent with the basis for our payment policy for new technologies under the hospital inpatient prospective payment system where the cost of a new technology must exceed one standard deviation beyond the mean standardized charge for all cases in the DRG to which the new technology is assigned in order to receive additional payments (see the September 7, 2001 final rule, 66 FR 46914). The counting of the days for the interruption of the stay would begin on the day of discharge from the proposed LTCH and would end on the day the patient is readmitted to the LTCH. For the purposes of payment under the proposed LTCH prospective payment system, a case that meets the proposed definition of an interrupted stay would be considered a single discharge from the LTCH, and, therefore, would receive only one LTC–DRG payment. Since the two LTCH stays would be considered as a single case for the purposes of payment under the LTCH prospective payment system, the second discharge from the LTCH would be covered under the single LTC–DRG payment. The acute care hospital, the IRF, or the SNF stay would be paid in accordance with the applicable payment policies for those providers.

We are proposing to make one discharge payment under the LTCH prospective payment system for an interrupted stay case as defined under proposed § 412.531(a), to reduce the incentives inherent in a discharged-based prospective payment system of ''shifting'' patients between Medicare-covered sites of care in order to maximize Medicare payments. This proposed policy is particularly appropriate for LTCHs since, as a group, these hospitals are considerably diverse and offer a broad range of services such that where some LTCHs may be able to handle certain acute conditions, others would need to transfer their patients to acute care hospitals. (See section I.E. of this preamble for a description of the universe of LTCHs.)

For instance, some LTCHs are equipped with operating rooms and intensive care units and are capable of performing minor surgeries. However, other LTCHs are unable to provide those services and would need to transfer the beneficiary to an acute care hospital. Similarly, a patient who no longer requires hospital-level care, but is not ready to return to the community, could be transferred to a SNF. This incentive to ''shift'' patients between Medicare-covered sites of care in order to maximize Medicare payments is of a particular concern when the LTCH is physically located within the walls of another hospital. Often, the LTCH patient may not even be aware of a transfer to the other hospital or SNF because he or she will have only been moved down the hall or to another wing of the building. Moreover, our research reveals that hospitals-within-hospitals are the fastest growing type of LTCH. We also believe that the same incentives for inappropriate discharges and readmittance exist for satellite LTCHs that are located within acute care hospitals, described in § 412.22(h), as well as for distinct part SNFs located in acute care hospitals or co-located with LTCHs. (We address the particular issues of onsite discharges and readmittances in section IV.B.5. (proposed § 412.532(d)) in this proposed rule.)

Whether or not a LTCH patient who is discharged to an inpatient acute care hospital, an IRF, or a SNF and then returns to the same LTCH is treated as an interrupted stay (with one LTC–DRG payment) or as a new admission (with two separate LTC–DRG payments) would depend on the patient's length of stay compared to the arithmetic average length of stay and the standard deviation for the hospital inpatient prospective payment system DRG, the IRF combination of the CMG and the comorbidity tier, or 45 days for all Medicare SNF cases. The arithmetic average length of stay and one standard deviation for each acute care hospital DRG and each IRF combination of the CMG and the comorbidity tier are shown below in Tables 5 and 6, respectively.

TABLE 5.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR ACUTE CARE HOSPITAL DRGS

Hospital inpatient prospective payment system DRG	Average length of stay plus one standard deviation
1	18
2	19
3	56
4	16
5	7
6	7
7	22
8	6
9	13
10	14

TABLE 5.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR ACUTE CARE HOSPITAL DRGS—Continued

Hospital inpatient prospective payment system DRG	Average length of stay plus one standard deviation
11	8
12	13
13	11
14	11
15	7
16	12
17	6
18	10
19	7
20	20
21	12
22	10
23	8
24	11
25	6
26	5
27	11
28	12
29	7
31	13
32	5
34	10
35	10
36	3
37	9
38	5
39	4
40	7
42	5
43	5
44	9
45	6
46	9
47	6
49	10
50	4
51	7
52	4
53	8
54	2
55	7
56	6
57	10
59	6
60	6
61	12
62	2
63	10
64	13
65	5
66	6
67	7
68	7
69	6
70	5
71	7
72	7
73	9
75	19
76	24
77	10
78	11
79	16
80	10
81	48
82	13
83	10

TABLE 5.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR ACUTE CARE HOSPITAL DRGS—Continued

Hospital inpatient prospective payment system DRG	Average length of stay plus one standard deviation
84	6
85	12
86	7
87	12
88	9
89	10
90	7
91	8
92	12
93	7
94	12
95	7
96	8
97	6
98	9
99	6
100	4
101	8
102	5
103	112
104	25
105	18
106	19
107	17
108	19
109	13
110	18
111	8
113	24
114	17
115	16
116	9
117	10
118	6
119	11
120	20
121	12
122	6
123	10
124	9
125	5
126	22
127	10
128	9
129	8
130	10
131	7
132	6
133	4
134	6
135	9
136	5
138	8
139	4
140	5
141	7
142	5
143	4
144	11
145	5
146	18
147	9
148	22
149	9
150	20
151	10
152	14

TABLE 5.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR ACUTE CARE HOSPITAL DRGS—Continued

Hospital inpatient prospective payment system DRG	Average length of stay plus one standard deviation
153	8
154	25
155	8
156	15
157	11
158	5
159	10
160	5
161	9
162	4
163	8
164	14
165	7
166	10
167	4
168	10
169	5
170	24
171	9
172	14
173	7
174	9
175	5
176	10
177	8
178	5
179	11
180	10
181	6
182	8
183	5
184	5
185	9
186	18
187	7
188	11
189	6
190	23
191	28
192	11
193	22
194	11
195	18
196	9
197	16
198	7
199	19
200	22
201	26
202	13
203	13
204	11
205	12
206	7
207	10
208	5
209	8
210	12
211	8
212	25
213	18
216	19
217	29
218	10
219	5
220	7
223	6

TABLE 5.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR ACUTE CARE HOSPITAL DRGS—Continued

Hospital inpatient prospective payment system DRG	Average length of stay plus one standard deviation
224	3
225	10
226	14
227	5
228	8
229	5
230	12
231	11
232	7
233	15
234	7
235	16
236	9
237	6
238	17
239	12
240	13
241	7
242	13
243	9
244	10
245	8
246	8
247	7
248	9
249	8
250	8
251	5
253	10
254	6
256	10
257	6
258	3
259	7
260	2
261	5
262	8
263	24
264	13
265	16
266	7
267	8
268	8
269	17
270	8
271	14
272	12
273	8
274	13
275	10
276	10
277	11
278	7
279	4
280	8
281	6
282	2
283	9
284	6
285	20
286	13
287	22
288	12
289	7
290	5
291	3
292	21

TABLE 5.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR ACUTE CARE HOSPITAL DRGS—Continued

Hospital inpatient prospective payment system DRG	Average length of stay plus one standard deviation
293	12
294	9
295	7
296	10
297	6
298	6
299	11
300	12
301	7
302	16
303	15
304	18
305	6
306	12
307	4
308	14
309	4
310	10
311	3
312	10
313	5
315	19
316	13
317	6
318	12
319	5
320	10
321	7
322	7
323	6
324	3
325	7
326	5
327	5
328	7
329	4
331	11
332	6
333	10
334	9
335	5
336	7
337	3
338	11
339	10
341	8
342	7
344	6
345	8
346	12
347	6
348	8
349	5
350	8
352	9
353	13
354	11
355	5
356	4
357	16
358	9
359	4
360	6
361	7
363	8
364	9
365	15

TABLE 5.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR ACUTE CARE HOSPITAL DRGS—Continued

Hospital inpatient prospective payment system DRG	Average length of stay plus one standard deviation
366	14
367	6
368	12
369	7
370	13
371	7
372	7
373	4
374	6
375	3
376	6
377	10
378	4
379	8
380	4
381	6
382	2
383	8
384	4
389	34
390	7
392	19
394	18
395	9
396	9
397	10
398	12
399	6
400	20
401	22
402	8
403	16
404	9
406	20
407	8
408	19
409	12
410	8
411	4
412	4
413	14
414	8
415	30
416	14
417	8
418	12
419	9
420	6
421	7
422	5
423	17
424	36
425	8
426	9
427	10
428	19
429	15
430	17
431	15
432	12
433	7
439	18
440	20
441	7
442	19
443	7
444	8

TABLE 5.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR ACUTE CARE HOSPITAL DRGS—Continued

Hospital inpatient prospective payment system DRG	Average length of stay plus one standard deviation
445	5
447	5
449	8
450	4
451	2
452	10
453	5
454	11
455	6
461	12
462	20
463	8
464	6
465	6
466	9
467	7
468	26
470	88
471	10
473	28
475	22
476	20
477	18
478	15
479	7
480	44
481	37
482	26
483	69
484	25
485	19
486	24
487	14
488	34
489	18
490	11
491	6
492	32
493	11
494	4
495	28
496	18
497	12
498	6
499	9
500	5
501	20
502	12
503	8
504	56
505	9
506	33
507	16
508	16
509	9
510	15
511	11
512	24
513	18
514	16
515	14
516	9
517	6
518	8
519	11
520	4
521	12

TABLE 5.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR ACUTE CARE HOSPITAL DRGS—Continued

Hospital inpatient prospective payment system DRG	Average length of stay plus one standard deviation
522	17
523	8

*Arithmetic average length of stay and standard deviation based on data used to develop the hospital inpatient prospective payment system FY 2002 DRG relative weights (see the August 1, 2001 final rule, 66 FR 40054).

TABLE 6.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR IRF COMBINATION OF CMG AND COMORBIDITY TIERS

IRF prospective payment system CMG	Comorbidity tier	Average length of stay plus one standard deviation**
0101**	1	11
0101**	2	10
0101	3	8
0101	None	13
0102**	1	17
0102	2	18
0102	3	16
0102	9	15
0103**	1	19
0103**	2	18
0103	3	17
0103	None	18
0104	1	25
0104	2	18
0104	3	18
0104	None	19
0105	1	24
0105	2	25
0105	3	22
0105	None	23
0106	1	26
0106	2	26
0106	3	27
0106	None	27
0107	1	25
0107	2	30
0107	3	30
0107	None	30
0108**	1	35
0108	2	44
0108	3	33
0108	None	33
0109	1	36
0109	2	35
0109	3	31
0109	None	35
0110**	1	39
0110	2	35
0110	3	40
0110	None	39
0111**	1	40
0111	2	38
0111	3	35
0111	None	39
0112	1	66

TABLE 6.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR IRF COMBINATION OF CMG AND COMORBIDITY TIERS—Continued

IRF prospective payment system CMG	Comorbidity tier	Average length of stay plus one standard deviation**
0112	2	52
0112	3	45
0112	None	44
0113	1	46
0113	2	41
0113	3	38
0113	None	40
0114	1	56
0114	2	51
0114	3	48
0114	None	48
0201**	1	19
0201	2	22
0201	3	21
0201	None	17
0202**	1	27
0202	2	24
0202	3	26
0202	None	25
0203	1	27
0203	2	27
0203	3	30
0203	None	27
0204**	1	35
0204	2	34
0204	3	33
0204	None	33
0205	1	65
0205	2	56
0205	3	52
0205	None	48
0301**	1	21
0301	2	22
0301	3	19
0301	None	20
0302**	1	27
0302	2	25
0302	3	27
0302	None	25
0303	1	33
0303	2	35
0303	3	33
0303	None	32
0304	1	63
0304	2	50
0304	3	53
0304	None	47
0401**	1	22
0401	2	22
0401	3	30
0401	None	30
0402**	1	30
0402	2	27
0402	3	33
0402	None	31
0403**	1	51
0403	2	55
0403	3	50
0403	None	52
0404	1	87
0404	2	64
0404	3	101
0404	None	66
0501**	1	18

TABLE 6.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR IRF COMBINATION OF CMG AND COMORBIDITY TIERS—Continued

IRF prospective payment system CMG	Comorbidity tier	Average length of stay plus one standard deviation**
0501	2	21
0501	3	15
0501	None	16
0502**	1	18
0502	2	26
0502	3	13
0502	None	18
0503**	1	25
0503	2	26
0503	3	23
0503	None	22
0504**	1	33
0504	2	31
0504	3	37
0504	None	29
0505	1	46
0505	2	48
0505	3	44
0505	None	45
0601**	1	20
0601	2	21
0601	3	17
0601	None	19
0602	1	19
0602	2	22
0602	3	21
0602	None	23
0603	1	33
0603	2	27
0603	3	27
0603	None	27
0604	1	49
0604	2	36
0604	3	40
0604	None	36
0701**	1	18
0701	2	18
0701	3	19
0701	None	17
0702**	1	22
0702	2	22
0702	3	23
0702	None	20
0703**	1	25
0703	2	26
0703	3	25
0703	None	24
0704	1	19
0704	2	29
0704	3	26
0704	None	26
0705	1	29
0705	2	32
0705	3	32
0705	None	31
0801**	1	13
0801	2	13
0801	3	12
0801	None	12
0802**	1	14
0802	2	15
0802	3	13
0802	None	13
0803	1	13

TABLE 6.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR IRF COMBINATION OF CMG AND COMORBIDITY TIERS—Continued

IRF prospective payment system CMG	Comorbidity tier	Average length of stay plus one standard deviation**
0803	2	16
0803	3	19
0803	None	15
0804	1	21
0804	2	20
0804	3	21
0804	None	18
0805**	1	22
0805	2	24
0805	3	21
0805	None	20
0806**	1	30
0806	2	30
0806	3	28
0806	None	27
0901**	1	17
0901	2	17
0901	3	17
0901	None	16
0902**	1	21
0902	2	22
0902	3	20
0902	None	20
0903**	1	26
0903	2	27
0903	3	27
0903	None	24
0904**	1	35
0904	2	36
0904	3	35
0904	None	33
1001**	1	19
1001	2	23
1001	3	18
1001	None	21
1002**	1	22
1002	2	22
1002	3	21
1002	None	23
1003**	1	26
1003	2	27
1003	3	25
1003	None	27
1004**	1	29
1004	2	30
1004	3	28
1004	None	28
1005	1	30
1005	2	37
1005	3	38
1005	None	35
1101**	1	24
1101	2	17
1101	3	19
1101	None	18
1102**	1	33
1102	2	26
1102	3	26
1102	None	28
1103**	1	43
1103	2	33
1103	3	33
1103	None	39
1201**	1	16

TABLE 6.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR IRF COMBINATION OF CMG AND COMORBIDITY TIERS—Continued

IRF prospective payment system CMG	Comorbidity tier	Average length of stay plus one standard deviation**
1201	2	14
1201	3	16
1201	None	14
1202**	1	22
1202	2	16
1202	3	20
1202	None	20
1203**	1	23
1203	2	20
1203	3	20
1203	None	20
1204**	1	29
1204	2	26
1204	3	24
1204	None	25
1205**	1	36
1205	2	32
1205	3	31
1205	None	30
1301**	1	19
1301	2	21
1301	3	21
1301	None	17
1302**	1	22
1302	2	21
1302	3	21
1302	None	20
1303**	1	27
1303	2	25
1303	3	24
1303	None	26
1304**	1	39
1304	2	39
1304	3	46
1304	None	36
1401	1	25
1401	2	17
1401	3	15
1401	None	16
1402	1	19
1402	2	21
1402	3	20
1402	None	20
1403	1	31
1403	2	28
1403	3	23
1403	None	24
1404	1	44
1404	2	36
1404	3	32
1404	None	31
1501**	1	20
1501	2	18
1501	3	20
1501	None	20
1502**	1	23
1502	2	26
1502	3	19
1502	None	23
1503**	1	28
1503	2	29
1503	3	25
1503	None	27
1504**	1	46

TABLE 6.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR IRF COMBINATION OF CMG AND COMORBIDITY TIERS—Continued

IRF prospective payment system CMG	Comorbidity tier	Average length of stay plus one standard deviation**
1504	2	44
1504	3	49
1504	None	42
1601**	1	22
1601	2	21
1601	3	20
1601	None	20
1602**	1	31
1602	2	30
1602	3	31
1602	None	27
1701**	1	20
1701	2	19
1701	3	15
1701	None	21
1702**	1	29
1702	2	29
1702	3	30
1702	None	26
1703	1	48
1703	2	45
1703	3	41
1703	None	37
1801**	1	17
1801**	2	17
1801**	3	17
1801	None	15
1802**	1	26
1802**	2	26
1802**	3	26
1802	None	26
1803**	1	33
1803	2	37
1803	3	31
1803	None	33
1804**	1	58
1804	2	45
1804**	3	56
1804	None	56
1901**	1	22
1901**	2	22
1901	3	25
1901	None	22
1902**	1	39
1902	2	39
1902	3	39
1902	None	36
1903**	1	54
1903	2	47
1903	3	42
1903	None	59
2001	1	20
2001	2	20
2001	3	18
2001	None	18
2002	1	21
2002	2	23
2002	3	21
2002	None	22
2003	1	29
2003	2	27
2003	3	27
2003	None	27
2004	1	47

TABLE 6.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR IRF COMBINATION OF CMG AND COMORBIDITY TIERS—Continued

IRF prospective payment system CMG	Comorbidity tier	Average length of stay plus one standard deviation**
2004	2	33
2004	3	32
2004	None	34
2005	1	50
2005	2	39
2005	3	38
2005	None	37
2101**	1	26
2101**	2	25
2101**	3	22
2101	None	24
2102**	1	44
2102	2	41
2102	3	39
2102	None	48
5001	None	3
5101	None	11
5102	None	31
5103	None	12
5104	None	43

*Arithmetic average length of stay and standard deviation based on data used to develop the IRF PPS relative weights for the combination CMG and comorbidity tiers in the August 7, 2001 final rule (66 FR 41394).

**Standard deviation for this combination CMG comorbidity tiers is unavailable; the lowest standard deviation for the CMG was used to determine the average length of stay plus one standard deviation.

If the LTCH patient who was discharged to an acute care hospital or an IRF has a length of stay in the acute care hospital or the IRF that exceeds one standard deviation from the average length of stay of the hospital inpatient DRG or the combination of the CMG and the comorbidity tier, respectively, then the subsequent admission to the same LTCH would be treated as a new LTCH stay rather than being considered as an interrupted stay, even if the second discharge is determined to fall into the same LTC–DRG as the original stay in the LTCH. Similarly, a patient returning to the LTCH following a stay in a SNF of longer than 45 days (more than one standard deviation from the average length of stay for all Medicare SNF cases) would be paid as a new stay for the LTCH. Thus, under this circumstance, the beneficiary would be deemed to have had two separate stays at the LTCH, resulting in two separate payments under the LTCH prospective payment system.

An interrupted stay could occur during a regular inlier case (length of stay greater than two-thirds the average length of stay for the LTC–DRG). A very short-stay discharge or a short-stay outlier (as explained in sections IV.B.1 and IV.B.2., respectively, of this proposed rule) could also become an interrupted stay if the beneficiary is discharged to an acute care hospital, an IRF, or a SNF. Whether or not the beneficiary's stay would remain in either of these categories would depend upon the total length of stay in the LTCH. Upon the initial discharge to the acute care hospital, the IRF, or the SNF, the LTCH ''day count'' would stop. For an interrupted stay case, this count would be resumed upon readmission to the LTCH until the beneficiary's final discharge (home, another site of care, or death). Thus, the period of absence (number of days) that the beneficiary is a patient in the acute care hospital, the IRF, or the SNF during a LTCH interrupted stay would not be included in determining the length of stay of the LTCH stay.

If the total number of days at the LTCH, from the initial admission to the final discharge, still falls into either the very short-stay discharge or short-stay outlier payment category, the LTCH would receive payment according to the proposed very short-stay discharge policy described in section IV.B.1. of this preamble or the proposed short-stay outlier policy described in section IV.B.2. of this preamble, respectively. If, on the other hand, the total number of days in the LTCH exceeds two-thirds of the average length of stay of the LTC–DRG (the proposed short-stay outlier criteria), one full LTC–DRG payment would be made for the case. Moreover, all applicable payment policies, including outliers and transfers for the acute care hospital inpatient prospective payment system and the IRF prospective payment system would still apply under this proposed policy.

The following are examples of possible ways in which these proposed policies would interact:

Example 1: A beneficiary stays in the LTCH for 5 days and is discharged to an inpatient acute care hospital and the length of stay at the acute care hospital is more than the sum of the average length of stay of the DRG under the hospital inpatient prospective payment system and one standard deviation before being discharged back to the LTCH. Medicare hospital payments for this beneficiary would be as follows:

- One very short-stay discharge LTCH prospective payment system payment to the LTCH for the first (5-day length of stay) LTCH discharge.
- Payment to the acute care hospital under the hospital inpatient prospective payment system for the acute care stay.
- A separate LTCH prospective payment system payment either as a very short-stay discharge (see proposed § 412.527), a short-stay outlier (see proposed § 412.529) or regular stay, depending on the second LTCH length of stay. This case would not be an interrupted stay because the acute care hospital stay was for more days than one standard deviation from the average length of stay of the DRG under the acute care hospital inpatient prospective payment system.

Example 2: A beneficiary stays in the LTCH for 5 days and is discharged to an inpatient acute care hospital and the length of stay at the acute care hospital is a number of days that is less than or equal to the sum of the average length of stay of the acute care hospital inpatient DRG and one standard deviation before being discharged back to the LTCH. The beneficiary remains in the LTCH for an additional 9 days after readmission to the LTCH following the acute care hospital stay. This case would be treated as an interrupted stay and Medicare hospital payments for this beneficiary would be as follows:

- Payment to the acute care hospital under the hospital inpatient prospective payment system for the DRG for the acute care hospital stay.
- The stay was interrupted because the acute care hospital stay was within one standard deviation from the average length of stay of the acute care hospital inpatient DRG. Therefore, a single payment would be made to the LTCH under the proposed LTCH prospective payment system. This payment would be a short-stay outlier payment (under proposed § 412.529) if the total LTCH length of stay (14 days) is less than two-thirds the average length of stay of the LTC–DRG.

Example 3: A beneficiary stays in the LTCH for 5 days and is discharged to an IRF and the length of stay at the IRF is less than or equal to the sum of the average length of stay of the IRF combination of the CMG and the comorbidity tier and one standard deviation before being discharged back to the LTCH. The beneficiary remained in the LTCH for an additional 12 days, so that the combined 17 days is greater than two-thirds of the average length of stay for the LTC–DRG after readmission to the LTCH following the IRF stay. This case would be an interrupted stay and Medicare hospital payments for this beneficiary would be as follows:

- Payment to the IRF under the IRF prospective payment system for the combination of the CMG and the comorbidity tier for the IRF stay; and
- Since the stay was interrupted because the IRF stay was within one standard deviation from the average length of stay of the IRF combination of the CMG and the comorbidity tier, a single payment would be made under LTCH prospective payment system. This payment would be a full LTC–DRG payment because the total LTCH length of stay is greater than two-thirds of the average length of stay of the LTC–DRG.

In Example 2 and Example 3, upon return to the LTCH following the discharge from the acute care hospital or the IRF, the day count would be resumed at day 6 of the LTCH stay. If the beneficiary was then discharged on day 6 or 7, the stay would be paid as a very short-stay discharge (see

proposed § 412.527); if the beneficiary was discharged within two-thirds of the average length of stay for the LTC–DRG, the stay would be paid as a short-stay outlier (see proposed § 412.529); and if the beneficiary was discharged beyond the short-stay threshold (two-thirds of the average length of stay for the LTC–DRG), the case would be paid for the full LTC–DRG.

While the interrupted stay policy proposed under § 412.531 is based in part on clinical considerations, we realize that it may be somewhat administratively burdensome for the LTCH to determine the DRG for the acute care hospital stay or the combination of the CMG and the comorbidity tier for the IRF stay in order to determine whether or not a beneficiary that is discharged to an acute care hospital, an IRF, or a SNF and then returns to the LTCH would be an interrupted stay (with a single LTCH prospective payment system payment) or a new admission (with two separate LTCH prospective payment system payments). Therefore, we are considering treating all patients who are discharged to either an acute care hospital or an IRF and admitted back to the LTCH within a fixed period of time (as we have proposed for SNFs), regardless of the DRG of the patient in the acute care hospital or the combination of the CMG and the comorbidity tier of the patient in the IRF, as an interrupted stay. We believe that 9 days for acute care hospitals and 27 days for IRFs would be an appropriate threshold to identify interrupted stay cases because, in both cases, the proposed thresholds are one standard deviation from the average length of stay of all patients in those respective settings. We are aware that, under such a policy, less clinically complex brief acute care hospital and IRF stays would be included and would become an interrupted stay if the beneficiary returns to a LTCH. However, those types of cases would be offset by stays that require more intense and lengthy care. We are in the process of further analyzing Medicare claims data for LTCH beneficiaries who are discharged to an acute care hospital or an IRF and return to the LTCH following that stay to determine if an interrupted stay threshold of a fixed number of days is the more appropriate policy. We specifically solicit comments on the appropriate period of absence for such an interrupted stay threshold. We also are interested in receiving comments regarding the inclusion of discharges to psychiatric hospitals or units in our proposed interrupted stay policy.

4. Other Special Cases

Under other Medicare prospective payment systems, specifically for inpatient acute care hospitals and for IRFs, there are separate policies for other types of special cases such as transfer cases and patients who expire. We believe the proposed very short-stay discharge policy (under proposed § 412.527), the proposed short-stay outlier policy (under proposed § 412.529), and the proposed interrupted stay policy (under proposed § 412.531) would adequately address these circumstances. For instance, a case with a stay that is less than two-thirds the average length of stay of the LTC–DRG would be paid under the proposed short-stay outlier policy (or the very short-stay discharge policy if the length of stay is 7 days or fewer) regardless of whether or not the patient is transferred upon discharge to his or her home or to another setting where Medicare would make additional payments, or whether the patient expired. Moreover, if a beneficiary's stay at the LTCH is at least two-thirds the average length of stay of the LTC–DRG, a full LTC–DRG payment would be made regardless of the destination following discharge. Therefore, we are not proposing a separate policy for cases that are transferred (except for those that are encompassed by the proposed interrupted stay policy) or for patients who expire.

Currently, under the hospital inpatient prospective payment system, discharges in 10 DRGs are considered to be transfers if the patients are discharged to another Medicare post-acute site of care, such as a LTCH, under section 1886(d)(5)(J)(ii) of the Act, implemented in regulations at § 412.4. The rationale behind this amendment was Congressional concern 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.'' (Conference Agreement, H.R. Conf. Rept. No. 105–217, 105th Cong., 1st Sess., at 740 (1997).) In such a scenario, Medicare would also have to pay the post-acute care provider for care that theoretically could have been provided at the acute care hospital. Section 1886(d)(5)(J)(iv) of the Act authorizes the Secretary to expand the post-acute care transfer policy to additional DRGs. From the standpoint of LTCHs, the impact of expanding the hospital inpatient prospective payment system post-acute care transfer policy could be significant for the LTCH prospective payment system since this policy could affect behavior at acute care hospitals. If additional discharges would be paid as transfers, these patients may be kept longer at acute care hospitals in order to avoid a reduced payment for the transfer and then have a shorter length of stay during the subsequent stay at the LTCH. Presently, approximately 70 percent of LTCH Medicare patients are admitted following discharge from an acute care hospital. We are presently exploring whether to propose an expansion of the 10–DRG policy in the FY 2003 hospital inpatient prospective payment system proposed rule.

5. Onsite Discharges and Readmittances

As we explained above, we do not believe that a separate policy governing transfers of Medicare patients between LTCHs and acute care hospitals is necessary at this time. However, we are proposing a policy that would address transfers between LTCHs and distinct-part SNFs, acute care hospitals, rehabilitation facilities, or psychiatric facilities when the LTCH and any of these other providers are co-located because of the potential for inappropriate shifting of patients among these providers without clinical justification to maximize Medicare payment. This situation may occur when a distinct-part SNF is part of a LTCH or when the LTCH is located within an acute care hospital or an IRF as either a ''hospital-within-a-hospital (as defined in § 412.22(e)) or a ''satellite facility'' (as defined in § 412.22(h)) and a distinct-part SNF (as defined in section 1819(a) of the Act) is also part of the same acute care hospital or IRF. (Section I.E.9. of this proposed rule describes findings from Urban's research on the admission and discharge patterns between LTCHs and SNFs.)

Similarly, a long-term care ''hospital-within-a-hospital'' or satellite facility may be co-located with a psychiatric or rehabilitation hospital that is also a hospital within the same acute care hospital or is a satellite facility situated in the same acute care hospital (§§ 412.25 and 412.27), or may be co-located in an acute care hospital with a psychiatric unit (§ 412.27) or a satellite psychiatric or rehabilitation unit (§ 412.25(e)).

We believe that a per discharge system, such as the prospective payment system for LTCHs, could provide inappropriate incentives to prematurely discharge patients to one of these other onsite providers once their lengths of stay at the LTCH exceeded the thresholds established by the short-stay discharge and outlier policies described in section IV.B. of this proposed rule. These discharges would

be based on payment considerations rather than on a clinical basis as an extension of the normal progression of appropriate patient care. If the long-term care hospital-within-a-hospital inappropriately discharges Medicare patients to the distinct-part SNF, or the onsite IRF, psychiatric facility, or acute care hospital without providing a complete episode of hospital-level care, Medicare would make inappropriate payments to the long-term care hospital-within-a-hospital, since payments under the proposed prospective payment system would have been calculated based on a complete episode of such care. This type of a case could then be followed by a readmission to the LTCH from the onsite provider for an additional LTC–DRG payment. (In the case of a discharge from a LTCH to an offsite acute care hospital, an IRF, or a SNF with a subsequent return to the LTCH, payments would also be considered under the interrupted stay policy set forth at section IV.B.3. of this proposed rule and at proposed § 412.531.)

In determining an appropriate response to onsite discharges and readmittances, we are proposing a policy consistent with our policy described in the July 30, 1999 **Federal Register** (64 FR 41535) that addresses inappropriate discharges of patients between an acute care hospital inpatient prospective payment system excluded hospital-within-a-hospital (such as a LTCH) to the host acute care hospital, that culminated in a readmission to the hospital-within-a-hospital. In that context, we expressed the same concern noted above—that these types of moves were occurring for financial rather than clinical reasons. In order to discourage these practices, we implemented regulations at § 413.40(a)(3) to specify how to calculate the cost per discharge under the excluded hospital payment provisions. Under those regulations, during a cost reporting period, if the hospital-within-a-hospital discharges more than 5 percent of its inpatients to the acute care hospital where it is located, and those patients are readmitted to the excluded hospital, Medicare considers each patient's entire stay as one discharge for purposes of calculating the cost per discharge of the excluded hospital. In determining whether a patient has previously been discharged and then readmitted, we consider all prior discharges, even if the discharge occurs late in one cost reporting period and the readmission occurs in the next cost reporting period. Only when the excluded hospital's number of these cases in a particular cost reporting year exceeds 5 percent of the total number of its discharges are the first discharges not counted for payment purposes. (If the 5-percent threshold is not triggered, all discharges are counted separately.)

With the implementation of the per discharge prospective payment system for LTCHs, we are proposing to adopt a similar policy to address inappropriate discharges and readmittances between LTCHs and other onsite providers by establishing a threshold beyond which the original patient stay and the readmission would be paid as one discharge (proposed § 412.532). By paying only one discharge, we would discourage those transfers that would be based on payment considerations instead of on a clinical basis. Generally, if a LTCH readmits more than 5 percent of its Medicare patients who are discharged to an onsite SNF, IRF, or psychiatric facility, or to an onsite acute care hospital, only one LTC–DRG payment would be made to the LTCH for each discharge and readmittance during the LTCH's cost reporting period. Therefore, payment for the entire stay would be paid either as one full LTC–DRG payment, a very short-stay discharge, or a short-stay outlier, depending on the duration of the entire LTCH stay.

In applying the 5-percent threshold, we are proposing to apply one threshold for discharges and readmittances with a co-located acute care hospital, consistent with the policy that has been in place under § 413.40(a)(3) for acute care hospitals and excluded hospitals described above. We also are proposing a separate 5-percent threshold for all discharges and readmittances with co-located SNFs, IRFs, and psychiatric facilities. In the case of a LTCH that is co-located with an acute care hospital, an IRF, or a SNF, the onsite discharge and readmittance policies that we are proposing would apply in addition to the proposed interrupted stay policy that we are proposing in section IV.B.3 of this proposed rule and at proposed § 412.531. This means that even if a discharged LTCH patient who was readmitted to the LTCH following a stay in an acute care hospital of greater than one standard deviation from the average length of stay of the specific hospital inpatient prospective payment system DRG, if the facilities share a common location and the 5-percent threshold were exceeded, the subsequent discharges from the LTCH would not represent a separate hospitalization for payment purposes. Similarly, if the LTCH has exceeded its 5-percent threshold for all discharges to an onsite IRF, SNF, or psychiatric hospital or unit with readmittances to the LTCH, the subsequent discharges would not be treated as a separate discharge for Medicare payment purposes, notwithstanding provisions of the proposed interrupted stay policy with regard to lengths of stay at an IRF or a SNF (see proposed §§ 412.531(b)(5)(ii) and (b)(5)(iii)). (As under the proposed interrupted stay policy, payment to an acute care hospital under the hospital inpatient prospective payment system, to an IRF under the IRF prospective payment system, and to a SNF under the SNF prospective payment system, would not be affected. Payments to the psychiatric facility also would not be affected.)

We are aware that situations could arise where, under sound clinical judgement, a patient who no longer required LTCH-level of care could be discharged to a SNF and then experience a setback necessitating rehospitalization. However, it is likely that, in such a scenario, in most cases the patient would be subsequently admitted to an acute care hospital rather than readmitted to the LTCH located within the acute care hospital. In addition, if the patient is being treated by a LTCH that also specializes in treating psychiatric or rehabilitation patients, it is unlikely that the patient who, for some medical reason, needed to be transferred to an onsite psychiatric or rehabilitation hospital or unit, would need to be readmitted to the LTCH. We believe that the 5-percent thresholds for discharges to onsite acute care hospitals and for discharges to onsite IRFs, SNFs, and psychiatric facilities followed by readmission to the LTCH provide adequate flexibility for those rare circumstances where such actions would be clinically preferable.

We believe that the combination of a discharge-based payment system that inherently contains financial incentives for shifting patients to another site of care and the close proximity of other sites of care such as other onsite hospitals-within-hospitals, satellites, and distinct-part SNFs, necessitates this type of policy. If we implement this policy in the final rule, we would monitor such discharges and analyze data and compare practice patterns before and after the implementation of the prospective payment system and, if warranted, may consider extending it to offsite providers.

6. Additional Issues for Onsite Facilities

As we prepare to implement a proposed prospective payment system for LTCHs, we are reevaluating certain existing policies for hospitals-within-hospitals and satellite facilities that

were established under the TEFRA payment system for excluded hospitals.

Existing regulations at § 412.22(e) specify exclusion criteria based on ownership and control for hospitals-within-hospitals and their host hospitals (59 FR 45330, September 1, 1994). We were concerned about possible manipulation of Medicare payments by a single entity that owns or controls an acute care hospital and a co-located LTCH. We believed that such a situation could lead to premature patient discharges from the acute care hospital to the co-located LTCH, resulting in two Medicare payments to the controlling entity for one episode of care. Under this circumstance, the LTCH would, in fact, function as an excluded unit of an acute care hospital, a situation inconsistent with section 1886(d)(1)(B) of the Act, which allows excluded rehabilitation and psychiatric units in acute care hospitals but not long-term care units. Through the proposed interrupted stay and proposed onsite discharge and readmittance policies set forth in sections IV.B.3. and IV.B.5., respectively, of this proposed rule, which limit potential inappropriate Medicare payments, we believe that we have addressed some of the concerns that originally led us to establish the rules in § 412.22(e). Accordingly, we are soliciting comments on any possible changes to CMS payment policy regarding ownership and control for hospitals-within-hospitals.

The second area that we are soliciting comments, in light of the forthcoming proposed LTCH prospective payment system, is our policy regarding LTCHs that have established satellite facilities. In § 412.22(h)(1), we define a satellite as ''a part of a hospital that provides inpatient services in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital.'' Satellite arrangements exist when an existing hospital that is excluded from the hospital inpatient prospective payment system and that is either a freestanding hospital or a hospital-within-a-hospital under § 412.22(e), shares space in a building or on a campus occupied by another hospital in order to establish an additional location for the excluded hospital. The July 30, 1999 **Federal Register** (64 FR 41532 through 41534) includes a detailed discussion of our policies regarding Medicare payments for satellite facilities of hospitals excluded from the hospital inpatient prospective payment system. We will consider the possibility of revisiting the policies we established for these satellites. In accordance with section 1886(b) of the Act, as amended by sections 4414 and 4416 of Public Law 105–33, we established two different target limits on payments to excluded hospitals, depending upon when the facilities were established. The target amount limit for excluded hospitals or units established before October 1, 1997 was set at the 75th percentile of the target amounts of similarly classified hospitals, as specified in § 413.40(c)(4)(iii), for cost reporting periods ending during FY 1996 as updated to the applicable cost reporting period. For excluded hospitals and units established on or after October 1, 1997, under section 4416 of Public Law 105–33, the payment amount for the hospital's first two 12-month cost reporting periods, as specified at § 413.40(f)(2)(ii), may not exceed 110 percent of the national median of target amounts of similarly classified hospitals for cost reporting periods ending during FY 1996, updated to the first cost reporting period in which the hospital receives payment.

Because we were concerned that a number of pre-1997 excluded hospitals, governed by § 413.40(c)(4)(iii), would seek to create satellite arrangements in order to avoid the effect of the lower payment caps that would apply to new hospitals, under § 413.40(f)(2)(ii), we established rules regarding the exclusion of and payments to satellites of existing facilities. If the number of beds in the hospital or unit (including both the base hospital or unit and the satellite location) exceeds the number of State-licensed and Medicare-certified beds in the hospital or unit on the last day of the hospital's or unit's last cost reporting period beginning before October 1, 1997, then the facility would be paid under the inpatient DRG system. Therefore, while an excluded hospital or unit could ''transfer'' bed capacity from a base facility to a satellite, if it increased total bed capacity beyond the level it had in the most recent cost reporting period before October 1, 1997 (64 FR 41532–4153, July 30, 1999), then the hospital would not be paid as a hospital excluded from the hospital inpatient prospective payment system. No similar limitation, however, was imposed with respect to the number of total beds in excluded hospitals and units and satellites of these facilities established after October 1, 1997, since these facilities were already subject to the lower payment limits of section 4416 of Public Law 105–33, and would, therefore, not benefit from the higher cap by creating a satellite.

Section 123 of Public Law 106–113 confers broad authority on the Secretary regarding the implementation of the proposed prospective payment system for LTCHs, and as described in section IV.G. of this proposed rule, we are proposing to transition this proposed prospective payment system over 5 years. During this time, payments to LTCHs would gradually change from hospital-specific cost-based payments to a per-discharge LTC–DRG-based prospective payment system. In addition, IRFs also will be transitioned to 100 percent payment starting with cost reporting periods beginning during FY 2003. We would consider whether to propose elimination of the bed-number criteria in § 412.22(h)(2)(i) for pre-1997 hospitals, once the applicable prospective payment system is fully phased-in, since all LTCHs would be paid based on 100 percent of the proposed LTCH prospective payment system by FY 2007 and the payment provisions under the TEFRA system at that time would no longer exist for this class of hospitals or for IRFs for cost reporting periods beginning during FY 2003. (This policy change, lifting of bed-number criteria for hospitals under prospective payment systems, that we are considering to propose, would not apply to hospitals that continue to be paid under the TEFRA system. Accordingly, during the 5-year phase-in, the policies in § 412.22(h)(2)(i) would continue to apply to LTCH satellites.

7. Monitoring System

In this proposed rule, we are proposing various policies that we believe would provide equitable payment for stays that reflect less than the full course of treatment and reduce the incentives for inappropriate admissions, transfers, or premature discharges of patients that are present in a discharge-based prospective payment system. We also would be collecting and interpreting data on changes in average lengths of stay under the proposed prospective payment system for specific LTC–DRGs and the impact of these changes on the Medicare program.

We propose to develop a monitoring system that would assist us in evaluating the LTCH prospective payment system. If our data indicate that changes might be warranted, we may revisit these issues and consider revising these proposed policies in the future.

C. Payment Adjustments

As indicated earlier, the Secretary generally has broad authority under section 123 of Public Law 106–113 in developing the prospective payment system for LTCHs. Thus, the Secretary generally has broad authority in determining whether (and how) to make

adjustments to the prospective payments to LTCHs. Section 307 of Public Law 106–554 directs the Secretary to ''examine'' appropriate adjustments to the prospective payments to LTCHs, including certain specific adjustments, but under that section the Secretary continues to have discretion as to whether to provide for adjustments.

In determining whether to propose specific payment adjustments under the prospective payment system for LTCHs, we conducted extensive regression analyses of the relationship between LTCH costs (including both operating and capital-related costs per case) and several factors that may affect costs such as the percent of Medicaid patients treated, the percent of Supplemental Security Income (SSI) patients treated, geographic location, and medical education programs. The appropriateness of potential payment adjustments is based on both cost effects estimated by regression analysis and other factors, including simulated payments that we discuss in section IV.E. of this proposed rule.

Our analyses are based on data from 222 LTCHs for which cost and case-mix data were available. We estimated costs for each case by multiplying hospital-specific cost-to-charge ratios by the LTCH's charges for that case. Cost-to-charge ratios were obtained from FY 1998 or FY 1999 cost report data, or both, available in the HCRIS minimum data set and Medicare claims data (charges) available in the MedPAR file. Because the universe of LTCHs has grown relatively rapidly over the last several years, in order to maximize the number of LTCHs in the database, we used the most recent cost report data available for each LTCH. If we had both FY 1998 and FY 1999 cost report data, we used the most complete cost reporting period (that is, the cost reporting period with the greater number of months). If we used FY 1998 cost report data because FY 1999 data were either unavailable (due to the time lag in cost report settlement) or incomplete, we updated the FY 1998 data for inflation using the FY 1999 excluded hospital market basket increase (2.4 percent) as published in the July 31, 1998 hospital inpatient prospective payment system FY 1999 final rule (63 FR 40954). As indicated in Appendix A of this proposed rule, we are proposing to use the excluded hospital market basket with a capital component to update payment rates. The excluded hospital market basket is currently used to update LTCHs' target amounts for inflation under the TEFRA system. We believe that proposing to continue use of the excluded hospital market basket to update LTCHs' costs for inflation is appropriate because the excluded hospital market basket measures price increases of the services furnished by excluded hospitals, including LTCHs. We believe that there is insufficient data to develop a proposed market basket based only on LTCH costs at this time.

In computing hospital-specific cost-to-charge ratios, we matched the costs for which we had the most recent and complete cost reporting period data to the claims in the MedPAR file for each month in that cost reporting period. For example, for a LTCH with a 12-month FY 1999 cost reporting period beginning on July 1, we used MedPAR data from July 1999 through June 2000 to compute a FY 1999 cost-to-charge ratio. The cost per case for each hospital is calculated by summing all costs and dividing by the number of corresponding cases.

Multivariate regression analysis is the standard statistical technique for examining cost variation that was used to analyze potential payment adjustments for LTCHs. We looked at two standard models—(1) a double log regression explanatory model to examine the impact of all relevant factors that might potentially affect a LTCH's cost per case; and (2) a payment model that examines the impacts of those factors that were determined to affect costs and, therefore, were used to determine payment rates. In multivariate regression, the estimated average cost per case (the dependent variable) at the LTCH can be explained or predicted by several independent variables, including the case-mix index, the wage index for the LTCH, and a vector of additional explanatory variables that may affect a LTCH's cost per case, such as a teaching program or the proportion of low-income patients. The case-mix index is the average of the LTC–DRG weights, derived by the hospital-specific relative value method, for each LTCH. Short-stay outlier cases are weighted based on the ratio of the length of stay for the short-stay case to the average length of stay for nonshort-stay cases in that LTC–DRG. We simulated payments using an estimated budget neutral payment rate and the regression coefficients as proxies for proposed payment system adjustments. Then we calculated payment-to-cost ratios for different classes of hospitals for specific combinations of payment policies.

We examined payment variables applicable to the hospital inpatient and IRF prospective payment systems, including the disproportionate share patient percentage, both the resident-to-average daily census ratio and the resident-to-bed ratio teaching variables, and variables that account for location in a rural or large urban area. A discussion of the major payment variables and our findings appears below.

1. Area Wage Adjustment

Section 307(b) of Public Law 106–554 requires that we examine the appropriateness of an area wage adjustment. Such an adjustment would account for area differences in hospital wage levels and would be made by adjusting the LTCH prospective payment system payment rate by a factor that would reflect the relative hospital wage level in the geographic area of the hospital as compared to the national average hospital wage level. At this time, we are not proposing an area wage adjustment for payments to LTCHs because the regression analysis indicated that a wage adjustment would not increase accuracy of payments. While we are not proposing to make an area wage adjustment in this proposed rule, we are specifically soliciting comments on whether an area wage adjustment is appropriate.

Under the acute care hospital inpatient prospective payment system, a wage index is applied to the labor-related share of the operating standardized amount to adjust for local cost variation. The hospital inpatient prospective payment system wage index is used also to make an area wage adjustment under the IRF prospective payment system, the SNF prospective payment system, the home health prospective payment system, and the outpatient hospital prospective payment system.

We began our analysis of the appropriateness of an area wage adjustment for LTCHs by evaluating the labor-related share from the excluded hospital with capital market basket. (This is the same market basket that is used in the IRF prospective payment system.) Currently, under the TEFRA cost-based reimbursement system, the excluded hospital market basket is used to update LTCHs' target amounts, which are used to determine payments to LTCHs for inpatient operating costs. Since we are proposing a single standard Federal rate under the proposed LTCH prospective payment system (see section IV.D. of this proposed rule), we are proposing to use a market basket with a capital component. A further explanation of the excluded hospital with capital market basket can be found in Appendix A of this proposed rule.

The labor-related share is the relative importance of wages, fringe benefits, professional fees, postal services, labor-intensive services, and a portion of the capital share for FY 2003. We determine a labor-related share of the excluded hospital with capital market basket by first estimating the portion related to operating costs. The excluded hospital with capital market basket is based on available cost data for facilities excluded from the acute care hospital inpatient prospective payment system, including long-term care, rehabilitation, psychiatric, cancer, and children's hospitals.

Using the excluded hospital with capital market basket, we determined that the labor-related share of operating costs would be 69.428 percent for FY 2003, which is calculated as the sum of the relative importance for wages and salaries (50.381 percent), employee benefits (11.525), professional fees (2.059), postal services (0.244), and all other labor intensive services (5.219).

The labor-related share of capital costs in the market basket needs to be considered as well. We are proposing to use the portion of capital attributed to labor, which is estimated to be 46 percent by CMS' Office of the Actuary. This is the same percentage used for both the hospital inpatient capital prospective payment system and the IRF prospective payment system. For FY 2003, we estimate the relative importance for capital to be 7.552 percent of the excluded hospital with capital market basket. We multiply 46 percent by 7.552 percent to determine that the labor-related share for capital costs for FY 2003 would be 3.474 percent.

We then add the 3.474 percent for capital costs to the 69.428 percent for operating costs to determine the total labor-related share based on the excluded hospital with capital market basket. Thus, when we examined an adjustment to account for area differences in hospital wage levels, we used a labor-related share of 72.902 percent for the proposed LTCH prospective payment system. Specifically, we examined the appropriateness of accounting for differences in area wage levels by multiplying the labor-related portion of the unadjusted Federal payment by the FY 2002 inpatient acute care hospital wage index, without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act. (This methodology is the methodology used under the IRF prospective payment system and the SNF prospective payment system.) Wage data to compute LTCH-specific wage indices are currently not available. However, LTCHs and other post-acute care facilities (for example, IRFs, SNFs, and HHAs) generally compete in the same local labor market for the same types of employees as inpatient acute care hospitals.

To validate the labor-related share calculated from the market basket, we analyzed the results of the wage index coefficient derived from regression analysis. In the regression, we standardized each LTCH's cost per case by the various factors, such as case-mix, bed size, number of cases, length of stay, and occupancy. The wage index coefficient allows us to approximate the labor-related portion of cost per case. Since the labor-related share derived from the market basket is the proportion of costs that have been identified as being influenced by the local labor amount, we would expect this coefficient to be statistically significant and near our market basket measure. The double-log regression analysis generated a wage index coefficient, which approximates the labor-related portion of cost per case, that is not statistically significant and is not near the market basket measure (72.902 percent) since it is only 19.91 percent. This suggests that the wage adjustment we examined would be only a small and unreliable predictor of LTCHs' costs.

Since the statistical analysis did not show a significant relationship between LTCHs' costs and their geographic location, we do not believe that at this point it would be appropriate to include a proposed adjustment for area wages. Furthermore, without applying the wage adjustment to the proposed standard Federal rate for LTCHs to account for the difference in area wage levels, the r-squared value (a statistical measure of how much variation in resource use among cases is explained by the system) of the proposed system taken as a whole is 0.82086. However, by applying the wage adjustment to the labor-related share of the proposed standard Federal rate for LTCHs to account for area differences in hospital wage levels, the r-squared value is reduced to 0.8017 for the proposed system as a whole (that is, including case-mix index and outlier policies). This means that not making a wage index adjustment would provide a 2.3 percent increase in the ability of the proposed payment system to predict costs. Furthermore, our regression analysis indicates that including a wage index adjustment would inappropriately redistribute payments to LTCHs by shifting money to LTCHs that are located in an area within a higher wage index but in fact have lower costs. Therefore, at this time we are not proposing an adjustment to account for area differences in LTCH wage levels. However, we will revisit the appropriateness of an adjustment to account for area differences in LTCH wage levels in developing the final rule.

2. Adjustment for Geographic Reclassification

In accordance with section 307(b) of Public Law 106–554, we also examined the appropriateness of applying an adjustment for geographic reclassification to payments under the LTCH prospective payment system, where hospitals could request reclassification from one geographic location to another for the purpose of using the other area's wage index value, Federal payment rates, or both. Such an adjustment is made under the acute care hospital inpatient prospective payment system in accordance with section 1886(d)(10) of the Act. The adjustment would treat a hospital located in one geographic area as being located in another geographic area, if certain conditions are met, because its costs and wages are more similar to those hospitals located in the other geographic area. As explained below, at this time, we are not proposing an adjustment for geographic reclassification in the prospective payment system for LTCHs.

Our data identified 14 rural LTCHs, but our analysis supported neither a proposed adjustment to account for differences in area wage levels nor a proposed adjustment for LTCHs located in rural areas or large urban areas because the regression analysis indicated that a wage adjustment would not increase the accuracy of payments. Therefore, under the proposed LTCH prospective payment system, all LTCHs would be treated the same for the purposes of payment, regardless of location. Since there would be no purpose for LTCHs to reclassify to another area, at this time we are not proposing an adjustment for geographic reclassification in the proposed prospective payment system for LTCHs.

We plan to review the above proposed policy determinations in developing the final rule based on the most recent available data. At that time, we also would revisit the appropriateness of an adjustment for geographic reclassification. It is important to note, however, that the Medicare Geographic Classification Review Board (MGCRB) currently has authority only over acute care (section 1886(d) of the Act) hospitals and there is presently no analogous determination process for hospitals that have been excluded from the acute care hospital inpatient prospective payment system. Under the

TEFRA system, prospective payment system-excluded hospitals and units, including LTCHs, are not required to fill out information related to wage-related costs on the Medicare cost report (that is, Worksheet S–3). Therefore, if a wage adjustment is ultimately implemented as part of the LTCH prospective payment system and it is determined that it is appropriate to make geographic reclassification adjustments, we would need to establish instructions for data collection on LTCH wage-related costs in order to determine an appropriate geographic reclassification adjustment for LTCHs. It would also be necessary to develop an application process and determination procedures.

3. Adjustment for Disproportionate Share of Low-Income Patients

Section 307(b) of Public Law 106–554 requires us to examine the appropriateness of an adjustment for hospitals serving a disproportionate share (DSH) of low-income patients, consistent with section 1886(d)(5)(F) of the Act, which establishes this adjustment for inpatient acute care hospitals. In assessing the appropriateness of a similar adjustment for LTCHs serving low-income patients, as specified in section 1886(d)(5)(F) of the Act, we focused our analysis on the relationship between serving low-income patients and LTCHs' cost per case. Based on the results of our analysis described below, at this time we are not proposing an adjustment for the treatment of a disproportionate share of low-income patients.

Under section 1886(d)(5)(F) of the Act, in calculating Medicare payments for inpatient services at acute care hospitals, the disproportionate share patient percentage takes into account both the percentage of Medicare patients who receive SSI and the percentage of Medicaid patients who are not entitled to Medicare. The DSH patient percentage is defined as:

$$\text{DSH Patient Percent} = \frac{\text{Medicare SSI Days}}{\text{Total Medicare Days}} + \frac{\text{Medicaid, Non-Medicare Days}}{\text{Total Patient Days}}$$

Based on this formula, an inpatient acute care hospital qualifies for a DSH adjustment under section 1886(d)(5)(F)(v) of the Act (as amended by section 211(a) of Public Law 106–554) if the hospital has a DSH patient percentage greater than or equal to 15 percent. The calculation of the DSH payment adjustments under that section is as follows:

- Hospitals (urban and rural) with fewer than 100 beds and whose DSH patient percentage is equal to or greater than 15 percent and less than 19.3 percent receive the DSH payment adjustment determined using the following formula:

(DSH patient percentage − 15) (.65) + 2.5.

- Hospitals (urban or rural) with fewer than 100 beds and whose DSH patient percentage is equal to or greater than 19.3 percent receive a flat add-on of 5.25 percent.
- Rural hospitals with greater than 500 beds and whose DSH patient percentage is equal to or greater than 15 percent and less than 20.2 percent receive the DSH payment adjustment using the following formula:

(DSH patient percentage − 15) (.65) + 2.5.

- Rural hospitals with greater than 500 beds and whose DSH patient percentage is equal to or greater than 20.2 percent receive the DSH payment adjustment using the following formula:

(DSH patient percentage − 20.2) (.825) + 5.88.

We analyzed the results of applying a DSH adjustment, in accordance with the criteria at section 1886(d)(5)(F) of the Act described above, on LTCHs. In modeling payments, because the proposed LTCH prospective payment system must be budget neutral in accordance with section 123(a) of Public Law 106–113, the proposed inclusion of such a DSH policy would result in a 3.31 percent decrease to the base payment rate. Furthermore, the inclusion of such a DSH policy would result in a 3.79 percent decrease in the r-squared value (a statistical measure of how much variation in resource use among cases is explained by the system). Accordingly, we found that including a DSH adjustment that is consistent with section 1886(d)(5)(F) of the Act would reduce the explanatory power of the proposed LTCH prospective payment system, or the ability of the proposed payment system model to predict cost per case, while lowering the base payment rate. Thus, at this time we are not proposing a DSH adjustment consistent with section 1886(d)(5)(F) of the Act.

We also evaluated an alternative adjustment, using regression analysis, that takes into account both the percentage of Medicare patients who are receiving SSI (SSI percent) and the percentage of Medicaid patients who are not entitled to Medicare (Medicare percent) without the other criteria specified in section 1886(d)(5)(F) of the Act. This analysis was made to determine if there is any relationship between these two variables and cost per case. The results of this analysis showed that the regression coefficients for both the percentage of Medicare patients who are receiving SSI and the percentage of Medicaid patients who are not entitled to Medicare would be statistically significant at the 99-percent level. However, the positive relationship between cost per case and the percentage of LTCH Medicare patients who are receiving SSI would be offset by a negative relationship between cost per case and the percentage of LTCH Medicaid patients who are not entitled to Medicare. This implies that while costs per discharge would appear to increase (slightly) as the percentage of LTCH Medicare SSI patients increases, costs per discharge would decline (slightly) as the percentage of LTCH Medicaid, non-Medicare patients increased. Therefore, at this time we are not proposing an adjustment for the treatment of a disproportionate share of low-income patients based on a LTCH's combined SSI percentage and Medicaid percentage.

Finally, we examined an adjustment for the treatment of low-income patients based solely on a LTCH's SSI ratio (the percentage of Medicare patients who are receiving SSI). The SSI ratio is calculated by dividing Medicare SSI days by total patient days. While the regression coefficient would be positive, it was not very large (0.04), which means that for every 1-percent increase in the SSI percent, a 0.04-percent increase in cost per case would be observed. Thus, at best, an empirically based adjustment based on the SSI percent would be very small. The positive regression coefficient for the SSI percentage is significantly influenced by the large SSI percentages of only a few LTCHs. Accordingly, we do not believe it is appropriate to propose an adjustment based on a LTCH's SSI percentage. Because section 123(a) of Public Law 106–113 requires that the LTCH prospective payment

system be budget neutral, applying such an adjustment would result in a 2.98-percent reduction in the proposed base payment rate for all LTCHs that is based on a small positive regression coefficient that is due mostly to a relatively small number of LTCHs with a large SSI percentage.

Because the analyses above do not indicate an increase in the accuracy of payments based on the adjustments examined for the treatment of a disproportionate share of low-income patients, we are not proposing an adjustment at this time. We will revisit the appropriateness of a DSH adjustment in developing the final rule based on the most recent data available.

4. Adjustment for Indirect Teaching Costs

In accordance with the directive of section 307(b) of Public Law 106–554 to examine ''appropriate adjustments'' to payments under the LTCH prospective payment system, we also examined the appropriateness of applying an adjustment for indirect teaching costs to payments under the proposed LTCH prospective payment system. Based on the analysis described below, at this time we are not proposing an adjustment for indirect teaching costs.

There are presently 14 LTCHs with teaching programs. LTCHs with major teaching programs tend to be older, larger (greater than 125 beds) hospitals, located in large urban areas, and have a higher proportion of low-income patients but with a lower case-mix index. Based on a double log regression, we found that the indirect teaching cost variable would be negative and not significant. We looked at different specifications for the teaching variable. We used a resident-to-bed ratio as the coefficient for the teaching variable in the regression that is currently used to measure teaching intensity under the acute care hospital inpatient prospective payment system for operating costs. We also used a ratio of resident to average daily census (defined as total inpatient days divided by the number of days in the cost reporting period) that is currently used under the acute care hospital inpatient prospective payment system for capital-related costs, as a measure of teaching intensity. We based this analysis on the estimated number of full-time equivalent (FTE) residents assigned to the inpatient area of the LTCH. In all our payment regressions, we determined that the teaching variable would not be significant. This means that there is no empirical evidence to show that LTCHs' cost per case would vary with teaching costs. Therefore, at this time we are not proposing an adjustment for indirect teaching costs. We will revisit the appropriateness of an adjustment for the costs of indirect medical education in developing the final rule based on the most recent available data.

5. Cost-of-Living Adjustment (COLA) for Alaska and Hawaii

In accordance with the directive of section 307(b) of Public Law 106–554 to examine ''appropriate adjustments'' to payments under the LTCH prospective payment system, we also examined the appropriateness of applying a cost-of-living adjustment (COLA) under the proposed LTCH prospective payment system for LTCHs located in Alaska and Hawaii.

There is currently one LTCH in Hawaii and no LTCHs in Alaska. In the absence of a COLA, we performed simulations, which indicate that the facility in Hawaii might experience a payment to cost ratio of 0.89 percent. Therefore, we are proposing a COLA for LTCHs in Hawaii and Alaska to account for the higher costs incurred in those states. The IRF proposed rule (November 3, 2000, 65 FR 66357) indicated that based on payment simulations, without a COLA, the one IRF located in Alaska may have a loss and the one IRF for which data were available, would have a gain. Due to the small number of cases, analysis of the simulation results were inconclusive regarding whether a cost-of-living adjustment would improve payment equity for these facilities. Accordingly, we did not include a COLA adjustment for those hospitals in the prospective payment system for IRFs. (65 FR 66357, November 3, 2000). We believe it appropriate, however, to propose a COLA for LTCHs based on the higher costs found in Hawaii. In general, the COLA would account for the higher costs in the LTCH and would eliminate the projected loss that the LTCH in Hawaii would experience absent the COLA. Furthermore this policy is consistent with the COLA made to account for the higher costs in acute care hospitals in Alaska and Hawaii under both the operating prospective payment system and the capital prospective payment system. We are proposing to make a COLA, under proposed § 412.525(b), to payments for LTCHs located in Alaska and Hawaii by multiplying the standard Federal payment rate by the appropriate factor listed in the table below. These factors are obtained from the U.S. Office of Personnel Management.

COST-OF-LIVING ADJUSTMENT FACTORS FOR ALASKA AND HAWAII HOSPITALS

Alaska:	
All areas	1.25
Hawaii:	
Honolulu County	1.25
Hawaii County	1.165
Kauai County	1.2325
Maui County	1.2375
Kalawao County	1.2375

6. Adjustment for High-Cost Outliers

In accordance with the directive of section 307(b) of Public Law 106–554, we also examined the appropriateness of an adjustment for additional payments for outlier cases. These are cases that have extraordinarily high costs relative to the costs of most discharges classified in the same LTC–DRG. Providing additional payments for outliers could strongly improve the accuracy of the LTCH prospective payment system in determining resource costs at the patient and hospital level. These additional payments would reduce the financial losses that would otherwise be caused by treating patients who require more costly care and, therefore, would reduce the incentives to underserve these patients.

We considered various outlier policy options. Specifically, we examined outlier policies under which outlier payments would be projected to be 5 percent, 8 percent, or 10 percent of total prospective system payments. We examined the impact of setting the outlier target percentage at 5 percent because that percentage is consistent with the range of targets provided under section 1886(d)(5)(A)(iv) of the Act for the hospital inpatient prospective payment system. We also considered an outlier target of 10 percent because that percentage was recommended in an industry study commissioned by NALTH. In addition, we considered an outlier target of 8 percent to analyze the impact of setting the outlier target at some percentage between 5 and 10 percent.

We also examined marginal cost factors, or the change in total cost with one unit of change in output, of 55 and 80 percent. We examined an 80-percent marginal cost factor for outlier payments because it is the same as the factor used under both the hospital inpatient prospective payment system and the IRF prospective payment system. We examined a 55-percent marginal cost factor in order to analyze the impact that a lower marginal cost factor would have on outlier payments and payments for all other cases.

As discussed in further detail in the June 4, 1992 hospital inpatient prospective payment system proposed rule (57 FR 23640), a study performed by RAND Corporation indicated that the marginal cost of care is usually less than the average cost because later days of a stay have considerably lower costs than the earlier days of the stay.

In order to determine the most appropriate outlier policy, we analyzed the extent to which the various options would reduce financial risk, reduce incentives to underserve costly beneficiaries, and improve the overall fairness of the system. We believe an outlier target of 8 percent would allow us to achieve a balance of the above stated goals. Our regression analysis showed that additional increments of outlier payments over 8 percent would reduce financial risk, but by successively smaller amounts. Since outlier payments are included in budget neutrality calculations, outlier payments would be funded by prospectively reducing the nonoutlier prospective payment system payment rates by the proportion of projected outlier payments to projected total prospective payment system payments in the absence of outlier payments; the higher the outlier target, the greater the (prospective) reduction to the base payment rate. We are proposing to provide outlier payments and to set outlier numerical criteria prospectively before the beginning of each Federal fiscal year so that outlier payments are projected to equal 8 percent of total payments under the proposed LTCH prospective payment system. Based on regression analysis and payment simulations, we believe this option optimizes the extent to which we would be able to protect vulnerable hospitals, while still providing adequate payment for all other cases that are not outlier cases.

We are proposing, under proposed § 412.525(a), to make an outlier payment for any discharges where the estimated cost would exceed the proposed adjusted LTCH prospective payment system payment for the proposed LTC–DRG plus a fixed-loss amount. The fixed-loss amount is the amount used to limit the loss that a hospital would incur under an outlier policy. This results in Medicare and the LTCH sharing financial risk in the treatment of extraordinarily costly cases. The LTCH's loss is limited to the fixed-loss amount and the percentage of costs above the marginal cost factor. The estimated cost of a case would be calculated by multiplying the overall hospital cost-to-charge ratio by the Medicare allowable covered charge.

Our analysis of payment-to-cost ratios for outlier cases showed that a marginal cost factor of 80 percent appropriately addresses outlier cases that are significantly more expensive than nonoutlier cases. This factor would ensure that there is a balance between the need to protect LTCHs financially while encouraging them to treat expensive patients and maintaining the incentives of a prospective payment system to improve the efficient delivery of care. Based on this analysis and consistent with the marginal cost factor used under the IRF prospective payment system and under section 1886(d) of the Act for inpatient acute care hospitals, we are proposing to pay outlier cases 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal prospective payment for the LTC–DRG and the fixed-loss amount). The proposed fixed-loss amount would be calculated by simulating aggregate payments with and without an outlier policy, using FY 2000 MedPAR claims data and the best available cost report data in an iterative process to determine a fixed-loss threshold that would result in outlier payments being equal to 8 percent of total payments. As discussed in section IV.D. of this proposed rule, for FY 2003 we proposing a fixed-loss amount of $29,852. Therefore, for FY 2003, we are proposing to pay an outlier case 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal prospective payment for the LTC–DRG prospective payment system payment plus $29,852).

D. Calculation of the Proposed Standard Federal Payment Rate

1. Overview of the Development of the Proposed Standard Payment Rate

Section 123(a)(1) of Public Law 106–113 requires that the prospective payment system for LTCHs maintain budget neutrality. Therefore, we are proposing to calculate the standard Federal rate by setting total estimated prospective payment system payments equal to estimated payments that would have been made under the TEFRA methodology if the proposed prospective payment system for LTCH were not implemented as described in this proposed rule. In accordance with section 307(a)(2) of the BIPA, the increases to the hospital-specific target amounts and cap on the target amounts for LTCHs for FY 2002 provided for by section 307(a)(1) of the BIPA and the enhanced bonus payments for LTCHs for FY 2001 and FY 2002 provided for by section 122 of the BBRA were not taken into account in the development of the proposed prospective payment system for LTCHs.

The proposed methodology for determining the standard Federal payment rate under the proposed LTCH prospective payment system is described in further detail below.

2. Development of the Proposed Standard Federal Payment Rate

a. Data Sources

The data sources that we used to calculate the proposed standard Federal payment rate include cost report data from FYs 1996 through 1999 and FY 2000 Medicare claims data from the June 2001 update of the MedPAR since these data were the most recently available complete data for LTCHs. We used data from 222 LTCHs to calculate the proposed standard Federal payment rate. We updated the cost report data for each LTCH to the midpoint of FY 2003 using an inflation factor based on the historical relationship of each hospital's costs and their target amounts as described in section IV.D.2.b. of this proposed rule. The FY 1996 cost report data were used to determine each LTCH's update for FY 1999, and the FY 1997 cost report data were used to determine the update for FY 2000. The FY 1998 cost report data were used to determine the update for FY 2001, and the FY 1999 cost report data were used to determine the update for FY 2002. We were unable to calculate a proposed payment under the current payment system for some LTCHs because cost report data were unavailable. We will attempt to obtain the most recent payment amounts for these hospitals through their Medicare fiscal intermediary and we will consider using these data to construct the standard Federal payment rates for the final rule. We will also examine the extent that certain LTCHs (new LTCHs, for example) are not included in the data used to determine the proposed standard Federal payment rate and consider the appropriateness of an adjustment to better reflect total estimated payments for LTCHs.

In determining the proposed prospective payment rates for LTCHs, we had significant concerns about the integrity of some of the cost report data in HCRIS. Specifically, we were concerned about data from cost reports submitted by a hospital chain that is the owner of approximately 20 percent of LTCHs nationwide that arose from a ''qui tam'' action filed by the U.S. Department of Justice (DOJ) in July 1999. This action alleged, among other

claims, that the hospitals inflated both cost and charge data on Medicare hospital cost reports filed from 1994 through 1999. On March 16, 2001, the hospital chain agreed to pay approximately $339 million to settle claims arising from 11 separate actions. Based upon audits and projections performed by Medicare's fiscal intermediary under the direction of our Office of Financial Management, the Medicare LTCH action was allocated $178 million of this settlement.

Under the terms of the agreement, Medicare cost reports from the years in question were not reopened and audited. However, the fiscal intermediary was able to estimate the effect on the Medicare cost reports for 1995, 1996, and 1997. Then a random sample of Medicare cost reports from 1998 and 1999 were reviewed to verify the projected impact for those years and a settlement figure was determined for FY 1995 through FY 1999. Therefore, in order to avoid the negative impact those providers' data may otherwise have on the integrity of the data, we are basing our proposed standard Federal rate on a factor determined by CMS' Office of the Actuary to adjust the costs reported in those affected FY 1998 and FY 1999 cost reports. This factor was derived by determining the ratio of the portion of the settlement amount described above attributable to each LTCH to the Medicare payments received by each affected LTCH during the period covered by the settlement.

b. Update the Latest Cost Report Data to the Midpoint of FY 2003

Consistent with the methodology used under the IRF prospective payment system (at § 412.624(c)), we are proposing, at § 412.523(c)(2), to update each LTCH's cost per discharge to the midpoint of FY 2003, using the weighted average of the applicable percentage increases to the TEFRA target amounts for FYs 1999 through 2002 (in accordance with § 413.40(c)(3)(vii)) and the full market basket percentage increase for FY 2003. For FYs 1999 through 2002, we would determine the appropriate update factor for each hospital by using the methodology described below:

- For hospitals with costs that equal or exceed their target amounts by 10 percent or more for the most recent cost reporting period for which information is available, the update factor would be the market basket percentage increase.
- For hospitals that exceed their target amounts by less than 10 percent, the update factor would be equal to the market basket minus 0.25 percentage points for each percentage point by which operating costs are less than 10 percent over the target (but in no case less than 0).
- For hospitals that are at or below their target amounts, but exceed two-thirds of the target amounts, the update factor would be the market basket minus 2.5 percentage points (but in no case less than 0).
- For hospitals that do not exceed two-thirds of their target amounts, the update factor would be 0 percent.

For FY 2003, we propose to use the most recent estimate of the percentage increase projected by the excluded hospital market basket index.

c. Estimate Total Payments Under the Current (TEFRA) Payment System

We would estimate payments for inpatient operating services under the TEFRA system using the following methodology:

Step 1: Determine each LTCH's hospital-specific target amount. The hospital-specific target amount for a LTCH is calculated based on the hospital's allowable inpatient operating cost per discharge for the hospital's base period, excluding capital-related, nonphysician anesthetist, and medical education costs. This target amount would then be updated using a rate-of-increase percentage as described in § 413.40(b)(3). For FYs 1998 through 2002, there are two national caps on the payment amounts for LTCHs. Under § 413.40(c)(4)(iii), a LTCH's hospital-specific target is the lower of its net allowable base year costs per discharge increased by the applicable update factors or the cap for the applicable cost reporting period. In determining each LTCH's hospital-specific target amount, we would use the FY 2002 cap amounts published in the August 1, 2001 **Federal Register** (66 FR 39915–39916), adjusted in accordance with section 307(a)(2) of Public Law 106–554 by removing the 2-percent increase in the cap for existing LTCHs required by section 307(a)(1) of Public Law 106–554. For existing hospitals (that is, LTCHs paid as an excluded hospital before October 1, 1997), the applicable cap amount for FY 2002 is $30,783 for the labor-related share adjusted by the applicable geographic wage index and added to $12,238 for the nonlabor-related share. For ''new'' hospitals (that is, LTCHs first paid as an excluded hospital on or after October 1, 1997), the cap amount applicable for FY 2002 is $16,701 for the labor-related share adjusted by the applicable geographic wage index and added to $6,640 for the nonlabor-related share. These capped amounts would then be inflated to the midpoint of FY 2003 by applying the excluded hospital operating market basket.

As explained above, we note that, in accordance with section 307(a)(2) of the BIPA, in estimating total payments to LTCHs under the current payment system, the increase to the hospital target amounts and caps on the target amounts for LTCHs effective from October 1, 2001 through September 30, 2002, provided for under section 307(a)(1) of the BIPA were not to be taken into account.

Step 2: Determine each LTCH's payment amount for inpatient operating services. Under the TEFRA system, a LTCH's payment amount for inpatient operating services is the lower of—

- The hospital-specific target amount (subject to the application of the cap as determined in Step 1) times the number of Medicare discharges (the ceiling); or
- The hospital average inpatient operating cost per case times the number of Medicare discharges.

In addition, under the TEFRA system, payments may include a bonus or relief payment, as follows:

- For LTCHs whose net inpatient operating costs are lower than or equal to the ceiling, payment would be determined based on the lower of either the net inpatient operating costs plus 15 percent of the difference between the inpatient operating costs and the ceiling or the net inpatient operating costs plus 2 percent of the ceiling.
- For LTCHs whose net inpatient operating costs are greater than the ceiling but less than 110 percent of the ceiling, payment would be the ceiling.
- For LTCHs whose net inpatient operating costs are greater than 110 percent of the ceiling, payment would be the ceiling plus the lower of 50 percent of the difference between the 110 percent of the ceiling and the net inpatient operating costs or 10 percent of the ceiling.

Further, under the TEFRA system, excluded hospitals and units, including LTCHs, may be eligible for continuous improvement bonus payments as described under § 413.40(d)(4). As explained above, in accordance with section 307(a)(2) of Public Law 106–554, the enhancement of continuous improvement bonus payments for LTCHs, effective for cost reporting periods beginning on or after October 1, 2000 and before September 30, 2002, and provided for under section 122 of Public Law 106–113, were not to be taken into account in estimating total payments to LTCHs under the current TEFRA system.

Step 3: Determine each LTCH's payment for capital-related costs. Under the TEFRA system, in accordance with

section 1886(g) of the Act, Medicare allowable capital costs are paid on a reasonable cost basis. Thus, each LTCH's payment for capital-related costs would be taken directly from the cost report and updated for inflation using the excluded hospital market basket, consistent with the methodology used under the IRF prospective payment system.

Step 4: Determine each LTCH's average total (operating and capital) payment per case under the current (TEFRA) payment system. Once estimated payments for inpatient operating costs are determined (including bonus and relief payments, as appropriate), we would add the operating payments and capital payments together to determine each LTCH's estimated total payments under the current (TEFRA) payment system. We would then divide each LTCH's estimated total TEFRA payments by the corresponding number of Medicare discharges from the cost report to determine what each LTCH's average total payment per case would be under the current (TEFRA) payment system.

Step 5: Determine a case weighted average payment under the current (TEFRA) payment system. We would determine each LTCH's average payment under the current (TEFRA) system weighted for its number of cases in the June 2001 update of the FY 2000 MedPAR by multiplying its average total payment per case from step 4 by its number of cases in the FY 2000 MedPAR.

Step 6: Estimate total (MedPAR) weighted payments under the current (TEFRA) payment system. We would estimate total weighted payments under the current (TEFRA) payment system by summing each LTCH's (MedPAR) weighted payments under the current (TEFRA) payment system (from step 5). In addition, we adjusted the estimated total weighted payments to reflect the estimated portion of additional outlier payments under proposed § 412.525(a). (This is consistent with not including outlier payments in estimating payments under the proposed prospective payment system in Step e. below.) This total would be the numerator in the calculation of a budget neutrality adjustment.

d. Calculate the Average Weighted Payment per Discharge Amount

Once estimated total payments under the current payment system are calculated, we would calculate an average per discharge payment amount weighted by the number of Medicare discharges under the current payment system. This would be done by first determining the average payment per discharge amount under the current payment system for each LTCH. Cost report data would be used to calculate each LTCH's average payment per discharge by dividing the number of discharges into the total payments. As explained above in section IV.D.2.a. of this proposed rule, the LTCH's payment per discharge would be adjusted consistent with the terms of the DOJ settlement agreement.

Next, we would determine the weighted average per discharge payment amount by multiplying each LTCH's average payment per discharge amount from the cost report by the number of discharges from the Medicare claims data in the FY 2000 MedPAR file. Then we would add the amounts for all LTCHs and divide by the total number of discharges from the Medicare claims in MedPAR to derive a weighted average payment per discharge.

e. Estimate Payments Under the Proposed Prospective Payment System Without a Budget Neutrality Adjustment

Payments under the proposed payment system would then be estimated without a budget neutrality adjustment. To do this, we would multiply each LTCH's case-mix index adjusted for short-stay outliers (*see* section IV.B.2. of this proposed rule), the number of discharges from the Medicare claims in MedPAR adjusted for short-stay outliers (*see* section IV.B.2. of this proposed rule) and the weighted average per discharge payment amount computed above. For purposes of this calculation, we would estimate payments for each LTCH as if it were paid based on 100 percent of the proposed standard Federal rate in FY 2003 rather than the proposed transition blend methodology described in section IV.G. of this proposed rule. Total payments for each LTCH would then be summed for all LTCHs. This total would be the denominator in the calculation of the budget neutral adjustment.

f. Determine the Budget Neutrality Adjustment

The budget neutrality adjustment would be calculated by dividing total adjusted payments under the current payment system (the total amount calculated in section IV.D.2.c. of this preamble) by estimated payments under the proposed prospective payment system, without a budget neutrality adjustment (the total amount calculated in section IV.D.2.e. of this preamble).

g. Determine the Standard Federal Payment Rate

The resulting budget neutrality adjustment (determined in section IV.D.2.f. of this preamble) would then be multiplied by the average weighted per discharge payment amount under the current payment system and we would adjust the result further to include a behavioral offset. As previously stated, to calculate the proposed standard Federal payment rate, we estimated what would have been paid under the current payment system. However, we expect that as a result of the implementation of the new prospective payment system, LTCHs may experience usage patterns that are significantly different from their current usage patterns. Since there is a fixed payment based on diagnosis in a per discharge prospective payment system regardless of the length of stay (except for additional outlier payments), there would be an incentive to discharge a patient (to home or to another site of care) as early in the stay as possible in order to minimize cost and maximize profit). As a result, discharges may occur earlier in the LTCH stay. This would result in lower payments under the current payment system for this care which must be taken into account when computing the budget neutral payment rate. Furthermore, as explained in sections IV.A.2. and G. of this proposed rule, we expect the LTCH's coding practice of LTCHs to improve once the proposed prospective payment system is implemented, which has a significant potential of resulting in a case-mix that would be higher than what would be used to determine the budget neutral standard Federal rate.

As was the case when the hospital inpatient prospective payment system was implemented, improved coding could result in a higher case-mix because hospitals would code secondary diagnoses more completely and accurately, now that these diagnoses would factor into the LTC–DRG assignment and, ultimately, their payment. The inclusion of appropriate secondary diagnoses could result in the case being grouped into a higher weighted LTC–DRG. This is especially true for LTCHs since they generally treat more medically complex patients who are more likely to have many secondary diagnoses. Thus, if the same cases that were used to develop the proposed standard Federal rate are grouped into higher weighted LTC–DRGs as a result of improved coding, this higher case-mix would result in higher payments under the proposed payment system for this care. This effect must also be taken

into account when computing the budget neutral standard Federal rate. Accounting for these effects through an adjustment is commonly known as a behavioral offset.

The proposed standard Federal payment rate with a behavioral offset is $27,649.02. This proposed dollar amount includes a 0.27 percent (that is, twenty-seven hundredths of one percent) reduction for the behavioral offset in the proposed standard Federal payment rate otherwise calculated under the methodology described above. Consistent with the assumptions made under the IRF prospective payment system, in determining this proposed behavioral offset adjustment, we assumed that the LTCHs would regain 15 percent of potential losses and augment payment increases by 5 percent through transfers occurring at or beyond the mean length of stay associated with the LTC–DRG at any point.

For FY 2003, we are proposing to establish a fixed-loss outlier threshold (as described previously in section IV.C.6. of this proposed rule) equal to the proposed standard Federal prospective payment rate for the LTC–DRG plus $29,852. In setting this proposed fixed-loss amount of $29,852, we project that FY 2003 outlier payments would equal 8 percent of LTC–DRG payments under the proposed LTCH prospective payment system in accordance with proposed § 412.523.

h. Determine a Budget Neutrality Offset To Account for the Proposed Transition Methodology

Section 123(a)(1) of the BBRA requires that the LTCH prospective payment system maintain budget neutrality. As discussed in further detail in section IV.G. of this proposed rule, we are proposing a 5-year transition period from cost-based TEFRA reimbursement to prospective payment, during which a LTCH would be paid an increasing percentage of the proposed LTCH prospective payment system rate and a decreasing percentage of its TEFRA rate for each discharge. Furthermore, we are proposing to allow a LTCH to elect to be paid based on 100 percent of the proposed standard Federal rate in lieu of the blend methodology. Based on a comparison of the estimated FY 2003 payments to each LTCH based on 100 percent of the proposed standard Federal rate and the proposed transition blend methodology, we project that approximately 58 percent of LTCHs would elect to be paid based on 100 percent of the proposed standard Federal rate since they would receive higher payments than under the proposed transition blend methodology. We project that the remaining 42 percent of LTCHs will choose to be paid based on the transition blend methodology (80 percent of TEFRA; and 20 percent of the prospective payment system) in FY 2003 since they would receive higher payments than if they were paid based on 100 percent of the Federal rate.

Since the proposed standard Federal rate ($27,649.02) determined under section IV.D.2.g. of this proposed rule was calculated as if all LTCHs would be paid based on 100 percent of the proposed standard Federal rate in FY 2003, in order to maintain budget neutrality, we are proposing to reduce all LTCH Medicare payments during the transition period by a factor that is equal to 1 minus the ratio of the estimated TEFRA reasonable cost-based payments that would have been made if the LTCH prospective payment system had not been implemented, to the projected total Medicare program payments that would be made under the proposed transition methodology and the option to elect payment based on 100 percent of the Federal rate.

We project that the full effect of the proposed 5-year transition period and the election option would result in a cost to the Medicare program of $230 million as follows:

Fiscal year	Estimated cost (in millions)
2003	$50
2004	80
2005	60
2006	30
2007	10

Thus, in order to maintain budget neutrality, we propose to apply a 5.1 percent reduction (0.949) to all LTCHs payments in FY 2003 to account for the estimated cost of $50 million for FY 2003. Furthermore, in order to maintain budget neutrality, we would propose a budget neutrality offset for each of the remaining years of the transition period in a notice of proposed rulemaking to account for the estimated costs for the respective fiscal year.

Based on the data available at this time, we would propose the following offsets to LTCH payments during the transition period: 3.9 percent (0.961) in FY 2004; 2.6 percent (0.974) in FY 2005; and 1.3 percent (0.987) in FY 2006. No budget neutrality offset would be necessary in the 5th year of the transition period (FY 2007) because under the proposed transition methodology, all LTCHs would be paid based on 100 percent of the standard Federal rate and zero percent of payments under TEFRA. These estimates are based on the inflation factors and projected Medicare spending for LTCHs discussed in section VI.B.6. of this proposed rule, and that an estimated 58 percent of LTCHs will elect to be paid based on 100 percent of the standard Federal rate rather than the transition blend.

Consistent with the statutory requirement for budget neutrality, we intend for estimated aggregate payments under the LTCH prospective payment system to equal the estimated aggregate payments that would be made if LTCH prospective payment system were not implemented. Our methodology for estimating payments for purposes of the budget neutrality calculations uses the best available data and necessarily reflects assumptions. When the LTCH prospective payment system is implemented, we would monitor payment data and evaluate the ultimate accuracy of the assumptions used to calculate the budget neutrality calculations (for example, inflation factors, intensity of services provided, or behavioral response to the implementation of the LTCH prospective payment system, as discussed in section IV.D of this proposed rule). To the extent these assumptions significantly differ from actual experience, the aggregate amount of actual payments may turn out to be significantly higher or lower than the estimates on which the budget neutrality calculations are based. Section 123 of Public Law 106–113 and section 307 of Public Law 106–554 provide the Secretary extremely broad authority in developing the LTCH prospective payment system, including the authority for appropriate adjustments. Pursuant to this broad authority, under § 412.523(d)(3), we are proposing a possible one-time prospective adjustment to the LTCH prospective payment system rates by October 1, 2006, so that the effect of any significant difference between actual payments and estimated payments for the first year of the LTCH prospective payment system is not perpetuated in the prospective payment system rates for future years. (We note that in other contexts (for example, outlier payments under the hospital inpatient prospective payment system) differences between estimated payments and actual payments for a given year are not built into the prospective payment system rates for subsequent years. Moreover, the statutory ratesetting scheme under the LTCH prospective payment system is very different than in other contexts.)

We estimate that total Medicare program payments for LTCH services over the next 5 years would be:

Fiscal year	Estimated payments ($ in billions)
2003	$1.80
2004	1.91
2005	2.02
2006	2.14
2007	2.26

These estimates are based on the assumption that the proposed LTCH inflation factor (the excluded hospital market basket) would be 3.6 percent for FYs 2003 through 2005, 3.5 percent for FY 2006, and 3.4 percent for FY 2007, that 58 percent of LTCHs would elect to be paid based on 100 percent of the proposed standard Federal rate rather than the proposed transition blend, and that there would be an increase in Medicare beneficiary enrollment of 2.2 percent in FY 2003, 2.3 percent in FYs 2004 and 2005, 2.4 percent in FY 2006, and 2.3 percent in FY 2007.

E. Development of the Proposed Federal Prospective Payments

Once the proposed relative weights for each LTC–DRG and the proposed standard Federal payment rate are calculated, the proposed Federal prospective payments can be determined. Under proposed § 412.523(c)(4), a LTC–DRG payment would be calculated by multiplying the proposed standard Federal payment rate by the appropriate proposed LTC–DRG relative weight. The equation would be as follows:

Federal Prospective Payment = LTC–DRG Relative Weight * Standard Federal Payment Rate

F. Computing the Proposed Adjusted Federal Prospective Payments

The proposed Federal prospective payments described in section IV.E. of this preamble would be adjusted to account for the higher costs of hospitals in Alaska and Hawaii by multiplying the proposed Federal prospective payment rate by the appropriate proposed adjustment factor shown in the table in section IV.C.5. of this proposed rule.

G. Transition Period

Under the broad authority conferred to the Secretary by section 123 of Public Law 106–113 for development of a prospective payment system for LTCHs, we are proposing, under § 412.533, a 5-year transition period from reasonable cost-based reimbursement under the TEFRA system to a prospective payment based on industry-wide average operating and capital-related costs. Under the average pricing system being proposed, payment would not be based on the experience of an individual hospital. We believe that a 5-year phase-in would provide LTCHs time to adjust their operations and capital financing to the new payment system, which would be based on prospectively determined Federal payment rates.

Moreover, capital renovation and expansion plans of certain LTCHs may not be amenable to short-term adjustment due to the commitment of capital funds involved. We believe that a 5-year transition period with an increasing percentage of prospective payments should afford LTCHs an opportunity to increase their efficiency in the delivery of operating services and reserve additional payments to finance their capital expenditures.

We further believe that the 5-year phase-in of the proposed LTCH prospective payment system would allow LTCH personnel to develop proficiency with the LTC–DRG coding system, resulting in improvement in the quality of the data used for generating our annual determination of relative weights and payment rates. Our analysis conducted during the development of the proposed LTCH prospective payment system revealed that most patients in LTCHs have several diagnosis codes on their Medicare claims indicating multiple CCs, although further review of individual case studies indicated that in some instances all of the diagnoses were not reported. Since payments to LTCHs under the current TEFRA system are based on reasonable costs, not diagnosis codes, past coding by LTCHs may not have accurately reflected the patient's diagnoses. Further evidence of incomplete coding is shown by the pairs of LTC–DRGs where the ''without CC'' LTC–DRG had a higher average charge than the corresponding with CC LTC–DRG. As described in more detail in section III. of this proposed rule, since the LTC–DRGs ''with CCs'' require more coded information, we believe this phenomenon indicates incomplete coding and that over the 5-year phase-in of the LTC–DRG-based LTCH prospective payment system, this problem would be resolved.

The proposed 5-year transition period would enable us to collect Medicare claims and cost data that would be produced based on new program instructions to providers and fiscal intermediaries, and subject to program integrity monitoring. This gradual phase-in would provide a stable fiscal base for LTCHs, as we analyze data that may lead to our revisiting and perhaps revising specific policy decisions for the proposed LTCH prospective payment system.

We are proposing that the transition period for all hospitals subject to the proposed LTCH prospective payment system would begin with the hospital's first cost reporting period beginning on or after October 1, 2002 and extend through the hospital's last cost reporting period beginning before October 1, 2007. During the 5-year transition period, we are proposing that a LTCH's total payment under the prospective payment system would be based on two payment percentages—one based on reasonable cost-based (TEFRA) payments, and the other based on the standard Federal prospective payment rate. The proposed blend percentages are as follows:

Cost reporting periods beginning on or after	Federal rate percentage	TEFRA rate percentage
October 1, 2002	20	80
October 1, 2003	40	60
October 1, 2004	60	40
October 1, 2005	80	20
October 1, 2006	100	0

For a cost reporting period beginning on or after October 1, 2002, and before October 1, 2003, the total payment for a LTCH would consist of 80 percent of the amount calculated under the current (TEFRA) payment system for that specific LTCH and 20 percent of the proposed Federal prospective rate. The percentage of payment based on the proposed LTCH prospective payment system Federal rate would increase by 20 percentage points each year, while the TEFRA rate percentage would decrease by 20 percentage points each year, for the next 4 fiscal years. For cost reporting periods beginning on or after October 1, 2006, Medicare payment to LTCHs would be determined entirely under the proposed Federal prospective payment system methodology. The TEFRA rate percentage is a LTCH specific amount that is based on the amount that the LTCH would have been paid (under TEFRA) if the prospective payment system were not implemented.

Medicare fiscal intermediaries would continue to compute the LTCH TEFRA payment amount according to § 412.22(b) of the regulations and sections 1886(d) and (g) of the Act. We note that several TEFRA provisions that currently are in effect would no longer be effective for cost reporting periods beginning in FY 2003. For instance, the caps on the target amounts for ''existing'' LTCHs provided for under

section 4414 of the BBA (see § 413.40(c)(4)(iii)) for FYs 1998 through 2002 would no longer be applicable for cost reporting periods beginning in FY 2003. For purposes of the LTCH prospective payment system, a LTCH's target amount for FY 2003 would be determined by updating its FY 2002 target amount (subject to the cap). In addition, the 15-percent reduction to payments to LTCHs for capital-related costs provided for under section 4412 of the BBA (§ 413.40(j)) is applicable for portions of cost reporting periods occurring in FYs 1998 through FY 2002. This reduction would no longer be applicable for cost reporting periods beginning in FY 2003. Therefore, the TEFRA portion of a LTCH's payment for capital-related costs during the LTCH prospective payment system transition period would be based on 100 percent of its Medicare allowable capital costs.

In implementing the proposed prospective payment system for LTCHs, one of our goals is to transition hospitals to full prospective payments as soon as appropriate. Therefore, we are proposing, under § 412.533(b), to allow a LTCH to elect payment based on 100 percent of the Federal rate at the start of any of its cost reporting periods during the 5-year transition period rather than incrementally shifting from cost-based payments to prospective payments. However, once a LTCH elects to be paid based on 100 percent of the Federal rate, it would not be able to revert to the proposed transition blend.

The purpose of the transition period is to allow for a smooth transition from cost-based reimbursement to prospective payment. We believe that it is appropriate not to allow a LTCH to revert back to the blended transition methodology once it elects payment based on 100 percent of the Federal rate, because allowing LTCHs to switch back to a payment based on the transition blend from a payment based on 100 percent of the Federal rate would be administratively burdensome to our fiscal intermediaries.

Consistent with transition methodology policies under the IRF prospective payment system, we are proposing that, in order to elect payment based on 100 percent of the Federal rate, a LTCH must notify the fiscal intermediary of the election no later than 30 days before the beginning of the cost reporting period in the applicable fiscal year beginning on or after October 1, 2003 and before October 1, 2007 (proposed § 412.533(b)). The request by the LTCH to make the election would be made in writing to the Medicare fiscal intermediary. The intermediary would have to receive the request on or before the 30th day before the applicable cost reporting period begins, regardless of any postmarks or anticipated delivery dates. Requests received, postmarked, or delivered by other means after the 30th day before the cost reporting period begins would not be approved. If the 30th day before the cost reporting begins falls on a day that the postal service or other delivery sources are not open for business, the LTCH would be responsible for allowing sufficient time for the delivery of the request before the deadline. If a LTCH's request is not received or not approved, payment would be based on the transition period rates.

H. Payments to New LTCHs

For the purposes of the proposed LTCH prospective payment system, we are proposing under § 412.23(e)(4) to define a new LTCH as a provider of inpatient hospital services that (1) meets the proposed revised qualifying criteria (described in section II.B.1. and in proposed § 412.23(e)(1) of this proposed rule); and (2) under present or previous ownership (or both), has not received payment as a LTCH for discharges prior to October 1, 2002 (the effective date of the proposed prospective payment system for LTCHs).

We are proposing, under § 412.533(c), that new LTCHs would be paid based on 100 percent of the Federal rate starting with their first cost reporting period beginning on or after October 1, 2002. Thus, these new LTCHs would not participate in the 5-year transition from cost-based reimbursement to prospective payment (*see* section IV.G. of this proposed rule), as would other LTCHs.

The proposed transition period described in section IV.G. of this proposed rule is intended to provide existing LTCHs time to adjust to payment under the new proposed system. Since these new LTCHs would not have received payment for the delivery of LTCH services prior to the effective date of the LTCH prospective payment system, we do not believe that new LTCHs require a transition period in order to make adjustments to their operations and capital financing, as would existing LTCHs.

These new LTCHs should not be confused with those LTCHs first paid under the TEFRA payment system for discharges occurring on or after October 1, 1997, described in section 1886(b)(7)(A) of the Act, added by section 4416 of Public Law 105–33. In accordance with § 413.40(f)(2)(ii), for cost reporting periods beginning on or after October 1, 2001, the payment amount for a ''new'' (post-FY 1998) LTCH is the lower of the hospital's net inpatient operating cost per case or 110 percent of the national median target amount payment limit for hospitals in the same class for cost reporting periods ending during FY 1996, updated to the applicable cost reporting period (*see* 62 FR 46019, August 29, 1997). A LTCH's second cost reporting period is subject to the same payment limit as the first cost reporting period. The target amount for the LTCH beginning with its third 12-month cost reporting period, as set forth in § 413.40(c)(4)(v), is its payment amount for the preceding cost reporting period updated to the third cost reporting period. Under the proposed prospective payment system for LTCHs, those ''new'' LTCHs would be paid under the proposed transition methodology described in section IV.G. of this proposed rule.

For example, a new LTCH that first began receiving payment as a LTCH on October 1, 2001, would be subject to the 110 percent of the median target amount payment limit for LTCHs (in accordance with § 413.40(f)(2)(ii)) for both its FY 2002 and FY 2003 cost reporting periods. For its cost reporting period beginning on October 1, 2002 (the first cost reporting period under which the LTCH would be subject to the proposed prospective payment system), under the proposed transition methodology the LTCH's TEFRA portion of its payment for operating costs (80 percent) would be limited by the 110 percent of the median target amount payment limit for LTCHs under § 413.40(f)(2)(ii). For its cost reporting period beginning on October 1, 2003, under the proposed transition methodology that LTCH's TEFRA portion of its payment for operating costs (60 percent) would be limited by its target amount as determined under § 413.40(c)(4)(v). However, where a new LTCH first begins to receive payment as a LTCH on or after October 1, 2002, the LTCH would not be subject to the 5-year transition period under proposed § 412.533. The LTCH would be paid based on 100 percent of the proposed LTCH prospective payment system Federal rate beginning with its first cost reporting period.

I. Method of Payment

As discussed earlier, we are proposing that a beneficiary would be classified into a proposed LTC–DRG based on the principal diagnosis, up to eight additional (secondary) diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The LTC–DRG would be used to determine the Federal prospective payment that

the LTCH would receive for the Medicare-covered Part A services the LTCH furnished during the Medicare beneficiary's stay. We are proposing, under § 412.541(a), that the payment would be based on the submission of the discharge bill since section 123(a) of Public Law 106–113 requires that the LTCH prospective payment system be a per discharge based system. The discharge bill would provide data to allow for reclassifying the stay from payment at the full LTC–DRG rate into one of the proposed very short-stay discharge LTC–DRGs (under proposed § 412.527), or to determine the payment for a case as a proposed short-stay outlier (under proposed § 412.529) or as a proposed interrupted stay (under proposed § 412.531), or to determine if the case would qualify for an outlier payment (under proposed § 412.525(a)).

Accordingly, the ICD–9–CM codes and other information proposed to be used to determine if an adjustment to the full LTC–DRG payment is necessary (for example, length of stay or interrupted stay status) would be recorded by the LTCH on the beneficiary's discharge bill and submitted to the Medicare fiscal intermediary for processing. The payment made would represent payment in full, under proposed § 412.521(b), for inpatient operating and capital-related costs, but not the costs of an approved medical education program, bad debts, blood clotting factors, anesthesia services by hospital-employed nonphysician anesthetists or obtained under arrangement, or the costs of photocopying and mailing medical records requested by a PRO, which are costs paid outside the proposed LTCH prospective payment system.

Under the current payment system, a LTCH may elect to be paid using the periodic interim payment (PIP) method described in § 413.64(h), and may be eligible to receive accelerated payments as described in § 413.64(g). With the implementation of a prospective payment system for LTCHs, at this time (under proposed § 412.541) we are proposing to continue this existing administrative policy of allowing PIP under § 413.64(h) and accelerated payments under § 413.64(g) for qualified LTCHs. For those LTCHs that will be paid during the 5-year transition based on the blended transition methodology in § 412.533 for cost reporting periods beginning on or after October 1, 2002 and before October 1, 2006, the PIP amount would be based on the transition formula. For those LTCHs that are paid based on 100 percent of the standard Federal rate, the PIP amount would be based on the estimated prospective payment for the year rather than on the estimated cost reimbursement. Excluded from the PIP amounts would be outlier payments that are paid upon submission of a discharge bill. In addition, Part A costs that are not paid for under the proposed LTCH prospective payment system, including Medicare costs of an approved medical education program, bad debts, blood clotting factors, anesthesia services by hospital-employed nonphysician anesthetists or obtained under arrangement, and the costs of photocopying and mailing medical records requested by a PRO would be subject to the interim payment provisions at § 413.64.

V. Provisions of the Proposed Rule

We are proposing to establish a new subpart O under 42 CFR part 412, to implement the provisions of the proposed prospective payment system for LTCHs as discussed in detail throughout the preamble to this proposed rule.

In addition, we are proposing to make additional policy changes and conforming changes to the following sections of the regulations under 42 CFR parts 412, 413, and 476 as discussed throughout this preamble: §§ 412.1, 412.20, 412.22, 412.23, 412.116, 431.1, 413.40, 413.64, and 476.71.

VI. Regulatory Impact Analysis

A. Introduction

We have examined the impact of this proposed rule as required by Executive Order 12866. We also have examined the impacts of this rule under the criteria of the Regulatory Flexibility Act (RFA) (Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandate Reform Act of 1995 (UMRA) (Pub. L. 104–4), and Executive Order 13132 (Federalism).

1. Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more annually (major rules). We have determined that this proposed rule would not be a major rule within the meaning of Executive Order 12866 because the redistributive effects do not constitute a shift of $100 million in any one year. Because the proposed LTCH prospective payment system must be budget neutral in accordance with section 123(a)(1) of Public Law 106–113, we estimate that there will be no budgetary impact for the Medicare program.

2. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small businesses in issuing a proposed rule. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $25 million or less annually. For purposes of the RFA, all hospitals are considered small entities. Medicare fiscal intermediaries are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

3. Impact on Rural Hospitals

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of an MSA and has fewer than 100 beds. Section VI.B. of this proposed rule contains our estimated impact of this proposed rule on the hospitals classified as located in rural areas that have fewer than 100 beds for which we had cost report data available.

4. Unfunded Mandate

Section 202 of the UMRA requires that agencies assess anticipated costs and benefits before issuing any proposed rule or any final rule preceded by a proposed rule that may result in expenditures in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million or more. This proposed rule would not mandate any requirements for State, local, or tribal governments nor would it affect private sector costs.

5. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local

governments, preempts State law, or otherwise has Federalism implications.

We have examined this proposed rule under the criteria set forth in Executive Order 13132 and have determined that this proposed rule would not have any negative impact on the rights, rules, and responsibilities of State, local, or tribal governments.

B. Anticipated Effects

We discuss the impact of this proposed rule below in terms of its fiscal impact on the Federal Medicare budget and on LTCHs.

1. Budgetary Impact

Section 123(a)(1) of Public Law 106–113 requires us to set the payment rates contained in this proposed rule such that total payments under the LTCH prospective payment system are projected to equal the amount that would have been paid if this prospective payment system had not been implemented. However, the proposed standard Federal rate ($27,649.02) was calculated as if all LTCHs would be paid based on 100 percent of the standard Federal rate in FY 2003. As discussed in section IV.D.2.h. of the preamble, we are proposing a budget neutrality offset to payments (in addition to the budget neutrality adjustment reflected in the proposed standard Federal rate) to account for the monetary effect of the proposed 5-year transition period and the proposed policy to permit LTCHs to elect to be paid based on 100 percent of the standard Federal rate rather than a blend of Federal rate payments and reasonable-cost based payments during the transition. The amount of the offset is equal to 1 minus the ratio of the estimated TEFRA reasonable cost-based payments that would have been made if the LTCH prospective payment system had not been implemented, to the projected total Medicare program payments that would be made under the proposed transition methodology and the option to elect payment based on 100 percent of the Federal rate. Thus, in accordance with section 123(a)(1) Public Law 106–113, there would be no budgetary impact to the Medicare program by implementation of the proposed LTCH prospective payment system.

2. Impacts on Providers

In order to understand the impact of the proposed new prospective payment system on different categories of LTCHs, it is necessary to estimate payments that would be made under the current (TEFRA) payment methodology (current payments) and payments under the proposed prospective payment system (proposed prospective payments). We also evaluated the ratio of estimated prospective payments to estimated costs for each category of LTCHs.

Hospital groups were based on characteristics provided in OSCAR data and 1999 cost report data from HCRIS. Hospitals with incomplete characteristics were grouped into the ''unknown'' category. Hospital groups include:

—Location: Large Urban/Other Urban/Rural
—Participation Date
—Ownership Control
—Census Region
—Bed Size

To estimate the impacts among the various categories of providers, it is imperative that current payments and proposed prospective payments contain similar inputs. More specifically, we estimated proposed prospective payments only for those providers that we are able to calculate current payment. For example, if we did not have FYs 1996 through 1999 cost data for a LTCH, we were unable to determine an update to the LTCH's target amount as described in section IV.D.2.b. of this proposed rule to estimate payment under the TEFRA system.

As previously stated in section IV.C. of this preamble, we have both case-mix and cost data for 222 LTCHs. All 222 providers that had covered Medicare claims in FY 2000 were used to analyze the appropriateness of various adjustments to the proposed standard Federal unadjusted payment rate. However, for the impact analyses shown in the following tables, we simulate payments for 211 LTCHs. The methodology used to update payment data to the midpoint of FY 2003 was based on the use of historical cost report data to determine the relationship between the LTCH's costs and target amount. Thus, the number of providers reflects only those providers for which we had cost report data available from FYs 1996, 1997, 1998, and 1999 (see discussion in section IV.D.2. of this proposed rule).

These impacts reflect the estimated losses/gains among the various classifications of providers for FY 2003. Proposed prospective payments were based on the proposed standard Federal rate of $27,649.02 and the hospital's estimated case-mix based on FY 2000 claims data. These hospital payments were compared to the hospital's payments based on its cost from the cost report inflated to FY 2003 and subject to the updated per discharge target amount.

3. Calculation of Current Payments

To calculate current costs, cost report data are trended forward from the midpoint of the cost reporting period to the midpoint of FY 2003 using the methodology set forth in section IV.D.2.b. of this preamble. To estimate current payments, we determined payments for operating costs for each LTCH in accordance with the methodology in section 1886(b) of the Act. Further, we compute payments for capital-related costs consistent with section 1886(g)(4) of the Act. To determine each LTCH's average per discharge payment amount under the current payment system, operating and capital-related payments are added together, and then the total payment is divided by the number of Medicare discharges from the cost reports. Total payments for each LTCH are then computed by multiplying the number of discharges from the FY 2000 MedPAR claims by the average per discharge payment amount.

4. Calculation of Proposed Prospective Payments

To estimate payments under the proposed prospective payment system, we multiply each LTCH's case-mix index by the LTCH's number of Medicare discharges and the proposed standard Federal rate. As noted in section IV.C. of this proposed rule, we are proposing to not make adjustments for area wage differences (wage index), geographic reclassification, indirect medical education costs, or a disproportionate share of low-income patients.

Next, we calculated payments using the proposed transition blend percentages for FY 2003 (80 percent of current cost-based (TEFRA) payments and 20 percent of payments under the proposed LTCH prospective payment system) and compared that estimated blended payment to the LTCH's estimated payment if it would elect payment based on 100 percent of the Federal rate (see section IV.G. of this proposed rule). If a LTCH would be paid more based on 100 percent of the Federal rate, we assumed that it would elect to bypass the proposed transition methodology and transition immediately to prospective payments.

Then we applied the proposed 5.1 percent reduction to payment to account for the effect of the proposed 5-year transition methodology and election of payment based on 100 percent of the Federal rate on Medicare program payments to each LTCH's estimated payments under the proposed prospective payment system (see section

IV.D.2.h. of this proposed rule). The impact based on our projection of whether a LTCH would be paid based on the proposed transition blend methodology or would elect payment based on 100 percent of the Federal rate for cost reporting periods beginning during FY 2003 is shown below in Table 1. We also show in Table 2 below the impact if the LTCH prospective payment system were fully implemented in FY 2003, that is, as if there were an immediate transition to fully Federal prospective payments under the LTCH prospective payment system for FY 2003. Accordingly, the proposed 5.1 percent reduction to account for the proposed 5-year transition methodology on LTCHs' Medicare program payments was not applied to LTCHs' estimated payments under the proposed prospective payment system. Furthermore, beginning with cost reporting periods beginning during FY 2007, the proposed 5-year transition period would have ended, and all LTCHs would be paid based on 100 percent of the proposed standard Federal rate. All payment simulations reflect data trended to the midpoint FY 2003.

Tables 1 and 2 below illustrate the aggregate impact of the proposed payment system among various classifications of LTCHs. The first column, LTCH Classification, identifies the type of LTCH. The second column lists the number of LTCHs of each classification type; the third column identifies the number of long-term care cases; and the fourth column is the ratio of proposed prospective payments to current payments.

TABLE 1.—PROJECTED IMPACT REFLECTING 20 PERCENT OF PROPOSED PROSPECTIVE PAYMENTS AND 80 PERCENT OF CURRENT (TEFRA) PAYMENTS AND OPTION TO ELECT PAYMENT BASED ON 100 PERCENT OF THE FEDERAL RATE

LTCH classification	Number of LTCHs	Number of long-term care cases	New payment to current payment ratio
All Providers [1]	211	70,732	1.0010
BY LOCATION:			
Rural	10	2,112	1.1826
Urban	201	68,620	0.9972
Large Urban	128	50,486	0.9977
Other Urban	73	18,134	0.9955
BY PARTICIPATION DATE:			
After Oct 1993	125	39,171	0.9819
Before Oct 1983	31	10,980	1.0498
Oct 1983–Sept 1993	51	20,103	1.0209
Unknown	4	478	1.0208
BY OWNERSHIP CONTROL:			
Voluntary	54	19,920	0.9874
Proprietary	131	46,739	1.0010
Government	26	4,073	1.0837
BY CENSUS REGION:			
New England	18	9,587	1.0283
Middle Atlantic	13	5,777	1.0209
South Atlantic	25	6,215	1.0294
East North Central	33	8,070	1.0489
East South Central	11	2,826	1.0330
West North Central	12	3,266	1.0808
West South Central	71	27,345	0.9543
Mountain	15	2,423	1.0277
Pacific	13	5,223	1.0024
By Bed Size:			
0–24 Beds	25	3,571	0.9886
25–49 Beds	84	19,426	1.0172
50–74 Beds	20	6,324	0.9688
75–124 Beds	29	12,362	0.9994
125–199 Beds	23	13,191	0.9869
200+ Beds	30	15,858	1.0100

[1] These estimated impacts of the proposed budget neutral LTCH prospective payment system are subject to rounding. Therefore, the impact on all providers is not exactly equal to 1.0000.

TABLE 2.—PROJECTED IMPACT REFLECTING THE FULLY PHASED-IN PROPOSED PROSPECTIVE PAYMENTS

LTCH classification	Number of LTCHs	Number of long-term care cases	New payment to current payment ratio
All Providers [1]	211	70,732	0.9977
BY LOCATION:			
Rural	10	2,112	1.2327
Urban	201	68,620	0.9927
Large Urban	128	50,486	0.9918
Other Urban	73	18,134	0.9955
BY PARTICIPATION DATE:			
After Oct 1993	125	39,171	0.9675
Before Oct 1983	31	10,980	1.0763
Oct 1983–Sept 1993	51	20,103	1.0286

TABLE 2.—PROJECTED IMPACT REFLECTING THE FULLY PHASED-IN PROPOSED PROSPECTIVE PAYMENTS—Continued

LTCH classification	Number of LTCHs	Number of long-term care cases	New payment to current payment ratio
Unknown	4	478	1.0403
BY OWNERSHIP CONTROL:			
Voluntary	54	19,920	0.9846
Proprietary	131	46,739	0.9956
Government	26	4,073	1.1130
BY CENSUS REGION:			
New England	18	9,587	1.0593
Middle Atlantic	13	5,777	1.0247
South Atlantic	25	6,215	1.0497
East North Central	33	8,070	1.0732
East South Central	11	2,826	1.0614
West North Central	12	3,266	1.1076
West South Central	71	27,345	0.9234
Mountain	15	2,423	1.0178
Pacific	13	5,223	0.9902
BY BED SIZE:	25	3,571	0.9845
25–49 Beds	84	19,426	1.0317
50–74 Beds	20	6,324	0.9170
75–124 Beds	29	12,362	0.9886
125–199 Beds	23	13,191	0.9842
200+ Beds	30	15,858	1.0116

[1] These estimated impacts of the proposed budget neutral LTCH prospective payment system are subject to rounding. Therefore, the impact on all providers is not exactly equal to 1.0000.

5. Results

We have prepared the following summary of the impact (as shown in Table 1) of the LTCH prospective payment system set forth in this proposed rule.

a. Location

The majority of LTCHs are in urban areas. Only 4.7 percent of the LTCHs are identified as being located in a rural area, and approximately less than 3 percent of all long-term care cases are treated in these rural hospitals. Impact analysis shows that the new payment to current payment ratio is estimated to be 1.1826 for rural LTCHs, and 0.9972 for urban LTCHs. There is only a small difference in payment between large urban LTCHs and other urban LTCHs. About 71.4 percent of the LTCH cases are in LTCHs located in large urban areas. Large urban LTCHs have a new payment to current payment ratio of 0.9977, while other urban LTCHs have a new payment to current payment ratio of 0.9955.

b. Participation Date

LTCHs are grouped by participation date into three categories: (1) Before October 1983; (2) between October 1983 and September 1993; and (3) after October 1993. We did not have sufficient OSCAR data on four LTCHs, which we labeled as an ''Unknown'' category. The majority, approximately 55 percent, of the long-term care cases are in hospitals that began participating after October 1993 and have a new payment to current payment ratio of 0.9816 (see Table 1) and approximately 15 percent of the cases are in LTCHs that began participating in Medicare before October 1983 with a new payment to current payment ratio of 1.0498.

c. Ownership Control

LTCHs are grouped into three categories based on ownership control type: (1) Voluntary; (2) proprietary; and (3) government. We expect that government LTCHs would gain the most from the proposed payment system with an estimated new payment to current payment ratio of 1.0837, although only approximately 11.5 percent of LTCHs are government run. Voluntary and proprietary LTCHs have a new payment to current payment ratio of 0.9874 and 1.0010, respectively.

d. Census Region

Of the nine census regions, we expect that LTCHs in the West North Central Region will have the highest new payment to current payment ratio (1.0808). We expect only LTCHs in the West South Central will have a new payment to current payment ratio of less than 1.0 (0.9543).

e. Bed Size

LTCHs were grouped into six categories based on bed size: 0–24 beds, 25–49 beds, 50–74 beds, 75–124 beds, 125–199 beds, and 200+ beds. The majority of LTCHs were in bed size categories where the new payment to current payment ratio is estimated to be greater than 0.98. LTCHs with beds between 25–49 or over 200 beds have a new payment to current payment ratio greater than 1.0 (1.0172 and 1.0100, respectively). LTCHs with between 50–74 beds have the lowest estimated new payment to current payment ratio (0.9688).

6. Effect on the Medicare Program

Based on actuarial projections resulting from our experience with other prospective payment systems, we estimate that Medicare spending (total Medicare program payments) for LTCH services over the next 5 years would be:

Fiscal year	Estimated payments ($ in million)
2003	$1,800
2004	1,910
2005	2,020
2006	2,140
2007	2,260

These estimates are based on the current estimate of increase in the excluded hospital with capital market basket of 3.6 percent for FYs 2003 through 2005, 3.5 percent for FY 2006, and 3.4 percent for FY 2007. We estimate that there would be an increase in Medicare beneficiary enrollment of 2.2 percent in FY 2003, 2.3 percent in FYs 2004, 2005, and 2007, and 2.4 percent in FY 2006, and an estimated increase in the total number of LTCHs.

Consistent with the statutory requirement for budget neutrality, we intend for estimated aggregate payments under the LTCH prospective payment system to equal the estimated aggregate payments that would be made if LTCH prospective payment system were not implemented. Our methodology for estimating payments for purposes of the budget neutrality calculations uses the best available data and necessarily reflects assumptions. When the LTCH prospective payment system is implemented, we would monitor payment data and evaluate the ultimate accuracy of the assumptions used to calculate the budget neutrality calculations (for example, inflation factors, intensity of services provided, or behavioral response to the implementation of the LTCH prospective payment system, as discussed in section IV.D of this proposed rule). To the extent these assumptions significantly differ from actual experience, the aggregate amount of actual payments may turn out to be significantly higher or lower than the estimates on which the budget neutrality calculations are based. Section 123 of Public Law 106–113 and section 307 of Public Law 106–554 provide the Secretary extremely broad authority in developing the LTCH prospective payment system, including the authority for appropriate adjustments. In accordance with this broad authority, we plan to discuss in a future proposed rule a possible one-time prospective adjustment to the LTCH prospective payment system rates so that the effect of the difference between actual payments and estimated payments for the first year of LTCH prospective payment system is not perpetuated in the prospective payment system rates for future years. (We note that in other contexts (for example, outlier payments under the hospital inpatient prospective payment system) differences between estimated payments and actual payments for a given year are not built into the prospective payment system rates for subsequent years. Moreover, the statutory ratesetting scheme under the LTCH prospective payment system is very different than in other contexts.)

7. Effect on Medicare Beneficiaries

Under the proposed LTCH prospective payment system, hospitals would receive payment based on the average resources consumed by patients for each diagnosis. We do not expect any changes in the quality of care or access to services for Medicare beneficiaries under the proposed LTCH prospective payment system, but we expect that paying prospectively for LTCH services would enhance the efficiency of the Medicare program.

8. Computer Hardware and Software

We do not anticipate that hospitals would incur additional systems operating costs in order to effectively participate in the prospective payment system for LTCHs. We believe that LTCHs possess the computer hardware capability to handle the LTC–DRGs, computerization, data transmission, and GROUPER software requirements. Our belief is based upon indications that approximately 99 percent of hospital inpatient claims currently are submitted electronically. Moreover, LTCHs have the option of purchasing data collection software that can be used to support other clinical or operational needs (for example, care planning, quality assurance, or billing) or other regulatory requirements for reporting patient information.

C. Alternatives Considered

Section 123 of Public Law 106–113 specifies that the case-mix adjusted prospective payment system must be a per discharge system based on DRGs, and section 307(b) of Public Law 106–554 directs the Secretary to examine the ''feasibility and the impact of basing payment under such a system on the use of existing (or refined) hospital diagnosis-related groups (DRGs) that have been modified to account for different resource use of LTCH patients as well as the use of the most recently available hospital discharge data.'' Section 307(b) further requires the Secretary to ''examine'' appropriate adjustments to the system such as adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment consistent with section 1886(d)(5)(F) of the Act. Generally, the statute confers broad authority on the Secretary in designing the key elements of the system. Our considerations of the patient classification systems in detail in section I.G. of this proposed rule. Our evaluation of alternative features and adjustment factors for the LTCH prospective payment system are set forth in section IV. We are soliciting public comments regarding our proposed policies and system design and will consider them as we formulate our final rule for the prospective payment system for LTCHs.

D. Executive Order 12866

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

VII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comments on each of these issues for the following proposed sections that contain information collection requirements:

Proposed §§ 412.116(a)(4) and 412.541(b) and (e) Method of Payment: Periodic Interim Payments and Accelerated Payments

Under proposed § 412.116(a)(4), for cost reporting periods beginning on or after October 1, 2002, payments to a LTCH for inpatient hospital services under the prospective payment system would be made as described in proposed § 412.541. Proposed § 412.541(b) provides that a LTCH may receive periodic interim payments for Part A services, subject to the provisions of § 413.64(h). Section 413.64(h) specifies that the request for periodic interim payments must be made to the fiscal intermediary. Proposed § 412.541(e) states that, upon request, an accelerated payment may be made to a LTCH that is not receiving a periodic interim payment if the LTCH is experiencing financial difficulties.

We estimate that the burden associated with this provision is the time it takes a LTCH to prepare and submit its request for periodic interim payments or accelerated payments. We estimate that approximately three LTCHs would request periodic interim payments under the prospective payment system and that it would take each hospital 1 hour to prepare and make the request. We estimate that approximately two LTCHs would

request accelerated payments and that it would take them approximately 30 minutes each to prepare and submit their written request, for a total estimated annual burden of 1 hour.

Both of these proposed sections of the regulations are exempt from the PRA since the two requirements would affect less than 10 LTCHs per year (see 5 CFR Part 1320.3(c)(4)).

Proposed § 412.508(b)(1) and (b)(2): Content of Physician Acknowledgement Statement and Completion of Acknowledgement

Proposed § 412.508(b) provides that a physician must complete an acknowledgement statement that each patient's principal and secondary diagnoses and major procedures performed are documented by the physician's entries in the patient's medical record. Proposed § 412.508(b)(1) specifies that when a claim is submitted, the hospital must have a signed and dated acknowledgement from the attending physician that the physician has received notice of the required acknowledgement of entries in the patient's medical record and that anyone who misrepresents, falsifies, or conceals essential information required for payment of Federal funds may be subject to fine, imprisonment, or civil penalty under applicable laws. Proposed § 412.508(b)(2) specifies that the acknowledgement must be completed by the physician at the time the physician is granted admitting privileges at the hospital or before or at the time the physician admits his or her first patient.

The burden associated with these information collection requirements is the time required for the physician to complete the acknowledgement statements.

These information collection requirements are currently approved under OMB approval number 0938–0359 through February 28, 2002. (We note that these requirements are currently in the reapproval process with OMB.)

Proposed § 412.511 Reporting and Recordkeeping Requirements

Under proposed § 412.511, a LTCH subject to the proposed prospective payment system described in this proposed rule must meet the recordkeeping and cost reporting requirements of §§ 413.20 and 413.24. While §§ 413.20 and 413.24 are subject to the PRA, the burden associated with these requirements is currently captured in approved collection 0938–0758, with a current expiration date of 3/31/2002. This collection is currently at OMB awaiting re-approval.

Proposed § 412.533(b) Transition Payments: Election Not To Be Paid Under the Transitional Period Methodology

Under proposed § 412.533(b), a LTCH may elect to be paid based on 100 percent of the Federal prospective payment rate at the start of any of its cost reporting periods during a 5-year transition period beginning on or after October 1, 2002, and before October 1, 2007, without regard to the transitional percentages. Proposed § 412.533(b)(1) specifies that the request to make the election must be made in writing to the Medicare intermediary by the LTCH and received no later than 30 days before the beginning of the cost reporting period for each applicable fiscal year beginning on or after October 1, 2003 and before October 1, 2007.

We estimate that 135 LTCHs would make a request under this section to elect to receive the full Federal rate and that it would take each LTCH approximately 15 minutes each to prepare and submit their written request, for a total estimated annual burden of 34 hours.

If you comment on these information collection requirements, please mail copies directly to the following addresses:

Centers for Medicare & Medicaid Services, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Attn: Dawn Willinghan CMS–1177–P; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, CMS Desk Officer.

We have submitted the information collection requirements under §§ 412.508(b), 412.116, 412.533, and 412.541 to the Office of Management and Budget (OMB) for review under the authority of PRA. We also have submitted a copy of this proposed rule to OMB for its review of the information collection requirements. These requirements would not be effective until approved by OMB.

VIII. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. Comments on the provisions of this proposed rule will be considered if we receive them by the date specified in the **DATES** section of this preamble.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 476

Health care, Health professional, Health record, Peer Review Organizations (PRO), Penalties, Privacy, Reporting and recordkeeping requirements.

42 CFR Chapter IV would be amended as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

A. Part 412 is amended as follows:

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provisions

2. Section § 412.1 is amended by:

a. Adding a new paragraph (a)(3);

b. Redesignating paragraph (b)(12) as paragraph (b)(13); and

c. Adding a new paragraph (b)(12).

§ 412.1 Scope of part.

(a) *Purpose.* * * *

(3) This part implements section 123 of Public Law 106–113, which provides for the establishment of a prospective payment system for the costs of inpatient hospital services furnished to Medicare beneficiaries by long-term care hospitals described in section 1886(d)(1)(B)(iv) of the Act, for cost reporting periods beginning on or after October 1, 2002. This part also reflects the provisions of section 307 of Public Law 106–554, which state that the Secretary shall examine and may provide for appropriate adjustments to the long-term care hospital prospective payment system, including adjustments to diagnosis-related group (DRG) weights, area wage adjustments, geographic reclassification, outlier adjustments, updates, and disproportionate share adjustments

consistent with section 1886(d)(5)(F) of the Act.

(b) *Summary of content.* * * *

(12) Subpart O of this part describes the prospective payment system specified in paragraph (a)(3) of this section for long-term care hospitals and sets forth the general methodology for paying for the operating and capital-related costs of inpatient hospital services furnished by long-term care hospitals, effective with cost reporting periods beginning on or after October 1, 2002.

* * * * *

Subpart B—Hospital Services Subject to and Excluded from the Prospective Payment Systems for Inpatient Operating Costs and Inpatient Capital-Related Costs

3. Section 412.20 is amended by:

a. Revising paragraph (a).

b. Redesignating paragraph (c) as paragraph (d).

c. Adding a new paragraph (c).

§ 412.20 Hospital services subject to the prospective payment systems.

(a) Except for services described in paragraphs (b), (c), and (d) of this section, all covered inpatient hospital services furnished to beneficiaries during subject cost reporting periods are paid under the prospective payment systems specified in § 412.1(a)(1).

* * * * *

(c) Effective for cost reporting periods beginning on or after October 1, 2002, covered inpatient hospital services furnished to Medicare beneficiaries by a long-term care hospital that meets the conditions for payment of §§ 412.505 through 412.511 are paid under the prospective payment system described in subpart O of this part.

* * * * *

4. Section 412.22 is amended by revising paragraph (b) to read as follows:

§ 412.22 Excluded hospitals and hospital units: General rules.

* * * * *

(b) *Cost reimbursement.* Except for those hospitals specified in paragraph (c) of this section and §§ 412.20(b) and (c), all excluded hospitals (and excluded hospital units, as described in §§ 412.23 through 412.29) are reimbursed under the cost reimbursement rules set forth in part 413 of this subchapter, and are subject to the ceiling on the rate of hospital cost increases described in § 413.40 of this subchapter.

* * * * *

5. Section 412.23 is amended by revising paragraph (e) to read as follows:

§ 412.23 Excluded hospitals: Classifications.

* * * * *

(e) *Long-term care hospitals.* A long-term care hospital must meet the requirements of paragraph (e)(1) and (e)(2) of this section and, where applicable, the additional requirements of § 412.22(e), to be excluded from the prospective payment systems specified in § 412.1(a)(1) and to be paid under the prospective payment system specified in § 412.1(a)(3) and in Subpart O of this part.

(1) *Provider agreements.* The hospital must have a provider agreement under Part 489 of this chapter to participate as a hospital; and

(2) *Average length of stay.* (i) The hospital must have an average Medicare inpatient length of stay of greater than 25 days as calculated under paragraph (e)(3) of this section; or

(ii) For cost reporting periods beginning on or after August 5, 1997, a hospital that was first excluded from the prospective payment system under this section in 1986 meets the length of stay criterion if it has an average inpatient length of stay for all patients, including both Medicare and non-Medicare inpatients, of greater than 20 days and demonstrates that at least 80 percent of its annual Medicare inpatient discharges in the 12-month cost reporting period ending in fiscal year 1997 have a principal diagnosis that reflects a finding of neoplastic disease as defined in paragraph (f)(1)(iv) of this section.

(3) *Calculation of average length of stay.* The average Medicare inpatient length of stay is calculated—

(i) By dividing the number of total Medicare inpatient days (less leave or pass days) by the number of total Medicare discharges for the hospital's most recent complete cost reporting period;

(ii) If a change in the hospital's Medicare average length of stay is indicated, by the same method for the immediately preceding 6-month period; or

(iii) If a hospital has undergone a change of ownership (as described in § 489.18 of this chapter) at the start of a cost reporting period or at any time within the preceding 6 months, the hospital may be excluded from the prospective payment system as a long-term care hospital for a cost reporting period if, for the 6 months immediately preceding the start of the period (including time before the change of ownership), the hospital has the required Medicare average length of stay, continuously operated as a hospital, and continuously participated as a hospital in Medicare.

(4) *Definition of new long-term care hospital.* For purposes of payment under the long-term care hospital prospective payment system under Subpart O of this part, a new long-term care hospital is a provider of inpatient hospital services that meets the qualifying criteria in paragraphs (e)(1) and (e)(2) of this section and, under present or previous ownership (or both), has not received payment as a long-term care hospital for discharges occurring prior to October 1, 2002.

* * * * *

Subpart H—Payments to Hospitals Under the Prospective Payment Systems

6. In § 412.116, the heading of paragraph (a) is revised and a new paragraph (a)(4) is added to read as follows:

§ 412.116 Method of payment.

(a) *General rules.* * * *

(4) For cost reporting periods beginning on or after October 1, 2002, payments for inpatient hospital services furnished by a long-term care hospital that meets the conditions for payment of §§ 412.505 through 412.511 are made as described in § 412.521.

* * * * *

7. A new subpart O is added to read as follows:

Subpart O—Prospective Payment System for Long-Term Care Hospitals

Sec.

412.500 Basis and scope of subpart.
412.503 Definitions.
412.505 Conditions for payment under the prospective payment system for long-term care hospitals.
412.507 Limitation on charges to beneficiaries.
412.508 Medical review requirements.
412.509 Furnishing of inpatient hospital services directly or under arrangement.
412.511 Reporting and recordkeeping requirements.
412.513 Patient classification system.
412.515 LTC–DRG weighting factors.
412.517 Revision of LTC–DRG group classifications and weighting factors.
412.521 Basis of payment.
412.523 Methodology for calculating the Federal prospective payment rates.
412.525 Adjustments to the Federal prospective payment.
412.527 Special payment provisions for very short-stay discharges.
412.529 Special payment provisions for short-stay outliers.
412.531 Special payment provisions when an interruption of a stay occurs in a long-term care hospital.
412.532 Special payment provisions for patients who are transferred to onsite providers and readmitted to a long-term care hospital.
412.533 Transition payments.

412.535 Publication of the Federal prospective payment rates.
412.541 Method of payment under the long-term care hospital prospective payment system.

Subpart O—Prospective Payment System for Long-Term Care Hospitals

§ 412.500 Basis and scope of subpart.

(a) *Basis.* This subpart implements section 123 of Public Law 106–113, which provides for the implementation of a prospective payment system for long-term care hospitals described in section 1886(d)(1)(B)(iv) of the Act. This subpart also reflects the provisions of section 307 of Public Law 106–554, which state that the Secretary shall examine and may provide for appropriate adjustments to that system, including adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and disproportionate share adjustments consistent with section 1886(d)(5)(F) of the Act.

(b) *Scope.* This subpart sets forth the framework for the prospective payment system for long-term care hospitals, including the methodology used for the development of payment rates and associated adjustments and related rules. Under this system, for cost reporting periods beginning on or after October 1, 2002, payment for the operating and capital-related costs of inpatient hospital services furnished by long-term care hospitals is made on the basis of prospectively determined rates and applied on a per discharge basis.

§ 412.503 Definitions.

As used in this subpart—

CMS stands for the Centers for Medicare & Medicaid Services.

Discharge. A Medicare patient in a long-term care hospital is considered discharged when—

(1) The patient is formally released;

(2) The patient stops receiving Medicare-covered long-term care services; or

(3) The patient dies in the long-term care facility.

LTC–DRG stands for the diagnosis-related group used to classify patient discharges from a long-term care hospital based on clinical characteristics and average resource use, for prospective payment purposes.

Outlier payment means an additional payment beyond the standard Federal prospective payment for cases with unusually high costs.

PRO stands for the Utilization and Quality Control Peer Review Organization.

§ 412.505 Conditions for payment under the prospective payment system for long-term care hospitals.

(a) *Long-term care hospitals subject to the prospective payment system.* To be eligible to receive payment under the prospective payment system specified in this subpart, a long-term care hospital must meet the criteria to be classified as a long-term care hospital set forth in § 412.23(e) for exclusion from the inpatient hospital prospective payment systems specified in § 412.1(a)(1). This condition is subject to the special payment provisions of § 412.22(c), the provisions on change in hospital status of § 412.22(d), the provisions related to hospitals-within-hospitals under § 412.22(e), and the provisions related to satellite facilities under § 412.22(h).

(b) *General requirements.* (1) Effective for cost reporting periods beginning on or after October 1, 2002, a long-term care hospital must meet the conditions for payment of this section and §§ 412.507 through 412.511 to receive payment under the prospective payment system described in this subpart for inpatient hospital services furnished to Medicare beneficiaries.

(2) If a long-term care hospital fails to comply fully with these conditions for payment with respect to inpatient hospital services furnished to one or more Medicare beneficiaries, CMS may withhold (in full or in part) or reduce Medicare payment to the hospital.

§ 412.507 Limitation on charges to beneficiaries.

(a) *Prohibited charges.* Except as provided in paragraph (b) of this section, a long-term care hospital may not charge a beneficiary for any services for which payment is made by Medicare, even if the hospital's costs of furnishing services to that beneficiary are greater than the amount the hospital is paid under the prospective payment system.

(b) *Permitted charges.* A long-term care hospital that receives payment under this subpart for a covered hospital stay (that is, a stay that includes at least one covered day) may charge the Medicare beneficiary or other person only for the applicable deductible and coinsurance amounts under §§ 409.82, 409.83, and 409.87 of this subchapter, and for items and services as specified under § 489.20(a) of this chapter.

§ 412.508 Medical review requirements.

(a) *Admission and quality review.* A long-term care hospital must have an agreement with a PRO to have the PRO review, on an ongoing basis, the following:

(1) The medical necessity, reasonableness, and appropriateness of hospital admissions and discharges.

(2) The medical necessity, reasonableness, and appropriateness of inpatient hospital care for which additional payment is sought under the outlier provisions of §§ 412.523(d)(1) and 412.525(a).

(3) The validity of the hospital's diagnostic and procedural information.

(4) The completeness, adequacy, and quality of the services furnished in the hospital.

(5) Other medical or other practices with respect to beneficiaries or billing for services furnished to beneficiaries.

(b) *Physician acknowledgement.* Because payment under the long-term care hospital prospective payment system is based in part on each patient's principal and secondary diagnoses and major procedures performed, as evidenced by the physician's entries in the patient's medical record, physicians must complete an acknowledgement statement to this effect.

(1) *Content of physician acknowledgement statement.* When a claim is submitted, the hospital must have on file a signed and dated acknowledgement from the attending physician that the physician has received the following notice:

> Notice to Physicians: Medicare payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patient, as attested to by the patient's attending physician by virtue of his or her signature in the medical record. Anyone who misrepresents, falsifies, or conceals essential information required for payment of Federal funds, may be subject to fine, imprisonment, or civil penalty under applicable Federal laws.

(2) *Completion of acknowledgement.* The acknowledgement must be completed by the physician at the time that the physician is granted admitting privileges at the hospital, or before or at the time the physician admits his or her first patient. Existing acknowledgements signed by physicians already on staff remain in effect as long as the physician has admitting privileges at the hospital.

(c) *Denial of payment as a result of admissions and quality review.* (1) If CMS determines, on the basis of information supplied by a PRO that a hospital has misrepresented admissions, discharges, or billing information, or has taken an action that results in the unnecessary admission of an individual entitled to benefits under Part A, unnecessary multiple admissions of an individual, or other inappropriate medical or other practices with respect to beneficiaries or billing for services

furnished to beneficiaries, CMS may, as appropriate—

(i) Deny payment (in whole or in part) under Part A with respect to inpatient hospital services provided for an unnecessary admission or subsequent readmission of an individual; or

(ii) Require the hospital to take other corrective action necessary to prevent or correct the inappropriate practice.

(2) When payment with respect to admission of an individual patient is denied by a PRO under paragraph (c)(1) of this section, and liability is not waived in accordance with §§ 411.400 through 411.402 of this chapter, notice and appeals are provided under procedures established by CMS to implement the provisions of section 1155 of the Act, Right to Hearing and Judicial Review.

(3) A determination under paragraph (c)(1) of this section, if it is related to a pattern of inappropriate admissions and billing practices that has the effect of circumventing the prospective payment system, is referred to the Department's Office of Inspector General for handling in accordance with § 1001.301 of this title.

§ 412.509 Furnishing of inpatient hospital services directly or under arrangement.

(a) Subject to the provisions of § 412.521(b), the applicable payments made under this subpart are payment in full for all inpatient hospital services, as defined in § 409.10 of this chapter. Inpatient hospital services do not include the following:

(1) Physicians' services that meet the requirements of § 415.102(a) of this subchapter for payment on a fee schedule basis.

(2) Physician assistant services, as defined in section 1861(s)(2)(K)(i) of the Act.

(3) Nurse practitioners and clinical nurse specialist services, as defined in section 1861(s)(2)(K)(ii) of the Act.

(4) Certified nurse midwife services, as defined in section 1861(gg) of the Act.

(5) Qualified psychologist services, as defined in section 1861(ii) of the Act.

(6) Services of an anesthetist, as defined in § 410.69 of this subchapter.

(b) Medicare does not pay any provider or supplier other than the long-term care hospital for services furnished to a Medicare beneficiary who is an inpatient of the hospital except for services described in paragraphs (a)(1) through (a)(6) of this section.

(c) The long-term care hospital must furnish all necessary covered services to the Medicare beneficiary who is an inpatient of the hospital either directly or under arrangements (as defined in § 409.3 of this subchapter).

§ 412.511 Reporting and recordkeeping requirements.

A long-term care hospital participating in the prospective payment system under this subpart must meet the recordkeeping and cost reporting requirements of §§ 413.20 and 413.24 of this subchapter.

§ 412.513 Patient classification system.

(a) *Classification methodology.* CMS classifies specific inpatient hospital discharges from long-term care hospitals by long-term care diagnosis-related groups (LTC–DRGs) to ensure that each hospital discharge is appropriately assigned based on essential data abstracted from the inpatient bill for that discharge.

(b) *Assignment of discharges to LTC–DRGs.* (1) The classification of a particular discharge is based, as appropriate, on the patient's age, sex, principal diagnosis (that is, the diagnosis established after study to be chiefly responsible for causing the patient's admission to the hospital), secondary diagnoses, procedures performed, and the patient's discharge status.

(2) Each discharge from a long-term care hospital is assigned to only one LTC–DRG (related, except as provided in paragraph (b)(3) of this section, to the patient's principal diagnosis), regardless of the number of conditions treated or services furnished during the patient's stay.

(3) When the discharge data submitted by a hospital show a surgical procedure unrelated to a patient's principal diagnosis, the bill is returned to the hospital for validation and reverification. The LTC–DRG classification system provides a LTC–DRG, and an appropriate weighting factor, for those cases for which none of the surgical procedures performed are related to the principal diagnosis.

(c) *Review of LTC–DRG assignment.* (1) A hospital has 60 days after the date of the notice of the initial assignment of a discharge to a LTC–DRG to request a review of that assignment. The hospital may submit additional information as a part of its request.

(2) The intermediary reviews that hospital's request and any additional information and decides whether a change in the LTC–DRG assignment is appropriate. If the intermediary decides that a different LTC–DRG should be assigned, the case will be reviewed by the appropriate PRO as specified in § 476.71(c)(2) of this chapter.

(3) Following the 60-day period described in paragraph (c)(1) of this section, the hospital may not submit additional information with respect to the DRG assignment or otherwise revise its claim.

§ 412.515 LTC–DRG weighting factors.

(a) *General.* For each LTC–DRG, CMS assigns an appropriate weight that reflects the estimated relative cost of hospital resources used within that group compared to discharges classified within other groups.

(b) *Very short-stay discharges.* CMS determines a weighting factor or factors for discharges of Medicare patients from a long-term care hospital after a very short stay in accordance with § 412.527.

§ 412.517 Revision of LTC–DRG group classifications and weighting factors.

CMS adjusts the classifications and weighting factors annually to reflect changes in—

(a) Treatment patterns;

(b) Technology;

(c) Number of discharges; and

(d) Other factors affecting the relative use of hospital resources.

§ 412.521 Basis of payment.

(a) *Method of payment.* (1) Under the prospective payment system, long-term care hospitals receive a predetermined payment amount per discharge for inpatient services furnished to Medicare beneficiaries.

(2) The amount of payment under the prospective payment system is based on the Federal payment rate established in accordance with § 412.523, including adjustments described in § 412.525, and, if applicable during a transition period, on a blend of the Federal payment rate and the cost-based reimbursement rate described in § 412.533.

(b) *Payment in full.* (1) The payment made under this subpart represents payment in full (subject to applicable deductibles and coinsurance described in subpart G of part 409 of this subchapter) for inpatient operating costs as described in § 412.2(c) and capital-related costs described in subpart G of part 413 of this subchapter associated with furnishing Medicare covered services in long-term care hospitals.

(2) In addition to payment based on prospective payment rates, long-term care hospitals may receive payments separate from payments under the prospective payment system for the following:

(i) The costs of approved medical education programs described in §§ 413.85 and 413.86 of this subchapter.

(ii) Bad debts of Medicare beneficiaries, as provided in § 413.80 of this subchapter.

(iii) A payment amount per unit for blood clotting factor provided to Medicare inpatients who have hemophilia.

(iv) Anesthesia services furnished by hospital employed nonphysician anesthetists or obtained under arrangements, as specified in § 412.113(c)(2).

(v) The costs of photocopying and mailing medical records requested by a PRO, in accordance with § 476.78(c) of this chapter.

(c) *Payment by workers' compensation, automobile medical, no-fault or liability insurance or an employer group health plan primary to Medicare.* If workers' compensation, automobile medical, no-fault, or liability insurance or an employer group health plan that is primary to Medicare pays in full or in part, payment is determined in accordance with the guidelines specified in § 412.120(b).

(d) *Effect of change of ownership on payments under the prospective payment system.* When a hospital's ownership changes, as described in § 489.18 of this chapter, the following rules apply:

(1) Payment for the operating and capital-related costs of inpatient hospital services for each patient, including outlier payments as provided in § 412.525 and payments for hemophilia clotting factor costs as provided in paragraph (b)(2)(iii) of this section, are made to the entity that is the legal owner on the date of discharge. Payments are not prorated between the buyer and seller.

(i) The owner on the date of discharge is entitled to submit a bill for all inpatient hospital services furnished to a beneficiary regardless of when the beneficiary's coverage began or ended during a stay, or of how long the stay lasted.

(ii) Each bill submitted must include all information necessary for the intermediary to compute the payment amount, whether or not some of that information is attributable to a period during which a different party legally owned the hospital.

(2) Other payments for approved medical education programs, bad debts, anesthesia services furnished by hospital employed nonphysician anesthestists, and costs of photocopying and mailing medical records to the PRO as provided for under paragraphs (b)(2)(i), (ii), (iv), and (v) of this section are made to each owner or operator of the hospital (buyer and seller) in accordance with the principles of reasonable cost reimbursement.

§ 412.523 Methodology for calculating the Federal prospective payment rates.

(a) *Data used.* To calculate the initial prospective payment rates for inpatient hospital services furnished by long-term care hospitals, CMS uses—

(1) The best Medicare data available; and

(2) A rate of increase factor to adjust for the most recent estimate of increases in the prices of an appropriate market basket of goods and services included in covered inpatient long-term care hospital services.

(b) *Determining the average costs per discharge for FY 2003.* CMS determines the average inpatient operating and capital-related costs per discharge for which payment is made to each inpatient long-term care hospital using the available data under paragraph (a)(1) of this section. The cost per discharge is adjusted to FY 2003 by a rate of increase factor, described in paragraph (a)(2) of this section, under the update methodology described in section 1886(b)(3)(B)(ii) of the Act for each year.

(c) *Determining the Federal prospective payment rates.*

(1) *General.* The Federal prospective payment rates will be established using a standard payment amount referred to as the standard Federal rate. The standard Federal rate is a standardized payment amount based on average costs from a base year that reflects the combined aggregate effects of the weighting factors and other adjustments.

(2) *Update the cost per discharge.* CMS applies the increase factor described in paragraph (a)(2) of this section to each hospital's cost per discharge determined under paragraph (b) of this section to compute the cost per discharge for FY 2003. Based on the updated cost per discharge, CMS estimates the payments that would have been made to each hospital for FY 2003 under Part 413 of this chapter without regard to the prospective payment system implemented under this subpart.

(3) *Computation of the standard Federal rate.* The standard Federal rate is computed as follows:

(i) *For FY 2003.* Based on the updated costs per discharge and estimated payments for FY 2003 determined in paragraph (c)(2) of this section, CMS computes a standard Federal rate for FY 2003 that reflects, as appropriate, the adjustments described in paragraph (d) of this section.

(ii) *For fiscal years after FY 2003.* The standard Federal rate for fiscal years after FY 2003 will be the standard Federal rate for the previous fiscal year, updated by the increase factor described in paragraph (a)(2) of this section, and adjusted as appropriate as described in paragraph (d) of this section.

(4) *Determining the Federal prospective payment rate for each LTC–DRG.* The Federal prospective payment rate for each LTC–DRG is the product of the weighting factors described in § 412.515 and the standard Federal rate described in paragraph (c)(3) of this section.

(d) *Adjustments to the standard Federal rate.* The standard Federal rate described in paragraph (c)(3) of this section will be adjusted for—

(1) *Outlier payments.* CMS adjusts the standard Federal rate by a reduction factor of 8 percent, the estimated proportion of outlier payments under the long-term care hospital prospective payment system, as described in § 412.525(a).

(2) *Budget neutrality.* CMS adjusts the Federal prospective payment rates for FY 2003 so that aggregate payments under the prospective payment system are estimated to equal the amount that would have been made to long-term care hospitals under Part 413 of this subchapter without regard to the prospective payment system implemented under this subpart.

(3) The Secretary will review payments under this prospective payment system and will make a one-time prospective adjustment to the LTCH prospective payment system rates by October 1, 2006 so that the effect of any significant difference between actual payments and estimated payments for the first year of the LTCH prospective payment system is not perpetuated in the prospective payment rates for future years.

(e) *Calculation of the adjusted Federal prospective payment.* For each discharge, a long-term care hospital's Federal prospective payment is computed on the basis of the Federal prospective payment rate multiplied by the relative weight of the LTC–DRG assigned for that discharge. A hospital's Federal prospective payment rate will be adjusted, as appropriate, to account for outliers and other factors as specified in § 412.525.

§ 412.525 Adjustments to the Federal prospective payment.

(a) *Adjustments for high-cost outliers.* CMS provides for an additional payment to a long-term care hospital if its estimated costs for a patient exceeds the adjusted LTC–DRG plus a fixed-loss amount. For each fiscal year, CMS determines a fix-loss amount that is the maximum loss that a hospital can incur under the prospective payment system for a case with unusually high costs before the hospital will receive any additional payments. The additional payment equals 80 percent of the difference between the estimated cost of the patient case and the sum of the adjusted Federal prospective payment

for the LTC–DRG and the fixed-loss amount.

(b) *Adjustments for Alaska and Hawaii.* CMS adjusts the Federal prospective payment for the effects of a higher cost of living for hospitals located in Alaska and Hawaii.

(c) *Special payment provisions.* CMS adjusts the Federal prospective payment to account for—

(1) Very short-stay discharges, as provided for in § 412.527;

(2) Short-stay outliers, as provided for in § 412.529; and

(3) Interruption of a stay, as provided for in § 412.531.

§ 412.527 Special payment provision for very short-stay discharges.

(a) *Very short-stay discharge defined.* A ''very short-stay discharge'' means a case that has a length of stay in a long-term care hospital of 7 days or fewer.

(b) *Adjustment to payment.* CMS adjusts the Federal prospective payment for very short-stay discharges, as defined in paragraph (a) of this section.

(c) *Method for determining payment.*

(1) Payment for a very short-stay discharge will be made on a per diem methodology according to the primary diagnosis of the discharge under either—

(i) A LTC–DRG psychiatric category; or

(ii) A LTC–DRG nonpsychiatric category.

(2) Each per diem amount is determined by dividing the Federal payment rate of the applicable LTC–DRG category specified in paragraph (c)(1)(i) or (c)(1)(ii) of this section (that is, Federal payment rate x the LTC–DRG weight) by seven.

§ 412.529 Special payment provision for short-stay outliers.

(a) *Short-stay outlier defined.* ''Short-stay outlier'' means a discharge with a length of stay in a long-term care hospital that is between 8 days and two-thirds of the arithmetic average length of stay for each LTC–DRG.

(b) *Adjustment to payment.* CMS adjusts the hospital's Federal prospective payment to account for any case that is determined to be a short-stay outlier, as defined in paragraph (a) of this section, under the methodology specified in paragraph (c) of this section.

(c) *Method for determining the payment amount.* (1) The payment amount for a short-stay outlier is the least of the following amounts:

(i) 150 percent of the LTC–DRG specific per diem amount determined under paragraph (c)(2) of this section multiplied by the length of stay of the discharge;

(ii) 150 percent of the cost of the case determined under paragraph (c)(3) of this section; or

(iii) The full Federal prospective payment for the LTC–DRG (the Federal payment rate x LTC–DRG weight).

(2) CMS calculates a per diem amount for short-stay outliers for each LTC–DRG by dividing the standard Federal payment rate (the Federal payment rate x LTC–DRG weight) by the arithmetic mean length of stay of the specific LTC–DRG.

(3) To determine the cost of a case, CMS uses the hospital-specific cost-to-charge ratio and the Medicare allowable charges for the case.

§ 412.531 Special payment provisions when an interruption of a stay occurs in a long-term care hospital.

(a) *Interruption of a stay defined.* ''Interruption of a stay'' means a stay at a long-term care hospital during which a Medicare inpatient is transferred upon discharge to an acute care hospital, an IRF, or a SNF for treatment or services that are not available in the long-term care hospital and returns to the same long-term care hospital within the applicable period specified in paragraphs (a)(1) through (a)(3) of this section.

(1) For a discharge to an acute care hospital, the applicable period is the number of days that is equal to one standard deviation beyond the average length of stay for the DRG assigned for the acute care inpatient hospital stay. The counting of those days begins on the day of discharge from the long-term care hospital and ends on the day the patient is readmitted to the long-term care hospital.

(2) For a discharge to an IRF, the applicable period is the number of days that is equal to one standard deviation beyond the average length of stay for the combination of the CMG and comorbidity tier for the IRF stay. The counting of those days begins on the day of discharge from the long-term care hospital and ends on the day that the patient is readmitted to the long-term care hospital.

(3) For a discharge to a SNF, the applicable period is 45 days, that is, the number of days that is equal to one standard deviation beyond the average length of stay for all Medicare SNF patients. The counting of those days begins on the day of discharge from the long-term care hospital and ends with the 45th day after the discharge.

(b) *Methods of determining payments.* (1) For purposes of determining a Federal prospective payment, any stay in a long-term care hospital that involves an interruption of the stay will be paid as a single discharge from the long-term care hospital. The number of days that a beneficiary spends in an acute care hospital, an IRF, or a SNF during an interruption of stay at a long-term care hospital is not included in determining the length of stay of the patient at the long-term care hospital. CMS will make only one LTC–DRG payment for all portions of a long-term care stay that involves an interruption of a stay. In accordance with § 412.513(b), payment will be based on the patient's LTC–DRG which would be determined by the principal diagnosis which is the condition established after study to be chiefly responsible for occasioning the first admission of the patient to the hospital for care.

(2) If the total number of days of a patient's length of stay in a long-term care hospital prior to and following an interruption of a stay is 7 days or less, CMS will make a Federal prospective payment for a very short stay discharge in accordance with § 412.527(c).

(3) If the total number of days of a patient's length of stay in a long-term care hospital prior to and following an interruption of a stay is between 8 days and two-thirds the average length of stay of the LTC–DRG, CMS will make a Federal prospective payment for a short-stay outlier in accordance with § 412.529(c).

(4) If the total number of days of a patient's length of stay in a long-term care hospital prior to and following an interruption of a stay exceeds two-thirds of the average length of stay for the LTC–DRG, CMS will make one full Federal LTC–DRG prospective payment for the case. An additional payment will be made if the patient's stay qualifies as a high-cost outlier, as set forth in § 412.525(a).

(5) Notwithstanding the provisions of paragraph (a) of this section, if a patient who has been discharged from a long-term care hospital to another facility and is readmitted to the long-term care hospital for additional treatment or services in the long-term care hospital following the stay at the other facility, the subsequent admission to the long-term care hospital is considered a new stay, even if the case is determined to fall into the same LTC–DRG, and the long-term care hospital will receive two separate Federal prospective payments if one of the following conditions are met:

(i) The patient has a length of stay in the acute care hospital that exceeds one standard deviation from the average length of stay for the inpatient hospital DRG;

(ii) The patient has a length of stay in the IRF that exceeds one standard

deviation from the average length of stay for the combination of CMG and the comorbidity tier; or

(iii) The patient has a length of stay in the SNF that exceeds 45 days (one standard deviation from the average length of stay for all Medicare SNF patients).

(c) *Payments to an acute care hospital, an IRF, or a SNF during an interruption of stay.* (1) Payment to the acute care hospital for the acute care hospital stay following discharge from the long-term care hospital will be paid in accordance with the acute care hospital inpatient prospective payment systems specified in § 412.1(a)(1).

(2) Payment to an IRF for the IRF stay following a discharge from the long-term care hospital will be paid in accordance with the IRF prospective payment system specified in § 412.624 of Subpart P of this part.

(3) Payment to a SNF for the SNF stay following a discharge from the long-term care hospital will be paid in accordance with the SNF prospective payment system specified in subpart J of Part 413 of this subchapter.

§ 412.532 Special payment provisions for patients who are transferred to onsite providers and readmitted to a long-term care hospital.

(a) The policies set forth in this section apply in the following situations:

(1) A long-term care hospital (including a satellite facility) that is co-located within an onsite acute care hospital, an onsite IRF, or an onsite psychiatric facility or unit that meets the definition of a hospital-within-a-hospital under § 412.22(e).

(2) A satellite facility, as defined in § 412.22(e), that is co-located with the long-term care hospital.

(3) A SNF, as defined in section 1819(a) of the Act, that is co-located with the long-term care hospital.

(b) If, during a cost reporting period, a long-term care hospital (including a satellite facility) discharges patients to an acute care hospital co-located with the long-term care hospital, as described in paragraph (a) of this section, and subsequently directly readmits more than 5 percent (that is, in excess of 5.0 percent) of the total number of its Medicare inpatients discharged from that acute care hospital, the discharge to the co-located acute care hospital and the readmission to the long-term care hospital will be treated as one discharge and one LTC–DRG payment will be made on the basis of the patient's initial principal diagnosis.

(c) If, during a cost reporting period, a long-term care hospital (including a satellite facility) discharges patients to an onsite IRF, an onsite psychiatric hospital or unit, or an onsite SNF, as described in paragraph (a) of this section, and subsequently directly readmits more than 5 percent (that is, in excess of 5.0 percent) of the total number of its Medicare inpatients discharged from the onsite IRF, the onsite psychiatric hospital or unit, or the onsite SNF, a discharge to any of these providers and a readmission to the LTCH will be treated as one discharge and one LTC–DRG payment will be made on the basis of the patient's initial principal diagnosis.

(d) For purposes of calculating the payment per discharge, payment for the entire stay at the long-term care hospital will be paid as a full LTC–DRG payment under § 412.523, a very short-stay discharge under § 412.527, or a short-stay outlier under § 412.529, depending on the duration of the entire stay.

(e) If the long-term care hospital does not meet the 5-percent thresholds specified under paragraph (b) or (c) of this section for discharges to the specified onsite providers and readmissions to the long-term care hospital during a cost reporting period, payment under the long-term care prospective payment system will be made, where applicable, under the policies on interruption of a stay as specified in § 412.531.

(f) Payment to the onsite acute care hospital, the onsite IRF, the onsite psychiatric hospital or unit, and the onsite SNF for a beneficiary's stay in the specified onsite providers is subject to the applicable payment policies, including outliers and transfers, under the acute care hospital inpatient prospective payment system, the IRF prospective payment system, the SNF prospective payment system, or the excluded psychiatric hospital or unit cost-based reimbursement payment system, as appropriate.

(g) In determining whether a patient has previously been discharged and then admitted, all prior discharges are considered, even if the discharge occurs late in one cost reporting period and the readmission occurs late in next cost reporting period.

§ 412.533 Transition payments.

(a) *Duration of transition periods.* Except for a long-term care hospital that makes an election under paragraph (b) of this section or for a long-term care hospital that is defined as new under § 412.23(e)(4), for cost reporting periods beginning on or after October 1, 2002, and before October 1, 2006, a long-term care hospital receives a payment comprised of a blend of the adjusted Federal prospective payment as determined under § 412.523, and the payment determined under the cost-based reimbursement rules under Part 413 of this subchapter.

(1) For cost reporting periods beginning on or after October 1, 2002 and before October 1, 2003, payment is based on 20 percent of the Federal prospective payment rate and 80 percent of the cost-based reimbursement rate.

(2) For cost reporting periods beginning on or after October 1, 2003 and before October 1, 2004, payment is based on 40 percent of the Federal prospective payment rate and 60 percent of the cost-based reimbursement rate.

(3) For cost reporting periods beginning on or after October 1, 2004 and before October 1, 2005, payment is based on 60 percent of the Federal prospective payment rate and 40 percent of the cost-based reimbursement rate.

(4) For cost reporting periods beginning on or after October 1, 2005 and before October 1, 2006, payment is based on 80 percent of the Federal prospective payment rate and 20 percent of the cost-based reimbursement rate.

(5) For cost reporting periods beginning on or after October 1, 2006, payment is based entirely on the adjusted Federal prospective payment rate.

(b) *Election not to be paid under the transition period methodology.* A long-term care hospital may elect to be paid based on 100 percent of the Federal prospective rate at the start of any of its cost reporting periods during the 5-year transition periods specified in paragraph (a) of this section. Once a long-term care hospital elects to be paid based on 100 percent of the Federal prospective payment rate, it may not revert to the transition blend.

(1) *General requirement.* A long-term care hospital must request the election under this paragraph (b) no later than 30 days before the beginning of the hospital's cost reporting period in each applicable fiscal year beginning on or after October 1, 2003 and before October 1, 2006.

(2) *Notification requirement to make election.* The request by the long-term care hospital to make the election under this paragraph (b) must be made in writing to the Medicare fiscal intermediary. The intermediary must receive the request on or before the 30th day before the applicable cost reporting period begins, regardless of any postmarks or anticipated delivery dates. Requests received, postmarked, or

delivered by other means after the 30th day before the cost reporting period begins will not be approved. If the 30th day before the cost reporting begins falls on a day that the postal service or other delivery sources are not open for business, the long-term care hospital is responsible for allowing sufficient time for the delivery of the request before the deadline. If a long-term care hospital's request is not received or not approved, payment will be based on the transition period rates specified in paragraphs (a)(1) through (a)(5) of this section.

(c) *Payments to new long-term care hospitals.* A new long-term care hospital, as defined in § 412.23(e)(4), will be paid based on 100 percent of the standard Federal rate, as described in § 412.523, with no transition payments, as described in § 412.533.

§ 412.535 Publication of the Federal prospective payment rates.

CMS publishes information pertaining to the long-term care hospital prospective payment system effective for each fiscal year in the **Federal Register**. This information includes the unadjusted Federal payment rates, the LTC–DRG classification system and associated weighting factors, and a description of the methodology and data used to calculate the payment rates. This information is published on or before August 1 prior to the beginning of each fiscal year.

§ 412.541 Method of payment under the long-term care hospital prospective payment system.

(a) *General rule.* Subject to the exceptions in paragraphs (b) and (c) of this section, long-term care hospitals receive payment under this subpart for inpatient operating costs and capital-related costs for each discharge only following submission of a discharge bill.

(b) *Periodic interim payments*—(1) *Criteria for receiving periodic interim payments.* (i) A long-term care hospital receiving payment under this subpart may receive periodic interim payments (PIP) for Part A services under the PIP method subject to the provisions of § 413.64(h) of this subchapter.

(ii) To be approved for PIP, the long-term care hospital must meet the qualifying requirements in § 413.64(h)(3) of this subchapter.

(iii) As provided in § 413.64(h)(5) of this subchapter, intermediary approval is conditioned upon the intermediary's best judgment as to whether payment can be made under the PIP method without undue risk of its resulting in an overpayment to the provider.

(2) *Frequency of payment.* (i) For long-term care hospitals approved for PIP and paid solely under Federal prospective payment system rates under § 412.533(b), the intermediary estimates the long-term care hospital's Federal prospective payments net after estimated beneficiary deductibles and coinsurance and makes biweekly payments equal to 1/26 of the total estimated amount of payment for the year.

(ii) For long-term care hospitals approved for PIP and paid using the blended payment schedule specified in § 412.533(a) for cost reporting periods beginning on or after October 1, 2002, and before October 1, 2006, the intermediary estimates the hospital's portion of the Federal prospective payments net and the hospital's portion of the reasonable cost-based reimbursement payments net, after beneficiary deductibles and coinsurance, in accordance with the blended transition percentages specified in § 412.533(a), and makes biweekly payments equal to 1/26 of the total estimated amount of both portions of payments for the year.

(iii) If the long-term care hospital has payment experience under the prospective payment system, the intermediary estimates PIP based on that payment experience, adjusted for projected changes supported by substantiated information for the current year.

(iv) Each payment is made 2 weeks after the end of a biweekly period of service as described in § 413.64(h)(6) of this subchapter.

(v) The interim payments are reviewed at least twice during the reporting period and adjusted if necessary. Fewer reviews may be necessary if a hospital receives interim payments for less than a full reporting period. These payments are subject to final settlement.

(3) *Termination of PIP*—(i) *Request by the hospital.* Subject to paragraph (b)(1)(iii) of this section, a long-term care hospital receiving PIP may convert to receiving prospective payments on a non-PIP basis at any time.

(ii) *Removal by the intermediary.* An intermediary terminates PIP if the long-term care hospital no longer meets the requirements of § 413.64(h) of this subchapter.

(c) *Interim payments for Medicare bad debts and for Part A costs not paid under the prospective payment system.* For Medicare bad debts and for the costs of an approved education program, blood clotting factors, anesthesia services furnished by hospital-employed nonphysician anesthetists or obtained under arrangement, and photocopying and mailing medical records to a PRO, which are costs paid outside the prospective payment system, the intermediary determines the interim payments by estimating the reimbursable amount for the year based on the previous year's experience, adjusted for projected changes supported by substantiated information for the current year, and makes biweekly payments equal to 1/26 of the total estimated amount. Each payment is made 2 weeks after the end of the biweekly period of service as described in § 413.64(h)(6) of this subchapter. The interim payments are reviewed at least twice during the reporting period and adjusted if necessary. Fewer reviews may be necessary if a long-term care hospital receives interim payments for less than a full reporting period. These payments are subject to final cost settlement.

(d) *Outlier payments.* Additional payments for outliers are not made on an interim basis. The outlier payments are made based on the submission of a discharge bill and represent final payment.

(e) *Accelerated payments*—(1) *General rule.* Upon request, an accelerated payment may be made to a long-term care hospital that is receiving payment under this subpart and is not receiving PIP under paragraph (b) of this section if the hospital is experiencing financial difficulties because of the following:

(i) There is a delay by the intermediary in making payment to the long-term care hospital.

(ii) Due to an exceptional situation, there is a temporary delay in the hospital's preparation and submittal of bills to the intermediary beyond its normal billing cycle.

(2) *Approval of payment.* A request by a long-term care hospital for an accelerated payment must be approved by the intermediary and by CMS.

(3) *Amount of payment.* The amount of the accelerated payment is computed as a percentage of the net payment for unbilled or unpaid covered services.

(4) *Recovery of payment.* Recovery of the accelerated payment is made by recoupment as long-term care hospital bills are processed or by direct payment by the long-term care hospital.

B. Part 413 is amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT FOR SKILLED NURSING FACILITIES

1. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i) and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 13951(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

Subpart A—Introduction and General Rules

2. Section 413.1 is amended by:

a. Revising paragraph (d)(2)(ii).

b. Adding paragraphs (d)(2)(vi) and (d)(2)(vii).

§ 413.1 Introduction.

* * * * *

(d) * * *

(2) * * *

(ii) Payment to children's and psychiatric hospitals (as well as separate psychiatric units (distinct parts) of short-term general hospitals) that are excluded from the prospective payment systems under subpart B of part 412 of this subchapter and hospitals outside the 50 states and the District of Columbia is on a reasonable cost basis, subject to the provisions of § 413.40.

* * * * *

(vi) For cost reporting periods beginning before October 1, 2002, payment to long-term care hospitals that are excluded under subpart B of part 412 of this subchapter from the prospective payment systems is on a reasonable cost basis, subject to the provisions of § 413.40.

(vii) For cost reporting periods beginning on or after October 1, 2002, payment to the long-term hospitals that meet the condition for payment of §§ 412.505 through 412.511 of this subchapter is based on prospectively determined rates under subpart O of part 412 of this subchapter.

* * * * *

Subpart C—Limits on Cost Reimbursement

3. Section 413.40 is amended by:

a. Republishing the introductory text of paragraph (a)(2)(i).

b. Adding a new paragraph (a)(2)(i)(D).

c. Amending paragraph (a)(2)(ii) by republishing the introductory text, removing ''and'' at the end of paragraph (a)(2)(ii)(A), adding ''and'' at the end of paragraph (a)(2)(ii)(B), and adding a new paragraph (a)(2)(ii)(C).

d. Adding a new paragraph (a)(2)(iv).

§ 413.40 Ceiling on the rate of increase in hospital inpatient cost.

(a) *Introduction.* * * *

(2) *Applicability.* (i) This section is not applicable to—

* * * * *

(D) Long-term care hospitals, as defined in section 1886(d)(1)(B)(iv) of the Act, that are paid based on 100 percent of the Federal prospective payment rate for inpatient hospital services in accordance with section 123 of Public Law 106–113 and section 307 of Public Law 106–554 and § 412.533 (b) and (c) of subpart O of part 412 of this subchapter for cost reporting periods beginning on or after October 1, 2002.

(ii) For cost reporting periods beginning on or after October 1, 1983, this section applies to—

* * * * *

(C) Long-term care hospitals excluded from the prospective payment systems described in § 412.1(a)(1) of this subchapter and in accordance with § 412.23 of this subchapter, except as limited by paragraph (a)(2)(iv) of this section with respect to long-term care hospitals specified in § 412.23(e) of this subchapter.

* * * * *

(iv) For cost reporting periods beginning on or after October 1, 1983 and before October 1, 2002, this section applies to long-term care hospitals that are excluded from the prospective payment systems described in § 412.1(a)(1) of this subchapter. For cost reporting periods beginning on or after October 1, 2002, and before October 1, 2006, this section also applies to long-term care hospitals, subject to paragraph (a)(2)(i)(D) of this section.

* * * * *

Subpart E—Payments to Providers

4. In § 413.64, paragraph (h)(2)(i) is revised to read as follows:

§ 413.64 Payment to providers: Specific rules.

* * * * *

(h) *Periodic interim payment method of reimbursement*— * * *

(2) * * *

(i) Part A inpatient services furnished in hospitals that are excluded from the prospective payment systems, described in § 412.1(a)(1) of this chapter, under subpart B of part 412 of this subchapter or are paid under the prospective payment systems described in subparts O and P part 412 of this subchapter.

* * * * *

C. Part 476 is amended as set forth below:

PART 476—UTILIZATION AND QUALITY CONTROL REVIEW

1. The authority citation for part 476 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 476.71 is amended by revising paragraph (c)(2) to read as follows:

§ 476.71 PRO review requirements.

* * * * *

(c) *Other duties and functions.* * * *

(2) As directed by CMS, the PRO must review changes in DRG and LTC–DRG assignments made by the intermediary under the provisions of §§ 412.60(d) and 412.513(c) of this chapter that result in the assignment of a higher-weighted DRG or a different LTC–DRG. The PRO's review must verify that the diagnostic and procedural information supplied by the hospital is substantiated by the information in the medical record.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: December 12, 2001.

Thomas A. Scully,

Administrator, Health Care Financing Administration.

Dated: February 22, 2002.

Tommy G. Thompson,

Secretary.

Editorial Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A—Proposed Market Basket for LTCHs

A market basket has historically been used under the Medicare program to account for price increases of the services furnished by providers. The proposed market basket for LTCHs would include both operating and capital-related costs of LTCHs because we are proposing a single payment rate for both operating and capital-related costs (see section IV.D. of this proposed rule). Under the reasonable cost-based reimbursement system, the excluded hospital market basket is used to update limits on payment for operating costs for LTCHs. The excluded hospital market basket is based on operating costs from 1992 cost report data and includes Medicare-participating long-term care, rehabilitation, psychiatric, cancer, and children's hospitals. Since LTCH costs are reflected as a component of the excluded hospital market basket, this index in part reflects the cost shares of LTCHs. In order to capture total costs (operating and capital), we are proposing to add a capital component to

the excluded hospital market basket for use under the proposed LTCH prospective payment system. We are referring to this proposed index as the excluded hospital with capital market basket.

At this time, we are not proposing a separate market basket for LTCHs because, currently, we believe that we do not have sufficient LTCH data to develop an accurate market basket based only on the costs of LTCHs. As the excluded hospital market basket is currently used under the reasonable cost-based (TEFRA) payment system for LTCHs, we believe it is appropriate to propose to use that market basket (including a component for capital costs) for LTCHs under the proposed prospective payment system. The same excluded hospital with capital market basket is used under the IRF prospective payment system.

In the following discussion, we describe the methodology used to determine the proposed operating portion of the market basket, the methodology used to determine the proposed capital portion of the market basket, and additional analyses explaining the extent to which long-term care cost shares are reflected in the proposed excluded hospital with capital market basket for LTCHs.

The operating portion of the excluded hospital with capital market basket consists of major cost categories and their respective weights. The major cost categories include wages and salaries, employee benefits, professional fees, pharmaceuticals, and a residual. The weights for the major cost categories are developed from the Medicare cost reports for FY 1992. The cost report data used include those hospitals excluded from the hospital inpatient prospective payment system where the Medicare average length of stay is within 15 percent (higher or lower) of the total facility average length of stay. Using the 15-percent threshold resulted in a subset of hospitals that had a significant amount of Medicare days and costs compared to using no adjustment or using a different threshold. Limiting the sample in this way provides a more accurate reflection of the structure of costs for Medicare. We chose to compare the average length of stay for all patients to that of Medicare beneficiaries as the test of the similarity of the practice patterns for non-Medicare patients versus Medicare patients. Our goal was to measure cost shares that were reflective of case-mix and practice patterns associated with providing services to Medicare beneficiaries (61 FR 46196, August 30, 1996). We chose to limit the data in the database because we use facility-wide data to calculate the cost shares and including facilities report costs that are significantly reflective of the non-Medicare case-mix would inappropriately skew the data and would not be reflective of the case-mix and practice patterns associated with Medicare patients. We accomplished our goal by limiting the reports we used to those with similar length of stays for the Medicare and total facility populations. The detailed cost categories under the residual are derived from the Asset and Expenditure Survey, 1992 Census of Service Industries, by the Bureau of the Census, Economics and Statistics Administration, U.S. Department of Commerce. This survey is used in conjunction with the 1992 Input-Output Tables published by the Bureau of Economic Analysis, U.S. Department of Commerce. A more detailed description of the development of the operating portion of this index can be found in the final rule, ''Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1998 Rates,'' published in the **Federal Register** on August 29, 1997 (62 FR 45993 through 45997).

As previously stated, the proposed market basket for the proposed LTCH prospective payment system reflects both operating and capital-related costs. Capital-related costs include depreciation, interest, and other associated capital-related costs. The cost categories for the capital portion of the excluded hospital with capital market basket that we are proposing are developed in a similar manner as those for the hospital inpatient prospective payment system capital input price index, which is explained in the August 30, 1996 **Federal Register** (61 FR 46196–46197). We calculated weights for capital costs using the same set of Medicare cost reports used to develop the operating share. The resulting capital weight for the FY 1992 base year is 9.080 percent.

Because capital is consumed over time, depreciation and interest costs in the current year reflect both current and previous capital purchases. We use vintage weighting to capture this effect. Vintage weighting, which is explained in the August 30, 1996 **Federal Register** (61 FR 46197 through 46203), is the process of weighting price changes for individual years in proportion to that year's share of total purchases still being consumed.

In order to vintage weight the capital portion of the index as described above, the average useful life of both assets and debt instruments (for example, a loan, bond, or promissory note) needs to be developed. For depreciation expenses, the useful life of fixed and movable assets is calculated from the Medicare cost reports for excluded hospitals, including LTCHs. The average useful life for fixed assets is 21 years and the average useful life for movable assets is 13 years. For interest expenses, we use the same useful life of debt instruments used in the hospital inpatient prospective payment system capital input price index. We believe that this useful life is appropriate because it reflects the average useful life of hospital issuances of commercial and municipal bonds from all hospitals, including LTCHs. The average useful life of interest expense is determined to be 22 years (61 FR 46199). After the useful life is determined, a set of weights is calculated by determining the average proportion of depreciation and interest expense incurred in any given year during the useful life. This information is developed using the Medicare cost reports. These calculations are the same as those described for the hospital inpatient prospective payment system capital input price index in the August 30, 1996 **Federal Register** (61 FR 46196 through 46198). The price proxies for each of the capital cost categories are the same as those used for the hospital inpatient prospective payment system capital input price index. The cost categories, price proxies, and base-year FY 1992 weights for the excluded hospital with capital market basket that would be used under the proposed LTCH prospective payment system are presented in Table 1 below. The vintage weights for the index are presented in Table 2 below.

TABLE 1.—EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1992) STRUCTURE AND WEIGHTS

Cost category	Price/wage variable	Weights (%) base-year: 1992
Total		100.000
Compensation		57.935
Wages and Salaries	CMS Occupational Wage Proxy	47.417
Employee Benefits	CMS Occupational Benefit Proxy	10.519
Professional fees: Non-Medical	ECI—Compensation: Prof. & Technical	1.908
Utilities:		1.524
Electricity	WPI—Commercial Electric Power	0.916
Fuel Oil, Coal, etc.	WPI—Commercial Natural Gas	0.365
Water and Sewerage	CPI–U—Water & Sewage	0.243
Professional Liability Insurance	CMS—Professional Liability Premiums	0.983
All Other Products and Services		28.571
All Other Products		22.027
Pharmaceuticals	WPI—Prescription Drugs	2.791
Food: Direct Purchase	WPI—Processed Foods	2.155
Food: Contract Service	CPI–U—Food Away from Home	0.998
Chemicals	WPI—Industrial Chemicals	3.413

TABLE 1.—EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1992) STRUCTURE AND WEIGHTS—Continued

Cost category	Price/wage variable	Weights (%) base-year: 1992
Medical Instruments	WPI—Med. Inst. & Equipment	2.868
Photographic Supplies	WPI—Photo Supplies	0.364
Rubber and Plastics	WPI—Rubber & Plastic Products	4.423
Paper Products	WPI—Convert. Paper and Paperboard	1.984
Apparel	WPI—Apparel	0.809
Machinery and Equipment	WPI—Machinery & Equipment	0.193
Miscellaneous Products	WPI—Finished Goods	2.029
All Other Services:		6.544
Telephone	CPI–U—Telephone Services	0.574
Postage	CPI–U—Postage	0.268
All Other: Labor	ECI—Compensation: Service Workers	4.945
All Other: Non-Labor Intensive	CPI–U—All Items (Urban)	0.757
Capital-Related Costs:		9.080
Depreciation		5.611
Fixed Assets	Boeckh-Institutional Construction: 21 Year Useful Life	3.570
Movable Equipment	WPI—Machinery & Equipment: 13 Year Useful Life	2.041
Interest Costs:		3.212
Non-profit	Avg. Yield Municipal Bonds: 22 Year Useful Life	2.730
For-profit	Avg. Yield AAA Bonds: 22 Year Useful Life	0.482
Other Capital-Related Costs	CPI–U—Residential Rent	0.257

*The wage and benefit proxies are a blend of 10 employment cost indices (ECI). A detailed discussion of the price proxies can be found in the August 30, 1996 and August 29, 1997 FEDERAL REGISTER final rules (61 FR 46197 and 62 FR 45993). The operating cost categories in the excluded market basket described in August 29, 1997 FEDERAL REGISTER (62 FR 45993 through 45996) had weights that added to 100.0. When we add an additional set of cost category weights (capital weight = 9.08 percent) to this original group, the sum of the weights in the new index must still add to 100.0. If capital cost category weights sum to 9.08, then operating cost category weights must add to 90.92 percent. Each weight in the excluded hospital market basket from the August 29, 1997 FEDERAL REGISTER (62 FR 45996 through 45997) was multiplied by 0.9092 to determine its weight in the excluded hospital with capital market basket.

TABLE 2.—EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1992) VINTAGE WEIGHTS

Year	Fixed assets (21-year weights)	Movable assets (13-year weights)	Interest: capital-related (22-year weights)
1	0.0201	0.0454	0.0071
2	0.0225	0.0505	0.0082
3	0.0225	0.0562	0.0100
4	0.0285	0.0620	0.0119
5	0.0301	0.0660	0.0139
6	0.0321	0.0710	0.0161
7	0.0336	0.0764	0.0185
8	0.0353	0.0804	0.0207
9	0.0391	0.0860	0.0244
10	0.0431	0.0923	0.0291
11	0.0474	0.0987	0.0350
12	0.0513	0.1047	0.0409
13	0.0538	0.1104	0.0474
14	0.0561		0.0525
15	0.0600		0.0590
16	0.0628		0.0670
17	0.0658		0.0742
18	0.0695		0.0809
19	0.0720		0.0875
20	0.0748		0.0931
21	0.0769		0.0993
22			0.1034
Total	1.0000	1.0000	1.0000

We further analyzed the extent to which the weights in the excluded hospital with capital market basket that we are proposing reflect the cost weights in LTCHs, particularly since more than 50 percent of excluded hospitals are psychiatric hospitals. For this purpose, we conducted an analysis comparing the major cost weights for LTCHs to the same set of cost weights for excluded hospitals. We analyzed the variations of wages, drugs, and capital. This analysis showed that these weights differed only slightly between the different types of hospitals. When the LTCH weights were substituted into the market basket structure for sensitivity analysis, the effect was less than 0.2 percentage points in any given year. This difference is less than the 0.25 percentage point criterion that determines whether a forecast error adjustment under the hospital inpatient prospective payment system is warranted. In addition, many LTCHs specialize in rehabilitation or psychiatric services. Thus, it would be anticipated that the cost shares would not differ drastically from these other types of prospective payment system-excluded

hospitals. Based on this analysis, we believe that using the excluded hospital with capital market basket for the proposed LTCH prospective payment system would provide a reasonable measure of the price changes facing LTCHs. We request comments on any other data sources that may be available to provide detailed cost category information on LTCHs.

Appendix B—Proposed Update Framework

Section 307(b) of Public Law 106–554 requires that the Secretary examine the appropriateness of certain adjustments to the LTCH prospective payment, including updates. Updates are necessary to appropriately account for changes in the prices of goods and services used by a provider in furnishing care to patients. A market basket has historically been used under the Medicare program in setting update factors for services furnished by providers. We are proposing that, beginning in FY 2004, the annual update to the standard Federal rate (described in section IV.D. of this proposed rule) would be equal to the percentage change in the excluded hospital with capital market basket index described in Appendix A of this proposed rule. However, in the future we would develop an update framework to update payments to LTCHs that would account for other appropriate factors that affect the efficient delivery of services and care provided to Medicare patients. The update framework would be proposed in the appropriate annual proposed rule in accordance with the notice and comment rulemaking process. While we are not proposing a specific update framework for the LTCH prospective payment system at this time in this proposed rule, we are providing a conceptual basis for developing such an update framework.

A. Need for an Update Framework

Under the proposed LTCH prospective payment system, Medicare payments to LTCHs would be based on a predetermined national payment amount per discharge. Under section 123 of BBRA and section 307(b) of BIPA, the Secretary has broad authority to make appropriate adjustments to the LTCH payment system, including updates to payment rates. Our goal is to develop a method for analyzing and comparing expected trends in the underlying cost per discharge to use in establishing these updates. However, as stated earlier, we are proposing that until an update framework is developed, future updates would be based only on the increase in the excluded hospital with capital market basket.

A market basket for the proposed LTCH prospective payment system (the excluded hospital with capital market basket), developed by CMS's Office of the Actuary (OACT), represents just one component in the measure of growth in LTCHs' costs per discharge. It captures only the pure price change of inputs (labor, materials, and capital) used by the hospital to produce a constant quantity and quality of care. However, other factors also contribute to the change in costs per discharge, including changes in case-mix, intensity, and productivity.

Under the hospital inpatient prospective payment system, CMS and MedPAC use an update framework to account for these other factors and to make annual recommendations to the Congress concerning the magnitude of the update. We are currently examining these factors and exploring ways that they could be incorporated into an update framework for the LTCH prospective payment system. We are also examining some additional conceptual and data issues that must be considered when the framework is constructed and applied.

At this time, we are proposing that future annual updates would be equal to the proposed market basket for the LTCH prospective payment system described in Appendix A of this proposed rule (the excluded hospital with capital market basket). We believe an annual update based on the proposed market basket for the LTCH prospective payment system would provide for a reasonable update until a more comprehensive update framework can be developed. Currently, under the TEFRA system, the excluded hospital market basket is used as the basis for updates to LTCHs' target amounts for inpatient operating costs. While our experience in developing other update frameworks, such as the hospital inpatient (operating and capital) and SNF prospective payment systems, could provide us with the conceptual framework, we are not proposing to apply an update framework at this time since we believe that it is important to develop successively more refined models of an update framework based on our evaluation of public comments and recommendations submitted to us on this issue. We would then further study the potential adjustments and the best available data. We are actively pursuing developing an analytical framework that would support the continued appropriateness and relevance of the payment rates for services provided to beneficiaries in LTCHs. To this end, we are requesting comments concerning the use and feasibility of the conceptual approach outlined below in this proposed rule. We are specifically interested in comments concerning which factors are appropriate and should be accounted for in the framework, and suggestions concerning potential data sources and analysis to support the model. As with the existing methodology used under the hospital inpatient prospective payment system, the features of a LTCH-specific update framework would need to be based on sound policy and methodology.

B. Factors Inherent in LTCH Payments Per Discharge

In order to understand the factors that determine LTCH costs per discharge, it is first necessary to understand the factors that determine LTCH payments per discharge. Payments per discharge under the LTCH prospective payment system are based on the cost and an implicit normal profit margin to the LTCH in providing an efficient level of care. We have developed a methodology to identify a mutually exclusive and exhaustive set of factors included in LTCH payments per discharge. The discussion here details a set of equations to identify these factors.

In its simplest form, the average payment per discharge to a LTCH can be separated into a cost term and a profit term as shown in equation (1):

$$\frac{\text{Payments}}{\text{Discharge}} = \frac{\text{Costs}}{\text{Discharge}} + \frac{\text{Profits}}{\text{Discharge}} \qquad (1)$$

This equation can be made multiplicative by converting profit per discharge into a profit rate as shown in equation (2):

$$\frac{\text{Payments}}{\text{Discharge}} = \frac{\text{Costs}}{\text{Discharge}} * \frac{\text{Payments}}{\text{Costs}} \qquad (2)$$

An output price term can be introduced into the equation by multiplying and dividing through by input prices and productivity. As shown in equation (3), the term inside the brackets represents the output price, since an output price reflects the input price and profit margin adjusted for productivity:

$$\frac{\text{Payments}}{\text{Discharge}} = \frac{\text{Costs}}{\text{Discharge}} * \left(\frac{\text{Payments}}{\text{Costs}} * \frac{\text{Input Prices}}{\text{Productivity}} \right) * \frac{\text{Productivity}}{\text{Input Prices}} \qquad (3)$$

The cost per discharge term can be further separated by accounting for real case-mix. Under the proposed LTCH prospective payment system, LTC–DRGs are used to classify patients. Based on accurate DRG classification data, average real case-mix per discharge can be incorporated, as shown in equation (4):

$$\frac{\text{Payments}}{\text{Discharge}} = \frac{\text{Costs/Discharge}}{\text{Real Case Mix/Discharge}} * \frac{\text{Real Case Mix}}{\text{Discharge}} * \left(\frac{\text{Payments}}{\text{Costs}} * \frac{\text{Input Prices}}{\text{Productivity}}\right) * \frac{\text{Productivity}}{\text{Input Prices}} \qquad (4)$$

The term ''real'' is imperative here because only true case-mix should be measured, not case-mix caused by improper coding behavior. By rearranging the terms in equation (4), a set of mutually exclusive and exhaustive factors such as those shown in equation (5) can be identified:

$$\frac{\text{Payments}}{\text{Discharge}} = \left(\frac{\dfrac{\text{Costs}}{\text{Discharge}}}{\text{Input Prices} * \dfrac{\text{Real Case Mix}}{\text{Discharge}}} * \text{Productivity}\right) * \frac{\text{Real Case Mix}}{\text{Discharge}} * \frac{1}{\text{Productivity}} * \text{Input Prices} * \frac{\text{Payments}}{\text{Costs}} \qquad (5)$$

The term in brackets can be analyzed in two steps. First, excluding the productivity term results in case-mix adjusted real cost per discharge, which is input intensity per discharge. Second, multiplying input intensity by productivity results in case-mix adjusted real payment per discharge, or output intensity per discharge. The rationale behind this step is explained in detail in section C below.

The result of this exercise is that LTCH payment per discharge can be determined from the following factors:

$$\text{Payment Per Discharge} = \frac{\begin{pmatrix}\text{Case-Mix-Constant}\\ \text{Real Output Intensity}\\ \text{Per Discharge}\end{pmatrix} * \begin{pmatrix}\text{Real Case Mix}\\ \text{per Discharge}\end{pmatrix} * (\text{Input Prices}) * (\text{Profit Margins})}{\text{Productivity}} \qquad (6)$$

Thus, it holds that the change in LTCH payment per discharge is a function of the change in these factors shown above. In order to determine an annual update that most accurately reflects the underlying cost to the LTCH of efficiently providing care, the four factors related to cost must be accounted for when an update framework is developed. A brief discussion of each factor, including specific conceptual and data issues, is provided in section C below.

C. Defining Each Factor Inherent in LTCH Costs Per Discharge

Each cost factor from equation (6) in section B is discussed here in detail. Because this is a basic conceptual discussion, it is likely that more detailed issues may be relevant that are not explored here.

1. Input Prices

Input prices are the pure prices of inputs used by the LTCH in providing services. When we refer to inputs, we are referring to costs, which have both a price and a quantity component. The price is an input price, and the quantity component reflects real inputs or real costs. Similarly, when we refer to outputs, we are referring to payments, which also have both a price and a quantity component. The price component is the transaction output price, and the quantity component is the real output or real payment. The real inputs include labor, capital, and materials such as drugs. By definition, an input price reflects prices that LTCHs encounter in purchasing these inputs, whereas an output price reflects the prices that buyers encounter in purchasing LTCH services. We currently measure input prices using the excluded hospital with capital market basket. While not specific to LTCHs, we believe this index adequately reflects the input prices faced by LTCHs as we describe in Appendix A.

2. Productivity

Productivity measures the efficiency of the LTCH in producing outputs. It is the amount of real outputs, or real payments, that can be produced from a given amount of real inputs or real costs. For LTCHs, these inputs are in the form of both labor and capital; thus, they represent multifactor productivity, as not just labor productivity is reflected. The following set of equations shows how multifactor productivity can be measured in terms of available data, such as payments, costs, and input prices:

$$\text{Productivity} = \frac{\text{Real Payments}}{\text{Real Costs}} = \frac{\text{(Payments/Output Price)}}{\text{(Costs/Input Price)}} = \frac{\text{Payments}}{\text{Costs}} * \frac{\text{Input Price}}{\text{Output Price}}$$

Rearranging the terms, this multifactor productivity equation was used as the basis for incorporating an output price term in equation (3) above. This equation is the basis for understanding the relationship between input prices, output prices, profit margins, and productivity.

Equation (6) shows that productivity is divided through the equation, offsetting other factors. The theory behind this offset is that if an efficient LTCH in a competitive market can produce more output with the same amount of inputs, the full increase in input costs does not have to be passed on by the provider to maintain a normal profit margin.

3. Real Case Mix Per Discharge

Real case mix per discharge is the average overall mix of care provided by the LTCH, as measured using the proposed LTC–DRG classification system. Over time, a measure of real case mix will change as care is given in more or less complex LTC–DRGs. Changes in the level of care within a LTC–DRG classification group would not be reflected in a case-mix measure based on LTC–DRGs, but instead should be captured in the intensity factor of equation (6). The important distinction here is the difference between real and nominal case mix. Under the proposed LTCH prospective payment system, LTCHs would submit claims using the proposed LTC–DRG classification system. The case-mix reflected by the claims is

considered ''nominal''. However, the reported classification can reflect the true level of care provided or improper coding behavior. An example of improper coding behavior would be the upcoding, or case-mix ''creep,'' that took place when the hospital inpatient prospective payment system was implemented. Any change in case-mix that is not associated with the actual level of care or a true change in the level of care provided must be excluded in order to determine real case-mix.

4. Case-Mix Constant Real Output Intensity Per Discharge

Intensity is the true underlying nature of the product or service and can take the form of output or input intensity, or both. In the case of LTCHs, output intensity per discharge is associated with real payment per discharge, while input intensity per discharge is associated with real cost per discharge. For example, input intensity would be associated with a nurse's hours when providing treatment, whereas output intensity would be associated with the type and number of treatments a nurse provides. The underlying nature of LTCH services is determined by such factors as technological capabilities, increased utilization of inputs (such as labor or drugs), site of care, and practice patterns. Because these factors can be difficult to measure, intensity per discharge is usually calculated as a residual after the other factors from equation (6) have been accounted for.

Accounting for output intensity associated with an efficient LTCH can be more accurately analyzed using a LTCH's costs rather than its payments. This analysis would also provide an alternative to developing or using a transaction output price index. The following series of equations shows how to use the definition of an output price as defined earlier to convert the equation for output intensity per discharge to reflect costs instead of payments, as used in equation (6):

Case-Mix Constant Real Output Intensity per Discharge

$$\begin{aligned}
\text{Case-Mix Constant Real Output Intensity per Discharge} &= \frac{[\text{Payments/Discharge}]}{\text{Output Prices} * \text{Real Case Mix/Discharge}} \\
&= \frac{[\text{Payments/Discharge}]}{\left(\frac{\text{Payments}}{\text{Costs}} * \frac{\text{Input Prices}}{\text{Productivity}}\right) * \text{Real Case Mix/Discharge}} \\
&= \frac{[\text{Payments/Discharge}] * \text{Costs}}{\text{Payments} * \frac{\text{Input Prices}}{\text{Productivity}} * \text{Real Case Mix/Discharge}} \\
&= \frac{\text{Payments} * [\text{Costs/Discharge}]}{\text{Payments} * \frac{\text{Input Prices}}{\text{Productivity}} * \text{Real Case Mix/Discharge}} \\
&= \frac{[\text{Costs/Discharge}]}{\frac{\text{Input Prices}}{\text{Productivity}} * \text{Real Case Mix/Discharge}} \\
&= \frac{[\text{Costs/Discharge}]}{\text{Input Prices} * \text{Real Case Mix/Discharge}} * \text{Productivity}
\end{aligned}$$

The last equation is identical to the term in brackets in equation (5), case-mix constant real input intensity per discharge multiplied by productivity. Thus, output intensity per discharge can be defined in such a way that cost data from the LTCH are utilized. This equation can be broken down even further to account for different types of input intensity per discharge. We discuss this matter more fully in section D below.

D. Applying the Factors That Affect LTCH Costs Per Discharge in an Update Framework

As discussed earlier, payments per discharge under the LTCH prospective payment system must be updated each year. Under this proposed rule, updates would be equal to the percent change in the excluded hospital with capital market basket beginning in FY 2004. The development of an update framework with a sound conceptual basis would provide the capability to understand the underlying trends in LTCH costs per discharge for an efficient provider.

Earlier, factors inherent in LTCH costs per discharge were identified. Changes in these factors determine the change in LTCH costs per discharge. Accounting for each of these factors from equation (6) under the proposed LTCH prospective payment system is discussed below:

- Change in case-mix constant real output intensity per discharge would be accounted for in the update framework, reflecting the factors that affect not only case-mix constant real input intensity per discharge, but also productivity, which is determined separately. Factors that can cause changes in case-mix constant real input intensity per discharge include, but are not limited to, changes in site of service, changes in within-LTC–DRG case-mix, changes in practice patterns, changes in the use of inputs, and changes in technology available.
- As discussed earlier, changes in nominal case-mix are automatically included in the payment to the LTCH. Therefore, the update framework should include an adjustment to convert changes in nominal case-mix per discharge to changes in real case-mix per discharge.
- Change in multifactor productivity would be accounted for in the update framework. The availability of historical data on input prices, payments, and costs are useful in the analysis of this factor. MedPAC sets this factor as a target under hospital inpatient prospective payment system.
- Changes in input prices for labor, material, and capital would be accounted for in the update framework. Our Office of the Actuary currently has an input price index, or market basket, to assist in updating payments for LTCH services; this is the excluded hospital with capital market basket.
- In an update framework, a forecast error adjustment would be included to reflect that the updates are set prospectively and a forecast error for a given year should not be perpetuated in payments for future years. In the case of the hospital inpatient prospective payment system, this prospective adjustment is made on a 2-year lag and only if the error exceeds a defined threshold (0.25 percentage points).

E. Current Hospital Inpatient Prospective Payment System and Illustrative LTCH Prospective Payment System Update Frameworks

Table I shows the payment update framework for the current hospital inpatient prospective payment system and an illustrative update framework for the LTCH prospective payment system. Some of the factors in the hospital inpatient prospective payment system framework are computed using Medicare cost report data, while others

are determined based on policy considerations. The details of calculating each factor for the hospital inpatient prospective payment system framework can be found in the May 4, 2001 proposed rule (66 FR 22891) that set forth proposed updates to the payment rates used under the hospital inpatient prospective payment system for FY 2002. This design for a LTCH update framework is for illustrative purposes only, as much more work needs to be done to determine the appropriate level of detail for each factor. The numbers provided for the hospital update are only intended to serve as examples of prior updates recommended for the hospital inpatient prospective payment system.

MedPAC supports the use of this type of framework for updating payments and applies a similar framework when it proposes updates to hospital payments in its annual recommendation to Congress. The appropriateness of this framework for updating inpatient hospital payments was discussed in the Health Care Financing Review, Winter 1992, in an article entitled, ''Are PPS Payments Adequate? Issues for Updating and Assessing Rates.'' A similar framework would be useful for analyzing updates to LTCH payments.

TABLE I.—CURRENT CMS HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEM AND ILLUSTRATIVE LTCH PROSPECTIVE PAYMENT SYSTEM UPDATE FRAMEWORKS

CMS hospital inpatient prospective payment system update percent change in:	FY 2002 calculated hospital update percent change	Illustrative LTCH prospective payment system update percent change in:
CMS Prospective Payment System Hospital Market Basket.	3.3	CMS Excluded Hospital with Capital Market Basket.
Forecast Error	0.7	Forecast Error.
Productivity	−0.6 to −0.5	Productivity.
Output Intensity:	0.2 to 0.3	Output Intensity:
Science and Technology		Science and Technology.
Practice Patterns		Real Within-DRG Change.
Real Within-DRG Change		Utilization of Inputs.
Site of Service		Site of Service.
Case-mix Adjustment Factors:		Case-mix Adjustment Factors:
Projected Case Mix	&−1.0	Nominal Across-DRG Case-Mix.
Real Across-DRG Change	1.0	Real Across-DRG Change.
Total Cost Per Discharge	0.3 to 0.5	Total Cost Per Discharge.
Other Policy Factors:		Other Policy Factors:
Reclassification and Recalibration	0.0	None.
Total Calculated Update	3.6 to 3.8	Total Calculated Update.

[1] Table data derived from the May 4, 2001 FEDERAL REGISTER, Medicare Program; Changes to the Hospital Inpatient Prospective Payment System and Fiscal Year 2002 Rates; Proposed Rule (66 FR 22890).

F. Additional Conceptual and Data Issues

Additional conceptual issues specific to the proposed LTCH prospective payment system include the relevance of a site-of-service substitution adjustment, the necessity of an adjustment for LTC–DRG reclassification, the handling of one-time factors, and consistency with other types of hospital updates since LTCHs are similar in structure to these other types of hospitals.

Under the hospital inpatient prospective payment system, a site-of-service substitution factor (captured as part of intensity) was necessary because of the incentive to shift care from inpatient hospital to other settings such as hospital outpatient departments, SNFs, or HHAs. For the proposed LTCH prospective payment system, it is not clear without additional research whether there is an incentive to shift care either into or out of the LTCH because of the changes in behavior created by the different Medicare payment systems.

A reclassification and recalibration adjustment under the hospital inpatient prospective payment system is necessary to account for changes in the case-mix or the types of patients treated by LTCHs resulting from the annual reclassification and recalibration of the proposed LTC–DRGs. This adjustment for case-mix is applied to the current fiscal year update, but reflects the effect of revisions in the fiscal year 2 years prior. MedPAC does not make this adjustment in its update framework. Whether a LTC–DRG reclassification adjustment would be necessary in the update framework would depend on the data availability and the likelihood of revisions to LTC–DRG classifications on a periodic basis.

There is also a question about how to handle one-time factors (an example of these could be those increased costs of converting computer systems to Year 2000 compliance). An update framework might be an appropriate mechanism to account for these items, but because of uncertainty surrounding their impact on costs, determining an appropriate adjustment amount may be difficult. MedPAC has discussed this issue in prior sessions, but was unable to agree on the exact methodology for these types of factors.

LTCHs are heterogeneous and are designated as a separate payment category only because their patients have longer average lengths of stay. This raises the question of whether certain factors in an update framework for LTCHs should be consistent with the factors in an update framework for other types of hospitals since they face similar cost pressures. Additional research in this area would need to be conducted to determine the reasonableness of having consistent updates.

The purpose of this conceptual discussion is not to determine how the identified factors of the update framework would be measured. We recognize that there are significant measurement issues in accurately determining the factors that would account for growth in costs per discharge for efficiently providing care. This is driven, in part, by the shift from a cost-based payment system with an upper payment limit to a prospective payment system. Significant research and data collection will be necessary to accurately measure these factors over the historical period. One example of this would be to measure the distinction between real and nominal case-mix change. However, many of these same concerns were also encountered and successfully addressed in the hospital inpatient prospective payment system update framework.

The discussion here provides the conceptual basis for developing an update framework for the LTCH prospective payment system that reflects changes in the underlying costs of efficiently providing services. It is important to note that the framework would not handle distribution issues such as geographic wage variations. Due to some variations in technical methodologies for measuring the factors of an update framework, and because of some of the data concerns mentioned earlier, implementing an update framework for the LTCH prospective payment system would involve making significant policy decisions on issues similar to those made for the hospital inpatient prospective payment system update framework. We invite comments on the type of data sources to use, what other factors (if any) we should consider in an update framework, and any additional comments concerning the issues discussed in this proposed rule regarding the update framework.

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Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412 et al.

Medicare Program; Prospective Payment System for Long-Term Care Hospitals: Proposed Implementation and FY 2003 Rates; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412, 413, and 476

[CMS–1177–P]

RIN 0938–AK69

Medicare Program; Prospective Payment System for Long-Term Care Hospitals: Proposed Implementation and FY 2003 Rates

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a prospective payment system for Medicare payment of inpatient hospital services furnished by long-term care hospitals (LTCHs) described in section 1886(d)(1)(B)(iv) of the Social Security Act (the Act). This proposed rule would implement section 123 of the Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act (BBRA) of 1999 and section 307(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000. Section 123 of the BBRA directs the Secretary to develop and implement a prospective payment system for LTCHs. The prospective payment system described in this proposed rule would replace the reasonable cost-based payment system under which the LTCHs are currently paid.

DATES: Comments will be considered if received at the appropriate address, as provided below, no later than 5 p.m. on May 21, 2002.

ADDRESSES: Mail written comments (an original and three copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1177–P, P.O. Box 8013, Baltimore, MD 21244–8013.

To ensure that mailed comments are received in time for us to consider them, please allow for possible delays in delivering them. If you prefer, you may deliver (by hand or courier) your written comments (an original and three copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–16–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–1177–P. For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Tzvi Hefter, (410) 786–4487, or Judy Richter, (410) 786–2590 (General information, transition payments, payment adjustments)

Michele Hudson, (410) 786–5490 (Calculation of the payment rates, relative weights/case-mix index, update factors, payment adjustments)

Ann Fagan, (410) 786–5662 (Patient classification system)

SUPPLEMENTARY INFORMATION:

Inspection of Public Comment

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at 7500 Security Boulevard, Baltimore, MD 21244, Monday through Friday of each week from 8:30 to 5 p.m. Please call (phone: (410) 786–7197) to make an appointment to view the public comments.

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Acronyms

Because of the many terms to which we refer by acronym in this proposed rule, we are listing the acronyms used and their corresponding terms in alphabetical order below:

APR–DRGs All patient-defined, diagnosis-related groups.
BBA Balanced Budget Act of 1997, Public Law 105–33.
BBRA Medicare, Medicaid and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999, Public Law 106–113.
BIPA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Benefits Improvement and Protection Act of 2000, Public Law 106–554.
CMGs Case-mix groups.
CMI Case-mix index.
CMS Centers for Medicare & Medicaid Services.
DRGs Diagnosis-related groups.
FY Federal fiscal year.
HCRIS Hospital Cost Report Information System.
HHA Home health agency.
HIPAA Health Insurance Portability and Accountability Act, Public Law 104–191.
IRF Inpatient rehabilitation facility.
LTC–DRG Long-term care diagnosis-related group.
LTCH Long-term care hospital.
MDCN Medicare Data Collection Network.
MedPAC Medicare Payment Advisory Commission.
MedPAR Medicare provider analysis and review file.
ProPAC Prospective Payment Assessment Commission.
SNF Skilled nursing facility.
TEFRA Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248.

I. Background

When the Medicare statute was originally enacted in 1965, Medicare payment for hospital inpatient services was based on the reasonable costs incurred in furnishing services to Medicare beneficiaries. Section 223 of the Social Security Act Amendments of 1972 (Pub. L. 92–603) amended section 1861(v)(1) of the Social Security Act (the Act) to set forth limits on reasonable costs for hospital inpatient services. Section 101(a) of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) amended the Medicare statute to limit payment by placing a cap on allowable costs per discharge. Section 601 of the Social Security Amendments of 1983 (Pub. L. 98–21) added section 1886(d) to the Act that replaced the reasonable cost-based payment system for most hospital inpatient services. Section 1886(d) of the Act provides for a prospective payment system for the operating costs of acute care hospital inpatient stays, effective with hospital cost reporting periods beginning on or after October 1, 1983.

Although most hospital inpatient services became subject to the prospective payment system, certain specialty hospitals are excluded from that system and continue to be paid their reasonable costs subject to the cap established under TEFRA. These hospitals included long-term care hospitals (LTCHs), rehabilitation and psychiatric hospitals, rehabilitation and psychiatric units of acute care hospitals, and children's hospitals. Cancer hospitals were added to the list of excluded hospitals by section 6004(a) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239).

Subsequent to the implementation of the acute care hospital inpatient prospective payment system, both the number of excluded hospitals and Medicare payments to these hospitals grew rapidly.

Congress enacted various provisions in the Balanced Budget Act (BBA) (Pub. L. 105–33), the Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act (BBRA) (Pub. L. 106–113), and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) (Pub. L. 106–554) to provide for the development and implementation of a prospective payment system for the following excluded hospitals:

- Rehabilitation hospitals (including units in acute care hospitals).
- Psychiatric hospitals (including units in acute care hospitals).
- LTCHs.

Section 4422 of the BBA mandated that the Secretary develop a legislative proposal, for presentation to Congress by October 1, 1999, for a case-mix adjusted LTCH prospective payment

system under the Medicare program. This system was to include an adequate patient classification system that reflects the differences in patient resource use and costs among LTCHs. Furthermore, in developing the legislative proposal for the prospective payment system, the Secretary was to consider several payment methodologies, including the feasibility of an expansion of the acute care inpatient hospital prospective payment system (diagnosis-related group (DRG) based system) established under section 1886(d) of the Act.

In the interim, section 4414 of the BBA imposed national limits (or caps) on hospital-specific target amounts (that is, annual per discharge limit) for these hospitals until cost reporting periods beginning on or after October 1, 2002. At the same time that Congress modified the payment system based on limits on target amounts, it also included in the BBA a provision to require the Secretary to develop a legislative proposal for establishing a prospective payment system for LTCHs.

With the passage of the BBRA in November 1999, in section 122, Congress refined some policies of the BBA prior to the implementation of prospective payment systems for LTCHs and psychiatric hospitals and units. Section 123 of the BBRA further requires that the Secretary develop a per discharge, DRG-based system for LTCHs and requires that this system be described in a report to the Congress by October 1, 2001, and be in place by October 1, 2002. Section 307(b)(1) of BIPA modified the BBRA's requirements for the prospective payment system for LTCHs by mandating that the Secretary ''* * * shall examine the feasibility and the impact of basing payment under such a system on the use of existing (or refined) hospital diagnosis-related groups (DRGs) that have been modified to account for different resource use of long-term care hospital patients as well as the use of the most recently available hospital discharge data.'' Furthermore, section 307(b)(1) of BIPA provided that the Secretary ''* * * shall examine and may provide for appropriate adjustments to the long-term hospital prospective payment system, including adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment * * *.'' In the event that the Secretary is unable to implement the LTCH prospective payment system by October 1, 2002, section 307(b)(2) of BIPA requires the Secretary to implement a prospective payment system using the existing hospital DRGs, modified where feasible to account for resource use by LTCHs.

In this proposed rule, we set forth the proposed Medicare prospective payment system for LTCHs as authorized under the BBRA and BIPA. Below, we discuss the development, proposed policies, and proposed implementation of the proposed LTCH prospective payment system. These discussions include the following:

- An overview of the current payment system for LTCHs.
- A discussion of the statutory requirements for developing and implementing a LTCH prospective payment system.
- A discussion of research findings on LTCHs.
- A detailed discussion of the proposed LTCH prospective payment system, including the patient classification system, relative weights, payment rates, additional payments, and the budget neutrality requirements mandated by section 123 of Public Law 106–113.
- An analysis of the estimated impact of the proposed LTCH prospective payment system on the Federal budget and LTCHs.
- Proposed changes to existing regulations and the establishment of proposed regulations in 42 CFR Chapter IV to implement the proposed LTCH prospective payment system.

A. Overview of Current Payment System for LTCHs

1. Exclusion of Certain Facilities From the Acute Care Hospital Inpatient Prospective Payment System

Although payment for operating costs of most hospital inpatient services became subject to a prospective payment system under the Social Security Amendments of 1983 (Pub. L. 98–21) which added section 1886(d) to the Act, certain types of hospitals and units were excluded from that payment system. Section 1886(d)(1)(B) of the Act lists the following classes of excluded hospitals:

- Psychiatric hospitals and units.
- Rehabilitation hospitals and units.
- LTCHs.
- Children's hospitals.

Effective with cost reporting periods beginning on or after October 1, 1989, cancer hospitals were added to this list by section 6004(a) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239).

The hospital inpatient prospective payment system is a system of average-based payments that assumes that some patient stays will consume more resources than the typical stay, while others will demand fewer resources. Therefore, an efficiently operated hospital should be able to deliver care to its Medicare patients for an overall cost that is at or below the amount paid under the hospital inpatient prospective payment system. In a report to the Congress, Hospital Prospective Payment for Medicare (1982), the Department of Health and Human Services stated that the ''467 DRGs were not designed to account for these types of treatment'' found in the four classes of excluded hospitals, and noted that ''including these hospitals will result in criticism and their application to these hospitals would be inaccurate and unfair.''

The Congress excluded these hospitals from the hospital inpatient prospective payment system because they typically treated cases that involved stays that were, on average, longer or more costly than would be predicted by the DRG system. The legislative history of the 1983 Social Security Amendments stated that the ''DRG system was developed for short-term acute care general hospitals and as currently constructed does not adequately take into account special circumstances of diagnoses requiring long stays.'' (Report of the Committee on Ways and Means, U.S. House of Representatives, to Accompany HR 1900, H.R. Rept. No. 98–25, at 141 (1983)). Therefore, these hospitals could be systemically underpaid if the same DRG system were applied to them.

Following enactment in April 1983 of the Social Security Amendments of 1983, we implemented the hospital inpatient prospective payment system on October 1, 1983, including the initial publication in the **Federal Register** of the rules and regulations for the hospital inpatient prospective payment system—the September 1, 1983 interim final rule (48 FR 39752) and the January 3, 1984 final rule (49 FR 234). Updates and modifications of the regulations have been published annually in the **Federal Register**. We also developed payment policy for hospitals that were seeking to be excluded from the hospital inpatient prospective payment system. The regulations concerning exclusion of LTCHs from the hospital inpatient prospective payment system are found in 42 CFR part 412, subpart B.

2. Requirements for LTCHs To Be Excluded From the Acute Care Hospital Inpatient Prospective Payment System

Under section 1886(d)(1)(B) of the Act, the prospective payment system for hospital inpatient operating costs set forth in section 1886(d) of the Act does not apply to several specified types of hospitals, including LTCHs defined in section 1886(d)(1)(B)(iv)(I) of the Act as ''* * * a hospital which has an average

inpatient length of stay (as determined by the Secretary) of greater than 25 days.'' Public Law 105–33 added section 1886(d)(1)(B)(iv)(II) to the Act, which also provides another definition of LTCHs, specifically, a hospital that was first excluded in 1986 which has an average inpatient length of stay (as determined by the Secretary) of greater than 20 days and has 80 percent or more of its annual Medicare inpatient discharges with a principal diagnosis of neoplastic disease in the 12-month cost reporting period ending in FY 1997.

Implementing regulations at § 405.471(c)(5) (now § 412.23(e)) require the facility to have a provider agreement with Medicare to participate as a hospital, and an average inpatient length of stay greater than 25 days as calculated under the following formula: The average length of stay is calculated by dividing the total number of inpatient days (excluding leave of absence or pass days) for all patients by the total number of discharges for the hospital's most recent complete cost reporting period. The determination of whether or not a hospital qualifies as an LTCH is based on the hospital's most recently filed cost report, or if a change in the hospital's average length of stay is indicated, by the same method for the immediately preceding 6-month period (§ 412.23(e)(3)). (Requirements for hospitals seeking classification as LTCHs that have undergone a change in ownership, as described in § 489.18, are set forth in § 412.23(e)(3)(iii).)

3. Payment System Requirements Prior to the BBA

Hospitals that are excluded from the hospital inpatient prospective payment system under section 1886(d)(1)(B) of the Act are paid for inpatient operating costs under the provisions of Public Law 97–248 (TEFRA) that are found in section 1886(b) of the Act and implemented in regulations at 42 CFR part 413. Public Law 97–248 established payments based on hospital-specific limits for inpatient operating costs. A ceiling on payments to hospitals excluded from the acute care hospital inpatient prospective payment system is determined by calculating the product of a facility's base year costs (the year on which its target reimbursement limit is based) per discharge, updated to the current year by a rate-of-increase percentage, and multiplied by the number of total current year discharges. (A detailed discussion of target amount payment limits under Public Law 97–248 can be found in the September 1, 1983 final rule published in the **Federal Register** (48 FR 39746).)

The base year for a facility varied, depending on when the facility was initially determined to be a prospective payment system-excluded provider. The base year for facilities that were established prior to the implementation of Public Law 97–248 was 1982, when Public Law 97–248 was enacted. For facilities established after implementation of Public Law 97–248 (section 1886(b) of the Act), we originally provided in the regulations for payment to these facilities for their full ''reasonable'' costs for their first 3 cost reporting years, and allowed the facilities to choose which of those years would be used in the future to determine their target limit. This ''new provider'' period was later shortened to 2 cost reporting years (§ 413.40(f)(1) (1992)), and we designated the second cost reporting year as the cost reporting year used to determine the hospital's per discharge target amount.

Excluded facilities whose costs were below their target amounts received bonus payments equal to the lesser of half of the difference between costs and the target amount, up to a maximum of 5 percent of the target amount, or the hospital's costs. For excluded facilities whose costs exceeded their target amounts, Medicare provided relief payments equal to half of the amount by which the hospital's costs exceeded the target amount up to 10 percent of the target amount. Excluded facilities that experienced a more significant increase in patient acuity could also apply for an additional amount under the regulations for Medicare exception payments (§ 413.40(d)).

4. Effect of the Current Payment System

Utilization of post-acute care services has grown rapidly in recent years since the implementation of the acute care hospital inpatient prospective payment system. Average length of stay in acute care hospitals has decreased, and patients are increasingly being discharged to post-acute care settings such as LTCHs, skilled nursing facilities (SNFs), home health agencies (HHAs), and inpatient rehabilitation facilities (IRFs) to complete their course of treatment. The increased utilization of post-acute care providers, including hospitals excluded from the prospective payment system, has resulted in the rapid growth in Medicare payments to these hospitals in recent years. In addition, there has been a significant increase in the number of LTCHs. In 1991, there were 91 LTCHs; in 1994, 155 LTCHs; in 1999, 225 LTCHs; in December 2000, 252 LTCHs; and in November 2001, 270 LTCHs. Payments to post-acute care providers were among the fastest growing providers under the Medicare program throughout the 1990s. (Prospective Payment Assessment Commission (ProPAC) June 1996 Report to Congress, p. 91.)

LTCHs have experienced faster growth in the number of facilities and Medicare program payments than any other category of prospective payment system-excluded provider. In its June 1996 Report to Congress, ProPAC found that, from 1990 to 1993, payment to rehabilitation facilities rose about 25 percent per year, while payments to LTCHs increased 33 percent annually (p. 92). ProPAC also found that, from 1991 to 1995, the number of rehabilitation facilities increased 21 percent (from 852 in 1991 to 1,029 in 1995), while the number of LTCHs increased 93 percent (from 91 in 1991 to 176 in 1995) (p. 93). Furthermore, the best available Hospital Cost Report Information System (HCRIS) data indicate $398 million in payments for inpatient operating services to 105 LTCHs in FY 1993 and $1.05 billion in payments for inpatient operating services to 206 LTCHs in FY 1998. This is more than a 96 percent increase in the number of LTCHs and a 164 percent increase in payments to LTCHs in 5 years.

In its March 1999 report to the Congress, the Medicare Payment Advisory Commission (MedPAC) (formerly ProPAC) stated that: ''[The] TEFRA system has remained in effect longer than expected partly because of difficulties in accounting for the variation in resource use across patients in exempted facilities. The unintended consequences of sustaining that system have been a steady growth in the number of prospective payment system-exempt facilities and a substantial payment inequity between older and newer facilities. In particular, the payment system encouraged new exempt facilities to maximize their costs in the base year to establish high cost limits. Once subject to its relatively high limit, a recent entrant could reduce its costs below its limit, resulting in reimbursement of its full costs plus bonus payment. By contrast, facilities that existed before they became subject to TEFRA could not influence their cost limits. Given the relatively low limits of older facilities, they are more likely to incur costs above their limits and thus receive payments less than their costs.'' (p. 72)

To address concerns regarding the historical growth in payments and the disparity in payments to existing and newly excluded hospitals and units, the BBA mandated several changes to the existing payment system. These changes

are outlined in section I.B.1. of this preamble.

5. Research and Discussion of a Prospective Payment System for LTCHs Prior to the BBA

Section 603(a)(2)(C)(ii) of Public Law 98–21 required the Secretary to include the results of research studies on whether and how excluded hospitals and units can be paid on a prospective basis, in the 1985 Report to the Congress on the Impact of Prospective Payment Methodology. HCFA (now CMS) undertook and funded a wide range of research projects that resulted in 1987 in a report to the Congress entitled ''Developing a Prospective Payment System for Excluded Hospitals.'' In that report, the Secretary presented an examination of the then current state of the four classes of excluded hospitals and units and offered recommendations for the development of a prospective payment system. ''Long-term'' or ''chronic disease'' hospitals, the report noted, ''are the least understood of the excluded hospital types'' (p. 3–51).

The following information was clear—there were a relatively small number of facilities (94 at that time); LTCHs were not dispersed throughout the country and, therefore, potential long-term care patients were receiving necessary care elsewhere; LTCHs, as defined by the greater than 25-day average length of stay, constituted a diverse set that closely resembled other hospitals, both included (acute care) and excluded (psychiatric, rehabilitation, and children's) under the prospective payment system (pp. 3–51 through 3–63). The Report concluded with the following discussion: ''Because this class of hospitals treats a very heterogeneous patient population and does not share a common set of facility characteristics, the development of a separate classification system for prospective payment purposes would appear to be both infeasible and undesirable. At the same time, as part of HCFA's [now CMS's] impact analysis, we were investigating the feasibility of including LTCHs under the current prospective payment system, where their cases would be expected to be paid predominantly under the prospective payment system outlier policy.'' (pp. 3–63 through 3–64)

The 1987 report further noted that present and future research on LTCHs would focus on acquiring a broader understanding of LTCHs, long-term care patients, and other treatment settings and on the preliminary financial impact of a prospective payment system on both LTCHs and the Medicare system. An initial inquiry was also planned ''into the role of those hospitals as a component of the continuum of care between acute care hospitals and skilled nursing facilities, as a general first step in developing a classification system for patients in these facilities. * * *'' (p. 3–54)

ProPAC's March 1996 Report to Congress endorsed the concept of prospective payment systems for all post-acute services, emphasizing consistent payment methods across all classes of facilities in order to encourage provider efficiency (p. 75). ProPAC's extensive analysis of ''patients using post-acute care providers and in these providers' treatment patterns'' based on FY 1994 data discussed in the June 1996 Report to Congress, concluded that ''[a]lthough there was significant overlap in the hospital assigned DRGs across settings, other patient characteristics, such as medical complexity or functional status, may influence which patients use a particular site.'' (p. 110)

In ProPAC's March 1, 1997 report, ProPAC's Recommendation 33, entitled ''Coordinating Post-Acute Care Provider Payment Methods'' stated that ''the Commission urges the Congress and the Secretary to consider the overlap in services and beneficiaries across post-acute care providers as they modify Medicare payment policies.'' (p. 60)

The passage of Public Law 105–33 (the BBA) provided for the establishment of separate and distinct prospective payment systems for post-acute care providers: SNFs (section 4432(a)), IRFs (section 4421), and HHAs (section 4603(b)). In addition, Congress directed the Secretary to develop a legislative proposal to pay LTCHs prospectively as well (section 4422).

B. Requirements of the BBA, BBRA, and BIPA for LTCHs

1. Provisions of the Current Payment System

a. BBA. The BBA amendments to section 1886(b) of the Act significantly altered the payment provisions for excluded hospitals and units and also added other qualifying criteria for certain hospitals excluded from the hospital inpatient prospective payment system (sections 4411, 4412, 4413, 4414, 4415, 4416, 4417, 4418, and 4419). Provisions of these amendments that related to the current payment system were explained in detail and implemented in our final rule published in the **Federal Register** on August 29, 1997 (62 FR 45966).

Section 4411 of the BBA amended section 1886(b)(3)(B) of the Act and restricted the rate-of-increase percentages that are applied to each provider's target amount so that excluded hospitals and units experiencing lower inpatient operating costs relative to their target amounts receive lower rates of increase.

Section 4412 amended section 1886(g) of the Act to establish a 15-percent reduction in capital payments for excluded psychiatric and rehabilitation hospitals and units and LTCHs, for portions of cost reporting periods occurring during the period of October 1, 1997, through September 30, 2002.

Section 4413(b) of Public Law 105–33 amended section 1886(b)(3) of the Act to permit certain LTCHs to elect a rebasing of the target amount for the 12-month cost reporting period beginning during FY 1996.

Section 4414 of the BBA amended section 1886(b)(3) of the Act to establish caps on the target amounts for excluded hospitals and units at the 75th percentile of target amounts for similar facilities for cost reporting periods beginning on or after October 1, 1997, through September 30, 2002. These caps on the target amounts apply only to psychiatric and rehabilitation hospitals and units and LTCHs. Payments for these excluded hospitals and units are based on the lesser of a provider's cost per discharge or its hospital-specific cost per discharge, subject to this cap.

Section 4415 of the BBA amended section 1886(b)(1) of the Act by revising the percentage factors used to determine the amount of bonus and relief payments, and establishing continuous improvement bonus payments for cost reporting periods beginning on or after October 1, 1997 for hospitals and units excluded from the prospective payment system that meet specified criteria. If a hospital is eligible for the continuous improvement bonus, the bonus payment is equal to the lesser of: (1) 50 percent of the amount by which operating cost are less than expected costs; or (2) 1 percent of the target amount.

Sections 4416 and 4419 of the BBA amended section 1886(b) of the Act to establish a new framework for payments for new excluded providers. Section 4416 added a new section 1886(b)(7) to the Act that established a new statutory methodology for new psychiatric and rehabilitation hospitals and units and LTCHs. Prior to this change, new hospitals excluded from the acute care hospital inpatient prospective payment system were exempted from the target amount per discharge ceiling until the end of the first cost reporting period ending at least 2 years after they accepted their first patient. This new provider ''exemption'' was eliminated from all classes of excluded providers

except children's hospitals for cost reporting periods beginning on or after October 1, 1997, by section 4419(a) of the BBA. Under section 4416, payment to these new excluded providers for their first two cost reporting periods is limited to the lesser of the operating costs per case, or 110 percent of the national median of target amounts, as adjusted for differences in wage levels, for the same class of hospital for cost reporting periods ending during FY 1996, updated to the applicable period.

It is important to note that prior to enactment of the BBA, the payment provisions for excluded hospitals and units applied consistently to all classes of excluded providers (that is, psychiatric, rehabilitation, long-term care, children's, and cancer). However, effective for cost reporting periods beginning on or after October 1, 1997, there are specific payment provisions for certain classes of excluded providers, as well as modifications for all excluded providers.

b. BBRA. With the enactment of the BBRA of 1999, Congress refined some of the policies mandated by the BBA for hospitals excluded from the acute care hospital inpatient prospective payment system. The provisions of the BBRA, which amended section 1886(b)(3)(H) of the Act relating to the current payment system for excluded hospitals, were explained in detail and implemented in our interim final rule published in the **Federal Register** on August 1, 2000 (65 FR 47026) and in our final rule also published on August 1, 2000 (65 FR 47054).

Section 4414 of the BBA had provided for caps on target amounts for excluded hospitals and units for cost reporting periods beginning on or after October 1, 1997. Section 121 of the BBRA amended section 1886(b)(3)(H) of the Act to provide for an appropriate wage adjustment to these caps on the target amounts for existing psychiatric and rehabilitation hospitals and units and LTCHs, effective for cost reporting periods beginning on or after October 1, 1999 through September 30, 2002.

Section 122 of BBRA provided for an increase in the continuous improvement bonus for eligible LTCHs and psychiatric hospitals and units for cost reporting periods beginning on or after October 1, 2000 and before September 30, 2002.

c. BIPA. Two provisions of BIPA that amended section 1886(b)(3) of the Act were directed at LTCHs. Section 307(a) of BIPA provided for a 2-percent increase to the wage-adjusted 75th percentile cap on the target amount for existing LTCHs, effective for cost reporting periods beginning during FY 2001. Section 307(a) also provided a 25-percent increase to the hospital-specific target amounts for existing LTCHs for cost reporting periods beginning in FY 2001, subject to the wage-adjusted national cap.

2. Provisions for a LTCH Prospective Payment System

a. BBA. In section 4422 of the BBA, the Congress mandated that the Secretary develop a legislative proposal for a case-mix adjusted prospective payment system under the Medicare program, for submission by October 1999 based on consideration of several payment methodologies, including the feasibility of expanding the current DRGs and the prospective payment system currently in place for acute care hospitals.

b. BBRA. Section 123 of the BBRA specifically requires that the prospective payment system for LTCHs be designed as a per discharge system with a DRG-based patient classification system that reflects the differences in patient resources and costs in LTCHs while maintaining budget neutrality. Section 123 also requires that a report be submitted to the Congress describing the system design of the mandated LTCH prospective payment system no later than October 1, 2001, and that the system be implemented for cost reporting periods beginning on or after October 1, 2002.

c. BIPA. The BIPA reiterated the dates of implementation of the LTCH prospective payment system set forth in the BBRA. This statute also directs the Secretary to examine the following specific payment adjustments: adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment. Furthermore, if the Secretary is unable to implement the prospective payment system by October 1, 2002, the BIPA mandates that a default LTCH prospective payment system be implemented, based on existing DRGs, modified where feasible to account for the specific resource use of long-term care patients.

C. Research Supporting the Establishment of the LTCH Prospective Payment System: Legislative Requirements

Section 4422 of the BBA required us to formulate a legislative proposal on the development of a prospective payment system for LTCHs for submission to the Congress by October 1, 1999. To prepare for this proposal, we awarded a contract to The Urban Institute (Urban) following the enactment of the BBA for a multifaceted analysis of LTCHs, including a description of facilities and patients, as well as exploration of a variety of classification and payment system options.

In section 123(a) of the BBRA, Congress mandated a per-discharge, DRG-based model for the prospective payment system for LTCHs. Our basic objective remained unchanged—to arrive at a clearer understanding of the universe of LTCHs in relation to facility characteristics; beneficiary utilization; and beneficiary characteristics such as diagnoses, treatment, and discharge patterns.

Under the terms of our original contract with Urban, 3M Health Information Systems (3M) was subcontracted to provide an analysis and assessment of alternative classification systems for use in LTCHs in keeping with variables such as treatment patterns, patient demographics, and diagnoses and procedure codes for patients at LTCHs and acute care hospitals.

After the enactment of section 123 of the BBRA, we instructed 3M to limit its analyses to several DRG-driven classification systems, using the database constructed by Urban describing LTCHs, patients at LTCHs, and patients with the same diagnoses as LTCH patients treated in other facilities. We also contracted with 3M to develop and analyze the data necessary for us to design and develop the proposed Medicare LTCH prospective payment system based on DRGs.

D. Description of Sources of Research Data

The records for all Medicare hospital inpatient discharges (including discharges for LTCHs) are contained in the Medicare provider analysis and review file (MedPAR), which includes patient demographics (age, gender, race, and residence zip code), clinical characteristics (diagnoses and procedures), and hospitalization characteristics. (Beneficiary data were encrypted to prevent the identification of specific Medicare beneficiaries.) The Medicare cost report data constitute the HCRIS, and includes information on facility characteristics, utilization data, and cost and charge data by cost center.

The description of the universe of LTCHs in section I.E. of this proposed rule is based on calendar year (CY) 1997 MedPAR, the HCRIS file containing the best available cost data for cost reporting periods that began during FYs 1996 and 1997, and 1997 data from the Online Survey Certification and Reporting System (OSCAR).

The 1997 OSCAR data provided information from the State survey and certification process to identify and characterize providers that participate in Medicare and Medicaid and includes a list of all hospitals that were designated as LTCHs by Medicare. OSCAR data included the number of employees of various types and the number of different types of beds and care units, as well as variables on certification date, type of control, geographic region, and hospital size.

E. The Universe of LTCHs

1. Background Issues

LTCHs typically furnish extended medical and rehabilitative care for patients who are clinically complex and have multiple acute or chronic conditions. Generally, Medicare patients in LTCHs have been transferred from acute care hospitals and receive a range of ''post-acute care'' services at LTCHs, including comprehensive rehabilitation, cancer treatment, head trauma treatment, and pain management. (MedPAC March 1999 Report to Congress, p. 95.) A LTCH must be certified as an acute care hospital that meets criteria set forth in section 1861(e) of the Act in order to participate as a hospital in the Medicare program. Generally, under Medicare, hospitals are paid as LTCHs if they have an inpatient average length of stay greater than 25 days.

LTCHs are a heterogeneous group of facilities ranging from old tuberculosis and chronic disease hospitals to newer facilities designed primarily to care for ventilator-dependent patients. They are unevenly distributed across the United States, with one-third (72 of 203 in 1997) located in Massachusetts, Texas, and Louisiana. As of 1997, 203 facilities were determined by Medicare to be LTCHs; by early 2000, 239 facilities were determined by Medicare to be LTCHs; and as of November 2001, OSCAR had data on 270 LTCHs.

LTCHs constitute a relatively small provider group in the Medicare program and have not been widely studied. Only limited information has been published about their characteristics in terms of types of patients served and resources used. As stated earlier in section I.C. of this preamble, the primary goal of the initial research contract with Urban was to increase our knowledge about LTCHs and their patients. In addition to describing the providers and patients, the study was expected to provide insight into the ways in which LTCHs differ from other Medicare post-acute care providers. In the following summary and tables, we provide a description of Urban's findings that formed the basis for the design of the proposed prospective payment system for LTCHs presented in this proposed rule.

2. General Medicare Policies

Inpatient stays at LTCHs are covered under the Part A hospital benefit and include room and board, medical and nursing services, laboratory tests, X-rays, pharmaceuticals, supplies, and other diagnostic or therapeutic services (§§ 409.10 and 412.50). LTCHs can offer specialized services (for example, physical rehabilitation or ventilator-dependent care) or can provide more generalized services (for example, chronic disease care).

Hospital services are covered for up to 90 days during a Medicare-defined ''benefit period,'' which is a period that begins with admission as an inpatient to an acute care or other hospital and ends when the beneficiary has spent 60 consecutive days outside of an inpatient facility (§ 409.60). There are 60 additional covered lifetime reserve days that may be used over a beneficiary's lifetime. One inpatient deductible payment ($792 in 2002) is required for each benefit period, so a beneficiary generally does not have to make a new deductible payment for a LTCH stay unless the LTCH stay is not preceded by another hospital stay. A patient with a long LTCH stay, however, is subject to a coinsurance payment ($198 in 2002) for days 61 through 90 of hospital use during a benefit period. For the lifetime reserve days, the Medicare beneficiary is subject to a daily coinsurance amount ($396 in 2002) (§ 409.61). LTCHs must meet State licensure requirements for acute care hospitals and must have a provider agreement with Medicare in order to receive Medicare payment. Intermediaries verify that LTCHs meet the required average length of stay of greater than 25 days.

3. Exclusion From the Acute Care Hospital Inpatient Prospective Payment System

As discussed more fully in section I.A.2 of this preamble, LTCHs were excluded from the FY 1984 implementation of the acute care hospital inpatient prospective payment system and continued to be paid based on their cost per discharge, subject to per discharge limits.

4. Geographic Distribution

Overall, 203 LTCHs filed Medicare claims in 1997. This number translates into an average of approximately one facility per 200,000 Medicare enrollees. As can be seen in Table 1, LTCHs are not distributed across all States in proportion to the number of Medicare enrollees in those States. They are unevenly distributed across the United States, with one-third (72 of 203) located in Massachusetts, Texas, and Louisiana. These three States together account for 36 percent of the LTCHs, but only fewer than 10 percent of Medicare enrollees. Furthermore, 13 small States have no LTCHs, although they account for approximately 7 percent of Medicare enrollees. In contrast, the three largest Medicare States (California, Florida, and New York) account for 24.1 percent of Medicare enrollees together, but only 13.8 percent of LTCHs.

TABLE 1.—PERCENTAGE DISTRIBUTION OF NUMBER OF LONG-TERM CARE HOSPITALS (LTCHS), MEDICARE ENROLLEES, AND CERTIFIED BEDS, BY STATE, 1997

State	Number of LTCHs	Percent of LTCHs	Number of medicare enrollees	Percent of medicare enrollees	Number of certified beds	Percent of certified beds
Alabama	1	0.5	696,586	1.8	191	1.0
Alaska	0	0.0	38,570	0.1	0	0.0
Arizona	4	2.0	667,226	1.7	187	1.0
Arkansas	0	0.0	453,195	1.1	0	0.0
California	12	5.9	3,920,674	9.9	1,304	7.1
Colorado	4	2.0	464,299	1.2	277	1.5
Connecticut	4	2.0	531,805	1.3	716	3.9
Delaware	0	0.0	111,171	0.3	0	0.0
District of Columbia	1	0.5	80,028	0.2	23	0.1
Florida	11	5.4	2,853,420	7.2	805	4.4

TABLE 1.—PERCENTAGE DISTRIBUTION OF NUMBER OF LONG-TERM CARE HOSPITALS (LTCHS), MEDICARE ENROLLEES, AND CERTIFIED BEDS, BY STATE, 1997—Continued

State	Number of LTCHs	Percent of LTCHs	Number of medicare enrollees	Percent of medicare enrollees	Number of certified beds	Percent of certified beds
Georgia	6	3.0	915,577	2.3	557	3.0
Hawaii	1	0.5	163,217	0.4	13	0.1
Idaho	0	0.0	163,303	0.4	0	0.0
Illinois	5	2.5	1,701,123	4.3	703	3.8
Indiana	11	5.4	877,656	2.2	434	2.4
Iowa	0	0.0	498,288	1.3	0	0.0
Kansas	3	1.5	406,752	1.0	74	0.4
Kentucky	1	0.5	633,802	1.6	337	1.8
Louisiana	19	9.4	622,805	1.6	1,288	7.0
Maine	0	0.0	218,265	0.6	0	0.0
Maryland	4	2.0	651,710	1.7	465	2.5
Massachusetts	17	8.4	991,641	2.5	3,077	16.8
Michigan	3	1.5	1,435,420	3.6	280	1.5
Minnesota	2	1.0	669,708	1.7	313	1.7
Mississippi	2	1.0	428,729	1.1	65	0.4
Missouri	3	1.5	888,959	2.3	317	1.7
Montana	0	0.0	139,392	0.4	0	0.0
Nebraska	1	0.5	263,287	0.7	25	0.1
Nevada	3	1.5	225,152	0.6	106	0.6
New Hampshire	0	0.0	170,031	0.4	0	0.0
New Jersey	3	1.5	1,239,890	3.1	212	1.2
New Mexico	2	1.0	231,517	0.6	86	0.5
New York	5	2.5	2,780,994	7.0	1,262	6.9
North Carolina	1	0.5	1,129,329	2.9	59	0.3
North Dakota	0	0.0	107,628	0.3	0	0.0
Ohio	7	3.4	1,766,266	4.5	653	3.6
Oklahoma	8	3.9	523,358	1.3	294	1.6
Oregon	0	0.0	500,035	1.3	0	0.0
Pennsylvania	6	3.0	2,183,850	5.5	412	2.3
Rhode Island	1	0.5	177,247	0.4	700	3.8
South Carolina	2	1.0	562,732	1.4	0	0.0
South Dakota	0	0.0	123,401	0.3	211	1.2
Tennessee	6	3.0	838,357	2.1	210	1.1
Texas	36	17.7	2,275,673	5.8	1,818	9.9
Utah	1	0.5	204,525	0.5	39	0.2
Vermont	0	0.0	89,821	0.2	0	0.0
Virginia	3	1.5	893,602	2.3	664	3.6
Washington	2	1.0	742,589	1.9	97	0.5
West Virginia	0	0.0	349,684	0.9	0	0.0
Wisconsin	1	0.5	806,951	2.0	34	0.2
Wyoming	1	0.5	65,699	0.2	3	0.0
Total	195	100.00	36,322,068	100.00	18,311	100.00

Source: 1997 Online Survey and Certification Reporting System (OSCAR).

Although the distribution of certified beds generally tracks the distribution of LTCHs across States, there is not always a direct relationship between the number of LTCHs and the bed capacity in a given State. For instance, Massachusetts has only 8.4 percent of LTCHs, but 16.8 percent of Medicare-certified beds. In contrast, Texas has 17.7 percent of LTCHs, but only 9.9 percent of the certified beds.

5. Characteristics by Date of Medicare Participation

The OSCAR program provided data captured by the State survey and certification process that can be used to identify and characterize providers participating in Medicare and Medicaid. The following analyses were based on LTCHs for which data were available. Eight facilities, which account for only 1 percent of all LTCH stays and 1.3 percent of certified beds, were excluded from the analysis since 1997 OSCAR records were not available for these facilities.

Given the known payment variations for old and new facilities that were excluded facilities paid under the target amount methodology, we divided the LTCHs by age (the date of the LTCH's first Medicare participation, as reported by OSCAR) to gain a sense of the variation among the existing LTCHs in 1997. A strong correlation is found between the age of a LTCH and other key characteristics, such as location and ownership control, as well as operating costs and Medicare payments. For analytical purposes, therefore, the total sample of LTCHs was stratified based on age (''old,'' ''middle,'' or ''new''). Of the 195 LTCHs in OSCAR in 1997, 20 percent were in existence before the hospital inpatient prospective payment system and hospital inpatient prospective payment system exclusions went into effect in October 1983 (old LTCHs); 30 percent were determined to be LTCHs between October 1983 and September 1993 (middle LTCHs); and 50 percent were determined to be LTCHs between October 1993 and September 1997 (new LTCHs). This pattern is consistent with reports of the large growth in the number of LTCHs in recent years. (As of November 2001, OSCAR had data on 270 LTCHs, which indicate that the growth has continued.)

Old LTCHs are generally located in the northeast region of the United States, while newer LTCHs are typically located in the southern region. Most notably, the ownership of the LTCHs that began Medicare participation before and after the implementation of the acute care hospital inpatient prospective payment system is quite different. Old LTCHs are either government controlled (about 63 percent) or nonprofit (about 37 percent). In contrast, one-half of the LTCHs that began participation in Medicare between 1983 and 1993, and two-thirds of those that began participation in Medicare in FY 1994 or later, are proprietary facilities. Virtually no new LTCHs are government controlled.

6. Hospitals-Within-Hospitals and Satellite Facilities

The Medicare statute does not contemplate the recognition of ''LTCH units'' of prospective payment system acute care hospitals; the statute does reference rehabilitation and psychiatric units. Long-term care units of prospective payment system hospitals are not allowed in part because of the concern that transfers of acute care patients into the LTCH units could inappropriately maximize prospective payments under the hospital inpatient prospective payment system. The presence of a long-term care ''unit'', excluded from the hospital inpatient prospective payment system and co-located in an acute care hospital, could enable the acute care hospital to shift patients to the long-term care ''unit'' without completing the full course of treatment. These patient transfers could result in inappropriate payments under Medicare since the acute care hospital would make money in those cases where it received a full DRG payment without providing the full course of treatment to the beneficiary and could avoid losing any money for other more costly patients by prematurely discharging them to the LTCH. Since payments to hospitals under the hospital inpatient prospective payment system were based on hospital costs that included the costs of patients with longer lengths of stay, such a patient shift would result in an ''overpayment'' to the acute care hospital and the LTCH would receive an additional payment for that same patient.

Nonetheless, in the mid-1990s, of the roughly 150 LTCHs in existence at the time, about 12 recently established LTCHs were, in fact, LTCHs located in the buildings or on the campuses of acute care hospitals. In order to prevent the gaming of the Medicare system that would result from inappropriate transfers between the inpatient acute care hospital and the LTCH located within the acute care hospital, we have implemented additional qualifying criteria at § 412.22(e) for these entities. These criteria require that in order to be excluded from the prospective payment system, a hospital located in or on the campus of an acute care hospital (referred to as a ''hospital-within-a-hospital'') must have a separate governing body, chief executive officer, chief medical officer, and medical staff. In addition, the hospital must perform basic functions independently from the host hospital, incur no more than 15 percent of its total inpatient operating costs for items and services supplied by the hospital in which it is located, and have an inpatient load of which at least 75 percent of patients are admitted from sources other than the host hospital. Originally, these regulations were effective as of October 1994. However, section 4417(a) of the BBA amended section 1886(d)(1)(B) of the Act to provide that a hospital that was excluded from the prospective payment system on or before September 30, 1995, as an LTCH, shall continue to be so classified, notwithstanding that it is located in the same building or in one or more buildings located on the same campus as another hospital. (See § 412.22(f).)

In the late 1990s, we became aware of a newly developing entity that was physically similar, but legally unrelated, to a hospital-within-a-hospital. These entities were hospital-within-hospital type facilities (in the buildings or on the campuses of acute care hospitals) owned by a separate existing LTCH. We identified these facilities as ''long-term care hospital satellites.''

In the July 30, 1999 **Federal Register** (64 FR 41540), we revised § 412.22(h) to require that in order to be excluded from the hospital inpatient prospective payment system, a satellite of a hospital: (1) Must maintain admission and discharge records that are separately identified from those of the hospital in which it is located; (2) cannot commingle beds with beds of the hospital in which it is located; (3) must be serviced by the same fiscal intermediary as the hospital of which it is a part; (4) Must be treated as a separate cost center of the hospital of which it is a part; (5) for cost reporting purposes, must use an accounting system that properly allocates costs and maintains adequate data to support the basis of allocation; and (6) must report costs in the cost report of the hospital of which it is a part, covering the same fiscal period and using the same method of apportionment as that hospital. In addition, the satellite facility must independently comply with the qualifying criteria for exclusion from the hospital inpatient prospective payment system. The total number of State-licensed and Medicare-certified beds (including those of the satellite facility) for a hospital that was excluded from the prospective payment system for the most recent cost reporting period beginning before October 1, 1997, may not exceed the hospital's number of beds on the last day of that cost reporting period.

7. Specialty Groups of LTCHs by Patient Mix

There is a widely held view that the population of LTCHs is heterogeneous. We believe that understanding the composition of this population and identifying and classifying subgroups within it are fundamental to designing a prospective payment system for LTCHs.

Broad categories of conditions as defined by major diagnostic categories (MDCs), the principal diagnostic categorization tool used under the hospital inpatient prospective payment system, were used to classify LTCHs according to the medical conditions of their patient caseloads. (MDCs were formed by dividing all possible principal diagnoses into 25 mutually exclusive categories. Most MDCs correspond to a major organ system, though a few correspond to etiology.)

We also explored the possibility of grouping patients by DRGs or by selected individual diagnoses. These attempts resulted in creating groups too small for any effective characterization. However, the analysis did reveal that while some LTCHs treat a wide range of conditions, others specialize in one or two types of conditions. In order to analyze a grouping based on patient mix, under its contract with us, Urban first examined the proportion of facilities' caseloads in specific MDCs. There are five MDCs in which at least one LTCH has a majority (that is, more than 50 percent) of its cases. Patients with respiratory system problems are the most common caseload concentration—in 1997, 13 percent of LTCHs have a caseload concentration of 50 percent to 75 percent, and another 7 percent of LTCHs have more than 75 percent of their cases in this MDC.

The other three MDCs that make up a majority of at least one LTCH's patient caseload (nervous system MDC, musculoskeletal and connective tissue disorders MDC, and factors influencing health status MDC) are all related to rehabilitation needs. (Because rehabilitation-related DRGs are common

to LTCHs and fall into the ''Factors Influencing Status'' MDC, we are proposing to classify all cases in this MDC as rehabilitation services for the purpose of this analysis.) Seven percent of LTCHs have a majority of their caseload in an MDC related to rehabilitation-related services. A significantly less common concentration is seen in the 2 percent of LTCHs that have a majority of their patients in the mental diseases and disorders MDC. All but two LTCHs in our analysis have some share of patients with respiratory system problems. Similarly, all but five LTCHs have some patients with circulatory problems.

Based on these findings, we developed a grouping that consists of four broad categories of LTCHs based on patient caseload. Facilities with greater than 50 percent of their cases in the respiratory MDC were assigned to a ''respiratory specialty'' group for the purpose of this analysis. Similarly, all facilities with over 50 percent of their caseload in the mental MDC were designated as ''mental specialty'' facilities. The three rehabilitation-related MDCs were combined into one ''rehabilitation-related MDC'' category and grouped into a ''rehabilitation specialty'' group. All remaining facilities (that did not have high concentrations of patients in the respiratory MDC, the mental MDC, or the rehabilitation-related MDCs category) were placed into a ''multispecialty'' facility group. LTCHs in this category provide care to a wider range of patient types than LTCHs in the first three categories.

To better understand the relatively large number of multispecialty LTCHs, we explored their MDC composition. Not unexpectedly, most of these facilities have high proportions of cases in the respiratory MDC and the rehabilitation-related MDCs category, although some LTCHs do not serve either of these populations in great numbers. Few LTCHs do not have a significant share of their caseload in either the respiratory MDC or the rehabilitation-related MDCs category. Only 2 percent of multispecialty LTCHs have less than 25 percent of their caseload in either specialty group. Similarly, only 7 percent of multispecialty facilities have less than 35 percent of their caseload in either of the two groups. In contrast, about 60 percent of LTCHs have at least half of their caseload in either the respiratory MDC or the rehabilitation-related MDCs category. This high share demonstrates that, despite their assignment to the multispecialty category, most LTCHs serve a high percentage of patients with respiratory or rehabilitation problems, or both.

Although respiratory and rehabilitation specialty facilities are prevalent in the LTCH population, there are also some ''niche'' LTCHs that have unique patient populations or provide uncommon services. These hospitals include, for example, a large hospital where most admitted individuals (90 percent) die in the facility.

Several LTCHs provide services for special populations. One facility provides services for a prison population. A large share of this facility's funding is through Medicaid; cost report data show Medicaid covers two-thirds of its patient stays.

Some other facilities work with similarly specialized populations and have very small Medicare caseloads. In particular, two facilities that focus on developmentally disabled children and younger adults had fewer than 10 Medicare stays in 1997. Cost reports show that one of these facilities, which provides rehabilitation for its Medicare patients, has few discharges (under 100) regardless of payer source. The other, which provides mostly psychiatric services, relies on public funding for only a small share of its discharge payments.

Although there are a few niche facilities in the LTCH population, our analysis indicates that a preponderance of the LTCHs can be classified in distinct specialty groups that focus on adult rehabilitation and respiratory system care.

8. Sources and Destinations of LTCH Patients

Another useful perspective on LTCHs is the pattern of sources from which patients are admitted to LTCHs and destinations to which LTCH patients are discharged. This information shows how such transition patterns differ among the specialty groups. In general, the findings are consistent with the notion that LTCHs as a group are heterogeneous in terms of the patients they serve.

The vast majority (70 percent) of LTCH patients are admitted from acute care hospitals. Within this group, acute care patients whose stays are designated as ''outlier'' stays, as defined by section 1886(d)(5)(A)(i) of the Act and implemented in § 412.80, were identified separately. Sixteen percent of LTCH admissions were acute care hospital outlier patients, while 54 percent were admitted from acute care hospitals but did not have extraordinarily long acute care stays. After acute care hospitals, direct admission from the community is the next most common source of admissions (14 percent) to LTCHs.

The admission patterns vary somewhat by LTCH specialty type. Notably, 85 percent of admissions to respiratory specialty LTCHs are from acute care hospitals, including 22 percent that are acute care hospital outlier cases. A very small percentage (7 percent) of admissions to respiratory specialty LTCHs are from the community. In contrast, the admission sources for the rehabilitation specialty LTCHs are more similar to that of the multispecialty LTCHs. Notably, a higher than average share of patients come from SNFs (8 percent) and HHAs (6 percent) and a lower percentage of patients transition from acute care hospital outlier stays (12 percent). A relatively large share (11 percent) of patients at rehabilitation specialty LTCHs are admitted directly from the community compared to patients at respiratory specialty LTCHs (7 percent). These findings suggest that patients admitted to rehabilitation specialty LTCHs might present a less medically intensive clinical picture than patients admitted to respiratory specialty LTCHs.

The admission pattern of patients admitted to the mental specialty LTCHs is quite different from those of the other specialties. A relatively small percentage (31 percent) of patients are admitted from acute care hospitals and only 2 percent are admitted after being acute care hospital outliers. In contrast, large proportions are admitted directly from the community (40 percent) or from some other type of Medicare provider (27 percent).

An analysis of the pattern of discharge destinations for LTCHs shows that, overall, 38 percent of LTCH stays are discharged to the community without additional Medicare services. Equal percentages (18 percent) are discharged to SNFs and acute care hospitals, and 21 percent of patients are discharged to HHAs.

Some variations in discharge destination patterns exist among LTCHs by specialty. Relative to the overall sample, the respiratory specialty LTCHs have higher than average percentages of patients discharged to SNFs (24 percent versus 18 percent), and lower percentages discharged to HHAs (14 percent versus 21 percent). Rehabilitation specialty facilities, however, have a relatively high proportion of cases (34 percent) discharged to HHAs, and a lower than average proportion discharged to the community without additional Medicare services (28 percent versus 38 percent). Finally, mental specialty hospitals have an unusually high

percent of cases (71 percent) discharged to the community without additional Medicare services. These findings suggest that patients served by respiratory specialty LTCHs are more likely to require extended care in institutional settings (for example, SNFs), while patients discharged from rehabilitation specialty facilities also require extended care, but not necessarily in institutional settings.

9. LTCHs and Patterns Among Post-Acute Care Facilities

Urban's research also produced data regarding a comparison of LTCHs with other post-acute care settings in order to provide us with the broadest possible understanding of the universe of LTCHs. The findings were only preliminary comparisons of patients among and across post-acute settings because of the nature of each category of post-acute care providers. Even though data suggest substantial clinical differences among the providers with some areas of overlap, because of some similarities we found it useful to draw parallels and distinctions among post-acute care providers. Moreover, findings from this research supported conclusions published in several reports to the Congress produced by ProPAC and MedPAC over the past decade.

Most patients in LTCHs have several diagnosis codes on their Medicare claims, indicating that they have multiple comorbidities and are probably less stable upon admission than patients admitted to other post-acute care settings. Relative to IRFs, LTCHs have a higher proportion of patient costs attributable to ancillary services (for example, pharmacy, laboratory, and radiology charges) (MedPAC March 1999 Report to Congress, p. 95). LTCHs also provide care to a disproportionately large number of Medicare beneficiaries who are eligible because of disability. While individuals with disabilities make up about 10 percent of the Medicare population, they make up 17 percent of LTCH patients.

Urban's analysis also explored the demographic characteristics of LTCH patients compared to IRF patients. The proportion of LTCH patients who are under 65 years of age (18 percent) is twice that of IRF patients (9 percent). The share of LTCH patients over 85 years old is slightly higher (18 percent) compared to IRF patients (14 percent). LTCHs also have a higher proportion of male patients and a lower proportion of white patients than IRFs. LTCHs have long median lengths of stay: 21 days versus 16 days for IRFs. About one-third of the LTCH Medicare stays are by beneficiaries who are also eligible for Medicaid, compared to fewer Medicaid-eligible beneficiary stays at IRFs (17 percent). It has been widely documented that dually eligible beneficiaries are generally much sicker than non-Medicaid eligible Medicare beneficiaries.

Urban's analysis also included a description of the demographic characteristics of LTCH patient stays by admission sources—outlier acute care hospital, nonoutlier acute care hospital, and other. Those with prior outlier acute care hospital stays seem to be the most distinctive group in terms of length of stay, gender, race, and poverty: they have the highest mean and median length of stay in the LTCH, the highest proportion male, the highest proportion white, and the lowest proportion of Medicaid-eligible patients. However, in terms of age, those with prior hospital stays (whether outlier or nonoutlier) are quite different from those with other admission sources. Those without a prior acute care hospital stay are younger and about twice as many are under age 65, whose mean age is about 5 and 3 years lower than those with a prior outlier stay and those with a prior nonoutlier stay, respectively. Among those with an acute care hospital stay, the nonoutliers are slightly older on average, with higher percentages in the oldest groups (75 to 84 and 85 plus) and the highest median age of all three groups.

The policies that we are proposing in this proposed rule were determined in part based on analysis of the above data and information gathered on LTCHs and their Medicare patients.

F. Overview of System Analysis for the Proposed LTCH Prospective Payment System

For the systems analysis, 3M used the MedPAR (FY 1999 through FY 2000), OSCAR (FY 2000), and HCRIS (FYs 1998 and early 1999) files. Specifically, for this proposed rule, 3M performed the following tasks:

- Construction of an updated data file, using the most recent data available from CMS.
- Analysis of issues, factors, or variables and presentation of options for possible use in the design and implementation of the proposed prospective payment system.
- Data simulation of various system features to analyze their impact on the design of the proposed prospective payment system.

A data file was constructed to serve as the basis of our proposed patient classification system and the development of proposed payment weight rates and proposed payment adjustments. The analysis of this data file helped us regarding the structure of the proposed prospective payment system in this proposed rule. We relied upon patient charge data from FY 2000 MedPAR for setting proposed LTC-DRG weights and upon costs data from FY 1998 and FY 1999 cost reports for proposed payment rates. We expect that the availability of updated FY 2000 MedPAR data and updated FY 1999 HCRIS data, further analysis of the data file, and review of the comments that we receive in response to this proposed rule may result in refinements to our proposed policies, particularly in the areas of weights and rates.

G. Evaluation of DRG-Based Patient Classification Systems

Section 307(b) of Public Law 106–554 modified the requirements of section 123 of Public Law 106–113 by specifically requiring that the Secretary examine ''the feasibility and the impact of basing payment under such a system [the LTCH prospective payment system] on the use of existing (or refined) hospital diagnosis-related groups (DRGs) that have been modified to account for different resource use of long-term care hospital patients as well as the use of the most recently available hospital discharge data.''

In order to comply with statutory mandates, our evaluation of DRG-based patient classification systems focused on two models—the LTC-all patient-refined DRGs (LTC–APR–DRGs Version, 1.0), a severity-based case-mix classification system developed specifically for LTCHs; and the LTC–CMS–DRGs, a modification of the DRG system used in the acute care hospital inpatient prospective payment system.

The LTC–APR–DRGs, a condensed version of 3M's all-patient refined DRGs (APR–DRGs) for acute care hospitals, was developed by Dr. Norbert Goldfield, Clinical Director of 3M Health Information Systems for exclusive use in LTCHs. The LTC–APR–DRG system was designed to reflect the clinical characteristics of LTCH patients. This case-mix classification model contains 26 base LTC–APR–DRGs, subdivided by 4 severity of illness levels to yield 104 classification levels. In this system, the patient's secondary diagnoses, their interaction, and their clinical impact on the primary diagnosis determine the severity level assigned to each of the 26 LTC–APR–DRGs.

The LTC–CMS–DRGs are based on research done by The Lewin Group (Developing a Long-Term Hospital Prospective Payment System Using Currently Available Administrative Data for the National Association of Long-

Term Hospitals (NALTH), July 1999.) This model uses our existing hospital inpatient DRGs with weights that accounted for the difference in resource use by patients exhibiting the case complexity and multiple medical problems characteristic of LTCHs. In order to deal with the large number of low volume DRGs (all DRGs with fewer than 25 cases), the LTC–CMS–DRG model groups low volume DRGs into 5 quintiles based on average charge per discharge. The result was 184 classification groups (179 DRG-based and 5 charge-based payment groups) based on patient data from FYs 1994 and 1995. (CMS updated this analysis using patient data from FYs 1999 and 2000 for purposes of system evaluations.)

Under either classification system, DRG weights would be based on data for the population of LTCH discharges, reflecting the fact that LTCH patients represent a different patient mix than patients in short-term acute care hospitals. GROUPER software programs enabled us to examine the most recent LTCH and acute care hospital inpatient prospective payment system patient discharge data in light of the features of each system. Using regression analyses and simulations, the impact of each patient classification system on potential adjustment features for the prospective payment system was assessed. (Data files used in these analyses are specified in section I.C.2.) Our medical staff as well as physicians involved in treatment of patients at LTCHs provided additional input from the standpoint of clinical coherence and practical applicability.

The system that we are proposing for the LTCH prospective payment system is the LTC–CMS–DRG GROUPER that is based on the Lewin model because we believe it accurately predicts costs without the problems that we believe could be inherent with the APR–DRG system. (In section III. of this proposed rule, which describes the functioning of the classification system as a component of the proposed LTCH prospective payment system, the LTC–CMS–DRGs are referred to as the proposed LTC–DRGs.)

It is important to note that we have analyzed both systems based on MedPAR files generated by LTCH patient data, using the best available data. Since the TEFRA payment system, under which LTCHs are currently paid, is not tied to patient diagnoses, the coding data from LTCHs have not been used for payment. Nevertheless, data analyses indicated that there was a minimal difference in both systems' abilities to predict costs. (The difference in the R^2, a statistical measure of how much variation in resource use among cases is explained by the models, was only 0.0313.)

We believe that either classification system would result in more equitable payments for LTCHs compared to current payment methods. The proposed LTCH prospective payment system would generally improve the accuracy of payments for more clinically complex patients. (*See* our discussion of the TEFRA payment system in section I.A. of this proposed rule.) As the Congress intended, the DRG weights under the proposed LTCH prospective payment system would reflect the ''* * * different resource use of long-term care hospital patients.'' Patients requiring more intensive complex services would be classified in LTC–DRGs with higher relative weights and hospitals would receive appropriately higher payments for these patients. We solicit comments on the impact one system may have over another as it applies to different kinds of LTCHs.

Although either system would result in more equitable payments to LTCHs, we have several interrelated concerns about adopting the LTC–APR–DRG system based upon its complexity, its clinical subjectivity, and its utility as it relates to other Medicare prospective payment systems. The LTC–APR–DRG model provides a clinical description of the population of LTCHs, patients exhibiting a range of severity of illness with multiple comorbidities as indicated by secondary diagnoses. The clinical interaction of the primary diagnosis with these comorbidities determines the severity level of the primary diagnoses, resulting in the final assignment to a LTC–APR–DRG by the GROUPER software designed for this system.

One aspect of our examination of the LTC–APR–DRG system included clinical review of actual case studies provided by physicians at several LTCHs and evaluations of the LTC–APR–DRG assignments that would have resulted based on the clinical logic of the APR–DRG GROUPER. A review of a number of those cases by different medical professionals resulted in different possible classifications for the GROUPER program. Looking at the same case, different views were held as to which APR–DRG category or to which level of severity the case should be grouped. Given the array of specialization at different LTCHs reflecting a range of services and patient types, as described in section I.E.7. of this preamble, we believe that we lack sufficient data, at this point in time, to definitely determine the effect of particular comorbidities on patient resource needs in LTCHs. Furthermore, it appears that depending on how many of the diagnoses are coded, medical judgement suggests that it could be possible to classify the same patient in more than one group or level of severity. Because of these concerns, we believe that payments under such a policy could be insufficiently well-defined, given currently available data, to ensure consistently appropriate Medicare payments.

We are aware that the forthcoming prospective payment system for IRFs is based on a patient classification system that includes a measure of comorbidities, the combination of the case-mix group (CMG) and comorbidity tier. In general, most IRF patients are treated for one primary rehabilitation condition (for example, a hip replacement) that is associated with functional measures and sometimes age. The CMGs constructed for IRF patients account for diagnostic, functional, and age variables. These variables are used to explain the variability in the cost among the various CMGs. Some of the remaining variability in cost could then be further explained by selected comorbidities which the inpatient rehabilitation data showed were statistically significant.

In contrast, determining whether particular comorbidities increase the cost of a case for a LTCH patient is complicated by the nature of the clinical characteristics of these patients. More specifically, many LTCH patients have numerous conditions that may not all be relevant to the cost of care for a particular discharge. Although the patient actually has a specific condition, including this condition among secondary diagnoses coded under the LTC–APR–DRG system, may assign an inaccurate severity level to the primary diagnosis and result in inappropriate LTC–APR–DRG payment. We also believe that reliance on existing comorbidity information submitted on LTCH bills could result in significant variation in the assignment of the specific LTC–APR–DRGs.

The LTC–CMS–DRG system is a system that is familiar to hospitals because it is based on the current DRG system under the acute care hospital inpatient prospective payment system. We believe that the familiarity of the LTC–CMS–DRG model may best facilitate the transition from the cost-based system to the prospective payment system as well as providing continuity in payment methodology across related sites of care (for example,

an acute care hospitalization for a patient with a chronic condition.).

We further wish to note that the adoption of severity-adjusted DRGs will be explored by CMS for use under the hospital inpatient prospective payment system. In its June 2000 Report to Congress, MedPAC recommended that the Secretary ''* * * improve the hospital inpatient prospective payment system by adopting, as soon as practicable, diagnosis related group refinements that more fully capture differences in severity of illness among patients.'' (Recommendation 3A, p. 63.) Although we are not proposing LTC–APR–DRGs in this proposed rule, we are interested in receiving comments on this issue. We also wish to note that in the event the LTCH prospective payment system is implemented using LTC–DRGs, we could have the opportunity to propose a severity-adjusted patient classification for LTCHs in the future, particularly if the acute care hospital inpatient prospective payment system moves in this direction.

H. Recommendations by MedPAC for a LTCH Prospective Payment System

As we noted in the section I.A.5. of this proposed rule, since the establishment of the acute care hospital inpatient prospective payment system in 1983, the topic of post-acute care payments under Medicare has been addressed in reports to the Congress prepared by ProPAC and its successor, MedPAC. Recommendations in these reports encouraged modifications to Medicare payment policies, examined the differences among post-acute care providers and within each category of providers, and reiterated the goal of eventually implementing prospective payment systems for providers being paid under the target amount payment methodology.

In its March 1, 1996 Report and Recommendations to the Congress, ProPAC recommended that ''prospective payment systems should be implemented for all post-acute services. The payment method for each service should be consistent across delivery sites. The Secretary should explore methods to control the volume of post-acute service use, such as bundling services for a single payment.'' (Recommendation 20, p. 75)

The following year, in its March 1, 1997 Report and Recommendations to the Congress, ProPAC recommended ''* * * the Congress and the Secretary to consider the overlap in services and beneficiaries across post-acute care providers as they modify Medicare payment policies. Changes to one provider's payment method could shift utilization to other sites and thus fail to curb overall spending. To this end, ProPAC commends HCFA's (now CMS's) efforts to identify elements common to the various facility-specific patient classification systems to use in comparing beneficiaries across settings.'' Ultimately, Medicare should move towards more uniform payment policies across sites, the Report continued, and ''payment amounts should vary depending on the intensity and nature of the services beneficiaries require, rather than on the setting. Further, providers should have incentives to coordinate services or an episode * * *'' (p. 60)

However, with enactment of the BBA, the Congress enacted legislation to provide for distinct prospective payment systems for HHAs (section 4603(b)), SNFs (section 4432(a)), and IRFs (section 4421). The BBA further required the development of a legislative proposal for the case-mix adjusted LTCH prospective payment system. Section 123 of the BBRA requires the Secretary to develop a per discharge DRG-based system for LTCHs, and section 307(a) of BIPA mandates that the Secretary examine the feasibility and impact of basing payments to LTCHs using the existing DRGs, modified to account for the resource use of LTCH patients. Thus, Congress mandated systems that would result in different payments, depending on the site of service, and not a system that is uniform across sites.

Notwithstanding the mandate to establish post-acute care prospective payment systems, MedPAC continued to articulate concern regarding the overlap of services among post-acute providers. In its June 1998 Report to Congress, MedPAC stated that ''all of these policy changes, in combination with the fact that similar services can be provided in multiple post-acute settings, indicate the need for continued monitoring and analysis of post-acute providers, policies, and service utilization.'' (p. 90)

In its March 1999 Report to Congress, MedPAC encouraged the Secretary to ''* * * collect a core set of patient assessment information across all post-acute care settings.'' (Recommendation 5A, p. 82)

Section 123 of BBRA specifically mandated a per discharge, DRG-based prospective payment system for LTCHs and established a timetable for the presentation of the proposed system in a report to the Congress by October 1, 2001 and for implementation of the actual prospective payment system by October 1, 2002. Further direction for a distinct prospective payment system for LTCHs was indicated in section 307(b) of BIPA, which directed the Secretary to examine a number of payment adjustment factors and establishes a default system if the Secretary is unable to meet the implementation timetable.

As we develop the prospective payment system for LTCHs described in this proposed rule, however, we wish to state that we do not believe that the establishment of distinct prospective payment systems for each post-acute care provider group eliminates the need to monitor payments and services across all service settings. We endorse MedPAC's Recommendation 3G, in its March 2000 Report to Congress, that encourages the Secretary to ''assess important aspects of the care uniquely provided in a particular setting, compare certain processes and outcomes of care provided in alternative settings, and evaluate the quality of care furnished in multiple-provider episodes of post-acute care.'' (p. 65). We intend to monitor the appropriateness of LTCH stays by tracking the number of LTCH patients and SNF patients and the frequency of subsequent admissions to an acute care hospital. We believe this data will be valuable in assessing the outcome of care provided in these settings.

Furthermore, we strongly support the additional research that will be required to choose or to develop an assessment instrument that will evaluate the quality of services delivered to beneficiaries in post-acute settings.

I. Evaluated Options for the Proposed Prospective Payment System for LTCHs

Section 123 of BBRA and section 307(b) of BIPA establish the statutory authority for the development of the proposed prospective payment system for LTCHs that is discussed in this proposed rule. Under the BBRA, we are required to:

- Develop a per discharge prospective payment system for inpatient hospital services furnished by LTCHs described in section 1886(d)(1)(B)(iv) of the Act.
- Include an adequate patient classification system that is based on DRGs that reflect the differences in patient resource use and costs.
- Maintain budget neutrality.
- Submit a report to the Congress describing this system by October 1, 2001.
- Implement this system for cost reporting periods beginning on or after October 1, 2002.

Section 307(b) of BIPA modified the requirements of section 123 of the BBRA by requiring the Secretary to—

- Examine the feasibility and the impact of basing payment under the prospective payment system on the use

of existing (or refined) DRGs that have been modified to account for different resource use of LTCH patients, as well as the use of the most recently available hospital data.

• Examine appropriate adjustments to LTCH prospective payments, including adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment.

In the event that we are unable to meet the implementation deadline of October 1, 2002, a default system will be implemented in which the payment is based on existing hospital DRGs, modified where feasible to account for resource use of LTCH patients. This default system would be based on the most recently available hospital discharge data for such services furnished on or after that date.

Although the statutory mandate for development of the LTCH prospective payment system established in the BBRA and the BIPA requires a per discharge, DRG-based system, generally the statute gives the Secretary broad discretion in designing the prospective payment system. The design of any prospective payment system requires decisions on the following issues:

• The categories used to classify services such as DRGs.

• The methodology for calculating the relative weights that are assigned to each patient category to reflect the relative difference in resource use across DRGs (these are relative values in economic terminology).

• The methodology for calculating the base rate, which is the basis for determining the DRG-based Federal payment rates. It is a standardized payment amount that is based on average costs from a base period and also reflects the combined aggregate effects of the payment weights and various facility and case level adjustments. Operating and capital-related costs may be combined in this base rate or may be treated separately.

• Adjustments to the base rate to reflect cost differences across providers, such as disproportionate share adjustments, indirect graduate medical education programs, and outliers.

• Finally, a procedure for the transition from the current system to the DRG-based prospective payment system must be established.

We pursued a two-pronged strategy as we developed the proposed prospective payment system for LTCHs. First, we analyzed the data and empirical facts about LTCH patients and providers summarized in section I.E. of this proposed rule. Secondly, in light of this information, we analyzed each option based on regressions and simulations, using the data sets described in section I.D. of this preamble.

Both technical and proposed policy considerations were important in these design proposals. We reviewed features of other recent prospective payment systems designed or implemented by CMS for other post-acute care providers to determine the feasibility of including features in the LTCH prospective payment system and to identify modifications that might enhance their application for this system. In addition, we considered factors that were important to the development of Medicare's acute care hospital inpatient prospective payment system, such as urban and rural location, and whether the hospital served a disproportionate share of low-income patients. We also analyzed clinical significance, administrative simplicity, availability of data, and consistency with other Medicare payment policies.

In addition to satisfying statutory requirements, the design of the proposed prospective payment system for LTCHs presented in this proposed rule is the result of the following factors:

• Our empirical understanding of the ''universe'' of LTCHs and long-term care patients, as set forth in section I.E. of this preamble.

• Our experience with the acute care hospital inpatient prospective payment system.

• Consideration of recommendations in MedPAC's reports to Congress on post-acute care.

• Our monitoring of the establishment and continuing development and refinement of prospective payment systems for IRFs, SNFs, and HHAs.

Additionally, as we deliberated on the choice of the specific model of DRG-based system we are proposing to use for the LTCH prospective payment system, we consulted with LTCH physicians and LTCH representatives.

II. General Discussion of the Proposed LTCH Prospective Payment System

A. Goals of the Proposed LTCH Prospective Payment System

We have designed the proposed prospective payment system for LTCHs in this proposed rule with the following objectives:

• To base the prospective payment system on an analysis of the best information and data available.

• To establish a payment model using our experience in implementing other prospective payment systems.

• To provide incentives to control costs and to furnish services as efficiently as possible.

• To base payment on clinically coherent categories and to appropriately reflect average resource needs across different categories.

• To minimize opportunities and incentives for inappropriately maximizing Medicare payments.

• To establish a system that is beneficiary centered by formulating procedures for quality monitoring.

• To develop a system that is administratively feasible.

B. Applicability of the Proposed LTCH Prospective Payment System

Our existing regulations at 42 CFR Part 482, Subparts A through D set forth the general conditions that hospitals must meet to qualify to participate in Medicare. There are no additional conditions for LTCHs as there are for psychiatric facilities.

Criteria for classification as a LTCH for purposes of payment are set forth in existing § 412.23(e), which provides that a LTCH must—

• Have a provider agreement to participate as a hospital and an average inpatient length of stay greater than 25 days or for cost reporting periods beginning on or after August 5, 1997, for a hospital that was first excluded from the prospective payment system in 1986, have an average inpatient length of stay of greater than 20 days and demonstrate that at least 80 percent of its annual Medicare inpatient discharges in the 12-month cost reporting period ending in FY 1997 have a principal diagnosis that reflects a finding of neoplastic disease, as defined in regulations. The calculation of the average inpatient length of stay is calculated by dividing the number of total inpatient days (less leave or pass days) by the number of total discharges for the hospital's most recent complete cost reporting period.

• Meet the additional criteria specified in § 412.22(e) if it is to be classified as a hospital-within-a-hospital and to be excluded from the acute care hospital inpatient prospective payment system.

• Meet the additional criteria specified in § 412.22(h) if it is to be classified as a satellite facility and to be excluded from the acute care hospital inpatient prospective payment system.

Results of our research on LTCHs, as set forth in section I.D. of this preamble, have suggested the following particular issue that we have evaluated and are proposing to address concurrent with the proposed implementation of the proposed LTCH prospective payment system:

Proposed Change in the Average 25-Day Total Inpatient Stay Requirement. Section 1886(d)(1)(B)(iv)(I) of the Act describes a LTCH generally as ''a hospital which has an average inpatient length of stay (as determined by the Secretary) of greater than 25 days.'' Thus, the statute gives the Secretary extremely broad discretion in determining the average inpatient length of stay for hospitals for purposes of determining whether a hospital warrants exclusion from the prospective payment system in section 1886(d) of the Act. Existing Medicare regulations at § 412.23(e)(1) and (e)(2) include all hospital inpatients in this calculation of the average inpatient length of stay.

Our data have revealed that approximately 52 percent of Medicare patients at LTCHs have lengths of stay of less than ⅔ of the average length of stay for the proposed LTC–DRGs in this proposed rule, and 20 percent have a length of stay of even less than 8 days. This means that some hospitals, while currently qualifying as LTCH by averaging non-Medicare long stay patients to maintain a length of stay of over 25 days, do not furnish ''long-term care'' on average to their Medicare patients. In these situations, many of the hospitals' short stay Medicare patients could be receiving appropriate services as patients at acute care hospitals. Under the proposed LTCH prospective payment system, the proposed LTC–DRG weights and proposed standard Federal payment rate are based on the charges and costs of LTCH patients, which are typically more medically complex and more costly than acute care hospital patients.

Since the proposed LTCH prospective payment system would result in higher per discharge payments for LTCHs than payments under the acute care hospital inpatient prospective payment system for patients that would group into identical DRGs under each system, we believe that under current policy, which factors in non-Medicare patients' lengths of stay in determining LTCH status, could result in inappropriately higher payments for those Medicare short-stay patients who happen to be treated in a LTCH instead of an acute care hospital. This is the case since if the average length of stay of patients at a hospital would not reach the mandatory 25-days threshold for designation as a LTCH unless non-Medicare patients are included in the calculation, the hospital would be paid for its Medicare patients under the acute care hospital inpatient prospective payment system. Therefore, if a hospital is not treating Medicare patients that, on average, require the more costly services offered at LTCHs that differentiate these hospitals from acute care hospitals, we believe that Medicare payments should be determined under the acute care hospital inpatient prospective payment system. Such payments would be lower for each DRG than would be paid for under the LTC–DRG system, reflecting the lower costs of acute care hospitals.

Under the current TEFRA reasonable cost-based reimbursement system, Medicare payments to LTCHs are commensurate with the actual reasonable costs incurred by the hospital. Therefore, under that system, Medicare payments for shorter lengths of stay patients reflect the lower costs of those patients. However, under the proposed LTCH prospective payment system, which is based on average costs of treatment for particular diagnosis, the hospital would receive prospective payments based on such average costs for these much shorter length of stay patients. Even under our proposed short-stay outlier policy, as described in section IV.B.2. of this proposed rule, the hospital would have the opportunity to be paid 150 percent of its costs.

Therefore, under our broad authority in the statute to determine the average inpatient length of stay, we are proposing to specify that we would include the hospital's Medicare patients, but not non-Medicare patients, in determining the average inpatient length of stay (proposed § 412.23(e)(2)) for purposes of section 1886(d)(1)(B)(iv)(I) of the Act. In proposing this change in policy, we believe there would be a strong incentive for LTCHs not to admit many short-stay Medicare patients since doing so could jeopardize their status as a LTCH. Instead, those patients could receive appropriate care at an acute care hospital and the care would be paid under the hospital inpatient prospective payment system. Furthermore, changing the methodology for determining the average inpatient length of stay to be based only on Medicare patients is consistent with the intent of our proposed very short-stay discharge policy (described in section IV.B.1. of this proposed rule) and our proposed short-stay outlier policy (described in section IV.B.2. of this proposed rule), which are also intended to discourage LTCHs under the proposed prospective payment system from treating Medicare patients that do not require the more costly resources of LTCHs and who could reasonably be treated in acute care hospitals.

We would monitor the types of hospitals that would qualify as LTCHs based on this proposed definition. It is possible that hospitals that currently qualify as either rehabilitation hospitals or psychiatric hospitals would also qualify as LTCHs under this proposed revised criteria, and could be paid as LTCHs in order to maximize Medicare payments. We also would monitor whether the proposed change in methodology for measuring the average length of stay in LTCHs would result in unanticipated shifts of patients to those settings. If a pattern of these behaviors is observed, we believe it may be appropriate that Congress address the issues raised through a legislative change.

As indicated above, pursuant to our broad authority in the statute, we are proposing to change the methodology for determining the average inpatient length of stay for purposes of section 1886(d)(1)(B)(iv)(I) of the Act, but we are not proposing to change the methodology for purposes of section 1886(d)(1)(B)(iv)(II) of the Act (proposed § 412.23(e)). For purposes of the latter provision (subclause (II)), we are proposing to retain the current methodology (which includes non-Medicare as well as Medicare patients) because we believe that the considerations underlying the proposed change in methodology for subclause (I) are not present under subclause (II). As discussed above, we are proposing to revise the methodology for purposes of the general definition of LTCH under subclause (I) because it has come to our attention that some hospitals that might not warrant exclusion from the prospective payment system have nevertheless obtained status as excluded hospitals under the current methodology. We believe that excluding non-Medicare patients in determining the average inpatient length of stay for purposes of subclause (I) would be more appropriate in identifying the hospitals that warrant exclusion under the general definition of LTCH in subclause (I). However, in enacting subclause (II), Congress provided an exception to the general definition of LTCH under subclause (I), and we have no reason to believe that the proposed change in methodology for determining the average inpatient length of stay would better identify the hospitals that Congress intended to exclude under subclause (II). Therefore, at this time, we are proposing to retain the current methodology for purposes of subclause (II).

C. LTCHs Not Subject to the Proposed LTCH Prospective Payment System

We are proposing that only hospitals qualifying as LTCHs under the proposed revised criteria described in section II.B.

of this proposed rule and in proposed revised § 412.23(e) by October 1, 2002, would be subject to the proposed LTCH prospective payment system. (This proposed system is summarized below in section II.D. and described in detail in section IV. of this proposed rule.) Our proposed treatment of hospitals first qualifying as LTCHs after October 1, 2002, is addressed in section IV.H. of this proposed rule.

The following hospitals are paid under special payment provisions, as described in existing § 412.22(c) and, therefore, would not be subject to the proposed LTCH prospective payment system rules:

- Veterans Administration hospitals.
- Hospitals that are reimbursed under State cost control systems approved under 42 CFR part 403.
- Hospitals that are reimbursed in accordance with demonstration projects authorized under section 402(a) of Public Law 90–248 (42 U.S.C. 1395b–1) or section 222(a) of Public Law 92–603 (42 U.S.C. 1395b–1 (note)).
- Nonparticipating hospitals furnishing emergency services to Medicare beneficiaries.

D. Summary Description of the Proposed LTCH Prospective Payment System

In accordance with the requirements of section 123 of Public Law 106–113, as modified by section 307(b) of Public Law 106–554, we are proposing to implement a prospective payment system for LTCHs that would replace the current reasonable cost-based payment system under TEFRA. The proposed prospective payment system would utilize information from LTCH patient records to classify patients into distinct DRGs based on clinical characteristics and expected resource needs. Separate payments would be calculated for each DRG with additional adjustments applied, as described below.

1. Procedures

We are proposing that, upon the discharge of the patient from a LTCH, the LTCH would assign appropriate diagnosis and procedure codes from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM). The LTCH would then enter these codes on the current Medicare claims form and submit the completed claims form to its Medicare fiscal intermediary. At present, the standard Medicare claims form is the UB–92. Under a requirement of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, electronic health care claims, including Medicare claims, will be required to be in the new national standard claims format and medical data code sets in accordance with regulations at 45 CFR Parts 160 and 162. The Medicare fiscal intermediary would enter the information into its claims processing systems and subject it to a series of edits called the Medicare Code Editor (MCE). This editor is designed to identify cases that would require further review before classification into a proposed LTC–DRG (described in sections II.D.2. and III. of this proposed rule).

After screening through the MCE, each claim would be classified into the appropriate LTC–DRG by the Medicare LTCH GROUPER. The LTCH GROUPER is specialized computer software based on the GROUPER utilized by the acute care hospital inpatient prospective payment system, which was developed as a means of classifying each case into a DRG on the basis of diagnosis and procedure codes and other demographic information (age, sex, and discharge status). Following the LTC–DRG assignment, the Medicare fiscal intermediary would determine the prospective payment by using the Medicare PRICER program, which accounts for hospital-specific adjustments.

As provided for under the acute care hospital inpatient prospective payment system, we are proposing to provide opportunity for the LTCH to review the LTC–DRG assignments made by the fiscal intermediary (proposed § 412.513(c)). A hospital would have 60 days after the date of the notice of the initial assignment of a discharge to a LTC–DRG to request a review of that assignment. The hospital would be allowed to submit additional information as part of its request. The fiscal intermediary would review that hospital's request and any additional information and would decide whether a change in the LTC–DRG assignment is appropriate. If the intermediary decides that a different LTC–DRG should be assigned, the case would be reviewed by the appropriate Peer Review Organization (PRO) as specified in § 476.71(c)(2). Following this 60-day period, the hospital would not be able to submit additional information with respect to the LTC–DRG assignment or otherwise revise its claim.

The operational aspects and instructions for completing and submitting Medicare claims under the LTCH prospective payment system will be addressed in a Medicare Program Memorandum once the final system requirements are developed and implemented.

2. Patient Classification Provisions

We are proposing a patient classification system called long-term care diagnosis-related groups (LTC–DRGs). The LTC–DRGs would classify patient discharges based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. We began the development of the proposed LTC–DRGs by using the CMS DRGs under the acute care hospital inpatient prospective payment system with the most recent data available. We address the issue of the use of proposed low volume LTC–DRGs (less than 25 LTCH cases) in determining the LTC–DRG weights. Further details of the proposed LTC–DRG classification system are discussed in section III. of this proposed rule.

3. Payment Rates

In accordance with section 123(a)(1) of Public Law 106–113, we are proposing to use a discharge as the payment unit for the proposed LTCH prospective payment system for Medicare patients. We would update these per discharge payment amounts annually. The proposed payment rates would encompass both inpatient operating and capital-related costs of furnishing covered inpatient LTCH services, including routine and ancillary costs, but not the costs of bad debts, approved educational activities, blood clotting factors, anesthesia services furnished by hospital-employed nonphysician anesthetists or obtained under arrangement, or the costs of photocopying and mailing medical records requested by a PRO, which are costs paid outside the prospective payment system. Consistent with current policy, beneficiaries may be charged only for deductibles, coinsurance, and noncovered services (for example, telephone and television). They may not be charged for the differences between the hospital's cost of providing covered care and the proposed Medicare LTCH prospective payment amount.

We are proposing to determine the LTCH prospective payment rates using relative weights to account for the variation in resource use among LTC–DRGs. During FY 2003, the LTCH prospective payment system would be ''budget neutral'' in accordance with section 123(a)(1) of Public Law 106–113. That is, total payments for LTCHs during FY 2003 would be projected to equal payments that would have been paid for operating and capital-related costs of LTCHs had this proposed new

payment system not been enacted. Budget neutrality is discussed in detail in section IV. of this preamble.

Based on our analysis of the data, we are proposing to make additional payments to LTCHs for discharges meeting specified criteria as ''outliers.'' For purposes of this proposed rule, outliers are cases that have unusually high costs, exceeding the LTC–DRG payment plus the fixed loss amount as discussed in section IV.D. of this proposed rule. In conjunction with a high cost outlier policy, we are proposing payment policies regarding very short-stay discharges, short-stay outliers, and interrupted stays. A detailed description of these proposed policies appears in section IV.B. of this preamble.

4. Limitation on Charges to Beneficiaries

In accordance with existing regulations and for consistency with other established hospital prospective payment systems policies, we are proposing to specify that a LTCH may not charge a beneficiary for any services for which payment is made by Medicare, even if the hospital's costs of furnishing services to that beneficiary are greater than the amount the hospital would be paid under the proposed LTCH prospective payment system (proposed § 412.507). We also are proposing to specify under proposed § 412.507 that a LTCH receiving a prospective payment for a covered hospital stay (that is, a stay that includes at least one covered day) may charge the Medicare beneficiary or other person only for the applicable deductible and coinsurance amounts under §§ 409.82, 409.83, and 409.87 of the existing regulations, and for items or services specified under § 489.20(a) of the existing regulations.

5. Medical Review Requirements

In accordance with existing regulations at §§ 412.44, 412.46, and 412.48 and for consistency with other established hospital prospective payment systems policies, we are proposing to specify that a LTCH must have an agreement with a PRO to have the PRO review, on an ongoing basis, the medical necessity, reasonableness, and appropriateness of hospital admissions and discharges and of inpatient hospital care for which outlier payments are sought; the validity of the hospital's diagnostic and procedural information; the completeness, adequacy, and quality of the services furnished in the hospital; and other medical or other practices with respect to beneficiaries or billing for services furnished to beneficiaries (proposed § 412.508(a)). In addition, we are proposing to require that, because payment under the proposed prospective payment system is based in part on each patient's principal and secondary diagnoses and major procedures performed, as evidenced by the physician's entries in the patient's medical record, physicians must complete an acknowledgement statement to that effect. We are proposing to apply the existing hospital requirements for the contents and filing of the physician acknowledgment statement (proposed § 412.508(b)).

Also, consistent with existing established hospital prospective payment system policies, we are proposing that if CMS determines, on the basis of information supplied by the PRO, that a hospital has misrepresented admissions, discharges, or billing information or has taken an action that results in the unnecessary admission or multiple admission of individuals entitled to Part A benefits or other inappropriate medical or other practices, CMS may deny payment (in whole or in part) for inpatient hospital services related to the unnecessary or subsequent readmission of an individual or require the hospital to take actions necessary to prevent or correct the inappropriate practice. Notice and appeal of a denial of payment would be provided under procedures established to implement section 1155 of the Act. In addition, a determination of a pattern of inappropriate admissions and billing practices that has the effect of circumventing the prospective payment system would be referred to the Department's Office of Inspector General, for handling in accordance with 42 CFR 1001.301.

6. Furnishing of Inpatient Hospital Services Directly or Under Arrangements

In accordance with existing regulations at § 414.15(m) and for consistency with other established hospital prospective payment systems policies, we are proposing that a LTCH must furnish covered services to Medicare beneficiaries either directly or under arrangements. Under proposed § 412.509, we are proposing that the LTCH prospective payment would be payment in full for all inpatient hospital services, as defined in § 409.10 of the existing regulations. We also are proposing that we would not pay any provider or supplier other than the LTCH for services furnished to a Medicare beneficiary who is an inpatient of the LTCH, except for those services that are not included as inpatient hospital services that are listed under existing § 412.50 (that is, physicians' services that meet the requirements of § 415.102(a) for payment on a fee schedule basis; physician assistant services as defined in section 1861(s)(2)(K)(i) of the Act; nurse practitioners and clinical nurse specialist services, as defined in section 1861 (s)(2)(K)(ii) of the Act; certified nurse midwife services, as defined in section 1861(gg) of the Act; qualified psychologist services, as defined in section 1861(ii) of the Act; and services of an anesthetist, as defined in § 410.69).

7. Reporting and Recordkeeping Requirements

We are proposing to impose the same recordkeeping and cost reporting requirements of §§ 413.20 and 413.24 of the existing regulations on all LTCHs that would participate in the proposed LTCH prospective payment system (proposed § 412.511).

8. Implementation of the Proposed Prospective Payment System

We are proposing a 5-year transition period from cost-based reimbursement to prospective payment for LTCHs as discussed in section IV.G. of this proposed rule. During this period, two payment percentages would be used to determine a LTCH's total payment under the prospective payment system. The proposed blend percentages are as follows:

Cost reporting periods beginning on or after	Prospective payment federal rate percentage	Cost-based reimbursement percentage
October 1, 2002	20	80
October 1, 2003	40	60
October 1, 2004	60	40
October 1, 2005	80	20
October 1, 2006	100	0

Therefore, for a cost reporting period beginning on or after October 1, 2002, and before October 1, 2003, the total prospective payment would consist of 80 percent of the amount based on the current cost-based reimbursement system and 20 percent of the proposed Federal prospective payment rate. The percentage of payment based on the LTCH prospective payment Federal rate would increase by 20 percent and the cost-based reimbursement rate percentage would decrease by 20 percent for each of the remaining 4 fiscal years in the transition period. For cost reporting periods beginning on or after October 1, 2006, Medicare payment to LTCHs would be determined entirely under the proposed Federal prospective payment system methodology. Furthermore, we are proposing that

LTCHs would have the option to elect to be paid 100 percent of the Federal rate and not be subject to the 5-year transition. (See section IV.G. of this proposed rule.)

III. Long-Term Care Diagnosis-Related Group (LTC-DRG) Classifications

Section 307(b) of Public Law 106–554 requires that the Secretary examine ''the feasibility and the impact of basing payment under such a system (the LTCH prospective payment system) on the use of existing (or refined) hospital diagnosis-related groups (DRGs) that have been modified to account for different resource use of long-term care hospital patients as well as the use of the most recently available hospital discharge data.'' The DRG-based patient classification system described in this section for the proposed LTCH prospective payment system would be based on the existing CMS DRG system used in the acute care hospital inpatient prospective payment system, modified where feasible to reflect the fact that LTCH patients represent a different patient mix from patients in short-term acute care hospitals, as required by section 307(b) of Public Law 106–554. Therefore, an understanding of pertinent facts about the CMS DRG system is essential to an understanding of the proposed LTC-DRGs that would be employed in the proposed LTCH prospective payment system.

A. Background

The design and development of DRGs began in the late 1960s at Yale University. The initial motivation for developing the DRGs was the creation of an effective framework for monitoring the quality of care and the utilization of services in a hospital setting. The first large-scale application of the DRGs as a basis for payments was in the late 1970s in New Jersey. New Jersey's State Department of Health used DRGs as the basis of a prospective payment system in which hospitals were reimbursed a fixed DRG-specific amount for each patient treated. In 1972, section 223 of Public Law 92–603 originally authorized the Secretary to set limits on costs reimbursed under Medicare for inpatient hospital services. In 1982, section 101(b)(3) of Public Law 97–248 required the Secretary to develop a legislative proposal for Medicare payments to hospitals, SNFs, and, to the extent feasible, other providers on a prospective basis. (See the September 1, 1983 **Federal Register** (48 FR 39754).) In 1983, Title VI of Public Law 98–21 added section 1886(d) to the Act, which established a national DRG-based hospital prospective payment system for Medicare inpatient acute care services. (See the January 3, 1984 **Federal Register** (49 FR 234).)

B. Historical Exclusion of LTCHs

Since the hospital inpatient DRG system had been developed from the cost and utilization experience of general acute care hospitals, it did not account for the resource costs for the types of patients treated in hospitals such as rehabilitation, psychiatric, and children's hospitals, as well as LTCHs and rehabilitation and psychiatric units of acute care hospitals. Therefore, the statute (section 1886(d)(1)(B) of the Act) excluded these classes of hospitals and units from the prospective payment system for general acute care hospitals. The excluded hospitals and units continued to receive payments based on costs subject to a cap on each facility's per discharge costs during a base year, with a yearly update as set forth in Public Law 97–248. (Cancer hospitals were added to the list of excluded hospitals by section 6004(a) of Pub. L. 101–239.)

C. Patient Classifications by DRGs

1. Objectives of the Classification System

The DRGs are a patient classification system that provides a means of relating the type of patients treated by a hospital (that is, its case-mix) to the costs incurred by the hospital. In other words, DRGs relate a hospital's case-mix to the resource demands and associated costs experienced by the hospital. Therefore, a hospital that has a more complex case-mix treats patients who require more hospital resources.

While each patient is unique, groups of patients have demographic, diagnostic, and therapeutic attributes in common that determine their level of resource intensity. Given that the purpose of DRGs is to relate a hospital's case-mix to its resource intensity, it was necessary to develop a way of determining the types of patients treated and to relate each patient type to the resources they consumed. In the development of the existing CMS DRGs, in order to aggregate patients into meaningful patient classes, it was essential to develop clinically similar groups of patients with similar resource intensity. The characteristics of a practical and meaningful DRG system were distilled into the following objectives:

- The patient characteristics should be limited to information routinely collected on hospital abstract systems.
- There should be a manageable number of DRGs encompassing all patients.
- Each DRG should contain patients with a similar pattern of resource intensity.
- DRGs should be clinically coherent, that is, containing patients who are similar from a clinical perspective.

Under a DRG-based system, patient information routinely collected include the following six data items: principal diagnosis, secondary or additional diagnoses, procedures, age, gender, and discharge status. All hospitals routinely collect this information; therefore, a classification system based on these elements could be applied uniformly across hospitals.

Limiting the number of DRGs to a manageable total (that is, hundreds of patient classes instead of thousands) ensures that, for most of the DRGs, hospital discharge data would allow for meaningful comparative analysis to be performed. If a hospital has a sufficient number of cases in particular DRGs, this will allow for evaluations and comparisons of resource consumption by patients grouped to those DRGs as compared to resources consumed by patients grouped to other DRGs. A large number of DRGs with only a few patients in each group would not provide useful patterns of case-mix complexity and cost performance.

The resource intensity of the patients in each DRG must be similar in order to establish a relationship between the case-mix of a hospital and the resources it consumes. (Similar resource intensity means that the resources used are relatively consistent across the patients in each DRG.) In implementing the original DRGs for the acute care hospital inpatient prospective payment system, we recognized that some variation in resource intensity would be present among the patients in each DRG, but the level of variation would be identifiable and predictable.

The last characteristic for an effective patient classification system is that the patients in a DRG are similar from a clinical perspective; that is, the definition of a DRG has to be clinically coherent. This objective requires that the patient characteristics included in the definition of each DRG be related to a common organ system or etiology, and that a specific medical specialty should typically provide care to the patients in a particular DRG.

2. DRGs and Medicare Payments

The LTC–DRGs that we are proposing as the patient classification component of the proposed LTCH prospective payment system would correspond to

the DRGs in the acute care hospital inpatient prospective payment system. As discussed in section IV.A.2. of this proposed rule, we are proposing to modify the CMS DRGs for the proposed LTCH prospective payment system by developing LTCH-specific relative weights to account for the fact that LTCHs generally treat patients with multiple medical problems. Therefore, we are presenting a brief review of the DRG patient classification system in the acute care hospital inpatient prospective payment system.

Generally, under the prospective payment system for short-term acute care hospital inpatient services, Medicare payment is made at a predetermined, specific rate for each discharge; that payment varies by the DRG to which a beneficiary's stay is assigned. Cases are classified into DRGs for payment based on the following six data elements:

(1) Principal diagnosis.
(2) Up to eight additional diagnoses.
(3) Up to six procedures performed.
(4) Age.
(5) Sex.
(6) Discharge status of the patient.

The diagnostic and procedure information from the patient's hospital record is reported by the hospital using ICD–9–CM codes on the uniform billing form currently in use.

Medicare fiscal intermediaries enter the clinical and demographic information into their claims processing systems and subject it to a front-end automated screening process called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before assignment into a DRG can be made. During this process, cases such as the following are selected for further development:

- Cases that are improperly coded (for example, diagnoses are shown that are inappropriate, given the sex of the patient. Code 68.6, Radical abdominal hysterectomy, would be an inappropriate code for a male.).
- Cases including surgical procedures not covered under Medicare (for example, organ transplant in a nonapproved transplant center).
- Cases requiring more information. (For example, ICD–9–CM codes are required to be entered at their highest level of specificity. There are valid 3-digit, 4-digit, and 5-digit codes. That is, code 136.3, Pneumocystosis, contains all appropriate digits, but if it is reported with either fewer or more than 4 digits, it will be rejected by the MCE as invalid.)
- Cases with principal diagnoses that do not usually justify admission to the hospital. (For example, 437.9, Unspecified cerebrovascular disease. While this code is valid according to the ICD–9–CM coding scheme, a more precise code should be used for the principal diagnosis.)

After screening through the MCE and any further development of the claims, cases are classified into the appropriate DRG by a software program called the GROUPER using the six data elements noted above.

The GROUPER is used both to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment. The records for all Medicare hospital inpatient discharges are maintained in the MedPAR file. The data in this file are used to evaluate possible DRG classification changes and to recalibrate the DRG weights during our annual update.

The DRGs are organized into 25 Major Diagnostic Categories (MDCs), most of which are based on a particular organ system of the body; the remainder involve multiple organ systems (such as MDC 22, Burns). Accordingly, the principal diagnosis determines MDC assignment. Within most MDCs, cases are then divided into surgical DRGs and medical DRGs. While we do not anticipate large numbers of surgical cases in LTCHs, surgical DRGs are assigned based on a surgical hierarchy that orders individual procedures or groups of procedures by resource intensity. Generally, the GROUPER does not recognize certain other procedures; that is, those procedures not surgical (for example, EKG), or minor surgical procedures generally not performed in an operating room and, therefore, not considered as surgical by the GROUPER (for example, 86.11, Biopsy of skin and subcutaneous tissue).

The medical DRGs are generally differentiated on the basis of diagnosis. Both medical and surgical DRGs may be further differentiated based on age, discharge status, and presence or absence of complications or comorbidities (CC). It should be noted that CCs are defined by certain secondary diagnoses not related to or inherently a part of the disease process identified by the principal diagnosis (for example, the GROUPER would not recognize a code from the 800.0x series, Skull fracture, as a comorbidity or complication when combined with principal diagnosis 850.4, Concussion with prolonged loss of consciousness, without return to pre-existing conscious level). Additionally, we would note that the presence of additional diagnoses does not automatically generate a CC, as not all DRGs recognize a comorbid or complicating condition in their definition. (For example, DRG 466, Aftercare without History of Malignancy as Secondary Diagnosis, is based solely on the principal diagnosis, without consideration of additional diagnoses for DRG determination.)

D. Proposed LTC–DRG Classification System for LTCHs

Unless otherwise noted, our analysis of a per discharge DRG-based patient classification system is based on LTCH data from the FY 2000 MedPAR file which contains hospital bills received through May 31, 2001, for discharges in FY 2000.

The proposed patient classification system for the proposed LTCH prospective payment system would be based on the hospital inpatient prospective payment system currently used for Medicare beneficiaries, as described in section III.C. of this proposed rule. Within the LTCH data set, as identified by provider number, we would classify all cases to the CMS DRGs. We identified individual LTCH cases with a length of stay equal to or less than 7 days (see section IV.B.1. of this preamble for a discussion of the proposed very short-stay discharge policy under § 412.527) and grouped them into two proposed very short-stay LTC–DRGs; one for psychiatric cases and one for all other cases. Therefore, the proposed patient classification system would consist of 501 DRGs that would form the basis of the proposed FY 2003 LTCH prospective payment system GROUPER. The 501 proposed LTC–DRGs include two DRGs for very short-stay discharges (*see* section IV.B.1.) and two error DRGs. The other 497 proposed LTC–DRGs are the same DRGs used in the hospital inpatient prospective payment system GROUPER for FY 2002 (version 18). Cases submitted to the fiscal intermediaries would be processed using the data elements, MCE, and the GROUPER system already in place for the acute care hospital inpatient prospective payment system as described above.

There is one significant difference in this proposed system that sets it apart from the concept of DRG definition based on clinical coherence. As noted above, cases with a length of stay equal to or less than 7 days (referred to hereafter as ''very short-stay'') were identified and grouped together in two separate LTC–DRGs.

We are proposing to group cases that stayed 7 days or fewer that would otherwise be grouped into DRGs 424 through 432 in MDC 19 (Mental

Diseases and Disorders) or DRGs 433 through 437 in MDC 20 (Alcohol/Drug Use and Alcohol/Drug-Induced Organic Mental Disorders) into a new proposed psychiatric very short-stay group. We are proposing to classify all other cases that stayed 7 days or fewer, that is, very short-stay cases not classified into MDC 19 or 20, into the second new proposed very short-stay, nonpsychiatric group. Additionally, as in the acute care hospital inpatient prospective payment system, we are proposing to include two ''error DRGs'' in the LTC–DRG system where cases that cannot be assigned to valid DRGs will be grouped. These are DRG 469 (Principal diagnosis invalid as a discharge diagnosis) and DRG 470 (Ungroupable). (*See* 66 FR 40062, August 1, 2001.) Therefore, the LTC–DRG system that we are proposing would include 4 nonclinical categories into which LTCH patients can be grouped.

E. ICD–9–CM Coding System

1. Historical Use of ICD–9–CM Codes

The Ninth Revision of the International Classification of Diseases, Clinical Modification, was adapted for use in the United States in 1979. This coding system is the basis for the CMS DRGs, upon which the proposed LTC–DRGs would be based. Additionally, the Standards for Electronic Transactions (65 FR 50312) designates the ICD–9–CM volumes 1 and 2 (including the official ICD–9–CM Guidelines for Coding and Reporting) as the standard medical data code set for capturing diseases, injuries, impairments, other health-related problems and their manifestations and causes. The ICD–9–CM volume 3 procedures (including the Official ICD–9–CM Guidelines for Coding and Reporting) have been adopted as the HIPAA standard code set for prevention, diagnosis, treatment, and management of actions taken for diseases, injuries, and impairments on hospital inpatients. These guidelines are available through a number of sources, including the following Web site: *http://www.cdc.gov/nchs/data/icdguide.pdf.*

(We note that should the Secretary, in the future, adopt a different medical data code set for capturing diseases, injuries, or impairments, hospitals participating in the Medicare program would be required to use those codes.)

2. Uniform Hospital Discharge Data Set (UHDDS) Definitions

Because the assignment of a case to a particular proposed LTC–DRG would determine the amount that would be paid for the case, it is important that the coding is accurate. We are proposing that classifications and terminology used in the proposed LTCH prospective payment system would be consistent with the ICD–9–CM and the UHDDS, as recommended to the Secretary by the National Committee on Vital and Health Statistics (Uniform Hospital Discharge Data: Minimum Data Set, National Center for Health Statistics, April 1980) and as revised in 1984 by the Health Information Policy Council (HIPC) of the U.S. Department of Health and Human Services.

We wish to point out that the ICD–9–CM coding terminology and the definitions of principal and other diagnoses of the UHDDS are consistent with the requirements of the HIPPA Administrative Simplification Act of 1996 (see 45 CFR part 162). Furthermore, the UHDDS has been used as a standard for the development of policies and programs related to hospital discharge statistics by both governmental and nongovernmental sectors for over 30 years. Additionally, the following definitions (as described in the 1984 Revision of the Uniform Hospital Discharge Data Set, approved by the Secretary of Health and Human Services for use starting January 1986) are requirements of the ICD–9–CM coding system, and have been used as a standard for the development of the CMS DRGs:

- Diagnoses include all diagnoses that affect the current hospital stay.
- Principal diagnosis is defined as the condition established after study to be chiefly responsible for occasioning the admission of the patient to the hospital for care.
- Other diagnoses (also called secondary diagnoses or additional diagnoses) are defined as all conditions that coexist at the time of admission, that develop subsequently, or that affect the treatment received or the length of stay or both. Diagnoses that relate to an earlier episode of care that have no bearing on the current hospital stay are excluded.

All procedures performed would be reported. This includes those that are surgical in nature, carry a procedural risk, carry an anesthetic risk, or require specialized training.

As discussed in section II.D.l. of this proposed rule and consistent with the procedures for review of CMS DRGs under the acute care hospital inpatient prospective payment system, we are proposing to provide LTCHs with a 60-day window after the date of the notice of the initial LTC–DRG assignment to request review of that assignment. Additional information may be provided by the LTCH to the fiscal intermediary as part of that review.

3. Maintenance of ICD–9–CM System

In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee, co-chaired by the National Center for Health Statistics (NCHS) and CMS, charged with maintaining and updating the ICD–9–CM system. The committee is jointly responsible for approving coding changes, and developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in the Tabular List and Alphabetic Index for Diseases, while CMS has lead responsibility for the ICD–9–CM procedure codes included in the Tabular List and Alphabetic Index for Procedures.

The 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 field, such as the American Health Information Management Association (AHIMA) (formerly American Medical Record Association (AMRA)), the American Hospital Association (AHA), and various physician specialty groups, as well as physicians, medical record administrators, health information management professionals, and other members of the public to contribute ideas on coding matters. After considering the opinions expressed at the public meetings and in writing, the committee formulates recommendations, which then must be approved by the agencies.

The committee presents proposals for coding changes at two public meetings per year held at the CMS Central Office located in Baltimore, Maryland. The agenda and date of the meeting can be accessed on the CMS Web site at: *http://www.cms.gov/medicare/icd9cm.htm.*

After consideration of public comments received at both meetings, as well as in writing, coding changes are published by CMS in the annual proposed and final rules in the **Federal**

Register on Medicare program changes to the short-term acute care hospital inpatient prospective payment systems. For example, new codes effective for discharges on or after October 1, 2001, can be found in Tables 6A through 6F of the August 1, 2001 hospital inpatient prospective payment system and rates for FY 2002 final rule (66 FR 40063 through 40066).

All changes to the ICD–9–CM coding system that affect DRG assignment are addressed annually in the acute care hospital inpatient prospective payment system proposed and final rules. Since the proposed DRG-based patient classification system for the proposed LTCH prospective payments system is based on the acute care hospital inpatient prospective payment system DRGs, these changes would also affect the proposed LTCH prospective payment system DRG patient classification system. As coding changes may have an impact on DRG assignment, LTCHs would be encouraged to obtain and correctly use the most current edition of the ICD–9–CM codes. The official version of the ICD–9–CM is available on CD–ROM from the U.S. Government Printing Office. The FY 2002 version can be ordered by contacting the Superintendent of Documents, U.S. Government Printing Office, Dept. 50, Washington, DC 20402–9329, telephone: (202) 512–1800. The stock number is 017–022–01510–2, and the price is $22.00. In addition, private vendors also publish the ICD–9–CM.

Copies of the Coordination and Maintenance Committee minutes can be obtained from the CMS Web site at: *http://www.cms.gov/medicare/icd9cm.htm.* We encourage commenters to address suggestions on coding issues involving diagnosis codes to: Donna Pickett, Co-Chairperson, ICD–9–CM Coordination and Maintenance Committee, NCHS Room 1100, 6525 Belcrest Road, Hyattsville, MD 20782. Comments may be sent by e-mail to: *dfp4@cdc.gov.*

Questions and comments concerning the procedure codes should be addressed to: Patricia E. Brooks, Co-Chairperson, ICD–9–CM Coordination and Maintenance Committee, CMS, Center for Medicare Management, Purchasing Policy Group, Division of Acute Care, Mail Stop C4–08–06, 7500 Security Boulevard, Baltimore, MD 21244–1850. Comments may be sent by e-mail to: *pbrooks@cms.hhs.gov.*

As noted above, the ICD–9–CM code changes that have been approved would become effective at the beginning of the Federal fiscal year, October 1. Of particular note to LTCHs would be the invalid diagnosis codes (Table 6C) and the invalid procedure codes (Table 6D). Use of invalid codes would cause claims to fail the MCE screens.

4. Coding Rules and Use of ICD–9–CM in LTCHs

The emphasis on the need for proper coding cannot be overstated. Inappropriate coding of cases can adversely affect the uniformity of cases in each LTC–DRG and produce inappropriate weighting factors at recalibration.

Because of our concern with correct coding practice, we have been working with the AHA editorial advisory board for its publication ''Coding Clinic for ICD–9–CM'' since 1984. Coding Clinic was developed to improve the accuracy and uniformity of medical record coding and is recognized in the industry as the definitive source of coding instruction. In 1987, the AHA created the cooperating parties, who have final approval of the coding advice provided in Coding Clinic. The cooperating parties consist of the AHA, the AHIMA (formerly the AMRA), CMS (formerly HCFA), and NCHS. As we participate on the editorial advisory board and are one of the cooperating parties, we support the use of Coding Clinic for coding advice for LTCHs. Information about Coding Clinic can be obtained from the American Hospital Association, Central Office on ICD–9–CM, One North Franklin, Chicago, IL 60606, or at its Web site at *http://www.ahacentraloffice.org.*

Even though we recognize that the **Federal Register** may not be the most efficient vehicle for coding instruction, we believe it is important to briefly review some of the basic instructions for coding. Our compelling need is based on the review of the data submitted by LTCHs. We note that the logic of the care patterns or place of treatment should not be considered in reviewing the following scenarios. Rather, we are attempting to present simplistic examples to illustrate correct coding practice.

- Principal diagnosis—As noted above, the specific definition for principal diagnosis established by the 1984 Revision of the Uniform Hospital Discharge Data Set is ''the condition established after study to be chiefly responsible for occasioning the admission of the patient to the hospital for care.'' When a patient is discharged from an acute care facility and admitted to a LTCH, the appropriate principal diagnosis at the LTCH is not necessarily the same diagnosis for which the patient received care at the acute care hospital. For example, a patient who suffers a stroke (code 436, Acute, but ill-defined, cerebrovascular disease) is admitted to an acute hospital for diagnosis and treatment. The patient is then transferred to a LTCH for further treatment of left-sided hemiparesis and dysphasia. The appropriate principal diagnosis at the LTCH would be a code from section 438 (Late effects of cerebrovascular disease), such as 438.20 (Late effects of cerebrovascular disease, Hemiplegia affecting unspecified side) or 438.12 (Late effects of cerebrovascular disease, Dysphasia).

Coding guidelines state that the residual condition is sequenced first followed by the cause of the late effect. In the case of cerebrovascular disease, the combination code describes both the residual of the stroke (for example, speech or language deficits or paralysis), and the cause of the residual (the stroke)). Code 436 would only be used for the first (initial) episode of care for the stroke that was in the acute care setting.

- Other diagnoses—Secondary diagnoses that have no bearing on the LTCH stay would not be coded. For example, a patient who has recovered from pneumonia during a previous episode of care would not have a diagnosis code for pneumonia included in his or her list of discharge diagnoses. The pneumonia was not treated during this LTCH admission and, therefore, has no bearing on this case.
- Procedures—Codes reflecting procedures provided during a previous acute care hospital stay would not be included because the procedure was not performed during this LTCH admission. For example, a patient with several chronic illnesses is admitted to an acute care hospital with a diagnosis of appendicitis for which he or she receives an appendectomy. The patient subsequently is transferred to a LTCH for medical treatment following surgery, and as a result of the multiple secondary conditions, the patient needs a higher level of care than he or she could receive at a SNF or at home with an HHA. In this situation, appendicitis would not be coded because this condition was resolved with the removal of the appendix. The procedure code for appendectomy would not be used on the LTCH record, as the procedure was performed in the acute care setting, not during the LTCH admission.

We would train fiscal intermediaries and providers on the new system prior to its implementation. We also would issue manuals containing procedures as well as coding instructions to LTCHs and fiscal intermediaries following the publication of the final rule.

IV. Proposed Payment System for LTCHs

The LTCH prospective payment system proposed in this rule would use Federal prospective payment rates across 501 proposed distinct LTC–DRGs. We are proposing to establish a standard Federal payment rate based on the best available LTCH cost data. LTC–DRG relative weights would be applied to the standard Federal rate to account for the relative differences in resource use across the LTC–DRGs. The proposed system would also include an adjustment for very short-stay discharges, short-stay outliers, and high-cost outlier cases, as described in section IV.B. of this preamble.

The proposed standard Federal prospective payment rate, which is the basis for determining proposed Federal payment rates for each proposed LTC–DRG, would be determined based on average costs from a base period, and also would reflect the combined aggregate effects of the proposed payment weights and other proposed policies discussed in this section. In discussing the proposed methodology, we begin by describing the various adjustments and factors that would serve as the input used in establishing the proposed standard Federal prospective payment rate. Accordingly, we are proposing to develop prospective payments for LTCHs using the following major steps:

- Develop the LTC–DRG relative weights.
- Determine appropriate payment system adjustments.
- Calculate the budget neutral standard Federal prospective payment rate.
- Calculate the Federal LTC–DRG prospective payments.

A detailed description of each step and a discussion of our proposed policies for special cases, phase-in implementation, and other policies follows.

A. Development of the Proposed LTC–DRG Relative Weights

1. Overview of Development of the Proposed LTC–DRG Relative Weights

As previously stated, one of the primary goals for the implementation of the proposed LTCH prospective payment system would be to pay each LTCH an appropriate amount for the efficient delivery of care to Medicare patients. The system must be able to account adequately for each LTCH's case-mix in order to ensure both fair distribution of Medicare payments and access to adequate care for beneficiaries whose care is more costly. To accomplish these goals, we are proposing to adjust the standard Federal prospective payment system rate by the LTC–DRG relative weights in determining payment to LTCHs for each case.

In this proposed payment system, relative weights for each LTC–DRG would be a primary element used to account for the variations in cost per discharge and resource utilization among the payment groups (proposed § 412.515). To ensure that Medicare patients classified to each proposed LTC–DRG would have access to an appropriate level of services and to encourage efficiency, we are proposing to calculate a relative weight for each LTC–DRG that represents the resources needed by an average inpatient LTCH case in that LTC–DRG. For example, cases in a LTC–DRG with a relative weight of 2 would, on average, cost twice as much as cases in a LTC–DRG with a weight of 1.

To calculate the proposed relative weights, we obtained charges from FY 2000 Medicare bill data in the June 2001 update of the MedPAR and we used version 18.0 of the CMS GROUPER (used under the hospital inpatient prospective payment system for FY 2001). In the final rule, we would recalculate the relative weights based on the most recent MedPAR data and version 19.0 of the CMS GROUPER (used under the hospital inpatient prospective payment system for FY 2002). By nature LTCHs often specialize in certain areas, such as ventilator-dependent patients and rehabilitation and wound care. Some case types (DRGs) may be treated, to a large extent, in hospitals that have, from a perspective of charges, relatively high (or low) charges. Such nonarbitrary distribution of cases with relatively high (or low) charges in specific LTC–DRGs has the potential to inappropriately distort the measure of average charges. To account for the fact that cases may not be randomly distributed across LTCHs, we are proposing to use a hospital-specific relative value method to calculate relative weights. We believe this method would remove this hospital-specific source of bias in measuring average charges. Specifically, we would reduce the impact of the variation in charges across providers on any particular LTC–DRG relative weight by converting each LTCH's charge for a case to a relative value based on that LTCH's average charge. As MedPAC noted in its June 2000 Report to Congress, the hospital-specific relative value method eliminates distortion in the weights due to systematic differences among hospitals in the level of charge markups or costs (p. 58). The case-mix index is the average case weight (adjusted to eliminate the effect of short-stay outliers that are described in section IV.B.2. of this preamble) for cases at each LTCH.

Under the hospital-specific relative value method, we would standardize charges for each LTCH by converting its charges for each case to hospital-specific relative charge values and then adjusting those values for the LTCH's case-mix. The adjustment for case-mix is needed to rescale the hospital-specific relative charge values (which average 1.0 for each LTCH by definition). The average relative weight for a LTCH is its case-mix, so it is reasonable to scale each LTCH's average relative charge value by its case-mix. In this way, each LTCH's relative charge values will be adjusted by its case-mix to an average that reflects the complexity of the cases it treats relative to the complexity of the cases treated by all other LTCHs (the average case-mix of all LTCHs).

We would standardize charges for each case by first dividing the adjusted charge for the case (adjusted for short-stay outliers as described in section IV.B.2. of this proposed rule) by the average adjusted charge for all cases at the LTCH in which the case was treated. The average adjusted charge would reflect the average intensity of the health care services delivered by a particular LTCH and the average cost level of that LTCH. The resulting ratio would be multiplied by that LTCH's case-mix index to determine the standardized charge for the case.

Multiplying by the LTCH's case-mix index accounts for the fact that the same relative charges are given greater weight in a hospital with higher average costs than they would at a LTCH with low average costs in order to adjust each LTCH's relative charge value to reflect its case-mix relative to the average case-mix for all LTCHs. Because we are proposing to standardize charges in this manner, we would count charges for a Medicare patient at a LTCH with high average charges as less resource intensive than they would be at a LTCH with low average charges. For example, a $10,000 charge for a case in a LTCH with an average adjusted charge of $17,500 reflects a higher level of relative resource use than a $10,000 charge for a case in a LTCH with the same case-mix, but an average adjusted charge of $35,000. We believe that the adjusted charge of an individual case would more accurately reflect actual resource use for an individual LTCH because the variation in charges due to systematic differences in the markup of charges among LTCHs is taken into account.

As explained in section III. of this proposed rule, we would group cases with a 7-day or fewer length of stay (very short-stay discharges under proposed § 412.527 described in section IV.B.1. of this preamble) into one of two proposed groups. We are proposing that discharges with a 7-day or fewer length of stay that would otherwise be grouped into DRGs 424 through 432 in MDC 19 (Mental Diseases and Disorders) or DRGs 433 through 437 in MDC 20 (Alcohol/Drug Use and Alcohol/Drug Induced Organic Mental Disorders) would be grouped into a proposed psychiatric very short-stay discharge group. All other very short-stay discharges would be grouped into the second very short-stay discharge, nonpsychiatric group. Each of these very short-stay discharge groups would have its own relative weight and an average length of stay computed using the same methodology used to determine the relative weights for the ''regular'' (length of stay greater than 7 days) LTC–DRGs.

In addition, in order to account for LTC–DRGs with low volume (that is, with fewer than 25 LTCH cases), we would group those low volume LTC–DRGs into one of five categories (quintiles) based on average charges, for the purposes of determining relative weights. Using LTCH cases from the June 2001 update of the FY 2000 MedPAR, we identified 188 LTC–DRGs that contained between 1 and 24 cases. This list of LTC–DRGs was then divided into one of the five low volume quintiles, each containing a minimum of 37 LTC–DRGs (188/5 = 37 with 3 LTC–DRGs as a remainder). We made an assignment to a specific quintile by sorting the 188 low volume DRGs in ascending order by average charge. Since the number of LTC–DRGs with less than 25 LTCH cases is not evenly divisible by five, the average charge of the low volume LTC–DRG was used to determine which quintiles received an additional LTC–DRG. After sorting the 188 volume LTC–DRGs in ascending order, the first fifth of low volume (37) LTC–DRGs with the lowest average charge are grouped into Quintile 1. Since the average charge of the next LTC–DRG (38th in the sorted list) is closer to the previous LTC–DRG's average charge (assigned to Quintile 1) than to the average charge of the 39th LTC–DRG on the sorted list (to be assigned to Quintile 2), it is placed into Quintile 1. This process was repeated through the remaining low volume LTC–DRGs so that 3 quintiles contained 38 LTC–DRGs and 2 quintiles contained 37 LTC–DRGs. The highest average charge cases would be grouped into Quintile 5. In order to determine the proposed relative weights for the 188 LTC–DRGs with low volume, we used the five low volume quintiles described above. The composition of each of the five low volume quintiles shown below in Table 2 would be used in determining the proposed LTC–DRG relative weights. We would determine a proposed relative weight and average length of stay for each of the proposed five low volume quintiles using the formula applied to the regular LTC–DRGs (25 or more cases), as described in section IV.A.2 of this proposed rule. We would assign the same relative weight and average length of stay to each of the proposed LTC–DRGs that make up that proposed low volume quintile. We note that as this proposed system is dynamic, it is entirely possible that the number and specific type of LTC–DRGs with a low volume of LTCH cases would vary in the future. We would use the best available claims data in the MedPAR to identify low volume LTC–DRGs and to calculate the relative weights based on our proposed methodology.

TABLE 2.—COMPOSITION OF PROPOSED LOW VOLUME QUINTILES

LTC–DRG	Description
Proposed Quintile 1	
45	NEUROLOGICAL EYE DISORDERS
47	OTHER DISORDERS OF THE EYE AGE >17 W/O CC
53	SINUS & MASTOID PROCEDURES AGE >17
55	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES
69	OTITIS MEDIA & URI AGE >17 W/O CC
149	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC
158	ANAL & STOMAL PROCEDURES W/O CC
160	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC
161	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC
171	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC
178	UNCOMPLICATED PEPTIC ULCER W/O CC
219	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC
252	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0–17
257	TOTAL MASTECTOMY FOR MALIGNANCY W CC
258	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC
282	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0–17
290	THYROID PROCEDURES
295	DIABETES AGE 0–35
299	INBORN ERRORS OF METABOLISM
305	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON–NEOPL W/O CC
307	PROSTATECTOMY W/O CC
326	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC
336	TRANSURETHRAL PROSTATECTOMY W CC
337	TRANSURETHRAL PROSTATECTOMY W/O CC
344	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY
353	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY
355	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC
356	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES
358	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC
359	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC
396	RED BLOOD CELL DISORDERS AGE 0–17
419**	FEVER OF UNKNOWN ORIGIN AGE >17 W CC
436	ALC/DRUG DEPENDENCE W REHABILITATION THERAPY

TABLE 2.—COMPOSITION OF PROPOSED LOW VOLUME QUINTILES—Continued

LTC–DRG	Description
437	ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY
447	ALLERGIC REACTIONS AGE >17
450	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC
467	OTHER FACTORS INFLUENCING HEALTH STATUS
494	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC
Proposed Quintile 2	
21	VIRAL MENINGITIS
46	OTHER DISORDERS OF THE EYE AGE >17 W CC
74	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0–17
95	PNEUMOTHORAX W/O CC
117	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT
124**	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG
128	DEEP VEIN THROMBOPHLEBITIS
129	CARDIAC ARREST, UNEXPLAINED
206	DISORDERS OF LIVER EXCEPT MALIG, CIRR, ALC HEPA W/O CC
208	DISORDERS OF THE BILIARY TRACT W/O CC
211	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC
224	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC
232	ARTHROSCOPY
273	MAJOR SKIN DISORDERS W/O CC
276	NON-MALIGANT BREAST DISORDERS
284	MINOR SKIN DISORDERS W/O CC
288	O.R. PROCEDURES FOR OBESITY
301	ENDOCRINE DISORDERS W/O CC
306	PROSTATECTOMY W CC
309	MINOR BLADDER PROCEDURES W/O CC
311	TRANSURETHRAL PROCEDURES W/O CC
324	URINARY STONES W/O CC
328	URETHRAL STRICTURE AGE >17 W CC
338	TESTES PROCEDURES, FOR MALIGNANCY
347	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC
348	BENIGN PROSTATIC HYPERTROPHY W CC
349*	BENIGN PROSTATIC HYPERTROPHY W/O CC
360	VAGINA, CERVIX & VULVA PROCEDURES
369	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS
399	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC
408	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R. PROC
419*	FEVER OF UNKNOWN ORIGIN AGE >17 W CC
420	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC
449	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC
454	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC
455	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC
465	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS
507	FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA
509	FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA
511	NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA
Proposed Quintile 3	
4	SPINAL PROCEDURES
8	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC
22	HYPERTENSIVE ENCEPHALOPATHY
32	CONCUSSION AGE >17 W/O CC
66	EPISTAXIS
81	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0–17
84	MAJOR CHEST TRAUMA W/O CC
157	ANAL & STOMAL PROCEDURES W CC
177	UNCOMPLICATED PEPTIC ULCER W CC
197	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE
225	FOOT PROCEDURES
228	MAJOR THUMB OR JOINT PROC, OR OTH HAND OR WRIST PROC W CC
229	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC
255	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE 0–17
261	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION
279	CELLULITIS AGE 0–17
298	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0–17
304	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC
308	MINOR BLADDER PROCEDURES W CC
319	KIDNEY & URINARY TRACT NEOPLASMS W/O CC

TABLE 2.—COMPOSITION OF PROPOSED LOW VOLUME QUINTILES—Continued

LTC–DRG	Description
322	KIDNEY & URINARY TRACT INFECTIONS AGE 0–17
323	URINARY STONES W CC, &/OR ESW LITHOTRIPSY
341	PENIS PROCEDURES
349**	BENIGN PROSTATIC HYPERTROPHY W/O CC
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM
385	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY
390	NEONATE W OTHER SIGNIFICANT PROBLEMS
401	LYMPHOMA & NON–ACUTE LEUKEMIA W OTHER O.R. PROC W CC
409	RADIOTHERAPY
421	VIRAL ILLNESS AGE >17
427	NEUROSES EXCEPT DEPRESSIVE
432	OTHER MENTAL DISORDER DIAGNOSES
493	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC
497	SPINAL FUSION W CC
508	FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA
510	NON–EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA
Proposed Quintile 4	
1	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA
5	EXTRACRANIAL VASCULAR PROCEDURES
91	SIMPLE PNEUMONIA & PLEURISY AGE 0–17
104	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W CARDIAC CATH
105	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W/O CARDIAC CATH
110	MAJOR CARDIOVASCULAR PROCEDURES W CC
115	PRM CARD PACEM IMPL W AMI, HRT FAIL OR SHK, OR AICD LEAD OR GNRTR P
118	CARDIAC PACEMAKER DEVICE REPLACEMENT
124*	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG
125*	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG
148	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC
150	PERITONEAL ADHESIOLYSIS W CC
159	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC
184	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0–17
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17
191	PANCREAS, LIVER & SHUNT PROCEDURES W CC
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC
218	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W CC
223	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC
231	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR
285	AMPUTAT OF LOWER LIMB FOR ENDOCRINE, NUTRIT, & METABOL DISORDERS
292	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC
293*	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC
310	TRANSURETHRAL PROCEDURES W CC
312	URETHRAL PROCEDURES, AGE >17 W CC
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES
363	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY
400	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE
410	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS
424	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS
439	SKIN GRAFTS FOR INJURIES
443	OTHER O.R. PROCEDURES FOR INJURIES W/O CC
482	TRACHEOSTOMY FOR FACE, MOUTH & NECK DIAGNOSES
492	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS
500	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC
503	KNEE PROCEDURES W/O PDX OF INFECTION
504	EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT
505	EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT
506	FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA
Proposed Quintile 5	
2	CRANIOTOMY FOR TRAUMA AGE >17
31	CONCUSSION AGE >17 W CC
44	ACUTE MAJOR EYE INFECTIONS
63	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES
75	MAJOR CHEST PROCEDURES
77	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC
112	PERCUTANEOUS CARDIOVASCULAR PROCEDURES
116	OTH PERM CARD PACEMAK IMPL OR PTCA W CORONARY ARTERY STENT IMPLNT
125**	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG
152	MINOR SMALL & LARGE BOWEL PROCEDURES W CC

TABLE 2.—COMPOSITION OF PROPOSED LOW VOLUME QUINTILES—Continued

LTC–DRG	Description
154	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC
155	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC
193	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC
199	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY
201	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES
209	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY
226	SOFT TISSUE PROCEDURES W CC
227	SOFT TISSUE PROCEDURES W/O CC
230	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC
265	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC
266	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC
267	PERIANAL & PILONIDAL PROCEDURES
268	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES
293**	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC
303	KIDNEY, URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM
333	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0–17
339	TESTES PROCEDURES, NON-MALIGNANCY AGE >17
345	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY
365	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES
394	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS
406	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R. PROC W CC
417	SEPTICEMIA AGE 0–17
479***	OTHER VASCULAR PROCEDURES W/O CC
486	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA
488	HIV W EXTENSIVE O.R. PROCEDURE
499	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC
501	KNEE PROCEDURES W PDX OF INFECTION W CC

*One of the original 188 low volume LTC-DRGs initially assigned to a different low volume quintile; reassigned to this low volume quintile in addressing nonmonotonicity (see step 4 below).

**One of the original 188 low volume LTC-DRGs initially assigned to this low volume quintile; reassigned to a different low volume quintile in addressing nonmonotonicity (see step 4 below).

***One of the original 188 low volume LTC-DRGs initially assigned to this low volume quintile; removed from the low volume quintiles in addressing nonmonotonicity (see step 4 below).

After grouping the cases in the appropriate proposed LTC–DRG, we calculate the proposed relative weights in this proposed rule by first adjusting the number of cases in each LTC–DRG for the effect of short-stay outlier cases under proposed § 412.529. The short-stay adjusted discharges and corresponding charges would be used to calculate proposed ''relative adjusted weights'' in each LTC–DRG using the hospital-specific relative value method described above. We describe each of these steps in greater detail below.

2. Steps for Calculating the Proposed Relative Weights

Step 1—Adjust charges for the effects of short-stay outliers. The first step in the calculation of the relative weights is to adjust each LTCH's charges per discharge for short-stay outlier cases (that is, a patient with a length of stay in excess of 7 days, but below two-thirds the average length of stay of the LTC–DRG as described in section IV.B.2. of this proposed rule).

We would make this adjustment by counting a short-stay outlier as a fraction of a discharge based on the ratio of the length of stay of the case to the average length of stay for the LTC–DRG for nonshort-stay outlier cases. This would have the effect of proportionately reducing the impact of the lower charges for the short-stay outlier cases in calculating the average charge for the LTC–DRG. This process produces the same result as if the actual charges per discharge of a short-stay outlier case would be adjusted to what they would have been had the patient's length of stay been equal to the average length of stay of the LTC–DRG.

Counting short-stay outlier cases as full discharges with no adjustment in determining the relative weights would lower the relative weight for affected LTC–DRGs because the relatively lower charges of the short-stay outlier cases bring down the average charge for all cases within a LTC–DRG. This would result in an ''underpayment'' to nonshort-stay outlier cases and an ''overpayment'' to short-stay outlier cases. Therefore, adjusting for short-stay outlier cases in this manner would result in more appropriate payments for all LTCH cases. The result of step 1 is that each LTCH's average cost per discharge is adjusted for short-stay outliers (as described above) before removing statistical outliers (step 2) and calculating the LTC–DRG relative weights on an iterative basis (step 3) using the hospital-specific relative value method.

Step 2—Remove statistical outliers. We are proposing to define statistical outliers as cases that are outside of 3.0 standard deviations from the mean of the log distribution of both charges per case and the charges per day for each proposed LTC–DRG. After adjusting each LTCH's discharges for short-stay outlier cases (see step 1), these statistical outliers would be removed prior to calculating the proposed relative weights. We believe that they may represent aberrations in the data that would distort the measure of average resource use. Including those cases in the calculation of the relative weights could result in an inaccurate weight that does not truly reflect relative resource use among the proposed LTC–DRGs. Thus, removing statistical outliers would result in more appropriate payments. These adjusted charges per discharge for each proposed LTC–DRG are then used to calculate the average adjusted charge of all cases at the LTCH in determining the proposed relative weight for the proposed LTC–DRGs.

Step 3—Calculate the LTC–DRG relative weights on an iterative basis. The process of calculating the LTC–DRG relative weights would be iterative. First, for each case, we would calculate a hospital-specific relative charge value by dividing the short-stay outlier adjusted charge per discharge (see step 1) of the case (after removing the statistical outlier (see step 2)) by the average charge per discharge for the LTCH in which the case occurred. The resulting ratio is then multiplied by the LTCH's case-mix index to produce an adjusted hospital-specific relative charge value for the case. An initial case-mix index value of 1.0 is used for each LTCH.

For each LTC–DRG, the proposed LTC–DRG relative weight would then be calculated by dividing the average of the adjusted hospital-specific relative charge values (from above) for the LTC–DRG by the overall average hospital-specific relative charge value across all cases for all LTCHs. Using these recalculated LTC–DRG relative weights, each LTCH's average relative weight for all of its cases (case-mix) would be calculated by dividing the sum of all the LTCH's LTC–DRG relative weights by its total number of cases. The LTCHs' hospital-specific relative charge values above would be multiplied by these hospital specific case-mix indexes. These hospital-specific case-mix adjusted relative charge values are then used to calculate a new set of LTC–DRG relative weights across all LTCHs. This iterative process would be continued until there is convergence between the weights produced at adjacent steps, for example, when the maximum difference is less than 0.0001.

Step 4—Adjust the LTC–DRG relative weights to account for nonmonotonically increasing relative weights. As explained in section III.C. of this proposed rule, the proposed LTC–DRGs would contain ''pairs'' that are differentiated based on the presence or absence of CCs. Proposed LTC–DRGs with CCs are defined by certain secondary diagnoses not related to or inherently a part of the disease process identified by the principal diagnosis, but the presence of additional diagnoses does not automatically generate a CC. The value of monotonically increasing relative weights rises as the resource use increases (for example, from uncomplicated to more complicated). The presence of CCs in a LTC–DRG means that cases classified into a ''without CC'' LTC–DRG are expected to have lower resource use (and lower costs). In other words, resource use (and costs) are expected to decrease across ''with CC''/''without CC'' pairs of LTC–DRGs. For a case to be assigned to a proposed LTC–DRG with CCs, more coded information is called for (that is, at least one relevant secondary diagnosis), than for a case to be assigned to a proposed LTC–DRG without CCs (which is based on only one primary diagnosis and no relevant secondary diagnoses). Currently, the database includes both accurately coded cases without complications and cases that have complications (and cost more) but were not coded completely. Both types of cases would be grouped to a proposed LTC–DRG ''without CCs'' since only one primary diagnosis was coded. Since LTCHs are currently paid under cost-based reimbursement, which is not based on patient diagnoses, LTCHs' coding for these cases may not have been as detailed as possible.

Thus, in developing the proposed relative weights for the LTCH prospective payment system, we found on occasion that the data suggested that cases classified to the proposed LTC–DRG ''with CCs'' of a ''with CC''/''without CC'' pair had a lower average charge than the corresponding proposed LTC–DRG ''without CCs.'' We believe this anomaly may be due to coding that may not have fully reflected all comorbidities that were present. Specifically, LTCHs may have failed to code relevant secondary diagnoses, which resulted in cases that actually had complications and comorbidities being classified into a ''without CC'' LTC–DRG. It would not make sense to pay a lower amount for the ''with CC'' LTC–DRG, so we are proposing to group both the cases ''with CCs'' and ''without CCs'' together for the purpose of calculating the proposed relative weights for the proposed LTC–DRGs until we have adequate data to calculate appropriate separate weights for these anomalous DRG pairs. We expect that, as was the case when we first implemented the acute care hospital inpatient prospective payment system, this problem will be self-correcting, as LTCHs submit more completely coded data in the future.

Using the LTCH cases in the June 2001 update of the FY 2000 MedPAR, we identified three types of ''with CC'' and ''without CC'' pairs of proposed LTC–DRGs that are nonmonotonic, that is, where the ''without CC'' LTC–DRG would have a higher average charge than the ''with CC'' LTC–DRG.

The first category of nonmonotonically increasing relative weights for LTC–DRG pairs ''with and without CCs'' contains 5 pairs of LTC–DRGs in which both the LTC–DRG ''with CCs'' and the LTC–DRG ''without CCs'' had 25 or more LTCH cases and, therefore, did not fall into one of the 5 quintiles. For each pair of LTC–DRGs, we would combine the cases and compute a new relative weight based on the case-weighted average of the combined cases of the LTC–DRGs. The case-weighted average charge would be determined by dividing the total charges for all cases by the total number of cases for the combined LTC–DRG. This new relative weight would be assigned to both of the LTC–DRGs in the pair. For the proposed FY 2003 implementation of the LTCH prospective payment system, the following proposed LTC–DRGs would be in this category: LTC–DRGs 10 and 11, 89 and 90, 138 and 139, 141 and 142, and 274 and 275.

The second category of nonmonotonically increasing relative weights for proposed LTC–DRG pairs with and without CCs consists of 4 pairs of LTC–DRGs that have fewer than 25 cases and are both grouped to different quintiles in which the ''without CC'' LTC–DRG would be in a higher-weighted quintile than the ''with CC'' LTC–DRG. For each pair, we would combine the cases and determine the case-weighted average charge for all cases. The case-weighted average charge would be determined by dividing the total charges for all cases by the total number of cases for the combined LTC–DRG. Based on the case-weighted average charge, we determined which quintile the ''combined LTC–DRG'' would be grouped. Both LTC–DRGs in the pair would then be grouped into the same quintile, and thus have the same proposed relative weight. For the proposed FY 2003 implementation of the LTCH prospective payment system, the following proposed LTC–DRGs would be in this category: 124 and 125 (low volume quintile 4), 292 and 293 (low volume quintile 4), 348 and 349 (low volume quintile 2), and 419 and 420 (low volume quintile 2).

The third category of nonmonotonically increasing relative weights for proposed LTC–DRG pairs with and without CCs has one pair of LTC–DRGs where one of the LTC–DRGs has fewer than 25 LTCH cases and is grouped to a quintile and the other LTC–DRG has 25 or more LTCH cases and would have its own LTC–DRG weight, and the LTC–DRG ''without CCs'' would have the higher weight. We would remove the low volume pair LTC–DRG from the quintile and combine it with the other pair LTC–DRG for the computation of a new relative weight for each of these LTC–DRGs. This proposed new relative weight would be assigned to both LTC–DRGs, so they would each have the same relative weight. For the proposed FY

2003 implementation of the LTCH prospective payment system, proposed LTC–DRGs 478 and 479 would be in this category.

In addition, for the FY 2003 implementation of the LTCH prospective payment system, we are proposing to determine the relative weight for each LTC–DRG using charges reported on the June 2001 update of the FY 2000 MedPAR. Of the proposed 501 LTC–DRGs in the proposed CMS LTCH prospective payment system, we identified 111 LTC–DRGs for which there were no LTCH cases in the database. That is, based on the FY 2000 MedPAR, no patients who would have been classified to those DRGs were treated in LTCHs during FY 2000 and, therefore, no charge data were reported for those DRGs. Thus, in the process of determining the relative weights of proposed LTC–DRGs, we were unable to determine weights for these 111 LTC–DRGs using the method described above. However, since patients with a number of the diagnoses under these LTC–DRGs may be treated at LTCHs beginning in FY 2003 when the LTCH prospective payment system would be implemented, we are proposing to assign relative weights to each of the 111 ''no volume'' LTC–DRGs based on clinical similarity and relative costliness to one of the remaining 390 (501 − 111 = 390) LTC–DRGs for which we are able to determine relative weights, based on FY 2000 charge data.

As there are currently no LTCH cases in these ''no volume'' LTC–DRGs, we are proposing to establish relative weights for the 111 LTC–DRGs with no LTCH cases in the FY 2000 MedPAR by grouping them to the appropriate low volume quintile. This methodology would be consistent with our methodology used in determining relative weights to account for low volume LTC–DRGs described above.

Our proposed methodology for determining relative weights for the ''no volume'' LTC–DRGs is as follows: First, we would cross-walk the no volume LTC–DRGs by matching them to other similar LTC–DRGs for which there were LTCH cases in the FY 2000 MedPAR based on clinical similarity and intensity of use of resources as determined by care provided during the period of time surrounding surgery, surgical approach (if applicable), length of time of surgical procedure, post-operative care, and length of stay. We would assign the weight for the applicable quintile to the no volume LTC–DRG if the LTC–DRG to which it would be cross-walked was grouped to one of the low volume quintiles. If the LTC–DRG to which the no volume LTC–DRG would be cross-walked was not one of the LTC–DRGs grouped to one of the low volume quintiles, we would compare the weight of the LTC–DRG to which the no volume LTC–DRG would be cross-walked to the weights of each of the five quintiles and assign the no volume LTC–DRG the relative weight of the quintile with the closest weight. A list of the proposed no volume LTC–DRGs and the LTC–DRG to which it would be crosswalked in order to determine the appropriate low volume quintile for the assignment of a relative weight is shown below in Table 3.

TABLE 3.—PROPOSED NO VOLUME LTC–DRG CROSSWALK AND PROPOSED QUINTILE ASSIGNMENT [1]

LTC–DRG	Description	Cross-walked LTC–DRG	Low volume quintile assigned
3	CRANIOTOMY AGE 0–17	1	Quintile 4.
6	CARPAL TUNNEL RELEASE	8	Quintile 3.
26	SEIZURE & HEADACHE AGE 0–17	25	Quintile 2.
30	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0–17	29	Quintile 3.
33	CONCUSSION AGE 0–17	32	Quintile 3.
36	RETINAL PROCEDURES	47	Quintile 1.
37	ORBITAL PROCEDURES	47	Quintile 1.
38	PRIMARY IRIS PROCEDURES	47	Quintile 1.
39	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	47	Quintile 1.
40	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	47	Quintile 1.
41	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0–17	47	Quintile 1.
42	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	47	Quintile 1.
43	HYPHEMA	47	Quintile 1.
48	OTHER DISORDERS OF THE EYE AGE 0–17	47	Quintile 1.
49	MAJOR HEAD & NECK PROCEDURES	73	Quintile 3.
50	SIALOADENECTOMY	73	Quintile 3.
51	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	73	Quintile 3.
52	CLEFT LIP & PALATE REPAIR	53	Quintile 1.
56	RHINOPLASTY	55	Quintile 1.
57	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	55	Quintile 1.
58	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17	55	Quintile 1.
59	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	55	Quintile 1.
60	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17	55	Quintile 1.
61	MYRINGOTOMY W TUBE INSERTION AGE >17	55	Quintile 1.
62	MYRINGOTOMY W TUBE INSERTION AGE 0–17	55	Quintile 1.
67	EPIGLOTTITIS	73	Quintile 3.
70	OTITIS MEDIA & URI AGE 0–17	69	Quintile 1.
71	LARYNGOTRACHEITIS	69	Quintile 1.
72	NASAL TRAUMA & DEFORMITY	69	Quintile 1.
98	BRONCHITIS & ASTHMA AGE 0–17	97	Quintile 1.
106	CORONARY BYPASS W PTCA	104	Quintile 4.
107	CORONARY BYPASS W CARDIAC CATH	104	Quintile 4.
108	OTHER CARDIOTHORACIC PROCEDURES	104	Quintile 4.
109	CORONARY BYPASS W/O PTCA OR CARDIAC CATH	104	Quintile 4.
119	VEIN LIGATION & STRIPPING	131	Quintile 2.
137	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0–17	136	Quintile 2.
146	RECTAL RESECTION W CC	148	Quintile 4.
147	RECTAL RESECTION W/O CC	148	Quintile 4.

TABLE 3.—PROPOSED NO VOLUME LTC–DRG CROSSWALK AND PROPOSED QUINTILE ASSIGNMENT [1]—Continued

LTC–DRG	Description	Cross-walked LTC–DRG	Low volume quintile as-signed
156	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0–17	155	Quintile 5.
163	HERNIA PROCEDURES AGE 0–17	160	Quintile 1.
164	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	157	Quintile 3.
165	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	158	Quintile 1.
166	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	158	Quintile 1.
167	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	158	Quintile 1.
168	MOUTH PROCEDURES W CC	185	Quintile 4.
169	MOUTH PROCEDURES W/O CC	185	Quintile 4.
187	DENTAL EXTRACTIONS & RESTORATIONS	185	Quintile 4.
190	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0–17	189	Quintile 3.
195	CHOLECYSTECTOMY W C.D.E. W CC	191	Quintile 4.
196	CHOLECYSTECTOMY W C.D.E. W/O CC	197	Quintile 3.
200	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	199	Quintile 5.
212	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0–17	211	Quintile 2.
220	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0–17	219	Quintile 1.
259	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	257	Quintile 1.
260	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	258	Quintile 1.
262	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	258	Quintile 1.
286	ADRENAL & PITUITARY PROCEDURES	292	Quintile 4.
289	PARATHYROID PROCEDURES	290	Quintile 1.
291	THYROGLOSSAL PROCEDURES	290	Quintile 1.
317	ADMIT FOR RENAL DIALYSIS	316	Quintile 3.
327	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0–17	326	Quintile 1.
334	MAJOR MALE PELVIC PROCEDURES W CC	354	Quintile 5.
335	MAJOR MALE PELVIC PROCEDURES W/O CC	354	Quintile 5.
340	TESTES PROCEDURES, NON-MALIGNANCY AGE 0–17	347	Quintile 2.
342	CIRCUMCISION AGE >17	344	Quintile 1.
343	CIRCUMCISION AGE 0–17	344	Quintile 1.
351	STERILIZATION, MALE	344	Quintile 1.
357	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	346	Quintile 3.
361	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	367	Quintile 3.
362	ENDOSCOPIC TUBAL INTERRUPTION	367	Quintile 3.
364	D&C, CONIZATION EXCEPT FOR MALIGNANCY	360	Quintile 2.
370	CESAREAN SECTION W CC	365	Quintile 5.
371	CESAREAN SECTION W/O CC	365	Quintile 5.
372	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	359	Quintile 1.
373	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	359	Quintile 1.
374	VAGINAL DELIVERY W STERILIZATION &/OR D&C	359	Quintile 1.
375	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	359	Quintile 1.
376	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	359	Quintile 1.
377	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	359	Quintile 1.
378	ECTOPIC PREGNANCY	359	Quintile 1.
379	THREATENED ABORTION	359	Quintile 1.
380	ABORTION W/O D&C	359	Quintile 1.
381	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	359	Quintile 1.
382	FALSE LABOR	359	Quintile 1.
383	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	359	Quintile 1.
384	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	359	Quintile 1.
386	EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	385	Quintile 3.
387	PREMATURITY W MAJOR PROBLEMS	385	Quintile 3.
388	PREMATURITY W/O MAJOR PROBLEMS	385	Quintile 3.
389	FULL TERM NEONATE W MAJOR PROBLEMS	385	Quintile 3.
391	NORMAL NEWBORN	390	Quintile 3.
392	SPLENECTOMY AGE >17	197	Quintile 3.
393	SPLENECTOMY AGE 0–17	197	Quintile 3.
405	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0–17	416	Quintile 3.
411	HISTORY OF MALIGNANCY W/O ENDOSCOPY	171	Quintile 1.
412	HISTORY OF MALIGNANCY W ENDOSCOPY	171	Quintile 1.
422	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0–17	421	Quintile 3.
441	HAND PROCEDURES FOR INJURIES	229	Quintile 3.
446	TRAUMATIC INJURY AGE 0–17	445	Quintile 3.
448	ALLERGIC REACTIONS AGE 0–17	447	Quintile 1.
451	POISONING & TOXIC EFFECTS OF DRUGS AGE 0–17	450	Quintile 1.
471	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	209	Quintile 5.
481	BONE MARROW TRANSPLANT	394	Quintile 5.
484	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	2	Quintile 5.
485	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TR	486	Quintile 5.
491	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY	486	Quintile 5.
496	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION	497	Quintile 3.

[1] This table does not reflect the four transplant LTC–DRGs, for which we propose to assign a relative weight of 0.0000.

To illustrate the methodology we are proposing for determining relative weights for the 111 LTC–DRGs with no LTCH cases, we are providing the following examples, which refer to the no volume LTC–DRGs crosswalk information provided above in Table 3:

Example 1: There were no cases in the FY 2000 MedPAR file for LTC–DRG 3 (Craniotomy Age 0–17). Since the period of time surrounding the surgery and the post-operative care are similar in resource use and the length and complexity of the surgical procedures and the length of stay are similar, we determined that LTC–DRG 1 (Craniotomy Age > 17 Except for Trauma), which is assigned to low volume quintile 4 for the purpose of determining the proposed relative weights, displayed similar clinical and resource use. Therefore, we are proposing to assign the same relative weight of LTC–DRG 1 of 1.3735 (quintile 4) (see Table 4 below) to LTC–DRG 3.

Example 2: There were no LTCH cases in the FY 2000 MedPAR file for LTC–DRG 98 (Bronchitis & Asthma Age 0–17). Since the severity of illness in patients with bronchitis and asthma are similar in patients regardless of age, we determined that LTC–DRG 97 (Bronchitis & Asthma Age>17 W/O CC) displayed similar clinical and resource use characteristics and have a similar length of stay to LTC–DRG 98. There were over 25 cases in LTC–DRG 97. Therefore, it is not assigned to a low volume quintile for the purpose of determining the relative weights. However, under our proposed methodology, LTC–DRG 98, with no LTCH cases, needs to be grouped to a low volume quintile. We identified that the quintile with the closest weight to LTC–DRG 97 (0.5239; see Table 4 below) was quintile 3 (0.5268; see Table 4 below). Therefore, we are proposing to assign LTC–DRG 98 a relative weight of 0.5268.

Furthermore, we are proposing to establish LTC–DRG relative weights of 0.0000 for heart, kidney, liver, and lung transplants (proposed LTC–DRGs 103, 302, 480, and 495, respectively) because Medicare will only cover these procedures if they are performed at a hospital that has been certified for the specific procedures by Medicare. We are only proposing to include these four transplant LTC–DRGs in the GROUPER program for administrative purposes. Since we are proposing to use the same GROUPER program for LTCHs as is used under the acute care hospital inpatient prospective payment system, removing these DRGs would be administratively burdensome. For further discussion of the Medicare coverage of heart, kidney, liver, and lung transplants, see the following **Federal Register** documents: February 2, 1995 final rule (60 FR 6537); April 12, 1991 final rule (56 FR 15006); and April 6, 1987 final rule (52 FR 10935). Based on our research, we found that most LTCHs only perform minor surgeries, such as minor small and large bowel procedures, if any surgeries at all. Given the extensive criteria that must be met to become certified as a transplant center for Medicare, we do not believe that any LTCHs would become certified as a transplant center. In fact, in the nearly 20 years since the implementation of the hospital inpatient prospective payment system, there has never been a LTCH that even expressed an interest in becoming a transplant center. We specifically solicit comments on whether there is a need for CMS to address determining relative weights (other than zero) for transplant LTC–DRGs. We are proposing to assign proposed LTC–DRGs 103, 302, 480, and 495 a relative weight of zero, as shown in Table 4 below.

Again, we note that as this proposed system is dynamic, it is entirely possible that the number of LTC–DRGs with a zero volume of LTCH cases based on the system we are proposing would vary in the future. We would use the best available claims data in the MedPAR to identify zero volume LTC–DRGs and to determine the relative weights in the final rule.

Table 4 lists the proposed LTC–DRGs and their proposed respective relative weights and arithmetic mean length of stay.

TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
1	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA [4]	1.3735	36.5	13
2	CRANIOTOMY FOR TRAUMA AGE >17 [5]	2.1422	48.3	1
3	CRANIOTOMY AGE 0–17 [4*]	1.3735	36.5	0
4	SPINAL PROCEDURES [3]	0.9568	30.0	10
5	EXTRACRANIAL VASCULAR PROCEDURES [4]	1.3735	36.5	2
6	CARPAL TUNNEL RELEASE [3*]	0.9568	30.0	0
7	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	1.8690	46.3	60
8	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC [3]	0.9568	30.0	2
9	SPINAL DISORDERS & INJURIES	1.5321	41.1	180
10	NERVOUS SYSTEM NEOPLASMS W CC	1.0668	31.8	162
11	NERVOUS SYSTEM NEOPLASMS W/O CC	1.0668	31.8	69
12	DEGENERATIVE NERVOUS SYSTEM DISORDERS	0.9289	32.6	1,955
13	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	0.7511	25.4	126
14	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.0143	30.9	2,678
15	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	0.8800	27.6	182
16	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.1461	29.8	114
17	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	0.8295	25.9	28
18	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	0.9063	28.9	138
19	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	0.8609	30.5	72
20	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.5115	36.4	189
21	VIRAL MENINGITIS [2]	0.7107	24.5	2
22	HYPERTENSIVE ENCEPHALOPATHY [3]	0.9568	30.0	8
23	NONTRAUMATIC STUPOR & COMA	1.2866	36.1	71
24	SEIZURE & HEADACHE AGE >17 W CC	0.9144	29.2	141
25	SEIZURE & HEADACHE AGE >17 W/O CC	0.6727	25.1	74
26	SEIZURE & HEADACHE AGE 0–17 [2]	0.7107	24.5	0
27	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.5525	38.6	54
28	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	1.0679	29.7	134
29	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	0.8326	27.2	95
30	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0–17 [3]	0.9568	30.0	0
31	CONCUSSION AGE >17 W CC [5]	2.1422	48.3	2
32	CONCUSSION AGE >17 W/O CC [3]	0.9568	30.0	2

TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
33	CONCUSSION AGE 0–17 [3]	0.9568	30.0	0
34	OTHER DISORDERS OF NERVOUS SYSTEM W CC	1.1042	30.8	518
35	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	0.9505	30.3	190
36	RETINAL PROCEDURES [1*]	0.5239	18.2	0
37	ORBITAL PROCEDURES [1*]	0.5239	18.2	0
38	PRIMARY IRIS PROCEDURES [1*]	0.5239	18.2	0
39	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY [1*]	0.5239	18.2	0
40	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17 [1*]	0.5239	18.2	0
41	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0–17 [1*]	0.5239	18.2	0
42	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS [1*]	0.5239	18.2	0
43	HYPHEMA [1*]	0.5239	18.2	0
44	ACUTE MAJOR EYE INFECTIONS [5]	2.1422	48.3	3
45	NEUROLOGICAL EYE DISORDERS [1]	0.5239	18.2	6
46	OTHER DISORDERS OF THE EYE AGE >17 W CC [2]	0.7107	24.5	9
47	OTHER DISORDERS OF THE EYE AGE >17 W/O CC [1]	0.5239	18.2	3
48	OTHER DISORDERS OF THE EYE AGE 0–17 [1*]	0.5239	18.2	0
49	MAJOR HEAD & NECK PROCEDURES [3*]	0.9568	30.0	0
50	SIALOADENECTOMY [3*]	0.9568	30.0	0
51	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY [3*]	0.9568	30.0	0
52	CLEFT LIP & PALATE REPAIR [1*]	0.5239	18.2	0
53	SINUS & MASTOID PROCEDURES AGE >17 [1]	0.5239	18.2	1
54	SINUS & MASTOID PROCEDURES AGE 0–17 [1]	0.5239	18.2	0
55	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES [1]	0.5239	18.2	1
56	RHINOPLASTY [1*]	0.5239	18.2	0
57	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17 [1*].	0.5239	18.2	0
58	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17 [1*].	0.5239	18.2	0
59	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17 [1*]	0.5239	18.2	0
60	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17 [1*]	0.5239	18.2	0
61	MYRINGOTOMY W TUBE INSERTION AGE >17 [1*]	0.5239	18.2	0
62	MYRINGOTOMY W TUBE INSERTION AGE 0–17 [1*]	0.5239	18.2	0
63	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES [5]	2.1422	48.3	5
64	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.4108	35.1	144
65	DYSEQUILIBRIUM	0.7130	27.0	25
66	EPISTAXIS [3]	0.9568	30.0	3
67	EPIGLOTTITIS [3]	0.9568	30.0	0
68	OTITIS MEDIA & URI AGE >17 W CC	0.8959	23.7	25
69	OTITIS MEDIA & URI AGE >17 W/O CC [1]	0.5239	18.2	7
70	OTITIS MEDIA & URI AGE 0–17 [1*]	0.5239	18.2	0
71	LARYNGOTRACHEITIS [1*]	0.5239	18.2	0
72	NASAL TRAUMA & DEFORMITY [1*]	0.5239	18.2	0
73	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	1.0917	33.3	31
74	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0–17 [2]	0.7107	24.5	1
75	MAJOR CHEST PROCEDURES [5]	2.1422	48.3	19
76	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.7153	50.7	327
77	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC [5]	2.1422	48.3	13
78	PULMONARY EMBOLISM	0.8294	24.8	122
79	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	1.2588	31.5	2,047
80	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	1.0733	30.0	204
81	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0–17 [3]	0.9568	30.0	10
82	RESPIRATORY NEOPLASMS	0.9690	26.9	755
83	MAJOR CHEST TRAUMA W CC	0.9797	24.8	33
84	MAJOR CHEST TRAUMA W/O CC [3]	0.9568	30.0	10
85	PLEURAL EFFUSION W CC	1.2406	30.1	132
86	PLEURAL EFFUSION W/O CC	0.7529	25.0	30
87	PULMONARY EDEMA & RESPIRATORY FAILURE	2.4202	44.1	5,741
88	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	0.9390	25.3	4,229
89	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	0.9740	27.2	2,387
90	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	0.9740	27.2	554
91	SIMPLE PNEUMONIA & PLEURISY AGE 0–17 [4]	1.3735	36.5	21
92	INTERSTITIAL LUNG DISEASE W CC	0.8885	24.8	181
93	INTERSTITIAL LUNG DISEASE W/O CC	0.7284	23.8	38
94	PNEUMOTHORAX W CC	0.9341	28.3	43
95	PNEUMOTHORAX W/O CC [2]	0.7107	24.5	5
96	BRONCHITIS & ASTHMA AGE >17 W CC	0.8855	24.4	139
97	BRONCHITIS & ASTHMA AGE >17 W/O CC	0.5268	17.8	67
98	BRONCHITIS & ASTHMA AGE 0–17 [1*]	0.5239	18.2	0
99	RESPIRATORY SIGNS & SYMPTOMS W CC	1.4609	32.1	384
100	RESPIRATORY SIGNS & SYMPTOMS W/O CC	1.0387	27.9	156

TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
101	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	1.3776	30.9	164
102	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	0.6568	22.0	34
103	HEART TRANSPLANT [6]	0.0000	0.0	0
104	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W CARDIAC CATH [4].	1.3735	36.5	2
105	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W/O CARDIAC CATH [4].	1.3735	36.5	2
106	CORONARY BYPASS W PTCA [4]*	1.3735	36.5	0
107	CORONARY BYPASS W CARDIAC CATH [4]*	1.3735	36.5	0
108	OTHER CARDIOTHORACIC PROCEDURES [4]*	1.3735	36.5	0
109	CORONARY BYPASS W/O PTCA OR CARDIAC CATH [4]*	1.3735	36.5	0
110	MAJOR CARDIOVASCULAR PROCEDURES W CC [4]	1.3735	36.5	1
111	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	1.3735	36.5	0
112	PERCUTANEOUS CARDIOVASCULAR PROCEDURES [5]	2.1422	48.3	3
113	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	1.5915	43.7	109
114	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.7160	46.5	31
115	PRM CARD PACEM IMPL W AMI, HRT FAIL OR SHK, OR AICD LEAD OR GNRTR P [4].	1.3735	36.5	3
116	OTH PERM CARD PACEMAK IMPL OR PTCA W CORONARY ARTERY STENT IMPLNT [5].	2.1422	48.3	4
117	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT [2]	0.7107	24.5	1
118	CARDIAC PACEMAKER DEVICE REPLACEMENT [4]	1.3735	36.5	11
119	VEIN LIGATION & STRIPPING [2]*	0.7107	24.5	0
120	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	1.3748	41.6	167
121	CIRCULATORY DISORDERS W AMI & MAJOR COMP, DISCHARGED ALIVE	0.8843	24.1	191
122	CIRCULATORY DISORDERS W AMI W/O MAJOR COMP, DISCHARGED ALIVE	0.6762	22.4	64
123	CIRCULATORY DISORDERS W AMI, EXPIRED	1.1855	23.7	58
124	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG [4]	1.3735	36.5	7
125	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG [4].	1.3735	36.5	4
126	ACUTE & SUBACUTE ENDOCARDITIS	1.0442	31.2	193
127	HEART FAILURE & SHOCK	0.8658	25.8	2,434
128	DEEP VEIN THROMBOPHLEBITIS [2]	0.7107	24.5	16
129	CARDIAC ARREST, UNEXPLAINED [2]	0.7107	24.5	22
130	PERIPHERAL VASCULAR DISORDERS W CC	0.9391	29.3	1,139
131	PERIPHERAL VASCULAR DISORDERS W/O CC	0.7878	27.4	279
132	ATHEROSCLEROSIS W CC	0.8672	23.6	641
133	ATHEROSCLEROSIS W/O CC	0.8388	25.3	195
134	HYPERTENSION	0.8482	28.8	136
135	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	0.9344	24.7	152
136	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	0.7211	24.2	42
137	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0–17 [2]*	0.7107	24.5	0
138	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	0.8712	28.1	273
139	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	0.8712	28.1	104
140	ANGINA PECTORIS	0.6919	23.5	85
141	SYNCOPE & COLLAPSE W CC	0.6732	24.4	84
142	SYNCOPE & COLLAPSE W/O CC	0.6732	24.4	71
143	CHEST PAIN	0.6017	20.4	50
144	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	0.9035	25.2	579
145	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	0.6545	20.6	97
146	RECTAL RESECTION W CC [4]*	1.3735	36.5	0
147	RECTAL RESECTION W/O CC [4]*	1.3735	36.5	0
148	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC [4]	1.3735	36.5	12
149	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC [1]	0.5239	18.2	3
150	PERITONEAL ADHESIOLYSIS W CC [4]	1.3735	36.5	2
151	PERITONEAL ADHESIOLYSIS W/O CC [4]	1.3735	36.5	0
152	MINOR SMALL & LARGE BOWEL PROCEDURES W CC [5]	2.1422	48.3	4
153	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC [5]	2.1422	48.3	0
154	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC [5]	2.1422	48.3	1
155	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC [5]	2.1422	48.3	1
156	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0–17 [5]*	2.1422	48.3	0
157	ANAL & STOMAL PROCEDURES W CC [3]	0.9568	30.0	3
158	ANAL & STOMAL PROCEDURES W/O CC [1]	0.5239	18.2	1
159	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC [4]	1.3735	36.5	1
160	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC [1]	0.5239	18.2	1
161	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC [1]	0.5239	18.2	2
162	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC [1]	0.5239	18.2	0
163	HERNIA PROCEDURES AGE 0–17 [1]*	0.5239	18.2	0
164	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC [3]*	0.9568	30.0	0
165	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC [1]*	0.5239	18.2	0

TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
166	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC [1]*	0.5239	18.2	0
167	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC [1]*	0.5239	18.2	0
168	MOUTH PROCEDURES W CC [4]*	1.3735	36.5	0
169	MOUTH PROCEDURES W/O CC	1.3735	36.5	0
170	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	1.8984	42.4	25
171	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC [1]	0.5239	18.2	1
172	DIGESTIVE MALIGNANCY W CC	1.0289	27.9	520
173	DIGESTIVE MALIGNANCY W/O CC	1.0177	28.9	140
174	G.I. HEMORRHAGE W CC	0.9592	26.9	270
175	G.I. HEMORRHAGE W/O CC	0.9181	28.3	62
176	COMPLICATED PEPTIC ULCER	0.9934	24.3	48
177	UNCOMPLICATED PEPTIC ULCER W CC [3]	0.9568	30.0	16
178	UNCOMPLICATED PEPTIC ULCER W/O CC [1]	0.5239	18.2	7
179	INFLAMMATORY BOWEL DISEASE	1.0571	24.0	40
180	G.I. OBSTRUCTION W CC	1.0191	27.8	212
181	G.I. OBSTRUCTION W/O CC	0.9831	24.8	49
182	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE > 17 W CC	0.9781	28.3	375
183	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE > 17 W/O CC	0.7925	24.4	149
184	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0–17 [4]	1.3735	36.5	2
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE > 17 [4]	1.3735	36.5	16
186	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0–17 [4]	1.3735	36.5	0
187	DENTAL EXTRACTIONS & RESTORATIONS [4]*	1.3735	36.5	0
188	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE > 17 W CC	1.1863	29.5	476
189	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE > 17 W/O CC	1.0223	25.1	74
190	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0–17 [3]*	0.9568	30.0	0
191	PANCREAS, LIVER & SHUNT PROCEDURES W CC [4]	1.3735	36.5	1
192	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC [4]	1.3735	36.5	0
193	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC [5]	2.1422	48.3	2
194	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC [5]	2.1422	48.3	0
195	CHOLECYSTECTOMY W C.D.E. W CC [4]*	1.3735	36.5	0
196	CHOLECYSTECTOMY W C.D.E. W/O CC [3]*	0.9568	30.0	0
197	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC [3]	0.9568	30.0	2
198	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC [3]	0.9568	30.0	0
199	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY [5]	2.1422	48.3	1
200	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY [5]*	2.1422	48.3	0
201	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES [5]	2.1422	48.3	4
202	CIRRHOSIS & ALCOHOLIC HEPATITIS	0.8110	26.6	128
203	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	0.8782	25.5	247
204	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.0512	26.0	205
205	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	0.9764	26.5	99
206	DISORDERS OF LIVER EXCEPT MALIG, CIRR, ALC HEPA W/O CC [2]	0.7107	24.5	24
207	DISORDERS OF THE BILIARY TRACT W CC	0.7691	25.8	62
208	DISORDERS OF THE BILIARY TRACT W/O CC [2]	0.7107	24.5	16
209	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY [5].	2.1422	48.3	10
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC [4]	1.3735	36.5	9
211	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC [2]	0.7107	24.5	2
212	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0–17 [2]*	0.7107	24.5	0
213	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS.	1.4379	41.5	35
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE [3]	0.9568	30.0	9
217	WND DEBRID & SKN GRFT EXCEPT HAND, FOR MUSCSKELET & CONN TISS DIS.	1.5497	43.6	185
218	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W CC [4].	1.3735	36.5	1
219	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC [1].	0.5239	18.2	1
220	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0–17 [1]*	0.5239	18.2	0
223	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC [4].	1.3735	36.5	1
224	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC [2].	0.7107	24.5	1
225	FOOT PROCEDURES [3]	0.9568	30.0	17
226	SOFT TISSUE PROCEDURES W CC [5]	2.1422	48.3	7
227	SOFT TISSUE PROCEDURES W/O CC [5]	2.1422	48.3	1
228	MAJOR THUMB OR JOINT PROC, OR OTH HAND OR WRIST PROC W CC [3]	0.9568	30.0	2
229	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC [3]	0.9568	30.0	1
230	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR [5]	2.1422	48.3	1
231	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR [4]	1.3735	36.5	13
232	ARTHROSCOPY [2]	0.7107	24.5	1

TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC [5]	2.1422	48.3	10
234	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC [5]	2.1422	48.3	0
235	FRACTURES OF FEMUR	0.9608	34.9	157
236	FRACTURES OF HIP & PELVIS	0.8221	28.8	1,638
237	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	0.6749	24.3	26
238	OSTEOMYELITIS	1.0920	34.5	962
239	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY.	0.8876	29.2	259
240	CONNECTIVE TISSUE DISORDERS W CC	1.0327	28.8	93
241	CONNECTIVE TISSUE DISORDERS W/O CC	0.8174	28.3	39
242	SEPTIC ARTHRITIS	0.8899	30.8	140
243	MEDICAL BACK PROBLEMS	0.7222	25.4	860
244	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	0.6953	25.5	232
245	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	0.4845	19.3	396
246	NON-SPECIFIC ARTHROPATHIES	0.7693	27.5	35
247	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	0.7016	24.9	343
248	TENDONITIS, MYOSITIS & BURSITIS	0.7110	24.6	449
249	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	0.9154	30.4	333
250	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC	0.8878	30.6	34
251	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	0.8341	29.2	41
252	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0–17 [1]	0.5239	18.2	1
253	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W CC	0.9364	31.9	245
254	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W/O CC	0.7816	28.7	160
255	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE 0–17 [3]	0.9568	30.0	2
256	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	0.9541	30.3	310
257	TOTAL MASTECTOMY FOR MALIGNANCY W CC [1]	0.5239	18.2	1
258	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC [1]	0.5239	18.2	1
259	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC [1*]	0.5239	18.2	0
260	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC [1*]	0.5239	18.2	0
261	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION [3]	0.9568	30.0	1
262	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY [1*]	0.5239	18.2	0
263	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	1.6894	51.6	657
264	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.4650	49.2	110
265	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC [5]	2.1422	48.3	11
266	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC [5].	2.1422	48.3	1
267	PERIANAL & PILONIDAL PROCEDURES [5]	2.1422	48.3	3
268	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES [5]	2.1422	48.3	4
269	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.5586	45.1	143
270	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	1.2594	40.1	26
271	SKIN ULCERS	1.2354	39.1	4,021
272	MAJOR SKIN DISORDERS W CC	0.9667	29.9	50
273	MAJOR SKIN DISORDERS W/O CC [2]	0.7107	24.5	11
274	MALIGNANT BREAST DISORDERS W CC	1.2025	32.9	118
275	MALIGNANT BREAST DISORDERS W/O CC	1.2025	32.9	32
276	NON-MALIGANT BREAST DISORDERS [2]	0.7107	24.5	7
277	CELLULITIS AGE >17 W CC	0.8857	28.3	816
278	CELLULITIS AGE >17 W/O CC	0.7680	26.0	359
279	CELLULITIS AGE 0–17 [3]	0.9568	30.0	8
280	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	0.9550	30.7	132
281	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	0.7586	25.2	74
282	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0–17 [1]	0.5239	18.2	0
283	MINOR SKIN DISORDERS W CC	0.9649	29.9	53
284	MINOR SKIN DISORDERS W/O CC [2]	0.7107	24.5	17
285	AMPUTAT OF LOWER LIMB FOR ENDOCRINE, NUTRIT, & METABOL DISORDERS [4].	1.3735	36.5	18
286	ADRENAL & PITUITARY PROCEDURES [4*]	1.3735	36.5	0
287	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	1.5168	42.1	32
288	O.R. PROCEDURES FOR OBESITY [2]	0.7107	24.5	1
289	PARATHYROID PROCEDURES [1*]	0.5239	18.2	0
290	THYROID PROCEDURES [1]	0.5239	18.2	1
291	THYROGLOSSAL PROCEDURES [1*]	0.5239	18.2	0
292	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC [4]	1.3735	36.5	14
293	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC [4]	1.3735	36.5	1
294	DIABETES AGE >35	0.8786	28.2	443
295	DIABETES AGE 0–35 [1]	0.5239	18.2	4
296	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	0.9448	28.2	665
297	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	0.7716	24.5	206
298	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0–17 [3]	0.9568	30.0	5
299	INBORN ERRORS OF METABOLISM [1]	0.5239	18.2	4

TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
300	ENDOCRINE DISORDERS W CC	0.8315	27.4	66
301	ENDOCRINE DISORDERS W/O CC [2]	0.7107	24.5	12
302	KIDNEY TRANSPLANT [6]	0.0000	na	0
303	KIDNEY, URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM [5]	2.1422	48.3	2
304	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC [3]	0.9568	30.0	2
305	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC [1]	0.5239	18.2	2
306	PROSTATECTOMY W CC [2]	0.7107	24.5	1
307	PROSTATECTOMY W/O CC [1]	0.5239	18.2	2
308	MINOR BLADDER PROCEDURES W CC [3]	0.9568	30.0	4
309	MINOR BLADDER PROCEDURES W/O CC [2]	0.7107	24.5	1
310	TRANSURETHRAL PROCEDURES W CC [4]	1.3735	36.5	7
311	TRANSURETHRAL PROCEDURES W/O CC [2]	0.7107	24.5	5
312	URETHRAL PROCEDURES, AGE >17 W CC [4]	1.3735	36.5	2
313	URETHRAL PROCEDURES, AGE >17 W/O CC [4]	1.3735	36.5	0
314	URETHRAL PROCEDURES, AGE 0–17	1.3735	36.5	0
315	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	1.8305	40.6	99
316	RENAL FAILURE	1.1553	29.1	1,721
317	ADMIT FOR RENAL DIALYSIS [3]*	0.9568	30.0	0
318	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.1129	33.0	118
319	KIDNEY & URINARY TRACT NEOPLASMS W/O CC [3]	0.9568	30.0	24
320	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	0.8814	28.7	730
321	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	0.7213	25.6	202
322	KIDNEY & URINARY TRACT INFECTIONS AGE 0–17 [3]	0.9568	30.0	7
323	URINARY STONES W CC, &/OR ESW LITHOTRIPSY [3]	0.9568	30.0	14
324	URINARY STONES W/O CC [2]	0.7107	24.5	4
325	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	0.5862	21.2	25
326	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC [1]	0.5239	18.2	18
327	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0–17 [1]*	0.5239	18.2	0
328	URETHRAL STRICTURE AGE >17 W CC [2]	0.7107	24.5	1
329	URETHRAL STRICTURE AGE >17 W/O CC [2]	0.7107	24.5	0
330	URETHRAL STRICTURE AGE 0–17 [2]	0.7107	24.5	0
331	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	0.9193	26.7	293
332	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	0.8284	24.8	69
333	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0–17 [5]	2.1422	48.3	1
334	MAJOR MALE PELVIC PROCEDURES W CC [5]*	2.1422	48.3	0
335	MAJOR MALE PELVIC PROCEDURES W/O CC [5]	2.1422	48.3	0
336	TRANSURETHRAL PROSTATECTOMY W CC [1]	0.5239	18.2	1
337	TRANSURETHRAL PROSTATECTOMY W/O CC [1]	0.5239	18.2	3
338	TESTES PROCEDURES, FOR MALIGNANCY [2]	0.7107	24.5	1
339	TESTES PROCEDURES, NON-MALIGNANCY AGE >17 [5]	2.1422	48.3	1
340	TESTES PROCEDURES, NON-MALIGNANCY AGE 0–17 [2]*	0.7107	24.5	0
341	PENIS PROCEDURES [3]	0.9568	30.0	2
342	CIRCUMCISION AGE >17 [1]*	0.5239	18.2	0
343	CIRCUMCISION AGE 0–17 [1]*	0.5239	18.2	0
344	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY [1].	0.5239	18.2	1
345	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY [5].	2.1422	48.3	3
346	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	0.9607	29.7	154
347	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC [2]	0.7107	24.5	21
348	BENIGN PROSTATIC HYPERTROPHY W CC [2]	0.7107	24.5	5
349	BENIGN PROSTATIC HYPERTROPHY W/O CC [2]	0.7107	24.5	1
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM [4]	1.3735	36.5	24
351	STERILIZATION, MALE [1]*	0.5239	18.2	0
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES [4]	1.3735	36.5	15
353	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY [1].	0.5239	18.2	1
354	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC [1]	0.5239	18.2	0
355	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC [1]	0.5239	18.2	1
356	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES [1]	0.5239	18.2	5
357	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY [3]	0.9568	30.0	0
358	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC [1]	0.5239	18.2	1
359	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC [1]	0.5239	18.2	4
360	VAGINA, CERVIX & VULVA PROCEDURES [2]	0.7107	24.5	1
361	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION [3]*	0.9568	30.0	0
362	ENDOSCOPIC TUBAL INTERRUPTION [3]*	0.9568	30.0	0
363	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY [4]	1.3735	36.5	1
364	D&C, CONIZATION EXCEPT FOR MALIGNANCY [2]*	0.7107	24.5	0
365	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES [5]	2.1422	48.3	5
366	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	0.9694	29.5	134

TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
367	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	0.8881	30.4	43
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM [3]	0.9568	30.0	22
369	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS [2]	0.7107	24.5	14
370	*CESAREAN SECTION W CC [5*]	2.1422	48.3	0
371	CESAREAN SECTION W/O CC [5*]	2.1422	48.3	0
372	VAGINAL DELIVERY W COMPLICATING DIAGNOSES [1*]	0.5239	18.2	0
373	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES [1*]	0.5239	18.2	0
374	VAGINAL DELIVERY W STERILIZATION &/OR D&C [1*]	0.5239	18.2	0
375	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C [1*]	0.5239	18.2	0
376	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE [1*]	0.5239	18.2	0
377	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE [1*]	0.5239	18.2	0
378	ECTOPIC PREGNANCY [1*]	0.5239	18.2	0
379	THREATENED ABORTION [1*]	0.5239	18.2	0
380	ABORTION W/O D&C [1*]	0.5239	18.2	0
381	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY [1*]	0.5239	18.2	0
382	FALSE LABOR [1*]	0.5239	18.2	0
383	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS [1*]	0.5239	18.2	0
384	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS [1*]	0.5239	18.2	0
385	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY [3*].	0.9568	30.0	2
386	EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE [3*].	0.9568	30.0	0
387	PREMATURITY W MAJOR PROBLEMS [3*]	0.9568	30.0	0
388	PREMATURITY W/O MAJOR PROBLEMS [3*]	0.9568	30.0	0
389	FULL TERM NEONATE W MAJOR PROBLEMS [3*]	0.9568	30.0	0
390	NEONATE W OTHER SIGNIFICANT PROBLEMS [3]	0.9568	30.0	2
391	NORMAL NEWBORN [3*]	0.9568	30.0	0
392	SPLENECTOMY AGE >17 [3*]	0.9568	30.0	0
393	SPLENECTOMY AGE 0–17 [3*]	0.9568	30.0	0
394	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS [5]	2.1422	48.3	1
395	RED BLOOD CELL DISORDERS AGE >17	0.8709	25.8	144
396	RED BLOOD CELL DISORDERS AGE 0–17 [1]	0.5239	18.2	2
397	COAGULATION DISORDERS	1.3069	29.5	43
398	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	0.8361	25.4	36
399	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC [2]	0.7107	24.5	10
400	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE [4]	1.3735	36.5	2
401	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC [3]	0.9568	30.0	3
402	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC [3]	0.9568	30.0	0
403	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.1242	29.4	280
404	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	0.8288	24.7	88
405	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0–17 [3*]	0.9568	30.0	0
406	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC [5]	2.1422	48.3	1
407	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC [5]	2.1422	48.3	0
408	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC [2]	0.7107	24.5	3
409	RADIOTHERAPY [3]	0.9568	30.0	24
410	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS [4]	1.3735	36.5	14
411	HISTORY OF MALIGNANCY W/O ENDOSCOPY [1*]	0.5239	18.2	0
412	HISTORY OF MALIGNANCY W ENDOSCOPY [1*]	0.5239	18.2	0
413	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	0.9832	26.7	49
414	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	0.8681	29.7	30
415	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	1.9075	44.1	227
416	SEPTICEMIA AGE >17	1.1222	29.4	1,695
417	SEPTICEMIA AGE 0–17 [5]	2.1422	48.3	5
418	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	1.0078	28.4	522
419	FEVER OF UNKNOWN ORIGIN AGE >17 W CC [2]	0.7107	24.5	17
420	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC [2]	0.7107	24.5	11
421	VIRAL ILLNESS AGE >17 [3]	0.9568	30.0	14
422	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0–17 [3*]	0.9568	30.0	0
423	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.0906	31.9	272
424	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS [4]	1.3735	36.5	15
425	ACUTE ADJUSTMENT REACTION & PSYCHOLOGICAL DYSFUNCTION	0.7912	30.5	63
426	DEPRESSIVE NEUROSES	0.6290	25.5	92
427	NEUROSES EXCEPT DEPRESSIVE [3]	0.9568	30.0	20
428	DISORDERS OF PERSONALITY & IMPULSE CONTROL	0.7423	31.6	31
429	ORGANIC DISTURBANCES & MENTAL RETARDATION	0.6401	27.9	957
430	PSYCHOSES	0.5602	26.4	2,396
431	CHILDHOOD MENTAL DISORDERS	0.5023	23.0	50
432	OTHER MENTAL DISORDER DIAGNOSES [3]	0.9568	30.0	7
433	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	0.2778	12.6	59
434	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W CC	0.5051	22.2	145
435	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W/O CC	0.4378	20.2	179

TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
436	ALC/DRUG DEPENDENCE W REHABILITATION THERAPY [1]	0.5239	18.2	4
437	ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY [1]	0.5239	18.2	2
439	SKIN GRAFTS FOR INJURIES [4]	1.3735	36.5	13
440	WOUND DEBRIDEMENTS FOR INJURIES	1.2503	39.8	40
441	HAND PROCEDURES FOR INJURIES [3]*	0.9568	30.0	0
442	OTHER O.R. PROCEDURES FOR INJURIES W CC	1.3777	38.6	28
443	OTHER O.R. PROCEDURES FOR INJURIES W/O CC [4]	1.3735	36.5	3
444	TRAUMATIC INJURY AGE >17 W CC	1.2206	34.5	169
445	TRAUMATIC INJURY AGE >17 W/O CC	0.9130	28.0	86
446	TRAUMATIC INJURY AGE 0–17 [3]*	0.9568	30.0	0
447	ALLERGIC REACTIONS AGE >17 [1]	0.5239	18.2	2
448	ALLERGIC REACTIONS AGE 0–17 [1]*	0.5239	18.2	0
449	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC [2]	0.7107	24.5	19
450	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC [1]	0.5239	18.2	11
451	POISONING & TOXIC EFFECTS OF DRUGS AGE 0–17 [1]*	0.5239	18.2	0
452	COMPLICATIONS OF TREATMENT W CC	1.3070	33.1	311
453	COMPLICATIONS OF TREATMENT W/O CC	0.7486	23.6	61
454	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC [2]	0.7107	24.5	11
455	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC [2]	0.7107	24.5	5
461	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	1.5801	43.2	197
462	REHABILITATION	0.7802	28.3	7,505
463	SIGNS & SYMPTOMS W CC	0.8474	29.7	859
464	SIGNS & SYMPTOMS W/O CC	0.7091	28.1	478
465	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS [2]	0.7107	24.5	20
466	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	1.2446	32.0	273
467	OTHER FACTORS INFLUENCING HEALTH STATUS [1]	0.5239	18.2	7
468	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2.3052	49.6	429
469	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	0.0000	na	0
470	UNGROUPABLE	0.0000	na	0
471	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY [5]*	2.1422	48.3	0
473	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	1.2549	25.3	39
475	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	2.3043	38.9	4,182
476	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.5835	41.1	26
477	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.9253	46.5	162
478	OTHER VASCULAR PROCEDURES W CC	1.8876	42.6	42
479	OTHER VASCULAR PROCEDURES W/O CC	1.8876	42.6	4
480	LIVER TRANSPLANT [6]	0.0000	na	0
481	BONE MARROW TRANSPLANT [5]*	2.1422	48.3	0
482	TRACHEOSTOMY FOR FACE, MOUTH & NECK DIAGNOSES [4]	1.3735	36.5	2
483	TRACHEOSTOMY EXCEPT FOR FACE, MOUTH & NECK DIAGNOSES	3.2118	51.4	326
484	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA [5]*	2.1422	48.3	0
485	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TR [5]*.	2.1422	48.3	0
486	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA [5]	2.1422	48.3	2
487	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.3111	35.9	77
488	HIV W EXTENSIVE O.R. PROCEDURE [5]	2.1422	48.3	2
489	HIV W MAJOR RELATED CONDITION	1.5141	38.5	106
490	HIV W OR W/O OTHER RELATED CONDITION	1.4702	36.4	48
491	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY [5]*.	2.1422	48.3	0
492	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS [4]	1.3735	36.5	1
493	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC [3]	0.9568	30.0	6
494	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC [1]	0.5239	18.2	1
495	LUNG TRANSPLANT [6]	0.0000	na	0
496	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION [3]*	0.9568	30.0	0
497	SPINAL FUSION W CC [3]	0.9568	30.0	4
498	SPINAL FUSION W/O CC [3]	0.9568	30.0	0
499	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC [5]	2.1422	48.3	4
500	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC [4]	1.3735	36.5	1
501	KNEE PROCEDURES W PDX OF INFECTION W CC [5]	2.1422	48.3	2
502	KNEE PROCEDURES W PDX OF INFECTION W/O CC [5]	2.1422	48.3	0
503	KNEE PROCEDURES W/O PDX OF INFECTION [4]	1.3735	36.5	3
504	EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT [4]	1.3735	36.5	2
505	EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT [4]	1.3735	36.5	4
506	FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA [4].	1.3735	36.5	9
507	FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA [2].	0.7107	24.5	2
508	FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA [3].	0.9568	30.0	24

TABLE 4.—PROPOSED LTC–DRG RELATIVE WEIGHTS AND ARITHMETIC MEAN LENGTH OF STAY—Continued

LTC–DRG	Description	Proposed relative weight	Arithmetic mean length of stay	FY 2000 LTCH cases
509	FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA [2].	0.7107	24.5	9
510	NON-EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA [3]	0.9568	30.0	23
511	NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA [2]	0.7107	24.5	10
601	VERY SHORT-STAY ADMISSION NON-PSYCHIATRIC DIAGNOSES [7]	0.1546	4.3	543
602	VERY SHORT-STAY ADMISSION PSYCHIATRIC DIAGNOSES [8]	0.0827	4.5	10,361

* Proposed relative weights for these LTC–DRGs were determined by assigning these cases to the appropriate low volume quintile because they had no LTCH cases in the FY 2000 MedPAR.
[1] Proposed relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 1.
[2] Proposed relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 2.
[3] Proposed relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 3.
[4] Proposed relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 4.
[5] Proposed relative weights for these LTC–DRGs were determined by assigning these cases to low volume quintile 5.
[6] Proposed relative weights for these LTC–DRGs were assigned a value of 0.0.
[7] Proposed relative weights for these LTC–DRGs were determined by combining LTCH cases in MDC 19 or 20 with a length of stay 7 days or fewer.
[8] Proposed relative weights for these LTC–DRGs were determined by combining LTCH cases in MDCs other than 19 or 20 with a length of stay 7 days or fewer.

B. Special Cases

Under section 123 of Public Law 106–113, the Secretary generally has broad authority in developing the prospective payment system for LTCHs. Thus, the Secretary generally has broad authority in determining whether (and how) to make adjustments to prospective payment system payments. Section 307 of Public Law 106–554 directs the Secretary to ''examine'' appropriate adjustments to the prospective payment system, including certain specific adjustments, but under that section the Secretary continues to have discretion as to whether to provide for adjustments to reflect variations in the necessary costs of treatment among LTCHs.

Generally, LTCHs, as described in section 1886(d)(1)(B)(iv) of the Act, are distinguished from other inpatient hospital settings by an average length of stay greater than 25 days. Certain ''special'' cases that have stays of considerably less than the average length of stay and that receive significantly less than the full course of treatment for a specific LTC–DRG would be paid inappropriately if the hospital were to receive the full LTC–DRG payment. Further, because of the budget neutrality requirement of section 123(a)(1) of Public Law 106–113, ''overpayment'' for these cases would reduce payments for all other cases that warrant full payment based on the LTCH services delivered. We discuss the special cases below in terms of proposed definitions, policy rationale, and proposed payment methodology. The three proposed subsets are very short-stay discharges, short-stay outliers, and interrupted stays.

1. Very Short-Stay Discharges

We are proposing, under § 412.527, to define a very short-stay discharge as a discharge that has a length of stay of 7 days or fewer (regardless of the LTC–DRG assignment), irrespective of the discharge designation (including cases where the patient expires). A very short-stay discharge often occurs when it is determined, following admission to a LTCH, that the beneficiary would receive more appropriate care in another setting, such as a patient who experiences an acute episode or requires more intensive rehabilitation therapy than is available at the LTCH. These patients may be discharged to another site of care and then subsequently readmitted to the LTCH following that stay if they require LTCH treatment (see the interrupted stay policy in section IV.B.3 of this preamble for further clarification regarding length of stay criteria), or they may be discharged and not subsequently readmitted because they no longer require LTCH treatment. Other circumstances that would warrant classification as a very short-stay discharge would involve patients who are either discharged to their home or who expire within the first 7 days of being admitted to a LTCH.

Since LTCHs are defined by statute as generally having an average length of stay greater than 25 days, we are proposing to make an adjustment for very short-stay discharges in order to make appropriate payment to cases that may not necessarily require the type of services intended to be provided at a LTCH. Further, we believe that providing a special payment for very short-stay discharges neither encourages hospitals to admit patients for whom they knowingly are unable to provide complete treatment in order to maximize payment, nor severely penalizes providers that, in good faith, admit a patient and provide some services before realizing that the beneficiary would receive more appropriate treatment at another site of care.

In considering the appropriate upper day threshold for identifying very short-stay discharges, we found in our analysis that, from a clinical perspective, it takes about 3 days to evaluate the appropriateness of the admission and typically an additional 3 to 4 days for any treatment to begin to have any impact on the patient's health status. Therefore, we believe that patient cases with 7 days or less treatment in a LTCH are different than the typical LTCH patient cases and generally the patients are not in the hospital long enough to clinically receive full LTCH treatment. We believe that establishing a special payment for these types of cases addresses the problem of an extremely short length of stay that is inherent in a discharge-based prospective payment system. Furthermore, because the rates are set to be budget neutral, if we did not propose to make this adjustment, providing a full prospective payment system payment for very short-stay cases would reduce payments for nonshort-stay LTCH cases.

We are proposing to pay a very short-stay discharge case under a LTC–DRG-specific per diem methodology. Analysis of payment-to-cost ratios indicates that the accuracy of the payments could be improved if we categorize very short-stay discharge cases into two categories based on the primary diagnosis—one for psychiatric

cases and one for all other types of cases. We believe it would be appropriate to separate very short-stay discharge cases into psychiatric and nonpsychiatric categories because our analysis shows that the resources used to treat these two types of patients during the first 7 days differ significantly. In our simulations, combining psychiatric very short-stay discharge cases with all other very short-stay discharge cases resulted in a considerable ''overpayment'' of the very short-stay discharge psychiatric cases and a substantial ''underpayment'' of all other (nonpsychiatric) very short-stay discharge cases. As shown in Table 4 above, the proposed relative weight of LTC–DRG 602 for very short-stay discharge psychiatric cases (0.0827) is almost half the proposed relative weight of LTC–DRG 601 (0.1546) for very short-stay discharge nonpsychiatric cases. This means that the average charge for cases with a stay of 7 days or less in nonpsychiatric LTC–DRGs is almost twice the average charge for cases with a stay of 7 days or less in psychiatric LTC–DRGs. Therefore, for payment of very short-stay discharge cases, we are proposing under § 412.527(c)(1), to categorize a discharge into either a very short-stay discharge psychiatric LTC–DRG or a very short-stay discharge nonpsychiatric LTC–DRG. Additional analysis of nonpsychiatric cases with a length of stay of 7 days or fewer indicates that there is not a significant difference in the resource use across other ''categories'' of LTCH very short-stay discharge cases and the equity of the payment system would not be improved. Thus, we do not believe further distinctions among very short-stay discharge nonpsychiatric cases would be necessary or appropriate.

The relative weight for each of these two very short-stay discharge LTC–DRGs would be based on the average charge for all very short-stay discharge psychiatric cases and all nonpsychiatric cases, respectively, relative to all other LTC–DRGs (excluding all very short-stay discharge cases). We computed the proposed relative weights for the very short-stay discharge psychiatric LTC–DRG and very short-stay discharge nonpsychiatric LTC–DRG by identifying all cases in which the length of stay is 7 days or fewer and categorizing those cases as either psychiatric or nonpsychiatric based on the primary diagnosis of the discharge. Very short-stay discharge psychiatric cases were identified based on the primary ICD–9–CM diagnosis code that would otherwise be classified in LTC–DRGs 424 through 432 in MDC 19 (Mental Diseases and Disorders) or LTC–DRGs 433 through 437 in MDC 20 (Alcohol/Drug Use and Alcohol/Drug-Induced Organic Mental Disorders) in the absence of a very short stay discharge policy. The proposed relative weights for these two very short-stay discharge LTC–DRGs would be calculated in the same manner discussed previously, using the hospital-specific relative value methodology. Each very short-stay discharge LTC–DRG per diem amount would be determined by dividing the applicable Federal payment rate (Federal payment rate x LTC–DRG weight) by 7 days (proposed § 412.527(c)(2)).

2. Short-Stay Outliers

We believe that considerations similar to those underlying the proposed very short-stay discharge policy also apply to short-stay cases with a length of stay greater than 7 days. More specifically, we note that some Medicare patients may have slightly longer lengths of stay, but are still well below the average length of stay of greater than the 25-day threshold specified in the statute, reflecting the fact that these beneficiaries may not require the type of care generally provided in a LTCH or may require urgent treatment at another site of care. Therefore, we also are proposing a short-stay outlier policy that would encompass cases with a length of stay beyond the 7 days that are addressed by the proposed very short-stay discharge policy.

A short-stay outlier case may occur when a beneficiary receives less than the full course of treatment at the LTCH before being discharged. These patients may be discharged to another site of care and be readmitted to the LTCH if they require subsequent LTCH treatment (see the interrupted stay policy in section IV.B.3. of this preamble for further clarification regarding length of stay criteria), or they may be discharged and not readmitted because they no longer require LTCH treatment.

Furthermore, patients may expire early in their LTCH stay. As noted above, generally LTCHs are defined by statute as having an average length of stay of greater than 25 days. Therefore, we believe that a payment adjustment for short-stay outlier cases would result in more appropriate payments since these cases most likely would not receive a full course of treatment in such a short period of time and a full LTC–DRG payment may not always be appropriate. Payment-to-cost ratios for the cases described above show that if LTCHs receive a full LTC–DRG payment for those cases, they would be significantly ''overpaid'' for the resources they have actually expended.

We also believe that providing a reduced payment for short-stay outlier cases neither encourages hospitals to admit patients for whom they knowingly are unable to provide complete treatment in order to maximize payment, nor severely penalizes providers that, in good faith, admit a patient and provide some services before realizing that the beneficiary would receive more appropriate treatment at another site of care or before the beneficiary is discharged to go home. Establishing a short-stay outlier payment for these types of cases addresses the incentives inherent in a discharge-based prospective payment system for treating patients with a short length of stay. One of the primary objectives of a prospective payment system is to provide incentives for hospitals to become more efficient and, in doing so, to ensure that they can still receive adequate and appropriate payments. Because the rates are set to be budget neutral, providing a full prospective payment system payment for those cases that do not actually require the full course of treatment would reduce payments for cases that warrant full payment based on the LTCH services furnished. Therefore, we believe that a short-stay outlier policy would permit more equitable payment.

In considering possible short-stay outlier policies, we sought to balance appropriate payments to shorter stay cases, which are generally less expensive than the average case in each LTC–DRG, and payments to inlier cases in each LTC–DRG. In the absence of a short-stay outlier policy, based on analysis of payment-to-cost ratios, the full LTC–DRG payment would ''overpay'' the short-stay cases and ''underpay'' the inlier cases. A short-stay outlier policy that results in payment-to-cost ratios that are at (or close to) 1.0 would ensure appropriate payments to both short-stay and inlier cases within a LTC–DRG because, on average, payments would closely match costs for these cases under this proposed prospective payment system.

With no short-stay outlier policy, we estimate that payment-to-cost ratios would be greater than 2.0 for cases with lengths of stays below the average length of stay for the LTC–DRG. We considered three alternative short-stay outlier policies in which payment would be based:

- The least of 100 percent of the cost of the case, 100 percent of the LTC–DRG specific per diem amount multiplied by the length of stay, or the full LTC–DRG

payment for cases with a length of stay between 8 days and the average length of stay of the LTC–DRG;

• The least of 150 percent of the cost of the case, 150 percent of the LTC–DRG specific per diem amount multiplied by the length of stay, or the full LTC–DRG payment for cases with a length of stay between 8 days and two-thirds of the average length of stay of the LTC–DRG; or

• The least of 200 percent of the cost of the case, 200 percent of the LTC–DRG specific per diem amount multiplied by the length of stay, or the full LTC–DRG payment for cases with a length of stay between 8 days and half of the average length of stay of the LTC–DRG.

In each of the three alternatives examined, the short-stay outlier day threshold corresponds to the day where the full LTC–DRG payment would be reached by paying the specified percentage of the per diem amount for the LTC–DRG. This would result in a gradual increase in payment as the length of stay increases without producing a ''payment cliff'', which would provide an incentive to discharge a patient one day later because there would be a significant increase in the payment. For example, in a LTC–DRG with an average length of stay of 24 days and a full LTC–DRG payment of $24,000, the per diem amount would be $1,000 per day ($24,000/24 days). At 150 percent of the per diem amount (1.5 × $1,000 = $1,500 per day), the full LTC–DRG payment ($24,000) would be reached on day 16 (16 days × $1,500 per day = $24,000), which is equal to two-thirds of the average length of stay for the LTC–DRG (2/3 × 24 days = 16 days). Thus, under the second alternative, the upper day threshold is two-thirds of the average length of stay and a case with a length of stay between 8 and 16 would be paid as a short-stay outlier in this example.

Our analysis of the three alternative short-stay outlier policies described above showed that a short-stay outlier policy that would pay the least of 100 percent of cost, 100 percent of the LTC–DRG per diem amount, or the full LTC–DRG payment with a length of stay between 8 days and the average length of stay for the LTC–DRG would result in an average payment-to-cost ratio of slightly less than 1.0 for cases identified as short-stay outliers and a payment-to-cost ratio of just over 1.0 for cases that exceeded the average length of stay. Such a short-stay outlier policy would slightly ''underpay'' most inlier cases while ''overpaying'', and thus reducing the incentives for efficiency in the delivery of care of, longer stay cases.

Our analysis also showed that a short-stay outlier policy that would pay the least of 200 percent of cost, 200 percent of the LTC–DRG per diem amount, or the full LTC–DRG payment for cases that stayed between 8 days and half of the average length of stay for the LTC–DRG would result in an average payment-to-cost ratio of greater than 1.5 for those cases identified as short-stay outliers. Such a short-stay outlier policy would result in significant overpayment to those cases identified as short-stay outliers.

Our analysis of a short-stay outlier policy that would pay the least of 150 percent of cost, 150 percent of the LTC–DRG per diem amount, or the full LTC–DRG payment for cases that stayed between 8 days and two-thirds of the average length of stay for the LTC–DRG showed that payment-to-cost ratios for both cases that would be identified as short-stay outliers and inlier cases (that are below the high-cost outlier threshold) would be at or slightly above 1.0. We believe that this alternative would most appropriately pay cases identified as short-stay outliers, inlier cases, and longer stay cases without an incentive to provide inefficient care.

Payment simulations showed that, of the LTCH cases in the FY 2000 MedPAR with a length of stay between 8 days and two-thirds of the average length of stay of the LTC–DRG under the proposed system, payment to 60.8 percent of those cases would be capped at 150 percent of cost. While we acknowledge that under any prospective payment system, hospitals have the opportunity to make a profit on discharges, particularly to help cover the expenses of their extraordinarily costly Medicare patients, we believe that a payment limited to 150 percent of costs or 150 percent of the LTC–DRG per diem payment amount would allow LTCHs to make a reasonable, but not excessive, profit for these short-stay patients.

Based on the analysis described above, we are proposing, under § 412.529, to define a short-stay outlier as a case that has a length of stay between 8 days and two-thirds of the arithmetic average length of stay for each LTC–DRG. We also are proposing to pay a short-stay outlier case defined in proposed § 412.529(a) the least of—(1) 150 percent of the LTC–DRG specific per diem based payment; (2) 150 percent of the cost of the case; or (3) the full LTC–DRG payment (proposed § 412.529(c)(1)).

The LTC–DRG specific per diem based payment would be determined using the proposed standard Federal payment rate (Federal payment rate × LTC–DRG weight) and the arithmetic mean length of stay of the specific LTC–DRG (proposed § 412.529(c)(2)). The cost of a case would be determined using the hospital-specific cost-to-charge ratio and the Medicare allowable charges for the case (proposed § 412.529(c)(3)).

3. Interrupted Stay

We are proposing, under § 412.531, to define interrupted stay cases as those cases in which a LTCH patient is discharged to an inpatient acute care hospital, an IRF, or a SNF for treatment or services not available at the LTCH for a period that is within (less than or equal to) one standard deviation from the arithmetic average length of stay for the DRG assigned for the inpatient acute care hospital stay, one standard deviation from the arithmetic average length of stay for the CMG and the comorbidity tier assigned for the IRF stay, or within 45 days in a SNF (that is, one standard deviation from the average length of stay for all Medicare SNF cases), followed by readmittance to the same LTCH. In considering an appropriate interrupted stay threshold, we attempted to balance the payment incentives of both the LTCH and the acute care hospital, IRF, or SNF to which the LTCH patient is discharged before being readmitted to the LTCH. In order to assure that discharges from LTCHs are based on clinical considerations and not financial incentives, we are proposing that the proposed interrupted stay day threshold would only pay the LTCH for more than one discharge if the patient's length of stay at the acute care hospital, IRF, or SNF exceeds one standard deviation from the average length of stay for the DRG, the combination of the CMG and the comorbidity tier, or for all Medicare SNF cases, respectively. This would, therefore, make it more difficult for a LTCH to find a prospectively paid acute care hospital, IRF, or SNF that would admit a LTCH patient just to allow the LTCH to receive two separate LTC–DRG payments.

We believe that an interrupted stay day threshold of one standard deviation from the average length of stay for either the acute care hospital DRG, the IRF combination of the CMG and the comorbidity tier, or for all Medicare SNF cases provides the appropriate disincentive since cases that stay significantly longer than the average length of stay are more costly than the average case. Since the SNF prospective payment system is a per diem system, not a per discharge system, we are proposing the same threshold for all SNF cases regardless of the resource utilization group (RUG) classification.

We believe that the proposed interrupted stay threshold is appropriate because, in general, the average length of stay plus one standard deviation would capture the majority of the discharges that are similar to the average length of stay for the respective DRG, combination CMG and comorbidity tier, or for all Medicare SNF cases. In addition, this is consistent with the basis for our payment policy for new technologies under the hospital inpatient prospective payment system where the cost of a new technology must exceed one standard deviation beyond the mean standardized charge for all cases in the DRG to which the new technology is assigned in order to receive additional payments (see the September 7, 2001 final rule, 66 FR 46914). The counting of the days for the interruption of the stay would begin on the day of discharge from the proposed LTCH and would end on the day the patient is readmitted to the LTCH. For the purposes of payment under the proposed LTCH prospective payment system, a case that meets the proposed definition of an interrupted stay would be considered a single discharge from the LTCH, and, therefore, would receive only one LTC–DRG payment. Since the two LTCH stays would be considered as a single case for the purposes of payment under the LTCH prospective payment system, the second discharge from the LTCH would be covered under the single LTC–DRG payment. The acute care hospital, the IRF, or the SNF stay would be paid in accordance with the applicable payment policies for those providers.

We are proposing to make one discharge payment under the LTCH prospective payment system for an interrupted stay case as defined under proposed § 412.531(a), to reduce the incentives inherent in a discharged-based prospective payment system of ''shifting'' patients between Medicare-covered sites of care in order to maximize Medicare payments. This proposed policy is particularly appropriate for LTCHs since, as a group, these hospitals are considerably diverse and offer a broad range of services such that where some LTCHs may be able to handle certain acute conditions, others would need to transfer their patients to acute care hospitals. (See section I.E. of this preamble for a description of the universe of LTCHs.)

For instance, some LTCHs are equipped with operating rooms and intensive care units and are capable of performing minor surgeries. However, other LTCHs are unable to provide those services and would need to transfer the beneficiary to an acute care hospital. Similarly, a patient who no longer requires hospital-level care, but is not ready to return to the community, could be transferred to a SNF. This incentive to ''shift'' patients between Medicare-covered sites of care in order to maximize Medicare payments is of a particular concern when the LTCH is physically located within the walls of another hospital. Often, the LTCH patient may not even be aware of a transfer to the other hospital or SNF because he or she will have only been moved down the hall or to another wing of the building. Moreover, our research reveals that hospitals-within-hospitals are the fastest growing type of LTCH. We also believe that the same incentives for inappropriate discharges and readmittance exist for satellite LTCHs that are located within acute care hospitals, described in § 412.22(h), as well as for distinct part SNFs located in acute care hospitals or co-located with LTCHs. (We address the particular issues of onsite discharges and readmittances in section IV.B.5. (proposed § 412.532(d)) in this proposed rule.)

Whether or not a LTCH patient who is discharged to an inpatient acute care hospital, an IRF, or a SNF and then returns to the same LTCH is treated as an interrupted stay (with one LTC–DRG payment) or as a new admission (with two separate LTC–DRG payments) would depend on the patient's length of stay compared to the arithmetic average length of stay and the standard deviation for the hospital inpatient prospective payment system DRG, the IRF combination of the CMG and the comorbidity tier, or 45 days for all Medicare SNF cases. The arithmetic average length of stay and one standard deviation for each acute care hospital DRG and each IRF combination of the CMG and the comorbidity tier are shown below in Tables 5 and 6, respectively.

TABLE 5.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR ACUTE CARE HOSPITAL DRGS

Hospital inpatient prospective payment system DRG	Average length of stay plus one standard deviation
1	18
2	19
3	56
4	16
5	7
6	7
7	22
8	6
9	13
10	14

TABLE 5.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR ACUTE CARE HOSPITAL DRGS—Continued

Hospital inpatient prospective payment system DRG	Average length of stay plus one standard deviation
11	8
12	13
13	11
14	11
15	7
16	12
17	6
18	10
19	7
20	20
21	12
22	10
23	8
24	11
25	6
26	5
27	11
28	12
29	7
31	13
32	5
34	10
35	10
36	3
37	9
38	5
39	4
40	7
42	5
43	5
44	9
45	6
46	9
47	6
49	10
50	4
51	7
52	4
53	8
54	2
55	7
56	6
57	10
59	6
60	6
61	12
62	2
63	10
64	13
65	5
66	6
67	7
68	7
69	6
70	5
71	7
72	7
73	9
75	19
76	24
77	10
78	11
79	16
80	10
81	48
82	13
83	10

TABLE 5.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR ACUTE CARE HOSPITAL DRGS—Continued

Hospital inpatient prospective payment system DRG	Average length of stay plus one standard deviation
84	6
85	12
86	7
87	12
88	9
89	10
90	7
91	8
92	12
93	7
94	12
95	7
96	8
97	6
98	9
99	6
100	4
101	8
102	5
103	112
104	25
105	18
106	19
107	17
108	19
109	13
110	18
111	8
113	24
114	17
115	16
116	9
117	10
118	6
119	11
120	20
121	12
122	6
123	10
124	9
125	5
126	22
127	10
128	9
129	8
130	10
131	7
132	6
133	4
134	6
135	9
136	5
138	8
139	4
140	5
141	7
142	5
143	4
144	11
145	5
146	18
147	9
148	22
149	9
150	20
151	10
152	14

TABLE 5.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR ACUTE CARE HOSPITAL DRGS—Continued

Hospital inpatient prospective payment system DRG	Average length of stay plus one standard deviation
153	8
154	25
155	8
156	15
157	11
158	5
159	10
160	5
161	9
162	4
163	8
164	14
165	7
166	10
167	4
168	10
169	5
170	24
171	9
172	14
173	7
174	9
175	5
176	10
177	8
178	5
179	11
180	10
181	6
182	8
183	5
184	5
185	9
186	18
187	7
188	11
189	6
190	23
191	28
192	11
193	22
194	11
195	18
196	9
197	16
198	7
199	19
200	22
201	26
202	13
203	13
204	11
205	12
206	7
207	10
208	5
209	8
210	12
211	8
212	25
213	18
216	19
217	29
218	10
219	5
220	7
223	6

TABLE 5.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR ACUTE CARE HOSPITAL DRGS—Continued

Hospital inpatient prospective payment system DRG	Average length of stay plus one standard deviation
224	3
225	10
226	14
227	5
228	8
229	5
230	12
231	11
232	7
233	15
234	7
235	16
236	9
237	6
238	17
239	12
240	13
241	7
242	13
243	9
244	10
245	8
246	8
247	7
248	9
249	8
250	8
251	5
253	10
254	6
256	10
257	6
258	3
259	7
260	2
261	5
262	8
263	24
264	13
265	16
266	7
267	8
268	8
269	17
270	8
271	14
272	12
273	8
274	13
275	10
276	10
277	11
278	7
279	4
280	8
281	6
282	2
283	9
284	6
285	20
286	13
287	22
288	12
289	7
290	5
291	3
292	21

TABLE 5.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR ACUTE CARE HOSPITAL DRGS—Continued

Hospital inpatient prospective payment system DRG	Average length of stay plus one standard deviation
293	12
294	9
295	7
296	10
297	6
298	6
299	11
300	12
301	7
302	16
303	15
304	18
305	6
306	12
307	4
308	14
309	4
310	10
311	3
312	10
313	5
315	19
316	13
317	6
318	12
319	5
320	10
321	7
322	7
323	6
324	3
325	7
326	5
327	5
328	7
329	4
331	11
332	6
333	10
334	9
335	5
336	7
337	3
338	11
339	10
341	8
342	7
344	6
345	8
346	12
347	6
348	8
349	5
350	8
352	9
353	13
354	11
355	5
356	4
357	16
358	9
359	4
360	6
361	7
363	8
364	9
365	15

TABLE 5.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR ACUTE CARE HOSPITAL DRGS—Continued

Hospital inpatient prospective payment system DRG	Average length of stay plus one standard deviation
366	14
367	6
368	12
369	7
370	13
371	7
372	7
373	4
374	6
375	3
376	6
377	10
378	4
379	8
380	4
381	6
382	2
383	8
384	4
389	34
390	7
392	19
394	18
395	9
396	9
397	10
398	12
399	6
400	20
401	22
402	8
403	16
404	9
406	20
407	8
408	19
409	12
410	8
411	4
412	4
413	14
414	8
415	30
416	14
417	8
418	12
419	9
420	6
421	7
422	5
423	17
424	36
425	8
426	9
427	10
428	19
429	15
430	17
431	15
432	12
433	7
439	18
440	20
441	7
442	19
443	7
444	8

TABLE 5.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR ACUTE CARE HOSPITAL DRGS—Continued

Hospital inpatient prospective payment system DRG	Average length of stay plus one standard deviation
445	5
447	5
449	8
450	4
451	2
452	10
453	5
454	11
455	6
461	12
462	20
463	8
464	6
465	6
466	9
467	7
468	26
470	88
471	10
473	28
475	22
476	20
477	18
478	15
479	7
480	44
481	37
482	26
483	69
484	25
485	19
486	24
487	14
488	34
489	18
490	11
491	6
492	32
493	11
494	4
495	28
496	18
497	12
498	6
499	9
500	5
501	20
502	12
503	8
504	56
505	9
506	33
507	16
508	16
509	9
510	15
511	11
512	24
513	18
514	16
515	14
516	9
517	6
518	8
519	11
520	4
521	12

TABLE 5.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR ACUTE CARE HOSPITAL DRGS—Continued

Hospital inpatient prospective payment system DRG	Average length of stay plus one standard deviation
522	17
523	8

*Arithmetic average length of stay and standard deviation based on data used to develop the hospital inpatient prospective payment system FY 2002 DRG relative weights (see the August 1, 2001 final rule, 66 FR 40054).

TABLE 6.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR IRF COMBINATION OF CMG AND COMORBIDITY TIERS

IRF prospective payment system CMG	Comorbidity tier	Average length of stay plus one standard deviation**
0101**	1	11
0101**	2	10
0101	3	8
0101	None	13
0102**	1	17
0102	2	18
0102	3	16
0102	9	15
0103**	1	19
0103**	2	18
0103	3	17
0103	None	18
0104	1	25
0104	2	18
0104	3	18
0104	None	19
0105	1	24
0105	2	25
0105	3	22
0105	None	23
0106	1	26
0106	2	26
0106	3	27
0106	None	27
0107	1	25
0107	2	30
0107	3	30
0107	None	30
0108**	1	35
0108	2	44
0108	3	33
0108	None	33
0109	1	36
0109	2	35
0109	3	31
0109	None	35
0110**	1	39
0110	2	35
0110	3	40
0110	None	39
0111**	1	40
0111	2	38
0111	3	35
0111	None	39
0112	1	66

TABLE 6.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR IRF COMBINATION OF CMG AND COMORBIDITY TIERS—Continued

IRF prospective payment system CMG	Comorbidity tier	Average length of stay plus one standard deviation**
0112	2	52
0112	3	45
0112	None	44
0113	1	46
0113	2	41
0113	3	38
0113	None	40
0114	1	56
0114	2	51
0114	3	48
0114	None	48
0201**	1	19
0201	2	22
0201	3	21
0201	None	17
0202**	1	27
0202	2	24
0202	3	26
0202	None	25
0203	1	27
0203	2	27
0203	3	30
0203	None	27
0204**	1	35
0204	2	34
0204	3	33
0204	None	33
0205	1	65
0205	2	56
0205	3	52
0205	None	48
0301**	1	21
0301	2	22
0301	3	19
0301	None	20
0302**	1	27
0302	2	25
0302	3	27
0302	None	25
0303	1	33
0303	2	35
0303	3	33
0303	None	32
0304	1	63
0304	2	50
0304	3	53
0304	None	47
0401**	1	22
0401	2	22
0401	3	30
0401	None	30
0402**	1	30
0402	2	27
0402	3	33
0402	None	31
0403**	1	51
0403	2	55
0403	3	50
0403	None	52
0404	1	87
0404	2	64
0404	3	101
0404	None	66
0501**	1	18

TABLE 6.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR IRF COMBINATION OF CMG AND COMORBIDITY TIERS—Continued

IRF prospective payment system CMG	Comorbidity tier	Average length of stay plus one standard deviation**
0501	2	21
0501	3	15
0501	None	16
0502**	1	18
0502	2	26
0502	3	13
0502	None	18
0503**	1	25
0503	2	26
0503	3	23
0503	None	22
0504**	1	33
0504	2	31
0504	3	37
0504	None	29
0505	1	46
0505	2	48
0505	3	44
0505	None	45
0601**	1	20
0601	2	21
0601	3	17
0601	None	19
0602	1	19
0602	2	22
0602	3	21
0602	None	23
0603	1	33
0603	2	27
0603	3	27
0603	None	27
0604	1	49
0604	2	36
0604	3	40
0604	None	36
0701**	1	18
0701	2	18
0701	3	19
0701	None	17
0702**	1	22
0702	2	22
0702	3	23
0702	None	20
0703**	1	25
0703	2	26
0703	3	25
0703	None	24
0704	1	19
0704	2	29
0704	3	26
0704	None	26
0705	1	29
0705	2	32
0705	3	32
0705	None	31
0801**	1	13
0801	2	13
0801	3	12
0801	None	12
0802**	1	14
0802	2	15
0802	3	13
0802	None	13
0803	1	13

TABLE 6.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR IRF COMBINATION OF CMG AND COMORBIDITY TIERS—Continued

IRF prospective payment system CMG	Comorbidity tier	Average length of stay plus one standard deviation**
0803	2	16
0803	3	19
0803	None	15
0804	1	21
0804	2	20
0804	3	21
0804	None	18
0805**	1	22
0805	2	24
0805	3	21
0805	None	20
0806**	1	30
0806	2	30
0806	3	28
0806	None	27
0901**	1	17
0901	2	17
0901	3	17
0901	None	16
0902**	1	21
0902	2	22
0902	3	20
0902	None	20
0903**	1	26
0903	2	27
0903	3	27
0903	None	24
0904**	1	35
0904	2	36
0904	3	35
0904	None	33
1001**	1	19
1001	2	23
1001	3	18
1001	None	21
1002**	1	22
1002	2	22
1002	3	21
1002	None	23
1003**	1	26
1003	2	27
1003	3	25
1003	None	27
1004**	1	29
1004	2	30
1004	3	28
1004	None	28
1005	1	30
1005	2	37
1005	3	38
1005	None	35
1101**	1	24
1101	2	17
1101	3	19
1101	None	18
1102**	1	33
1102	2	26
1102	3	26
1102	None	28
1103**	1	43
1103	2	33
1103	3	33
1103	None	39
1201**	1	16

TABLE 6.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR IRF COMBINATION OF CMG AND COMORBIDITY TIERS—Continued

IRF prospective payment system CMG	Comorbidity tier	Average length of stay plus one standard deviation**
1201	2	14
1201	3	16
1201	None	14
1202**	1	22
1202	2	16
1202	3	20
1202	None	20
1203**	1	23
1203	2	20
1203	3	20
1203	None	20
1204**	1	29
1204	2	26
1204	3	24
1204	None	25
1205**	1	36
1205	2	32
1205	3	31
1205	None	30
1301**	1	19
1301	2	21
1301	3	21
1301	None	17
1302**	1	22
1302	2	21
1302	3	21
1302	None	20
1303**	1	27
1303	2	25
1303	3	24
1303	None	26
1304**	1	39
1304	2	39
1304	3	46
1304	None	36
1401	1	25
1401	2	17
1401	3	15
1401	None	16
1402	1	19
1402	2	21
1402	3	20
1402	None	20
1403	1	31
1403	2	28
1403	3	23
1403	None	24
1404	1	44
1404	2	36
1404	3	32
1404	None	31
1501**	1	20
1501	2	18
1501	3	20
1501	None	20
1502**	1	23
1502	2	26
1502	3	19
1502	None	23
1503**	1	28
1503	2	29
1503	3	25
1503	None	27
1504**	1	46

TABLE 6.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR IRF COMBINATION OF CMG AND COMORBIDITY TIERS—Continued

IRF prospective payment system CMG	Comorbidity tier	Average length of stay plus one standard deviation**
1504	2	44
1504	3	49
1504	None	42
1601**	1	22
1601	2	21
1601	3	20
1601	None	20
1602**	1	31
1602	2	30
1602	3	31
1602	None	27
1701**	1	20
1701	2	19
1701	3	15
1701	None	21
1702**	1	29
1702	2	29
1702	3	30
1702	None	26
1703	1	48
1703	2	45
1703	3	41
1703	None	37
1801**	1	17
1801**	2	17
1801**	3	17
1801	None	15
1802**	1	26
1802**	2	26
1802**	3	26
1802	None	26
1803**	1	33
1803	2	37
1803	3	31
1803	None	33
1804**	1	58
1804	2	45
1804**	3	56
1804	None	56
1901**	1	22
1901**	2	22
1901	3	25
1901	None	22
1902**	1	39
1902	2	39
1902	3	39
1902	None	36
1903**	1	54
1903	2	47
1903	3	42
1903	None	59
2001	1	20
2001	2	20
2001	3	18
2001	None	18
2002	1	21
2002	2	23
2002	3	21
2002	None	22
2003	1	29
2003	2	27
2003	3	27
2003	None	27
2004	1	47

TABLE 6.—ARITHMETIC AVERAGE LENGTH OF STAY AND ONE STANDARD DEVIATION FOR IRF COMBINATION OF CMG AND COMORBIDITY TIERS—Continued

IRF prospective payment system CMG	Comorbidity tier	Average length of stay plus one standard deviation**
2004	2	33
2004	3	32
2004	None	34
2005	1	50
2005	2	39
2005	3	38
2005	None	37
2101**	1	26
2101**	2	25
2101**	3	22
2101	None	24
2102**	1	44
2102	2	41
2102	3	39
2102	None	48
5001	None	3
5101	None	11
5102	None	31
5103	None	12
5104	None	43

*Arithmetic average length of stay and standard deviation based on data used to develop the IRF PPS relative weights for the combination CMG and comorbidity tiers in the August 7, 2001 final rule (66 FR 41394).

**Standard deviation for this combination CMG comorbidity tiers is unavailable; the lowest standard deviation for the CMG was used to determine the average length of stay plus one standard deviation.

If the LTCH patient who was discharged to an acute care hospital or an IRF has a length of stay in the acute care hospital or the IRF that exceeds one standard deviation from the average length of stay of the hospital inpatient DRG or the combination of the CMG and the comorbidity tier, respectively, then the subsequent admission to the same LTCH would be treated as a new LTCH stay rather than being considered as an interrupted stay, even if the second discharge is determined to fall into the same LTC–DRG as the original stay in the LTCH. Similarly, a patient returning to the LTCH following a stay in a SNF of longer than 45 days (more than one standard deviation from the average length of stay for all Medicare SNF cases) would be paid as a new stay for the LTCH. Thus, under this circumstance, the beneficiary would be deemed to have had two separate stays at the LTCH, resulting in two separate payments under the LTCH prospective payment system.

An interrupted stay could occur during a regular inlier case (length of stay greater than two-thirds the average length of stay for the LTC–DRG). A very short-stay discharge or a short-stay outlier (as explained in sections IV.B.1 and IV.B.2., respectively, of this proposed rule) could also become an interrupted stay if the beneficiary is discharged to an acute care hospital, an IRF, or a SNF. Whether or not the beneficiary's stay would remain in either of these categories would depend upon the total length of stay in the LTCH. Upon the initial discharge to the acute care hospital, the IRF, or the SNF, the LTCH ''day count'' would stop. For an interrupted stay case, this count would be resumed upon readmission to the LTCH until the beneficiary's final discharge (home, another site of care, or death). Thus, the period of absence (number of days) that the beneficiary is a patient in the acute care hospital, the IRF, or the SNF during a LTCH interrupted stay would not be included in determining the length of stay of the LTCH stay.

If the total number of days at the LTCH, from the initial admission to the final discharge, still falls into either the very short-stay discharge or short-stay outlier payment category, the LTCH would receive payment according to the proposed very short-stay discharge policy described in section IV.B.1. of this preamble or the proposed short-stay outlier policy described in section IV.B.2. of this preamble, respectively. If, on the other hand, the total number of days in the LTCH exceeds two-thirds of the average length of stay of the LTC–DRG (the proposed short-stay outlier criteria), one full LTC–DRG payment would be made for the case. Moreover, all applicable payment policies, including outliers and transfers for the acute care hospital inpatient prospective payment system and the IRF prospective payment system would still apply under this proposed policy.

The following are examples of possible ways in which these proposed policies would interact:

Example 1: A beneficiary stays in the LTCH for 5 days and is discharged to an inpatient acute care hospital and the length of stay at the acute care hospital is more than the sum of the average length of stay of the DRG under the hospital inpatient prospective payment system and one standard deviation before being discharged back to the LTCH. Medicare hospital payments for this beneficiary would be as follows:

- One very short-stay discharge LTCH prospective payment system payment to the LTCH for the first (5-day length of stay) LTCH discharge.
- Payment to the acute care hospital under the hospital inpatient prospective payment system for the acute care stay.
- A separate LTCH prospective payment system payment either as a very short-stay discharge (see proposed § 412.527), a short-stay outlier (see proposed § 412.529) or regular stay, depending on the second LTCH length of stay. This case would not be an interrupted stay because the acute care hospital stay was for more days than one standard deviation from the average length of stay of the DRG under the acute care hospital inpatient prospective payment system.

Example 2: A beneficiary stays in the LTCH for 5 days and is discharged to an inpatient acute care hospital and the length of stay at the acute care hospital is a number of days that is less than or equal to the sum of the average length of stay of the acute care hospital inpatient DRG and one standard deviation before being discharged back to the LTCH. The beneficiary remains in the LTCH for an additional 9 days after readmission to the LTCH following the acute care hospital stay. This case would be treated as an interrupted stay and Medicare hospital payments for this beneficiary would be as follows:

- Payment to the acute care hospital under the hospital inpatient prospective payment system for the DRG for the acute care hospital stay.
- The stay was interrupted because the acute care hospital stay was within one standard deviation from the average length of stay of the acute care hospital inpatient DRG. Therefore, a single payment would be made to the LTCH under the proposed LTCH prospective payment system. This payment would be a short-stay outlier payment (under proposed § 412.529) if the total LTCH length of stay (14 days) is less than two-thirds the average length of stay of the LTC–DRG.

Example 3: A beneficiary stays in the LTCH for 5 days and is discharged to an IRF and the length of stay at the IRF is less than or equal to the sum of the average length of stay of the IRF combination of the CMG and the comorbidity tier and one standard deviation before being discharged back to the LTCH. The beneficiary remained in the LTCH for an additional 12 days, so that the combined 17 days is greater than two-thirds of the average length of stay for the LTC–DRG after readmission to the LTCH following the IRF stay. This case would be an interrupted stay and Medicare hospital payments for this beneficiary would be as follows:

- Payment to the IRF under the IRF prospective payment system for the combination of the CMG and the comorbidity tier for the IRF stay; and
- Since the stay was interrupted because the IRF stay was within one standard deviation from the average length of stay of the IRF combination of the CMG and the comorbidity tier, a single payment would be made under LTCH prospective payment system. This payment would be a full LTC–DRG payment because the total LTCH length of stay is greater than two-thirds of the average length of stay of the LTC–DRG.

In Example 2 and Example 3, upon return to the LTCH following the discharge from the acute care hospital or the IRF, the day count would be resumed at day 6 of the LTCH stay. If the beneficiary was then discharged on day 6 or 7, the stay would be paid as a very short-stay discharge (see

proposed § 412.527); if the beneficiary was discharged within two-thirds of the average length of stay for the LTC–DRG, the stay would be paid as a short-stay outlier (see proposed § 412.529); and if the beneficiary was discharged beyond the short-stay threshold (two-thirds of the average length of stay for the LTC–DRG), the case would be paid for the full LTC–DRG.

While the interrupted stay policy proposed under § 412.531 is based in part on clinical considerations, we realize that it may be somewhat administratively burdensome for the LTCH to determine the DRG for the acute care hospital stay or the combination of the CMG and the comorbidity tier for the IRF stay in order to determine whether or not a beneficiary that is discharged to an acute care hospital, an IRF, or a SNF and then returns to the LTCH would be an interrupted stay (with a single LTCH prospective payment system payment) or a new admission (with two separate LTCH prospective payment system payments). Therefore, we are considering treating all patients who are discharged to either an acute care hospital or an IRF and admitted back to the LTCH within a fixed period of time (as we have proposed for SNFs), regardless of the DRG of the patient in the acute care hospital or the combination of the CMG and the comorbidity tier of the patient in the IRF, as an interrupted stay. We believe that 9 days for acute care hospitals and 27 days for IRFs would be an appropriate threshold to identify interrupted stay cases because, in both cases, the proposed thresholds are one standard deviation from the average length of stay of all patients in those respective settings. We are aware that, under such a policy, less clinically complex brief acute care hospital and IRF stays would be included and would become an interrupted stay if the beneficiary returns to a LTCH. However, those types of cases would be offset by stays that require more intense and lengthy care. We are in the process of further analyzing Medicare claims data for LTCH beneficiaries who are discharged to an acute care hospital or an IRF and return to the LTCH following that stay to determine if an interrupted stay threshold of a fixed number of days is the more appropriate policy. We specifically solicit comments on the appropriate period of absence for such an interrupted stay threshold. We also are interested in receiving comments regarding the inclusion of discharges to psychiatric hospitals or units in our proposed interrupted stay policy.

4. Other Special Cases

Under other Medicare prospective payment systems, specifically for inpatient acute care hospitals and for IRFs, there are separate policies for other types of special cases such as transfer cases and patients who expire. We believe the proposed very short-stay discharge policy (under proposed § 412.527), the proposed short-stay outlier policy (under proposed § 412.529), and the proposed interrupted stay policy (under proposed § 412.531) would adequately address these circumstances. For instance, a case with a stay that is less than two-thirds the average length of stay of the LTC–DRG would be paid under the proposed short-stay outlier policy (or the very short-stay discharge policy if the length of stay is 7 days or fewer) regardless of whether or not the patient is transferred upon discharge to his or her home or to another setting where Medicare would make additional payments, or whether the patient expired. Moreover, if a beneficiary's stay at the LTCH is at least two-thirds the average length of stay of the LTC–DRG, a full LTC–DRG payment would be made regardless of the destination following discharge. Therefore, we are not proposing a separate policy for cases that are transferred (except for those that are encompassed by the proposed interrupted stay policy) or for patients who expire.

Currently, under the hospital inpatient prospective payment system, discharges in 10 DRGs are considered to be transfers if the patients are discharged to another Medicare post-acute site of care, such as a LTCH, under section 1886(d)(5)(J)(ii) of the Act, implemented in regulations at § 412.4. The rationale behind this amendment was Congressional concern 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.'' (Conference Agreement, H.R. Conf. Rept. No. 105–217, 105th Cong., 1st Sess., at 740 (1997).) In such a scenario, Medicare would also have to pay the post-acute care provider for care that theoretically could have been provided at the acute care hospital. Section 1886(d)(5)(J)(iv) of the Act authorizes the Secretary to expand the post-acute care transfer policy to additional DRGs. From the standpoint of LTCHs, the impact of expanding the hospital inpatient prospective payment system post-acute care transfer policy could be significant for the LTCH prospective payment system since this policy could affect behavior at acute care hospitals. If additional discharges would be paid as transfers, these patients may be kept longer at acute care hospitals in order to avoid a reduced payment for the transfer and then have a shorter length of stay during the subsequent stay at the LTCH. Presently, approximately 70 percent of LTCH Medicare patients are admitted following discharge from an acute care hospital. We are presently exploring whether to propose an expansion of the 10–DRG policy in the FY 2003 hospital inpatient prospective payment system proposed rule.

5. Onsite Discharges and Readmittances

As we explained above, we do not believe that a separate policy governing transfers of Medicare patients between LTCHs and acute care hospitals is necessary at this time. However, we are proposing a policy that would address transfers between LTCHs and distinct-part SNFs, acute care hospitals, rehabilitation facilities, or psychiatric facilities when the LTCH and any of these other providers are co-located because of the potential for inappropriate shifting of patients among these providers without clinical justification to maximize Medicare payment. This situation may occur when a distinct-part SNF is part of a LTCH or when the LTCH is located within an acute care hospital or an IRF as either a ''hospital-within-a-hospital (as defined in § 412.22(e)) or a ''satellite facility'' (as defined in § 412.22(h)) and a distinct-part SNF (as defined in section 1819(a) of the Act) is also part of the same acute care hospital or IRF. (Section I.E.9. of this proposed rule describes findings from Urban's research on the admission and discharge patterns between LTCHs and SNFs.)

Similarly, a long-term care ''hospital-within-a-hospital'' or satellite facility may be co-located with a psychiatric or rehabilitation hospital that is also a hospital within the same acute care hospital or is a satellite facility situated in the same acute care hospital (§§ 412.25 and 412.27), or may be co-located in an acute care hospital with a psychiatric unit (§ 412.27) or a satellite psychiatric or rehabilitation unit (§ 412.25(e)).

We believe that a per discharge system, such as the prospective payment system for LTCHs, could provide inappropriate incentives to prematurely discharge patients to one of these other onsite providers once their lengths of stay at the LTCH exceeded the thresholds established by the short-stay discharge and outlier policies described in section IV.B. of this proposed rule. These discharges would

be based on payment considerations rather than on a clinical basis as an extension of the normal progression of appropriate patient care. If the long-term care hospital-within-a-hospital inappropriately discharges Medicare patients to the distinct-part SNF, or the onsite IRF, psychiatric facility, or acute care hospital without providing a complete episode of hospital-level care, Medicare would make inappropriate payments to the long-term care hospital-within-a-hospital, since payments under the proposed prospective payment system would have been calculated based on a complete episode of such care. This type of a case could then be followed by a readmission to the LTCH from the onsite provider for an additional LTC–DRG payment. (In the case of a discharge from a LTCH to an offsite acute care hospital, an IRF, or a SNF with a subsequent return to the LTCH, payments would also be considered under the interrupted stay policy set forth at section IV.B.3. of this proposed rule and at proposed § 412.531.)

In determining an appropriate response to onsite discharges and readmittances, we are proposing a policy consistent with our policy described in the July 30, 1999 **Federal Register** (64 FR 41535) that addresses inappropriate discharges of patients between an acute care hospital inpatient prospective payment system excluded hospital-within-a-hospital (such as a LTCH) to the host acute care hospital, that culminated in a readmission to the hospital-within-a-hospital. In that context, we expressed the same concern noted above—that these types of moves were occurring for financial rather than clinical reasons. In order to discourage these practices, we implemented regulations at § 413.40(a)(3) to specify how to calculate the cost per discharge under the excluded hospital payment provisions. Under those regulations, during a cost reporting period, if the hospital-within-a-hospital discharges more than 5 percent of its inpatients to the acute care hospital where it is located, and those patients are readmitted to the excluded hospital, Medicare considers each patient's entire stay as one discharge for purposes of calculating the cost per discharge of the excluded hospital. In determining whether a patient has previously been discharged and then readmitted, we consider all prior discharges, even if the discharge occurs late in one cost reporting period and the readmission occurs in the next cost reporting period. Only when the excluded hospital's number of these cases in a particular cost reporting year exceeds 5 percent of the total number of its discharges are the first discharges not counted for payment purposes. (If the 5-percent threshold is not triggered, all discharges are counted separately.)

With the implementation of the per discharge prospective payment system for LTCHs, we are proposing to adopt a similar policy to address inappropriate discharges and readmittances between LTCHs and other onsite providers by establishing a threshold beyond which the original patient stay and the readmission would be paid as one discharge (proposed § 412.532). By paying only one discharge, we would discourage those transfers that would be based on payment considerations instead of on a clinical basis. Generally, if a LTCH readmits more than 5 percent of its Medicare patients who are discharged to an onsite SNF, IRF, or psychiatric facility, or to an onsite acute care hospital, only one LTC–DRG payment would be made to the LTCH for each discharge and readmittance during the LTCH's cost reporting period. Therefore, payment for the entire stay would be paid either as one full LTC–DRG payment, a very short-stay discharge, or a short-stay outlier, depending on the duration of the entire LTCH stay.

In applying the 5-percent threshold, we are proposing to apply one threshold for discharges and readmittances with a co-located acute care hospital, consistent with the policy that has been in place under § 413.40(a)(3) for acute care hospitals and excluded hospitals described above. We also are proposing a separate 5-percent threshold for all discharges and readmittances with co-located SNFs, IRFs, and psychiatric facilities. In the case of a LTCH that is co-located with an acute care hospital, an IRF, or a SNF, the onsite discharge and readmittance policies that we are proposing would apply in addition to the proposed interrupted stay policy that we are proposing in section IV.B.3 of this proposed rule and at proposed § 412.531. This means that even if a discharged LTCH patient who was readmitted to the LTCH following a stay in an acute care hospital of greater than one standard deviation from the average length of stay of the specific hospital inpatient prospective payment system DRG, if the facilities share a common location and the 5-percent threshold were exceeded, the subsequent discharges from the LTCH would not represent a separate hospitalization for payment purposes. Similarly, if the LTCH has exceeded its 5-percent threshold for all discharges to an onsite IRF, SNF, or psychiatric hospital or unit with readmittances to the LTCH, the subsequent discharges would not be treated as a separate discharge for Medicare payment purposes, notwithstanding provisions of the proposed interrupted stay policy with regard to lengths of stay at an IRF or a SNF (see proposed §§ 412.531(b)(5)(ii) and (b)(5)(iii)). (As under the proposed interrupted stay policy, payment to an acute care hospital under the hospital inpatient prospective payment system, to an IRF under the IRF prospective payment system, and to a SNF under the SNF prospective payment system, would not be affected. Payments to the psychiatric facility also would not be affected.)

We are aware that situations could arise where, under sound clinical judgement, a patient who no longer required LTCH-level of care could be discharged to a SNF and then experience a setback necessitating rehospitalization. However, it is likely that, in such a scenario, in most cases the patient would be subsequently admitted to an acute care hospital rather than readmitted to the LTCH located within the acute care hospital. In addition, if the patient is being treated by a LTCH that also specializes in treating psychiatric or rehabilitation patients, it is unlikely that the patient who, for some medical reason, needed to be transferred to an onsite psychiatric or rehabilitation hospital or unit, would need to be readmitted to the LTCH. We believe that the 5-percent thresholds for discharges to onsite acute care hospitals and for discharges to onsite IRFs, SNFs, and psychiatric facilities followed by readmission to the LTCH provide adequate flexibility for those rare circumstances where such actions would be clinically preferable.

We believe that the combination of a discharge-based payment system that inherently contains financial incentives for shifting patients to another site of care and the close proximity of other sites of care such as other onsite hospitals-within-hospitals, satellites, and distinct-part SNFs, necessitates this type of policy. If we implement this policy in the final rule, we would monitor such discharges and analyze data and compare practice patterns before and after the implementation of the prospective payment system and, if warranted, may consider extending it to offsite providers.

6. Additional Issues for Onsite Facilities

As we prepare to implement a proposed prospective payment system for LTCHs, we are reevaluating certain existing policies for hospitals-within-hospitals and satellite facilities that

were established under the TEFRA payment system for excluded hospitals.

Existing regulations at § 412.22(e) specify exclusion criteria based on ownership and control for hospitals-within-hospitals and their host hospitals (59 FR 45330, September 1, 1994). We were concerned about possible manipulation of Medicare payments by a single entity that owns or controls an acute care hospital and a co-located LTCH. We believed that such a situation could lead to premature patient discharges from the acute care hospital to the co-located LTCH, resulting in two Medicare payments to the controlling entity for one episode of care. Under this circumstance, the LTCH would, in fact, function as an excluded unit of an acute care hospital, a situation inconsistent with section 1886(d)(1)(B) of the Act, which allows excluded rehabilitation and psychiatric units in acute care hospitals but not long-term care units. Through the proposed interrupted stay and proposed onsite discharge and readmittance policies set forth in sections IV.B.3. and IV.B.5., respectively, of this proposed rule, which limit potential inappropriate Medicare payments, we believe that we have addressed some of the concerns that originally led us to establish the rules in § 412.22(e). Accordingly, we are soliciting comments on any possible changes to CMS payment policy regarding ownership and control for hospitals-within-hospitals.

The second area that we are soliciting comments, in light of the forthcoming proposed LTCH prospective payment system, is our policy regarding LTCHs that have established satellite facilities. In § 412.22(h)(1), we define a satellite as ''a part of a hospital that provides inpatient services in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital.'' Satellite arrangements exist when an existing hospital that is excluded from the hospital inpatient prospective payment system and that is either a freestanding hospital or a hospital-within-a-hospital under § 412.22(e), shares space in a building or on a campus occupied by another hospital in order to establish an additional location for the excluded hospital. The July 30, 1999 **Federal Register** (64 FR 41532 through 41534) includes a detailed discussion of our policies regarding Medicare payments for satellite facilities of hospitals excluded from the hospital inpatient prospective payment system. We will consider the possibility of revisiting the policies we established for these satellites. In accordance with section 1886(b) of the Act, as amended by sections 4414 and 4416 of Public Law 105–33, we established two different target limits on payments to excluded hospitals, depending upon when the facilities were established. The target amount limit for excluded hospitals or units established before October 1, 1997 was set at the 75th percentile of the target amounts of similarly classified hospitals, as specified in § 413.40(c)(4)(iii), for cost reporting periods ending during FY 1996 as updated to the applicable cost reporting period. For excluded hospitals and units established on or after October 1, 1997, under section 4416 of Public Law 105–33, the payment amount for the hospital's first two 12-month cost reporting periods, as specified at § 413.40(f)(2)(ii), may not exceed 110 percent of the national median of target amounts of similarly classified hospitals for cost reporting periods ending during FY 1996, updated to the first cost reporting period in which the hospital receives payment.

Because we were concerned that a number of pre-1997 excluded hospitals, governed by § 413.40(c)(4)(iii), would seek to create satellite arrangements in order to avoid the effect of the lower payment caps that would apply to new hospitals, under § 413.40(f)(2)(ii), we established rules regarding the exclusion of and payments to satellites of existing facilities. If the number of beds in the hospital or unit (including both the base hospital or unit and the satellite location) exceeds the number of State-licensed and Medicare-certified beds in the hospital or unit on the last day of the hospital's or unit's last cost reporting period beginning before October 1, 1997, then the facility would be paid under the inpatient DRG system. Therefore, while an excluded hospital or unit could ''transfer'' bed capacity from a base facility to a satellite, if it increased total bed capacity beyond the level it had in the most recent cost reporting period before October 1, 1997 (64 FR 41532–4153, July 30, 1999), then the hospital would not be paid as a hospital excluded from the hospital inpatient prospective payment system. No similar limitation, however, was imposed with respect to the number of total beds in excluded hospitals and units and satellites of these facilities established after October 1, 1997, since these facilities were already subject to the lower payment limits of section 4416 of Public Law 105–33, and would, therefore, not benefit from the higher cap by creating a satellite.

Section 123 of Public Law 106–113 confers broad authority on the Secretary regarding the implementation of the proposed prospective payment system for LTCHs, and as described in section IV.G. of this proposed rule, we are proposing to transition this proposed prospective payment system over 5 years. During this time, payments to LTCHs would gradually change from hospital-specific cost-based payments to a per-discharge LTC–DRG-based prospective payment system. In addition, IRFs also will be transitioned to 100 percent payment starting with cost reporting periods beginning during FY 2003. We would consider whether to propose elimination of the bed-number criteria in § 412.22(h)(2)(i) for pre-1997 hospitals, once the applicable prospective payment system is fully phased-in, since all LTCHs would be paid based on 100 percent of the proposed LTCH prospective payment system by FY 2007 and the payment provisions under the TEFRA system at that time would no longer exist for this class of hospitals or for IRFs for cost reporting periods beginning during FY 2003. (This policy change, lifting of bed-number criteria for hospitals under prospective payment systems, that we are considering to propose, would not apply to hospitals that continue to be paid under the TEFRA system. Accordingly, during the 5-year phase-in, the policies in § 412.22(h)(2)(i) would continue to apply to LTCH satellites.

7. Monitoring System

In this proposed rule, we are proposing various policies that we believe would provide equitable payment for stays that reflect less than the full course of treatment and reduce the incentives for inappropriate admissions, transfers, or premature discharges of patients that are present in a discharge-based prospective payment system. We also would be collecting and interpreting data on changes in average lengths of stay under the proposed prospective payment system for specific LTC–DRGs and the impact of these changes on the Medicare program.

We propose to develop a monitoring system that would assist us in evaluating the LTCH prospective payment system. If our data indicate that changes might be warranted, we may revisit these issues and consider revising these proposed policies in the future.

C. Payment Adjustments

As indicated earlier, the Secretary generally has broad authority under section 123 of Public Law 106–113 in developing the prospective payment system for LTCHs. Thus, the Secretary generally has broad authority in determining whether (and how) to make

adjustments to the prospective payments to LTCHs. Section 307 of Public Law 106–554 directs the Secretary to ''examine'' appropriate adjustments to the prospective payments to LTCHs, including certain specific adjustments, but under that section the Secretary continues to have discretion as to whether to provide for adjustments.

In determining whether to propose specific payment adjustments under the prospective payment system for LTCHs, we conducted extensive regression analyses of the relationship between LTCH costs (including both operating and capital-related costs per case) and several factors that may affect costs such as the percent of Medicaid patients treated, the percent of Supplemental Security Income (SSI) patients treated, geographic location, and medical education programs. The appropriateness of potential payment adjustments is based on both cost effects estimated by regression analysis and other factors, including simulated payments that we discuss in section IV.E. of this proposed rule.

Our analyses are based on data from 222 LTCHs for which cost and case-mix data were available. We estimated costs for each case by multiplying hospital-specific cost-to-charge ratios by the LTCH's charges for that case. Cost-to-charge ratios were obtained from FY 1998 or FY 1999 cost report data, or both, available in the HCRIS minimum data set and Medicare claims data (charges) available in the MedPAR file. Because the universe of LTCHs has grown relatively rapidly over the last several years, in order to maximize the number of LTCHs in the database, we used the most recent cost report data available for each LTCH. If we had both FY 1998 and FY 1999 cost report data, we used the most complete cost reporting period (that is, the cost reporting period with the greater number of months). If we used FY 1998 cost report data because FY 1999 data were either unavailable (due to the time lag in cost report settlement) or incomplete, we updated the FY 1998 data for inflation using the FY 1999 excluded hospital market basket increase (2.4 percent) as published in the July 31, 1998 hospital inpatient prospective payment system FY 1999 final rule (63 FR 40954). As indicated in Appendix A of this proposed rule, we are proposing to use the excluded hospital market basket with a capital component to update payment rates. The excluded hospital market basket is currently used to update LTCHs' target amounts for inflation under the TEFRA system. We believe that proposing to continue use of the excluded hospital market basket to update LTCHs' costs for inflation is appropriate because the excluded hospital market basket measures price increases of the services furnished by excluded hospitals, including LTCHs. We believe that there is insufficient data to develop a proposed market basket based only on LTCH costs at this time.

In computing hospital-specific cost-to-charge ratios, we matched the costs for which we had the most recent and complete cost reporting period data to the claims in the MedPAR file for each month in that cost reporting period. For example, for a LTCH with a 12-month FY 1999 cost reporting period beginning on July 1, we used MedPAR data from July 1999 through June 2000 to compute a FY 1999 cost-to-charge ratio. The cost per case for each hospital is calculated by summing all costs and dividing by the number of corresponding cases.

Multivariate regression analysis is the standard statistical technique for examining cost variation that was used to analyze potential payment adjustments for LTCHs. We looked at two standard models—(1) a double log regression explanatory model to examine the impact of all relevant factors that might potentially affect a LTCH's cost per case; and (2) a payment model that examines the impacts of those factors that were determined to affect costs and, therefore, were used to determine payment rates. In multivariate regression, the estimated average cost per case (the dependent variable) at the LTCH can be explained or predicted by several independent variables, including the case-mix index, the wage index for the LTCH, and a vector of additional explanatory variables that may affect a LTCH's cost per case, such as a teaching program or the proportion of low-income patients. The case-mix index is the average of the LTC–DRG weights, derived by the hospital-specific relative value method, for each LTCH. Short-stay outlier cases are weighted based on the ratio of the length of stay for the short-stay case to the average length of stay for nonshort-stay cases in that LTC–DRG. We simulated payments using an estimated budget neutral payment rate and the regression coefficients as proxies for proposed payment system adjustments. Then we calculated payment-to-cost ratios for different classes of hospitals for specific combinations of payment policies.

We examined payment variables applicable to the hospital inpatient and IRF prospective payment systems, including the disproportionate share patient percentage, both the resident-to-average daily census ratio and the resident-to-bed ratio teaching variables, and variables that account for location in a rural or large urban area. A discussion of the major payment variables and our findings appears below.

1. Area Wage Adjustment

Section 307(b) of Public Law 106–554 requires that we examine the appropriateness of an area wage adjustment. Such an adjustment would account for area differences in hospital wage levels and would be made by adjusting the LTCH prospective payment system payment rate by a factor that would reflect the relative hospital wage level in the geographic area of the hospital as compared to the national average hospital wage level. At this time, we are not proposing an area wage adjustment for payments to LTCHs because the regression analysis indicated that a wage adjustment would not increase accuracy of payments. While we are not proposing to make an area wage adjustment in this proposed rule, we are specifically soliciting comments on whether an area wage adjustment is appropriate.

Under the acute care hospital inpatient prospective payment system, a wage index is applied to the labor-related share of the operating standardized amount to adjust for local cost variation. The hospital inpatient prospective payment system wage index is used also to make an area wage adjustment under the IRF prospective payment system, the SNF prospective payment system, the home health prospective payment system, and the outpatient hospital prospective payment system.

We began our analysis of the appropriateness of an area wage adjustment for LTCHs by evaluating the labor-related share from the excluded hospital with capital market basket. (This is the same market basket that is used in the IRF prospective payment system.) Currently, under the TEFRA cost-based reimbursement system, the excluded hospital market basket is used to update LTCHs' target amounts, which are used to determine payments to LTCHs for inpatient operating costs. Since we are proposing a single standard Federal rate under the proposed LTCH prospective payment system (see section IV.D. of this proposed rule), we are proposing to use a market basket with a capital component. A further explanation of the excluded hospital with capital market basket can be found in Appendix A of this proposed rule.

The labor-related share is the relative importance of wages, fringe benefits, professional fees, postal services, labor-intensive services, and a portion of the capital share for FY 2003. We determine a labor-related share of the excluded hospital with capital market basket by first estimating the portion related to operating costs. The excluded hospital with capital market basket is based on available cost data for facilities excluded from the acute care hospital inpatient prospective payment system, including long-term care, rehabilitation, psychiatric, cancer, and children's hospitals.

Using the excluded hospital with capital market basket, we determined that the labor-related share of operating costs would be 69.428 percent for FY 2003, which is calculated as the sum of the relative importance for wages and salaries (50.381 percent), employee benefits (11.525), professional fees (2.059), postal services (0.244), and all other labor intensive services (5.219).

The labor-related share of capital costs in the market basket needs to be considered as well. We are proposing to use the portion of capital attributed to labor, which is estimated to be 46 percent by CMS' Office of the Actuary. This is the same percentage used for both the hospital inpatient capital prospective payment system and the IRF prospective payment system. For FY 2003, we estimate the relative importance for capital to be 7.552 percent of the excluded hospital with capital market basket. We multiply 46 percent by 7.552 percent to determine that the labor-related share for capital costs for FY 2003 would be 3.474 percent.

We then add the 3.474 percent for capital costs to the 69.428 percent for operating costs to determine the total labor-related share based on the excluded hospital with capital market basket. Thus, when we examined an adjustment to account for area differences in hospital wage levels, we used a labor-related share of 72.902 percent for the proposed LTCH prospective payment system. Specifically, we examined the appropriateness of accounting for differences in area wage levels by multiplying the labor-related portion of the unadjusted Federal payment by the FY 2002 inpatient acute care hospital wage index, without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act. (This methodology is the methodology used under the IRF prospective payment system and the SNF prospective payment system.) Wage data to compute LTCH-specific wage indices are currently not available. However, LTCHs and other post-acute care facilities (for example, IRFs, SNFs, and HHAs) generally compete in the same local labor market for the same types of employees as inpatient acute care hospitals.

To validate the labor-related share calculated from the market basket, we analyzed the results of the wage index coefficient derived from regression analysis. In the regression, we standardized each LTCH's cost per case by the various factors, such as case-mix, bed size, number of cases, length of stay, and occupancy. The wage index coefficient allows us to approximate the labor-related portion of cost per case. Since the labor-related share derived from the market basket is the proportion of costs that have been identified as being influenced by the local labor amount, we would expect this coefficient to be statistically significant and near our market basket measure. The double-log regression analysis generated a wage index coefficient, which approximates the labor-related portion of cost per case, that is not statistically significant and is not near the market basket measure (72.902 percent) since it is only 19.91 percent. This suggests that the wage adjustment we examined would be only a small and unreliable predictor of LTCHs' costs.

Since the statistical analysis did not show a significant relationship between LTCHs' costs and their geographic location, we do not believe that at this point it would be appropriate to include a proposed adjustment for area wages. Furthermore, without applying the wage adjustment to the proposed standard Federal rate for LTCHs to account for the difference in area wage levels, the r-squared value (a statistical measure of how much variation in resource use among cases is explained by the system) of the proposed system taken as a whole is 0.82086. However, by applying the wage adjustment to the labor-related share of the proposed standard Federal rate for LTCHs to account for area differences in hospital wage levels, the r-squared value is reduced to 0.8017 for the proposed system as a whole (that is, including case-mix index and outlier policies). This means that not making a wage index adjustment would provide a 2.3 percent increase in the ability of the proposed payment system to predict costs. Furthermore, our regression analysis indicates that including a wage index adjustment would inappropriately redistribute payments to LTCHs by shifting money to LTCHs that are located in an area within a higher wage index but in fact have lower costs. Therefore, at this time we are not proposing an adjustment to account for area differences in LTCH wage levels. However, we will revisit the appropriateness of an adjustment to account for area differences in LTCH wage levels in developing the final rule.

2. Adjustment for Geographic Reclassification

In accordance with section 307(b) of Public Law 106–554, we also examined the appropriateness of applying an adjustment for geographic reclassification to payments under the LTCH prospective payment system, where hospitals could request reclassification from one geographic location to another for the purpose of using the other area's wage index value, Federal payment rates, or both. Such an adjustment is made under the acute care hospital inpatient prospective payment system in accordance with section 1886(d)(10) of the Act. The adjustment would treat a hospital located in one geographic area as being located in another geographic area, if certain conditions are met, because its costs and wages are more similar to those hospitals located in the other geographic area. As explained below, at this time, we are not proposing an adjustment for geographic reclassification in the prospective payment system for LTCHs.

Our data identified 14 rural LTCHs, but our analysis supported neither a proposed adjustment to account for differences in area wage levels nor a proposed adjustment for LTCHs located in rural areas or large urban areas because the regression analysis indicated that a wage adjustment would not increase the accuracy of payments. Therefore, under the proposed LTCH prospective payment system, all LTCHs would be treated the same for the purposes of payment, regardless of location. Since there would be no purpose for LTCHs to reclassify to another area, at this time we are not proposing an adjustment for geographic reclassification in the proposed prospective payment system for LTCHs.

We plan to review the above proposed policy determinations in developing the final rule based on the most recent available data. At that time, we also would revisit the appropriateness of an adjustment for geographic reclassification. It is important to note, however, that the Medicare Geographic Classification Review Board (MGCRB) currently has authority only over acute care (section 1886(d) of the Act) hospitals and there is presently no analogous determination process for hospitals that have been excluded from the acute care hospital inpatient prospective payment system. Under the

TEFRA system, prospective payment system-excluded hospitals and units, including LTCHs, are not required to fill out information related to wage-related costs on the Medicare cost report (that is, Worksheet S–3). Therefore, if a wage adjustment is ultimately implemented as part of the LTCH prospective payment system and it is determined that it is appropriate to make geographic reclassification adjustments, we would need to establish instructions for data collection on LTCH wage-related costs in order to determine an appropriate geographic reclassification adjustment for LTCHs. It would also be necessary to develop an application process and determination procedures.

3. Adjustment for Disproportionate Share of Low-Income Patients

Section 307(b) of Public Law 106–554 requires us to examine the appropriateness of an adjustment for hospitals serving a disproportionate share (DSH) of low-income patients, consistent with section 1886(d)(5)(F) of the Act, which establishes this adjustment for inpatient acute care hospitals. In assessing the appropriateness of a similar adjustment for LTCHs serving low-income patients, as specified in section 1886(d)(5)(F) of the Act, we focused our analysis on the relationship between serving low-income patients and LTCHs' cost per case. Based on the results of our analysis described below, at this time we are not proposing an adjustment for the treatment of a disproportionate share of low-income patients.

Under section 1886(d)(5)(F) of the Act, in calculating Medicare payments for inpatient services at acute care hospitals, the disproportionate share patient percentage takes into account both the percentage of Medicare patients who receive SSI and the percentage of Medicaid patients who are not entitled to Medicare. The DSH patient percentage is defined as:

$$\text{DSH Patient Percent} = \frac{\text{Medicare SSI Days}}{\text{Total Medicare Days}} + \frac{\text{Medicaid, Non-Medicare Days}}{\text{Total Patient Days}}$$

Based on this formula, an inpatient acute care hospital qualifies for a DSH adjustment under section 1886(d)(5)(F)(v) of the Act (as amended by section 211(a) of Public Law 106–554) if the hospital has a DSH patient percentage greater than or equal to 15 percent. The calculation of the DSH payment adjustments under that section is as follows:

- Hospitals (urban and rural) with fewer than 100 beds and whose DSH patient percentage is equal to or greater than 15 percent and less than 19.3 percent receive the DSH payment adjustment determined using the following formula:

(DSH patient percentage − 15) (.65) + 2.5.

- Hospitals (urban or rural) with fewer than 100 beds and whose DSH patient percentage is equal to or greater than 19.3 percent receive a flat add-on of 5.25 percent.
- Rural hospitals with greater than 500 beds and whose DSH patient percentage is equal to or greater than 15 percent and less than 20.2 percent receive the DSH payment adjustment using the following formula:

(DSH patient percentage − 15) (.65) + 2.5.

- Rural hospitals with greater than 500 beds and whose DSH patient percentage is equal to or greater than 20.2 percent receive the DSH payment adjustment using the following formula:

(DSH patient percentage − 20.2) (.825) + 5.88.

We analyzed the results of applying a DSH adjustment, in accordance with the criteria at section 1886(d)(5)(F) of the Act described above, on LTCHs. In modeling payments, because the proposed LTCH prospective payment system must be budget neutral in accordance with section 123(a) of Public Law 106–113, the proposed inclusion of such a DSH policy would result in a 3.31 percent decrease to the base payment rate. Furthermore, the inclusion of such a DSH policy would result in a 3.79 percent decrease in the r-squared value (a statistical measure of how much variation in resource use among cases is explained by the system). Accordingly, we found that including a DSH adjustment that is consistent with section 1886(d)(5)(F) of the Act would reduce the explanatory power of the proposed LTCH prospective payment system, or the ability of the proposed payment system model to predict cost per case, while lowering the base payment rate. Thus, at this time we are not proposing a DSH adjustment consistent with section 1886(d)(5)(F) of the Act.

We also evaluated an alternative adjustment, using regression analysis, that takes into account both the percentage of Medicare patients who are receiving SSI (SSI percent) and the percentage of Medicaid patients who are not entitled to Medicare (Medicare percent) without the other criteria specified in section 1886(d)(5)(F) of the Act. This analysis was made to determine if there is any relationship between these two variables and cost per case. The results of this analysis showed that the regression coefficients for both the percentage of Medicare patients who are receiving SSI and the percentage of Medicaid patients who are not entitled to Medicare would be statistically significant at the 99-percent level. However, the positive relationship between cost per case and the percentage of LTCH Medicare patients who are receiving SSI would be offset by a negative relationship between cost per case and the percentage of LTCH Medicaid patients who are not entitled to Medicare. This implies that while costs per discharge would appear to increase (slightly) as the percentage of LTCH Medicare SSI patients increases, costs per discharge would decline (slightly) as the percentage of LTCH Medicaid, non-Medicare patients increased. Therefore, at this time we are not proposing an adjustment for the treatment of a disproportionate share of low-income patients based on a LTCH's combined SSI percentage and Medicaid percentage.

Finally, we examined an adjustment for the treatment of low-income patients based solely on a LTCH's SSI ratio (the percentage of Medicare patients who are receiving SSI). The SSI ratio is calculated by dividing Medicare SSI days by total patient days. While the regression coefficient would be positive, it was not very large (0.04), which means that for every 1-percent increase in the SSI percent, a 0.04-percent increase in cost per case would be observed. Thus, at best, an empirically based adjustment based on the SSI percent would be very small. The positive regression coefficient for the SSI percentage is significantly influenced by the large SSI percentages of only a few LTCHs. Accordingly, we do not believe it is appropriate to propose an adjustment based on a LTCH's SSI percentage. Because section 123(a) of Public Law 106–113 requires that the LTCH prospective payment

system be budget neutral, applying such an adjustment would result in a 2.98-percent reduction in the proposed base payment rate for all LTCHs that is based on a small positive regression coefficient that is due mostly to a relatively small number of LTCHs with a large SSI percentage.

Because the analyses above do not indicate an increase in the accuracy of payments based on the adjustments examined for the treatment of a disproportionate share of low-income patients, we are not proposing an adjustment at this time. We will revisit the appropriateness of a DSH adjustment in developing the final rule based on the most recent data available.

4. Adjustment for Indirect Teaching Costs

In accordance with the directive of section 307(b) of Public Law 106–554 to examine ''appropriate adjustments'' to payments under the LTCH prospective payment system, we also examined the appropriateness of applying an adjustment for indirect teaching costs to payments under the proposed LTCH prospective payment system. Based on the analysis described below, at this time we are not proposing an adjustment for indirect teaching costs.

There are presently 14 LTCHs with teaching programs. LTCHs with major teaching programs tend to be older, larger (greater than 125 beds) hospitals, located in large urban areas, and have a higher proportion of low-income patients but with a lower case-mix index. Based on a double log regression, we found that the indirect teaching cost variable would be negative and not significant. We looked at different specifications for the teaching variable. We used a resident-to-bed ratio as the coefficient for the teaching variable in the regression that is currently used to measure teaching intensity under the acute care hospital inpatient prospective payment system for operating costs. We also used a ratio of resident to average daily census (defined as total inpatient days divided by the number of days in the cost reporting period) that is currently used under the acute care hospital inpatient prospective payment system for capital-related costs, as a measure of teaching intensity. We based this analysis on the estimated number of full-time equivalent (FTE) residents assigned to the inpatient area of the LTCH. In all our payment regressions, we determined that the teaching variable would not be significant. This means that there is no empirical evidence to show that LTCHs' cost per case would vary with teaching costs. Therefore, at this time we are not proposing an adjustment for indirect teaching costs. We will revisit the appropriateness of an adjustment for the costs of indirect medical education in developing the final rule based on the most recent available data.

5. Cost-of-Living Adjustment (COLA) for Alaska and Hawaii

In accordance with the directive of section 307(b) of Public Law 106–554 to examine ''appropriate adjustments'' to payments under the LTCH prospective payment system, we also examined the appropriateness of applying a cost-of-living adjustment (COLA) under the proposed LTCH prospective payment system for LTCHs located in Alaska and Hawaii.

There is currently one LTCH in Hawaii and no LTCHs in Alaska. In the absence of a COLA, we performed simulations, which indicate that the facility in Hawaii might experience a payment to cost ratio of 0.89 percent. Therefore, we are proposing a COLA for LTCHs in Hawaii and Alaska to account for the higher costs incurred in those states. The IRF proposed rule (November 3, 2000, 65 FR 66357) indicated that based on payment simulations, without a COLA, the one IRF located in Alaska may have a loss and the one IRF for which data were available, would have a gain. Due to the small number of cases, analysis of the simulation results were inconclusive regarding whether a cost-of-living adjustment would improve payment equity for these facilities. Accordingly, we did not include a COLA adjustment for those hospitals in the prospective payment system for IRFs. (65 FR 66357, November 3, 2000). We believe it appropriate, however, to propose a COLA for LTCHs based on the higher costs found in Hawaii. In general, the COLA would account for the higher costs in the LTCH and would eliminate the projected loss that the LTCH in Hawaii would experience absent the COLA. Furthermore this policy is consistent with the COLA made to account for the higher costs in acute care hospitals in Alaska and Hawaii under both the operating prospective payment system and the capital prospective payment system. We are proposing to make a COLA, under proposed § 412.525(b), to payments for LTCHs located in Alaska and Hawaii by multiplying the standard Federal payment rate by the appropriate factor listed in the table below. These factors are obtained from the U.S. Office of Personnel Management.

COST-OF-LIVING ADJUSTMENT FACTORS FOR ALASKA AND HAWAII HOSPITALS

Alaska:	
All areas	1.25
Hawaii:	
Honolulu County	1.25
Hawaii County	1.165
Kauai County	1.2325
Maui County	1.2375
Kalawao County	1.2375

6. Adjustment for High-Cost Outliers

In accordance with the directive of section 307(b) of Public Law 106–554, we also examined the appropriateness of an adjustment for additional payments for outlier cases. These are cases that have extraordinarily high costs relative to the costs of most discharges classified in the same LTC–DRG. Providing additional payments for outliers could strongly improve the accuracy of the LTCH prospective payment system in determining resource costs at the patient and hospital level. These additional payments would reduce the financial losses that would otherwise be caused by treating patients who require more costly care and, therefore, would reduce the incentives to underserve these patients.

We considered various outlier policy options. Specifically, we examined outlier policies under which outlier payments would be projected to be 5 percent, 8 percent, or 10 percent of total prospective system payments. We examined the impact of setting the outlier target percentage at 5 percent because that percentage is consistent with the range of targets provided under section 1886(d)(5)(A)(iv) of the Act for the hospital inpatient prospective payment system. We also considered an outlier target of 10 percent because that percentage was recommended in an industry study commissioned by NALTH. In addition, we considered an outlier target of 8 percent to analyze the impact of setting the outlier target at some percentage between 5 and 10 percent.

We also examined marginal cost factors, or the change in total cost with one unit of change in output, of 55 and 80 percent. We examined an 80-percent marginal cost factor for outlier payments because it is the same as the factor used under both the hospital inpatient prospective payment system and the IRF prospective payment system. We examined a 55-percent marginal cost factor in order to analyze the impact that a lower marginal cost factor would have on outlier payments and payments for all other cases.

As discussed in further detail in the June 4, 1992 hospital inpatient prospective payment system proposed rule (57 FR 23640), a study performed by RAND Corporation indicated that the marginal cost of care is usually less than the average cost because later days of a stay have considerably lower costs than the earlier days of the stay.

In order to determine the most appropriate outlier policy, we analyzed the extent to which the various options would reduce financial risk, reduce incentives to underserve costly beneficiaries, and improve the overall fairness of the system. We believe an outlier target of 8 percent would allow us to achieve a balance of the above stated goals. Our regression analysis showed that additional increments of outlier payments over 8 percent would reduce financial risk, but by successively smaller amounts. Since outlier payments are included in budget neutrality calculations, outlier payments would be funded by prospectively reducing the nonoutlier prospective payment system payment rates by the proportion of projected outlier payments to projected total prospective payment system payments in the absence of outlier payments; the higher the outlier target, the greater the (prospective) reduction to the base payment rate. We are proposing to provide outlier payments and to set outlier numerical criteria prospectively before the beginning of each Federal fiscal year so that outlier payments are projected to equal 8 percent of total payments under the proposed LTCH prospective payment system. Based on regression analysis and payment simulations, we believe this option optimizes the extent to which we would be able to protect vulnerable hospitals, while still providing adequate payment for all other cases that are not outlier cases.

We are proposing, under proposed § 412.525(a), to make an outlier payment for any discharges where the estimated cost would exceed the proposed adjusted LTCH prospective payment system payment for the proposed LTC–DRG plus a fixed-loss amount. The fixed-loss amount is the amount used to limit the loss that a hospital would incur under an outlier policy. This results in Medicare and the LTCH sharing financial risk in the treatment of extraordinarily costly cases. The LTCH's loss is limited to the fixed-loss amount and the percentage of costs above the marginal cost factor. The estimated cost of a case would be calculated by multiplying the overall hospital cost-to-charge ratio by the Medicare allowable covered charge.

Our analysis of payment-to-cost ratios for outlier cases showed that a marginal cost factor of 80 percent appropriately addresses outlier cases that are significantly more expensive than nonoutlier cases. This factor would ensure that there is a balance between the need to protect LTCHs financially while encouraging them to treat expensive patients and maintaining the incentives of a prospective payment system to improve the efficient delivery of care. Based on this analysis and consistent with the marginal cost factor used under the IRF prospective payment system and under section 1886(d) of the Act for inpatient acute care hospitals, we are proposing to pay outlier cases 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal prospective payment for the LTC–DRG and the fixed-loss amount). The proposed fixed-loss amount would be calculated by simulating aggregate payments with and without an outlier policy, using FY 2000 MedPAR claims data and the best available cost report data in an iterative process to determine a fixed-loss threshold that would result in outlier payments being equal to 8 percent of total payments. As discussed in section IV.D. of this proposed rule, for FY 2003 we proposing a fixed-loss amount of $29,852. Therefore, for FY 2003, we are proposing to pay an outlier case 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal prospective payment for the LTC–DRG prospective payment system payment plus $29,852).

D. Calculation of the Proposed Standard Federal Payment Rate

1. Overview of the Development of the Proposed Standard Payment Rate

Section 123(a)(1) of Public Law 106–113 requires that the prospective payment system for LTCHs maintain budget neutrality. Therefore, we are proposing to calculate the standard Federal rate by setting total estimated prospective payment system payments equal to estimated payments that would have been made under the TEFRA methodology if the proposed prospective payment system for LTCH were not implemented as described in this proposed rule. In accordance with section 307(a)(2) of the BIPA, the increases to the hospital-specific target amounts and cap on the target amounts for LTCHs for FY 2002 provided for by section 307(a)(1) of the BIPA and the enhanced bonus payments for LTCHs for FY 2001 and FY 2002 provided for by section 122 of the BBRA were not taken into account in the development of the proposed prospective payment system for LTCHs.

The proposed methodology for determining the standard Federal payment rate under the proposed LTCH prospective payment system is described in further detail below.

2. Development of the Proposed Standard Federal Payment Rate

a. Data Sources

The data sources that we used to calculate the proposed standard Federal payment rate include cost report data from FYs 1996 through 1999 and FY 2000 Medicare claims data from the June 2001 update of the MedPAR since these data were the most recently available complete data for LTCHs. We used data from 222 LTCHs to calculate the proposed standard Federal payment rate. We updated the cost report data for each LTCH to the midpoint of FY 2003 using an inflation factor based on the historical relationship of each hospital's costs and their target amounts as described in section IV.D.2.b. of this proposed rule. The FY 1996 cost report data were used to determine each LTCH's update for FY 1999, and the FY 1997 cost report data were used to determine the update for FY 2000. The FY 1998 cost report data were used to determine the update for FY 2001, and the FY 1999 cost report data were used to determine the update for FY 2002. We were unable to calculate a proposed payment under the current payment system for some LTCHs because cost report data were unavailable. We will attempt to obtain the most recent payment amounts for these hospitals through their Medicare fiscal intermediary and we will consider using these data to construct the standard Federal payment rates for the final rule. We will also examine the extent that certain LTCHs (new LTCHs, for example) are not included in the data used to determine the proposed standard Federal payment rate and consider the appropriateness of an adjustment to better reflect total estimated payments for LTCHs.

In determining the proposed prospective payment rates for LTCHs, we had significant concerns about the integrity of some of the cost report data in HCRIS. Specifically, we were concerned about data from cost reports submitted by a hospital chain that is the owner of approximately 20 percent of LTCHs nationwide that arose from a ''qui tam'' action filed by the U.S. Department of Justice (DOJ) in July 1999. This action alleged, among other

claims, that the hospitals inflated both cost and charge data on Medicare hospital cost reports filed from 1994 through 1999. On March 16, 2001, the hospital chain agreed to pay approximately $339 million to settle claims arising from 11 separate actions. Based upon audits and projections performed by Medicare's fiscal intermediary under the direction of our Office of Financial Management, the Medicare LTCH action was allocated $178 million of this settlement.

Under the terms of the agreement, Medicare cost reports from the years in question were not reopened and audited. However, the fiscal intermediary was able to estimate the effect on the Medicare cost reports for 1995, 1996, and 1997. Then a random sample of Medicare cost reports from 1998 and 1999 were reviewed to verify the projected impact for those years and a settlement figure was determined for FY 1995 through FY 1999. Therefore, in order to avoid the negative impact those providers' data may otherwise have on the integrity of the data, we are basing our proposed standard Federal rate on a factor determined by CMS' Office of the Actuary to adjust the costs reported in those affected FY 1998 and FY 1999 cost reports. This factor was derived by determining the ratio of the portion of the settlement amount described above attributable to each LTCH to the Medicare payments received by each affected LTCH during the period covered by the settlement.

b. Update the Latest Cost Report Data to the Midpoint of FY 2003

Consistent with the methodology used under the IRF prospective payment system (at § 412.624(c)), we are proposing, at § 412.523(c)(2), to update each LTCH's cost per discharge to the midpoint of FY 2003, using the weighted average of the applicable percentage increases to the TEFRA target amounts for FYs 1999 through 2002 (in accordance with § 413.40(c)(3)(vii)) and the full market basket percentage increase for FY 2003. For FYs 1999 through 2002, we would determine the appropriate update factor for each hospital by using the methodology described below:

- For hospitals with costs that equal or exceed their target amounts by 10 percent or more for the most recent cost reporting period for which information is available, the update factor would be the market basket percentage increase.
- For hospitals that exceed their target amounts by less than 10 percent, the update factor would be equal to the market basket minus 0.25 percentage points for each percentage point by which operating costs are less than 10 percent over the target (but in no case less than 0).
- For hospitals that are at or below their target amounts, but exceed two-thirds of the target amounts, the update factor would be the market basket minus 2.5 percentage points (but in no case less than 0).
- For hospitals that do not exceed two-thirds of their target amounts, the update factor would be 0 percent.

For FY 2003, we propose to use the most recent estimate of the percentage increase projected by the excluded hospital market basket index.

c. Estimate Total Payments Under the Current (TEFRA) Payment System

We would estimate payments for inpatient operating services under the TEFRA system using the following methodology:

Step 1: Determine each LTCH's hospital-specific target amount. The hospital-specific target amount for a LTCH is calculated based on the hospital's allowable inpatient operating cost per discharge for the hospital's base period, excluding capital-related, nonphysician anesthetist, and medical education costs. This target amount would then be updated using a rate-of-increase percentage as described in § 413.40(b)(3). For FYs 1998 through 2002, there are two national caps on the payment amounts for LTCHs. Under § 413.40(c)(4)(iii), a LTCH's hospital-specific target is the lower of its net allowable base year costs per discharge increased by the applicable update factors or the cap for the applicable cost reporting period. In determining each LTCH's hospital-specific target amount, we would use the FY 2002 cap amounts published in the August 1, 2001 **Federal Register** (66 FR 39915–39916), adjusted in accordance with section 307(a)(2) of Public Law 106–554 by removing the 2-percent increase in the cap for existing LTCHs required by section 307(a)(1) of Public Law 106–554. For existing hospitals (that is, LTCHs paid as an excluded hospital before October 1, 1997), the applicable cap amount for FY 2002 is $30,783 for the labor-related share adjusted by the applicable geographic wage index and added to $12,238 for the nonlabor-related share. For ''new'' hospitals (that is, LTCHs first paid as an excluded hospital on or after October 1, 1997), the cap amount applicable for FY 2002 is $16,701 for the labor-related share adjusted by the applicable geographic wage index and added to $6,640 for the nonlabor-related share. These capped amounts would then be inflated to the midpoint of FY 2003 by applying the excluded hospital operating market basket.

As explained above, we note that, in accordance with section 307(a)(2) of the BIPA, in estimating total payments to LTCHs under the current payment system, the increase to the hospital target amounts and caps on the target amounts for LTCHs effective from October 1, 2001 through September 30, 2002, provided for under section 307(a)(1) of the BIPA were not to be taken into account.

Step 2: Determine each LTCH's payment amount for inpatient operating services. Under the TEFRA system, a LTCH's payment amount for inpatient operating services is the lower of—

- The hospital-specific target amount (subject to the application of the cap as determined in Step 1) times the number of Medicare discharges (the ceiling); or
- The hospital average inpatient operating cost per case times the number of Medicare discharges.

In addition, under the TEFRA system, payments may include a bonus or relief payment, as follows:

- For LTCHs whose net inpatient operating costs are lower than or equal to the ceiling, payment would be determined based on the lower of either the net inpatient operating costs plus 15 percent of the difference between the inpatient operating costs and the ceiling or the net inpatient operating costs plus 2 percent of the ceiling.
- For LTCHs whose net inpatient operating costs are greater than the ceiling but less than 110 percent of the ceiling, payment would be the ceiling.
- For LTCHs whose net inpatient operating costs are greater than 110 percent of the ceiling, payment would be the ceiling plus the lower of 50 percent of the difference between the 110 percent of the ceiling and the net inpatient operating costs or 10 percent of the ceiling.

Further, under the TEFRA system, excluded hospitals and units, including LTCHs, may be eligible for continuous improvement bonus payments as described under § 413.40(d)(4). As explained above, in accordance with section 307(a)(2) of Public Law 106–554, the enhancement of continuous improvement bonus payments for LTCHs, effective for cost reporting periods beginning on or after October 1, 2000 and before September 30, 2002, and provided for under section 122 of Public Law 106–113, were not to be taken into account in estimating total payments to LTCHs under the current TEFRA system.

Step 3: Determine each LTCH's payment for capital-related costs. Under the TEFRA system, in accordance with

section 1886(g) of the Act, Medicare allowable capital costs are paid on a reasonable cost basis. Thus, each LTCH's payment for capital-related costs would be taken directly from the cost report and updated for inflation using the excluded hospital market basket, consistent with the methodology used under the IRF prospective payment system.

Step 4: Determine each LTCH's average total (operating and capital) payment per case under the current (TEFRA) payment system. Once estimated payments for inpatient operating costs are determined (including bonus and relief payments, as appropriate), we would add the operating payments and capital payments together to determine each LTCH's estimated total payments under the current (TEFRA) payment system. We would then divide each LTCH's estimated total TEFRA payments by the corresponding number of Medicare discharges from the cost report to determine what each LTCH's average total payment per case would be under the current (TEFRA) payment system.

Step 5: Determine a case weighted average payment under the current (TEFRA) payment system. We would determine each LTCH's average payment under the current (TEFRA) system weighted for its number of cases in the June 2001 update of the FY 2000 MedPAR by multiplying its average total payment per case from step 4 by its number of cases in the FY 2000 MedPAR.

Step 6: Estimate total (MedPAR) weighted payments under the current (TEFRA) payment system. We would estimate total weighted payments under the current (TEFRA) payment system by summing each LTCH's (MedPAR) weighted payments under the current (TEFRA) payment system (from step 5). In addition, we adjusted the estimated total weighted payments to reflect the estimated portion of additional outlier payments under proposed § 412.525(a). (This is consistent with not including outlier payments in estimating payments under the proposed prospective payment system in Step e. below.) This total would be the numerator in the calculation of a budget neutrality adjustment.

d. Calculate the Average Weighted Payment per Discharge Amount

Once estimated total payments under the current payment system are calculated, we would calculate an average per discharge payment amount weighted by the number of Medicare discharges under the current payment system. This would be done by first determining the average payment per discharge amount under the current payment system for each LTCH. Cost report data would be used to calculate each LTCH's average payment per discharge by dividing the number of discharges into the total payments. As explained above in section IV.D.2.a. of this proposed rule, the LTCH's payment per discharge would be adjusted consistent with the terms of the DOJ settlement agreement.

Next, we would determine the weighted average per discharge payment amount by multiplying each LTCH's average payment per discharge amount from the cost report by the number of discharges from the Medicare claims data in the FY 2000 MedPAR file. Then we would add the amounts for all LTCHs and divide by the total number of discharges from the Medicare claims in MedPAR to derive a weighted average payment per discharge.

e. Estimate Payments Under the Proposed Prospective Payment System Without a Budget Neutrality Adjustment

Payments under the proposed payment system would then be estimated without a budget neutrality adjustment. To do this, we would multiply each LTCH's case-mix index adjusted for short-stay outliers (*see* section IV.B.2. of this proposed rule), the number of discharges from the Medicare claims in MedPAR adjusted for short-stay outliers (*see* section IV.B.2. of this proposed rule) and the weighted average per discharge payment amount computed above. For purposes of this calculation, we would estimate payments for each LTCH as if it were paid based on 100 percent of the proposed standard Federal rate in FY 2003 rather than the proposed transition blend methodology described in section IV.G. of this proposed rule. Total payments for each LTCH would then be summed for all LTCHs. This total would be the denominator in the calculation of the budget neutral adjustment.

f. Determine the Budget Neutrality Adjustment

The budget neutrality adjustment would be calculated by dividing total adjusted payments under the current payment system (the total amount calculated in section IV.D.2.c. of this preamble) by estimated payments under the proposed prospective payment system, without a budget neutrality adjustment (the total amount calculated in section IV.D.2.e. of this preamble).

g. Determine the Standard Federal Payment Rate

The resulting budget neutrality adjustment (determined in section IV.D.2.f. of this preamble) would then be multiplied by the average weighted per discharge payment amount under the current payment system and we would adjust the result further to include a behavioral offset. As previously stated, to calculate the proposed standard Federal payment rate, we estimated what would have been paid under the current payment system. However, we expect that as a result of the implementation of the new prospective payment system, LTCHs may experience usage patterns that are significantly different from their current usage patterns. Since there is a fixed payment based on diagnosis in a per discharge prospective payment system regardless of the length of stay (except for additional outlier payments), there would be an incentive to discharge a patient (to home or to another site of care) as early in the stay as possible in order to minimize cost and maximize profit). As a result, discharges may occur earlier in the LTCH stay. This would result in lower payments under the current payment system for this care which must be taken into account when computing the budget neutral payment rate. Furthermore, as explained in sections IV.A.2. and G. of this proposed rule, we expect the LTCH's coding practice of LTCHs to improve once the proposed prospective payment system is implemented, which has a significant potential of resulting in a case-mix that would be higher than what would be used to determine the budget neutral standard Federal rate.

As was the case when the hospital inpatient prospective payment system was implemented, improved coding could result in a higher case-mix because hospitals would code secondary diagnoses more completely and accurately, now that these diagnoses would factor into the LTC–DRG assignment and, ultimately, their payment. The inclusion of appropriate secondary diagnoses could result in the case being grouped into a higher weighted LTC–DRG. This is especially true for LTCHs since they generally treat more medically complex patients who are more likely to have many secondary diagnoses. Thus, if the same cases that were used to develop the proposed standard Federal rate are grouped into higher weighted LTC–DRGs as a result of improved coding, this higher case-mix would result in higher payments under the proposed payment system for this care. This effect must also be taken

into account when computing the budget neutral standard Federal rate. Accounting for these effects through an adjustment is commonly known as a behavioral offset.

The proposed standard Federal payment rate with a behavioral offset is $27,649.02. This proposed dollar amount includes a 0.27 percent (that is, twenty-seven hundredths of one percent) reduction for the behavioral offset in the proposed standard Federal payment rate otherwise calculated under the methodology described above. Consistent with the assumptions made under the IRF prospective payment system, in determining this proposed behavioral offset adjustment, we assumed that the LTCHs would regain 15 percent of potential losses and augment payment increases by 5 percent through transfers occurring at or beyond the mean length of stay associated with the LTC–DRG at any point.

For FY 2003, we are proposing to establish a fixed-loss outlier threshold (as described previously in section IV.C.6. of this proposed rule) equal to the proposed standard Federal prospective payment rate for the LTC–DRG plus $29,852. In setting this proposed fixed-loss amount of $29,852, we project that FY 2003 outlier payments would equal 8 percent of LTC–DRG payments under the proposed LTCH prospective payment system in accordance with proposed § 412.523.

h. Determine a Budget Neutrality Offset To Account for the Proposed Transition Methodology

Section 123(a)(1) of the BBRA requires that the LTCH prospective payment system maintain budget neutrality. As discussed in further detail in section IV.G. of this proposed rule, we are proposing a 5-year transition period from cost-based TEFRA reimbursement to prospective payment, during which a LTCH would be paid an increasing percentage of the proposed LTCH prospective payment system rate and a decreasing percentage of its TEFRA rate for each discharge. Furthermore, we are proposing to allow a LTCH to elect to be paid based on 100 percent of the proposed standard Federal rate in lieu of the blend methodology. Based on a comparison of the estimated FY 2003 payments to each LTCH based on 100 percent of the proposed standard Federal rate and the proposed transition blend methodology, we project that approximately 58 percent of LTCHs would elect to be paid based on 100 percent of the proposed standard Federal rate since they would receive higher payments than under the proposed transition blend methodology. We project that the remaining 42 percent of LTCHs will choose to be paid based on the transition blend methodology (80 percent of TEFRA; and 20 percent of the prospective payment system) in FY 2003 since they would receive higher payments than if they were paid based on 100 percent of the Federal rate.

Since the proposed standard Federal rate ($27,649.02) determined under section IV.D.2.g. of this proposed rule was calculated as if all LTCHs would be paid based on 100 percent of the proposed standard Federal rate in FY 2003, in order to maintain budget neutrality, we are proposing to reduce all LTCH Medicare payments during the transition period by a factor that is equal to 1 minus the ratio of the estimated TEFRA reasonable cost-based payments that would have been made if the LTCH prospective payment system had not been implemented, to the projected total Medicare program payments that would be made under the proposed transition methodology and the option to elect payment based on 100 percent of the Federal rate.

We project that the full effect of the proposed 5-year transition period and the election option would result in a cost to the Medicare program of $230 million as follows:

Fiscal year	Estimated cost (in millions)
2003	$50
2004	80
2005	60
2006	30
2007	10

Thus, in order to maintain budget neutrality, we propose to apply a 5.1 percent reduction (0.949) to all LTCHs payments in FY 2003 to account for the estimated cost of $50 million for FY 2003. Furthermore, in order to maintain budget neutrality, we would propose a budget neutrality offset for each of the remaining years of the transition period in a notice of proposed rulemaking to account for the estimated costs for the respective fiscal year.

Based on the data available at this time, we would propose the following offsets to LTCH payments during the transition period: 3.9 percent (0.961) in FY 2004; 2.6 percent (0.974) in FY 2005; and 1.3 percent (0.987) in FY 2006. No budget neutrality offset would be necessary in the 5th year of the transition period (FY 2007) because under the proposed transition methodology, all LTCHs would be paid based on 100 percent of the standard Federal rate and zero percent of payments under TEFRA. These estimates are based on the inflation factors and projected Medicare spending for LTCHs discussed in section VI.B.6. of this proposed rule, and that an estimated 58 percent of LTCHs will elect to be paid based on 100 percent of the standard Federal rate rather than the transition blend.

Consistent with the statutory requirement for budget neutrality, we intend for estimated aggregate payments under the LTCH prospective payment system to equal the estimated aggregate payments that would be made if LTCH prospective payment system were not implemented. Our methodology for estimating payments for purposes of the budget neutrality calculations uses the best available data and necessarily reflects assumptions. When the LTCH prospective payment system is implemented, we would monitor payment data and evaluate the ultimate accuracy of the assumptions used to calculate the budget neutrality calculations (for example, inflation factors, intensity of services provided, or behavioral response to the implementation of the LTCH prospective payment system, as discussed in section IV.D of this proposed rule). To the extent these assumptions significantly differ from actual experience, the aggregate amount of actual payments may turn out to be significantly higher or lower than the estimates on which the budget neutrality calculations are based. Section 123 of Public Law 106–113 and section 307 of Public Law 106–554 provide the Secretary extremely broad authority in developing the LTCH prospective payment system, including the authority for appropriate adjustments. Pursuant to this broad authority, under § 412.523(d)(3), we are proposing a possible one-time prospective adjustment to the LTCH prospective payment system rates by October 1, 2006, so that the effect of any significant difference between actual payments and estimated payments for the first year of the LTCH prospective payment system is not perpetuated in the prospective payment system rates for future years. (We note that in other contexts (for example, outlier payments under the hospital inpatient prospective payment system) differences between estimated payments and actual payments for a given year are not built into the prospective payment system rates for subsequent years. Moreover, the statutory ratesetting scheme under the LTCH prospective payment system is very different than in other contexts.)

We estimate that total Medicare program payments for LTCH services over the next 5 years would be:

Fiscal year	Estimated payments ($ in billions)
2003	$1.80
2004	1.91
2005	2.02
2006	2.14
2007	2.26

These estimates are based on the assumption that the proposed LTCH inflation factor (the excluded hospital market basket) would be 3.6 percent for FYs 2003 through 2005, 3.5 percent for FY 2006, and 3.4 percent for FY 2007, that 58 percent of LTCHs would elect to be paid based on 100 percent of the proposed standard Federal rate rather than the proposed transition blend, and that there would be an increase in Medicare beneficiary enrollment of 2.2 percent in FY 2003, 2.3 percent in FYs 2004 and 2005, 2.4 percent in FY 2006, and 2.3 percent in FY 2007.

E. Development of the Proposed Federal Prospective Payments

Once the proposed relative weights for each LTC–DRG and the proposed standard Federal payment rate are calculated, the proposed Federal prospective payments can be determined. Under proposed § 412.523(c)(4), a LTC–DRG payment would be calculated by multiplying the proposed standard Federal payment rate by the appropriate proposed LTC–DRG relative weight. The equation would be as follows:

Federal Prospective Payment = LTC–DRG Relative Weight * Standard Federal Payment Rate

F. Computing the Proposed Adjusted Federal Prospective Payments

The proposed Federal prospective payments described in section IV.E. of this preamble would be adjusted to account for the higher costs of hospitals in Alaska and Hawaii by multiplying the proposed Federal prospective payment rate by the appropriate proposed adjustment factor shown in the table in section IV.C.5. of this proposed rule.

G. Transition Period

Under the broad authority conferred to the Secretary by section 123 of Public Law 106–113 for development of a prospective payment system for LTCHs, we are proposing, under § 412.533, a 5-year transition period from reasonable cost-based reimbursement under the TEFRA system to a prospective payment based on industry-wide average operating and capital-related costs. Under the average pricing system being proposed, payment would not be based on the experience of an individual hospital. We believe that a 5-year phase-in would provide LTCHs time to adjust their operations and capital financing to the new payment system, which would be based on prospectively determined Federal payment rates.

Moreover, capital renovation and expansion plans of certain LTCHs may not be amenable to short-term adjustment due to the commitment of capital funds involved. We believe that a 5-year transition period with an increasing percentage of prospective payments should afford LTCHs an opportunity to increase their efficiency in the delivery of operating services and reserve additional payments to finance their capital expenditures.

We further believe that the 5-year phase-in of the proposed LTCH prospective payment system would allow LTCH personnel to develop proficiency with the LTC–DRG coding system, resulting in improvement in the quality of the data used for generating our annual determination of relative weights and payment rates. Our analysis conducted during the development of the proposed LTCH prospective payment system revealed that most patients in LTCHs have several diagnosis codes on their Medicare claims indicating multiple CCs, although further review of individual case studies indicated that in some instances all of the diagnoses were not reported. Since payments to LTCHs under the current TEFRA system are based on reasonable costs, not diagnosis codes, past coding by LTCHs may not have accurately reflected the patient's diagnoses. Further evidence of incomplete coding is shown by the pairs of LTC–DRGs where the ''without CC'' LTC–DRG had a higher average charge than the corresponding with CC LTC–DRG. As described in more detail in section III. of this proposed rule, since the LTC–DRGs ''with CCs'' require more coded information, we believe this phenomenon indicates incomplete coding and that over the 5-year phase-in of the LTC–DRG-based LTCH prospective payment system, this problem would be resolved.

The proposed 5-year transition period would enable us to collect Medicare claims and cost data that would be produced based on new program instructions to providers and fiscal intermediaries, and subject to program integrity monitoring. This gradual phase-in would provide a stable fiscal base for LTCHs, as we analyze data that may lead to our revisiting and perhaps revising specific policy decisions for the proposed LTCH prospective payment system.

We are proposing that the transition period for all hospitals subject to the proposed LTCH prospective payment system would begin with the hospital's first cost reporting period beginning on or after October 1, 2002 and extend through the hospital's last cost reporting period beginning before October 1, 2007. During the 5-year transition period, we are proposing that a LTCH's total payment under the prospective payment system would be based on two payment percentages—one based on reasonable cost-based (TEFRA) payments, and the other based on the standard Federal prospective payment rate. The proposed blend percentages are as follows:

Cost reporting periods beginning on or after	Federal rate percentage	TEFRA rate percentage
October 1, 2002	20	80
October 1, 2003	40	60
October 1, 2004	60	40
October 1, 2005	80	20
October 1, 2006	100	0

For a cost reporting period beginning on or after October 1, 2002, and before October 1, 2003, the total payment for a LTCH would consist of 80 percent of the amount calculated under the current (TEFRA) payment system for that specific LTCH and 20 percent of the proposed Federal prospective rate. The percentage of payment based on the proposed LTCH prospective payment system Federal rate would increase by 20 percentage points each year, while the TEFRA rate percentage would decrease by 20 percentage points each year, for the next 4 fiscal years. For cost reporting periods beginning on or after October 1, 2006, Medicare payment to LTCHs would be determined entirely under the proposed Federal prospective payment system methodology. The TEFRA rate percentage is a LTCH specific amount that is based on the amount that the LTCH would have been paid (under TEFRA) if the prospective payment system were not implemented.

Medicare fiscal intermediaries would continue to compute the LTCH TEFRA payment amount according to § 412.22(b) of the regulations and sections 1886(d) and (g) of the Act. We note that several TEFRA provisions that currently are in effect would no longer be effective for cost reporting periods beginning in FY 2003. For instance, the caps on the target amounts for ''existing'' LTCHs provided for under

section 4414 of the BBA (see § 413.40(c)(4)(iii)) for FYs 1998 through 2002 would no longer be applicable for cost reporting periods beginning in FY 2003. For purposes of the LTCH prospective payment system, a LTCH's target amount for FY 2003 would be determined by updating its FY 2002 target amount (subject to the cap). In addition, the 15-percent reduction to payments to LTCHs for capital-related costs provided for under section 4412 of the BBA (§ 413.40(j)) is applicable for portions of cost reporting periods occurring in FYs 1998 through FY 2002. This reduction would no longer be applicable for cost reporting periods beginning in FY 2003. Therefore, the TEFRA portion of a LTCH's payment for capital-related costs during the LTCH prospective payment system transition period would be based on 100 percent of its Medicare allowable capital costs.

In implementing the proposed prospective payment system for LTCHs, one of our goals is to transition hospitals to full prospective payments as soon as appropriate. Therefore, we are proposing, under § 412.533(b), to allow a LTCH to elect payment based on 100 percent of the Federal rate at the start of any of its cost reporting periods during the 5-year transition period rather than incrementally shifting from cost-based payments to prospective payments. However, once a LTCH elects to be paid based on 100 percent of the Federal rate, it would not be able to revert to the proposed transition blend.

The purpose of the transition period is to allow for a smooth transition from cost-based reimbursement to prospective payment. We believe that it is appropriate not to allow a LTCH to revert back to the blended transition methodology once it elects payment based on 100 percent of the Federal rate, because allowing LTCHs to switch back to a payment based on the transition blend from a payment based on 100 percent of the Federal rate would be administratively burdensome to our fiscal intermediaries.

Consistent with transition methodology policies under the IRF prospective payment system, we are proposing that, in order to elect payment based on 100 percent of the Federal rate, a LTCH must notify the fiscal intermediary of the election no later than 30 days before the beginning of the cost reporting period in the applicable fiscal year beginning on or after October 1, 2003 and before October 1, 2007 (proposed § 412.533(b)). The request by the LTCH to make the election would be made in writing to the Medicare fiscal intermediary. The intermediary would have to receive the request on or before the 30th day before the applicable cost reporting period begins, regardless of any postmarks or anticipated delivery dates. Requests received, postmarked, or delivered by other means after the 30th day before the cost reporting period begins would not be approved. If the 30th day before the cost reporting begins falls on a day that the postal service or other delivery sources are not open for business, the LTCH would be responsible for allowing sufficient time for the delivery of the request before the deadline. If a LTCH's request is not received or not approved, payment would be based on the transition period rates.

H. Payments to New LTCHs

For the purposes of the proposed LTCH prospective payment system, we are proposing under § 412.23(e)(4) to define a new LTCH as a provider of inpatient hospital services that (1) meets the proposed revised qualifying criteria (described in section II.B.1. and in proposed § 412.23(e)(1) of this proposed rule); and (2) under present or previous ownership (or both), has not received payment as a LTCH for discharges prior to October 1, 2002 (the effective date of the proposed prospective payment system for LTCHs).

We are proposing, under § 412.533(c), that new LTCHs would be paid based on 100 percent of the Federal rate starting with their first cost reporting period beginning on or after October 1, 2002. Thus, these new LTCHs would not participate in the 5-year transition from cost-based reimbursement to prospective payment (*see* section IV.G. of this proposed rule), as would other LTCHs.

The proposed transition period described in section IV.G. of this proposed rule is intended to provide existing LTCHs time to adjust to payment under the new proposed system. Since these new LTCHs would not have received payment for the delivery of LTCH services prior to the effective date of the LTCH prospective payment system, we do not believe that new LTCHs require a transition period in order to make adjustments to their operations and capital financing, as would existing LTCHs.

These new LTCHs should not be confused with those LTCHs first paid under the TEFRA payment system for discharges occurring on or after October 1, 1997, described in section 1886(b)(7)(A) of the Act, added by section 4416 of Public Law 105–33. In accordance with § 413.40(f)(2)(ii), for cost reporting periods beginning on or after October 1, 2001, the payment amount for a ''new'' (post-FY 1998) LTCH is the lower of the hospital's net inpatient operating cost per case or 110 percent of the national median target amount payment limit for hospitals in the same class for cost reporting periods ending during FY 1996, updated to the applicable cost reporting period (*see* 62 FR 46019, August 29, 1997). A LTCH's second cost reporting period is subject to the same payment limit as the first cost reporting period. The target amount for the LTCH beginning with its third 12-month cost reporting period, as set forth in § 413.40(c)(4)(v), is its payment amount for the preceding cost reporting period updated to the third cost reporting period. Under the proposed prospective payment system for LTCHs, those ''new'' LTCHs would be paid under the proposed transition methodology described in section IV.G. of this proposed rule.

For example, a new LTCH that first began receiving payment as a LTCH on October 1, 2001, would be subject to the 110 percent of the median target amount payment limit for LTCHs (in accordance with § 413.40(f)(2)(ii)) for both its FY 2002 and FY 2003 cost reporting periods. For its cost reporting period beginning on October 1, 2002 (the first cost reporting period under which the LTCH would be subject to the proposed prospective payment system), under the proposed transition methodology the LTCH's TEFRA portion of its payment for operating costs (80 percent) would be limited by the 110 percent of the median target amount payment limit for LTCHs under § 413.40(f)(2)(ii). For its cost reporting period beginning on October 1, 2003, under the proposed transition methodology that LTCH's TEFRA portion of its payment for operating costs (60 percent) would be limited by its target amount as determined under § 413.40(c)(4)(v). However, where a new LTCH first begins to receive payment as a LTCH on or after October 1, 2002, the LTCH would not be subject to the 5-year transition period under proposed § 412.533. The LTCH would be paid based on 100 percent of the proposed LTCH prospective payment system Federal rate beginning with its first cost reporting period.

I. Method of Payment

As discussed earlier, we are proposing that a beneficiary would be classified into a proposed LTC–DRG based on the principal diagnosis, up to eight additional (secondary) diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The LTC–DRG would be used to determine the Federal prospective payment that

the LTCH would receive for the Medicare-covered Part A services the LTCH furnished during the Medicare beneficiary's stay. We are proposing, under § 412.541(a), that the payment would be based on the submission of the discharge bill since section 123(a) of Public Law 106–113 requires that the LTCH prospective payment system be a per discharge based system. The discharge bill would provide data to allow for reclassifying the stay from payment at the full LTC–DRG rate into one of the proposed very short-stay discharge LTC–DRGs (under proposed § 412.527), or to determine the payment for a case as a proposed short-stay outlier (under proposed § 412.529) or as a proposed interrupted stay (under proposed § 412.531), or to determine if the case would qualify for an outlier payment (under proposed § 412.525(a)).

Accordingly, the ICD–9–CM codes and other information proposed to be used to determine if an adjustment to the full LTC–DRG payment is necessary (for example, length of stay or interrupted stay status) would be recorded by the LTCH on the beneficiary's discharge bill and submitted to the Medicare fiscal intermediary for processing. The payment made would represent payment in full, under proposed § 412.521(b), for inpatient operating and capital-related costs, but not the costs of an approved medical education program, bad debts, blood clotting factors, anesthesia services by hospital-employed nonphysician anesthetists or obtained under arrangement, or the costs of photocopying and mailing medical records requested by a PRO, which are costs paid outside the proposed LTCH prospective payment system.

Under the current payment system, a LTCH may elect to be paid using the periodic interim payment (PIP) method described in § 413.64(h), and may be eligible to receive accelerated payments as described in § 413.64(g). With the implementation of a prospective payment system for LTCHs, at this time (under proposed § 412.541) we are proposing to continue this existing administrative policy of allowing PIP under § 413.64(h) and accelerated payments under § 413.64(g) for qualified LTCHs. For those LTCHs that will be paid during the 5-year transition based on the blended transition methodology in § 412.533 for cost reporting periods beginning on or after October 1, 2002 and before October 1, 2006, the PIP amount would be based on the transition formula. For those LTCHs that are paid based on 100 percent of the standard Federal rate, the PIP amount would be based on the estimated prospective payment for the year rather than on the estimated cost reimbursement. Excluded from the PIP amounts would be outlier payments that are paid upon submission of a discharge bill. In addition, Part A costs that are not paid for under the proposed LTCH prospective payment system, including Medicare costs of an approved medical education program, bad debts, blood clotting factors, anesthesia services by hospital-employed nonphysician anesthetists or obtained under arrangement, and the costs of photocopying and mailing medical records requested by a PRO would be subject to the interim payment provisions at § 413.64.

V. Provisions of the Proposed Rule

We are proposing to establish a new subpart O under 42 CFR part 412, to implement the provisions of the proposed prospective payment system for LTCHs as discussed in detail throughout the preamble to this proposed rule.

In addition, we are proposing to make additional policy changes and conforming changes to the following sections of the regulations under 42 CFR parts 412, 413, and 476 as discussed throughout this preamble: §§ 412.1, 412.20, 412.22, 412.23, 412.116, 431.1, 413.40, 413.64, and 476.71.

VI. Regulatory Impact Analysis

A. Introduction

We have examined the impact of this proposed rule as required by Executive Order 12866. We also have examined the impacts of this rule under the criteria of the Regulatory Flexibility Act (RFA) (Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandate Reform Act of 1995 (UMRA) (Pub. L. 104–4), and Executive Order 13132 (Federalism).

1. Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more annually (major rules). We have determined that this proposed rule would not be a major rule within the meaning of Executive Order 12866 because the redistributive effects do not constitute a shift of $100 million in any one year. Because the proposed LTCH prospective payment system must be budget neutral in accordance with section 123(a)(1) of Public Law 106–113, we estimate that there will be no budgetary impact for the Medicare program.

2. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small businesses in issuing a proposed rule. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $25 million or less annually. For purposes of the RFA, all hospitals are considered small entities. Medicare fiscal intermediaries are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

3. Impact on Rural Hospitals

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of an MSA and has fewer than 100 beds. Section VI.B. of this proposed rule contains our estimated impact of this proposed rule on the hospitals classified as located in rural areas that have fewer than 100 beds for which we had cost report data available.

4. Unfunded Mandate

Section 202 of the UMRA requires that agencies assess anticipated costs and benefits before issuing any proposed rule or any final rule preceded by a proposed rule that may result in expenditures in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million or more. This proposed rule would not mandate any requirements for State, local, or tribal governments nor would it affect private sector costs.

5. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local

governments, preempts State law, or otherwise has Federalism implications.

We have examined this proposed rule under the criteria set forth in Executive Order 13132 and have determined that this proposed rule would not have any negative impact on the rights, rules, and responsibilities of State, local, or tribal governments.

B. Anticipated Effects

We discuss the impact of this proposed rule below in terms of its fiscal impact on the Federal Medicare budget and on LTCHs.

1. Budgetary Impact

Section 123(a)(1) of Public Law 106–113 requires us to set the payment rates contained in this proposed rule such that total payments under the LTCH prospective payment system are projected to equal the amount that would have been paid if this prospective payment system had not been implemented. However, the proposed standard Federal rate ($27,649.02) was calculated as if all LTCHs would be paid based on 100 percent of the standard Federal rate in FY 2003. As discussed in section IV.D.2.h. of the preamble, we are proposing a budget neutrality offset to payments (in addition to the budget neutrality adjustment reflected in the proposed standard Federal rate) to account for the monetary effect of the proposed 5-year transition period and the proposed policy to permit LTCHs to elect to be paid based on 100 percent of the standard Federal rate rather than a blend of Federal rate payments and reasonable-cost based payments during the transition. The amount of the offset is equal to 1 minus the ratio of the estimated TEFRA reasonable cost-based payments that would have been made if the LTCH prospective payment system had not been implemented, to the projected total Medicare program payments that would be made under the proposed transition methodology and the option to elect payment based on 100 percent of the Federal rate. Thus, in accordance with section 123(a)(1) Public Law 106–113, there would be no budgetary impact to the Medicare program by implementation of the proposed LTCH prospective payment system.

2. Impacts on Providers

In order to understand the impact of the proposed new prospective payment system on different categories of LTCHs, it is necessary to estimate payments that would be made under the current (TEFRA) payment methodology (current payments) and payments under the proposed prospective payment system (proposed prospective payments). We also evaluated the ratio of estimated prospective payments to estimated costs for each category of LTCHs.

Hospital groups were based on characteristics provided in OSCAR data and 1999 cost report data from HCRIS. Hospitals with incomplete characteristics were grouped into the ''unknown'' category. Hospital groups include:

—Location: Large Urban/Other Urban/Rural
—Participation Date
—Ownership Control
—Census Region
—Bed Size

To estimate the impacts among the various categories of providers, it is imperative that current payments and proposed prospective payments contain similar inputs. More specifically, we estimated proposed prospective payments only for those providers that we are able to calculate current payment. For example, if we did not have FYs 1996 through 1999 cost data for a LTCH, we were unable to determine an update to the LTCH's target amount as described in section IV.D.2.b. of this proposed rule to estimate payment under the TEFRA system.

As previously stated in section IV.C. of this preamble, we have both case-mix and cost data for 222 LTCHs. All 222 providers that had covered Medicare claims in FY 2000 were used to analyze the appropriateness of various adjustments to the proposed standard Federal unadjusted payment rate. However, for the impact analyses shown in the following tables, we simulate payments for 211 LTCHs. The methodology used to update payment data to the midpoint of FY 2003 was based on the use of historical cost report data to determine the relationship between the LTCH's costs and target amount. Thus, the number of providers reflects only those providers for which we had cost report data available from FYs 1996, 1997, 1998, and 1999 (see discussion in section IV.D.2. of this proposed rule).

These impacts reflect the estimated losses/gains among the various classifications of providers for FY 2003. Proposed prospective payments were based on the proposed standard Federal rate of $27,649.02 and the hospital's estimated case-mix based on FY 2000 claims data. These hospital payments were compared to the hospital's payments based on its cost from the cost report inflated to FY 2003 and subject to the updated per discharge target amount.

3. Calculation of Current Payments

To calculate current costs, cost report data are trended forward from the midpoint of the cost reporting period to the midpoint of FY 2003 using the methodology set forth in section IV.D.2.b. of this preamble. To estimate current payments, we determined payments for operating costs for each LTCH in accordance with the methodology in section 1886(b) of the Act. Further, we compute payments for capital-related costs consistent with section 1886(g)(4) of the Act. To determine each LTCH's average per discharge payment amount under the current payment system, operating and capital-related payments are added together, and then the total payment is divided by the number of Medicare discharges from the cost reports. Total payments for each LTCH are then computed by multiplying the number of discharges from the FY 2000 MedPAR claims by the average per discharge payment amount.

4. Calculation of Proposed Prospective Payments

To estimate payments under the proposed prospective payment system, we multiply each LTCH's case-mix index by the LTCH's number of Medicare discharges and the proposed standard Federal rate. As noted in section IV.C. of this proposed rule, we are proposing to not make adjustments for area wage differences (wage index), geographic reclassification, indirect medical education costs, or a disproportionate share of low-income patients.

Next, we calculated payments using the proposed transition blend percentages for FY 2003 (80 percent of current cost-based (TEFRA) payments and 20 percent of payments under the proposed LTCH prospective payment system) and compared that estimated blended payment to the LTCH's estimated payment if it would elect payment based on 100 percent of the Federal rate (see section IV.G. of this proposed rule). If a LTCH would be paid more based on 100 percent of the Federal rate, we assumed that it would elect to bypass the proposed transition methodology and transition immediately to prospective payments.

Then we applied the proposed 5.1 percent reduction to payment to account for the effect of the proposed 5-year transition methodology and election of payment based on 100 percent of the Federal rate on Medicare program payments to each LTCH's estimated payments under the proposed prospective payment system (see section

IV.D.2.h. of this proposed rule). The impact based on our projection of whether a LTCH would be paid based on the proposed transition blend methodology or would elect payment based on 100 percent of the Federal rate for cost reporting periods beginning during FY 2003 is shown below in Table 1. We also show in Table 2 below the impact if the LTCH prospective payment system were fully implemented in FY 2003, that is, as if there were an immediate transition to fully Federal prospective payments under the LTCH prospective payment system for FY 2003. Accordingly, the proposed 5.1 percent reduction to account for the proposed 5-year transition methodology on LTCHs' Medicare program payments was not applied to LTCHs' estimated payments under the proposed prospective payment system. Furthermore, beginning with cost reporting periods beginning during FY 2007, the proposed 5-year transition period would have ended, and all LTCHs would be paid based on 100 percent of the proposed standard Federal rate. All payment simulations reflect data trended to the midpoint FY 2003.

Tables 1 and 2 below illustrate the aggregate impact of the proposed payment system among various classifications of LTCHs. The first column, LTCH Classification, identifies the type of LTCH. The second column lists the number of LTCHs of each classification type; the third column identifies the number of long-term care cases; and the fourth column is the ratio of proposed prospective payments to current payments.

TABLE 1.—PROJECTED IMPACT REFLECTING 20 PERCENT OF PROPOSED PROSPECTIVE PAYMENTS AND 80 PERCENT OF CURRENT (TEFRA) PAYMENTS AND OPTION TO ELECT PAYMENT BASED ON 100 PERCENT OF THE FEDERAL RATE

LTCH classification	Number of LTCHs	Number of long-term care cases	New payment to current payment ratio
All Providers [1]	211	70,732	1.0010
BY LOCATION:			
Rural	10	2,112	1.1826
Urban	201	68,620	0.9972
Large Urban	128	50,486	0.9977
Other Urban	73	18,134	0.9955
BY PARTICIPATION DATE:			
After Oct 1993	125	39,171	0.9819
Before Oct 1983	31	10,980	1.0498
Oct 1983–Sept 1993	51	20,103	1.0209
Unknown	4	478	1.0208
BY OWNERSHIP CONTROL:			
Voluntary	54	19,920	0.9874
Proprietary	131	46,739	1.0010
Government	26	4,073	1.0837
BY CENSUS REGION:			
New England	18	9,587	1.0283
Middle Atlantic	13	5,777	1.0209
South Atlantic	25	6,215	1.0294
East North Central	33	8,070	1.0489
East South Central	11	2,826	1.0330
West North Central	12	3,266	1.0808
West South Central	71	27,345	0.9543
Mountain	15	2,423	1.0277
Pacific	13	5,223	1.0024
By Bed Size:			
0–24 Beds	25	3,571	0.9886
25–49 Beds	84	19,426	1.0172
50–74 Beds	20	6,324	0.9688
75–124 Beds	29	12,362	0.9994
125–199 Beds	23	13,191	0.9869
200+ Beds	30	15,858	1.0100

[1] These estimated impacts of the proposed budget neutral LTCH prospective payment system are subject to rounding. Therefore, the impact on all providers is not exactly equal to 1.0000.

TABLE 2.—PROJECTED IMPACT REFLECTING THE FULLY PHASED-IN PROPOSED PROSPECTIVE PAYMENTS

LTCH classification	Number of LTCHs	Number of long-term care cases	New payment to current payment ratio
All Providers [1]	211	70,732	0.9977
BY LOCATION:			
Rural	10	2,112	1.2327
Urban	201	68,620	0.9927
Large Urban	128	50,486	0.9918
Other Urban	73	18,134	0.9955
BY PARTICIPATION DATE:			
After Oct 1993	125	39,171	0.9675
Before Oct 1983	31	10,980	1.0763
Oct 1983–Sept 1993	51	20,103	1.0286

TABLE 2.—PROJECTED IMPACT REFLECTING THE FULLY PHASED-IN PROPOSED PROSPECTIVE PAYMENTS—Continued

LTCH classification	Number of LTCHs	Number of long-term care cases	New payment to current payment ratio
Unknown	4	478	1.0403
BY OWNERSHIP CONTROL:			
Voluntary	54	19,920	0.9846
Proprietary	131	46,739	0.9956
Government	26	4,073	1.1130
BY CENSUS REGION:			
New England	18	9,587	1.0593
Middle Atlantic	13	5,777	1.0247
South Atlantic	25	6,215	1.0497
East North Central	33	8,070	1.0732
East South Central	11	2,826	1.0614
West North Central	12	3,266	1.1076
West South Central	71	27,345	0.9234
Mountain	15	2,423	1.0178
Pacific	13	5,223	0.9902
BY BED SIZE:	25	3,571	0.9845
25–49 Beds	84	19,426	1.0317
50–74 Beds	20	6,324	0.9170
75–124 Beds	29	12,362	0.9886
125–199 Beds	23	13,191	0.9842
200+ Beds	30	15,858	1.0116

[1] These estimated impacts of the proposed budget neutral LTCH prospective payment system are subject to rounding. Therefore, the impact on all providers is not exactly equal to 1.0000.

5. Results

We have prepared the following summary of the impact (as shown in Table 1) of the LTCH prospective payment system set forth in this proposed rule.

a. Location

The majority of LTCHs are in urban areas. Only 4.7 percent of the LTCHs are identified as being located in a rural area, and approximately less than 3 percent of all long-term care cases are treated in these rural hospitals. Impact analysis shows that the new payment to current payment ratio is estimated to be 1.1826 for rural LTCHs, and 0.9972 for urban LTCHs. There is only a small difference in payment between large urban LTCHs and other urban LTCHs. About 71.4 percent of the LTCH cases are in LTCHs located in large urban areas. Large urban LTCHs have a new payment to current payment ratio of 0.9977, while other urban LTCHs have a new payment to current payment ratio of 0.9955.

b. Participation Date

LTCHs are grouped by participation date into three categories: (1) Before October 1983; (2) between October 1983 and September 1993; and (3) after October 1993. We did not have sufficient OSCAR data on four LTCHs, which we labeled as an ''Unknown'' category. The majority, approximately 55 percent, of the long-term care cases are in hospitals that began participating after October 1993 and have a new payment to current payment ratio of 0.9816 (see Table 1) and approximately 15 percent of the cases are in LTCHs that began participating in Medicare before October 1983 with a new payment to current payment ratio of 1.0498.

c. Ownership Control

LTCHs are grouped into three categories based on ownership control type: (1) Voluntary; (2) proprietary; and (3) government. We expect that government LTCHs would gain the most from the proposed payment system with an estimated new payment to current payment ratio of 1.0837, although only approximately 11.5 percent of LTCHs are government run. Voluntary and proprietary LTCHs have a new payment to current payment ratio of 0.9874 and 1.0010, respectively.

d. Census Region

Of the nine census regions, we expect that LTCHs in the West North Central Region will have the highest new payment to current payment ratio (1.0808). We expect only LTCHs in the West South Central will have a new payment to current payment ratio of less than 1.0 (0.9543).

e. Bed Size

LTCHs were grouped into six categories based on bed size: 0–24 beds, 25–49 beds, 50–74 beds, 75–124 beds, 125–199 beds, and 200+ beds. The majority of LTCHs were in bed size categories where the new payment to current payment ratio is estimated to be greater than 0.98. LTCHs with beds between 25–49 or over 200 beds have a new payment to current payment ratio greater than 1.0 (1.0172 and 1.0100, respectively). LTCHs with between 50–74 beds have the lowest estimated new payment to current payment ratio (0.9688).

6. Effect on the Medicare Program

Based on actuarial projections resulting from our experience with other prospective payment systems, we estimate that Medicare spending (total Medicare program payments) for LTCH services over the next 5 years would be:

Fiscal year	Estimated payments ($ in million)
2003	$1,800
2004	1,910
2005	2,020
2006	2,140
2007	2,260

These estimates are based on the current estimate of increase in the excluded hospital with capital market basket of 3.6 percent for FYs 2003 through 2005, 3.5 percent for FY 2006, and 3.4 percent for FY 2007. We estimate that there would be an increase in Medicare beneficiary enrollment of 2.2 percent in FY 2003, 2.3 percent in FYs 2004, 2005, and 2007, and 2.4 percent in FY 2006, and an estimated increase in the total number of LTCHs.

Consistent with the statutory requirement for budget neutrality, we intend for estimated aggregate payments under the LTCH prospective payment system to equal the estimated aggregate payments that would be made if LTCH prospective payment system were not implemented. Our methodology for estimating payments for purposes of the budget neutrality calculations uses the best available data and necessarily reflects assumptions. When the LTCH prospective payment system is implemented, we would monitor payment data and evaluate the ultimate accuracy of the assumptions used to calculate the budget neutrality calculations (for example, inflation factors, intensity of services provided, or behavioral response to the implementation of the LTCH prospective payment system, as discussed in section IV.D of this proposed rule). To the extent these assumptions significantly differ from actual experience, the aggregate amount of actual payments may turn out to be significantly higher or lower than the estimates on which the budget neutrality calculations are based. Section 123 of Public Law 106–113 and section 307 of Public Law 106–554 provide the Secretary extremely broad authority in developing the LTCH prospective payment system, including the authority for appropriate adjustments. In accordance with this broad authority, we plan to discuss in a future proposed rule a possible one-time prospective adjustment to the LTCH prospective payment system rates so that the effect of the difference between actual payments and estimated payments for the first year of LTCH prospective payment system is not perpetuated in the prospective payment system rates for future years. (We note that in other contexts (for example, outlier payments under the hospital inpatient prospective payment system) differences between estimated payments and actual payments for a given year are not built into the prospective payment system rates for subsequent years. Moreover, the statutory ratesetting scheme under the LTCH prospective payment system is very different than in other contexts.)

7. Effect on Medicare Beneficiaries

Under the proposed LTCH prospective payment system, hospitals would receive payment based on the average resources consumed by patients for each diagnosis. We do not expect any changes in the quality of care or access to services for Medicare beneficiaries under the proposed LTCH prospective payment system, but we expect that paying prospectively for LTCH services would enhance the efficiency of the Medicare program.

8. Computer Hardware and Software

We do not anticipate that hospitals would incur additional systems operating costs in order to effectively participate in the prospective payment system for LTCHs. We believe that LTCHs possess the computer hardware capability to handle the LTC–DRGs, computerization, data transmission, and GROUPER software requirements. Our belief is based upon indications that approximately 99 percent of hospital inpatient claims currently are submitted electronically. Moreover, LTCHs have the option of purchasing data collection software that can be used to support other clinical or operational needs (for example, care planning, quality assurance, or billing) or other regulatory requirements for reporting patient information.

C. Alternatives Considered

Section 123 of Public Law 106–113 specifies that the case-mix adjusted prospective payment system must be a per discharge system based on DRGs, and section 307(b) of Public Law 106–554 directs the Secretary to examine the ''feasibility and the impact of basing payment under such a system on the use of existing (or refined) hospital diagnosis-related groups (DRGs) that have been modified to account for different resource use of LTCH patients as well as the use of the most recently available hospital discharge data.'' Section 307(b) further requires the Secretary to ''examine'' appropriate adjustments to the system such as adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment consistent with section 1886(d)(5)(F) of the Act. Generally, the statute confers broad authority on the Secretary in designing the key elements of the system. Our considerations of the patient classification systems in detail in section I.G. of this proposed rule. Our evaluation of alternative features and adjustment factors for the LTCH prospective payment system are set forth in section IV. We are soliciting public comments regarding our proposed policies and system design and will consider them as we formulate our final rule for the prospective payment system for LTCHs.

D. Executive Order 12866

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

VII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comments on each of these issues for the following proposed sections that contain information collection requirements:

Proposed §§ 412.116(a)(4) and 412.541(b) and (e) Method of Payment: Periodic Interim Payments and Accelerated Payments

Under proposed § 412.116(a)(4), for cost reporting periods beginning on or after October 1, 2002, payments to a LTCH for inpatient hospital services under the prospective payment system would be made as described in proposed § 412.541. Proposed § 412.541(b) provides that a LTCH may receive periodic interim payments for Part A services, subject to the provisions of § 413.64(h). Section 413.64(h) specifies that the request for periodic interim payments must be made to the fiscal intermediary. Proposed § 412.541(e) states that, upon request, an accelerated payment may be made to a LTCH that is not receiving a periodic interim payment if the LTCH is experiencing financial difficulties.

We estimate that the burden associated with this provision is the time it takes a LTCH to prepare and submit its request for periodic interim payments or accelerated payments. We estimate that approximately three LTCHs would request periodic interim payments under the prospective payment system and that it would take each hospital 1 hour to prepare and make the request. We estimate that approximately two LTCHs would

request accelerated payments and that it would take them approximately 30 minutes each to prepare and submit their written request, for a total estimated annual burden of 1 hour.

Both of these proposed sections of the regulations are exempt from the PRA since the two requirements would affect less than 10 LTCHs per year (see 5 CFR Part 1320.3(c)(4)).

Proposed § 412.508(b)(1) and (b)(2): Content of Physician Acknowledgement Statement and Completion of Acknowledgement

Proposed § 412.508(b) provides that a physician must complete an acknowledgement statement that each patient's principal and secondary diagnoses and major procedures performed are documented by the physician's entries in the patient's medical record. Proposed § 412.508(b)(1) specifies that when a claim is submitted, the hospital must have a signed and dated acknowledgement from the attending physician that the physician has received notice of the required acknowledgement of entries in the patient's medical record and that anyone who misrepresents, falsifies, or conceals essential information required for payment of Federal funds may be subject to fine, imprisonment, or civil penalty under applicable laws. Proposed § 412.508(b)(2) specifies that the acknowledgement must be completed by the physician at the time the physician is granted admitting privileges at the hospital or before or at the time the physician admits his or her first patient.

The burden associated with these information collection requirements is the time required for the physician to complete the acknowledgement statements.

These information collection requirements are currently approved under OMB approval number 0938–0359 through February 28, 2002. (We note that these requirements are currently in the reapproval process with OMB.)

Proposed § 412.511 Reporting and Recordkeeping Requirements

Under proposed § 412.511, a LTCH subject to the proposed prospective payment system described in this proposed rule must meet the recordkeeping and cost reporting requirements of §§ 413.20 and 413.24. While §§ 413.20 and 413.24 are subject to the PRA, the burden associated with these requirements is currently captured in approved collection 0938–0758, with a current expiration date of 3/31/2002. This collection is currently at OMB awaiting re-approval.

Proposed § 412.533(b) Transition Payments: Election Not To Be Paid Under the Transitional Period Methodology

Under proposed § 412.533(b), a LTCH may elect to be paid based on 100 percent of the Federal prospective payment rate at the start of any of its cost reporting periods during a 5-year transition period beginning on or after October 1, 2002, and before October 1, 2007, without regard to the transitional percentages. Proposed § 412.533(b)(1) specifies that the request to make the election must be made in writing to the Medicare intermediary by the LTCH and received no later than 30 days before the beginning of the cost reporting period for each applicable fiscal year beginning on or after October 1, 2003 and before October 1, 2007.

We estimate that 135 LTCHs would make a request under this section to elect to receive the full Federal rate and that it would take each LTCH approximately 15 minutes each to prepare and submit their written request, for a total estimated annual burden of 34 hours.

If you comment on these information collection requirements, please mail copies directly to the following addresses:

Centers for Medicare & Medicaid Services, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Attn: Dawn Willinghan CMS–1177–P; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, CMS Desk Officer.

We have submitted the information collection requirements under §§ 412.508(b), 412.116, 412.533, and 412.541 to the Office of Management and Budget (OMB) for review under the authority of PRA. We also have submitted a copy of this proposed rule to OMB for its review of the information collection requirements. These requirements would not be effective until approved by OMB.

VIII. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. Comments on the provisions of this proposed rule will be considered if we receive them by the date specified in the **DATES** section of this preamble.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 476

Health care, Health professional, Health record, Peer Review Organizations (PRO), Penalties, Privacy, Reporting and recordkeeping requirements.

42 CFR Chapter IV would be amended as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

A. Part 412 is amended as follows:

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provisions

2. Section § 412.1 is amended by:

a. Adding a new paragraph (a)(3);

b. Redesignating paragraph (b)(12) as paragraph (b)(13); and

c. Adding a new paragraph (b)(12).

§ 412.1 Scope of part.

(a) *Purpose.* * * *

(3) This part implements section 123 of Public Law 106–113, which provides for the establishment of a prospective payment system for the costs of inpatient hospital services furnished to Medicare beneficiaries by long-term care hospitals described in section 1886(d)(1)(B)(iv) of the Act, for cost reporting periods beginning on or after October 1, 2002. This part also reflects the provisions of section 307 of Public Law 106–554, which state that the Secretary shall examine and may provide for appropriate adjustments to the long-term care hospital prospective payment system, including adjustments to diagnosis-related group (DRG) weights, area wage adjustments, geographic reclassification, outlier adjustments, updates, and disproportionate share adjustments

consistent with section 1886(d)(5)(F) of the Act.

(b) *Summary of content.* * * *

(12) Subpart O of this part describes the prospective payment system specified in paragraph (a)(3) of this section for long-term care hospitals and sets forth the general methodology for paying for the operating and capital-related costs of inpatient hospital services furnished by long-term care hospitals, effective with cost reporting periods beginning on or after October 1, 2002.

* * * * *

Subpart B—Hospital Services Subject to and Excluded from the Prospective Payment Systems for Inpatient Operating Costs and Inpatient Capital-Related Costs

3. Section 412.20 is amended by:

a. Revising paragraph (a).

b. Redesignating paragraph (c) as paragraph (d).

c. Adding a new paragraph (c).

§ 412.20 Hospital services subject to the prospective payment systems.

(a) Except for services described in paragraphs (b), (c), and (d) of this section, all covered inpatient hospital services furnished to beneficiaries during subject cost reporting periods are paid under the prospective payment systems specified in § 412.1(a)(1).

* * * * *

(c) Effective for cost reporting periods beginning on or after October 1, 2002, covered inpatient hospital services furnished to Medicare beneficiaries by a long-term care hospital that meets the conditions for payment of §§ 412.505 through 412.511 are paid under the prospective payment system described in subpart O of this part.

* * * * *

4. Section 412.22 is amended by revising paragraph (b) to read as follows:

§ 412.22 Excluded hospitals and hospital units: General rules.

* * * * *

(b) *Cost reimbursement.* Except for those hospitals specified in paragraph (c) of this section and §§ 412.20(b) and (c), all excluded hospitals (and excluded hospital units, as described in §§ 412.23 through 412.29) are reimbursed under the cost reimbursement rules set forth in part 413 of this subchapter, and are subject to the ceiling on the rate of hospital cost increases described in § 413.40 of this subchapter.

* * * * *

5. Section 412.23 is amended by revising paragraph (e) to read as follows:

§ 412.23 Excluded hospitals: Classifications.

* * * * *

(e) *Long-term care hospitals.* A long-term care hospital must meet the requirements of paragraph (e)(1) and (e)(2) of this section and, where applicable, the additional requirements of § 412.22(e), to be excluded from the prospective payment systems specified in § 412.1(a)(1) and to be paid under the prospective payment system specified in § 412.1(a)(3) and in Subpart O of this part.

(1) *Provider agreements.* The hospital must have a provider agreement under Part 489 of this chapter to participate as a hospital; and

(2) *Average length of stay.* (i) The hospital must have an average Medicare inpatient length of stay of greater than 25 days as calculated under paragraph (e)(3) of this section; or

(ii) For cost reporting periods beginning on or after August 5, 1997, a hospital that was first excluded from the prospective payment system under this section in 1986 meets the length of stay criterion if it has an average inpatient length of stay for all patients, including both Medicare and non-Medicare inpatients, of greater than 20 days and demonstrates that at least 80 percent of its annual Medicare inpatient discharges in the 12-month cost reporting period ending in fiscal year 1997 have a principal diagnosis that reflects a finding of neoplastic disease as defined in paragraph (f)(1)(iv) of this section.

(3) *Calculation of average length of stay.* The average Medicare inpatient length of stay is calculated—

(i) By dividing the number of total Medicare inpatient days (less leave or pass days) by the number of total Medicare discharges for the hospital's most recent complete cost reporting period;

(ii) If a change in the hospital's Medicare average length of stay is indicated, by the same method for the immediately preceding 6-month period; or

(iii) If a hospital has undergone a change of ownership (as described in § 489.18 of this chapter) at the start of a cost reporting period or at any time within the preceding 6 months, the hospital may be excluded from the prospective payment system as a long-term care hospital for a cost reporting period if, for the 6 months immediately preceding the start of the period (including time before the change of ownership), the hospital has the required Medicare average length of stay, continuously operated as a hospital, and continuously participated as a hospital in Medicare.

(4) *Definition of new long-term care hospital.* For purposes of payment under the long-term care hospital prospective payment system under Subpart O of this part, a new long-term care hospital is a provider of inpatient hospital services that meets the qualifying criteria in paragraphs (e)(1) and (e)(2) of this section and, under present or previous ownership (or both), has not received payment as a long-term care hospital for discharges occurring prior to October 1, 2002.

* * * * *

Subpart H—Payments to Hospitals Under the Prospective Payment Systems

6. In § 412.116, the heading of paragraph (a) is revised and a new paragraph (a)(4) is added to read as follows:

§ 412.116 Method of payment.

(a) *General rules.* * * *

(4) For cost reporting periods beginning on or after October 1, 2002, payments for inpatient hospital services furnished by a long-term care hospital that meets the conditions for payment of §§ 412.505 through 412.511 are made as described in § 412.521.

* * * * *

7. A new subpart O is added to read as follows:

Subpart O—Prospective Payment System for Long-Term Care Hospitals

Sec.

412.500 Basis and scope of subpart.
412.503 Definitions.
412.505 Conditions for payment under the prospective payment system for long-term care hospitals.
412.507 Limitation on charges to beneficiaries.
412.508 Medical review requirements.
412.509 Furnishing of inpatient hospital services directly or under arrangement.
412.511 Reporting and recordkeeping requirements.
412.513 Patient classification system.
412.515 LTC–DRG weighting factors.
412.517 Revision of LTC–DRG group classifications and weighting factors.
412.521 Basis of payment.
412.523 Methodology for calculating the Federal prospective payment rates.
412.525 Adjustments to the Federal prospective payment.
412.527 Special payment provisions for very short-stay discharges.
412.529 Special payment provisions for short-stay outliers.
412.531 Special payment provisions when an interruption of a stay occurs in a long-term care hospital.
412.532 Special payment provisions for patients who are transferred to onsite providers and readmitted to a long-term care hospital.
412.533 Transition payments.

412.535 Publication of the Federal prospective payment rates.
412.541 Method of payment under the long-term care hospital prospective payment system.

Subpart O—Prospective Payment System for Long-Term Care Hospitals

§ 412.500 Basis and scope of subpart.

(a) *Basis.* This subpart implements section 123 of Public Law 106–113, which provides for the implementation of a prospective payment system for long-term care hospitals described in section 1886(d)(1)(B)(iv) of the Act. This subpart also reflects the provisions of section 307 of Public Law 106–554, which state that the Secretary shall examine and may provide for appropriate adjustments to that system, including adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and disproportionate share adjustments consistent with section 1886(d)(5)(F) of the Act.

(b) *Scope.* This subpart sets forth the framework for the prospective payment system for long-term care hospitals, including the methodology used for the development of payment rates and associated adjustments and related rules. Under this system, for cost reporting periods beginning on or after October 1, 2002, payment for the operating and capital-related costs of inpatient hospital services furnished by long-term care hospitals is made on the basis of prospectively determined rates and applied on a per discharge basis.

§ 412.503 Definitions.

As used in this subpart—

CMS stands for the Centers for Medicare & Medicaid Services.

Discharge. A Medicare patient in a long-term care hospital is considered discharged when—

(1) The patient is formally released;

(2) The patient stops receiving Medicare-covered long-term care services; or

(3) The patient dies in the long-term care facility.

LTC–DRG stands for the diagnosis-related group used to classify patient discharges from a long-term care hospital based on clinical characteristics and average resource use, for prospective payment purposes.

Outlier payment means an additional payment beyond the standard Federal prospective payment for cases with unusually high costs.

PRO stands for the Utilization and Quality Control Peer Review Organization.

§ 412.505 Conditions for payment under the prospective payment system for long-term care hospitals.

(a) *Long-term care hospitals subject to the prospective payment system.* To be eligible to receive payment under the prospective payment system specified in this subpart, a long-term care hospital must meet the criteria to be classified as a long-term care hospital set forth in § 412.23(e) for exclusion from the inpatient hospital prospective payment systems specified in § 412.1(a)(1). This condition is subject to the special payment provisions of § 412.22(c), the provisions on change in hospital status of § 412.22(d), the provisions related to hospitals-within-hospitals under § 412.22(e), and the provisions related to satellite facilities under § 412.22(h).

(b) *General requirements.* (1) Effective for cost reporting periods beginning on or after October 1, 2002, a long-term care hospital must meet the conditions for payment of this section and §§ 412.507 through 412.511 to receive payment under the prospective payment system described in this subpart for inpatient hospital services furnished to Medicare beneficiaries.

(2) If a long-term care hospital fails to comply fully with these conditions for payment with respect to inpatient hospital services furnished to one or more Medicare beneficiaries, CMS may withhold (in full or in part) or reduce Medicare payment to the hospital.

§ 412.507 Limitation on charges to beneficiaries.

(a) *Prohibited charges.* Except as provided in paragraph (b) of this section, a long-term care hospital may not charge a beneficiary for any services for which payment is made by Medicare, even if the hospital's costs of furnishing services to that beneficiary are greater than the amount the hospital is paid under the prospective payment system.

(b) *Permitted charges.* A long-term care hospital that receives payment under this subpart for a covered hospital stay (that is, a stay that includes at least one covered day) may charge the Medicare beneficiary or other person only for the applicable deductible and coinsurance amounts under §§ 409.82, 409.83, and 409.87 of this subchapter, and for items and services as specified under § 489.20(a) of this chapter.

§ 412.508 Medical review requirements.

(a) *Admission and quality review.* A long-term care hospital must have an agreement with a PRO to have the PRO review, on an ongoing basis, the following:

(1) The medical necessity, reasonableness, and appropriateness of hospital admissions and discharges.

(2) The medical necessity, reasonableness, and appropriateness of inpatient hospital care for which additional payment is sought under the outlier provisions of §§ 412.523(d)(1) and 412.525(a).

(3) The validity of the hospital's diagnostic and procedural information.

(4) The completeness, adequacy, and quality of the services furnished in the hospital.

(5) Other medical or other practices with respect to beneficiaries or billing for services furnished to beneficiaries.

(b) *Physician acknowledgement.* Because payment under the long-term care hospital prospective payment system is based in part on each patient's principal and secondary diagnoses and major procedures performed, as evidenced by the physician's entries in the patient's medical record, physicians must complete an acknowledgement statement to this effect.

(1) *Content of physician acknowledgement statement.* When a claim is submitted, the hospital must have on file a signed and dated acknowledgement from the attending physician that the physician has received the following notice:

> Notice to Physicians: Medicare payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patient, as attested to by the patient's attending physician by virtue of his or her signature in the medical record. Anyone who misrepresents, falsifies, or conceals essential information required for payment of Federal funds, may be subject to fine, imprisonment, or civil penalty under applicable Federal laws.

(2) *Completion of acknowledgement.* The acknowledgement must be completed by the physician at the time that the physician is granted admitting privileges at the hospital, or before or at the time the physician admits his or her first patient. Existing acknowledgements signed by physicians already on staff remain in effect as long as the physician has admitting privileges at the hospital.

(c) *Denial of payment as a result of admissions and quality review.* (1) If CMS determines, on the basis of information supplied by a PRO that a hospital has misrepresented admissions, discharges, or billing information, or has taken an action that results in the unnecessary admission of an individual entitled to benefits under Part A, unnecessary multiple admissions of an individual, or other inappropriate medical or other practices with respect to beneficiaries or billing for services

furnished to beneficiaries, CMS may, as appropriate—

(i) Deny payment (in whole or in part) under Part A with respect to inpatient hospital services provided for an unnecessary admission or subsequent readmission of an individual; or

(ii) Require the hospital to take other corrective action necessary to prevent or correct the inappropriate practice.

(2) When payment with respect to admission of an individual patient is denied by a PRO under paragraph (c)(1) of this section, and liability is not waived in accordance with §§ 411.400 through 411.402 of this chapter, notice and appeals are provided under procedures established by CMS to implement the provisions of section 1155 of the Act, Right to Hearing and Judicial Review.

(3) A determination under paragraph (c)(1) of this section, if it is related to a pattern of inappropriate admissions and billing practices that has the effect of circumventing the prospective payment system, is referred to the Department's Office of Inspector General for handling in accordance with § 1001.301 of this title.

§ 412.509 Furnishing of inpatient hospital services directly or under arrangement.

(a) Subject to the provisions of § 412.521(b), the applicable payments made under this subpart are payment in full for all inpatient hospital services, as defined in § 409.10 of this chapter. Inpatient hospital services do not include the following:

(1) Physicians' services that meet the requirements of § 415.102(a) of this subchapter for payment on a fee schedule basis.

(2) Physician assistant services, as defined in section 1861(s)(2)(K)(i) of the Act.

(3) Nurse practitioners and clinical nurse specialist services, as defined in section 1861(s)(2)(K)(ii) of the Act.

(4) Certified nurse midwife services, as defined in section 1861(gg) of the Act.

(5) Qualified psychologist services, as defined in section 1861(ii) of the Act.

(6) Services of an anesthetist, as defined in § 410.69 of this subchapter.

(b) Medicare does not pay any provider or supplier other than the long-term care hospital for services furnished to a Medicare beneficiary who is an inpatient of the hospital except for services described in paragraphs (a)(1) through (a)(6) of this section.

(c) The long-term care hospital must furnish all necessary covered services to the Medicare beneficiary who is an inpatient of the hospital either directly or under arrangements (as defined in § 409.3 of this subchapter).

§ 412.511 Reporting and recordkeeping requirements.

A long-term care hospital participating in the prospective payment system under this subpart must meet the recordkeeping and cost reporting requirements of §§ 413.20 and 413.24 of this subchapter.

§ 412.513 Patient classification system.

(a) *Classification methodology.* CMS classifies specific inpatient hospital discharges from long-term care hospitals by long-term care diagnosis-related groups (LTC–DRGs) to ensure that each hospital discharge is appropriately assigned based on essential data abstracted from the inpatient bill for that discharge.

(b) *Assignment of discharges to LTC–DRGs.* (1) The classification of a particular discharge is based, as appropriate, on the patient's age, sex, principal diagnosis (that is, the diagnosis established after study to be chiefly responsible for causing the patient's admission to the hospital), secondary diagnoses, procedures performed, and the patient's discharge status.

(2) Each discharge from a long-term care hospital is assigned to only one LTC–DRG (related, except as provided in paragraph (b)(3) of this section, to the patient's principal diagnosis), regardless of the number of conditions treated or services furnished during the patient's stay.

(3) When the discharge data submitted by a hospital show a surgical procedure unrelated to a patient's principal diagnosis, the bill is returned to the hospital for validation and reverification. The LTC–DRG classification system provides a LTC–DRG, and an appropriate weighting factor, for those cases for which none of the surgical procedures performed are related to the principal diagnosis.

(c) *Review of LTC–DRG assignment.* (1) A hospital has 60 days after the date of the notice of the initial assignment of a discharge to a LTC–DRG to request a review of that assignment. The hospital may submit additional information as a part of its request.

(2) The intermediary reviews that hospital's request and any additional information and decides whether a change in the LTC–DRG assignment is appropriate. If the intermediary decides that a different LTC–DRG should be assigned, the case will be reviewed by the appropriate PRO as specified in § 476.71(c)(2) of this chapter.

(3) Following the 60-day period described in paragraph (c)(1) of this section, the hospital may not submit additional information with respect to the DRG assignment or otherwise revise its claim.

§ 412.515 LTC–DRG weighting factors.

(a) *General.* For each LTC–DRG, CMS assigns an appropriate weight that reflects the estimated relative cost of hospital resources used within that group compared to discharges classified within other groups.

(b) *Very short-stay discharges.* CMS determines a weighting factor or factors for discharges of Medicare patients from a long-term care hospital after a very short stay in accordance with § 412.527.

§ 412.517 Revision of LTC–DRG group classifications and weighting factors.

CMS adjusts the classifications and weighting factors annually to reflect changes in—

(a) Treatment patterns;

(b) Technology;

(c) Number of discharges; and

(d) Other factors affecting the relative use of hospital resources.

§ 412.521 Basis of payment.

(a) *Method of payment.* (1) Under the prospective payment system, long-term care hospitals receive a predetermined payment amount per discharge for inpatient services furnished to Medicare beneficiaries.

(2) The amount of payment under the prospective payment system is based on the Federal payment rate established in accordance with § 412.523, including adjustments described in § 412.525, and, if applicable during a transition period, on a blend of the Federal payment rate and the cost-based reimbursement rate described in § 412.533.

(b) *Payment in full.* (1) The payment made under this subpart represents payment in full (subject to applicable deductibles and coinsurance described in subpart G of part 409 of this subchapter) for inpatient operating costs as described in § 412.2(c) and capital-related costs described in subpart G of part 413 of this subchapter associated with furnishing Medicare covered services in long-term care hospitals.

(2) In addition to payment based on prospective payment rates, long-term care hospitals may receive payments separate from payments under the prospective payment system for the following:

(i) The costs of approved medical education programs described in §§ 413.85 and 413.86 of this subchapter.

(ii) Bad debts of Medicare beneficiaries, as provided in § 413.80 of this subchapter.

(iii) A payment amount per unit for blood clotting factor provided to Medicare inpatients who have hemophilia.

(iv) Anesthesia services furnished by hospital employed nonphysician anesthetists or obtained under arrangements, as specified in § 412.113(c)(2).

(v) The costs of photocopying and mailing medical records requested by a PRO, in accordance with § 476.78(c) of this chapter.

(c) *Payment by workers' compensation, automobile medical, no-fault or liability insurance or an employer group health plan primary to Medicare.* If workers' compensation, automobile medical, no-fault, or liability insurance or an employer group health plan that is primary to Medicare pays in full or in part, payment is determined in accordance with the guidelines specified in § 412.120(b).

(d) *Effect of change of ownership on payments under the prospective payment system.* When a hospital's ownership changes, as described in § 489.18 of this chapter, the following rules apply:

(1) Payment for the operating and capital-related costs of inpatient hospital services for each patient, including outlier payments as provided in § 412.525 and payments for hemophilia clotting factor costs as provided in paragraph (b)(2)(iii) of this section, are made to the entity that is the legal owner on the date of discharge. Payments are not prorated between the buyer and seller.

(i) The owner on the date of discharge is entitled to submit a bill for all inpatient hospital services furnished to a beneficiary regardless of when the beneficiary's coverage began or ended during a stay, or of how long the stay lasted.

(ii) Each bill submitted must include all information necessary for the intermediary to compute the payment amount, whether or not some of that information is attributable to a period during which a different party legally owned the hospital.

(2) Other payments for approved medical education programs, bad debts, anesthesia services furnished by hospital employed nonphysician anesthestists, and costs of photocopying and mailing medical records to the PRO as provided for under paragraphs (b)(2)(i), (ii), (iv), and (v) of this section are made to each owner or operator of the hospital (buyer and seller) in accordance with the principles of reasonable cost reimbursement.

§ 412.523 Methodology for calculating the Federal prospective payment rates.

(a) *Data used.* To calculate the initial prospective payment rates for inpatient hospital services furnished by long-term care hospitals, CMS uses—

(1) The best Medicare data available; and

(2) A rate of increase factor to adjust for the most recent estimate of increases in the prices of an appropriate market basket of goods and services included in covered inpatient long-term care hospital services.

(b) *Determining the average costs per discharge for FY 2003.* CMS determines the average inpatient operating and capital-related costs per discharge for which payment is made to each inpatient long-term care hospital using the available data under paragraph (a)(1) of this section. The cost per discharge is adjusted to FY 2003 by a rate of increase factor, described in paragraph (a)(2) of this section, under the update methodology described in section 1886(b)(3)(B)(ii) of the Act for each year.

(c) *Determining the Federal prospective payment rates.*

(1) *General.* The Federal prospective payment rates will be established using a standard payment amount referred to as the standard Federal rate. The standard Federal rate is a standardized payment amount based on average costs from a base year that reflects the combined aggregate effects of the weighting factors and other adjustments.

(2) *Update the cost per discharge.* CMS applies the increase factor described in paragraph (a)(2) of this section to each hospital's cost per discharge determined under paragraph (b) of this section to compute the cost per discharge for FY 2003. Based on the updated cost per discharge, CMS estimates the payments that would have been made to each hospital for FY 2003 under Part 413 of this chapter without regard to the prospective payment system implemented under this subpart.

(3) *Computation of the standard Federal rate.* The standard Federal rate is computed as follows:

(i) *For FY 2003.* Based on the updated costs per discharge and estimated payments for FY 2003 determined in paragraph (c)(2) of this section, CMS computes a standard Federal rate for FY 2003 that reflects, as appropriate, the adjustments described in paragraph (d) of this section.

(ii) *For fiscal years after FY 2003.* The standard Federal rate for fiscal years after FY 2003 will be the standard Federal rate for the previous fiscal year, updated by the increase factor described in paragraph (a)(2) of this section, and adjusted as appropriate as described in paragraph (d) of this section.

(4) *Determining the Federal prospective payment rate for each LTC–DRG.* The Federal prospective payment rate for each LTC–DRG is the product of the weighting factors described in § 412.515 and the standard Federal rate described in paragraph (c)(3) of this section.

(d) *Adjustments to the standard Federal rate.* The standard Federal rate described in paragraph (c)(3) of this section will be adjusted for—

(1) *Outlier payments.* CMS adjusts the standard Federal rate by a reduction factor of 8 percent, the estimated proportion of outlier payments under the long-term care hospital prospective payment system, as described in § 412.525(a).

(2) *Budget neutrality.* CMS adjusts the Federal prospective payment rates for FY 2003 so that aggregate payments under the prospective payment system are estimated to equal the amount that would have been made to long-term care hospitals under Part 413 of this subchapter without regard to the prospective payment system implemented under this subpart.

(3) The Secretary will review payments under this prospective payment system and will make a one-time prospective adjustment to the LTCH prospective payment system rates by October 1, 2006 so that the effect of any significant difference between actual payments and estimated payments for the first year of the LTCH prospective payment system is not perpetuated in the prospective payment rates for future years.

(e) *Calculation of the adjusted Federal prospective payment.* For each discharge, a long-term care hospital's Federal prospective payment is computed on the basis of the Federal prospective payment rate multiplied by the relative weight of the LTC–DRG assigned for that discharge. A hospital's Federal prospective payment rate will be adjusted, as appropriate, to account for outliers and other factors as specified in § 412.525.

§ 412.525 Adjustments to the Federal prospective payment.

(a) *Adjustments for high-cost outliers.* CMS provides for an additional payment to a long-term care hospital if its estimated costs for a patient exceeds the adjusted LTC–DRG plus a fixed-loss amount. For each fiscal year, CMS determines a fix-loss amount that is the maximum loss that a hospital can incur under the prospective payment system for a case with unusually high costs before the hospital will receive any additional payments. The additional payment equals 80 percent of the difference between the estimated cost of the patient case and the sum of the adjusted Federal prospective payment

for the LTC–DRG and the fixed-loss amount.

(b) *Adjustments for Alaska and Hawaii.* CMS adjusts the Federal prospective payment for the effects of a higher cost of living for hospitals located in Alaska and Hawaii.

(c) *Special payment provisions.* CMS adjusts the Federal prospective payment to account for—

(1) Very short-stay discharges, as provided for in § 412.527;

(2) Short-stay outliers, as provided for in § 412.529; and

(3) Interruption of a stay, as provided for in § 412.531.

§ 412.527 Special payment provision for very short-stay discharges.

(a) *Very short-stay discharge defined.* A ''very short-stay discharge'' means a case that has a length of stay in a long-term care hospital of 7 days or fewer.

(b) *Adjustment to payment.* CMS adjusts the Federal prospective payment for very short-stay discharges, as defined in paragraph (a) of this section.

(c) *Method for determining payment.*

(1) Payment for a very short-stay discharge will be made on a per diem methodology according to the primary diagnosis of the discharge under either—

(i) A LTC–DRG psychiatric category; or

(ii) A LTC–DRG nonpsychiatric category.

(2) Each per diem amount is determined by dividing the Federal payment rate of the applicable LTC–DRG category specified in paragraph (c)(1)(i) or (c)(1)(ii) of this section (that is, Federal payment rate x the LTC–DRG weight) by seven.

§ 412.529 Special payment provision for short-stay outliers.

(a) *Short-stay outlier defined.* ''Short-stay outlier'' means a discharge with a length of stay in a long-term care hospital that is between 8 days and two-thirds of the arithmetic average length of stay for each LTC–DRG.

(b) *Adjustment to payment.* CMS adjusts the hospital's Federal prospective payment to account for any case that is determined to be a short-stay outlier, as defined in paragraph (a) of this section, under the methodology specified in paragraph (c) of this section.

(c) *Method for determining the payment amount.* (1) The payment amount for a short-stay outlier is the least of the following amounts:

(i) 150 percent of the LTC–DRG specific per diem amount determined under paragraph (c)(2) of this section multiplied by the length of stay of the discharge;

(ii) 150 percent of the cost of the case determined under paragraph (c)(3) of this section; or

(iii) The full Federal prospective payment for the LTC–DRG (the Federal payment rate x LTC–DRG weight).

(2) CMS calculates a per diem amount for short-stay outliers for each LTC–DRG by dividing the standard Federal payment rate (the Federal payment rate x LTC–DRG weight) by the arithmetic mean length of stay of the specific LTC–DRG.

(3) To determine the cost of a case, CMS uses the hospital-specific cost-to-charge ratio and the Medicare allowable charges for the case.

§ 412.531 Special payment provisions when an interruption of a stay occurs in a long-term care hospital.

(a) *Interruption of a stay defined.* ''Interruption of a stay'' means a stay at a long-term care hospital during which a Medicare inpatient is transferred upon discharge to an acute care hospital, an IRF, or a SNF for treatment or services that are not available in the long-term care hospital and returns to the same long-term care hospital within the applicable period specified in paragraphs (a)(1) through (a)(3) of this section.

(1) For a discharge to an acute care hospital, the applicable period is the number of days that is equal to one standard deviation beyond the average length of stay for the DRG assigned for the acute care inpatient hospital stay. The counting of those days begins on the day of discharge from the long-term care hospital and ends on the day the patient is readmitted to the long-term care hospital.

(2) For a discharge to an IRF, the applicable period is the number of days that is equal to one standard deviation beyond the average length of stay for the combination of the CMG and comorbidity tier for the IRF stay. The counting of those days begins on the day of discharge from the long-term care hospital and ends on the day that the patient is readmitted to the long-term care hospital.

(3) For a discharge to a SNF, the applicable period is 45 days, that is, the number of days that is equal to one standard deviation beyond the average length of stay for all Medicare SNF patients. The counting of those days begins on the day of discharge from the long-term care hospital and ends with the 45th day after the discharge.

(b) *Methods of determining payments.* (1) For purposes of determining a Federal prospective payment, any stay in a long-term care hospital that involves an interruption of the stay will be paid as a single discharge from the long-term care hospital. The number of days that a beneficiary spends in an acute care hospital, an IRF, or a SNF during an interruption of stay at a long-term care hospital is not included in determining the length of stay of the patient at the long-term care hospital. CMS will make only one LTC–DRG payment for all portions of a long-term care stay that involves an interruption of a stay. In accordance with § 412.513(b), payment will be based on the patient's LTC–DRG which would be determined by the principal diagnosis which is the condition established after study to be chiefly responsible for occasioning the first admission of the patient to the hospital for care.

(2) If the total number of days of a patient's length of stay in a long-term care hospital prior to and following an interruption of a stay is 7 days or less, CMS will make a Federal prospective payment for a very short stay discharge in accordance with § 412.527(c).

(3) If the total number of days of a patient's length of stay in a long-term care hospital prior to and following an interruption of a stay is between 8 days and two-thirds the average length of stay of the LTC–DRG, CMS will make a Federal prospective payment for a short-stay outlier in accordance with § 412.529(c).

(4) If the total number of days of a patient's length of stay in a long-term care hospital prior to and following an interruption of a stay exceeds two-thirds of the average length of stay for the LTC–DRG, CMS will make one full Federal LTC–DRG prospective payment for the case. An additional payment will be made if the patient's stay qualifies as a high-cost outlier, as set forth in § 412.525(a).

(5) Notwithstanding the provisions of paragraph (a) of this section, if a patient who has been discharged from a long-term care hospital to another facility and is readmitted to the long-term care hospital for additional treatment or services in the long-term care hospital following the stay at the other facility, the subsequent admission to the long-term care hospital is considered a new stay, even if the case is determined to fall into the same LTC–DRG, and the long-term care hospital will receive two separate Federal prospective payments if one of the following conditions are met:

(i) The patient has a length of stay in the acute care hospital that exceeds one standard deviation from the average length of stay for the inpatient hospital DRG;

(ii) The patient has a length of stay in the IRF that exceeds one standard

deviation from the average length of stay for the combination of CMG and the comorbidity tier; or

(iii) The patient has a length of stay in the SNF that exceeds 45 days (one standard deviation from the average length of stay for all Medicare SNF patients).

(c) *Payments to an acute care hospital, an IRF, or a SNF during an interruption of stay.* (1) Payment to the acute care hospital for the acute care hospital stay following discharge from the long-term care hospital will be paid in accordance with the acute care hospital inpatient prospective payment systems specified in § 412.1(a)(1).

(2) Payment to an IRF for the IRF stay following a discharge from the long-term care hospital will be paid in accordance with the IRF prospective payment system specified in § 412.624 of Subpart P of this part.

(3) Payment to a SNF for the SNF stay following a discharge from the long-term care hospital will be paid in accordance with the SNF prospective payment system specified in subpart J of Part 413 of this subchapter.

§ 412.532 Special payment provisions for patients who are transferred to onsite providers and readmitted to a long-term care hospital.

(a) The policies set forth in this section apply in the following situations:

(1) A long-term care hospital (including a satellite facility) that is co-located within an onsite acute care hospital, an onsite IRF, or an onsite psychiatric facility or unit that meets the definition of a hospital-within-a-hospital under § 412.22(e).

(2) A satellite facility, as defined in § 412.22(e), that is co-located with the long-term care hospital.

(3) A SNF, as defined in section 1819(a) of the Act, that is co-located with the long-term care hospital.

(b) If, during a cost reporting period, a long-term care hospital (including a satellite facility) discharges patients to an acute care hospital co-located with the long-term care hospital, as described in paragraph (a) of this section, and subsequently directly readmits more than 5 percent (that is, in excess of 5.0 percent) of the total number of its Medicare inpatients discharged from that acute care hospital, the discharge to the co-located acute care hospital and the readmission to the long-term care hospital will be treated as one discharge and one LTC–DRG payment will be made on the basis of the patient's initial principal diagnosis.

(c) If, during a cost reporting period, a long-term care hospital (including a satellite facility) discharges patients to an onsite IRF, an onsite psychiatric hospital or unit, or an onsite SNF, as described in paragraph (a) of this section, and subsequently directly readmits more than 5 percent (that is, in excess of 5.0 percent) of the total number of its Medicare inpatients discharged from the onsite IRF, the onsite psychiatric hospital or unit, or the onsite SNF, a discharge to any of these providers and a readmission to the LTCH will be treated as one discharge and one LTC–DRG payment will be made on the basis of the patient's initial principal diagnosis.

(d) For purposes of calculating the payment per discharge, payment for the entire stay at the long-term care hospital will be paid as a full LTC–DRG payment under § 412.523, a very short-stay discharge under § 412.527, or a short-stay outlier under § 412.529, depending on the duration of the entire stay.

(e) If the long-term care hospital does not meet the 5-percent thresholds specified under paragraph (b) or (c) of this section for discharges to the specified onsite providers and readmissions to the long-term care hospital during a cost reporting period, payment under the long-term care prospective payment system will be made, where applicable, under the policies on interruption of a stay as specified in § 412.531.

(f) Payment to the onsite acute care hospital, the onsite IRF, the onsite psychiatric hospital or unit, and the onsite SNF for a beneficiary's stay in the specified onsite providers is subject to the applicable payment policies, including outliers and transfers, under the acute care hospital inpatient prospective payment system, the IRF prospective payment system, the SNF prospective payment system, or the excluded psychiatric hospital or unit cost-based reimbursement payment system, as appropriate.

(g) In determining whether a patient has previously been discharged and then admitted, all prior discharges are considered, even if the discharge occurs late in one cost reporting period and the readmission occurs late in next cost reporting period.

§ 412.533 Transition payments.

(a) *Duration of transition periods.* Except for a long-term care hospital that makes an election under paragraph (b) of this section or for a long-term care hospital that is defined as new under § 412.23(e)(4), for cost reporting periods beginning on or after October 1, 2002, and before October 1, 2006, a long-term care hospital receives a payment comprised of a blend of the adjusted Federal prospective payment as determined under § 412.523, and the payment determined under the cost-based reimbursement rules under Part 413 of this subchapter.

(1) For cost reporting periods beginning on or after October 1, 2002 and before October 1, 2003, payment is based on 20 percent of the Federal prospective payment rate and 80 percent of the cost-based reimbursement rate.

(2) For cost reporting periods beginning on or after October 1, 2003 and before October 1, 2004, payment is based on 40 percent of the Federal prospective payment rate and 60 percent of the cost-based reimbursement rate.

(3) For cost reporting periods beginning on or after October 1, 2004 and before October 1, 2005, payment is based on 60 percent of the Federal prospective payment rate and 40 percent of the cost-based reimbursement rate.

(4) For cost reporting periods beginning on or after October 1, 2005 and before October 1, 2006, payment is based on 80 percent of the Federal prospective payment rate and 20 percent of the cost-based reimbursement rate.

(5) For cost reporting periods beginning on or after October 1, 2006, payment is based entirely on the adjusted Federal prospective payment rate.

(b) *Election not to be paid under the transition period methodology.* A long-term care hospital may elect to be paid based on 100 percent of the Federal prospective rate at the start of any of its cost reporting periods during the 5-year transition periods specified in paragraph (a) of this section. Once a long-term care hospital elects to be paid based on 100 percent of the Federal prospective payment rate, it may not revert to the transition blend.

(1) *General requirement.* A long-term care hospital must request the election under this paragraph (b) no later than 30 days before the beginning of the hospital's cost reporting period in each applicable fiscal year beginning on or after October 1, 2003 and before October 1, 2006.

(2) *Notification requirement to make election.* The request by the long-term care hospital to make the election under this paragraph (b) must be made in writing to the Medicare fiscal intermediary. The intermediary must receive the request on or before the 30th day before the applicable cost reporting period begins, regardless of any postmarks or anticipated delivery dates. Requests received, postmarked, or

delivered by other means after the 30th day before the cost reporting period begins will not be approved. If the 30th day before the cost reporting begins falls on a day that the postal service or other delivery sources are not open for business, the long-term care hospital is responsible for allowing sufficient time for the delivery of the request before the deadline. If a long-term care hospital's request is not received or not approved, payment will be based on the transition period rates specified in paragraphs (a)(1) through (a)(5) of this section.

(c) *Payments to new long-term care hospitals.* A new long-term care hospital, as defined in § 412.23(e)(4), will be paid based on 100 percent of the standard Federal rate, as described in § 412.523, with no transition payments, as described in § 412.533.

§ 412.535 Publication of the Federal prospective payment rates.

CMS publishes information pertaining to the long-term care hospital prospective payment system effective for each fiscal year in the **Federal Register**. This information includes the unadjusted Federal payment rates, the LTC–DRG classification system and associated weighting factors, and a description of the methodology and data used to calculate the payment rates. This information is published on or before August 1 prior to the beginning of each fiscal year.

§ 412.541 Method of payment under the long-term care hospital prospective payment system.

(a) *General rule.* Subject to the exceptions in paragraphs (b) and (c) of this section, long-term care hospitals receive payment under this subpart for inpatient operating costs and capital-related costs for each discharge only following submission of a discharge bill.

(b) *Periodic interim payments*—(1) *Criteria for receiving periodic interim payments.* (i) A long-term care hospital receiving payment under this subpart may receive periodic interim payments (PIP) for Part A services under the PIP method subject to the provisions of § 413.64(h) of this subchapter.

(ii) To be approved for PIP, the long-term care hospital must meet the qualifying requirements in § 413.64(h)(3) of this subchapter.

(iii) As provided in § 413.64(h)(5) of this subchapter, intermediary approval is conditioned upon the intermediary's best judgment as to whether payment can be made under the PIP method without undue risk of its resulting in an overpayment to the provider.

(2) *Frequency of payment.* (i) For long-term care hospitals approved for PIP and paid solely under Federal prospective payment system rates under § 412.533(b), the intermediary estimates the long-term care hospital's Federal prospective payments net after estimated beneficiary deductibles and coinsurance and makes biweekly payments equal to 1/26 of the total estimated amount of payment for the year.

(ii) For long-term care hospitals approved for PIP and paid using the blended payment schedule specified in § 412.533(a) for cost reporting periods beginning on or after October 1, 2002, and before October 1, 2006, the intermediary estimates the hospital's portion of the Federal prospective payments net and the hospital's portion of the reasonable cost-based reimbursement payments net, after beneficiary deductibles and coinsurance, in accordance with the blended transition percentages specified in § 412.533(a), and makes biweekly payments equal to 1/26 of the total estimated amount of both portions of payments for the year.

(iii) If the long-term care hospital has payment experience under the prospective payment system, the intermediary estimates PIP based on that payment experience, adjusted for projected changes supported by substantiated information for the current year.

(iv) Each payment is made 2 weeks after the end of a biweekly period of service as described in § 413.64(h)(6) of this subchapter.

(v) The interim payments are reviewed at least twice during the reporting period and adjusted if necessary. Fewer reviews may be necessary if a hospital receives interim payments for less than a full reporting period. These payments are subject to final settlement.

(3) *Termination of PIP*—(i) *Request by the hospital.* Subject to paragraph (b)(1)(iii) of this section, a long-term care hospital receiving PIP may convert to receiving prospective payments on a non-PIP basis at any time.

(ii) *Removal by the intermediary.* An intermediary terminates PIP if the long-term care hospital no longer meets the requirements of § 413.64(h) of this subchapter.

(c) *Interim payments for Medicare bad debts and for Part A costs not paid under the prospective payment system.* For Medicare bad debts and for the costs of an approved education program, blood clotting factors, anesthesia services furnished by hospital-employed nonphysician anesthetists or obtained under arrangement, and photocopying and mailing medical records to a PRO, which are costs paid outside the prospective payment system, the intermediary determines the interim payments by estimating the reimbursable amount for the year based on the previous year's experience, adjusted for projected changes supported by substantiated information for the current year, and makes biweekly payments equal to 1/26 of the total estimated amount. Each payment is made 2 weeks after the end of the biweekly period of service as described in § 413.64(h)(6) of this subchapter. The interim payments are reviewed at least twice during the reporting period and adjusted if necessary. Fewer reviews may be necessary if a long-term care hospital receives interim payments for less than a full reporting period. These payments are subject to final cost settlement.

(d) *Outlier payments.* Additional payments for outliers are not made on an interim basis. The outlier payments are made based on the submission of a discharge bill and represent final payment.

(e) *Accelerated payments*—(1) *General rule.* Upon request, an accelerated payment may be made to a long-term care hospital that is receiving payment under this subpart and is not receiving PIP under paragraph (b) of this section if the hospital is experiencing financial difficulties because of the following:

(i) There is a delay by the intermediary in making payment to the long-term care hospital.

(ii) Due to an exceptional situation, there is a temporary delay in the hospital's preparation and submittal of bills to the intermediary beyond its normal billing cycle.

(2) *Approval of payment.* A request by a long-term care hospital for an accelerated payment must be approved by the intermediary and by CMS.

(3) *Amount of payment.* The amount of the accelerated payment is computed as a percentage of the net payment for unbilled or unpaid covered services.

(4) *Recovery of payment.* Recovery of the accelerated payment is made by recoupment as long-term care hospital bills are processed or by direct payment by the long-term care hospital.

B. Part 413 is amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT FOR SKILLED NURSING FACILITIES

1. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i) and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 13951(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

Subpart A—Introduction and General Rules

2. Section 413.1 is amended by:

a. Revising paragraph (d)(2)(ii).

b. Adding paragraphs (d)(2)(vi) and (d)(2)(vii).

§ 413.1 Introduction.

* * * * *

(d) * * *

(2) * * *

(ii) Payment to children's and psychiatric hospitals (as well as separate psychiatric units (distinct parts) of short-term general hospitals) that are excluded from the prospective payment systems under subpart B of part 412 of this subchapter and hospitals outside the 50 states and the District of Columbia is on a reasonable cost basis, subject to the provisions of § 413.40.

* * * * *

(vi) For cost reporting periods beginning before October 1, 2002, payment to long-term care hospitals that are excluded under subpart B of part 412 of this subchapter from the prospective payment systems is on a reasonable cost basis, subject to the provisions of § 413.40.

(vii) For cost reporting periods beginning on or after October 1, 2002, payment to the long-term hospitals that meet the condition for payment of §§ 412.505 through 412.511 of this subchapter is based on prospectively determined rates under subpart O of part 412 of this subchapter.

* * * * *

Subpart C—Limits on Cost Reimbursement

3. Section 413.40 is amended by:

a. Republishing the introductory text of paragraph (a)(2)(i).

b. Adding a new paragraph (a)(2)(i)(D).

c. Amending paragraph (a)(2)(ii) by republishing the introductory text, removing ''and'' at the end of paragraph (a)(2)(ii)(A), adding ''and'' at the end of paragraph (a)(2)(ii)(B), and adding a new paragraph (a)(2)(ii)(C).

d. Adding a new paragraph (a)(2)(iv).

§ 413.40 Ceiling on the rate of increase in hospital inpatient cost.

(a) *Introduction.* * * *

(2) *Applicability.* (i) This section is not applicable to—

* * * * *

(D) Long-term care hospitals, as defined in section 1886(d)(1)(B)(iv) of the Act, that are paid based on 100 percent of the Federal prospective payment rate for inpatient hospital services in accordance with section 123 of Public Law 106–113 and section 307 of Public Law 106–554 and § 412.533 (b) and (c) of subpart O of part 412 of this subchapter for cost reporting periods beginning on or after October 1, 2002.

(ii) For cost reporting periods beginning on or after October 1, 1983, this section applies to—

* * * * *

(C) Long-term care hospitals excluded from the prospective payment systems described in § 412.1(a)(1) of this subchapter and in accordance with § 412.23 of this subchapter, except as limited by paragraph (a)(2)(iv) of this section with respect to long-term care hospitals specified in § 412.23(e) of this subchapter.

* * * * *

(iv) For cost reporting periods beginning on or after October 1, 1983 and before October 1, 2002, this section applies to long-term care hospitals that are excluded from the prospective payment systems described in § 412.1(a)(1) of this subchapter. For cost reporting periods beginning on or after October 1, 2002, and before October 1, 2006, this section also applies to long-term care hospitals, subject to paragraph (a)(2)(i)(D) of this section.

* * * * *

Subpart E—Payments to Providers

4. In § 413.64, paragraph (h)(2)(i) is revised to read as follows:

§ 413.64 Payment to providers: Specific rules.

* * * * *

(h) *Periodic interim payment method of reimbursement*— * * *

(2) * * *

(i) Part A inpatient services furnished in hospitals that are excluded from the prospective payment systems, described in § 412.1(a)(1) of this chapter, under subpart B of part 412 of this subchapter or are paid under the prospective payment systems described in subparts O and P part 412 of this subchapter.

* * * * *

C. Part 476 is amended as set forth below:

PART 476—UTILIZATION AND QUALITY CONTROL REVIEW

1. The authority citation for part 476 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 476.71 is amended by revising paragraph (c)(2) to read as follows:

§ 476.71 PRO review requirements.

* * * * *

(c) *Other duties and functions.* * * *

(2) As directed by CMS, the PRO must review changes in DRG and LTC–DRG assignments made by the intermediary under the provisions of §§ 412.60(d) and 412.513(c) of this chapter that result in the assignment of a higher-weighted DRG or a different LTC–DRG. The PRO's review must verify that the diagnostic and procedural information supplied by the hospital is substantiated by the information in the medical record.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: December 12, 2001.

Thomas A. Scully,

Administrator, Health Care Financing Administration.

Dated: February 22, 2002.

Tommy G. Thompson,

Secretary.

Editorial Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A—Proposed Market Basket for LTCHs

A market basket has historically been used under the Medicare program to account for price increases of the services furnished by providers. The proposed market basket for LTCHs would include both operating and capital-related costs of LTCHs because we are proposing a single payment rate for both operating and capital-related costs (see section IV.D. of this proposed rule). Under the reasonable cost-based reimbursement system, the excluded hospital market basket is used to update limits on payment for operating costs for LTCHs. The excluded hospital market basket is based on operating costs from 1992 cost report data and includes Medicare-participating long-term care, rehabilitation, psychiatric, cancer, and children's hospitals. Since LTCH costs are reflected as a component of the excluded hospital market basket, this index in part reflects the cost shares of LTCHs. In order to capture total costs (operating and capital), we are proposing to add a capital component to

the excluded hospital market basket for use under the proposed LTCH prospective payment system. We are referring to this proposed index as the excluded hospital with capital market basket.

At this time, we are not proposing a separate market basket for LTCHs because, currently, we believe that we do not have sufficient LTCH data to develop an accurate market basket based only on the costs of LTCHs. As the excluded hospital market basket is currently used under the reasonable cost-based (TEFRA) payment system for LTCHs, we believe it is appropriate to propose to use that market basket (including a component for capital costs) for LTCHs under the proposed prospective payment system. The same excluded hospital with capital market basket is used under the IRF prospective payment system.

In the following discussion, we describe the methodology used to determine the proposed operating portion of the market basket, the methodology used to determine the proposed capital portion of the market basket, and additional analyses explaining the extent to which long-term care cost shares are reflected in the proposed excluded hospital with capital market basket for LTCHs.

The operating portion of the excluded hospital with capital market basket consists of major cost categories and their respective weights. The major cost categories include wages and salaries, employee benefits, professional fees, pharmaceuticals, and a residual. The weights for the major cost categories are developed from the Medicare cost reports for FY 1992. The cost report data used include those hospitals excluded from the hospital inpatient prospective payment system where the Medicare average length of stay is within 15 percent (higher or lower) of the total facility average length of stay. Using the 15-percent threshold resulted in a subset of hospitals that had a significant amount of Medicare days and costs compared to using no adjustment or using a different threshold. Limiting the sample in this way provides a more accurate reflection of the structure of costs for Medicare. We chose to compare the average length of stay for all patients to that of Medicare beneficiaries as the test of the similarity of the practice patterns for non-Medicare patients versus Medicare patients. Our goal was to measure cost shares that were reflective of case-mix and practice patterns associated with providing services to Medicare beneficiaries (61 FR 46196, August 30, 1996). We chose to limit the data in the database because we use facility-wide data to calculate the cost shares and including facilities report costs that are significantly reflective of the non-Medicare case-mix would inappropriately skew the data and would not be reflective of the case-mix and practice patterns associated with Medicare patients. We accomplished our goal by limiting the reports we used to those with similar length of stays for the Medicare and total facility populations. The detailed cost categories under the residual are derived from the Asset and Expenditure Survey, 1992 Census of Service Industries, by the Bureau of the Census, Economics and Statistics Administration, U.S. Department of Commerce. This survey is used in conjunction with the 1992 Input-Output Tables published by the Bureau of Economic Analysis, U.S. Department of Commerce. A more detailed description of the development of the operating portion of this index can be found in the final rule, ''Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1998 Rates,'' published in the **Federal Register** on August 29, 1997 (62 FR 45993 through 45997).

As previously stated, the proposed market basket for the proposed LTCH prospective payment system reflects both operating and capital-related costs. Capital-related costs include depreciation, interest, and other associated capital-related costs. The cost categories for the capital portion of the excluded hospital with capital market basket that we are proposing are developed in a similar manner as those for the hospital inpatient prospective payment system capital input price index, which is explained in the August 30, 1996 **Federal Register** (61 FR 46196–46197). We calculated weights for capital costs using the same set of Medicare cost reports used to develop the operating share. The resulting capital weight for the FY 1992 base year is 9.080 percent.

Because capital is consumed over time, depreciation and interest costs in the current year reflect both current and previous capital purchases. We use vintage weighting to capture this effect. Vintage weighting, which is explained in the August 30, 1996 **Federal Register** (61 FR 46197 through 46203), is the process of weighting price changes for individual years in proportion to that year's share of total purchases still being consumed.

In order to vintage weight the capital portion of the index as described above, the average useful life of both assets and debt instruments (for example, a loan, bond, or promissory note) needs to be developed. For depreciation expenses, the useful life of fixed and movable assets is calculated from the Medicare cost reports for excluded hospitals, including LTCHs. The average useful life for fixed assets is 21 years and the average useful life for movable assets is 13 years. For interest expenses, we use the same useful life of debt instruments used in the hospital inpatient prospective payment system capital input price index. We believe that this useful life is appropriate because it reflects the average useful life of hospital issuances of commercial and municipal bonds from all hospitals, including LTCHs. The average useful life of interest expense is determined to be 22 years (61 FR 46199). After the useful life is determined, a set of weights is calculated by determining the average proportion of depreciation and interest expense incurred in any given year during the useful life. This information is developed using the Medicare cost reports. These calculations are the same as those described for the hospital inpatient prospective payment system capital input price index in the August 30, 1996 **Federal Register** (61 FR 46196 through 46198). The price proxies for each of the capital cost categories are the same as those used for the hospital inpatient prospective payment system capital input price index. The cost categories, price proxies, and base-year FY 1992 weights for the excluded hospital with capital market basket that would be used under the proposed LTCH prospective payment system are presented in Table 1 below. The vintage weights for the index are presented in Table 2 below.

TABLE 1.—EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1992) STRUCTURE AND WEIGHTS

Cost category	Price/wage variable	Weights (%) base-year: 1992
Total		100.000
Compensation		57.935
Wages and Salaries	CMS Occupational Wage Proxy	47.417
Employee Benefits	CMS Occupational Benefit Proxy	10.519
Professional fees: Non-Medical	ECI—Compensation: Prof. & Technical	1.908
Utilities:		1.524
Electricity	WPI—Commercial Electric Power	0.916
Fuel Oil, Coal, etc.	WPI—Commercial Natural Gas	0.365
Water and Sewerage	CPI–U—Water & Sewage	0.243
Professional Liability Insurance	CMS—Professional Liability Premiums	0.983
All Other Products and Services		28.571
All Other Products		22.027
Pharmaceuticals	WPI—Prescription Drugs	2.791
Food: Direct Purchase	WPI—Processed Foods	2.155
Food: Contract Service	CPI–U—Food Away from Home	0.998
Chemicals	WPI—Industrial Chemicals	3.413

TABLE 1.—EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1992) STRUCTURE AND WEIGHTS—Continued

Cost category	Price/wage variable	Weights (%) base-year: 1992
Medical Instruments	WPI—Med. Inst. & Equipment	2.868
Photographic Supplies	WPI—Photo Supplies	0.364
Rubber and Plastics	WPI—Rubber & Plastic Products	4.423
Paper Products	WPI—Convert. Paper and Paperboard	1.984
Apparel	WPI—Apparel	0.809
Machinery and Equipment	WPI—Machinery & Equipment	0.193
Miscellaneous Products	WPI—Finished Goods	2.029
All Other Services:		6.544
Telephone	CPI–U—Telephone Services	0.574
Postage	CPI–U—Postage	0.268
All Other: Labor	ECI—Compensation: Service Workers	4.945
All Other: Non-Labor Intensive	CPI–U—All Items (Urban)	0.757
Capital-Related Costs:		9.080
Depreciation		5.611
Fixed Assets	Boeckh-Institutional Construction: 21 Year Useful Life	3.570
Movable Equipment	WPI—Machinery & Equipment: 13 Year Useful Life	2.041
Interest Costs:		3.212
Non-profit	Avg. Yield Municipal Bonds: 22 Year Useful Life	2.730
For-profit	Avg. Yield AAA Bonds: 22 Year Useful Life	0.482
Other Capital-Related Costs	CPI–U—Residential Rent	0.257

*The wage and benefit proxies are a blend of 10 employment cost indices (ECI). A detailed discussion of the price proxies can be found in the August 30, 1996 and August 29, 1997 FEDERAL REGISTER final rules (61 FR 46197 and 62 FR 45993). The operating cost categories in the excluded market basket described in August 29, 1997 FEDERAL REGISTER (62 FR 45993 through 45996) had weights that added to 100.0. When we add an additional set of cost category weights (capital weight = 9.08 percent) to this original group, the sum of the weights in the new index must still add to 100.0. If capital cost category weights sum to 9.08, then operating cost category weights must add to 90.92 percent. Each weight in the excluded hospital market basket from the August 29, 1997 FEDERAL REGISTER (62 FR 45996 through 45997) was multiplied by 0.9092 to determine its weight in the excluded hospital with capital market basket.

TABLE 2.—EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1992) VINTAGE WEIGHTS

Year	Fixed assets (21-year weights)	Movable assets (13-year weights)	Interest: capital-related (22-year weights)
1	0.0201	0.0454	0.0071
2	0.0225	0.0505	0.0082
3	0.0225	0.0562	0.0100
4	0.0285	0.0620	0.0119
5	0.0301	0.0660	0.0139
6	0.0321	0.0710	0.0161
7	0.0336	0.0764	0.0185
8	0.0353	0.0804	0.0207
9	0.0391	0.0860	0.0244
10	0.0431	0.0923	0.0291
11	0.0474	0.0987	0.0350
12	0.0513	0.1047	0.0409
13	0.0538	0.1104	0.0474
14	0.0561		0.0525
15	0.0600		0.0590
16	0.0628		0.0670
17	0.0658		0.0742
18	0.0695		0.0809
19	0.0720		0.0875
20	0.0748		0.0931
21	0.0769		0.0993
22			0.1034
Total	1.0000	1.0000	1.0000

We further analyzed the extent to which the weights in the excluded hospital with capital market basket that we are proposing reflect the cost weights in LTCHs, particularly since more than 50 percent of excluded hospitals are psychiatric hospitals. For this purpose, we conducted an analysis comparing the major cost weights for LTCHs to the same set of cost weights for excluded hospitals. We analyzed the variations of wages, drugs, and capital. This analysis showed that these weights differed only slightly between the different types of hospitals. When the LTCH weights were substituted into the market basket structure for sensitivity analysis, the effect was less than 0.2 percentage points in any given year. This difference is less than the 0.25 percentage point criterion that determines whether a forecast error adjustment under the hospital inpatient prospective payment system is warranted. In addition, many LTCHs specialize in rehabilitation or psychiatric services. Thus, it would be anticipated that the cost shares would not differ drastically from these other types of prospective payment system-excluded

hospitals. Based on this analysis, we believe that using the excluded hospital with capital market basket for the proposed LTCH prospective payment system would provide a reasonable measure of the price changes facing LTCHs. We request comments on any other data sources that may be available to provide detailed cost category information on LTCHs.

Appendix B—Proposed Update Framework

Section 307(b) of Public Law 106–554 requires that the Secretary examine the appropriateness of certain adjustments to the LTCH prospective payment, including updates. Updates are necessary to appropriately account for changes in the prices of goods and services used by a provider in furnishing care to patients. A market basket has historically been used under the Medicare program in setting update factors for services furnished by providers. We are proposing that, beginning in FY 2004, the annual update to the standard Federal rate (described in section IV.D. of this proposed rule) would be equal to the percentage change in the excluded hospital with capital market basket index described in Appendix A of this proposed rule. However, in the future we would develop an update framework to update payments to LTCHs that would account for other appropriate factors that affect the efficient delivery of services and care provided to Medicare patients. The update framework would be proposed in the appropriate annual proposed rule in accordance with the notice and comment rulemaking process. While we are not proposing a specific update framework for the LTCH prospective payment system at this time in this proposed rule, we are providing a conceptual basis for developing such an update framework.

A. Need for an Update Framework

Under the proposed LTCH prospective payment system, Medicare payments to LTCHs would be based on a predetermined national payment amount per discharge. Under section 123 of BBRA and section 307(b) of BIPA, the Secretary has broad authority to make appropriate adjustments to the LTCH payment system, including updates to payment rates. Our goal is to develop a method for analyzing and comparing expected trends in the underlying cost per discharge to use in establishing these updates. However, as stated earlier, we are proposing that until an update framework is developed, future updates would be based only on the increase in the excluded hospital with capital market basket.

A market basket for the proposed LTCH prospective payment system (the excluded hospital with capital market basket), developed by CMS's Office of the Actuary (OACT), represents just one component in the measure of growth in LTCHs' costs per discharge. It captures only the pure price change of inputs (labor, materials, and capital) used by the hospital to produce a constant quantity and quality of care. However, other factors also contribute to the change in costs per discharge, including changes in case-mix, intensity, and productivity.

Under the hospital inpatient prospective payment system, CMS and MedPAC use an update framework to account for these other factors and to make annual recommendations to the Congress concerning the magnitude of the update. We are currently examining these factors and exploring ways that they could be incorporated into an update framework for the LTCH prospective payment system. We are also examining some additional conceptual and data issues that must be considered when the framework is constructed and applied.

At this time, we are proposing that future annual updates would be equal to the proposed market basket for the LTCH prospective payment system described in Appendix A of this proposed rule (the excluded hospital with capital market basket). We believe an annual update based on the proposed market basket for the LTCH prospective payment system would provide for a reasonable update until a more comprehensive update framework can be developed. Currently, under the TEFRA system, the excluded hospital market basket is used as the basis for updates to LTCHs' target amounts for inpatient operating costs. While our experience in developing other update frameworks, such as the hospital inpatient (operating and capital) and SNF prospective payment systems, could provide us with the conceptual framework, we are not proposing to apply an update framework at this time since we believe that it is important to develop successively more refined models of an update framework based on our evaluation of public comments and recommendations submitted to us on this issue. We would then further study the potential adjustments and the best available data. We are actively pursuing developing an analytical framework that would support the continued appropriateness and relevance of the payment rates for services provided to beneficiaries in LTCHs. To this end, we are requesting comments concerning the use and feasibility of the conceptual approach outlined below in this proposed rule. We are specifically interested in comments concerning which factors are appropriate and should be accounted for in the framework, and suggestions concerning potential data sources and analysis to support the model. As with the existing methodology used under the hospital inpatient prospective payment system, the features of a LTCH-specific update framework would need to be based on sound policy and methodology.

B. Factors Inherent in LTCH Payments Per Discharge

In order to understand the factors that determine LTCH costs per discharge, it is first necessary to understand the factors that determine LTCH payments per discharge. Payments per discharge under the LTCH prospective payment system are based on the cost and an implicit normal profit margin to the LTCH in providing an efficient level of care. We have developed a methodology to identify a mutually exclusive and exhaustive set of factors included in LTCH payments per discharge. The discussion here details a set of equations to identify these factors.

In its simplest form, the average payment per discharge to a LTCH can be separated into a cost term and a profit term as shown in equation (1):

$$\frac{\text{Payments}}{\text{Discharge}} = \frac{\text{Costs}}{\text{Discharge}} + \frac{\text{Profits}}{\text{Discharge}} \qquad (1)$$

This equation can be made multiplicative by converting profit per discharge into a profit rate as shown in equation (2):

$$\frac{\text{Payments}}{\text{Discharge}} = \frac{\text{Costs}}{\text{Discharge}} * \frac{\text{Payments}}{\text{Costs}} \qquad (2)$$

An output price term can be introduced into the equation by multiplying and dividing through by input prices and productivity. As shown in equation (3), the term inside the brackets represents the output price, since an output price reflects the input price and profit margin adjusted for productivity:

$$\frac{\text{Payments}}{\text{Discharge}} = \frac{\text{Costs}}{\text{Discharge}} * \left(\frac{\text{Payments}}{\text{Costs}} * \frac{\text{Input Prices}}{\text{Productivity}} \right) * \frac{\text{Productivity}}{\text{Input Prices}} \qquad (3)$$

The cost per discharge term can be further separated by accounting for real case-mix. Under the proposed LTCH prospective payment system, LTC–DRGs are used to classify patients. Based on accurate DRG classification data, average real case-mix per discharge can be incorporated, as shown in equation (4):

$$\frac{\text{Payments}}{\text{Discharge}} = \frac{\text{Costs/Discharge}}{\text{Real Case Mix/Discharge}} * \frac{\text{Real Case Mix}}{\text{Discharge}} * \left(\frac{\text{Payments}}{\text{Costs}} * \frac{\text{Input Prices}}{\text{Productivity}}\right) * \frac{\text{Productivity}}{\text{Input Prices}} \qquad (4)$$

The term ''real'' is imperative here because only true case-mix should be measured, not case-mix caused by improper coding behavior. By rearranging the terms in equation (4), a set of mutually exclusive and exhaustive factors such as those shown in equation (5) can be identified:

$$\frac{\text{Payments}}{\text{Discharge}} = \left(\frac{\dfrac{\text{Costs}}{\text{Discharge}}}{\text{Input Prices} * \dfrac{\text{Real Case Mix}}{\text{Discharge}}} * \text{Productivity}\right) * \frac{\text{Real Case Mix}}{\text{Discharge}} * \frac{1}{\text{Productivity}} * \text{Input Prices} * \frac{\text{Payments}}{\text{Costs}} \qquad (5)$$

The term in brackets can be analyzed in two steps. First, excluding the productivity term results in case-mix adjusted real cost per discharge, which is input intensity per discharge. Second, multiplying input intensity by productivity results in case-mix adjusted real payment per discharge, or output intensity per discharge. The rationale behind this step is explained in detail in section C below.

The result of this exercise is that LTCH payment per discharge can be determined from the following factors:

$$\text{Payment Per Discharge} = \frac{\begin{pmatrix}\text{Case-Mix-Constant}\\ \text{Real Output Intensity}\\ \text{Per Discharge}\end{pmatrix} * \begin{pmatrix}\text{Real Case Mix}\\ \text{per Discharge}\end{pmatrix} * (\text{Input Prices}) * (\text{Profit Margins})}{\text{Productivity}} \qquad (6)$$

Thus, it holds that the change in LTCH payment per discharge is a function of the change in these factors shown above. In order to determine an annual update that most accurately reflects the underlying cost to the LTCH of efficiently providing care, the four factors related to cost must be accounted for when an update framework is developed. A brief discussion of each factor, including specific conceptual and data issues, is provided in section C below.

C. Defining Each Factor Inherent in LTCH Costs Per Discharge

Each cost factor from equation (6) in section B is discussed here in detail. Because this is a basic conceptual discussion, it is likely that more detailed issues may be relevant that are not explored here.

1. Input Prices

Input prices are the pure prices of inputs used by the LTCH in providing services. When we refer to inputs, we are referring to costs, which have both a price and a quantity component. The price is an input price, and the quantity component reflects real inputs or real costs. Similarly, when we refer to outputs, we are referring to payments, which also have both a price and a quantity component. The price component is the transaction output price, and the quantity component is the real output or real payment. The real inputs include labor, capital, and materials such as drugs. By definition, an input price reflects prices that LTCHs encounter in purchasing these inputs, whereas an output price reflects the prices that buyers encounter in purchasing LTCH services. We currently measure input prices using the excluded hospital with capital market basket. While not specific to LTCHs, we believe this index adequately reflects the input prices faced by LTCHs as we describe in Appendix A.

2. Productivity

Productivity measures the efficiency of the LTCH in producing outputs. It is the amount of real outputs, or real payments, that can be produced from a given amount of real inputs or real costs. For LTCHs, these inputs are in the form of both labor and capital; thus, they represent multifactor productivity, as not just labor productivity is reflected. The following set of equations shows how multifactor productivity can be measured in terms of available data, such as payments, costs, and input prices:

$$\text{Productivity} = \frac{\text{Real Payments}}{\text{Real Costs}} = \frac{\text{(Payments/Output Price)}}{\text{(Costs/Input Price)}} = \frac{\text{Payments}}{\text{Costs}} * \frac{\text{Input Price}}{\text{Output Price}}$$

Rearranging the terms, this multifactor productivity equation was used as the basis for incorporating an output price term in equation (3) above. This equation is the basis for understanding the relationship between input prices, output prices, profit margins, and productivity.

Equation (6) shows that productivity is divided through the equation, offsetting other factors. The theory behind this offset is that if an efficient LTCH in a competitive market can produce more output with the same amount of inputs, the full increase in input costs does not have to be passed on by the provider to maintain a normal profit margin.

3. Real Case Mix Per Discharge

Real case mix per discharge is the average overall mix of care provided by the LTCH, as measured using the proposed LTC–DRG classification system. Over time, a measure of real case mix will change as care is given in more or less complex LTC–DRGs. Changes in the level of care within a LTC–DRG classification group would not be reflected in a case-mix measure based on LTC–DRGs, but instead should be captured in the intensity factor of equation (6). The important distinction here is the difference between real and nominal case mix. Under the proposed LTCH prospective payment system, LTCHs would submit claims using the proposed LTC–DRG classification system. The case-mix reflected by the claims is

considered ''nominal''. However, the reported classification can reflect the true level of care provided or improper coding behavior. An example of improper coding behavior would be the upcoding, or case-mix ''creep,'' that took place when the hospital inpatient prospective payment system was implemented. Any change in case-mix that is not associated with the actual level of care or a true change in the level of care provided must be excluded in order to determine real case-mix.

4. Case-Mix Constant Real Output Intensity Per Discharge

Intensity is the true underlying nature of the product or service and can take the form of output or input intensity, or both. In the case of LTCHs, output intensity per discharge is associated with real payment per discharge, while input intensity per discharge is associated with real cost per discharge. For example, input intensity would be associated with a nurse's hours when providing treatment, whereas output intensity would be associated with the type and number of treatments a nurse provides. The underlying nature of LTCH services is determined by such factors as technological capabilities, increased utilization of inputs (such as labor or drugs), site of care, and practice patterns. Because these factors can be difficult to measure, intensity per discharge is usually calculated as a residual after the other factors from equation (6) have been accounted for.

Accounting for output intensity associated with an efficient LTCH can be more accurately analyzed using a LTCH's costs rather than its payments. This analysis would also provide an alternative to developing or using a transaction output price index. The following series of equations shows how to use the definition of an output price as defined earlier to convert the equation for output intensity per discharge to reflect costs instead of payments, as used in equation (6):

Case-Mix Constant Real Output Intensity per Discharge

$$\begin{aligned}
\text{Case-Mix Constant Real Output Intensity per Discharge} &= \frac{[\text{Payments/Discharge}]}{\text{Output Prices} * \text{Real Case Mix/Discharge}} \\
&= \frac{[\text{Payments/Discharge}]}{\left(\frac{\text{Payments}}{\text{Costs}} * \frac{\text{Input Prices}}{\text{Productivity}}\right) * \text{Real Case Mix/Discharge}} \\
&= \frac{[\text{Payments/Discharge}] * \text{Costs}}{\text{Payments} * \frac{\text{Input Prices}}{\text{Productivity}} * \text{Real Case Mix/Discharge}} \\
&= \frac{\text{Payments} * [\text{Costs/Discharge}]}{\text{Payments} * \frac{\text{Input Prices}}{\text{Productivity}} * \text{Real Case Mix/Discharge}} \\
&= \frac{[\text{Costs/Discharge}]}{\frac{\text{Input Prices}}{\text{Productivity}} * \text{Real Case Mix/Discharge}} \\
&= \frac{[\text{Costs/Discharge}]}{\text{Input Prices} * \text{Real Case Mix/Discharge}} * \text{Productivity}
\end{aligned}$$

The last equation is identical to the term in brackets in equation (5), case-mix constant real input intensity per discharge multiplied by productivity. Thus, output intensity per discharge can be defined in such a way that cost data from the LTCH are utilized. This equation can be broken down even further to account for different types of input intensity per discharge. We discuss this matter more fully in section D below.

D. Applying the Factors That Affect LTCH Costs Per Discharge in an Update Framework

As discussed earlier, payments per discharge under the LTCH prospective payment system must be updated each year. Under this proposed rule, updates would be equal to the percent change in the excluded hospital with capital market basket beginning in FY 2004. The development of an update framework with a sound conceptual basis would provide the capability to understand the underlying trends in LTCH costs per discharge for an efficient provider.

Earlier, factors inherent in LTCH costs per discharge were identified. Changes in these factors determine the change in LTCH costs per discharge. Accounting for each of these factors from equation (6) under the proposed LTCH prospective payment system is discussed below:

- Change in case-mix constant real output intensity per discharge would be accounted for in the update framework, reflecting the factors that affect not only case-mix constant real input intensity per discharge, but also productivity, which is determined separately. Factors that can cause changes in case-mix constant real input intensity per discharge include, but are not limited to, changes in site of service, changes in within-LTC–DRG case-mix, changes in practice patterns, changes in the use of inputs, and changes in technology available.
- As discussed earlier, changes in nominal case-mix are automatically included in the payment to the LTCH. Therefore, the update framework should include an adjustment to convert changes in nominal case-mix per discharge to changes in real case-mix per discharge.
- Change in multifactor productivity would be accounted for in the update framework. The availability of historical data on input prices, payments, and costs are useful in the analysis of this factor. MedPAC sets this factor as a target under hospital inpatient prospective payment system.
- Changes in input prices for labor, material, and capital would be accounted for in the update framework. Our Office of the Actuary currently has an input price index, or market basket, to assist in updating payments for LTCH services; this is the excluded hospital with capital market basket.
- In an update framework, a forecast error adjustment would be included to reflect that the updates are set prospectively and a forecast error for a given year should not be perpetuated in payments for future years. In the case of the hospital inpatient prospective payment system, this prospective adjustment is made on a 2-year lag and only if the error exceeds a defined threshold (0.25 percentage points).

E. Current Hospital Inpatient Prospective Payment System and Illustrative LTCH Prospective Payment System Update Frameworks

Table I shows the payment update framework for the current hospital inpatient prospective payment system and an illustrative update framework for the LTCH prospective payment system. Some of the factors in the hospital inpatient prospective payment system framework are computed using Medicare cost report data, while others

are determined based on policy considerations. The details of calculating each factor for the hospital inpatient prospective payment system framework can be found in the May 4, 2001 proposed rule (66 FR 22891) that set forth proposed updates to the payment rates used under the hospital inpatient prospective payment system for FY 2002. This design for a LTCH update framework is for illustrative purposes only, as much more work needs to be done to determine the appropriate level of detail for each factor. The numbers provided for the hospital update are only intended to serve as examples of prior updates recommended for the hospital inpatient prospective payment system.

MedPAC supports the use of this type of framework for updating payments and applies a similar framework when it proposes updates to hospital payments in its annual recommendation to Congress. The appropriateness of this framework for updating inpatient hospital payments was discussed in the Health Care Financing Review, Winter 1992, in an article entitled, ''Are PPS Payments Adequate? Issues for Updating and Assessing Rates.'' A similar framework would be useful for analyzing updates to LTCH payments.

TABLE I.—CURRENT CMS HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEM AND ILLUSTRATIVE LTCH PROSPECTIVE PAYMENT SYSTEM UPDATE FRAMEWORKS

CMS hospital inpatient prospective payment system update percent change in:	FY 2002 calculated hospital update percent change	Illustrative LTCH prospective payment system update percent change in:
CMS Prospective Payment System Hospital Market Basket.	3.3	CMS Excluded Hospital with Capital Market Basket.
Forecast Error	0.7	Forecast Error.
Productivity	−0.6 to −0.5	Productivity.
Output Intensity:	0.2 to 0.3	Output Intensity:
Science and Technology		Science and Technology.
Practice Patterns		Real Within-DRG Change.
Real Within-DRG Change		Utilization of Inputs.
Site of Service		Site of Service.
Case-mix Adjustment Factors:		Case-mix Adjustment Factors:
Projected Case Mix	&−1.0	Nominal Across-DRG Case-Mix.
Real Across-DRG Change	1.0	Real Across-DRG Change.
Total Cost Per Discharge	0.3 to 0.5	Total Cost Per Discharge.
Other Policy Factors:		Other Policy Factors:
Reclassification and Recalibration	0.0	None.
Total Calculated Update	3.6 to 3.8	Total Calculated Update.

[1] Table data derived from the May 4, 2001 FEDERAL REGISTER, Medicare Program; Changes to the Hospital Inpatient Prospective Payment System and Fiscal Year 2002 Rates; Proposed Rule (66 FR 22890).

F. Additional Conceptual and Data Issues

Additional conceptual issues specific to the proposed LTCH prospective payment system include the relevance of a site-of-service substitution adjustment, the necessity of an adjustment for LTC–DRG reclassification, the handling of one-time factors, and consistency with other types of hospital updates since LTCHs are similar in structure to these other types of hospitals.

Under the hospital inpatient prospective payment system, a site-of-service substitution factor (captured as part of intensity) was necessary because of the incentive to shift care from inpatient hospital to other settings such as hospital outpatient departments, SNFs, or HHAs. For the proposed LTCH prospective payment system, it is not clear without additional research whether there is an incentive to shift care either into or out of the LTCH because of the changes in behavior created by the different Medicare payment systems.

A reclassification and recalibration adjustment under the hospital inpatient prospective payment system is necessary to account for changes in the case-mix or the types of patients treated by LTCHs resulting from the annual reclassification and recalibration of the proposed LTC–DRGs. This adjustment for case-mix is applied to the current fiscal year update, but reflects the effect of revisions in the fiscal year 2 years prior. MedPAC does not make this adjustment in its update framework. Whether a LTC–DRG reclassification adjustment would be necessary in the update framework would depend on the data availability and the likelihood of revisions to LTC–DRG classifications on a periodic basis.

There is also a question about how to handle one-time factors (an example of these could be those increased costs of converting computer systems to Year 2000 compliance). An update framework might be an appropriate mechanism to account for these items, but because of uncertainty surrounding their impact on costs, determining an appropriate adjustment amount may be difficult. MedPAC has discussed this issue in prior sessions, but was unable to agree on the exact methodology for these types of factors.

LTCHs are heterogeneous and are designated as a separate payment category only because their patients have longer average lengths of stay. This raises the question of whether certain factors in an update framework for LTCHs should be consistent with the factors in an update framework for other types of hospitals since they face similar cost pressures. Additional research in this area would need to be conducted to determine the reasonableness of having consistent updates.

The purpose of this conceptual discussion is not to determine how the identified factors of the update framework would be measured. We recognize that there are significant measurement issues in accurately determining the factors that would account for growth in costs per discharge for efficiently providing care. This is driven, in part, by the shift from a cost-based payment system with an upper payment limit to a prospective payment system. Significant research and data collection will be necessary to accurately measure these factors over the historical period. One example of this would be to measure the distinction between real and nominal case-mix change. However, many of these same concerns were also encountered and successfully addressed in the hospital inpatient prospective payment system update framework.

The discussion here provides the conceptual basis for developing an update framework for the LTCH prospective payment system that reflects changes in the underlying costs of efficiently providing services. It is important to note that the framework would not handle distribution issues such as geographic wage variations. Due to some variations in technical methodologies for measuring the factors of an update framework, and because of some of the data concerns mentioned earlier, implementing an update framework for the LTCH prospective payment system would involve making significant policy decisions on issues similar to those made for the hospital inpatient prospective payment system update framework. We invite comments on the type of data sources to use, what other factors (if any) we should consider in an update framework, and any additional comments concerning the issues discussed in this proposed rule regarding the update framework.

[FR Doc. 02–6714 Filed 3–21–02; 8:45 am]

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Federal Register

Friday,
March 22, 2002

Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–7161–6]

RIN 2060–AJ87

National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed amendments.

SUMMARY: We are proposing to amend the national emission standards for hazardous air pollutants (NESHAP) final rule for new and existing publicly owned treatment works (POTW), pursuant to a settlement agreement with the Pharmaceutical Research and Manufacturers of America (PhRMA) regarding their petition for judicial review of the POTW NESHAP. We are proposing to rescind the applicability provision; adopt, for all industrial POTW treatment plants which are area sources of hazardous air pollutants (HAP), the same NESHAP requirements which apply to industrial POTW treatment plants which are major sources of HAP; and exempt industrial POTW treatment plants which are area sources of HAP from the permit requirements in section 502(a) of the Clean Air Act (CAA).

DATES: *Comments.* Comments must be received on or before April 22, 2002. If a public hearing is held, written comments must be received by May 6, 2002.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by April 1, 2002, a public hearing will be held on April 5, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–96–46, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–96–46, U.S. EPA, 401 M Street, SW., Washington DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is held, it will begin at 10:00 a.m. and will be held at EPA's Office of Administration Auditorium in Research Triangle Park, North Carolina, or an alternate site nearby. You should contact JoLynn Collins, Waste and Chemical Processes Group, Emission Standards Division, U.S. EPA (C439–03), Research Triangle Park, NC 27711, telephone (919) 541–5671, to request a public hearing, to request to speak at a public hearing, or to find out if a hearing will be held.

Docket. Docket No. A–96–46 for this regulation contains supporting information used in developing the standards. The docket is located at the U.S. EPA, 401 M Street SW., Washington, DC 20460, in Room M–1500, Waterside Mall (ground floor, central mall), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. Copies of docket materials may be obtained by request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Lucas, Waste and Chemical Processes Group, Emission Standards Division (C439–03), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–0884, facsimile number (919) 541–0246, electronic mail address ''lucas.bob@epa.gov''. For information concerning applicability and rule determinations, contact your State or local representative or the appropriate EPA Regional Office representatives.

SUPPLEMENTARY INFORMATION:

Comments

Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments will also be accepted on disks in WordPerfect® file format. All comments and data submitted in electronic form must note the docket number: (Docket No. A–96–46). No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it ''Confidential Business Information.'' Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention Mr. Bob Lucas, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park NC 27711.

The EPA will disclose information identified as CBI only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing

Persons interested in making an oral presentation or inquiring as to whether a hearing is to be held should contact Ms. JoLynn Collins at the Emission Standards Division (C439–03), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541–5671, at least 2 days in advance of the public hearing. Persons interested in attending the public hearing should also call Ms. Collins to verify time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed amendments.

Docket

The docket is an organized and complete record of all the information compiled by the EPA in the development of the POTW NESHAP and these amendments. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA). The regulatory text and other materials related to these proposed amendments are available for review in the docket, or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW)

In addition to being available in the docket, an electronic copy of today's proposed amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of today's proposed amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information

regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities

Categories and entities potentially regulated by this action:

Category	Standard industrial classification (SIC) codes	North American industrial classification system (NAICS) codes	Examples of potentially regulated entities
Federal Government	4952	22132	Sewage treatment facilities, and federally owned treatment works.
State/local/tribal Governments	4952	22132	Sewage treatment facilities, municipal wastewater treatment facilities, and publicly-owned treatment works.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that could potentially be regulated by these proposed amendments. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.1580 of the final rule and in 40 CFR 63.1. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline

The information presented in these proposed amendments is organized as follows:

I. What is the background for this action?
II. What changes to the current rule are we proposing as the result of our settlement agreement with the PhRMA?
III. What is the basis for controlling POTW that are area sources?
IV. What is the basis for exempting area source POTW from title V permitting?
V. What are the impacts of the proposed amendments?
VI. What are the administrative requirements?
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA) as Amended by Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act

I. What Is the Background for This Action?

On October 26, 1999, we promulgated the NESHAP for new and existing POTW using our authority under the CAA. In the POTW NESHAP, we require air pollution controls on new or reconstructed treatment plants at POTW that are major sources of HAP. Section 112(a)(1) of the CAA defines a major source as:

> * * * any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.

The standards also define the requirements for industrial POTW. Industrial POTW treat regulated waste streams from an industry (e.g., pharmaceutical manufacturing) that may be subject to other NESHAP, and this treatment allows the industry to comply with the NESHAP. The standards include a provision in 40 CFR 63.1580(c) stating that if an industrial major source complies with the other NESHAP by using the treatment and controls at a POTW, then the POTW is considered to be a major source.

On March 23, 2001, we published final rule amendments that clarified and corrected errors in the promulgated rule. The PhRMA filed a timely petition for judicial review of the POTW NESHAP. The PhRMA expressed concern regarding the practical effect of the provision classifying an industrial POTW as a major source if the POTW receives wastewater for treatment from a major source. In particular, PhRMA was concerned that industrial POTW might be subject to permitting requirements which would otherwise not apply, and that such POTW might elect not to accept wastewater for treatment in these circumstances. We entered into settlement discussions with PhRMA and executed a settlement agreement with PhRMA on November 16, 2001. We are proposing these amendments to the POTW NESHAP pursuant to that agreement.

II. What Changes to the Current Rule Are We Proposing as the Result of Our Settlement Agreement With the PhRMA?

In the settlement agreement we reached with PhRMA, we agreed to make the following three changes: (1) Rescind the applicability provision set forth in 40 CFR 63.1580(c); (2) adopt, for all industrial POTW treatment plants which are area sources of HAP, the same NESHAP requirements which apply to industrial POTW treatment plants which are major sources of HAP; and (3) exempt industrial POTW treatment plants which are area sources of HAP from the permit requirements in section 502(a) of the CAA. Area sources of HAP are those stationary sources that emit, or have the potential to emit, less than 10 tons per year of any one HAP or less than 25 tons per year of a combination of HAP.

The CAA affords EPA the authority to adopt an alternative definition of ''major source'' in appropriate circumstances. Our original intent in adopting the alternate definition in 40 CFR 63.1580(c) of the POTW NESHAP was to make all industrial POTW subject to direct enforcement under the CAA, thereby providing additional assurance that they would adhere to the treatment and control limits of the applicable industrial NESHAP. The proposed amendments will still accomplish this goal since all POTW that meet our definition of industrial POTW will remain subject to direct enforcement and will be required to meet the control limits of the applicable industrial NESHAP.

III. What Is the Basis for Controlling POTW That Are Area Sources?

As directed by section 112(k) of the CAA, we developed the Urban Air Toxics Strategy to control emissions of HAP from area sources in urban areas.

The Agency identified 33 HAP that present the greatest threat to public health in the largest number of urban areas as the result of emissions from area sources. In an action published in the **Federal Register** on July 19, 1999 (64 FR 38706), we identified POTW as one of the urban area source categories to be considered for additional regulation due to their contribution to HAP emissions in urban areas. At least six of the 33 urban area HAP (benzene, carbon tetrachloride, chloroform, ethylene dichloride, methylene chloride, tetrachloroethylene) may be emitted from POTW. Evaluating the feasibility of controlling HAP emissions from industrial POTW that are area sources is, therefore, one element in implementing our Urban Air Toxics Strategy.

Though POTW with significant HAP emissions are often associated with urban areas, today we are proposing a national rule. A national rule promotes regulatory consistency and assures that populations in smaller cities or rural areas that might be located near area sources will receive the same degree of protection. In addition, POTW serving urban areas can have rural locations. Therefore, a national rule was considered appropriate for POTW.

When EPA regulates HAP emissions from area sources, CAA section 112(d)(5) provides that we may set standards that provide for the use of generally available control technology (GACT). We have determined that GACT requirements for all existing industrial POTW which are area sources should be the same as the MACT requirements for those existing industrial POTW which are deemed to be major sources under the present rule. Thus, we are proposing to require that existing industrial POTW that are area sources must meet all requirements established by the applicable MACT standard for the industrial discharger. This approach assures that these requirements will be enforceable directly on an industrial POTW, without the need to classify any POTW, which itself emits HAP in area source quantities, as a major source.

Similarly, we have determined that GACT requirements for all new or reconstructed industrial POTW should be the same as MACT requirements for new or reconstructed industrial POTW which are deemed to be major sources under the present rule. This requires that such sources comply with the MACT requirements for the industrial discharger or for new or reconstructed non-industrial POTW, whichever are more stringent. Thus, we are proposing to establish GACT equal to MACT for all industrial POTW. This eliminates the need for a definition of major source which is derived from the characteristics of the discharger rather than the POTW.

For new and existing non-industrial POTW which are area sources, we have determined that GACT should be no control. In addition, we are proposing to exempt such non-industrial area sources from the notification requirements in the current POTW NESHAP. In setting GACT at no control for non-industrial facilities, we considered the fact that the emissions of HAP from these facilities are typically low. Existing facilities do not have HAP controls, and the cost of adding HAP controls would be prohibitively high. With respect to new sources, the CAA provides that we may establish GACT requirements less stringent than the MACT floors which apply to major sources. Although we did adopt some limited control requirements for those new non-industrial POTW which are major sources, we do not believe that requiring such controls would be warranted for those new POTW which are only area sources.

IV. What Is the Basis for Exempting Area Source POTW From Title V Permitting?

We are proposing in these amendments to exempt those POTW which are regulated as area sources from any title V permitting requirements under the authority given to us under section 502(a) of the CAA. Major sources of HAP are subject to the Federal operating permit program established by title V of the CAA. Area sources may also be subject to title V permitting requirements, but we have statutory authority to waive these requirements. Section 502(a) of the CAA permits us to exempt one or more area source categories (in whole or in part) from the requirement to obtain a permit under 42 U.S.C. 7661a(a) if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories.

One important purpose of the operating permit program is to provide a mechanism by which the general regulatory requirements established by Federal standards can be translated into more specific requirements for affected sources. This function is largely superfluous in the case of industrial POTW because the industrial dischargers are themselves subject to the operating permit program, and wastewater treatment requirements under the applicable MACT standards are one of the elements which must be incorporated in the operating permit for those industrial facilities. Thus, it is unnecessary to require that an area source industrial POTW obtain an operating permit to identify those wastewater treatment requirements which apply. The applicable requirements will already be clearly established in the permit obtained by the discharger.

In these circumstances, we believe it would be unnecessarily burdensome to require that an area source POTW obtain an additional operating permit. Therefore, unless the source is otherwise required to obtain an operating permit, we are proposing to exempt the owner or operator of industrial POTW area sources subject to these standards from any permitting requirements under title V of the CAA.

V. What Are the Impacts of the Proposed Amendments?

We do not expect any change in the environmental impacts of the final POTW NESHAP as a result of these proposed amendments to apply GACT to POTW. All facilities regulated under the present rule must meet identical control requirements under these proposed amendments. Furthermore, EPA anticipates that there will be no increase in the regulatory burden because there are no additional sources that will be subject to the standards. Indeed, we believe that the proposed amendments, by exempting industrial POTW which are area sources from title V requirements, which would apply to them under the present rule, will relieve affected sources, State and local agencies, and the EPA Regional Offices from an unnecessary regulatory burden.

VI. What Are the Administrative Requirements?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that these proposed amendments are not a ''significant regulatory action'' because they will not have an annual effect on the economy of $100 million or more.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled, ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government.''

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed regulation.

The proposed amendments 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, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed amendments.

Nevertheless, in the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA, State, and local governments, EPA specifically solicits comment on the proposed amendments from State and local officials.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

These proposed amendments do not have tribal implications, as specified in Executive Order 13175. The proposed amendments impose no new requirements on new or existing POTW treatment plants. Thus, Executive Order 13175 does not apply to this action.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on the proposed amendments from tribal officials.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation.

The proposed amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, the proposed amendments have been determined to be not ''economically significant'' as defined under Executive Order 12866.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The proposed amendments are not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because they are not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more

for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The regulatory revisions proposed here have no associated costs and do not contain requirements that apply to small governments or impose obligations upon them. This action is not a ''significant'' regulatory action within the meaning of Executive Order 12866 and does not impose any additional Federal mandate on State, local and tribal governments or the private sector within the meaning of the UMRA. Thus, today's proposed amendments are not subject to the requirements of sections 202, 203, and 205 of the UMRA.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis for any action subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed amendments on small entities, small entity is defined as: (1) A small business as defined in each applicable subpart; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The proposed amendments would not have a significant impact on a substantial number of small entities as they impose no new requirements on new or existing POTW treatment plants. Pursuant to the provisions of 5 U.S.C. 605(b), I certify that the proposed amendments will not have a significant economic impact on a substantial number of small entities. Under the RFA, an agency is not required to prepare a regulatory flexibility analysis for a rule that the agency head certifies will not have a significant economic impact on a substantial number of small entities. Consequently, a regulatory flexibility analysis is not required and has not been prepared.

H. Paperwork Reduction Act

An Information Collection Request (ICR) document was prepared for the October 26, 1999 POTW final rule by the EPA and was submitted to and approved by OMB. A copy of this ICR (OMB control number 2060–0428) may be obtained from Sandy Farmer by mail at the Office of Environmental Information, Collection Strategies Division, U.S. EPA (2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at *farmer.sandy@epa.gov,* or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.*

Burden means 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.

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 the EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. These proposed amendments will not require additional burden on the affected entities.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable VCS.

The proposed amendments do not involve any additional technical standards. Therefore, the requirements of the NTTAA do not apply to this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 15, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart VVV—[Amended]

2. Section 63.1580 is revised to read as follows:

§ 63.1580 Am I subject to this subpart?

(a) You are subject to this subpart if the following are all true:

(1) You own or operate a publicly owned treatment works (POTW) that includes an affected source (§ 63.1595);

(2) The affected source is located at a POTW which is a major source of hazardous air pollutant (HAP) emissions, or at any industrial POTW regardless of whether or not it is a major source of HAP; and

(3) Your POTW is required to develop and implement a pretreatment program as defined by 40 CFR 403.8 (for a POTW owned or operated by a municipality, state, or intermunicipal or interstate agency), or your POTW would meet the general criteria for development and implementation of a pretreatment program (for a POTW owned or operated by a department, agency, or instrumentality of the Federal government).

(b) If your existing POTW treatment plant is not located at a major source as of October 26, 1999, but thereafter becomes a major source for any reason other than reconstruction, then, for the purpose of this subpart, your POTW treatment plant would be considered an existing source.

Note to Paragraph (b): See § 63.2 of the national emission standards for hazardous air pollutants (NESHAP) general provisions in subpart A of this part for the definitions of major source and area source.

(c) If you reconstruct your POTW treatment plant, then the requirements for a new or reconstructed POTW

treatment plant, as defined in § 63.1595, apply.

3. Section 63.1586 introductory text is revised to read as follows:

§ 63.1586 What are the emission points and control requirements for a non-industrial POTW treatment plant?

There are no control requirements for an existing non-industrial POTW treatment plant. There are no control requirements for any new or reconstructed area source non-industrial POTW treatment plant which is not a major source of HAP. The control requirements for a new or reconstructed major source non-industrial POTW treatment plant which is a major source of HAP are as follows:

* * * * *

4. Section 63.1590 is amended by revising paragraph (a)(1) introductory text to read as follows:

§ 63.1590 What reports must I submit?

(a)(1) If you have an existing non-industrial POTW treatment plant, or a new or reconstructed area source non-industrial POTW treatment plant, you are not required to submit a notification of compliance status. If you have a new or reconstructed non-industrial POTW treatment plant which is a major source of HAP, you must submit to the Administrator a notification of compliance status, signed by the responsible official who must certify its accuracy, attesting to whether your POTW treatment plant has complied with this subpart. This notification must be submitted initially, and each time a notification of compliance status is required under this subpart. At a minimum, the notification must list—

* * * * *

5. Section 63.1591 is amended by revising paragraph (a) to read as follows:

§ 63.1591 What are my notification requirements?

(a) If you have an industrial POTW treatment plant or a new or reconstructed non-industrial POTW which is a major source of HAP, and your State has not been delegated authority, you must submit notifications to the appropriate EPA Regional Office. If your State has been delegated authority you must submit notifications to your State and a copy of each notification to the appropriate EPA Regional Office. The Regional Office may waive this requirement for any notifications at its discretion.

* * * * *

6. Section 63.1592 is revised to read as follows:

§ 63.1592 Which General Provisions apply to my POTW treatment plant?

(a) Table 1 to this subpart lists the General Provisions (40 CFR part 63, subpart A) which do and do not apply to POTW treatment plants.

(b) Unless a permit is otherwise required by law, the owner or operator of an industrial POTW which is not a major source is exempt from the permitting requirements established by 40 CFR part 70.

7. Table 1 to subpart VVV is amended by revising the entries ''§ 63.1(c)(2)(i)'' and ''§ 63.9(a)'' to read as follows:

TABLE 1 TO SUBPART VVV.—APPLICABILITY OF 40 CFR PART 63—GENERAL PROVISIONS TO SUBPART VVV

General provisions reference	Applicable to subpart VVV	Explanation
*	*	* * * * *
§ 63.1(c)(2)(i)	Yes/No	State options regarding title V permit. Unless required by the State, area sources subject to subpart VVV are exempted from permitting requirements.
*	*	* * * * *
§ 63.9(a)	Yes/No	Applicability of notification requirements. Existing major non-industrial POTW treatment plants, and existing and new or reconstructed area non- industrial POTW treatment plants are not subject to the notification requirements.
*	*	* * * * *

[FR Doc. 02–6847 Filed 3–21–02; 8:45 am]

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Federal Register

Friday,
March 22, 2002

Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–7161–6]

RIN 2060–AJ87

National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed amendments.

SUMMARY: We are proposing to amend the national emission standards for hazardous air pollutants (NESHAP) final rule for new and existing publicly owned treatment works (POTW), pursuant to a settlement agreement with the Pharmaceutical Research and Manufacturers of America (PhRMA) regarding their petition for judicial review of the POTW NESHAP. We are proposing to rescind the applicability provision; adopt, for all industrial POTW treatment plants which are area sources of hazardous air pollutants (HAP), the same NESHAP requirements which apply to industrial POTW treatment plants which are major sources of HAP; and exempt industrial POTW treatment plants which are area sources of HAP from the permit requirements in section 502(a) of the Clean Air Act (CAA).

DATES: *Comments.* Comments must be received on or before April 22, 2002. If a public hearing is held, written comments must be received by May 6, 2002.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by April 1, 2002, a public hearing will be held on April 5, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–96–46, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–96–46, U.S. EPA, 401 M Street, SW., Washington DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is held, it will begin at 10:00 a.m. and will be held at EPA's Office of Administration Auditorium in Research Triangle Park, North Carolina, or an alternate site nearby. You should contact JoLynn Collins, Waste and Chemical Processes Group, Emission Standards Division, U.S. EPA (C439–03), Research Triangle Park, NC 27711, telephone (919) 541–5671, to request a public hearing, to request to speak at a public hearing, or to find out if a hearing will be held.

Docket. Docket No. A–96–46 for this regulation contains supporting information used in developing the standards. The docket is located at the U.S. EPA, 401 M Street SW., Washington, DC 20460, in Room M–1500, Waterside Mall (ground floor, central mall), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. Copies of docket materials may be obtained by request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Lucas, Waste and Chemical Processes Group, Emission Standards Division (C439–03), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–0884, facsimile number (919) 541–0246, electronic mail address ''lucas.bob@epa.gov''. For information concerning applicability and rule determinations, contact your State or local representative or the appropriate EPA Regional Office representatives.

SUPPLEMENTARY INFORMATION:

Comments

Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments will also be accepted on disks in WordPerfect® file format. All comments and data submitted in electronic form must note the docket number: (Docket No. A–96–46). No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it ''Confidential Business Information.'' Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention Mr. Bob Lucas, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park NC 27711.

The EPA will disclose information identified as CBI only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing

Persons interested in making an oral presentation or inquiring as to whether a hearing is to be held should contact Ms. JoLynn Collins at the Emission Standards Division (C439–03), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541–5671, at least 2 days in advance of the public hearing. Persons interested in attending the public hearing should also call Ms. Collins to verify time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed amendments.

Docket

The docket is an organized and complete record of all the information compiled by the EPA in the development of the POTW NESHAP and these amendments. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA). The regulatory text and other materials related to these proposed amendments are available for review in the docket, or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW)

In addition to being available in the docket, an electronic copy of today's proposed amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of today's proposed amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information

regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities

Categories and entities potentially regulated by this action:

Category	Standard industrial classification (SIC) codes	North American industrial classification system (NAICS) codes	Examples of potentially regulated entities
Federal Government	4952	22132	Sewage treatment facilities, and federally owned treatment works.
State/local/tribal Governments	4952	22132	Sewage treatment facilities, municipal wastewater treatment facilities, and publicly-owned treatment works.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that could potentially be regulated by these proposed amendments. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.1580 of the final rule and in 40 CFR 63.1. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline

The information presented in these proposed amendments is organized as follows:

I. What is the background for this action?
II. What changes to the current rule are we proposing as the result of our settlement agreement with the PhRMA?
III. What is the basis for controlling POTW that are area sources?
IV. What is the basis for exempting area source POTW from title V permitting?
V. What are the impacts of the proposed amendments?
VI. What are the administrative requirements?
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA) as Amended by Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act

I. What Is the Background for This Action?

On October 26, 1999, we promulgated the NESHAP for new and existing POTW using our authority under the CAA. In the POTW NESHAP, we require air pollution controls on new or reconstructed treatment plants at POTW that are major sources of HAP. Section 112(a)(1) of the CAA defines a major source as:

> * * * any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.

The standards also define the requirements for industrial POTW. Industrial POTW treat regulated waste streams from an industry (e.g., pharmaceutical manufacturing) that may be subject to other NESHAP, and this treatment allows the industry to comply with the NESHAP. The standards include a provision in 40 CFR 63.1580(c) stating that if an industrial major source complies with the other NESHAP by using the treatment and controls at a POTW, then the POTW is considered to be a major source.

On March 23, 2001, we published final rule amendments that clarified and corrected errors in the promulgated rule. The PhRMA filed a timely petition for judicial review of the POTW NESHAP. The PhRMA expressed concern regarding the practical effect of the provision classifying an industrial POTW as a major source if the POTW receives wastewater for treatment from a major source. In particular, PhRMA was concerned that industrial POTW might be subject to permitting requirements which would otherwise not apply, and that such POTW might elect not to accept wastewater for treatment in these circumstances. We entered into settlement discussions with PhRMA and executed a settlement agreement with PhRMA on November 16, 2001. We are proposing these amendments to the POTW NESHAP pursuant to that agreement.

II. What Changes to the Current Rule Are We Proposing as the Result of Our Settlement Agreement With the PhRMA?

In the settlement agreement we reached with PhRMA, we agreed to make the following three changes: (1) Rescind the applicability provision set forth in 40 CFR 63.1580(c); (2) adopt, for all industrial POTW treatment plants which are area sources of HAP, the same NESHAP requirements which apply to industrial POTW treatment plants which are major sources of HAP; and (3) exempt industrial POTW treatment plants which are area sources of HAP from the permit requirements in section 502(a) of the CAA. Area sources of HAP are those stationary sources that emit, or have the potential to emit, less than 10 tons per year of any one HAP or less than 25 tons per year of a combination of HAP.

The CAA affords EPA the authority to adopt an alternative definition of ''major source'' in appropriate circumstances. Our original intent in adopting the alternate definition in 40 CFR 63.1580(c) of the POTW NESHAP was to make all industrial POTW subject to direct enforcement under the CAA, thereby providing additional assurance that they would adhere to the treatment and control limits of the applicable industrial NESHAP. The proposed amendments will still accomplish this goal since all POTW that meet our definition of industrial POTW will remain subject to direct enforcement and will be required to meet the control limits of the applicable industrial NESHAP.

III. What Is the Basis for Controlling POTW That Are Area Sources?

As directed by section 112(k) of the CAA, we developed the Urban Air Toxics Strategy to control emissions of HAP from area sources in urban areas.

The Agency identified 33 HAP that present the greatest threat to public health in the largest number of urban areas as the result of emissions from area sources. In an action published in the **Federal Register** on July 19, 1999 (64 FR 38706), we identified POTW as one of the urban area source categories to be considered for additional regulation due to their contribution to HAP emissions in urban areas. At least six of the 33 urban area HAP (benzene, carbon tetrachloride, chloroform, ethylene dichloride, methylene chloride, tetrachloroethylene) may be emitted from POTW. Evaluating the feasibility of controlling HAP emissions from industrial POTW that are area sources is, therefore, one element in implementing our Urban Air Toxics Strategy.

Though POTW with significant HAP emissions are often associated with urban areas, today we are proposing a national rule. A national rule promotes regulatory consistency and assures that populations in smaller cities or rural areas that might be located near area sources will receive the same degree of protection. In addition, POTW serving urban areas can have rural locations. Therefore, a national rule was considered appropriate for POTW.

When EPA regulates HAP emissions from area sources, CAA section 112(d)(5) provides that we may set standards that provide for the use of generally available control technology (GACT). We have determined that GACT requirements for all existing industrial POTW which are area sources should be the same as the MACT requirements for those existing industrial POTW which are deemed to be major sources under the present rule. Thus, we are proposing to require that existing industrial POTW that are area sources must meet all requirements established by the applicable MACT standard for the industrial discharger. This approach assures that these requirements will be enforceable directly on an industrial POTW, without the need to classify any POTW, which itself emits HAP in area source quantities, as a major source.

Similarly, we have determined that GACT requirements for all new or reconstructed industrial POTW should be the same as MACT requirements for new or reconstructed industrial POTW which are deemed to be major sources under the present rule. This requires that such sources comply with the MACT requirements for the industrial discharger or for new or reconstructed non-industrial POTW, whichever are more stringent. Thus, we are proposing to establish GACT equal to MACT for all industrial POTW. This eliminates the need for a definition of major source which is derived from the characteristics of the discharger rather than the POTW.

For new and existing non-industrial POTW which are area sources, we have determined that GACT should be no control. In addition, we are proposing to exempt such non-industrial area sources from the notification requirements in the current POTW NESHAP. In setting GACT at no control for non-industrial facilities, we considered the fact that the emissions of HAP from these facilities are typically low. Existing facilities do not have HAP controls, and the cost of adding HAP controls would be prohibitively high. With respect to new sources, the CAA provides that we may establish GACT requirements less stringent than the MACT floors which apply to major sources. Although we did adopt some limited control requirements for those new non-industrial POTW which are major sources, we do not believe that requiring such controls would be warranted for those new POTW which are only area sources.

IV. What Is the Basis for Exempting Area Source POTW From Title V Permitting?

We are proposing in these amendments to exempt those POTW which are regulated as area sources from any title V permitting requirements under the authority given to us under section 502(a) of the CAA. Major sources of HAP are subject to the Federal operating permit program established by title V of the CAA. Area sources may also be subject to title V permitting requirements, but we have statutory authority to waive these requirements. Section 502(a) of the CAA permits us to exempt one or more area source categories (in whole or in part) from the requirement to obtain a permit under 42 U.S.C. 7661a(a) if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories.

One important purpose of the operating permit program is to provide a mechanism by which the general regulatory requirements established by Federal standards can be translated into more specific requirements for affected sources. This function is largely superfluous in the case of industrial POTW because the industrial dischargers are themselves subject to the operating permit program, and wastewater treatment requirements under the applicable MACT standards are one of the elements which must be incorporated in the operating permit for those industrial facilities. Thus, it is unnecessary to require that an area source industrial POTW obtain an operating permit to identify those wastewater treatment requirements which apply. The applicable requirements will already be clearly established in the permit obtained by the discharger.

In these circumstances, we believe it would be unnecessarily burdensome to require that an area source POTW obtain an additional operating permit. Therefore, unless the source is otherwise required to obtain an operating permit, we are proposing to exempt the owner or operator of industrial POTW area sources subject to these standards from any permitting requirements under title V of the CAA.

V. What Are the Impacts of the Proposed Amendments?

We do not expect any change in the environmental impacts of the final POTW NESHAP as a result of these proposed amendments to apply GACT to POTW. All facilities regulated under the present rule must meet identical control requirements under these proposed amendments. Furthermore, EPA anticipates that there will be no increase in the regulatory burden because there are no additional sources that will be subject to the standards. Indeed, we believe that the proposed amendments, by exempting industrial POTW which are area sources from title V requirements, which would apply to them under the present rule, will relieve affected sources, State and local agencies, and the EPA Regional Offices from an unnecessary regulatory burden.

VI. What Are the Administrative Requirements?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that these proposed amendments are not a ''significant regulatory action'' because they will not have an annual effect on the economy of $100 million or more.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled, ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government.''

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed regulation.

The proposed amendments 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, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed amendments.

Nevertheless, in the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA, State, and local governments, EPA specifically solicits comment on the proposed amendments from State and local officials.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

These proposed amendments do not have tribal implications, as specified in Executive Order 13175. The proposed amendments impose no new requirements on new or existing POTW treatment plants. Thus, Executive Order 13175 does not apply to this action.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on the proposed amendments from tribal officials.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation.

The proposed amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, the proposed amendments have been determined to be not ''economically significant'' as defined under Executive Order 12866.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The proposed amendments are not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because they are not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more

for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The regulatory revisions proposed here have no associated costs and do not contain requirements that apply to small governments or impose obligations upon them. This action is not a ''significant'' regulatory action within the meaning of Executive Order 12866 and does not impose any additional Federal mandate on State, local and tribal governments or the private sector within the meaning of the UMRA. Thus, today's proposed amendments are not subject to the requirements of sections 202, 203, and 205 of the UMRA.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis for any action subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed amendments on small entities, small entity is defined as: (1) A small business as defined in each applicable subpart; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The proposed amendments would not have a significant impact on a substantial number of small entities as they impose no new requirements on new or existing POTW treatment plants. Pursuant to the provisions of 5 U.S.C. 605(b), I certify that the proposed amendments will not have a significant economic impact on a substantial number of small entities. Under the RFA, an agency is not required to prepare a regulatory flexibility analysis for a rule that the agency head certifies will not have a significant economic impact on a substantial number of small entities. Consequently, a regulatory flexibility analysis is not required and has not been prepared.

H. Paperwork Reduction Act

An Information Collection Request (ICR) document was prepared for the October 26, 1999 POTW final rule by the EPA and was submitted to and approved by OMB. A copy of this ICR (OMB control number 2060–0428) may be obtained from Sandy Farmer by mail at the Office of Environmental Information, Collection Strategies Division, U.S. EPA (2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at *farmer.sandy@epa.gov,* or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.*

Burden means 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.

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 the EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. These proposed amendments will not require additional burden on the affected entities.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable VCS.

The proposed amendments do not involve any additional technical standards. Therefore, the requirements of the NTTAA do not apply to this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 15, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart VVV—[Amended]

2. Section 63.1580 is revised to read as follows:

§ 63.1580 Am I subject to this subpart?

(a) You are subject to this subpart if the following are all true:

(1) You own or operate a publicly owned treatment works (POTW) that includes an affected source (§ 63.1595);

(2) The affected source is located at a POTW which is a major source of hazardous air pollutant (HAP) emissions, or at any industrial POTW regardless of whether or not it is a major source of HAP; and

(3) Your POTW is required to develop and implement a pretreatment program as defined by 40 CFR 403.8 (for a POTW owned or operated by a municipality, state, or intermunicipal or interstate agency), or your POTW would meet the general criteria for development and implementation of a pretreatment program (for a POTW owned or operated by a department, agency, or instrumentality of the Federal government).

(b) If your existing POTW treatment plant is not located at a major source as of October 26, 1999, but thereafter becomes a major source for any reason other than reconstruction, then, for the purpose of this subpart, your POTW treatment plant would be considered an existing source.

Note to Paragraph (b): See § 63.2 of the national emission standards for hazardous air pollutants (NESHAP) general provisions in subpart A of this part for the definitions of major source and area source.

(c) If you reconstruct your POTW treatment plant, then the requirements for a new or reconstructed POTW

treatment plant, as defined in § 63.1595, apply.

3. Section 63.1586 introductory text is revised to read as follows:

§ 63.1586 What are the emission points and control requirements for a non-industrial POTW treatment plant?

There are no control requirements for an existing non-industrial POTW treatment plant. There are no control requirements for any new or reconstructed area source non-industrial POTW treatment plant which is not a major source of HAP. The control requirements for a new or reconstructed major source non-industrial POTW treatment plant which is a major source of HAP are as follows:

* * * * *

4. Section 63.1590 is amended by revising paragraph (a)(1) introductory text to read as follows:

§ 63.1590 What reports must I submit?

(a)(1) If you have an existing non-industrial POTW treatment plant, or a new or reconstructed area source non-industrial POTW treatment plant, you are not required to submit a notification of compliance status. If you have a new or reconstructed non-industrial POTW treatment plant which is a major source of HAP, you must submit to the Administrator a notification of compliance status, signed by the responsible official who must certify its accuracy, attesting to whether your POTW treatment plant has complied with this subpart. This notification must be submitted initially, and each time a notification of compliance status is required under this subpart. At a minimum, the notification must list—

* * * * *

5. Section 63.1591 is amended by revising paragraph (a) to read as follows:

§ 63.1591 What are my notification requirements?

(a) If you have an industrial POTW treatment plant or a new or reconstructed non-industrial POTW which is a major source of HAP, and your State has not been delegated authority, you must submit notifications to the appropriate EPA Regional Office. If your State has been delegated authority you must submit notifications to your State and a copy of each notification to the appropriate EPA Regional Office. The Regional Office may waive this requirement for any notifications at its discretion.

* * * * *

6. Section 63.1592 is revised to read as follows:

§ 63.1592 Which General Provisions apply to my POTW treatment plant?

(a) Table 1 to this subpart lists the General Provisions (40 CFR part 63, subpart A) which do and do not apply to POTW treatment plants.

(b) Unless a permit is otherwise required by law, the owner or operator of an industrial POTW which is not a major source is exempt from the permitting requirements established by 40 CFR part 70.

7. Table 1 to subpart VVV is amended by revising the entries ''§ 63.1(c)(2)(i)'' and ''§ 63.9(a)'' to read as follows:

TABLE 1 TO SUBPART VVV.—APPLICABILITY OF 40 CFR PART 63—GENERAL PROVISIONS TO SUBPART VVV

General provisions reference	Applicable to subpart VVV	Explanation
*	*	* * * * *
§ 63.1(c)(2)(i)	Yes/No	State options regarding title V permit. Unless required by the State, area sources subject to subpart VVV are exempted from permitting requirements.
*	*	* * * * *
§ 63.9(a)	Yes/No	Applicability of notification requirements. Existing major non-industrial POTW treatment plants, and existing and new or reconstructed area non- industrial POTW treatment plants are not subject to the notification requirements.
*	*	* * * * *

[FR Doc. 02–6847 Filed 3–21–02; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7162–6]

RIN 2060–AJ34

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendment.

SUMMARY: The EPA is proposing to amend the national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient (PAI) Production. This action changes the deadline for existing sources complying with the rule. Under the promulgated rule, existing affected sources would be required to be in compliance by June 23, 2002. With this action, existing sources will be required to be in compliance with the rule by December 23, 2003.

In the ''Rules and Regulations'' section of this **Federal Register**, we are making this change in a direct final rule without prior proposal because we view the change as noncontroversial and anticipate no adverse comments. We have explained our reasons for this change in the preamble to the direct final rule.

If we receive no adverse comments, we will take no further action on this proposed rule. If we receive an adverse comment on the revised definition, we will publish a timely withdrawal of the direct final rule, and it will not take effect. If we receive adverse comment, we will respond to all such comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by April 22, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–20, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–20, U.S. EPA, 401 M Street, SW., Washington DC 20460. A separate copy of each public comment must also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT**.

Docket. Docket No. A–95–20 contains supporting information used in developing the NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (C504–04), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments

Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect. All comments and data submitted in electronic form must note the docket number A–95–20. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Randy McDonald, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27709. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW)

In addition to being available in the docket, an electronic copy of this proposed rule will also be available through the WWW. Following signature, a copy of this action will be posted on the EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities

The regulated category and entities affected by this action include:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry	Typically, 325199 and 325320.	Typically, 2869 and 2879	• Producers of pesticide active ingredients that contain organic compounds that are used in herbicides, insecticides, or fungicides. • Producers of any integral intermediate used in on-site production of an active ingredient used in herbicides, insecticides, or fungicides.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the proposed revisions to the regulation affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR part 63, subpart MMM. If you have questions regarding the applicability of this proposed amendment to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. What Action Is EPA Proposing?

This proposal would change the compliance date from June 23, 2002 to December 23, 2003. For further information, please see the information provided in the direct final rulemaking notice located in the ''Rules and Regulations'' section of today's **Federal Register**.

II. What Are the Administrative Requirements for This Action?

Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule amendment on small entities, a small entity is defined as:

(1) A small business in the NAICS code 325320 that has as many as 500 employees; (2) a small business in NAICS code 325199 that has as many as 1,000 employees; (3) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (4) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule amendment on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact on small entities'' (5 U.S.C. 603 and 604). Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The EPA has determined that none of the small entities will experience a significant impact because the proposed amendment merely extends the compliance date for such regulated entities and therefore imposes no additional regulatory requirements on owners or operators of affected sources.

For information regarding other administrative requirements for this action, please see the direct final rule action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 19, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–6976 Filed 3–21–02; 8:45 am]

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Federal Register

Friday,
March 22, 2002

Part IV

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7162–6]

RIN 2060–AJ34

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendment.

SUMMARY: The EPA is proposing to amend the national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient (PAI) Production. This action changes the deadline for existing sources complying with the rule. Under the promulgated rule, existing affected sources would be required to be in compliance by June 23, 2002. With this action, existing sources will be required to be in compliance with the rule by December 23, 2003.

In the ''Rules and Regulations'' section of this **Federal Register**, we are making this change in a direct final rule without prior proposal because we view the change as noncontroversial and anticipate no adverse comments. We have explained our reasons for this change in the preamble to the direct final rule.

If we receive no adverse comments, we will take no further action on this proposed rule. If we receive an adverse comment on the revised definition, we will publish a timely withdrawal of the direct final rule, and it will not take effect. If we receive adverse comment, we will respond to all such comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by April 22, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–20, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–20, U.S. EPA, 401 M Street, SW., Washington DC 20460. A separate copy of each public comment must also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT**.

Docket. Docket No. A–95–20 contains supporting information used in developing the NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (C504–04), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments

Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect. All comments and data submitted in electronic form must note the docket number A–95–20. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Randy McDonald, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27709. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW)

In addition to being available in the docket, an electronic copy of this proposed rule will also be available through the WWW. Following signature, a copy of this action will be posted on the EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities

The regulated category and entities affected by this action include:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry	Typically, 325199 and 325320.	Typically, 2869 and 2879	• Producers of pesticide active ingredients that contain organic compounds that are used in herbicides, insecticides, or fungicides. • Producers of any integral intermediate used in on-site production of an active ingredient used in herbicides, insecticides, or fungicides.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the proposed revisions to the regulation affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR part 63, subpart MMM. If you have questions regarding the applicability of this proposed amendment to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. What Action Is EPA Proposing?

This proposal would change the compliance date from June 23, 2002 to December 23, 2003. For further information, please see the information provided in the direct final rulemaking notice located in the ''Rules and Regulations'' section of today's **Federal Register**.

II. What Are the Administrative Requirements for This Action?

Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule amendment on small entities, a small entity is defined as:

(1) A small business in the NAICS code 325320 that has as many as 500 employees; (2) a small business in NAICS code 325199 that has as many as 1,000 employees; (3) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (4) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule amendment on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact on small entities'' (5 U.S.C. 603 and 604). Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The EPA has determined that none of the small entities will experience a significant impact because the proposed amendment merely extends the compliance date for such regulated entities and therefore imposes no additional regulatory requirements on owners or operators of affected sources.

For information regarding other administrative requirements for this action, please see the direct final rule action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 19, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–6976 Filed 3–21–02; 8:45 am]

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Friday,
March 22, 2002

Part V

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production; Direct Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7162–5]

RIN 2060–AJ34

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendment.

SUMMARY: We are taking direct final action to amend the national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient (PAI) Production. This amendment will extend the compliance date of the PAI Production NESHAP as currently promulgated by 18 months. Under the promulgated rule, the compliance date is June 23, 2002. With this action, existing sources will be required to comply with the rule by December 23, 2003.

DATES: This direct final rule will be effective May 21, 2002 without further notice, unless the EPA receives adverse comments by April 22, 2002. If we receive any adverse comments on the amendment, we will publish a timely withdrawal of this direct final rule in the **Federal Register** indicating that the amendment in this rule will not take effect.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–20, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–20, U.S. EPA, 401 M Street, SW., Washington, DC 20460. A separate copy of each public comment must also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT.**

Docket. Docket No. A–95–20 contains supporting information used in developing the PAI Production NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (C504–04), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect. All comments and data submitted in electronic form must note the docket number A–95–20. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

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Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on the EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The regulated category and entities affected by this action include:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry	Typically, 325199 and 325320.	Typically, 2869 and 2879	Producers of pesticide active ingredients that contain organic compounds that are used in herbicides, insecticides, or fungicides. Producers of any integral intermediate used in onsite production of an active ingredient used in herbicides, insecticides, or fungicides.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the regulation affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR part 63, subpart MMM. If you have questions regarding the applicability of the amendment to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of this direct final rule is available only by

filing a petition for review in the U.S. Court of Appeals for the District of Columbia by May 21, 2002. Under section 307(d)(7)(B) of the CAA, only an objection to this rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review.

I. Why Are We Amending the Rule?

Today's action is necessary to extend the compliance deadline of the PAI Production NESHAP pending review and approval of a proposed Settlement Agreement between EPA and the American Crop Protection Association (ACPA) and BASF Corporation and promulgation of rule amendments described in that Settlement Agreement. The ACPA and BASF, as well as the American Coke and Coal Chemicals Institute and Eastman Chemical Company, filed petitions for judicial review of the PAI Production NESHAP promulgated on June 23, 1999 (64 FR 33550). On January 18, 2002, EPA entered into a Settlement Agreement with ACPA and BASF, resolving petitioners' litigation. Notice of that Agreement was published in the **Federal Register** pursuant to the requirements of CAA section 113(g) on February 4, 2002 (67 FR 5116). The Agreement calls for EPA to propose a number of amendments to the PAI Production NESHAP.

Upon final approval of the Settlement Agreement, EPA will publish a notice of proposed rulemaking with the agreed upon amendments to the PAI Production NESHAP in the **Federal Register**.

Today's direct final rulemaking extends the compliance date for existing sources from June 23, 2002 to December 23, 2003. We believe this extension reasonably allows sources time to assess the compliance impacts of proposed Settlement Agreement and the agreed upon rule amendments included in that Settlement Agreement. While we believe the 18-month extension of the compliance date will be sufficient for all sources to come into compliance with the amendments to be proposed, should a source be unable to meet that compliance date because of the need to install controls that cannot be installed by that date, that source may request an extension of up to 1 year in accordance with 40 CFR 63.1364(a)(2).

II. What Amendment Are We Making to the Rule Today?

Today's action extends the compliance date by 18 months. Under the promulgated PAI Production NESHAP, existing affected sources would be required to be in compliance by June 23, 2002. With today's action, existing sources must be in compliance by December 23, 2003.

III. Why Are We Publishing the Amendment as a Direct Final Rule?

We are taking separate direct final action on the compliance date extension in order to ensure that this change can be completed before the current June 23, 2002 compliance deadline for existing sources. We believe this 18-month extension is a noncontroversial change because it provides a reasonable extension to allow sources to assess the compliance impacts of the agreed upon rule amendments included in the Settlement Agreement. As a result, we anticipate no adverse comments.

If we receive an adverse comment on this action, we will publish a timely notice before the effective date of this amendment indicating that the rule is being withdrawn. In the ''Proposed Rules'' section of this **Federal Register**, we are publishing a separate document that will serve as the proposal for the amendment in the event that we receive an adverse comment. We will respond to all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on the subsequent final rule. Any parties interested in commenting must do so at this time.

IV. What Are the Administrative Requirements for This Direct Final Rule?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule amendment is a not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This direct final rule amendment does not have federalism implications. It 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, as specified in Executive Order 13132, because State and local governments do not own or operate any sources that would be subject to the PAI Production NESHAP. Thus, Executive Order 13132 does not apply to this direct final rule amendment.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

The final rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the rule.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If

the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule amendment is not subject to Executive Order 13045 because it is based on technology performance, not health or safety risks. Furthermore, this rule amendment has been determined not to be ''economically significant'' as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule amendment does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. For existing sources, the total annual cost of the PAI Production NESHAP has been estimated to be approximately $39.4 million (64 FR 33559, June 23, 1999). Today's amendment does not add new requirements that would increase this cost. Thus, this rule amendment is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this rule amendment contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, this rule amendment is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this direct final rule amendment on small entities, a small entity is defined as: (1) A small business in the North American Industrial Classification System (NAICS) code 325320 that has as many as 500 employees; (2) a small business in NAICS code 325199 that has as many as 1,000 employees; (3) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (4) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's amendment on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact on small entities'' (5 U.S.C. 603 and 604). Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's amendment imposes no additional regulatory requirements on owners or operators of affected sources. The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule amendment.

G. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in the 1999 PAI Production NESHAP under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control No. 2060–0370. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1807.01), and a copy may be obtained from Sandy Farmer by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington DC 20460, by email at *farmer.sandy@epa.gov,* or by calling (202) 260–2740.

The amendment contained in this direct final rule will have no impact on the information collection burden estimates made previously. Consequently, the ICR has not been revised.

H. National Technology Transfer and Advancement Act of 1995

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides

not to use available and applicable voluntary consensus standards.

Today's action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Congressional Review Act

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

J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This direct final rule amendment is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 19, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart MMM—National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

2. Section 63.1364 is amended by revising paragraph (a)(1) as follows:

§ 63.1364 Compliance dates.

(a) *Compliance dates for existing sources.* (1) An owner or operator of an existing affected source must comply with the provisions in this subpart by December 23, 2003.

* * * * *

[FR Doc. 02–6975 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Friday,
March 22, 2002

Part V

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production; Direct Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7162–5]

RIN 2060–AJ34

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendment.

SUMMARY: We are taking direct final action to amend the national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient (PAI) Production. This amendment will extend the compliance date of the PAI Production NESHAP as currently promulgated by 18 months. Under the promulgated rule, the compliance date is June 23, 2002. With this action, existing sources will be required to comply with the rule by December 23, 2003.

DATES: This direct final rule will be effective May 21, 2002 without further notice, unless the EPA receives adverse comments by April 22, 2002. If we receive any adverse comments on the amendment, we will publish a timely withdrawal of this direct final rule in the **Federal Register** indicating that the amendment in this rule will not take effect.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–20, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–20, U.S. EPA, 401 M Street, SW., Washington, DC 20460. A separate copy of each public comment must also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT.**

Docket. Docket No. A–95–20 contains supporting information used in developing the PAI Production NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (C504–04), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect. All comments and data submitted in electronic form must note the docket number A–95–20. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Randy McDonald, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27709. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on the EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The regulated category and entities affected by this action include:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry	Typically, 325199 and 325320.	Typically, 2869 and 2879	Producers of pesticide active ingredients that contain organic compounds that are used in herbicides, insecticides, or fungicides. Producers of any integral intermediate used in onsite production of an active ingredient used in herbicides, insecticides, or fungicides.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the regulation affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR part 63, subpart MMM. If you have questions regarding the applicability of the amendment to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of this direct final rule is available only by

filing a petition for review in the U.S. Court of Appeals for the District of Columbia by May 21, 2002. Under section 307(d)(7)(B) of the CAA, only an objection to this rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review.

I. Why Are We Amending the Rule?

Today's action is necessary to extend the compliance deadline of the PAI Production NESHAP pending review and approval of a proposed Settlement Agreement between EPA and the American Crop Protection Association (ACPA) and BASF Corporation and promulgation of rule amendments described in that Settlement Agreement. The ACPA and BASF, as well as the American Coke and Coal Chemicals Institute and Eastman Chemical Company, filed petitions for judicial review of the PAI Production NESHAP promulgated on June 23, 1999 (64 FR 33550). On January 18, 2002, EPA entered into a Settlement Agreement with ACPA and BASF, resolving petitioners' litigation. Notice of that Agreement was published in the **Federal Register** pursuant to the requirements of CAA section 113(g) on February 4, 2002 (67 FR 5116). The Agreement calls for EPA to propose a number of amendments to the PAI Production NESHAP.

Upon final approval of the Settlement Agreement, EPA will publish a notice of proposed rulemaking with the agreed upon amendments to the PAI Production NESHAP in the **Federal Register**.

Today's direct final rulemaking extends the compliance date for existing sources from June 23, 2002 to December 23, 2003. We believe this extension reasonably allows sources time to assess the compliance impacts of proposed Settlement Agreement and the agreed upon rule amendments included in that Settlement Agreement. While we believe the 18-month extension of the compliance date will be sufficient for all sources to come into compliance with the amendments to be proposed, should a source be unable to meet that compliance date because of the need to install controls that cannot be installed by that date, that source may request an extension of up to 1 year in accordance with 40 CFR 63.1364(a)(2).

II. What Amendment Are We Making to the Rule Today?

Today's action extends the compliance date by 18 months. Under the promulgated PAI Production NESHAP, existing affected sources would be required to be in compliance by June 23, 2002. With today's action, existing sources must be in compliance by December 23, 2003.

III. Why Are We Publishing the Amendment as a Direct Final Rule?

We are taking separate direct final action on the compliance date extension in order to ensure that this change can be completed before the current June 23, 2002 compliance deadline for existing sources. We believe this 18-month extension is a noncontroversial change because it provides a reasonable extension to allow sources to assess the compliance impacts of the agreed upon rule amendments included in the Settlement Agreement. As a result, we anticipate no adverse comments.

If we receive an adverse comment on this action, we will publish a timely notice before the effective date of this amendment indicating that the rule is being withdrawn. In the ''Proposed Rules'' section of this **Federal Register**, we are publishing a separate document that will serve as the proposal for the amendment in the event that we receive an adverse comment. We will respond to all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on the subsequent final rule. Any parties interested in commenting must do so at this time.

IV. What Are the Administrative Requirements for This Direct Final Rule?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule amendment is a not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This direct final rule amendment does not have federalism implications. It 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, as specified in Executive Order 13132, because State and local governments do not own or operate any sources that would be subject to the PAI Production NESHAP. Thus, Executive Order 13132 does not apply to this direct final rule amendment.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

The final rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the rule.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If

the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule amendment is not subject to Executive Order 13045 because it is based on technology performance, not health or safety risks. Furthermore, this rule amendment has been determined not to be ''economically significant'' as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule amendment does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. For existing sources, the total annual cost of the PAI Production NESHAP has been estimated to be approximately $39.4 million (64 FR 33559, June 23, 1999). Today's amendment does not add new requirements that would increase this cost. Thus, this rule amendment is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this rule amendment contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, this rule amendment is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this direct final rule amendment on small entities, a small entity is defined as: (1) A small business in the North American Industrial Classification System (NAICS) code 325320 that has as many as 500 employees; (2) a small business in NAICS code 325199 that has as many as 1,000 employees; (3) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (4) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's amendment on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact on small entities'' (5 U.S.C. 603 and 604). Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's amendment imposes no additional regulatory requirements on owners or operators of affected sources. The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule amendment.

G. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in the 1999 PAI Production NESHAP under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control No. 2060–0370. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1807.01), and a copy may be obtained from Sandy Farmer by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington DC 20460, by email at *farmer.sandy@epa.gov,* or by calling (202) 260–2740.

The amendment contained in this direct final rule will have no impact on the information collection burden estimates made previously. Consequently, the ICR has not been revised.

H. National Technology Transfer and Advancement Act of 1995

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides

not to use available and applicable voluntary consensus standards.

Today's action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Congressional Review Act

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

J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This direct final rule amendment is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 19, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart MMM—National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

2. Section 63.1364 is amended by revising paragraph (a)(1) as follows:

§ 63.1364 Compliance dates.

(a) *Compliance dates for existing sources.* (1) An owner or operator of an existing affected source must comply with the provisions in this subpart by December 23, 2003.

* * * * *

[FR Doc. 02–6975 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Friday,
March 22, 2002

Part VI

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production; Good Cause Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7162–7]

RIN 2060–AJ34

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production; Good Cause Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendment.

SUMMARY: We are taking final action to amend the national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient (PAI) Production. This amendment will extend the compliance date as currently promulgated for existing sources subject to the PAI NESHAP by 60 days. Without this amendment, the compliance date under the rule would be June 23, 2002. With this action, existing sources will be required to comply with the rule by August 22, 2002.

DATES: March 22, 2002.

ADDRESSES: Docket No. A–95–20 contains supporting information used in developing the PAI Production NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (Mail Code C504–04), U.S. EPA, Research Triangle Park, North Carolina 27711 (express packages to 4930 Old Page Road, Research Triangle Park, North Carolina 27709), telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on the EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The regulated category and entities affected by this action include:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry	Typically, 325199 and 325320	Typically, 2869 and 2879	• Producers of pesticide active ingredients that contain organic compounds that are used in herbicides, insecticides, or fungicides. • Producers of any integral intermediate used in onsite production of an active ingredient used in herbicides, insecticides, or fungicides.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the regulation affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR part 63, subpart MMM. If you have questions regarding the applicability of the amendment to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of this rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by May 21, 2002.

I. What Amendment Are We Making to the Rule?

Today's action extends the compliance deadline for existing sources under the PAI NESHAP by 60 days. Without this amendment, 40 CFR 63.1364(a)(1) would require existing affected sources to comply with the provisions of subpart MMM by June 23, 2002. With today's action, existing sources must be in compliance by August 22, 2002.

This amendment will result in deferring the deadline for submitting precompliance plans pursuant to 40 CFR 63.1368(e). Sources are required to submit these precompliance plans 3 months prior to the compliance date of the standard (66 FR 58393, November 21, 2001). Without this amendment, precompliance plans would be due March 23, 2002. As a result of this amendment, precompliance plans will now be due May 22, 2002, unless and until the compliance deadline is further extended.

II. Why Are We Amending the Rule?

We are promulgating an interim 60-day extension of the compliance deadline for the PAI NESHAP in order to avoid unnecessary and potentially confusing submittals of the precompliance plans currently due March 23, 2002. Submittal of the precompliance plans on March 23, 2002 would be premature and unnecessary because EPA is currently in the process of proposing amendments to the PAI NESHAP, including an extension of the compliance deadline. These other amendments are the result of a settlement agreement between EPA and the American Crop Protection Association (ACPA) and BASF

Corporation signed January 18, 2002.[1] Under the settlement agreement, EPA is to take final action on the proposed amendments by September 6, 2002.

Pursuant to the settlement agreement, EPA is publishing a direct final rulemaking and parallel proposal that would extend the compliance deadline in 40 CFR 63.1364(a)(1) to December 23, 2003. These actions, however, will not be effective before March 23, 2002.

Thus, in order to minimize confusion and potentially unnecessary paperwork, we believe an immediate short-term extension of the compliance deadline is necessary while the direct final rulemaking process is completed.

III. Why Are We Relying on the Good Cause Exemption to Promulgate This Final Rule?

Clean Air Act section 307(d) generally requires EPA to provide notice and an opportunity for public comment on actions promulgating or revising regulations under CAA section 112(d). Section 307(d)(2), however, exempts rulemakings where the Agency, pursuant to section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)), finds for good cause that notice and comment are impracticable, unnecessary, or contrary to the public interest.

The EPA finds that good cause is warranted to forgo notice and opportunity for comment for this action to provide a short, interim extension of the compliance deadline. The EPA is publishing a direct final rule and parallel proposal to extend the compliance deadline further, but the public review process will not be completed before the current March 23, 2002 precompliance plan deadline. The EPA believes it is in the interest of all parties to avoid the unnecessary paperwork burden associated with submitting precompliance plans that need to be revised and resubmitted if the PAI NESHAP are amended according to the settlement agreement with ACPA and BASF. The interim extension is of limited duration to allow EPA time to complete the public review process on the direct final rule extending the compliance deadline to December 23, 2003.

IV. What Are the Administrative Requirements for This Final Rule?

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. Because the EPA has made a ''good cause'' finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute (see Summary), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate as described in sections 203 and 204 of UMRA. This final rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). This final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, as specified in Executive Order 13132 (64 FR 43255, August 10,1999). This final rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant.

This final rule amendment does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This final rule amendment also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). This final rule amendment does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This direct final rule amendment is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. The EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the June 23, 1999 final rule (64 FR 33550).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, the EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 22, 2002. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 19, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart MMM—National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

2. Section 63.1364 is amended by revising the paragraph (a)(1) as follows:

§ 63.1364 Compliance dates.

(a) *Compliance dates for existing sources.* (1) An owner or operator of an existing affected source must comply with the provisions in this subpart by August 22, 2002.

* * * * *

[FR Doc. 02–6974 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–P

[1] Notice of this agreement was published in the **Federal Register** pursuant to the requirements of CAA section 113(g) on February 4, 2002 (67 FR 5116).

Federal Register

Friday,
March 22, 2002

Part VI

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production; Good Cause Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7162–7]

RIN 2060–AJ34

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production; Good Cause Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendment.

SUMMARY: We are taking final action to amend the national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient (PAI) Production. This amendment will extend the compliance date as currently promulgated for existing sources subject to the PAI NESHAP by 60 days. Without this amendment, the compliance date under the rule would be June 23, 2002. With this action, existing sources will be required to comply with the rule by August 22, 2002.

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ADDRESSES: Docket No. A–95–20 contains supporting information used in developing the PAI Production NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (Mail Code C504–04), U.S. EPA, Research Triangle Park, North Carolina 27711 (express packages to 4930 Old Page Road, Research Triangle Park, North Carolina 27709), telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION:

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Judicial Review. Under section 307(b)(1) of the CAA, judicial review of this rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by May 21, 2002.

I. What Amendment Are We Making to the Rule?

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Corporation signed January 18, 2002.[1] Under the settlement agreement, EPA is to take final action on the proposed amendments by September 6, 2002.

Pursuant to the settlement agreement, EPA is publishing a direct final rulemaking and parallel proposal that would extend the compliance deadline in 40 CFR 63.1364(a)(1) to December 23, 2003. These actions, however, will not be effective before March 23, 2002.

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The EPA finds that good cause is warranted to forgo notice and opportunity for comment for this action to provide a short, interim extension of the compliance deadline. The EPA is publishing a direct final rule and parallel proposal to extend the compliance deadline further, but the public review process will not be completed before the current March 23, 2002 precompliance plan deadline. The EPA believes it is in the interest of all parties to avoid the unnecessary paperwork burden associated with submitting precompliance plans that need to be revised and resubmitted if the PAI NESHAP are amended according to the settlement agreement with ACPA and BASF. The interim extension is of limited duration to allow EPA time to complete the public review process on the direct final rule extending the compliance deadline to December 23, 2003.

IV. What Are the Administrative Requirements for This Final Rule?

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. Because the EPA has made a ''good cause'' finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute (see Summary), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate as described in sections 203 and 204 of UMRA. This final rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). This final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, as specified in Executive Order 13132 (64 FR 43255, August 10,1999). This final rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant.

This final rule amendment does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This final rule amendment also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). This final rule amendment does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This direct final rule amendment is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. The EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the June 23, 1999 final rule (64 FR 33550).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, the EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 22, 2002. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 19, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart MMM—National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

2. Section 63.1364 is amended by revising the paragraph (a)(1) as follows:

§ 63.1364 Compliance dates.

(a) *Compliance dates for existing sources.* (1) An owner or operator of an existing affected source must comply with the provisions in this subpart by August 22, 2002.

* * * * *

[FR Doc. 02–6974 Filed 3–21–02; 8:45 am]

BILLING CODE 6560–50–P

[1] Notice of this agreement was published in the **Federal Register** pursuant to the requirements of CAA section 113(g) on February 4, 2002 (67 FR 5116).

Federal Register

Friday,
March 22, 2002

Part VII

Securities and Exchange Commission

17 CFR Parts 210, 228, et al.
Requirements for Arthur Andersen LLP Auditing Clients; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 228, 229, 230, 240, 249 and 260

[Release Nos. 33–8070, 34–45590; 35–27503; 39–2395; IA–2018; IC–25464; FR–62; File No. S7–03–02]

RIN 3235–AI46

Requirements for Arthur Andersen LLP Auditing Clients

AGENCY: Securities and Exchange Commission.

ACTION: Temporary final rules and final rules.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') is adopting rules to assure a continuing and orderly flow of information to investors and the U.S. capital markets and to minimize any potential disruptions that may occur as a result of the indictment of Arthur Andersen LLP. In addition, the Commission is modifying, in a manner appropriate for the protection of investors, the requirements for including audited financial statements in registration statements under the Securities Act of 1933 and filings required by the Trust Indenture Act of 1939 by registrants that are unable to or elect not to have Andersen issue a manually signed audit report, if the audit report was not issued on or before March 14, 2002. The rules the Commission adopts today, as well as the interpretations set forth in this release, are necessary to effect these modifications. The Commission emphasizes that companies should make their own independent decisions regarding completion of current audits and that these actions are intended only to provide neutral flexibility for companies as they make those decisions. In the document, the Commission also publishes companion orders relating to, among other matters, the inclusion of financial statements in filings under the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940 and the Public Utility Holding Company Act of 1935 where those filings would have included audited or reviewed financial statements for which Andersen had been engaged as the independent public accountant. To further an understanding of the interactions between the rules we adopt today, the interpretations set forth in this document and the exemptions provided in the orders, this document includes a description of a number of actions taken in those orders.

EFFECTIVE DATE: March 18, 2002, except Temporary Notes 1T, 2T and 3T preceding § 210.3–01; § 228.304T; Temporary Notes 1T and 2T in § 228.310; §§ 228.601T, 229.304T, 229.601T, 230.427T; Instruction 2T following paragraph (b)(2)(iv) in § 230.428; and the amendments to Form 20–F will be effective from March 18, 2002 to December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Investors with questions can call a special hotline maintained by the Commission's Office of Investor Education and Assistance at 1–800–SEC–0330 or e-mail the office at *help@sec.gov*.

Issuers with questions regarding Securities Act or Exchange Act filings or compliance with the Trust Indenture Act, please call the Division of Corporation Finance's hotline at 202–942–2816 or e-mail the Division at *cfhotline@sec.gov*.

Auditors with transition questions may call the Office of the Chief Accountant at 202–942–4400 or e-mail the office at *oca@sec.gov*.

For questions regarding broker-dealers, self-regulatory organizations, and transfer agents, please call the Division of Market Regulation's hotline at 202–942–0069 or e-mail the Division at *marketreg@sec.gov*.

For questions regarding investment companies, investment advisers or public utility holding companies, please call the Division of Investment Management's hotline at 202–942–0590 or e-mail the Division at *IMOCA@sec.gov*.

SUPPLEMENTARY INFORMATION: We are adopting temporary amendments to Item 310 [1] of Regulation S–B [2] and Article 3 [3] of Regulation S–X [4] under the Securities Act of 1933 [5] (''Securities Act'') and Form 20–F [6] under the Securities Exchange Act of 1934 [7] (''Exchange Act). We are also adopting amendments to Rule 2–02 [8] of Regulation S–X and Rule 428 [9] under the Securities Act. Additionally, we are adopting temporary Items 304T [10] and 601T [11] of Regulation S–B, temporary Items 304T [12] and 601T [13] of Regulation S–K,[14] temporary Rule 427T,[15] Rule 401a [16] and Rule 437a [17] under the Securities Act, Rule 12b–37 [18] under the Exchange Act and Rule 19a–1 [19] under the Trust Indenture Act of 1939 [20] (''Trust Indenture Act''). We are also attaching to this release a copy of Release No. 34–45589 (March 18, 2002) as Appendix A (the ''34 Act Order''), a copy of Release Nos. IA–2017 and IC–25463 (March 18, 2002) as Appendix B (the ''40 Act Order'') and a copy of Release No. 35–27502 (March 18, 2002) as Appendix C (the ''35 Act Order'').

I. Introduction

The Securities and Exchange Commission is taking necessary and immediate regulatory actions to assure a continuing and orderly flow of information to investors and U.S. capital markets and to minimize any potential disruptions that may occur as a result of the indictment of Arthur Andersen LLP (''Andersen''). The actions the Commission takes today, through this release and by separate Commission orders attached as Appendices A, B and C to this release (the ''Orders'') apply, and the guidance issued in Staff Accounting Bulletin No. 90, Topic I.L.,[21] does not apply. The Commission has requested and received assurances from Andersen that it will continue to audit financial statements in accordance with generally accepted auditing standards (''GAAS'') and applicable professional and firm auditing standards, including quality control standards. Andersen has also told the Commission that if it becomes unable to continue to provide those assurances, it will advise the Commission immediately.

As discussed more fully in this release, companies to whom Andersen issues a manually signed audit report after March 14, 2002 must file a letter as an exhibit to their filings stating they have received certain representations from Andersen concerning audit quality controls, including representations regarding the continuity of Andersen personnel working on the audit, the availability of national office consultation, and the availability of personnel at foreign affiliates of Andersen to conduct relevant portions of the audit. So long as Andersen continues to be in a position to provide

[1] 17 CFR 228.310.
[2] 17 CFR 228.10 *et seq.*
[3] 17 CFR 210.3–01–3–20.
[4] 17 CFR 210.1–01 *et seq.*
[5] 15 U.S.C. § 77a *et seq.*
[6] 17 CFR 249.220f.
[7] 15 U.S.C. § 78a *et seq.*
[8] 17 CFR 210.2–02.
[9] 17 CFR 230.428.
[10] 17 CFR 228.304T.
[11] 17 CFR 228.601T.
[12] 17 CFR 229.304T.
[13] 17 CFR 229.601T.
[14] 17 CFR 229.10 *et seq.*
[15] 17 CFR 230.427T.
[16] 17 CFR 230.401a.
[17] 17 CFR 230.437a.
[18] 17 CFR 240.12b–37.
[19] 17 CFR 260.19a–1.
[20] 15 U.S.C. § 77sss, *et seq.*
[21] Staff Accounting Bulletin No. 90 (Feb. 7, 1991) [56 FR 4938].

those assurances, the Commission will continue to accept financial statements audited by Andersen in filings.

In addition, if companies for which Andersen had been engaged as the independent public accountant [22] are unable to obtain from Andersen or elect not to have Andersen issue a manually signed audit report, these companies may need additional time to engage new independent accountants and complete their filings. Further, as a number of requirements throughout the federal securities laws are contingent upon the flow of accurate and timely information into the market, any potential disruption may, absent the actions the Commission takes today, have a significant impact on a company's compliance with a number of provisions under the federal securities laws.

Accordingly, the Commission is taking action for those Andersen clients that are unable to obtain from Andersen or elect not to have Andersen issue a manually signed audit report. The Commission will require adherence to existing filing deadlines, but will accept filings that include unaudited financial statements from any such issuer unable to provide timely audited financial statements. Issuers electing this alternative will generally be required to amend their filings within 60 days to include audited financial statements. The Commission has taken similar actions regarding reviews of interim financial statements.

The actions the Commission takes today, through this release and by the Orders, are meant to provide investors with the timely financial information to which they are entitled under the federal securities laws, while giving certain Andersen clients time to address any timing constraints and temporary disruptions they may face. In addition to those actions, in this release we also adopt rules and express interpretations concerning the impact of those actions upon other requirements of the federal securities laws.[23] None of the actions announced by the Commission today affects the liability standards to which an issuer's filing is subject.

We emphasize that companies should make their own independent decisions regarding completion of current audits and that these actions are intended only to provide neutral flexibility for companies as they make those decisions. Consistent with this approach, our actions do not apply to issuers to whom Andersen had issued a signed audit report on or before March 14, 2002. We also recognize there are a number of situations that will be fact-specific. We strongly encourage companies to contact the staff of the Commission listed at the beginning of this release and request consideration of specific situations and the appropriateness of additional Commission or staff action.

II. Registrants Under the Securities Act of 1933

A. Registrants That Continue To Engage Andersen

For issuers that make filings that include accountant's reports from Andersen issued after March 14, 2002, the Commission has adopted Temporary Note 3T to Article 3 of Regulation S–X (and Temporary Note 2T to Item 310 of Regulation S–B for small business issuers [24] and General Instruction A–T2 to Form 20–F for foreign private issuers [25]) to specify special disclosure requirements for these issuers. While the exact nature of each issuer's disclosure may vary depending on the facts and circumstances applicable to each of Andersen's public company audit clients, these issuers are required to include as an exhibit to their filings a letter by the issuer addressed to the Commission that states that Andersen has represented to the issuer that the audit was subject to Andersen's quality control system for the U.S. accounting and auditing practice to provide reasonable assurance that the engagement was conducted in compliance with professional standards and that there was appropriate continuity of Andersen personnel working on audits, availability of national office consultation and availability of personnel at foreign affiliates of Andersen to conduct the relevant portions of the audit. We expect these assurances will be given in connection with the issuance of the audit report. So long as Andersen continues to be in a position to provide those assurances, the Commission will continue to accept financial statements audited by Andersen.

B. Registrants That Are Unable To, or Choose Not To, Engage Andersen

There may be issuers that are Andersen clients or whose filings are to include financial statements as to the examination of which Andersen had been engaged on or after March 14, 2002 that are unable to obtain from Andersen or elect not to have Andersen issue a manually signed audit report. The following sections outline specific relief to be granted to these issuers. This relief does not apply for financial statements where Andersen has already issued a manually signed audit report for those financial statements on or before March 14, 2002.

1. Form Eligibility

Forms S–2, [26] S–3,[27] F–2,[28] F–3 [29] and S–8 [30] under the Securities Act permit alternative disclosure formats.[31] Eligibility for those forms is dependent upon, among other requirements, whether the company filing the registration statement has filed all required reports under the Exchange Act for a specified period and whether the company has filed those reports in a timely manner for a specified period. The 34 Act Order provides alternate procedures for filing Exchange Act reports by issuers that are unable to obtain from Andersen or elect not to have Andersen issue a manually signed audit report. It is the Commission's view that the filing of reports in the manner permitted by the 34 Act Order is consistent with the protection of investors. Accordingly, it is our further view that compliance with the 34 Act Order should not negatively impact a company's eligibility to use Securities Act registration statement forms. We are adopting Rule 401a under the Securities Act to make clear that issuers that are eligible to rely on the 34 Act Order and that comply with its terms for the filing of their Exchange Act reports will be current and timely and, therefore, will not have their eligibility for Securities Act forms impacted negatively.

2. Financial Statements Required in Registration Statements

The financial statement requirements for registration statements on Forms S–

[22] Throughout this release, where we refer to Andersen, we also include foreign affiliates of Andersen.

[23] The Commission's actions are procedural in nature and are of finite duration. The temporary rules and amendments we are adopting today expire on December 31, 2002.

[24] The term "small business issuer" is defined in Item 10(a)(1) of Regulation S–B.

[25] The term "foreign private issuer" is defined in Securities Act Rule 405 [17 CFR 230.405].

[26] 17 CFR 239.12.

[27] 17 CFR 239.13.

[28] 17 CFR 239.32.

[29] 17 CFR 239.33.

[30] 17 CFR 239.16b.

[31] Forms S–4 and F–4 [17 CFR 239.25 and 17 CFR 239.34] under the Securities Act do not have "form eligibility" standards relating to the company registering a transaction on that form or the other company(ies) involved in the transaction. Rather, Forms S–4 and F–4 permit specific disclosure formats regarding each of those companies based on their eligibility to use Forms S–2 or S–3 and F–2 or F–3, respectively. As new Securities Act Rule 401a relates to eligibility to use Securities Act forms, that rule should be considered when completing those sections of Forms S–4 and F–4 that rely upon Securities Act form eligibility.

1,[32] S–2, S–3, S–4, S–6,[33] S–8, S–11,[34] N–1,[35] N–1A,[36] N–2,[37] N–3,[38] N–4,[39] N–5[40] and N–14[41] generally are set forth in Regulation S–X.[42] The financial statement requirements for registration statements on Form SB–1[43] and Form SB–2,[44] as well as for financial statements regarding small business issuers on other Securities Act forms, generally are set forth in Item 310 of Regulation S–B. The financial statement requirements for registration statements on Forms F–1,[45] F–2, F–3 and F–4 generally are contained in Form 20–F under the Exchange Act. We have adopted temporary notes to Article 3 of Regulation S–X and Item 310 of Regulation S–B and a temporary instruction to Form 20–F for eligible issuers whose registration statements contain financial statements of an entity that has a fiscal year ending between and including November 30, 2001[46] and April 15, 2002, as to the examination of which Andersen had been engaged as the independent public accountant on or after March 14, 2002.[47] These new items generally provide that unaudited information may be included in Securities Act registration statements so long as audited financial statements are subsequently provided by amendment. These new items may not be relied upon by any registrant that is a ''blank check company'' as defined in Securities Act Rule 419(a)(2).[48] These items will have the following effect on the inclusion of audited financial statements in registration statements under the Securities Act:

- Registration statements filed by companies that, at the time of filing the registration statement, are not required to file reports under Section 13(a)[49] or 15(d)[50] of the Exchange Act, must in all circumstances include financial statements that meet the timeliness and audit requirements of Commission rules.
- Registration statements (or any pre-effective or post-effective amendments thereto) filed by companies that, at the time of filing the registration statement, are required to file reports under Section 13(a) or 15(d) of the Exchange Act,[51] may include financial statements that meet the timeliness requirements of Commission rules but that are unaudited if Andersen had been engaged as the independent public accountant on or after March 14, 2002 to examine those financial statements and the issuer is unable to obtain from Andersen or elects not to have Andersen issue a manually signed audit report.[52] The registration statement must also include disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X.[53] These companies will then be required to file a pre-effective amendment, post-effective amendment or an amendment to a document incorporated by reference, as appropriate, containing the audited financial statements for the required periods if the registered offering or offerings have not been completed. Generally, if the registration statement is not yet effective and will become effective on or after the earlier of 60 days from the date when use of the financial statements would have been required and the date the audited financial statements are filed in the annual report of the registrant,[54] a pre-effective amendment to the registration statement or an amendment to a document incorporated by reference, as appropriate, containing audited financial statements must be filed before effectiveness.[55] If the registration statement is effective, the amendment containing audited financial statements generally must be filed by the earlier of 60 days from the date when use of the financial statements would have been required and the date the audited financial statements are filed in the annual report of the registrant,[56] if the offering or offerings are not complete (including any prospectus delivery period required by Section 4(3) of the Securities Act[57] and the rules thereunder) by such date.[58]
- Registration statements for offerings that are registered in accordance with Securities Act Rule 415[59] and that are updated through ''forward incorporation by reference'' of the issuer's Exchange Act reports rather than through the filing of post-effective amendments will be updated in accordance with the procedures for including the audited financial information in the registrant's Exchange Act reports.

Issuers with effective registration statements for offerings registered in accordance with Rule 415 under the Securities Act must update the registration statement pursuant to undertakings included in those registration statements.[60] Among the events requiring an updating of the registration statement is the occurrence of facts or events that, individually or in

[32] 17 CFR 239.11.

[33] 17 CFR 239.16.

[34] 17 CFR 239.18.

[35] 17 CFR 239.15.

[36] 17 CFR 239.15A.

[37] 17 CFR 239.14.

[38] 17 CFR 239.17a.

[39] 17 CFR 239.17b.

[40] 17 CFR 239.24.

[41] 17 CFR 239.23.

[42] These financial statement requirements may be included in the form indirectly, as they apply to the company's periodic reports, which are incorporated by reference into the registration statement. Form S–8 has an additional requirement, as expressed in Instruction 2 to Securities Act Rule 428(b) [17 CFR 230.428(b)], regarding the delivery of documents during the first 120 days of a fiscal year for a domestic company and the first 190 days of a fiscal year for a foreign private issuer. Under this instruction, the company may deliver a document that does not include audited financial information for the most recently completed fiscal year, so long as the company provides audited financial information by the end of the 120 day or 190 day period, as applicable. Consistent with the 34 Act Order, domestic companies may provide a document to plan participants within the first 180 days of the fiscal year that do not contain audited financial statements. Similarly, foreign private issuers may deliver such documents within the first 250 days of the fiscal year. The delivery of such documents will be permissible conditioned upon the delivery of audited financial statements by the end of the 180 day or 250 day period, as applicable.

[43] 17 CFR 239.9.

[44] 17 CFR 239.10.

[45] 17 CFR 239.31.

[46] For foreign private issuers, this date is August 31, 2001. For registered investment companies, this date is January 1, 2002. If the entity does not meet all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g) of Regulation S–B if the entity is a small business issuer), this date is December 29, 2001.

[47] We are using the date of March 14, 2002 to ensure that the registrant had engaged Andersen as its auditor for their most recent fiscal year end. Other rules and amendments adopted today address situations where a registrant is using financial information that has previously been audited by Andersen.

[48] 17 CFR 230.419(a)(2).

[49] 15 U.S.C. § 78m(a).

[50] 15 U.S.C. § 78o(d).

[51] Including registered investment companies that have previously filed a registration statement under the Securities Act that has been declared effective by the Commission.

[52] Unit investment trusts that offer a new series will continue to be required to provide audited financial statements for the registrant as currently required. The Commission believes that obtaining an audit that verifies the securities deposited in a unit investment trust is not unduly burdensome.

[53] *See* Section II.B.3 of this release.

[54] Annual report to shareholders, in the case of a registered investment company.

[55] The 60 day period applies to foreign private issuers and issuers that meet all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g)(2) of Regulation S–B for small business issuers). For issuers that do not meet all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g)(2) of Regulation S–B for small business issuers), the period is 106 days. If the issuer is a registered investment company, the applicable time period is six months after the close of the fiscal year.

[56] Annual report to shareholders, in the case of a registered investment company.

[57] 15 U.S.C. 77d(3).

[58] The period is 106 days for issuers that do not meet all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g)(2) of Regulation S–B for small business issuers). If the issuer is a registered investment company, the applicable time period is six months after the close of the fiscal year.

[59] 17 CFR 230.415.

[60] Those undertakings, which are set forth in Item 512(a) of Regulation S–B or Regulation S–K [17 CFR 228.512 and 17 CFR 229.512], must be included in registration statements for offerings registered in accordance with Rule 415 under the Securities Act.

the aggregate, represent a ''fundamental change in the information set forth in the registration statement.'' [61] It is the Commission's view that the failure of an eligible issuer to include audited financial statements in the registration statement, either through the filing of a post-effective amendment or amendments of Exchange Act reports or other documents incorporated by reference, in accordance with Temporary Note 1T to Article 3 of Regulation S–X (or Temporary Note 1T of Item 310 of S–B for small business issuers or Temporary Instruction A–T1 to Form 20–F for foreign private issuers) represents such a ''fundamental change.'' Accordingly, failure to comply with those requirements will require the filing of a post-effective amendment to the registration statement. Offerings under the registration statement must cease until a post-effective amendment that includes all information required by those requirements is declared effective.

Section 10(a)(3) of the Securities Act requires that the information in a prospectus that is used more than nine months after the effective date of the registration statement of which the prospectus is a part ''shall be as of a date not more than sixteen months prior to such use so far as such information is known to the user of such prospectus or can be furnished without unreasonable effort or expense.'' [62] If the issuer is unable to obtain from Andersen or elects not to have Andersen issue a manually signed audit report, this presents a situation that we believe would cause compliance with Section 10(a)(3) to involve ''unreasonable effort or expense.'' Accordingly, we are adopting temporary Rule 427T under the Securities Act to extend for eligible issuers the sixteen month requirement in Section 10(a)(3) as it relates to audited financial statements. Under Rule 427T, the Section 10(a)(3) timeliness requirement for audited financial statements will be satisfied by any eligible issuer if two conditions are met. First, the prospectus used more than nine months after the effective date of the registration statement is updated to include unaudited financial information that is as of a date not more than sixteen months prior to use; provided that the registrant provides in the prospectus disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X.[63] Second, the prospectus used more than nine months after the effective date of the registration statement is updated to include audited financial information that is as of a date not more than eighteen months prior to use.[64] The updated prospectus should include a discussion of any material changes from the unaudited financial information and updated or revised information in any other section of the prospectus or documents incorporated by reference that should be updated or revised to reflect the changes in the audited financial information. Temporary Rule 427T may not be relied upon by any registrant that is a ''blank check company'' as defined in Securities Act Rule 419(a)(2).

3. Additional Disclosure Required in Filings

Issuers permitted to provide unaudited financial information in reliance on the temporary rules adopted today or in reliance on the Orders should consider whether any additional disclosure is necessary in those filings. The Commission has adopted Temporary Note 2T to Article 3 of Regulation S–X to provide guidance on the additional disclosure. The guidance in the note applies to all such issuers, including small business issuers and foreign private issuers. The temporary note is intended to provide guidance to issuers in meeting their disclosure obligations under the federal securities laws. While the exact content of each issuer's disclosure may vary depending on the facts and circumstances applicable to each of Andersen's former public company audit clients, issuers must provide on the cover page of their filings a prominent statement that the filing includes unaudited financial statements in lieu of the audited financial statements because the issuer was unable to obtain from Andersen or elected not to have Andersen issue a manually signed audit report. The issuer must also place this prominent statement in the filing immediately before the financial statements and follow guidance as to providing:

- A statement as to when and how the issuer intends to provide the audited financial statements; and
- A statement that no auditor has opined that the unaudited financial statements present fairly, in all material respects, the financial position, the results of operations, cash flows and the changes in shareholders' equity of the company (and, in the case of a registered investment company, the financial highlights) for each of the periods reported in accordance with generally accepted accounting principles.

Further, any audit report previously issued by Andersen that is required to be included in a filing should be included as required.

4. Predecessor Auditor's Reports

Each issuer filing audited financial statements as to the examination of which Andersen had been engaged as the independent public accountant is required to file a manually signed accountants' report [65] from Andersen.[66] Issuers may be unable to obtain an accountants' report for the period for which Andersen was engaged. Accordingly, the Commission is amending Rule 2–02 of Regulation S–X to provide that those issuers that cannot obtain an accountants' report from Andersen after reasonable efforts may file a copy of the latest signed and dated accountants' report issued by Andersen for such period. The issuer must disclose prominently on such copy that the report is a copy of a previously issued Andersen report and that the report has not been reissued by Andersen. This rule is available only to issuers filing documents containing financial statements for a period with respect to which Andersen issued an accountants' report.

5. Written Consents

Each issuer filing a Securities Act registration statement containing financial statements as to the examination of which Andersen had been engaged as the independent public accountant is required to file a written consent from Andersen. An issuer may be unable to obtain these consents. Accordingly, the Commission is adopting Securities Act Rule 437a to provide that, notwithstanding any other Commission rule or regulation, every registrant eligible to rely on this rule may dispense with the requirement for

[61] 17 CFR 228.512(a)(1)(ii) and 17 CFR 229.512(a)(1)(ii).

[62] Id.

[63] For registration statements that are updated through ''forward incorporation by reference'' of Exchange Act reports, each of the required updates may be accomplished in that manner. For registration statements that are updated through the filing of post-effective amendments, each update will require a post-effective amendment.

[64] Provisions of the 34 Act Order, the 40 Act Order or Temporary Note 1T to Article 3 of Regulation S–X may require the filing of audited financial statements at an earlier time than Rule 427T. For example, a registered investment company generally would be required to file its annual updating amendment with audited financial statements no later than the date it is required to file audited financial statements in its annual report to shareholders under the 40 Act Order, *i.e.,* typically 120 days after the close of its fiscal year.

[65] See Item 302 of Regulation S–T [17 CFR 232.302] for requirements related to signatures in electronic submissions.

[66] See Rule 2–02(a) of Regulation S–X [17 CFR 210.2–02(a)] for the technical requirements of an accountants' report.

the registrant to file the written consent of Andersen as required by Section 7 of the Securities Act where:

- The registrant has not already obtained the written consent that would be required if not for this temporary rule,
- The registrant is not able to obtain the written consent after reasonable efforts, and
- The registrant discloses clearly any limitations on recovery by investors posed by the lack of consent.

This rule is available only to issuers filing registration statements containing financial statements audited by Andersen. The rule may not be relied upon by any registrant that is a ''blank check company'' as defined in Securities Act Rule 419(a)(2).

6. Rule 144

Rule 144(c)(1)[67] provides that there shall be adequate, current public information available for purposes of Rule 144 if the issuer of the securities to be offered has been subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least 90 days preceding the subject sale of securities and has filed all required reports for the 12 months preceding that sale. It is the view of the Commission that the requirement to have filed all required reports for purposes of Rule 144(c)(1) is satisfied for issuers eligible to rely on the 34 Act Order if they have filed their Exchange Act reports as permitted under the 34 Act Order.[68]

7. Rule 144A

Rule 144A(d)(4)[69] addresses the information that an issuer that is not a reporting company under the Exchange Act, not a foreign government and not a foreign company exempt from registration under Section 12 of the Exchange Act[70] by Exchange Act Rule 12g3–2(b)[71] must agree to provide to investors or prospective investors if Rule 144A is to be relied upon. Among other requirements, an issuer subject to Rule 144A(d)(4) must provide financial information that ''should be audited to the extent reasonably available.'' It is the view of the Commission that resales under Rule 144A will not be affected by the unavailability of audited financial information due to reliance on the 34 Act Order and temporary rules adopted today.

8. Rule 701

The conditions for the Rule 701 exemption from Securities Act registration for certain offerings of securities include financial statement requirements. It is the view of the Commission that, to the extent required, where the information referenced in Rule 701(e) is prepared in compliance with the 34 Act Order by issuers eligible to rely on the 34 Act Order, the information contained in those reports is sufficient for purposes of Rule 701.

9. Regulation D

Rule 502(b)(2)(ii)[72] sets forth the financial information requirements for issuers that are subject to the Exchange Act reporting requirements. Subject to various conditions, that rule may require the furnishing of annual reports under Exchange Act Rule 14a–3,[73] reports under the Exchange Act or registration statements under the Securities Act. It is the view of the Commission that, where the reports and registration statements referenced in Rule 502(b)(2)(ii) are prepared in compliance with the 34 Act Order by issuers eligible to rely on the 34 Act Order, the information contained in those reports and registration statements is sufficient for purposes of Regulation D.

10. Items 304 and 601 of Regulation S–K and Regulation S–B

Item 304 of Regulation S–K[74] sets forth the disclosure requirements for an issuer when its independent public accountant is dismissed or resigns. This disclosure would include a discussion of any disagreements with the independent accountants regarding accounting and financial disclosure. Subject to various conditions, the issuer may be required to request that its former independent accountant furnish a letter addressed to the Commission stating whether it agrees with the statements made by the issuer in response to Item 304(a) and, if not, stating the matters on which it does not agree. This letter must be filed as an exhibit to certain of the issuer's filings in accordance with Item 601(b)(16) of Regulation S–K.[75]

The resignation or dismissal of the independent accountant triggers an issuer's obligation to file a current report on Form 8–K.[76] That Form 8–K must include the information required by Item 304. Further, the disclosure and letter required by Item 304 must be included in any Exchange Act registration statement or report on Form 10,[77] 10–SB,[78] 10–K,[79] 10–KSB[80] or N–SAR[81] or Securities Act registration statement on Form S–1, S–2, S–4 or S–11 that the issuer files. We are adopting temporary Items 304T and 601T of Regulation S–K and Regulation S–B for use by issuers for which Andersen had been engaged as the independent public accountant to examine the issuer's financial statements, or for which Andersen had been engaged to examine a significant subsidiary's financial statements and on which the principal accountant expressed reliance in its report, on or after March 14, 2002. Under Item 304T, the filing obligation of these issuers will be satisfied if the issuer's filings do not include the letter from Andersen if the issuer has not yet obtained it and is not able to obtain it after reasonable efforts.

III. Trust Indenture Act of 1939

Section 314(a)(1) of the Trust Indenture Act[82] requires companies that are obligors on securities issued under an indenture that is qualified under the Trust Indenture Act to file certain information with the indenture trustee. The indenture obligor must ''file with the indenture trustee all reports required to be filed with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act.''[83] We have adopted a rule to make clear the application of Section 314(a)(1) to indenture obligors that file their Exchange Act reports with the

[67] 17 CFR 230.144(c)(1).

[68] This position, as well as the positions expressed with regard to Rule 701 [17 CFR 230.701] and Regulation D [17 CFR 230.501–508], are consistent with Exchange Act Rule 12b–37 which we are adopting today to address the satisfaction of an issuer's Exchange Act filing requirements.

[69] 17 CFR 230.144A(d)(4).

[70] 15 U.S.C. 77l.

[71] 17 CFR 240.12g3–2(b).

[72] 17 CFR 230.502(b)(2)(ii).

[73] 17 CFR 240.14a–3.

[74] 17 CFR 229.304. Item 304 of Regulation S–B [17 CFR 228.304] sets forth the same requirement for issuers reporting under the small business issuer reporting system. The discussion of Item 304T in this section refers to new Item 304T of Regulation S–K and Regulation S–B.

[75] 17 CFR 229.601(b)(16). The discussion of Item 601 of Regulation S–K applies equally to Item 601 of Regulation S–B [17 CFR 228.601].

[76] 17 CFR 249.308.

[77] 17 CFR 249.10.

[78] *Id.*

[79] 17 CFR 249.310.

[80] 17 CFR 249.310b.

[81] 17 CFR 249.330. In the case of registered investment companies, the disclosure and letter must also be included in the annual report to shareholders.

[82] 15 U.S.C. 77nnn(a)(1).

[83] *Id.* Section 314(a)(1) also discusses the obligations for indenture obligors that are not required to file reports with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act. The discussion in this section and new Rule 19a–1 do not apply to indenture obligors that are not required to file reports with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act.

Commission in compliance with the 34 Act Order.[84] Trust Indenture Act Rule 19a–1 states that the indenture obligor's filing with the indenture trustee of those Exchange Act reports filed in accordance with the 34 Act Order shall satisfy the indenture obligor's responsibility to ''file with the indenture trustee all reports required to be filed with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act'' for purposes of Section 314(a)(1).

IV. Registrants Under the Securities Exchange Act of 1934

A. Registrants That Continue To Engage Andersen

For issuers that make filings that include accountant's reports from Andersen issued after March 14, 2002, the Commission has adopted Temporary Note 3T to Article 3 of Regulation S–X (and Temporary Note 2T to Item 310 of Regulation S–B for small business issuers and General Instruction A–T2 to Form 20–F for foreign private issuers) to specify special disclosure requirements for these issuers. While the exact nature of each issuer's disclosure may vary depending on the facts and circumstances applicable to each of Andersen's public company audit clients, these issuers are required to include as an exhibit to their filings a letter by the issuer addressed to the Commission that states that Andersen has represented to the issuer that the audit was subject to Andersen's quality control system for the U.S. accounting and auditing practice to provide reasonable assurance that the engagement was conducted in compliance with professional standards and that there was appropriate continuity of Andersen personnel working on audits, availability of national office consultation and availability of personnel at foreign affiliates of Andersen to conduct the relevant portions of the audit. We expect these assurances will be given in connection with the issuance of the audit report. So long as Andersen continues to be in a position to provide those assurances, the Commission will continue to accept financial statements audited by Andersen.

B. Registrants That Are Unable To, or Choose Not To, Engage Andersen

There may be issuers that are Andersen clients or whose filings are to include financial statements as to the examination of which Andersen had been engaged on or after March 14, 2002 that are unable to obtain from Andersen or elect not to have Andersen issue a manually signed audit report. The 34 Act Order issued by the Commission provides affected issuers extensions of time to file audited financial statements or obtain reviews of financial statements for quarterly reports under specified conditions. In most cases, the relief is conditioned on timely filing of the financial statements on an unaudited basis and requiring an amendment to the filing within 60 days after the original due date to provide the audited financial statements. The relief does not apply for financial statements where Andersen has already issued a manually signed report for those financial statements on or before March 14, 2002. In addition, the relief does not apply to any filings by a ''blank check company'' as defined in Securities Act Rule 419(a)(2). We are adopting Rule 12b–37 under the Exchange Act to make clear that reports filed in compliance with the 34 Act Order and the 40 Act Order will satisfy the issuer's Exchange Act filing requirements.

1. Annual Reports on Form 10–K/Form 10–KSB

For issuers that file annual reports on Form 10–K or Form 10–KSB, the relief provided by the 34 Act Order applies to issuers with a fiscal year ending between and including November 30, 2001 and April 15, 2002. The 34 Act Order maintains the existing filing deadlines for these reports, but permits eligible issuers to file their annual reports with those financial statements on an unaudited basis. The 34 Act Order's conditions require the issuer to provide disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X in the report. [85] Further, within 60 days of the original due date for filing, the issuer must file an amendment presenting the financial statements audited by an accountant other than Andersen, a discussion of any material changes from the unaudited financial statements and any other section of the report, including without limitation Management's Discussion and Analysis of Financial Condition and Results of Operations,[86] that should be amended to reflect any changes in the financial statements.[87]

For example, the 34 Act Order permits a company with a fiscal year that ended on December 31, 2001, for which Andersen had been engaged as the independent public accountant to examine the company's financial statements on or after March 14, 2002, to file timely its annual report responding to all items required in the report by April 1, 2002,[88] but include the financial statements on an unaudited basis.[89] Under the 34 Act Order, the company will then file the audited financial statements, any required selected financial data, a discussion of any material changes from the unaudited financial statements and any other section of the annual report that should be amended to reflect any changes in the financial statements as an amendment no later than May 31, 2002.[90]

2. Quarterly Reports on Form 10–Q/Form 10–QSB

For issuers that file quarterly reports on Form 10–Q [91] or Form 10–QSB,[92] the relief provided by the 34 Act Order applies to issuers that have fiscal quarters ending between and including January 26, 2002 and June 15, 2002. The 34 Act Order maintains the existing

[84] Trust Indenture Act Rule 19a–1 is consistent with Exchange Act Rule 12b–37 which we are adopting today regarding satisfaction of an issuer's Exchange Act filing requirements. Trust Indenture Act Rule 19a–1 uses the term ''eligible indenture obligors.'' The rule defines ''eligible indenture obligors'' as those obligors that may rely on any of the provisions of the 34 Act Order with regard to the filing of reports with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act.

[85] *See* Section II.B.3 of this release.

[86] Item 303 of Regulation S–K and Regulation S–B [17 CFR 229.303 and 17 CFR 228.303].

[87] If the original filing was on Form 10–K and Andersen had been engaged originally as the independent public accountant to examine the issuer's financial statements, selected financial data required by Item 6 of Form 10–K based on the audited financial statements must also be provided.

[88] General Instruction A. to Form 10–K and Form 10–KSB set the due date for these reports at 90 days after the end of the issuer's fiscal year. If that date falls on a Saturday, Sunday or holiday, Exchange Act Rule 0–3 [17 CFR 240.0–3] allows such reports to be filed on the first business day following. March 31, 2002, which is 90 days after December 31, 2001, falls on a Sunday, so the report will be due by April 1, 2002.

[89] One-time extensions of time to file the report are available under certain circumstances under Exchange Act Rule 12b–25 [17 CFR 240.12b–25]. If an issuer complies with that rule, it can file its annual report no later than the fifteenth calendar day following the prescribed due date for that report, and the report will be deemed to be filed on the prescribed due date. If the issuer is relying on Exchange Act Rule 12b–25 in connection with a report covered by the Orders, the 34 Act Order provides that the issuer need not attach as an exhibit to its Form 12b–25 filing a statement by Andersen as required by Exchange Act Rule 12b–25(c) if such statement cannot be obtained by the issuer after reasonable efforts.

[90] Reliance on the 34 Act Order is conditioned upon filing the amendment within 60 days after the original due date of the report, excluding any additional period issuers had to actually file the report under Exchange Act Rule 12b–25. Extensions under Exchange Rule 12b–25 are not available for filing the amendment.

[91] 17 CFR 249.308.

[92] 17 CFR 249.308b.

filing deadlines for these reports,[93] but permits eligible issuers to file their quarterly reports with financial statements that have not been reviewed pursuant to Rule 10–01(d) of Regulation S–X (or Item 310(b) of Regulation S–B for issuers filing on Form 10–QSB). The 34 Act Order's conditions require the issuer to provide similar disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X in the report.

Under the 34 Act Order's conditions, if, upon completion of the review, there is a change in those financial statements, the issuer must amend its quarterly report to present the reviewed financial statements, a discussion of any material changes from the unreviewed financial statements and any other section of the quarterly report, including without limitation Management's Discussion and Analysis of Financial Condition and Results of Operations, that should be amended to reflect any changes in the financial statements. Otherwise, the 34 Act Order's conditions only require the issuer to state in its next quarterly report that the financial statements for the previous quarter had subsequently been reviewed by an accountant other than Andersen, but the issuer is not required to include a copy of the review report. If an amendment to the previous quarterly report is not required, we encourage issuers to make public that there were no material changes as a result of the review prior to the submission of the next required periodic report.

3. Annual Reports on Form 20–F

For foreign private issuers that file annual reports on Form 20–F, the 34 Act Order applies to foreign private issuers with fiscal years ending between and including August 31, 2001 and April 15, 2002. The 34 Act Order maintains the existing filing deadline for Form 20–F, but permits eligible foreign private issuers to file their annual reports on Form 20–F with financial statements on an unaudited basis. The 34 Act Order's conditions require these financial statements to include an unaudited reconciliation to U.S. generally accepted accounting principles (GAAP) if the foreign private issuer prepares its financial statements in accordance with local GAAP or international accounting standards (IAS). The 34 Act Order's conditions also require the foreign private issuer to provide disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X in the report.

Within 60 days after the original due date for filing, a foreign private issuer relying on the 34 Act Order must file an amendment presenting the audited financial statements (including the audited reconciliation to U.S. GAAP where the issuer's financial statements are prepared in accordance with local GAAP or IAS) audited by an accountant other than Andersen, a discussion of any material changes from the unaudited financial statements and any other section of the report that should be amended to reflect any changes in the financial statements, including without limitation the Operating and Financial Review and Prospects required by Item 5 of Form 20–F.[94]

For example, the 34 Act Order permits a foreign private issuer with a fiscal year that ended on December 31, 2001 for which Andersen had been engaged as the independent public accountant to examine the financial statements to file timely its annual report on Form 20–F responding to all items required in the report by July 1, 2002,[95] but include the financial statements and the reconciliation to U.S. GAAP on an unaudited basis.[96] Under the 34 Act Order, the foreign private issuer must then file the audited financial statements and reconciliation, any required selected financial data, a discussion of any material changes from the unaudited financial statements and any other section of the annual report that should be amended to reflect any changes in the financial statements as an amendment no later than August 30, 2002.[97]

4. Employee Benefit Plan Annual Reports on Form 11–K

For non-ERISA[98] employee stock purchase, savings and similar plans subject to Section 15(d) of the Exchange Act, the 34 Act Order applies to plans with a fiscal year ending between and including November 30, 2001 and April 15, 2002. The 34 Act Order maintains the existing filing deadlines for Form 11–K,[99] but permits non-ERISA plans whose annual reports would need to include audited plan financial statements for which Andersen had been engaged as the independent public accountant on or after March 14, 2002 to file their annual reports on Form 11–K with unaudited plan financial statements. The 34 Act Order's conditions require the plan to provide disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X in the report. Further, within 60 days of the original due date for filing, the plan must file an amendment presenting the financial statements audited by an accountant other than Andersen and a discussion of any material changes from the unaudited financial statements filed originally.

Exchange Act Rule 15d–21[100] provides plans with the alternative of including audited financial statements in the annual report of the issuer of the stock or other securities offered to employees through their participation in the plan. If the plan follows this alternative procedure, the 34 Act Order permits unaudited plan financial statements (with appropriate disclosures) to be filed in the annual report (or an amendment thereto) of the issuer within 120 days after the end of the fiscal year of the plan. The 34 Act Order's conditions require audited plan financial statements to be filed as an amendment within 180 days after the end of the fiscal year of the plan. Plans with fiscal years that end within 62 days before the end of the fiscal year of the issuer that elect to furnish the

[93] General Instruction A.1. to Form 10–Q and Form 10–QSB set the due date for these reports at 45 days after the end of the issuer's first three fiscal quarters. As with reports on Form 10–K and Form 10–KSB, one-time extensions of time to file the report are available under certain circumstances under Exchange Act Rule 12b–25. If the issuer complies with that rule, it can file its quarterly report no later than the fifth calendar day following the prescribed due date for that report, and the report will be deemed to be filed on the prescribed due date. *See supra* note 89 for additional relief provided by the 34 Act Order regarding Exchange Act Rule 12b–25.

[94] If Andersen or a foreign affiliate of Andersen had been engaged originally as the independent public accountant for the foreign private issuer's financial statements, selected financial data required by Item 3.A. of Form 20–F (and any reconciliation of that data to U.S. GAAP and Regulation S–K if required by Instruction 2 to Item 3.A. of Form 20–F) must also be provided.

[95] General Instruction A.(b) of Form 20–F sets the due date for these annual reports at six months after the end of the fiscal year covered by the report. June 30, 2002 falls on a Sunday, so the report will be due by July 1, 2002 for foreign private issuers with a December 31 fiscal year end.

[96] As with reports on Form 10–K and Form 10–KSB, one-time extensions of time to file the report are available under certain circumstances under Exchange Act Rule 12b–25. If a foreign private issuer complies with that rule, it can file its annual report no later than the fifteenth calendar day following the prescribed due date for that report, and the report will be deemed to be filed on the prescribed due date. *See supra* note 89 for additional relief provided by the 34 Act Order regarding Exchange Act Rule 12b–25.

[97] As with reports on Form 10–K and Form 10–KSB, reliance on the 34 Act Order is conditioned upon filing of the amendment in 60 days after the original due date of the report, excluding any additional period foreign private issuers had to actually file the report under Exchange Act Rule 12b–25. Extensions under Exchange Rule 12b–25 are not available for filing the amendment.

[98] ERISA stands for the Employee Retirement Income Security Act of 1974, as amended [29 U.S.C. §§ 1001–1461].

[99] 17 CFR 249.311.

[100] 17 CFR 240.15d–21.

information as part of the issuer's next annual report, as permitted by Exchange Act Rule 15d–21(b), will not be affected.

For example, the 34 Act Order permits a plan with a fiscal year ending December 31, 2001 for which Andersen had been engaged as the independent public accountant to examine the plan's financial statements on or after March 14, 2002, to file timely its annual report on Form 11–K by April 1, 2002,[101] but include the plan financial statements on an unaudited basis.[102] Under the 34 Act Order, the plan will then file its audited plan financial statements, a discussion of any material changes from the unaudited plan financial statements and any other section of the annual report that should be amended to reflect any changes in the financial statements as an amendment by May 31, 2002.[103]

If the alternative procedure in Exchange Act Rule 15d–21 is followed, the 34 Act Order permits unaudited plan financial statements to be filed in the annual report of the issuer, or as an amendment to that report, by April 30, 2002. Under the 34 Act Order's conditions, audited plan financial statements, a discussion of any material changes from the unaudited plan financial statements and any other section of the annual report related to the plan that should be updated will need to be filed as an amendment by July 1, 2002.[104] If the plan has a fiscal year that ends within 62 days before the end of the fiscal year of the issuer, it may elect to file the plan financial statements in the issuer's next annual report pursuant to Exchange Act Rule 15d–21(b).

Plans subject to ERISA will remain subject to the existing requirements for filing plan financial statements.

5. Filings on Schedules 14A and 14C

For issuers that file proxy statements or information statements that require audited financial statements pursuant to Item 13 or Item 14 of Schedule 14A [105] or Item 1 of Schedule 14C,[106] the 34 Act Order permits the filing of unaudited financial statements of issuers and, where applicable, of acquired companies, where the independent public accountant of the entity in question had been Andersen on or after March 14, 2002.[107] For issuers that are not registered investment companies, the relief provided by the 34 Act Order applies to proxy statements or information statements that are sent on or before September 13, 2002. For registered investment companies, the relief provided by the 34 Act Order applies to proxy statements or information statements that are sent on or before August 13, 2002. The 34 Act Order's conditions require the proxy statement or information statement to include disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X.

Under the 34 Act Order, these issuers must file revised material or amend documents incorporated by reference, as appropriate, containing financial statements audited by an accountant other than Andersen for the required periods by the earlier of 60 days [108] from the date when the financial statements were required to be included in the proxy statement or information statement and the date the audited financial statements are filed in the annual report of the registrant,[109] if the solicitation for purposes of proxy statements (or corporate action for purposes of information statements) has not been completed by such date. The revised material or amended documents must present the audited financial statements, a discussion of any material changes from the unaudited financial statements and any other section of the materials that should be updated to reflect the changes in the financial statements.[110]

Additionally, the Commission recognizes that issuers sending their proxy statement or information statement prior to obtaining their audit report will be unable to provide disclosure regarding audit committee reports pursuant to Item 7(d)(3)(i) of Schedule 14A and audit fees pursuant to Item 9(e) of Schedule 14A or Item 1 of Schedule 14C. The 34 Act Order permits the omission of this information for issuers with a fiscal year end between November 30, 2001 and April 15, 2002 from proxy statements and information statements in full satisfaction of those disclosure requirements if the issuer meets the 34 Act Order's conditions.

The 34 Act Order's conditions require the issuer to send its proxy statement or information statement on or before September 13, 2002.[111] Further, the issuer must respond to all other applicable disclosure requirements in their proxy statement or information statement. Under the 34 Act Order, the issuer will then include disclosure in response to Items 7(d)(3)(i) and Item 9(e) of Schedule 14A in their amended Form 10–K or Form 10–KSB, if this information was required in the Schedule 14A or Schedule 14C.

6. Annual Reports to Shareholders in Connection With Annual Meeting Proxy Solicitations

Issuers furnishing proxy statements or information statements in connection with their annual meeting of security holders, or written consents in lieu of annual meetings, at which directors are to be elected, must accompany or precede that proxy statement with an annual report to shareholders. That annual report to shareholders must satisfy the requirements of Exchange Act Rule 14a–3(b) [112] for proxy statements and Exchange Act Rule 14c–3 [113] for information statements. The 34 Act Order applies to issuers with a fiscal year ending between and including

[101] General Instruction A. to Form 11–K sets the due date for these reports at 90 days after the end of the fiscal year of the plan for non-ERISA plans. March 31, 2002 falls on a Sunday, so the report will be due by April 1 for plans with a December 31 fiscal year end.

[102] As with reports on Form 10–K and Form 10–KSB, one-time extensions of time to file the report are available under certain circumstances under Exchange Act Rule 12b–25. If a plan complies with that rule, it can file its annual report no later than the fifteenth calendar day following the prescribed due date for that report, and the report will be deemed to be filed on the prescribed due date. *See supra* note 89 for additional relief provided by the 34 Act Order regarding Exchange Act Rule 12b–25.

[103] As with reports on Form 10–K and Form 10–KSB, reliance on the 34 Act Order is conditioned upon filing of the amendment in 60 days after the original due date of the report, excluding any additional period the plan had to actually file the report under Exchange Act Rule 12b–25. Extensions under Exchange Rule 12b–25 are not available for filing the amendment.

[104] 180 days after the end of a fiscal year of a plan with a December 31 fiscal year is June 29, 2002, which falls on a Saturday. Accordingly, the amendment will be due by July 1, 2002.

[105] 17 CFR 240.14a–101.

[106] 17 CFR 240.14c–101.

[107] Under the 34 Act Order, the entity in question must also have a fiscal year ending with a date between and including November 30, 2001 and April 15, 2002 (for entities that meet the requirements of Rule 3–01(c) of Regulation S–X (or Item 310(b) of Regulation S–B if the entity is a small business issuer)), a fiscal year ending with a date between and including December 29, 2001 and April 15, 2002 (for entities that do not meet the requirements of Rule 3–01(c) of Regulation S–X (or Item 310(b) of Regulation S–B if the entity is a small business issuer)) or a fiscal year ending with a date between and including January 1, 2002 and April 15, 2002 (if the entity is a registered investment company).

[108] This period is 106 days for an issuer that does not meet all of the conditions in Rule 3–01(c) of Regulation S–X (Item 310(g) of Regulation S–B for small business issuers).

[109] Or the annual report to shareholders in the case of a registered investment company.

[110] Unless the company is eligible to rely on Regulation S–B for its disclosure requirements, if Andersen had been engaged originally as the independent public accountant to examine the company's financial statements, selected financial data required by Item 301 of Regulation S–K based on the audited financial statements are also required to be provided if this information would otherwise have been required in the proxy statement or information statement.

[111] This date is August 13, 2002 in the case of an issuer that is a registered investment company.

[112] 17 CFR 240.14a–3(b).

[113] 17 CFR 240.14c–3.

November 30, 2001 and April 15, 2002 for proxy statements or information statements sent on or before September 13, 2002.

Where their annual reports will include financial statements as to the examination of which Andersen had been engaged as the independent public accountant on or after March 14, 2002, the 34 Act Order permits issuers to provide those financial statements on an unaudited basis, if the document containing the unaudited financial statements includes disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X. The 34 Act Order's conditions require any issuer that does not include audited financial statements to inform its shareholders (i.e., through a press release [114] and posting the audited financial statements on the issuer's website, if it has one) when it files or amends its Form 10–K or Form 10–KSB to include the financial statements audited by an accountant other than Andersen, if the issuer's solicitation or corporate action has not been completed before the time the audited financial statements are filed.

7. Tender Offer Filings on Schedules TO

For offerors that commence tender offers that require financial statements pursuant to Item 10 of Schedule TO,[115] the 34 Act Order permits the filing of unaudited financial statements where the independent public accountant of the entity in question had been Andersen on or after March 14, 2002. The relief provided by the 34 Act Order applies to a Schedule TO filed on or before September 13, 2002 that would need to contain audited financial statements of an entity that has a fiscal year ending between and including November 30, 2001 and April 15, 2002 and where Andersen had been engaged as the independent public accountant on or after March 14, 2002 to examine those financial statements. The 34 Act Order's conditions require the Schedule TO to include disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X.

Under the 34 Act Order, the offeror must file revised material or amend documents incorporated by reference, as appropriate, to provide the financial statements audited by an accountant other than Andersen no later than the earlier of 60 days from the date the audited financial statements were required to be included in the Schedule TO and the date the audited financial statements are filed in the annual report of the registrant,[116] if the tender offer has not been completed by that date. The 34 Act Order's conditions require the revised material or amended documents to present the audited financial statements, a discussion of any material changes from the unaudited financial statements and any other section of the materials that should be updated to reflect the changes in the financial statements.[117]

V. Special Case-by-Case Matters

A. Item 7 of Form 8–K—Financial Statements in Business Combination Transactions

Item 7 of Form 8–K requires the filing by an acquiring company of financial statements of a target company and *pro forma* financial statements within 75 days of the consummation for certain business combination transactions. The Commission invites acquiring companies to seek accommodation, such as extensions of time to file, or other relief, such as permitting use of unaudited financial statements if the acquiring or target company had Andersen as its independent accountant and audited financial statements are not available and cannot be obtained without unreasonable effort and expense, in writing under Rule 3–13 of Regulation S–X. Letters should name all parties involved and state the relief or accommodation sought, the reason(s) the relief or accommodation is being sought and any other relevant information. Letters should be addressed to the Commission at 450 Fifth Street, NW, Washington, DC 20549–0410 (Facsimile: 202–942–9582). For purposes of the significance tests of Regulation S–X used to determine whether financial statements of a target company and *pro forma* financial statements are required, if Andersen was the independent accountant of the issuer, the issuer should use the most recent annual consolidated financial statements filed at, or prior to, the date of acquisition, even though the most recent filing may include unaudited financial statements.

B. Other Matters

We encourage issuers to contact the staff of the Commission and request consideration of the appropriateness of Commission or staff action in connection with their specific factual situation. Some of the areas where these types of requests may be appropriate include: companies with uncommon fiscal year ends, change in fiscal year end and the resultant need to file transition reports pursuant to either Exchange Act Rule 13a–10 [118] or Exchange Act Rule 15d–10, [119] special financial reports required by Exchange Act Rule 15d–2, [120] filings by Canadian issuers under the Multi-Jurisdictional Disclosure System [121] and issues concerning the need to recirculate a prospectus, resolicit a proxy statement or extend an offering.

VI. Broker-Dealers and Transfer Agents Registered Under the Exchange Act; Other Market Regulation Guidance

The 34 Act Order provides affected registered broker-dealers and transfer agents extensions of time to file audited financial statements and audited internal controls reports, respectively, under specified conditions. The 34 Act Order also permits affected registered broker-dealers to furnish unaudited annual financial statements to customers and certain other persons under specified conditions. The relief provided by the 34 Act Order is available with respect to registered broker-dealers and transfer agents that are unable or elect not to obtain from Andersen a manually signed audit report for those financial statements, or a manually signed internal controls report, so long as such manually-signed reports were not received on or before March 14, 2002.

A. Broker-Dealer Financial Statements

The relief provided by the 34 Act Order applies to broker-dealers with a fiscal year ending between and including January 14, 2002 and April 15, 2002. Paragraph (d) of Exchange Act Rule 17a–5 [122] generally requires a registered broker-dealer to file with the Commission annually, on a calendar or fiscal year basis, specified audited

[114] The press release is to announce that the audited financial statements are available and may be found in the issuer's filing on the Commission's website at www.sec.gov and on the issuer's website, citing the address, if the issuer has a website.

[115] 17 CFR 240.14d–100.

[116] Or annual report to shareholders in the case of a registered investment company.

[117] Unless the offeror is eligible to rely on Regulation S–B for its disclosure requirements, if Andersen had been engaged originally as the independent public accountant to examine the offeror's financial statements, selected financial data required by Item 301 of Regulation S–K based on the audited financial statements must also be provided.

[118] 17 CFR 240.13a–10.

[119] 17 CFR 240.15d–13.

[120] 17 CFR 240.15d–2.

[121] As a general matter, it is the view of the Commission that MJDS filers on Forms F–7, F–8, F–9, F–10 or F–80 [17 CFR 239.37, 239.38, 239.39, 239.40 or 239.41] under the Securities Act will be in compliance with the requirements of the form relating to consents of Andersen if the issuer meets the eligibility requirements and conditions of new Securities Act Rule 437a.

[122] 17 CFR 240.17a–5.

financial statements no later than 60 days after the date of the financial statements. The 34 Act Order permits eligible broker-dealers to file their audited financial statements within 60 days after the date the statements otherwise would have been required to have been filed under paragraph (d)(5) of Rule 17a–5. For example, the 34 Act Order permits a broker-dealer with a fiscal year that ended on January 31, 2002, for which Andersen had been engaged as the independent public accountant to examine the broker-dealer's financial statements, and for which the manually-signed audit report has not been received on or before March 14, 2002, to file its audited financial statements no later than May 31, 2002.

In addition, paragraph (c) of Exchange Act Rule 17a–5 generally requires a registered broker-dealer to send to its customers and certain other persons [123] certain audited financial statements within 105 days after the date of the end of the calendar or fiscal year.[124] The 34 Act Order maintains the existing deadline under Rule 17a–5(c), but permits eligible broker-dealers to furnish financial statements on an unaudited basis. For example, the 34 Act Order permits a broker-dealer with a fiscal year that ended on January 31, 2002, for which Andersen had been engaged as the independent public accountant to examine the broker-dealer's financial statements, and for which the manually-signed audit report has not been received on or before March 14, 2002, to furnish unaudited annual financial statements to customers and such other persons no later than May 16, 2002.

B. Transfer Agent Internal Control Reports

Paragraph (a) of Exchange Act Rule 17Ad–13 [125] generally requires a registered transfer agent to file annually with the Commission and the transfer agent's appropriate regulatory agency a report prepared by an independent accountant concerning the transfer agent's system of internal accounting control and related procedures for the transfer of record ownership and the safeguarding of related securities and funds. That internal controls report must be filed within 90 calendar days of the date of the accountant's study and evaluation. The 34 Act Order permits eligible transfer agents to file their internal controls reports within 60 days after the date the reports otherwise would have been required to have been filed under paragraph (a) of Rule 17Ad–13. For example, the 34 Act Order permits a transfer agent, for which Andersen had been engaged to prepare its annual internal controls report and had conducted its study and evaluation as of January 31, 2002, and for which a manually-signed report has not been received on or before March 14, 2002, to file such report no later than June 30, 2002.

C. Other Market Regulation Guidance

1. Listing Requirements of Self-Regulatory Organizations

Self-regulatory organization (''SRO'') listing standards typically require issuers to distribute to shareholders an annual report containing audited financial statements within a prescribed period after the end of the issuer's fiscal year and no later than a prescribed number of days before the issuer's annual meeting.[126] The Commission will work with applicable SROs to encourage them to grant relief to listed companies that are audit clients of Andersen that is consistent with the relief being issued by the Commission today.

2. SRO Member Firm Audit Requirements

To the extent that SRO rules require broker-dealer member firms to file annual audited financial statements,[127] the Commission will work with such SROs to encourage them to grant relief to member firms that are audit clients of Andersen that is consistent with the relief being issued by the Commission today. In addition, the Commission urges broker-dealer audit clients of Andersen with fiscal years ending before January 14, 2002 that have encountered delays in completing their audited financial statements to contact their designated examining authority for an appropriate extension of time to file under Exchange Act Rule 17a–5.[128]

3. Municipal Securities Issuers: Contractual Requirements to Provide Audited Financial Statements

Exchange Act Rule 15c2–12 [129] generally requires underwriters participating in municipal securities offerings to reasonably determine that issuers and certain other ''obligated persons'' have contracted to provide annual financial statements to certain information repositories,[130] and to disclose in material event notices [131] and future official statements [132] failures to do so by the contractual deadline. The Commission urges municipal securities market participants to interpret the filing of annual audited financial statements within 60 days of the contractual deadline, by municipal securities issuers and obligated persons with a fiscal year ending between and including September 15, 2001 and April 15, 2002 that are audited by Andersen, as not creating a material breach of their contractual undertaking. This interpretation would be appropriate, however, only if the issuer or obligated person files unaudited financial statements with the appropriate repositories by the contractual deadline.

VII. Registrants Under the Investment Company Act of 1940 and the Investment Advisers Act of 1940

The Commission is also issuing an order under the Investment Company Act [133] and Investment Adviser Act [134] that address issues investment companies and investment advisers may face that are unable to obtain the services of Andersen or that choose not to continue to engage Andersen as their independent public accountant.

A. Registration Statements and Reports Under the Investment Company Act

1. Eligibility

The 40 Act Order provides relief for investment companies with obligations to file amendments to registration statements under the 1940 Act, annual reports to shareholders, and annual

[123] Subparagraph (c)(1) of Rule 17a–5 requires registered broker-dealers to file specified customer statements with the Commission, at its principal office in Washington, D.C., with the regional office of the Commission for the region in which the broker-dealer has its principal place of business, and with each national securities exchange and national securities association of which it is a member.

[124] Specifically, the audited financial statements must be sent to customers no later than 105 days after the date of the audited report required by paragraph (d) of Rule 17a–5.

[125] 17 CFR 240.17Ad–13.

[126] *E.g.,* NYSE Listed Company Manual Para. 203.01; NASD Rule 4350(b); Amex Listing Standards, Policies and Requirements Sections 610–611.

[127] *E.g.,* NYSE Rule 418; CBOE Rule 15.6.

[128] Subparagraph (l)(1) of Exchange Act Rule 17a–5 permits a broker-dealer's designated examining authority to extend the period for filing annual audit reports under paragraph (d) of Exchange Act Rule 17a–5.

[129] 17 CFR 240.15c2–12.

[130] Annual financial information is to be furnished to each nationally recognized municipal securities information repository and to the appropriate state information depository, if any. (Rule 15c2–12(b)(5)(i)(A)–(B)).

[131] Rule 15c2–12(b)(5)(i)(D).

[132] As defined in Rule 15c2–12(f)(3), the required ''final official statement'' must include a description of any instances in the previous five years in which the issuer or obligated person failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified by Rule 15c2–12(b)(5)(i).

[133] 15 U.S.C. 80a–1 *et seq.*

[134] 15 U.S.C. 80b–1 *et seq.*

reports on Form N–SAR.[135] An investment company is eligible for the relief (an ''Eligible Fund'') if—

- Andersen had been engaged on or after March 14, 2002 as the fund's independent public accountant;
- The Eligible Fund, on or before March 14, 2002, had not obtained a manually signed audit report from Andersen in respect to those financial statements; and
- The Eligible Fund is unable to obtain from Andersen or elects not to have Andersen issue a manually signed audit report with respect to its financial statements.

2. Registration Statement Under the Investment Company Act

For Eligible Funds with a fiscal year ending between January 1, 2002 and April 15, 2002, the 40 Act Order permits them to file a post-effective amendment to their 1940 Act registration statements within six months after their fiscal year end (rather than 120 days) if the fund has timely filed its Form N–SAR as provided in the order. The 40 Act Order thus conforms the 1940 Act registration statement updating requirements to those we are today adopting in 1933 Act Rule 427T.

3. Annual Reports to Shareholders

For Eligible Funds transmitting annual reports to shareholders and that have fiscal years ended between January 1, 2002 and April 15, 2002, the 40 Act Order permits them to mail their annual reports to shareholders with unaudited financial statements that also contain the disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X. The Eligible Fund must file an amended annual report within 60 days of the original due date containing financial statements audited by another independent public accountant and a discussion of any material changes from the unaudited financial statements filed originally. [136]

Most closed-end funds annually furnish shareholders a proxy statement (or information statement) that must be accompanied or preceded by an annual report. The 40 Act Order's conditions require a closed-end fund, when it amends its annual report to include the audited financial statements, to inform its shareholders through a press release and by posting the audited financial statements on the company's web site (if it has one) if the company's solicitation or corporate action has not been completed before the time the audited financial statements are filed.

4. Form N–SAR

For Eligible Funds filing annual reports on Form N–SAR with fiscal years ending between December 15, 2001 and April 15, 2002, the 40 Act Order permits them to file their Form N–SAR with unaudited financial information and without the report of independent accountants on internal controls so long as the Eligible Fund files an amendment providing audited financial information and the report of the independent accountants on internal controls within 60 days of the original due date for the filing.

Investment companies for which Andersen has been acting as independent accountant may report a change in accountant under item 77K of Form N–SAR consistent with our statement on change in accountants as described above in Section II.B.10. of this release.

B. Selection of Independent Public Accountant

Section 32(a)(1) and Rule 32a–3 under the Investment Company Act set forth certain periods at the beginning of each fiscal year during which registered management investment companies (mutual funds, closed-end funds and business development companies) must select an independent public accountant.[137] Some investment companies for which Andersen serves as independent public accountant may need additional time as a result of recent events. The 40 Act Order provides an additional sixty days for an investment company to select an independent public accountant whose financial statements for its last fiscal years was audited by Andersen and whose fiscal year ended on or before April 15, 2002.

Section 32(a) provides that a new accountant may be selected due to the death or resignation of the accountant by a vote of a majority of members of the investment company's board of directors (*i.e.,* without shareholder ratification), but does not address how a fund whose board of directors has terminated the appointment of the accountant may select a new one. The 40 Act Order permits a fund that had selected Andersen as its independent public accountant on or before March 14, 2002, and thereafter terminated the appointment, to select a new independent public accountant by a majority vote of the independent directors of the fund.

Section 32 requires the directors to select the investment company's independent public accountant at a meeting at which their votes would be cast ''in person.'' In light of the events surrounding Andersen, the 40 Act Order permits companies making selections pursuant to the provisions of the 40 Act Order to cast their votes in a meeting in which directors may participate by any means of communicating that allows all directors participating to communicate with each other simultaneously during the meeting.

C. Verification of Assets in Custody

Various Investment Company Act rules (Rules 17f–1, 17f–2, 6e–2 and 6e–3(T)) regarding custody of securities or similar investments of a management investment company or insurance company separate account require that the securities and other investments be verified by actual examination periodically by an independent public accountant.[138] Because clients of Andersen may decide to retain a new independent public accountant and may need additional time to complete their verifications, the 40 Act Order allows an additional 60 days to complete these verifications for investment companies with a fiscal year ending between January 1 and April 15, 2002.

D. Balance Sheets of Investment Advisers

Investment Adviser Act Form ADV requires an investment adviser to include on Schedule G of the Form a balance sheet for its most recent fiscal year, audited by an independent accountant, if the adviser has custody of client funds or securities or if the adviser requires prepayment of more than $500 in fees per client and six or more months in advance.[139] The 40 Act Order permits an adviser that had engaged Andersen (or a foreign affiliate of Andersen) to examine the balance sheet to be included in Schedule G to use an unaudited balance sheet to satisfy the requirements of Schedule G for 60 days if the adviser—

- Had not, on or before April 14, 2002, obtained a manually signed unaudited report from Andersen (or a foreign affiliate of Andersen);
- Is unable or elects not to have Andersen issue a manually signed audit

[135] 17 CFR 274.101.

[136] An investment company that continues to engage Andersen must make the disclosures specified in Temporary Note 3T to Article 3 of Regulation S–X in its annual report to shareholders, although the exact nature of each company's disclosure may vary depending upon the facts and circumstances of each company. *See* discussion in Section II.A. of this release.

[137] 15 U.S.C 80a–31 and 17 CFR 270.32a–3. Section 32(a)(1) also applies to face amount certificate companies.

[138] 17 CFR 270. 17f–1, 17f–2, 6e–2, and 6e–3(T).

[139] 17 CFR 279.1.

report from Andersen in respect to that balance sheet; and

- Has a fiscal year ending between December 1, 2001 and April 15, 2002.

At the end of the 60-day period the adviser must resume furnishing or offering to furnish a disclosure statement containing an audited balance sheet. The 40 Act Order imposes no additional filing requirements.

E. Exemptive Orders

In the past, the Commission has issued a number of orders under the Investment Company Act and the Investment Advisers Act and the rules thereunder exempting investment companies, investment advisers and others from provisions of these statutes and rules. Some of these orders are conditioned upon the involvement of an independent accountant preparing a report, conducting an audit, reviewing various systems or procedures, monitoring ongoing transactions or providing other services. Persons relying on these orders that have retained the services of Andersen will not be in violation of the applicable provisions of law or rule because of an inability to comply with the conditions or representations as a result of their inability to obtain the services of or elects not to continue to engage Andersen. We have provided persons relying on these orders an additional 60 days to comply with the requirements of their orders.

VIII. Registrants Under the Public Utility Holding Company Act of 1935

The Commission is issuing another order under the Public Utility Holding Company Act of 1935 [140] that addresses issues that registered public utility holding companies may face as a result of the circumstances surrounding Andersen.

A. Annual Reports on Form U5S

Public utility holding companies registered under the Public Utility Holding Company Act of 1935 are required to file with the Commission annual reports on Form U5S.[141] Form U5S includes requirements that a registered holding company incorporate by reference annual reports filed by any of its system companies under the Exchange Act (''1934 Act Reports'') as well as the opinion of its independent accountant with respect to the holding company's consolidated financial statements.

The 35 Act Order permits registered public utility holding companies with a fiscal year ending between November 30, 2001 and April 15, 2002 that have retained Andersen as their independent accountant to file their annual report on Form U5S with unaudited financial statements. Specifically, the 35 Act Order permits registered public utility holding companies to incorporate by reference 1934 Act Reports that meet the requirements of the 34 Act Order provided they amend their filing to include any amended report filed in accordance with the 34 Act Order as well as the opinion of their independent accountants within 60 days.

B. Computations Required by Certain Rules and Orders

Rules 53 and 58 under the Public Utility Holding Company Act of 1935 establish safe harbors that permit registered public utility holding companies to invest up to a specified amount in various types of non-utility activities without seeking prior Commission approval.[142] In computing the permitted level of investment, registered public utility holding companies relying on the rules are required to use financial information included in their filings on Form 10–Q and Form 10–K. Other registered utility holding companies with orders under Sections 53, 54 [143] and 58 of the Public Utility Holding Company Act of 1935 permitting them to exceed these safe harbors are required to make analogous computations pursuant to the terms of their orders. The 35 Act Order makes clear that with respect to any computation required by Rule 53(a)(1) or Rule 58(a)(1) or any similar computation required by these rules or orders, a registered public utility holding company that is filing annual reports of Form 10–K or quarterly reports on Form 10–Q in reliance on the 34 Act Order may rely on the financial statements included in those filings in performing the required calculations.

IX. Consideration of Comments

We are publishing final rules and temporary final rules, rather than a notice of proposed rulemaking, for reasons stated in the section entitled ''Procedural Matters.'' We will, however, consider any comments concerning whether other temporary or permanent rule changes are needed.

X. Procedural Matters

The Administrative Procedure Act generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register**.[144] This requirement does not apply, however, if the agency ''for good cause finds * * * that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.'' [145] The Commission believes that it is appropriate to adopt the rules immediately for two reasons. First, some Andersen clients that end their audit relationship with Andersen may be in the middle of, or about to begin, raising capital publicly but will not have the required audited financial statements available when they are needed. The rules are needed immediately to remove regulatory impediments to their capital-raising plans with minimal market disruption. Second, information needs to be available to the investing public, beginning immediately, about the assurances issuers to whom Andersen issues reports after March 14, 2002 have received from Andersen concerning Andersen's quality control procedures in place during the audit. Accordingly, the Commission for good cause finds that delaying adoption of these rules until after a notice and comment period would be impractical and contrary to the public interest.

The Administrative Procedure Act also generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.[146] This requirement, however, does not apply if the agency finds good cause for making the rule effective sooner.[147] For the same reasons as it is waiving notice and comment, the Commission finds good cause to make the rules effective immediately.[148]

XI. Paperwork Reduction Act

This Paperwork Reduction Act (''PRA'') information pertains to both the rules adopted today and the accompanying orders attached to this release as Appendices A–C. Certain provisions of the rules and accompanying orders contain a ''collection of information'' requirement within the meaning of the Paperwork Reduction Act of 1995.[149] We submitted this requirement to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(j) and 5 CFR 1320.13. The title for

[140] 15 U.S.C. 79a *et seq.*

[141] 17 CFR 259.5s.

[142] 17 CFR 250.53 and 58.

[143] 17 CFR 250.54.

[144] *See* 5 U.S.C. 553(b).

[145] *Id.*

[146] *See* 5 U.S.C. 553(d).

[147] *Id.*

[148] This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rules to become immediately effective notwithstanding the requirements of 5 U.S.C. 801 (if agency finds that notice and public procedure are ''impractical, unnecessary, or contrary to the public interest,'' rule ''shall take effect at such time as the Federal agency promulgating the rule determines'').

[149] 44 U.S.C. 3501 *et seq.*

the collection is Temporary Relief for Certain Entities Audited by Arthur Andersen LLP.

As discussed above, the Commission is adopting rules and issuing orders to mitigate the potential consequences to the markets as a result of Andersen's indictment. In order to minimize any market disruption, the Commission is providing relief with respect to certain filing and other requirements for certain clients of Andersen. The collection of information adopted today is necessary to ensure that the market receives disclosure from clients of Andersen that are taking advantage of this relief. The collection of information will supply investors with information they may not otherwise have and will help prevent confusion.

Temporary Relief for Certain Entities Audited by Arthur Andersen LLP. This collection of information encompasses certain new disclosures required by certain clients of Andersen. In general, public companies for whom Andersen does not complete audits or reviews will be allowed to file unaudited financial statements, rather than audited ones, in order to meet existing periodic reporting, proxy statement, tender offer, and registration requirements, as long as they disclose that the financial statements are unaudited (or not reviewed), provide audited (or reviewed) financial statements at a later date, and explain any material differences between the unaudited and audited financial statements. In some cases, issuers must alert the public through a press release that the audited financial statements are available and post the audited financial statements on their websites (if they have websites). Certain investment advisers may provide clients and prospective clients with unaudited balance sheets, with appropriate disclosure, and provide audited balance sheets at a later date. Clients that wish to file financial statements audited by Andersen must file a letter with affected filings concerning representations received from Andersen regarding Andersen's audit quality controls. In certain cases where Andersen clients were required to submit a consent or a reissued accountants' report from their auditor, but cannot obtain the consent or the reissued accountants' report, those requirements have been waived provided the filing includes appropriate disclosure. Because the rules regarding waiver of consents and reissued accountants' reports are permanent, these aspects of the collection of information also have been submitted to OMB for regular review as a stand-alone collection of information.

This collection of information imposes a minimal and temporary burden on some Andersen clients. It is difficult to estimate with precision the burden imposed by this collection of information requirement. We estimate that there are approximately 2,400 clients of Andersen potentially affected by this collection of information. However, some clients may not be subject to the collection of information because these clients may already have filed financial statements audited by Andersen.

We estimate for purposes of the PRA that approximately 1,979 Andersen clients will make new disclosures associated with one periodic report (two burden hours per filing) and approximately 325 will make new disclosures associated with two such reports; approximately 130 Andersen clients will make new disclosures associated with one registration statement each (three burden hours per filing); approximately 2,304 Andersen clients will make new disclosures associated with one proxy-related filing each (two burden hours per filing); approximately 22 Andersen clients will make new disclosures associated with one tender offer-related filing (two burden hours per filing); approximately 83 Andersen clients will make disclosures associated with investment adviser balance sheet requirements (one hour per disclosure); and approximately 2,400 Andersen clients will make one disclosure relating to Andersen's audit quality controls (one burden hour per filing). We recognize that the assumptions necessarily overcount the potential burden, as they assume all clients will both continue to be audited by Andersen and decide not to have Andersen complete the audit. We make these assumptions because the overall burden estimate is minimal and because we cannot estimate which option Andersen clients will choose. Thus, for PRA purposes, we have estimated that the total number of burden hours associated with this collection of information is 12,783.

Waiver of Auditor Consent and Reissued Accountants' Report. The Commission has also submitted, for regular review pursuant to 44 U.S.C. 3507(d) and 5 CFR 1320.11, as a separate collection of information that will not be temporary, two aspects of the above-described collection of information. First, companies currently need to include in their registration statements the consent of auditors for use of their reports related to the three previous years' audits. For Andersen clients unable to obtain these consents, the rule amendments waive the obligation to obtain an auditor's consent for years before 2001, provided that the company discloses any limitations on remedies resulting from the lack of consents. Second, certain issuers that change auditors need to obtain from their predecessor auditor a reissued accountants' report for previously audited financial statements. Under the new rules, if the issuer is unable to obtain the accountants' report after reasonable efforts, the issuer may provide a copy of the latest previously issued accountants' report, as long as it discloses that the report is a copy of a report previously issued and that the report has not been reissued by Andersen. This collection of information is necessary to advise potential purchasers of securities and investors of certain information that they would not receive otherwise.

For the purposes of the collection of information entitled ''Temporary Relief for Certain Entities Audited by Arthur Andersen LLP,'' we estimated that the disclosures associated with registration statements would take three hours and that disclosures associated with periodic reports, proxy statements and tender offers would take two hours. One half hour of these estimates is the estimated time required to make disclosures associated with the waiver of consents and one half hour of these estimates is the estimated time required to make disclosures associated with the waiver of the predecessor auditor's reissued report.

We estimate that last year there were approximately 650 registration statements filed by clients of Andersen. For purposes of the PRA, we assume that 650 Andersen clients will file one registration statement annually requiring waivers of the consent and the reissued predecessor auditor's report. Additionally, we estimate that of Andersen's approximately 2,400 clients, approximately 2,304 are public companies that file annual reports, proxy materials and tender offer filings. We estimate that these clients will file 2,629 annual reports (certain issuers with non-ERISA retirement benefit plans may file additional annual reports for those plans), 2,304 proxy-related filings, and 132 tender offer filings. Because we estimate that each disclosure will require one half hour, we estimate that the total number of burden hours associated with this collection of information is 3,182.5.

The Commission has adopted, and OMB has approved, the collection of information entitled ''Temporary Relief for Certain Entities Audited by Arthur Andersen LLP'' on an emergency basis. The control number for this collection

of information is OMB Control No. 3235–0557. This collection of information will expire on September 30, 2002. As noted above, the Commission has also submitted for regular review pursuant to 44 U.S.C. 3507(d) and 5 CFR 1320.11 the collection of information entitled ''Waiver of Auditor Consent and Reissued Accountants' Report.''

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information entitled ''Waiver of Auditor Consent and Reissued Accountants' Report'' 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 Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirement should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, with reference to File No. S7–03–02. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–03–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning its regular review of the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

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. Compliance with the disclosure requirements is mandatory for those taking advantage of the rules and orders. There is no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential.

XII. Analysis of Costs and Benefits

The Commission is sensitive to the costs and benefits imposed by its rules. [150] The rules we are adopting include a requirement that Andersen clients that continue their audit relationship with Andersen make publicly available certain assurances they receive from Andersen concerning Andersen's quality control procedures in place during the audit (the ''assurance letter requirement''). The rules also provide alternative regulatory requirements that will give Andersen clients certain options regarding compliance with the federal securities laws (the ''temporary rules'').

A. The Assurance Letter Requirement

The assurance letter requirement benefits investors by providing that basic information about Andersen's continued adherence to quality control standards be made publicly available with respect to each Andersen audit during this period of uncertainty and potentially rapid change. The costs of the assurance letter requirement are limited to the minimal costs involved for Andersen to transmit representations to its audit clients and the minimal costs involved for each Andersen audit client to include representations in a letter with certain filings.

B. The Temporary Rules

Before its indictment, Andersen may not have completed its audit or issued audit opinions with respect to many of its clients in registration or about to register securities. Andersen clients that are in that position, but that choose to end their audit relationship with Andersen or are unable to obtain audit services from Andersen to complete their audits (hereafter, the ''terminated clients''), will need to engage new independent public accountants. We recognize that many terminated clients may be unable to engage a new auditor that can, in a timely fashion, complete an audit and sign an audit opinion that normally must be included with a registration statement. The purpose of the temporary rules is to minimize disruption to the capital markets and to the terminated clients while those clients complete certain pending or imminent offerings.

The temporary rules have four primary components:

- The Commission is permitting the terminated clients filing registration statements (other than companies registering initial public offerings) to include unaudited financial statements. Those terminated clients must amend their registration statements to include audited financial statements within 60 days after the date on which the audited financial statements would otherwise be required.
- The Commission is extending from 16 to 18 months the age of audited financial information that a terminated client can include in a prospectus used nine months after the effectiveness of an underlying registration statement.
- The Commission is waiving the requirement for Andersen clients to include in a registration statement the consent of Andersen to use audit reports for prior years for which a consent cannot be obtained; the issuer must include a copy of the latest signed and dated accountants' report issued by Andersen and include certain related disclosure if a reissued accountants' report cannot be obtained.
- Our current rules require issuers that expect to report a loss for the most recent fiscal year, or that had a loss for the last two fiscal years, to file audited financial statements within 45 days of the end of their fiscal year. The Commission is providing relief allowing the affected terminated clients to continue to use their unaudited financial statements for registration statements or any other purpose provided they obtain audited financial statements within 60 days of the original due date.

1. Benefits

The benefit of the temporary rules, like the Orders issued today, is the mitigation of disruption, uncertainty, lost opportunity, and other costs that, however unlikely, might be visited upon the market and the terminated clients. The temporary rules provide the market and the terminated clients with regulatory clarity to help address the disruption in an orderly fashion, and without expending more resources, or forsaking more opportunity, than is necessary.

First, by virtue of addressing and resolving certain questions, the temporary rules mitigate the costs to terminated clients from having to formulate capital-raising plans in an uncertain regulatory environment. It is unavoidable that the terminated clients will need to devote resources to

[150] In companion Orders issued today, we are providing relief under the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and the Public Utility Holding Company Act. This cost-benefit analysis addresses only the relief provided by these rule amendments.

assessment and planning, but a principal benefit of the temporary rules is to facilitate that assessment and planning process by preemptively addressing questions that would arise concerning regulatory compliance.

Second, the temporary rules will help mitigate any possible disruptions to the capital-raising process. The terminated clients currently in registration, or planning to register securities in the very near term, may be unable to obtain audited financial statements in time to support registration statements. They may also face hardship in obtaining necessary consents from Andersen to include accountants' reports related to financial statements Andersen audited in prior years and obtaining a reissued accountants' report for use in future filings. Capital raising frequently is time-sensitive. By preserving for the terminated clients the option of going forward with their capital-raising plans, albeit subject to whatever market risk accompanies going forward with unaudited financial statements, the temporary rules afford issuers and investors a capital-raising and investment option that would otherwise be postponed and possibly lost altogether.

Third, the temporary rules will benefit certain terminated clients by extending a regulatory deadline that would be difficult, and perhaps impossible, to meet because of the transition to a new auditor. Our current rules require issuers that expect to report a loss for the most recent fiscal year, or that had a loss for the last two fiscal years, to file audited financial statements within 45 days of the end of their fiscal year. The temporary rules provide a reasonable regulatory accommodation for the terminated clients in that position.

2. Costs

As described above, the principal purpose of the temporary rules is to mitigate costs and uncertainties. Because the temporary rules, like the Orders issued today, provide optional compliance alternatives, any costs that they impose will be imposed only on those parties that choose to proceed pursuant to them. The terminated clients that opt to proceed pursuant to the temporary rules may incur costs associated with explaining the effect of filing unaudited financial statements, retransmitting financial statements, and obtaining new signatures for the second filing, with attendant liability.

The temporary rules may also impose certain other types of costs. One cost that may result from the rules is the unquantifiable cost of allowing the terminated clients to offer securities for a temporary period with unaudited, rather than audited, financial statements. That cost is borne both by investors, who may bear more risk than usual in purchasing the securities, and by the terminated clients, since that increased investor risk may create a less receptive market and a correspondingly higher cost of capital for those issuers.

The temporary rules limit the time during which potential investors in the securities will need to make investment decisions without the benefit of audited financial statements. The temporary rules do not mitigate the risk to those investors who do in fact purchase the securities in the period before the audited financial statements are filed, nor do they mitigate the risk to issuers that investors may be less receptive to their securities during that period.

Some costs may be associated with allowing a withdrawing client to use audited financial information that is up to 18 months old, rather than 16 months old, in a prospectus used nine months after the effectiveness of the underlying registration statement. The increased age of the information may mean that it is perceived by investors to be less reliable.

Costs may also accompany the waiver, for current and former Andersen clients, of the requirement that a registration statement include the consent of Andersen to use Andersen audit opinions for prior years. Because the registration statements will be supported by prior years' audit opinions that are not backed by the auditor's current consent, the temporary rules may generate a cost in that investors may have less confidence in the issuer's reported financial condition for those earlier years. Similar costs may be associated with the inability of issuers to obtain a reissued accountants' report.

The inability of Andersen clients to obtain Andersen's consent is a consequence of Andersen's status and not a consequence of the temporary rules. That inability alone, however, does not make it impossible for Andersen clients to comply with the consent requirement, since they could decide to retain a different auditor to re-audit prior years. Thus, while it is Andersen's status, and not the temporary rules, that may make it impossible to obtain the relevant consents from Andersen, the temporary rules create the possibility that the affected registration statements will be effective without those issuers otherwise complying with the consent requirement. Issuers may select the approach which they perceive to be most cost-effective.

Finally, there are costs associated with extending the deadline for filing audited financial statements by those terminated clients that expect to report a loss for a recently completed fiscal year or have reported losses for the past two fiscal years. As discussed above, the use of unaudited financial statements can result in unquantifiable costs to investors and issuers. The filing deadline serves a regulatory purpose that will be impeded temporarily because of the delay.

XIII. Regulatory Flexibility Act

The Regulatory Flexibility Act [151] does not apply to the rules we are adopting today. The Regulatory Flexibility Act only requires agencies to prepare analyses for rulemaking when the Administrative Procedure Act requires general notice of proposed rulemaking.[152] As noted above, the Commission is not required to solicit public comment because the Commission is using the expedited rulemaking procedures under section 553(b) of the Administrative Procedure Act.

XIV. Effects on Competition, Efficiency and Capital Formation

Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the anticompetitive effects of any rules it adopts.

A. The Assurance Letter Requirement

We have considered what impact the assurance letter requirement will have on efficiency, competition, and capital formation. The requirement may promote efficiency to some degree by making available to markets information that it would not otherwise be available, at a de minimis cost to those that must supply the information. The assurance letter requirement will neither promote nor impede capital formation or competition, but will only help ensure the availability of relevant information to markets and investors.

B. The Temporary Rules

The temporary rules neither promote nor impede competition. The temporary

[151] 5 U.S.C. 601–612.

[152] 5 U.S.C. 603(a).

rules give the terminated clients the option of proceeding with capital formation as intended before the announcement of Andersen's indictment. Absent the relief we are providing today, some terminated clients might be forced to postpone public offerings of securities until they engage a new auditor and obtain audited financial statements. By affording those terminated clients the option of proceeding, temporarily, with unaudited financial statements, the temporary rules reduce that obstacle to capital formation.

Some terminated clients have made, or will make, financial and economic decisions to raise capital based on their individual needs and will pursue plans toward that end. Absent the relief we are providing today, the temporary adjustments that the terminated clients would need to make to financial and other operations due to the postponement of those plans would likely entail overall inefficiencies in their capital-raising efforts. By giving those terminated clients the option to proceed, the temporary rules provide them with an alternative that would reduce or eliminate those inefficiencies.

We have considered whether the temporary rules promote competition. The temporary rules will neither promote nor impede competition. The terminated clients may have made plans for, and based expectations on, raising capital within a certain time frame. Absent the relief we are providing today, capital raising could be delayed. From this perspective, the temporary rules may well mitigate that possible effect.

We have also considered whether the temporary rules would impede competition by giving terminated clients a competitive advantage relative to other issuers. It might be suggested that other issuers would like to have the option of filing a registration statement with unaudited financial statements and only supplying audited financial statements sixty days later. We cannot conclude that the temporary rules create a competitive advantage for the terminated clients or otherwise impede competition. The terminated clients will be seeking capital without supplying investors with audited financial statements, while competing issuers seeking capital in the same markets will supply audited financial statements. This does not constitute a competitive advantage for the terminated clients. The temporary rules do not pose an impediment to competition or materially impede the competitive position of any issuer.

XV. Statutory Bases

The amendments contained in this release are being adopted under the authority set forth in Sections 2, 4, 6, 7, 8, 10, 19 and 28 of the Securities Act, as amended, Sections 3, 4, 10, 12, 13, 14, 15, 23 and 36 of the Exchange Act, as amended, and Sections 304, 305, 307, 308, 310, 314 and 319 of the Trust Indenture Act of 1939, as amended.

List of Subjects

17 CFR Part 210

Accountants, Accounting.

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small business.

17 CFR Parts 229 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 230

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

17 CFR Part 260

Reporting and recordkeeping requirements, Securities, Trusts and trustees.

Text of the Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78l, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78ll, 78mm, 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), 80b–3, 80b–11 unless otherwise noted.

2. By amending § 210.2–02 by adding paragraph (e) to read as follows:

§ 210.2–02 Accountants' reports.

* * * * *

(e) Paragraph (e) of this section applies only to registrants that are providing financial statements in a filing for a period with respect to which Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP (''Andersen'') issued an accountants' report. Notwithstanding any other Commission rule or regulation, a registrant that cannot obtain an accountants' report that meets the technical requirements of paragraph (a) of this section after reasonable efforts may include in the document a copy of the latest signed and dated accountants' report issued by Andersen for such period in satisfaction of that requirement, if prominent disclosure that the report is a copy of the previously issued Andersen accountants' report and that the report has not been reissued by Andersen is set forth on such copy.

3. By adding Temporary Note 1T, Temporary Note 2T and Temporary Note 3T after the introductory note under the undesignated heading ''General Instructions as to Financial Statements'' preceding § 210.3–01 to read as follows:

GENERAL INSTRUCTIONS AS TO FINANCIAL STATEMENTS

* * * * *

Temporary Note 1T: Notwithstanding any other Commission rule or regulation, every registrant meeting the eligibility requirements in paragraph (a) of this note that files a registration statement on Forms S–1, S–2, S–3, S–4, S–6, S–8, S–11, N–1, N–1A, N–2, N–3, N–4, N–5 or N–14 (§§ 239.11, 239.12, 239.13, 239.25, 239.16, 239.16b, 239.18, 239.15, 239.15A, 239.14, 239.17a, 239.17b, 239.24 or 239.23 of this chapter), or an amendment thereto, that requires audited financial statements for the most recent fiscal year end may file unaudited financial statements in satisfaction of that requirement under the conditions listed in paragraph (b) of this note. In the case of a registered investment company that files a new registration statement on Form S–6 other than an insurance company separate account, however, the relief provided by this note shall not extend to financial statements of the registered investment company itself.

(a) *Eligibility requirements.* An issuer:

(1) That at the time of filing a registration statement is subject to the periodic reporting requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a) or 78o(d)) or, in the case of a registered investment company, has previously filed a registration statement under the Securities Act of 1933 (15 U.S.C. § 77a *et seq.*) that has been declared effective by the Commission;

(2) Whose registration statement will include financial statements:

(i) Of an entity that has a fiscal year ending between and including:

(A) November 30, 2001 and April 15, 2002, if the entity meets all of the conditions in Rule 3–01(c) of Regulation S–X (§ 210.3–01(c)) (or Item 310(g) of Regulation S–B

(§ 228.310(g) of this chapter) if the entity is a small business issuer) (or if the entity is a depositor for a registered unit investment trust and the entity is not subject to the periodic reporting requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a) or 78o(d))) and is not a registered investment company;

(B) December 29, 2001 and April 15, 2002, if the entity does not meet all of the conditions in Rule 3–01(c) of Regulation S–X (§ 210.3–01(c)) (or Item 310(g) of Regulation S–B (§ 228.310(g) of this chapter) if the entity is a small business issuer) and is not a registered investment company; or

(C) January 1, 2002 and April 15, 2002 in the case of a registered investment company;

(ii) As to the examination of which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant on or after March 14, 2002;

(3) That, on or before March 14, 2002, had not obtained a manually signed audit report from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) in respect of those financial statements;

(4) That is unable to obtain from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) or elects not to have Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) issue a manually signed audit report in respect of those financial statements; and

(5) That is not a ''blank check company'' as defined in § 230.419(a)(2) of this chapter.

(b) *Conditions.*

(1) The issuer's registration statement responds to all items required by the applicable registration form, but with unaudited financial statements that meet the timeliness requirements of Rule 3–01 of Regulation S–X (§ 210.3–01) or, for a registered investment company, Rules 3–12 and 3–18 of Regulation S–X (§§ 210.3–12 and 210.3–18) for those financial statements as to the examination of which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant.

(2) The issuer provides in the registration statement disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X (§§ 210.3–01—3–20).

(3) If the registration statement is not yet effective and it will become effective on or after the date specified in paragraph (b)(4) of this section, the issuer must file a pre-effective amendment or an amendment to a document incorporated by reference, as appropriate, before effectiveness. If the registration statement is effective, the issuer must file either a post-effective amendment or an amendment to a document incorporated by reference, as appropriate, not later than the date specified in paragraph (b)(4) of this note; provided that this filing or amendment need not be made if the offering or offerings have been completed (and any prospectus delivery period under Section 4(3) of the Securities Act of 1933 (15 U.S.C. § 77d(3)) and the rules thereunder has expired) prior to the date specified in paragraph (b)(4) of this note. The filing or amendment shall present:

(i) The financial statements audited by an independent public accountant other than Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP);

(ii) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant to examine the issuer's financial statements, selected financial data required by Item 301 of Regulation S–K (§ 229.301 of this chapter) based on the audited financial statements; (iii)A discussion of any material changes from the unaudited financial statements filed originally; and

(iv) Any other section of the registration statement or documents incorporated by reference that should be updated or revised to reflect the changes in the financial statements so filed by amendment.

(4) For purposes of paragraph (b)(3) of this note:

(i) If the issuer (other than a registered investment company) meets all of the conditions in Rule 3–01(c) of Regulation S–X (§ 210.3–01(c)), the date shall be the earlier of:

(A) 60 days from the date the audited financial statements were required to be included in the registration statement; and

(B) The date on which an amended Form 10–K or 10–KSB (§ 249.310 or 249.310b of this chapter) containing audited financial statements is filed in accordance with Release No. 34–45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov);

(ii) If the issuer (other than a registered investment company) does not meet all of the conditions in Rule 3–01(c) of Regulation S–X (§ 210.3–01(c)), the date shall be the earlier of:

(A) 106 days from the date the audited financial statements were required to be included in the registration statement; and

(B) The date on which an amended Form 10–K or 10–KSB containing audited financial statements is filed in accordance with Release No. 34–45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov); and

(iii) If the issuer is a registered investment company, the date shall be the earlier of:

(A) 6 months after the close of the fiscal year of the issuer; and

(B) The date on which an amended annual report to shareholders containing audited financial statements is filed in accordance with Release No. IC–25463 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov).

(c) This temporary note will expire on December 31, 2002.

Temporary Note 2T: (a) This temporary note applies to any issuer that provides unaudited financial statements in a filing in reliance on Release No. 34–45589 (March 18, 2002) or Release Nos. IA–2017 and IC–25463 (March 18, 2002) (each of which may be viewed on the Commission's website at www.sec.gov) or a temporary rule adopted in Release 33–8070 (March 18, 2002) published on March 22, 2002, in the **Federal Register**. The guidance provided by this note is intended to assist issuers in meeting their disclosure obligations under the federal securities laws. The exact content of each issuer's disclosure may vary depending on the facts and circumstances applicable to each of Arthur Andersen LLP's (or a foreign affiliate of Arthur Andersen LLP's) former public company audit clients. To the extent this note requires disclosure on the cover page of a filing, if the subject filing does not have a cover page, present this information as a preface to the disclosure presented in response to the form.

(b) The issuers for which this temporary note applies must provide on the cover page of their filings a prominent statement that the filing includes unaudited financial statements in lieu of audited financial statements because the issuer was unable to obtain from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) or elected not to have Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) issue a manually signed audit report in respect of those financial statements and a cross-reference to additional information contained in the filing.

(c) The issuer for which this temporary note applies also shall provide the prominent statement referred to in paragraph (b) of this note in the filing immediately before the financial statements and shall also disclose:

(1) A statement as to when and how the issuer intends to provide the audited financial statements; and

(2) A statement that no auditor has opined that the unaudited financial statements present fairly, in all material respects, the financial position, the results of operations, cash flows and the changes in shareholders' equity of the company (and, in the case of a registered investment company, the financial highlights) for each of the periods reported in accordance with generally accepted accounting principles.

(d) Further, any audit report previously issued by Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) that is required to be included in a filing should be included as required.

(e) This temporary note will expire on December 31, 2002.

Temporary Note 3T: (a) This temporary note applies to any issuer that provides audited financial statements with an accountant's report issued by Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP (''Andersen'') after March 14, 2002 in a filing. The exact content of each issuer's disclosure may vary depending on the facts and circumstances applicable to each of Andersen's public company audit clients.

(b) The issuers for which this temporary note applies must include as an exhibit (under Exhibit 99) to their filing a letter by the issuer addressed to the Commission that states that Andersen has represented to the issuer that the audit was subject to Andersen's quality control system for the U.S. accounting and auditing practice to provide reasonable assurance that the engagement was conducted in compliance with professional standards and that there was appropriate continuity of Andersen personnel working on audits, availability of national office consultation and availability of personnel at foreign affiliates of Andersen to conduct the relevant portions of the audit.

(c) This temporary note will expire on December 31, 2002.

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

4. The authority citation for Part 228 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37 and 80b–11.

5. By adding § 228.304T to read as follows:

§ 228.304T (Item 304T) Item 304T of Regulation S–B.

Note: This is a special temporary section that applies to issuers for which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant to examine the issuer's financial statements, or for which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged to examine a significant subsidiary's financial statements and on which the principal public accountant expressed reliance in its report, on or after March 14, 2002.

(a) *General rule.* Those issuers for which this Item 304T applies must comply with the requirements of § 228.304, except as indicated in paragraph (b) of this Item 304T.

(b) *Special disclosure standards for issuers to whom this Item 304T applies.* An issuer for which this Item 304T applies may comply with § 228.304(a)(3) in the following manner:

(1) If Arthur Andersen LLP (or the foreign affiliate of Arthur Andersen LLP, if applicable) has already provided the issuer with a letter addressed to the Commission stating whether it agrees with the statements made by the issuer in response to § 228.304, and, if that letter indicates that it does not agree, stating the respects in which it does not agree, the issuer shall file that letter as an exhibit to the report or registration statement containing this disclosure; or

(2) If the issuer has not yet received that letter and cannot obtain it after reasonable efforts, compliance with § 228.304(a)(3) is not required.

(c) This temporary section will expire on December 31, 2002.

6. By amending § 228.310 by adding Temporary Note 1T and Temporary Note 2T after the introductory notes to read as follows:

§ 228.310 (Item 310) Financial Statements.

Notes * * *

Temporary Note 1T: Notwithstanding any other Commission rule or regulation, every registrant meeting the eligibility requirements in paragraph (a) of this note that files a registration statement on Forms SB–1, SB–2, S–3, S–4 or S–8 (§§ 239.9, 239.10, 239.13, 239.25 or 239.16b), or an amendment thereto, that requires audited financial statements for the most recent fiscal year end may file unaudited financial statements in satisfaction of that requirement under the conditions listed in paragraph (b) of this note.

(a) *Eligibility requirements.* An issuer:

(1) That at the time of filing a registration statement is subject to the periodic reporting requirements of Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. §§ 78m(a) or 78o(d));

(2) Whose registration statement will include financial statements:

(i) Of an entity that has a fiscal year ending between and including:

(A) November 30, 2001 and April 15, 2002, if the entity meets all of the conditions in Item 310(g) of Regulation S–B (§ 228.310(g)); or

(B) December 29, 2001 and April 15, 2002, if the entity does not meet all of the conditions in Item 310(g) of Regulation S–B (§ 228.310(g));

(ii) As to the examination of which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant on or after March 14, 2002;

(3) That, on or before March 14, 2002, had not obtained a manually signed audit report from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) in respect of those financial statements;

(4) That is unable to obtain from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) or elects not to have Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) issue a manually signed audit report in respect of those financial statements; and

(5) That is not a ''blank check company'' as defined in § 230.419(a)(2) of this chapter.

(b) *Conditions.*

(1) The issuer's registration statement responds to all items required by the appropriate registration form, but with unaudited financial statements that meet the timeliness requirements of Item 310(g) of Regulation S–B (§ 228.310(g)) for those financial statements as to the examination of which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant.

(2) The issuer provides in the registration statement disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X (§§ 210.3–01—3–20 of this chapter).

(3) If the registration statement is not yet effective and it will become effective on or after the date specified in paragraph (b)(4) of this section, the issuer must file a pre-effective amendment or an amendment to a document incorporated by reference, as appropriate, before effectiveness. If the registration statement is effective, the issuer must file either a post-effective amendment or an amendment to a document incorporated by reference, as appropriate, not later than the date specified in paragraph (b)(4) of this note; provided that this filing or amendment need not be made if the offering or offerings have been completed (and any prospectus delivery period under Section 4(3) of the Securities Act of 1933 (15 U.S.C. § 77d(3)) and the rules thereunder has expired) prior to the date specified in paragraph (b)(4) of this note. The filing or amendment shall present:

(i) The financial statements audited by an independent public accountant other than Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP);

(ii) A discussion of any material changes from the unaudited financial statements filed originally; and

(iii) Any other section of the registration statement or documents incorporated by reference that should be updated or revised to reflect the changes in the financial statements so filed by amendment.

(4) For purposes of paragraph (b)(3) of this note:

(i) If the issuer meets all of the conditions of Item 310(g)(2) of Regulation S–B (§ 228.310(g)(2)), the date shall be the earlier of:

(A) 60 days from the date the audited financial statements were required to be included in the registration statement; and

(B) The date on which an amended Form 10–K or 10–KSB containing audited financial statements is filed in accordance with Release No. 34–45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov); and

(ii) If the issuer does not meet all of the conditions of Item 310(g)(2) of Regulation S–B (§ 228.310(g)(2)), the date shall be the earlier of:

(A) 106 days from the date the audited financial statements were required to be included in the registration statement; and

(B) The date on which an amended Form 10–K or 10–KSB (§ 249.310 or 249.310b of this chapter) containing audited financial statements is filed in accordance with Release No. 34–45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov).

(c) This temporary note will expire on December 31, 2002.

Temporary Note 2T: (a) This temporary note applies to any issuer that provides audited financial statements with an accountant's report issued by Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP (''Andersen'') after March 14, 2002 in a filing. The exact content of each issuer's disclosure may vary depending on the facts and circumstances applicable to each of Andersen's public company audit clients.

(b) The issuers for which this temporary note applies must include as an exhibit (under Exhibit 99) to their filing a letter by the issuer addressed to the Commission that states that Andersen has represented to the issuer that the audit was subject to Andersen's quality control system for the U.S. accounting and auditing practice to provide reasonable assurance that the engagement was conducted in compliance with professional standards and that there was appropriate continuity of Andersen personnel working on audits, availability of national office consultation and availability of personnel at foreign affiliates of Andersen to conduct the relevant portions of the audit.

(c) This temporary note will expire on December 31, 2002.

* * * * *

7. By adding § 228.601T to read as follows:

§ 228.601T (Item 601T) Item 601T of Regulation S–B.

Any issuer that may rely upon the alternative disclosure requirement of § 228.304T shall comply with § 228.601(b)(16) in the following manner:

(a) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) has already provided the issuer with a letter addressed to the Commission stating whether it agrees or disagrees with the statements made by the registrant in response to § 228.304(c), the issuer must comply with § 228.601(b)(16).

(b) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) has not provided the issuer with this letter and the issuer cannot obtain it after reasonable efforts, the issuer need not comply with § 228.601(b)(16).

(c) This temporary section will expire on December 31, 2002.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

8. The authority citation for Part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 78mm, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a) and 80b–11, unless otherwise noted.

9. By adding § 229.304T to read as follows:

§ 229.304T (Item 304T) Item 304T of Regulation S–K.

Note: This is a special temporary section that applies to issuers for which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant to examine the issuer's financial statements, or for which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged to examine a significant subsidiary's financial statements and on which the principal public accountant expressed reliance in its report, on or after March 14, 2002.

(a) *General rule.* Those issuers for which this Item 304T applies must comply with the requirements of § 229.304, except as indicated in paragraph (b) of this Item 304T.

(b) *Special disclosure standards for issuers to whom this Item 304T applies.* An issuer for which this Item 304T applies may comply with § 229.304(a)(3) in the following manner:

(1) If Arthur Andersen LLP (or the foreign affiliate of Arthur Andersen LLP, if applicable) has already provided the issuer with a letter addressed to the Commission stating whether it agrees with the statements made by the issuer in response to § 229.304, and, if that letter indicates that it does not agree, stating the respects in which it does not agree, the issuer shall file that letter as an exhibit to the report or registration statement containing this disclosure; or

(2) If the issuer has not yet received that letter and cannot obtain it after reasonable efforts, compliance with § 229.304(a)(3) is not required.

(c) This temporary section will expire on December 31, 2002.

10. By adding § 229.601T to read as follows:

§ 229.601T (Item 601T) Item 601T of Regulation S–K.

Any issuer that may rely upon the alternative disclosure requirement of § 229.304T shall comply with § 229.601(b)(16) in the following manner:

(a) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) has already provided the issuer with a letter addressed to the Commission stating whether it agrees or disagrees with the statements made by the issuer in response to § 229.304(c), the issuer must comply with § 229.601(b)(16).

(b) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) has not provided the issuer with this letter and the issuer cannot obtain it after reasonable efforts, the issuer need not comply with § 229.601(b)(16).

(c) This temporary section will expire on December 31, 2002.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

11. The general authority citation for Part 230 is revised to read as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z–3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78t, 78w, 77*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

12. By adding § 230.401a to read as follows:

§ 230.401a Requirements as to proper form.

With regard to issuers eligible to rely on Release No. 34–45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov), the filing of reports in accordance with the provisions of that Release shall result in those reports being ''timely filed'' for purposes of all form eligibility standards in registration statement forms under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*).

13. By adding § 230.427T to read as follows:

§ 230.427T Information in prospectuses more than nine months after the effective date of the related registration statement.

(a) Notwithstanding the language in Section 10(a)(3) of the Act (15 U.S.C. § 77j(a)(3)), until December 16, 2002, for a registrant that meets the eligibility requirements in paragraph (a)(1) of this section, the audited financial information in a prospectus used more than nine months after the effective date of the registration statement of which that prospectus is a part must be as of a date not more than eighteen months prior to such use; provided that the conditions specified in paragraph (a)(2) of this section are satisfied.

(1) *Eligibility requirements.* A registrant meets the eligibility requirements of this paragraph (a) of this section if:

(i) The registrant has an effective registration statement under the Act that is required to include financial statements for any entity that has a fiscal year ending between and including November 30, 2001 (or, in the case of a registered investment company, January 1, 2002) and April 15, 2002;

(ii) Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged, on or after March 14, 2002, as the independent public accountant to examine those financial statements for that fiscal year;

(iii) On or before March 14, 2002, the registrant had not obtained a manually signed audit report from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) in respect of those financial statements for that fiscal year;

(iv) The registrant is unable to obtain from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) or elects not to have Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) issue a manually signed audit report in respect of those financial statements; and

(v) The registrant is not a ''blank check company'' as defined in § 230.419(a)(2) of this chapter.

(2) *Conditions.*

(i) A prospectus that is used more than nine months after the effective date of the registration statement of which that prospectus is a part includes unaudited financial information that is as of a date not more than sixteen months prior to such use; provided that the registrant provides in the prospectus disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X (§§ 210.3–01—3–20 of this chapter).

(ii) The audited financial information referred to in paragraph (a)(1)(i) of this section in a prospectus used more than nine months after the effective date of the registration statement of which that prospectus is a part must be audited by an independent public accountant other than Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) and the prospectus must include:

(A) A discussion of any material changes from the unaudited financial information; and

(B) Updated or revised information in any other section of the prospectus or documents incorporated by reference that should be updated or revised to reflect the changes in the audited financial information.

(b) This temporary section will expire on December 31, 2002.

14. By amending § 230.428 by adding Instruction 2T to the Instructions following paragraph (b)(2)(iv) to read as follows:

§ 230.428 Documents constituting a section 10(a) prospectus for Form S–8 registration statement; requirements relating to offerings of securities registered on Form S–8.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

Instructions.

* * * * *

2T. With regard to issuers that are eligible to rely on and are electing to comply with Release No. 34–45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov) or a temporary rule adopted in Release 33–8070 (March 18, 2002) published on March 22, 2002, in the **Federal Register**, until September 13, 2002 (or December 16, 2002 with respect to foreign private issuers), if the latest fiscal year has ended within 180 days (or 250 days with respect to foreign private issuers) prior to the delivery of documents containing the information specified by Part I of Form S–8 (§ 239.16b of this chapter), the issuer may deliver a document containing financial statements for the fiscal year preceding the latest fiscal year, provided that within the 180 or 250 day period a document containing financial statements for the latest fiscal year is furnished to each employee. This temporary instruction will expire on December 31, 2002.

* * * * *

15. By adding § 230.437a to read as follows:

§ 230.437a Written consents.

(a) This section applies only to registrants that:

(1) Are not a ''blank check company'' as defined in § 230.419(a)(2); and

(2) Are filing a registration statement containing financial statements in which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been acting as the independent public accountant.

(b) Notwithstanding any other Commission rule or regulation, every registrant eligible to rely on this section may dispense with the requirement for the registrant to file the written consent of Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) as required by Section 7 of the Act (15 U.S.C. 77g) where:

(1) The registrant has not already obtained the written consent that would be required if not for this section;

(2) The registrant is not able to obtain the written consent after reasonable efforts; and

(3) The registrant discloses clearly any limitations on recovery by investors posed by the lack of consent.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

16. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

17. By adding § 240.12b–37 to read as follows:

§ 240.12b–37 Satisfaction of filing requirements.

With regard to issuers eligible to rely on Release No. 34–45589 (March 18, 2002) or Release No. IC–25463 (March 18, 2002) (each of which may be viewed on the Commission's website at www.sec.gov), filings made in accordance with the provisions of those Releases shall satisfy the issuer's requirement to make such a filing under Section 13(a), 14 or 15(d) of the Act (15 U.S.C. 77m(a), 78n or 78o(d)), as applicable, and the Commission's rules and regulations thereunder.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

18. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.*, unless otherwise noted.

* * * * *

19. By amending Form 20–F (referenced in § 249.220f) by adding General Instruction A–T1. and General Instruction A–T2. after General Instruction A. to read as follows:

Note: Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

United States

Securities and Exchange Commission

Washington, D.C. 20549

Form 20–F

* * * * *

General Instructions

A. * * *

* * * * *

A–T1. Temporary Instructions Relating to Certain Financial Statements.

Notwithstanding any other Commission rule or regulation, every foreign private issuer meeting the eligibility requirements in paragraph (a) of this instruction that files a registration statement on Forms F–1, F–2, F–3, F–4 or S–8, or an amendment thereto, that requires audited financial statements for the most recent fiscal year end may file unaudited financial statements in satisfaction of that requirement under the conditions listed in paragraph (b) of this instruction.

(a) *Eligibility Requirements.* A foreign private issuer:

(1) That at the time of filing a registration statement is subject to the periodic reporting requirements of Section 13(a) or 15(d) of the Exchange Act;

(2) Whose registration statement will include audited financial statements of an entity that has a fiscal year ending between and including November 30, 2001 and April 15, 2002 as to the examination of which Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP had been engaged as the independent public accountant on or after March 14, 2002, unless the foreign private issuer fits within Instruction 2 to Item 8 of Form 20–F, in which case the fiscal year can be between August 31, 2001 and April 15, 2002;

(3) That, on or before March 14, 2002, had not obtained a manually signed audit report from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) in respect of those financial statements;

(4) That is unable to obtain from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) or elects not to have Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) issue a manually signed audit

report in respect of those financial statements; and

(5) That is not a ''blank check company'' as defined in Securities Act Rule 419(a)(2) (§ 230.419(a)(2) of this chapter).

(b) *Conditions.*

(1) The foreign private issuer's registration statement responds to all items required by the appropriate registration form, but with unaudited financial statements that meet the required timeliness requirements for those financial statements as to the examination of which Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP had been engaged as the independent public accountant (including an unaudited reconciliation to U.S. generally accepted accounting principles (GAAP) pursuant to Item 17(c) of Form 20–F if the foreign private issuer prepares its financial statements on a basis of accounting other than U.S. GAAP).

(2) The foreign private issuer provides in the registration statement disclosure reflecting the guidance in Temporary Note 2T of Article 3 of Regulation S–X (17 CFR 210.3–01 '' 3–20).

(3) If the registration statement is not yet effective and it will become effective on or after the date specified in paragraph (b)(4) of this instruction, the foreign private issuer must file a pre-effective amendment or an amendment to a document incorporated by reference, as appropriate, before effectiveness. If the registration statement is effective, the foreign private issuer must file either a post-effective amendment to the registration statement or an amendment to a document incorporated by reference, as appropriate, not later than the date specified in paragraph (b)(4) of this instruction; provided that this filing or amendment need not be made if the offering or offerings have been completed (and any prospectus delivery period under Section 4(3) of the Securities Act of 1933 (15 U.S.C. 77d(3)) and the rules thereunder has expired) prior to the date specified in paragraph (b)(4) of this instruction. The filing or amendment shall present:

(i) The financial statements audited by an independent public accountant other than Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP);

(ii) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant to examine the registrant's financial statements, selected financial data required by Item 3(a) of Form 20–F based on the audited financial statements;

(iii) A discussion of any material changes from the unaudited financial statements filed originally; and

(iv) Any other section of the registration statement or Form 20–F that should be updated or revised to reflect the changes in the financial statements so filed by amendment.

(4) For purposes of paragraph (b)(3) of this instruction, the date shall be the earlier of:

(i) 60 days from the date the audited financial statements were required to be included in the registration statement; and

(ii) The date on which an amended Form 20–F containing audited financial statements is filed in accordance with Release No. 34–45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov).

(c) This temporary instruction will expire on December 31, 2002.

A–T2.Temporary Instructions Relating to Certain Financial Statements

(a) This temporary note applies to any foreign private issuer that provides audited financial statements with an accountant's report issued by Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP (''Andersen'') after March 14, 2002 in a filing. The exact content of each foreign private issuer's disclosure may vary depending on the facts and circumstances applicable to each of Andersen's public company audit clients.

(b) The foreign private issuers for which this temporary note applies must include as an exhibit (under Exhibit 99) to their filing a letter by the foreign private issuer addressed to the Commission that states that Andersen has represented to the foreign private issuer that the audit was subject to Andersen's quality control system for the U.S. accounting and auditing practice to provide reasonable assurance that the engagement was conducted in compliance with professional standards and that there was appropriate continuity of Andersen personnel working on audits, availability of national office consultation and availability of personnel at foreign affiliates of Andersen to conduct the relevant portions of the audit.

(c) This temporary note will expire on December 31, 2002.

* * * * *

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

20. The authority citation for Part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*ll*(d), 80b–3, 80b–4, and 80b–11.

21. By adding § 260.19a–1 to read as follows:

§ 260.19a–1 Compliance with Section 314(a)(1) of the Trust Indenture Act for certain eligible indenture obligors.

(a) This section is applicable only to an ''eligible indenture obligor'' as defined in paragraph (b) of this section.

(b) For purposes of paragraph (c) of this section, an ''eligible indenture obligor'' is any obligor that:

(1) Is required to file reports with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange of 1934 (15 U.S.C. §§ 78m or 78o(d)) (the ''Exchange Act''); and

(2) May rely on any of the provisions of Release No. 34–45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov) with regard to the filing of reports with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act (14 U.S.C. 78m or 78o(d)).

(c) An ''eligible indenture obligor'' that files with the indenture trustee those Exchange Act reports filed with the Commission in accordance with the Release referred to in paragraph (b)(2) of this section has met its duty under Section 314(a)(1) of the Act (15 U.S.C. 77nn(a)(1)) to ''file with the indenture trustee all reports required to be filed with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934.''

By the Commission.

Dated: March 18, 2002.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendices A, B and C to the preamble will not appear in the Code of Federal Regulations.

Appendix A

United States of America Before the Securities and Exchange Commission

Securities Exchange Act of 1934

Release No. 34–45589/March 18, 2002

Order Under Section 36 of the Securities Exchange Act of 1934 Granting Exemptions From Certain Provisions of the Act and Rules Thereunder

To assure a continuing and orderly flow of information to investors and the U.S. capital markets and to minimize any potential disruptions that may occur in light of the circumstances surrounding Arthur Andersen LLP (''Andersen''), the Commission finds that the exemptions set forth below are necessary and appropriate in the public interest and consistent with the protection of investors.[1]

I. Accordingly, *it is ordered,* pursuant to Section 36 of the Securities Exchange Act of 1934 (the ''Exchange Act''), that any one or more of theprovisions of Section I. of this order shall apply to any issuer:

- Whose report, registration statement, amendment or other documents referenced in this order will include financial statements the examination or review of which Andersen (or a foreign affiliate of Andersen) had been engaged, on or after March 14, 2002, as the independent public accountant;
- That, on or before March 14, 2002, had not obtained a manually signed audit report from Andersen (or a foreign affiliate of Andersen) in respect of those financial statements (or a review report in the case of interim financial statements);
- That is unable to obtain from Andersen (or a foreign affiliate of Andersen) or elects not to have Andersen (or a foreign affiliate of Andersen) issue a manually signed audit report in respect of those financial statements (or a review in the case of interim financial statements); and

[1] The Commission is also publishing today a separate release modifying, in a manner appropriate for the protection of investors, the requirements for including audited financial statements in registration statements under the Securities Act of 1933 and filings required by the Trust Indenture Act of 1939. See Release No. 33–8070 (March 18, 2002).

• That is not a ''blank check company'' as defined in Rule 419(a)(2) under the Securities Act of 1933.

The review referenced above is a review in accordance with Rule 10–01(d) of Regulation S–X (or Item 310(b) of Regulation S–B for small business issuers, as defined in Item 10(a)(1) of Regulation S–B).

1. *Annual Reports on Form 10–K/Form 10–KSB.* Notwithstanding any other Commission rule or regulation, an issuer that has a fiscal year ending between and including November 30, 2001 and April 15, 2002 that is required to file an annual report on Form 10–K or Form 10–KSB may file its annual report for that fiscal year under the conditions below.

Conditions.

(a) The issuer timely files its annual report on Form 10–K or Form 10–KSB within the period specified in the appropriate form (including any additional period for filing the report if the issuer relies on Exchange Act Rule 12b–25) responding to all items required by the appropriate form, but with unaudited financial statements for those financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(b) The issuer provides the disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X in the report; and

(c) The issuer files an amendment to the report within 60 days of the original due date of the report (excluding any additional period for filing the original report if the issuer relied on Exchange Act Rule 12b–25 for the filing of that report), that presents:

(1) The financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen);

(2) If the original filing was on Form 10–K and Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant to examine the issuer's financial statements, selected financial data required by Item 6 of Form 10–K based on the audited financial statements;

(3) A discussion of any material changes from the unaudited financial statements filed originally; and

(4) Any other section of the annual report that should be amended, including without limitation, Management's Discussion and Analysis of Financial Condition and Results of Operations, to reflect any changes in the financial statements so filed by amendment.

2. *Quarterly Reports on Form 10–Q/Form 10–QSB.* Notwithstanding any other Commission rule or regulation, an issuer that has a fiscal quarter ending between and including January 26, 2002 and June 15, 2002 that is required to file quarterly reports on Form 10–Q or Form 10–QSB may file its quarterly report for those fiscal quarters under the conditions listed below.

Conditions.

(a) The issuer timely files its quarterly report on Form 10–Q or Form 10–QSB within the period specified in the appropriate form (including any additional period for filing the report if the issuer relies on Exchange Act Rule 12b–25) responding to all items required by the appropriate form, but with interim financial statements that have not been reviewed by an independent public accountant in accordance with Rule 10–01(d) of Regulation S–X (or Item 310(b) of Regulation S–B for issuers filing on Form 10–QSB);

(b) The issuer provides disclosure in the report similar to that reflected in the guidance included in Temporary Note 2T to Article 3 of Regulation S–X, as applicable;

(c) If upon completion of the review by an independent public accountant in accordance with Rule 10–01(d) of Regulation S–X (or Item 310(b) of Regulation S–B for issuers filing on Form 10–QSB) there is a change to the interim financial statements, the issuer must file an amendment to the report upon completion of the review presenting:

(1) The interim financial statements reviewed by an independent public accountant other than Andersen (or a foreign affiliate of Andersen);

(2) A discussion of any material changes from the unreviewed financial statements filed originally; and

(3) Any other section of the quarterly report that should be amended, including without limitation, Management's Discussion and Analysis of Financial Condition and Results of Operations, to reflect any changes in the financial statements so filed by amendment; and

(d) If upon completion of the review there is not a change to the interim financial statements, the issuer must state in its quarterly report for the immediately succeeding fiscal quarter that the interim financial statements for the previous quarter had subsequently been reviewed by an independent public accountant other than Andersen (or a foreign affiliate of Andersen), but no report of that independent public accountant need be presented.

3. *Annual Reports on Form 20–F.* Notwithstanding any other Commission rule or regulation, a foreign private issuer that has a fiscal year ending between and including August 31, 2001 and April 15, 2002 that is required to file an annual report on Form 20–F may file its annual report on Form 20–F for that fiscal year under the conditions listed below.

Conditions.

(a) The foreign private issuer timely files its annual report on Form 20–F within the period specified in Form 20–F (including any additional period for filing the report if the foreign private issuer relies on Exchange Act Rule 12b–25) responding to all items required by Form 20–F, but with unaudited financial statements for those financial statements as to the examination of which either Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant (including an unaudited reconciliation to U.S. generally accepted accounting principles (GAAP) pursuant to Item 17(c) of Form 20–F if the foreign private issuer prepares its financial statements on a basis of accounting other than U.S. GAAP);

(b) The foreign private issuer provides disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X in the report; and

(c) The foreign private issuer files an amendment to the report within 60 days of the original due date of the report (excluding any additional period for filing the original report if the issuer relied on Exchange Act Rule 12b–25 for the filing of that report), that presents:

(1) The financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen);

(2) If Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant to examine the foreign private issuer's financial statements, selected financial data required by Item 3.A. of Form 20–F (including any reconciliation of that data to U.S. GAAP and Regulation S–K if required by Instruction 2 to Item 3.A. of Form 20–F) based on the audited financial statements;

(3) A discussion of any material changes from the unaudited financial statements or unaudited reconciliation filed originally; and

(4) Any other section of the annual report that should be amended, including without limitation, the Operating and Financial Review and Prospects required by Item 5 of Form 20–F, to reflect any changes in the financial statements so filed by amendment.

4. *Rule 12b–25.* Notwithstanding any other Commission rule or regulation, an issuer that files a Notification of Late Filing on Form 12b–25 for its annual report on Form 10–K or Form 10–KSB for its fiscal year ending between and including November 30, 2001 and April 15, 2002, its annual report on Form 20–F for its fiscal year ending between and including August 31, 2001 and April 15, 2002, its annual report on Form N–SAR for its fiscal year ending between and including December 15, 2001 and April 15, 2002 or its quarterly report on Form 10–Q or Form 10–QSB for its fiscal quarter ending between and including January 26, 2002 and June 15, 2002 need not attach as an exhibit a statement by Andersen (or a foreign affiliate of Andersen) as required by Exchange Act Rule 12b–25(c) if such statement cannot be obtained by the issuer after reasonable efforts.

5. *Schedules 14A and 14C.* Notwithstanding any other Commission rule or regulation, every issuer that files either a Schedule 14A or Schedule 14C that requires audited financial statements of an entity with a fiscal year ending between and including:

(i) November 30, 2001 and April 15, 2002, if the entity meets all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g) of Regulation S–B if the entity is a small business issuer), (ii) December 29, 2001 and April 15, 2002, if the entity does not meet all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g) of Regulation S–B if the entity is a small business issuer), or (iii)January 1, 2002 and April 15, 2002, if the entity is a registered investment company, may file unaudited financial statements in satisfaction of that requirement under the conditions listed below.

Conditions.

(a) The issuer sends its proxy statement or information statement on or before September 13, 2002 (or, in the case of an issuer that is a registered investment company, on or before August 13, 2002);

(b) The issuer's proxy statement or information statement responds to all items

required by Schedule 14A or Schedule 14C (taking into account paragraph I.6. below), but with unaudited financial statements for those financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(c) The issuer provides in the proxy statement or information statement disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X;

(d) The issuer must file either revised materials or amended documents incorporated by reference, as appropriate, not later than the date specified in paragraph I.5.(e) below, provided that this filing or amendment need not be made if the solicitation or corporate action has been completed by that date. Such filing or amended document shall present:

(1) The financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen);

(2) If Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant for the issuer's financial statements, selected financial data required by Item 301 of Regulation S–K based on the audited financial statements if this information would otherwise have been required in the proxy statement or information statement;

(3) A discussion of any material changes from the unaudited financial statements filed originally; and

(4) Any other section of the revised materials or filings incorporated by reference that should be updated or revised to reflect any changes in the financial statements contained in the revised materials or amended documents; and

(e) For purposes of paragraph I.5.(d) above:

(1) If the issuer meets all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g)(2) of Regulation S–B for small business issuers, as defined in Item 10(a)(1) of Regulation S–B), the date shall be the earlier of (i) 60 days from the date the audited financial statements were required to be included in the proxy statement or information statement and (ii) the date on which an amended Form 10–K or 10–KSB containing audited financial statements is filed in accordance with this Order;

(2) If the issuer does not meet all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g)(2) of Regulation S–B for small business issuers, as defined in Item 10(a)(1) of Regulation S–B), the date shall be the earlier of (i) 106 days from the date the audited financial statements were required to be included in the proxy statement or information statement and (ii) the date on which an amended Form 10–K or 10–KSB containing audited financial statements is filed in accordance with this Order; and

(3) If the issuer is a registered investment company, the date shall be the earlier of (i) 60 days from the date the audited financial statements were required to be in the proxy statement or information statement and (ii) the date on which an amended annual report to shareholders containing audited financial information is filed in accordance with Release No. IC–25463 (March 18, 2002).

6. *Audit Committee Disclosures in Certain Schedules 14A and 14C.* Notwithstanding any other Commission rule or regulation, every issuer that has a fiscal year ending between and including November 30, 2001 and April 15, 2002 that files either a Schedule 14A or Schedule 14C may omit any disclosure required by Item 7(d)(3)(i) and Item 9(e) of Schedule 14A or Item 7(d)(3)(i) and Item 9(e) of Schedule 14A pursuant to Item 1 of Schedule 14C under the conditions listed below.

(a) The issuer sends its proxy statement or information statement on or before September 13, 2002 (or, in the case of an issuer that is a registered investment company, on or before August 13, 2002).

(b) The issuer's proxy statement or information statement responds to all items required by Schedule 14A or Schedule 14C (taking into account paragraph I.5. above, if applicable) other than Items 7(d)(3)(i) and Item 9(e) for Schedule 14A or Item 7(d)(3)(i) and Item 9(e) of Schedule 14A pursuant to Item 1 of Schedule 14C for Schedule 14C.

(c) The issuer has not filed audited financial statements nor amended its Form 10–K or Form 10–KSB pursuant to paragraph I.1. above prior to sending its proxy statement or information statement to shareholders.

(d) The issuer includes information in its amended Form 10–K or Form 10–KSB (or, in the case of a registered investment company, in its amended annual report to shareholders) that responds to Items 7(d)(3)(i) and Item 9(e) of Schedule 14A, if this information would otherwise have been required in the Schedule 14A or Schedule 14C.

7. *Rule 14a–3.* Notwithstanding any other Commission rule or regulation, every issuer that has a fiscal year ending between and including November 30, 2001 and April 15, 2002 that files either a Schedule 14A that relates to an annual meeting of security holders (or a special meeting in lieu of an annual meeting of security holders), or written consent in lieu of such meeting, at which directors are to be elected shall satisfy the requirements in Rule 14a–3 for audited financial statements in the annual report to security holders for that fiscal year under the conditions listed below.

Conditions.

(a) The proxy statement or information statement is sent on or before September 13, 2002;

(b) The issuer's proxy statement responds to all items required by Schedule 14A (taking into account paragraphs I.5. and I.6. above, if applicable);

(c) The issuer's annual report to security holders responds to all items required in the report, but with unaudited financial statements for those financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(d) The issuer provides in the annual report to security holders disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X; and

(e) The issuer announces in a press release, at the time it files its Form 10–K or Form 10–KSB (or an amendment thereto) that includes the financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen), that these financial statements are available and may be found in that filing on the Commission's website at *www.sec.gov* and on the issuer's website, citing the address, if the issuer has a website; provided that this announcement need not be made if the issuer's solicitation or corporate action has been completed prior to the time these audited financial statements are filed.

8. *Rule 14c–3.* Notwithstanding any other Commission rule or regulation, every issuer that has a fiscal year ending between and including November 30, 2001 and April 15, 2002 that files a Schedule 14C that relates to an annual meeting of security holders (or a special meeting in lieu of an annual meeting of security holders), or written consent in lieu of such meeting, at which directors are to be elected shall satisfy the requirements in Rule 14c–3 for audited financial statements in the annual report to security holders for that fiscal year under the conditions listed below.

Conditions.

(a) The proxy statement or information statement is sent on or before September 13, 2002;

(b) The issuer's information statement responds to all items required by Schedule 14C (taking into account paragraphs I.5. and I.6. above, if applicable);

(c) The issuer's annual report to security holders responds to all items required in the report, but with unaudited financial statements for those financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(d) The issuer provides in the annual report to security holders disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X; and

(e) The issuer announces in a press release, at the time it files its Form 10–K or Form 10–KSB (or an amendment thereto) that includes the financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen), that these financial statements are available and may be found in that filing on the Commission's website at *www.sec.gov* and on the issuer's website, citing the address, if the issuer has a website; provided that this announcement need not be made if the issuer's solicitation or corporate action has been completed prior to the time these audited financial statements are filed.

9. *Schedules TO.* Notwithstanding any other Commission rule or regulation, every issuer whose Schedule TO requires audited financial statements of an entity with a fiscal year ending between and including November 30, 2001 and April 15, 2002 may file the Schedule TO with unaudited financial statements in satisfaction of that requirement under the conditions listed below.

Conditions.

(a) The issuer files its Schedule TO on or before September 13, 2002;

(b) The offering materials respond to all items required by Schedule TO, but with unaudited financial statements for those financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(c) The issuer provides in the offering materials disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X; and

(d) The issuer must either file revised materials or amend documents incorporated by reference to provide the financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen) not later than the earlier of (i) 60 days from the date the audited financial statements were required to be included in the Schedule TO and (ii) the date on which an amended Form 10–K or 10–KSB (or, in the case of a registered investment company, annual report to shareholders) containing audited financial statements is filed in accordance with this Order; provided that such filing or amendment shall not be required if the tender offer has been completed by such date. The revised materials or the periodic report which satisfies this requirement through incorporation by reference, must present:

(1) Those audited financial statements;

(2) If Andersen (or a foreign affiliate of Andersen) had been engaged originally as the independent public accountant for the issuer's financial statements, selected financial data required by Item 301 of Regulation S–K based on the audited financial statements;

(3) A discussion of any material changes from the unaudited financial statements filed originally; and

(4) Any other section of the revised materials or filings incorporated by reference that should be updated or revised to reflect any changes in the financial statements contained in the revised materials or amended documents.

II. *It is further ordered,* pursuant to Section 36 of the Exchange Act, that:

1. *Employee Benefit Plan Annual Reports on Form 11–K.* Notwithstanding any other Commission rule or regulation, employee stock purchase, savings and similar plans meeting the requirements in paragraph II.1.(a) below that are required to file annual reports on Form 11–K may file their annual report on Form 11–K for their fiscal year ending between and including November 30, 2001 and April 15, 2002 under the conditions listed in paragraph II.1.(b) below.

(a) *Eligibility Requirements.* This paragraph II.1. applies to an employee stock purchase, savings or similar plan:

(1) That is subject to Section 15(d) of the Exchange Act;

(2) That is not subject to the Employee Retirement Income Security Act of 1974;

(3) That has a fiscal year ending between and including November 30, 2001 and April 15, 2002;

(4) Whose report for such period will include financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant on or after March 14, 2002;

(5) That, on or before March 14, 2002, had not obtained a manually signed audit report from Andersen (or a foreign affiliate of Andersen) in respect of those financial statements;

(6) That is unable to obtain from Andersen (or a foreign affiliate of Andersen) or elects not to have Andersen (or a foreign affiliate of Andersen) issue a manually signed audit report in respect of those financial statements; and

(7) Where the issuer of the stock or other securities offered to employees through their participation in the plan is not a ''blank check company'' as defined in Rule 419(a)(2) under the Securities Act of 1933.

(b) *Conditions.*

(1) The plan timely files its annual report on Form 11–K within the period specified in Form 11–K (including any additional period for filing the report if the plan relies on Exchange Act Rule 12b–25) responding to all items required by Form 11–K, but with unaudited plan financial statements for those financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(2) The plan provides the disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X in the report;

(3) The plan files an amendment to the report within 60 days of the original due date for filing (excluding any additional period for filing the original report if the issuer relied on Exchange Act Rule 12b–25 for the filing of that report), that presents:

(i) The financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen);

(ii) A discussion of any material changes from the unaudited financial statements filed originally; and

(iii) Any other section of the annual report that should be amended to reflect any changes in the financial statements so filed by amendment.

(4) Notwithstanding paragraphs II.1.(b)(1)–(3) above, if the plan elects to use the alternative filing procedure in Exchange Act Rule 15d–21:

(i) Unaudited plan financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant must be filed in the annual report on Form 10–K, Form 10–KSB or U5S of the issuer, or an amendment thereto, within 120 days after the end of the fiscal year of the plan;

(ii) The issuer provides the disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X in the report with respect to the plan;

(iii) An amendment must be filed to such report within 180 days after the end of the fiscal year of the plan, presenting:

(A) The audited financial statements that would have been required for the plan where Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(B) A discussion of any material changes from the unaudited financial statements filed originally; and

(C) Any other section of the annual report related to the plan that should be amended including without limitation Management's Discussion and Analysis of Financial Condition and Results of Operations, to reflect any changes in the financial statements so filed by amendment; and

(iv) Notwithstanding paragraphs II.1.(b)(4)(i)–(iii) above, a plan whose fiscal year ends within 62 days prior to the end of the fiscal year of the issuer may elect to file the audited plan financial statements as a part of the issuer's next annual report pursuant to Exchange Act Rule 15d–21(b).

2. *Rule 12b–25.* Notwithstanding any other Commission rule or regulation, every plan meeting the eligibility requirements in paragraph II.1.(a) above that files a Notification of Late Filing on Form 12b–25 for its annual report on Form 11–K for its fiscal year ending between and including November 30, 2001 and April 15, 2002 need not attach as an exhibit a statement by Andersen (or a foreign affiliate of Andersen) as required by Exchange Act Rule 12b–25(c) if such statement cannot be obtained by the issuer after reasonable efforts.

III. *It is further ordered,* pursuant to Section 36 of the Exchange Act, that:

1. *Rule 17a–5.* A registered broker-dealer with a contractual commitment from Andersen (or a foreign affiliate of Andersen) to conduct the broker-dealer's annual audit pursuant to Exchange Act Rule 17a–5(d) as of a date between and including January 14, 2002 and April 15, 2002, and for which the manually signed audit report has not been received on or before March 14, 2002, may (i) file its audited financial statements within 60 days after the date the statements would otherwise have been required to have been filed under Exchange Act Rule 17a–5(d)(5); and (ii) comply with the requirements of Exchange Act Rule 17a–5(c)(2) by furnishing unaudited statements to customers and other persons set forth in Exchange Act Rule 17a–5(c)(1) within 105 days after the date as of which audited statements were to have been prepared. The unaudited statements shall contain the information specified in Exchange Act Rule 17a–5(c)(2)(i) and (c)(2)(ii).

2. *Rule 17Ad–13.* A registered transfer agent with a contractual commitment from Andersen (or a foreign affiliate of Andersen) to prepare a report concerning the transfer agent's system of internal accounting control and related procedures for the transfer of record ownership and the safeguarding of related securities and funds pursuant to Exchange Act Rule 17Ad–13(a), and for which the manually signed report has not been received on or before March 14, 2002, may file the report pursuant to such paragraph within 60 days after the date the report otherwise would have been required to have been filed.

By the Commission.

Jonathan G. Katz,
Secretary.

Appendix B

United States of America Before the Securities and Exchange Commission

Investment Company Act of 1940

Release No. IC–25463/March 18, 2002

Investment Advisers Act of 1940

Release No. IA–2017/March 18, 2002

Order Under Sections 6(b), 6(c), and 38(a) of the Investment Company Act of 1940 and Sections 206A and 211(a) of the Investment Advisers Act of 1940 Granting Exemptions From Certain Provisions of the Acts and Rules Thereunder

To assure a continuing and orderly flow of information to investors and the U.S. capital markets and to minimize any potential disruptions that may occur in light of the circumstances surrounding Arthur Andersen LLP (''Andersen''), the Commission finds that the exemptions set forth below:

- Are necessary and appropriate to the exercise of the powers conferred on it by the Investment Company Act of 1940 (Company Act) and Investment Advisers Act of 1940 (Advisers Act); and
- Are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Company Act and Advisers Act.[1]

The necessity for immediate action of the Commission does not permit prior notice of the Commission's action.

Accordingly, IT IS ORDERED, pursuant to Sections 6(b), 6(c), and 38(a) of the Company Act and Sections 206A and 211(a) of the Advisers Act:

I. Selection of Auditors by Investment Companies

1.(a) A registered management investment company, registered face amount certificate company or a business development company:

(i) Whose financial statements for its last fiscal year were audited by Andersen, had not selected its independent public accountant on or before March 14, 2002, and whose fiscal year ends on or before April 15, 2002, is exempt from the requirement of Section 32(a) of the Company Act and Rule 32a–3 thereunder that such company select its independent public accountant within the time periods specified by Section 32(a) or rule 32a–3, provided that it selects its independent public accountant other than Andersen no later than 60 days after it otherwise would have been required to select the independent public accountant; or

(ii) That had selected Andersen as its independent accountant on or before March 14, 2002, and terminates the appointment may, notwithstanding any provision of Section 32(a), select another independent public accountant by vote of a majority of those members of the board of directors who are not interested persons of the registered investment company.

(b) A registered management investment company, registered face amount certificate company or a business development company that selects an independent public accountant pursuant to paragraph I.1.(a) of this Order is exempt from the provisions of Section 32(a) that require that the selection be made by a vote of a majority of those members of the board of directors who are not interested persons, cast in person at a meeting called for that purpose, provided that such votes are instead cast at a meeting in which directors may participate by any means of communicating that allows all directors participating to communicate with each other simultaneously during the meeting.

II. Custody of Investment Company Assets

1. *Self-Custody.* A registered management investment company or business development company having a fiscal year ending between and including January 1, 2002 and April 15, 2002, and which has engaged Andersen for the purpose of verifying assets pursuant to Rule 17f–2, 6e–2 or 6e–3(T) under the Company Act and elects to terminate such engagement is exempt from the requirement of those rules that an independent public accountant conduct an actual examination of such assets at least three times during the company's fiscal year, provided the examinations required by the rules are conducted by an independent public accountant other than Andersen no later than 60 days from the date they were required to be conducted.

2. *Custody with a Member of a National Securities Exchange.* A registered management investment company or business development company having a fiscal year ending between and including January 1, 2002 and April 15, 2002 that has engaged Andersen for the purpose of verifying assets held with a member of a national securities exchange pursuant to Rule 17f–1 under the Company Act and elects to terminate such engagement is exempt from the requirement that an independent public accountant conduct an examination of such assets at the end of the annual fiscal period, semiannual fiscal period and at a time chosen by the accountant, provided that:

(a) The actual examinations are conducted by an independent public accountant other than Andersen no later than 60 days after the date they were required to be conducted; and

(b) In the case of a semiannual or annual verification, the assets are verified as of the end of the annual or semiannual fiscal period.

III. Reports and Registration Statements by Investment Companies

1. The relief provided in Section III of this order shall apply to a registered investment company:

(a) Whose report, registration statement, or amendments referenced in this order will include financial statements or are based on financial statements the examination of which Andersen had been engaged, on or after March 14, 2002, as the independent public accountant;

(b) That, on or before March 14, 2002, had not obtained a manually signed audit report from Andersen in respect of those financial statements; and

(c) That is unable to obtain from Andersen or elects not to have Andersen issue a manually signed audit report in respect of those financial statements.

2. *Annual Reports on Form N–SAR.* A registered management investment company or a unit investment trust having a fiscal year ending between and including December 15, 2001 and April 15, 2002 is exempt from the requirement of Rule 30a–1 under the Company Act to file an annual report to the Commission on Form N–SAR containing financial information based upon audited financial information and without a report of independent accountants on internal controls, provided that such company or trust:

(a) Files Form N–SAR within 60 days of the end of its fiscal year (or 75 days in the case of a company or trust relying on Rule 12b–25 under the Securities Exchange Act of 1934 (''Exchange Act'')) responding to all items required by the form, but with financial information based upon unaudited financial statements, and includes disclosure in an exhibit to the form explaining that financial information in the report is based upon unaudited financial statements because the company or trust was unable to receive services from Andersen or chose not to have Andersen complete those audits; and

(b) Files an amendment to its Form N–SAR no later than 60 days from the date it was required to file Form N–SAR (excluding any additional time period for filing the additional report if the company or trust relied upon Rule 12b–25 under the Exchange Act for the filing of that report) that contains (i) financial information based upon financial statements audited by an independent public accountant other than Andersen, (ii) a report of independent accountants on internal controls issued by an independent public accountant other than Andersen, and (iii) an exhibit that provides a discussion of any material changes from the financial information based upon the unaudited financial statements filed originally and identifies the items of the company's or trust's Form N–SAR that were revised as a result of the amendment.

3. *Annual Reports to Shareholders.* A registered management investment company or a unit investment trust having a fiscal year ending between and including January 1, 2002 and April 15, 2002, is exempt from the requirement of Rule 30e–1 under the Company Act (and registration forms to which the Rule refers) to transmit to each shareholder of record an annual report containing audited financial statements, provided that the company or trust:

(a) Transmits to its shareholders within 60 days after the close of its fiscal year (and files with the Commission no later than 10 days thereafter) an annual report responding to all items required by the appropriate form, but with (i) unaudited financial statements, and (ii) disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X;

[1] The Commission is also publishing today a separate release modifying, in a manner appropriate for the protection of investors, the requirements for including audited financial statements in registration statements under the Securities Act of 1933 and filings required by the Trust Indenture Act of 1939. *See* Investment Company Act Release No. 25464 (March 18, 2002).

(b) Files with the Commission no later than 60 days from the date it was required to file the annual shareholder report an amendment to its shareholder report containing (i) the financial statements audited by an independent public accountant other than Andersen, (ii) a discussion of any material changes from the unaudited financial statements filed originally, and (iii) changes to any other section to reflect any changes in the financial statements filed by amendment; and

(c) In the case of a closed-end management company, announces, at the time it files its amendment that includes financial statements audited by an independent public accountant other than Andersen, that these financial statements are available and may be found in that filing on the Commission's website at *www.sec.gov* and on the company's website, citing the address, if the company has a website; provided that this announcement need not be made if the company's solicitation or corporate action has been completed prior to the time that these audited financial statements are filed.

4. *Amendments to Investment Company Act Registration Statements.* A registered management investment company that has (i) a fiscal year ending between and including January 1, 2002 and April 15, 2002, and (ii) timely filed a report on Form N–SAR as provided in paragraph III.2. of this order, is exempt from the requirement of Rule 8b–16 under the Company Act to amend its registration statement within 120 days of the end of its fiscal year, provided that the company files the amendment not later than six months after the end of the fiscal year.

IV. Balance Sheet Requirement for Certain Investment Advisers

A registered investment adviser that (i) is required by Item 14 of Part II of Form ADV under the Advisers Act to furnish a balance sheet audited by an independent public accountant, (ii) had engaged Andersen (or a foreign affiliate of Andersen) as an independent public accountant to examine the balance sheet to be included in Form ADV; (iii) had not, on or before March 14, 2002, obtained a manually signed audit report from Andersen (or a foreign affiliate of Andersen); (iv) is unable to or elects not to have Andersen issue a manually signed audit report from Andersen in respect of that balance sheet; and (v) has a fiscal year ending between and including December 1, 2001 and April 15, 2002, is exempt from the requirement of Rule 204–3 of the Advisers Act to furnish (in the case of a prospective client) or offer (in the case of a client) Part II of Form ADV (or a written disclosure statement) that contains an audited balance sheet, provided that:

1. The adviser furnishes or offers to furnish to prospective clients and clients on a timely basis Part II of Form ADV (or a written disclosure statement containing at least the information required by Part II) responding to all items required by Form ADV, but with an unaudited balance sheet, and discloses prominently on Schedule G (or the written disclosure statement) that an audited balance sheet is unavailable because the adviser was unable to receive services from Andersen or chose not to have Andersen complete those audits; and

2. The adviser amends its Part II (or written disclosure statement) to include a balance sheet examined by an independent public accountant other than Andersen no later than 60 days from the date it was required to update its Part II (which amendment is not required to be submitted to the Commission).

V. Exemptive Orders

An investment company, investment adviser, employees' securities company or other person relying on a Commission exemptive order issued under the Company Act or the Advisers Act that requires (either as a result of a representation made by the applicant or condition of the order) the involvement of an independent public accountant or independent representative (who may be an independent public accountant), that, on or after March 14, 2002, had engaged but is no longer able to obtain such services from Andersen or elects not to continue to engage Andersen shall not be deemed to have violated the terms or conditions of the order provided:

1. In the case of a report that must be furnished periodically or an audit that must be conducted annually, the report is furnished or audit is conducted by an independent public accountant other than Andersen no later than 60 days after the report was otherwise required to be furnished or the audit was otherwise required to be conducted; and

2. In the case of ongoing transactions that must be reviewed by the independent public accountant (or independent representative), the transactions are effected without the review, provided that the company or adviser engages an independent public accountant (or independent representative) other than Andersen no later than May 15, 2002, and that new engagement requires the independent public accountant (or independent representative) to review the transactions effected during the interim period.

By the Commission.

Jonathan G. Katz,
Secretary.

Appendix C

United States of America Before the Securities and Exchange Commission

Public Utility Holding Company Act of 1935

Release No. 35–27502/March 18, 2002

Order Under Sections 20(a) and 20(d) of the Public Utility Holding Company Act of 1935 Granting Exemptions From Certain Provisions of the Act and Rules Thereunder

To assure a continuing and orderly flow of information to investors and the U.S. capital markets and to minimize any potential disruptions that may occur in light of the circumstances surrounding Arthur Andersen LLP (''Andersen''), the Commission finds that the exemptions set forth below are necessary and appropriate to the exercise of the powers conferred on it by the Public Utility Holding Company of 1935.[1]

The necessity for immediate action of the Commission does not permit prior notice of the Commission's action.

Accordingly, *it is ordered,* pursuant to sections 20(a) and 20(d) of the Public Utility Holding Company Act of 1935:

I. Annual Reports on Form U5S

(1) Notwithstanding any other Commission rule or regulation, every registered public utility holding company that is required to file an annual report on Form U5S and

(a) That has a fiscal year ending from November 30, 2001 to April 15, 2002, and

(b) That meets the requirements of Section I of Securities Exchange Act of 1934 Release No. 45589 (March 18, 2002) (''1934 Act Order'')

may file its annual report on Form U5S for its fiscal year ending from November 30, 2001 to April 15, 2002 under the conditions listed in paragraph (2) below. Reports filed pursuant to this order shall be deemed to have satisfied the registered public utility holding company's requirement to file an annual report for such period under section 14 of the Public Utility Holding Company Act and the Commission's rules and regulations thereunder.

(2) *Conditions:*

(a) The registered public utility holding company files its annual report on Form U5S within the required period, responding to all items required by the form except for any item requiring that (i) the registered public utility holding company provide material including audited financial statements as to the examination of which Andersen had been engaged as the independent public accountant or (ii) the registered public utility holding company provide an opinion of an independent public accountant that would have been provided by Andersen;

(b) With respect to any annual report required to be incorporated by reference in Exhibit A to Form U5S, the registered public utility holding company incorporates by reference an annual report that complies with paragraphs I.1.(a) and I.1.(b) of the 1934 Act Order;

(c) With respect to any amendment to an annual report required by paragraph I.1.(c) of the 1934 Act Order, the registered public utility holding company files the amendment as an amendment to its Form U5S filing on the same day and amends any other section of its Form U5S filing that should be updated as a result; and

(d) With respect to ''the opinion of the independent accountants'' required by Exhibit F to Form U5S, the registered public utility holding company files as an amendment to its Form U5S filing the opinion within 60 days of the original due date of the Form.

II. Computations Required by Certain Rules and Orders

With respect to any computation required by rule 53(a)(1) or rule 58(a)(1) or any similar

[1] The Commission is also publishing today a separate release modifying, in a manner appropriate for the protection of investors, the requirements for including audited financial statements in registration statements under the Securities Act of 1933 and filings required by the Trust Indenture Act of 1939. *See* Release No. 33–8070 (March 18, 2002).

computation required by a Commission order issued under sections 53, 54 or 58 of the Public Utility Holding Company Act of 1935, a registered public utility holding company which is filing annual reports on Form 10–K or quarterly reports on Form 10–Q in reliance on the exemptions provided in the 1934 Act Order may rely on the financial statements included in those filings in performing the required computations.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–6947 Filed 3–19–02; 4:54 pm]

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Friday,
March 22, 2002

Part VII

Securities and Exchange Commission

17 CFR Parts 210, 228, et al.
Requirements for Arthur Andersen LLP Auditing Clients; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 228, 229, 230, 240, 249 and 260

[Release Nos. 33–8070, 34–45590; 35–27503; 39–2395; IA–2018; IC–25464; FR–62; File No. S7–03–02]

RIN 3235–AI46

Requirements for Arthur Andersen LLP Auditing Clients

AGENCY: Securities and Exchange Commission.

ACTION: Temporary final rules and final rules.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') is adopting rules to assure a continuing and orderly flow of information to investors and the U.S. capital markets and to minimize any potential disruptions that may occur as a result of the indictment of Arthur Andersen LLP. In addition, the Commission is modifying, in a manner appropriate for the protection of investors, the requirements for including audited financial statements in registration statements under the Securities Act of 1933 and filings required by the Trust Indenture Act of 1939 by registrants that are unable to or elect not to have Andersen issue a manually signed audit report, if the audit report was not issued on or before March 14, 2002. The rules the Commission adopts today, as well as the interpretations set forth in this release, are necessary to effect these modifications. The Commission emphasizes that companies should make their own independent decisions regarding completion of current audits and that these actions are intended only to provide neutral flexibility for companies as they make those decisions. In the document, the Commission also publishes companion orders relating to, among other matters, the inclusion of financial statements in filings under the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940 and the Public Utility Holding Company Act of 1935 where those filings would have included audited or reviewed financial statements for which Andersen had been engaged as the independent public accountant. To further an understanding of the interactions between the rules we adopt today, the interpretations set forth in this document and the exemptions provided in the orders, this document includes a description of a number of actions taken in those orders.

EFFECTIVE DATE: March 18, 2002, except Temporary Notes 1T, 2T and 3T preceding § 210.3–01; § 228.304T; Temporary Notes 1T and 2T in § 228.310; §§ 228.601T, 229.304T, 229.601T, 230.427T; Instruction 2T following paragraph (b)(2)(iv) in § 230.428; and the amendments to Form 20–F will be effective from March 18, 2002 to December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Investors with questions can call a special hotline maintained by the Commission's Office of Investor Education and Assistance at 1–800–SEC–0330 or e-mail the office at *help@sec.gov*.

Issuers with questions regarding Securities Act or Exchange Act filings or compliance with the Trust Indenture Act, please call the Division of Corporation Finance's hotline at 202–942–2816 or e-mail the Division at *cfhotline@sec.gov*.

Auditors with transition questions may call the Office of the Chief Accountant at 202–942–4400 or e-mail the office at *oca@sec.gov*.

For questions regarding broker-dealers, self-regulatory organizations, and transfer agents, please call the Division of Market Regulation's hotline at 202–942–0069 or e-mail the Division at *marketreg@sec.gov*.

For questions regarding investment companies, investment advisers or public utility holding companies, please call the Division of Investment Management's hotline at 202–942–0590 or e-mail the Division at *IMOCA@sec.gov*.

SUPPLEMENTARY INFORMATION: We are adopting temporary amendments to Item 310 [1] of Regulation S–B [2] and Article 3 [3] of Regulation S–X [4] under the Securities Act of 1933 [5] (''Securities Act'') and Form 20–F [6] under the Securities Exchange Act of 1934 [7] (''Exchange Act). We are also adopting amendments to Rule 2–02 [8] of Regulation S–X and Rule 428 [9] under the Securities Act. Additionally, we are adopting temporary Items 304T [10] and 601T [11] of Regulation S–B, temporary Items 304T [12] and 601T [13] of Regulation S–K,[14] temporary Rule 427T,[15] Rule 401a [16] and Rule 437a [17] under the Securities Act, Rule 12b–37 [18] under the Exchange Act and Rule 19a–1 [19] under the Trust Indenture Act of 1939 [20] (''Trust Indenture Act''). We are also attaching to this release a copy of Release No. 34–45589 (March 18, 2002) as Appendix A (the ''34 Act Order''), a copy of Release Nos. IA–2017 and IC–25463 (March 18, 2002) as Appendix B (the ''40 Act Order'') and a copy of Release No. 35–27502 (March 18, 2002) as Appendix C (the ''35 Act Order'').

I. Introduction

The Securities and Exchange Commission is taking necessary and immediate regulatory actions to assure a continuing and orderly flow of information to investors and U.S. capital markets and to minimize any potential disruptions that may occur as a result of the indictment of Arthur Andersen LLP (''Andersen''). The actions the Commission takes today, through this release and by separate Commission orders attached as Appendices A, B and C to this release (the ''Orders'') apply, and the guidance issued in Staff Accounting Bulletin No. 90, Topic I.L.,[21] does not apply. The Commission has requested and received assurances from Andersen that it will continue to audit financial statements in accordance with generally accepted auditing standards (''GAAS'') and applicable professional and firm auditing standards, including quality control standards. Andersen has also told the Commission that if it becomes unable to continue to provide those assurances, it will advise the Commission immediately.

As discussed more fully in this release, companies to whom Andersen issues a manually signed audit report after March 14, 2002 must file a letter as an exhibit to their filings stating they have received certain representations from Andersen concerning audit quality controls, including representations regarding the continuity of Andersen personnel working on the audit, the availability of national office consultation, and the availability of personnel at foreign affiliates of Andersen to conduct relevant portions of the audit. So long as Andersen continues to be in a position to provide

[1] 17 CFR 228.310.
[2] 17 CFR 228.10 *et seq.*
[3] 17 CFR 210.3–01–3–20.
[4] 17 CFR 210.1–01 *et seq.*
[5] 15 U.S.C. § 77a *et seq.*
[6] 17 CFR 249.220f.
[7] 15 U.S.C. § 78a *et seq.*
[8] 17 CFR 210.2–02.
[9] 17 CFR 230.428.
[10] 17 CFR 228.304T.
[11] 17 CFR 228.601T.
[12] 17 CFR 229.304T.
[13] 17 CFR 229.601T.
[14] 17 CFR 229.10 *et seq.*
[15] 17 CFR 230.427T.
[16] 17 CFR 230.401a.
[17] 17 CFR 230.437a.
[18] 17 CFR 240.12b–37.
[19] 17 CFR 260.19a–1.
[20] 15 U.S.C. § 77sss, *et seq.*
[21] Staff Accounting Bulletin No. 90 (Feb. 7, 1991) [56 FR 4938].

those assurances, the Commission will continue to accept financial statements audited by Andersen in filings.

In addition, if companies for which Andersen had been engaged as the independent public accountant [22] are unable to obtain from Andersen or elect not to have Andersen issue a manually signed audit report, these companies may need additional time to engage new independent accountants and complete their filings. Further, as a number of requirements throughout the federal securities laws are contingent upon the flow of accurate and timely information into the market, any potential disruption may, absent the actions the Commission takes today, have a significant impact on a company's compliance with a number of provisions under the federal securities laws.

Accordingly, the Commission is taking action for those Andersen clients that are unable to obtain from Andersen or elect not to have Andersen issue a manually signed audit report. The Commission will require adherence to existing filing deadlines, but will accept filings that include unaudited financial statements from any such issuer unable to provide timely audited financial statements. Issuers electing this alternative will generally be required to amend their filings within 60 days to include audited financial statements. The Commission has taken similar actions regarding reviews of interim financial statements.

The actions the Commission takes today, through this release and by the Orders, are meant to provide investors with the timely financial information to which they are entitled under the federal securities laws, while giving certain Andersen clients time to address any timing constraints and temporary disruptions they may face. In addition to those actions, in this release we also adopt rules and express interpretations concerning the impact of those actions upon other requirements of the federal securities laws.[23] None of the actions announced by the Commission today affects the liability standards to which an issuer's filing is subject.

We emphasize that companies should make their own independent decisions regarding completion of current audits and that these actions are intended only to provide neutral flexibility for companies as they make those decisions. Consistent with this approach, our actions do not apply to issuers to whom Andersen had issued a signed audit report on or before March 14, 2002. We also recognize there are a number of situations that will be fact-specific. We strongly encourage companies to contact the staff of the Commission listed at the beginning of this release and request consideration of specific situations and the appropriateness of additional Commission or staff action.

II. Registrants Under the Securities Act of 1933

A. Registrants That Continue To Engage Andersen

For issuers that make filings that include accountant's reports from Andersen issued after March 14, 2002, the Commission has adopted Temporary Note 3T to Article 3 of Regulation S–X (and Temporary Note 2T to Item 310 of Regulation S–B for small business issuers [24] and General Instruction A–T2 to Form 20–F for foreign private issuers [25]) to specify special disclosure requirements for these issuers. While the exact nature of each issuer's disclosure may vary depending on the facts and circumstances applicable to each of Andersen's public company audit clients, these issuers are required to include as an exhibit to their filings a letter by the issuer addressed to the Commission that states that Andersen has represented to the issuer that the audit was subject to Andersen's quality control system for the U.S. accounting and auditing practice to provide reasonable assurance that the engagement was conducted in compliance with professional standards and that there was appropriate continuity of Andersen personnel working on audits, availability of national office consultation and availability of personnel at foreign affiliates of Andersen to conduct the relevant portions of the audit. We expect these assurances will be given in connection with the issuance of the audit report. So long as Andersen continues to be in a position to provide those assurances, the Commission will continue to accept financial statements audited by Andersen.

B. Registrants That Are Unable To, or Choose Not To, Engage Andersen

There may be issuers that are Andersen clients or whose filings are to include financial statements as to the examination of which Andersen had been engaged on or after March 14, 2002 that are unable to obtain from Andersen or elect not to have Andersen issue a manually signed audit report. The following sections outline specific relief to be granted to these issuers. This relief does not apply for financial statements where Andersen has already issued a manually signed audit report for those financial statements on or before March 14, 2002.

1. Form Eligibility

Forms S–2, [26] S–3,[27] F–2,[28] F–3 [29] and S–8 [30] under the Securities Act permit alternative disclosure formats.[31] Eligibility for those forms is dependent upon, among other requirements, whether the company filing the registration statement has filed all required reports under the Exchange Act for a specified period and whether the company has filed those reports in a timely manner for a specified period. The 34 Act Order provides alternate procedures for filing Exchange Act reports by issuers that are unable to obtain from Andersen or elect not to have Andersen issue a manually signed audit report. It is the Commission's view that the filing of reports in the manner permitted by the 34 Act Order is consistent with the protection of investors. Accordingly, it is our further view that compliance with the 34 Act Order should not negatively impact a company's eligibility to use Securities Act registration statement forms. We are adopting Rule 401a under the Securities Act to make clear that issuers that are eligible to rely on the 34 Act Order and that comply with its terms for the filing of their Exchange Act reports will be current and timely and, therefore, will not have their eligibility for Securities Act forms impacted negatively.

2. Financial Statements Required in Registration Statements

The financial statement requirements for registration statements on Forms S–

[22] Throughout this release, where we refer to Andersen, we also include foreign affiliates of Andersen.

[23] The Commission's actions are procedural in nature and are of finite duration. The temporary rules and amendments we are adopting today expire on December 31, 2002.

[24] The term "small business issuer" is defined in Item 10(a)(1) of Regulation S–B.

[25] The term "foreign private issuer" is defined in Securities Act Rule 405 [17 CFR 230.405].

[26] 17 CFR 239.12.

[27] 17 CFR 239.13.

[28] 17 CFR 239.32.

[29] 17 CFR 239.33.

[30] 17 CFR 239.16b.

[31] Forms S–4 and F–4 [17 CFR 239.25 and 17 CFR 239.34] under the Securities Act do not have "form eligibility" standards relating to the company registering a transaction on that form or the other company(ies) involved in the transaction. Rather, Forms S–4 and F–4 permit specific disclosure formats regarding each of those companies based on their eligibility to use Forms S–2 or S–3 and F–2 or F–3, respectively. As new Securities Act Rule 401a relates to eligibility to use Securities Act forms, that rule should be considered when completing those sections of Forms S–4 and F–4 that rely upon Securities Act form eligibility.

1,[32] S–2, S–3, S–4, S–6,[33] S–8, S–11,[34] N–1,[35] N–1A,[36] N–2,[37] N–3,[38] N–4,[39] N–5[40] and N–14[41] generally are set forth in Regulation S–X.[42] The financial statement requirements for registration statements on Form SB–1[43] and Form SB–2,[44] as well as for financial statements regarding small business issuers on other Securities Act forms, generally are set forth in Item 310 of Regulation S–B. The financial statement requirements for registration statements on Forms F–1,[45] F–2, F–3 and F–4 generally are contained in Form 20–F under the Exchange Act. We have adopted temporary notes to Article 3 of Regulation S–X and Item 310 of Regulation S–B and a temporary instruction to Form 20–F for eligible issuers whose registration statements contain financial statements of an entity that has a fiscal year ending between and including November 30, 2001[46] and April 15, 2002, as to the examination of which Andersen had been engaged as the independent public accountant on or after March 14, 2002.[47] These new items generally provide that unaudited information may be included in Securities Act registration statements so long as audited financial statements are subsequently provided by amendment. These new items may not be relied upon by any registrant that is a ''blank check company'' as defined in Securities Act Rule 419(a)(2).[48] These items will have the following effect on the inclusion of audited financial statements in registration statements under the Securities Act:

- Registration statements filed by companies that, at the time of filing the registration statement, are not required to file reports under Section 13(a)[49] or 15(d)[50] of the Exchange Act, must in all circumstances include financial statements that meet the timeliness and audit requirements of Commission rules.
- Registration statements (or any pre-effective or post-effective amendments thereto) filed by companies that, at the time of filing the registration statement, are required to file reports under Section 13(a) or 15(d) of the Exchange Act,[51] may include financial statements that meet the timeliness requirements of Commission rules but that are unaudited if Andersen had been engaged as the independent public accountant on or after March 14, 2002 to examine those financial statements and the issuer is unable to obtain from Andersen or elects not to have Andersen issue a manually signed audit report.[52] The registration statement must also include disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X.[53] These companies will then be required to file a pre-effective amendment, post-effective amendment or an amendment to a document incorporated by reference, as appropriate, containing the audited financial statements for the required periods if the registered offering or offerings have not been completed. Generally, if the registration statement is not yet effective and will become effective on or after the earlier of 60 days from the date when use of the financial statements would have been required and the date the audited financial statements are filed in the annual report of the registrant,[54] a pre-effective amendment to the registration statement or an amendment to a document incorporated by reference, as appropriate, containing audited financial statements must be filed before effectiveness.[55] If the registration statement is effective, the amendment containing audited financial statements generally must be filed by the earlier of 60 days from the date when use of the financial statements would have been required and the date the audited financial statements are filed in the annual report of the registrant,[56] if the offering or offerings are not complete (including any prospectus delivery period required by Section 4(3) of the Securities Act[57] and the rules thereunder) by such date.[58]
- Registration statements for offerings that are registered in accordance with Securities Act Rule 415[59] and that are updated through ''forward incorporation by reference'' of the issuer's Exchange Act reports rather than through the filing of post-effective amendments will be updated in accordance with the procedures for including the audited financial information in the registrant's Exchange Act reports.

Issuers with effective registration statements for offerings registered in accordance with Rule 415 under the Securities Act must update the registration statement pursuant to undertakings included in those registration statements.[60] Among the events requiring an updating of the registration statement is the occurrence of facts or events that, individually or in

[32] 17 CFR 239.11.

[33] 17 CFR 239.16.

[34] 17 CFR 239.18.

[35] 17 CFR 239.15.

[36] 17 CFR 239.15A.

[37] 17 CFR 239.14.

[38] 17 CFR 239.17a.

[39] 17 CFR 239.17b.

[40] 17 CFR 239.24.

[41] 17 CFR 239.23.

[42] These financial statement requirements may be included in the form indirectly, as they apply to the company's periodic reports, which are incorporated by reference into the registration statement. Form S–8 has an additional requirement, as expressed in Instruction 2 to Securities Act Rule 428(b) [17 CFR 230.428(b)], regarding the delivery of documents during the first 120 days of a fiscal year for a domestic company and the first 190 days of a fiscal year for a foreign private issuer. Under this instruction, the company may deliver a document that does not include audited financial information for the most recently completed fiscal year, so long as the company provides audited financial information by the end of the 120 day or 190 day period, as applicable. Consistent with the 34 Act Order, domestic companies may provide a document to plan participants within the first 180 days of the fiscal year that do not contain audited financial statements. Similarly, foreign private issuers may deliver such documents within the first 250 days of the fiscal year. The delivery of such documents will be permissible conditioned upon the delivery of audited financial statements by the end of the 180 day or 250 day period, as applicable.

[43] 17 CFR 239.9.

[44] 17 CFR 239.10.

[45] 17 CFR 239.31.

[46] For foreign private issuers, this date is August 31, 2001. For registered investment companies, this date is January 1, 2002. If the entity does not meet all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g) of Regulation S–B if the entity is a small business issuer), this date is December 29, 2001.

[47] We are using the date of March 14, 2002 to ensure that the registrant had engaged Andersen as its auditor for their most recent fiscal year end. Other rules and amendments adopted today address situations where a registrant is using financial information that has previously been audited by Andersen.

[48] 17 CFR 230.419(a)(2).

[49] 15 U.S.C. § 78m(a).

[50] 15 U.S.C. § 78o(d).

[51] Including registered investment companies that have previously filed a registration statement under the Securities Act that has been declared effective by the Commission.

[52] Unit investment trusts that offer a new series will continue to be required to provide audited financial statements for the registrant as currently required. The Commission believes that obtaining an audit that verifies the securities deposited in a unit investment trust is not unduly burdensome.

[53] *See* Section II.B.3 of this release.

[54] Annual report to shareholders, in the case of a registered investment company.

[55] The 60 day period applies to foreign private issuers and issuers that meet all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g)(2) of Regulation S–B for small business issuers). For issuers that do not meet all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g)(2) of Regulation S–B for small business issuers), the period is 106 days. If the issuer is a registered investment company, the applicable time period is six months after the close of the fiscal year.

[56] Annual report to shareholders, in the case of a registered investment company.

[57] 15 U.S.C. 77d(3).

[58] The period is 106 days for issuers that do not meet all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g)(2) of Regulation S–B for small business issuers). If the issuer is a registered investment company, the applicable time period is six months after the close of the fiscal year.

[59] 17 CFR 230.415.

[60] Those undertakings, which are set forth in Item 512(a) of Regulation S–B or Regulation S–K [17 CFR 228.512 and 17 CFR 229.512], must be included in registration statements for offerings registered in accordance with Rule 415 under the Securities Act.

the aggregate, represent a ''fundamental change in the information set forth in the registration statement.'' [61] It is the Commission's view that the failure of an eligible issuer to include audited financial statements in the registration statement, either through the filing of a post-effective amendment or amendments of Exchange Act reports or other documents incorporated by reference, in accordance with Temporary Note 1T to Article 3 of Regulation S–X (or Temporary Note 1T of Item 310 of S–B for small business issuers or Temporary Instruction A–T1 to Form 20–F for foreign private issuers) represents such a ''fundamental change.'' Accordingly, failure to comply with those requirements will require the filing of a post-effective amendment to the registration statement. Offerings under the registration statement must cease until a post-effective amendment that includes all information required by those requirements is declared effective.

Section 10(a)(3) of the Securities Act requires that the information in a prospectus that is used more than nine months after the effective date of the registration statement of which the prospectus is a part ''shall be as of a date not more than sixteen months prior to such use so far as such information is known to the user of such prospectus or can be furnished without unreasonable effort or expense.'' [62] If the issuer is unable to obtain from Andersen or elects not to have Andersen issue a manually signed audit report, this presents a situation that we believe would cause compliance with Section 10(a)(3) to involve ''unreasonable effort or expense.'' Accordingly, we are adopting temporary Rule 427T under the Securities Act to extend for eligible issuers the sixteen month requirement in Section 10(a)(3) as it relates to audited financial statements. Under Rule 427T, the Section 10(a)(3) timeliness requirement for audited financial statements will be satisfied by any eligible issuer if two conditions are met. First, the prospectus used more than nine months after the effective date of the registration statement is updated to include unaudited financial information that is as of a date not more than sixteen months prior to use; provided that the registrant provides in the prospectus disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X.[63] Second, the prospectus used more than nine months after the effective date of the registration statement is updated to include audited financial information that is as of a date not more than eighteen months prior to use.[64] The updated prospectus should include a discussion of any material changes from the unaudited financial information and updated or revised information in any other section of the prospectus or documents incorporated by reference that should be updated or revised to reflect the changes in the audited financial information. Temporary Rule 427T may not be relied upon by any registrant that is a ''blank check company'' as defined in Securities Act Rule 419(a)(2).

3. Additional Disclosure Required in Filings

Issuers permitted to provide unaudited financial information in reliance on the temporary rules adopted today or in reliance on the Orders should consider whether any additional disclosure is necessary in those filings. The Commission has adopted Temporary Note 2T to Article 3 of Regulation S–X to provide guidance on the additional disclosure. The guidance in the note applies to all such issuers, including small business issuers and foreign private issuers. The temporary note is intended to provide guidance to issuers in meeting their disclosure obligations under the federal securities laws. While the exact content of each issuer's disclosure may vary depending on the facts and circumstances applicable to each of Andersen's former public company audit clients, issuers must provide on the cover page of their filings a prominent statement that the filing includes unaudited financial statements in lieu of the audited financial statements because the issuer was unable to obtain from Andersen or elected not to have Andersen issue a manually signed audit report. The issuer must also place this prominent statement in the filing immediately before the financial statements and follow guidance as to providing:

- A statement as to when and how the issuer intends to provide the audited financial statements; and
- A statement that no auditor has opined that the unaudited financial statements present fairly, in all material respects, the financial position, the results of operations, cash flows and the changes in shareholders' equity of the company (and, in the case of a registered investment company, the financial highlights) for each of the periods reported in accordance with generally accepted accounting principles.

Further, any audit report previously issued by Andersen that is required to be included in a filing should be included as required.

4. Predecessor Auditor's Reports

Each issuer filing audited financial statements as to the examination of which Andersen had been engaged as the independent public accountant is required to file a manually signed accountants' report [65] from Andersen.[66] Issuers may be unable to obtain an accountants' report for the period for which Andersen was engaged. Accordingly, the Commission is amending Rule 2–02 of Regulation S–X to provide that those issuers that cannot obtain an accountants' report from Andersen after reasonable efforts may file a copy of the latest signed and dated accountants' report issued by Andersen for such period. The issuer must disclose prominently on such copy that the report is a copy of a previously issued Andersen report and that the report has not been reissued by Andersen. This rule is available only to issuers filing documents containing financial statements for a period with respect to which Andersen issued an accountants' report.

5. Written Consents

Each issuer filing a Securities Act registration statement containing financial statements as to the examination of which Andersen had been engaged as the independent public accountant is required to file a written consent from Andersen. An issuer may be unable to obtain these consents. Accordingly, the Commission is adopting Securities Act Rule 437a to provide that, notwithstanding any other Commission rule or regulation, every registrant eligible to rely on this rule may dispense with the requirement for

[61] 17 CFR 228.512(a)(1)(ii) and 17 CFR 229.512(a)(1)(ii).

[62] Id.

[63] For registration statements that are updated through ''forward incorporation by reference'' of Exchange Act reports, each of the required updates may be accomplished in that manner. For registration statements that are updated through the filing of post-effective amendments, each update will require a post-effective amendment.

[64] Provisions of the 34 Act Order, the 40 Act Order or Temporary Note 1T to Article 3 of Regulation S–X may require the filing of audited financial statements at an earlier time than Rule 427T. For example, a registered investment company generally would be required to file its annual updating amendment with audited financial statements no later than the date it is required to file audited financial statements in its annual report to shareholders under the 40 Act Order, *i.e.,* typically 120 days after the close of its fiscal year.

[65] See Item 302 of Regulation S–T [17 CFR 232.302] for requirements related to signatures in electronic submissions.

[66] See Rule 2–02(a) of Regulation S–X [17 CFR 210.2–02(a)] for the technical requirements of an accountants' report.

the registrant to file the written consent of Andersen as required by Section 7 of the Securities Act where:

- The registrant has not already obtained the written consent that would be required if not for this temporary rule,
- The registrant is not able to obtain the written consent after reasonable efforts, and
- The registrant discloses clearly any limitations on recovery by investors posed by the lack of consent.

This rule is available only to issuers filing registration statements containing financial statements audited by Andersen. The rule may not be relied upon by any registrant that is a ''blank check company'' as defined in Securities Act Rule 419(a)(2).

6. Rule 144

Rule 144(c)(1)[67] provides that there shall be adequate, current public information available for purposes of Rule 144 if the issuer of the securities to be offered has been subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least 90 days preceding the subject sale of securities and has filed all required reports for the 12 months preceding that sale. It is the view of the Commission that the requirement to have filed all required reports for purposes of Rule 144(c)(1) is satisfied for issuers eligible to rely on the 34 Act Order if they have filed their Exchange Act reports as permitted under the 34 Act Order.[68]

7. Rule 144A

Rule 144A(d)(4)[69] addresses the information that an issuer that is not a reporting company under the Exchange Act, not a foreign government and not a foreign company exempt from registration under Section 12 of the Exchange Act[70] by Exchange Act Rule 12g3–2(b)[71] must agree to provide to investors or prospective investors if Rule 144A is to be relied upon. Among other requirements, an issuer subject to Rule 144A(d)(4) must provide financial information that ''should be audited to the extent reasonably available.'' It is the view of the Commission that resales under Rule 144A will not be affected by the unavailability of audited financial information due to reliance on the 34 Act Order and temporary rules adopted today.

8. Rule 701

The conditions for the Rule 701 exemption from Securities Act registration for certain offerings of securities include financial statement requirements. It is the view of the Commission that, to the extent required, where the information referenced in Rule 701(e) is prepared in compliance with the 34 Act Order by issuers eligible to rely on the 34 Act Order, the information contained in those reports is sufficient for purposes of Rule 701.

9. Regulation D

Rule 502(b)(2)(ii)[72] sets forth the financial information requirements for issuers that are subject to the Exchange Act reporting requirements. Subject to various conditions, that rule may require the furnishing of annual reports under Exchange Act Rule 14a–3,[73] reports under the Exchange Act or registration statements under the Securities Act. It is the view of the Commission that, where the reports and registration statements referenced in Rule 502(b)(2)(ii) are prepared in compliance with the 34 Act Order by issuers eligible to rely on the 34 Act Order, the information contained in those reports and registration statements is sufficient for purposes of Regulation D.

10. Items 304 and 601 of Regulation S–K and Regulation S–B

Item 304 of Regulation S–K[74] sets forth the disclosure requirements for an issuer when its independent public accountant is dismissed or resigns. This disclosure would include a discussion of any disagreements with the independent accountants regarding accounting and financial disclosure. Subject to various conditions, the issuer may be required to request that its former independent accountant furnish a letter addressed to the Commission stating whether it agrees with the statements made by the issuer in response to Item 304(a) and, if not, stating the matters on which it does not agree. This letter must be filed as an exhibit to certain of the issuer's filings in accordance with Item 601(b)(16) of Regulation S–K.[75]

The resignation or dismissal of the independent accountant triggers an issuer's obligation to file a current report on Form 8–K.[76] That Form 8–K must include the information required by Item 304. Further, the disclosure and letter required by Item 304 must be included in any Exchange Act registration statement or report on Form 10,[77] 10–SB,[78] 10–K,[79] 10–KSB[80] or N–SAR[81] or Securities Act registration statement on Form S–1, S–2, S–4 or S–11 that the issuer files. We are adopting temporary Items 304T and 601T of Regulation S–K and Regulation S–B for use by issuers for which Andersen had been engaged as the independent public accountant to examine the issuer's financial statements, or for which Andersen had been engaged to examine a significant subsidiary's financial statements and on which the principal accountant expressed reliance in its report, on or after March 14, 2002. Under Item 304T, the filing obligation of these issuers will be satisfied if the issuer's filings do not include the letter from Andersen if the issuer has not yet obtained it and is not able to obtain it after reasonable efforts.

III. Trust Indenture Act of 1939

Section 314(a)(1) of the Trust Indenture Act[82] requires companies that are obligors on securities issued under an indenture that is qualified under the Trust Indenture Act to file certain information with the indenture trustee. The indenture obligor must ''file with the indenture trustee all reports required to be filed with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act.''[83] We have adopted a rule to make clear the application of Section 314(a)(1) to indenture obligors that file their Exchange Act reports with the

[67] 17 CFR 230.144(c)(1).

[68] This position, as well as the positions expressed with regard to Rule 701 [17 CFR 230.701] and Regulation D [17 CFR 230.501–508], are consistent with Exchange Act Rule 12b–37 which we are adopting today to address the satisfaction of an issuer's Exchange Act filing requirements.

[69] 17 CFR 230.144A(d)(4).

[70] 15 U.S.C. 77l.

[71] 17 CFR 240.12g3–2(b).

[72] 17 CFR 230.502(b)(2)(ii).

[73] 17 CFR 240.14a–3.

[74] 17 CFR 229.304. Item 304 of Regulation S–B [17 CFR 228.304] sets forth the same requirement for issuers reporting under the small business issuer reporting system. The discussion of Item 304T in this section refers to new Item 304T of Regulation S–K and Regulation S–B.

[75] 17 CFR 229.601(b)(16). The discussion of Item 601 of Regulation S–K applies equally to Item 601 of Regulation S–B [17 CFR 228.601].

[76] 17 CFR 249.308.

[77] 17 CFR 249.10.

[78] *Id.*

[79] 17 CFR 249.310.

[80] 17 CFR 249.310b.

[81] 17 CFR 249.330. In the case of registered investment companies, the disclosure and letter must also be included in the annual report to shareholders.

[82] 15 U.S.C. 77nnn(a)(1).

[83] *Id.* Section 314(a)(1) also discusses the obligations for indenture obligors that are not required to file reports with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act. The discussion in this section and new Rule 19a–1 do not apply to indenture obligors that are not required to file reports with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act.

Commission in compliance with the 34 Act Order.[84] Trust Indenture Act Rule 19a–1 states that the indenture obligor's filing with the indenture trustee of those Exchange Act reports filed in accordance with the 34 Act Order shall satisfy the indenture obligor's responsibility to ''file with the indenture trustee all reports required to be filed with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act'' for purposes of Section 314(a)(1).

IV. Registrants Under the Securities Exchange Act of 1934

A. Registrants That Continue To Engage Andersen

For issuers that make filings that include accountant's reports from Andersen issued after March 14, 2002, the Commission has adopted Temporary Note 3T to Article 3 of Regulation S–X (and Temporary Note 2T to Item 310 of Regulation S–B for small business issuers and General Instruction A–T2 to Form 20–F for foreign private issuers) to specify special disclosure requirements for these issuers. While the exact nature of each issuer's disclosure may vary depending on the facts and circumstances applicable to each of Andersen's public company audit clients, these issuers are required to include as an exhibit to their filings a letter by the issuer addressed to the Commission that states that Andersen has represented to the issuer that the audit was subject to Andersen's quality control system for the U.S. accounting and auditing practice to provide reasonable assurance that the engagement was conducted in compliance with professional standards and that there was appropriate continuity of Andersen personnel working on audits, availability of national office consultation and availability of personnel at foreign affiliates of Andersen to conduct the relevant portions of the audit. We expect these assurances will be given in connection with the issuance of the audit report. So long as Andersen continues to be in a position to provide those assurances, the Commission will continue to accept financial statements audited by Andersen.

B. Registrants That Are Unable To, or Choose Not To, Engage Andersen

There may be issuers that are Andersen clients or whose filings are to include financial statements as to the examination of which Andersen had been engaged on or after March 14, 2002 that are unable to obtain from Andersen or elect not to have Andersen issue a manually signed audit report. The 34 Act Order issued by the Commission provides affected issuers extensions of time to file audited financial statements or obtain reviews of financial statements for quarterly reports under specified conditions. In most cases, the relief is conditioned on timely filing of the financial statements on an unaudited basis and requiring an amendment to the filing within 60 days after the original due date to provide the audited financial statements. The relief does not apply for financial statements where Andersen has already issued a manually signed report for those financial statements on or before March 14, 2002. In addition, the relief does not apply to any filings by a ''blank check company'' as defined in Securities Act Rule 419(a)(2). We are adopting Rule 12b–37 under the Exchange Act to make clear that reports filed in compliance with the 34 Act Order and the 40 Act Order will satisfy the issuer's Exchange Act filing requirements.

1. Annual Reports on Form 10–K/Form 10–KSB

For issuers that file annual reports on Form 10–K or Form 10–KSB, the relief provided by the 34 Act Order applies to issuers with a fiscal year ending between and including November 30, 2001 and April 15, 2002. The 34 Act Order maintains the existing filing deadlines for these reports, but permits eligible issuers to file their annual reports with those financial statements on an unaudited basis. The 34 Act Order's conditions require the issuer to provide disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X in the report. [85] Further, within 60 days of the original due date for filing, the issuer must file an amendment presenting the financial statements audited by an accountant other than Andersen, a discussion of any material changes from the unaudited financial statements and any other section of the report, including without limitation Management's Discussion and Analysis of Financial Condition and Results of Operations,[86] that should be amended to reflect any changes in the financial statements.[87]

For example, the 34 Act Order permits a company with a fiscal year that ended on December 31, 2001, for which Andersen had been engaged as the independent public accountant to examine the company's financial statements on or after March 14, 2002, to file timely its annual report responding to all items required in the report by April 1, 2002,[88] but include the financial statements on an unaudited basis.[89] Under the 34 Act Order, the company will then file the audited financial statements, any required selected financial data, a discussion of any material changes from the unaudited financial statements and any other section of the annual report that should be amended to reflect any changes in the financial statements as an amendment no later than May 31, 2002.[90]

2. Quarterly Reports on Form 10–Q/Form 10–QSB

For issuers that file quarterly reports on Form 10–Q [91] or Form 10–QSB,[92] the relief provided by the 34 Act Order applies to issuers that have fiscal quarters ending between and including January 26, 2002 and June 15, 2002. The 34 Act Order maintains the existing

[84] Trust Indenture Act Rule 19a–1 is consistent with Exchange Act Rule 12b–37 which we are adopting today regarding satisfaction of an issuer's Exchange Act filing requirements. Trust Indenture Act Rule 19a–1 uses the term ''eligible indenture obligors.'' The rule defines ''eligible indenture obligors'' as those obligors that may rely on any of the provisions of the 34 Act Order with regard to the filing of reports with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act.

[85] *See* Section II.B.3 of this release.

[86] Item 303 of Regulation S–K and Regulation S–B [17 CFR 229.303 and 17 CFR 228.303].

[87] If the original filing was on Form 10–K and Andersen had been engaged originally as the independent public accountant to examine the issuer's financial statements, selected financial data required by Item 6 of Form 10–K based on the audited financial statements must also be provided.

[88] General Instruction A. to Form 10–K and Form 10–KSB set the due date for these reports at 90 days after the end of the issuer's fiscal year. If that date falls on a Saturday, Sunday or holiday, Exchange Act Rule 0–3 [17 CFR 240.0–3] allows such reports to be filed on the first business day following. March 31, 2002, which is 90 days after December 31, 2001, falls on a Sunday, so the report will be due by April 1, 2002.

[89] One-time extensions of time to file the report are available under certain circumstances under Exchange Act Rule 12b–25 [17 CFR 240.12b–25]. If an issuer complies with that rule, it can file its annual report no later than the fifteenth calendar day following the prescribed due date for that report, and the report will be deemed to be filed on the prescribed due date. If the issuer is relying on Exchange Act Rule 12b–25 in connection with a report covered by the Orders, the 34 Act Order provides that the issuer need not attach as an exhibit to its Form 12b–25 filing a statement by Andersen as required by Exchange Act Rule 12b–25(c) if such statement cannot be obtained by the issuer after reasonable efforts.

[90] Reliance on the 34 Act Order is conditioned upon filing the amendment within 60 days after the original due date of the report, excluding any additional period issuers had to actually file the report under Exchange Act Rule 12b–25. Extensions under Exchange Rule 12b–25 are not available for filing the amendment.

[91] 17 CFR 249.308.

[92] 17 CFR 249.308b.

filing deadlines for these reports,[93] but permits eligible issuers to file their quarterly reports with financial statements that have not been reviewed pursuant to Rule 10–01(d) of Regulation S–X (or Item 310(b) of Regulation S–B for issuers filing on Form 10–QSB). The 34 Act Order's conditions require the issuer to provide similar disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X in the report.

Under the 34 Act Order's conditions, if, upon completion of the review, there is a change in those financial statements, the issuer must amend its quarterly report to present the reviewed financial statements, a discussion of any material changes from the unreviewed financial statements and any other section of the quarterly report, including without limitation Management's Discussion and Analysis of Financial Condition and Results of Operations, that should be amended to reflect any changes in the financial statements. Otherwise, the 34 Act Order's conditions only require the issuer to state in its next quarterly report that the financial statements for the previous quarter had subsequently been reviewed by an accountant other than Andersen, but the issuer is not required to include a copy of the review report. If an amendment to the previous quarterly report is not required, we encourage issuers to make public that there were no material changes as a result of the review prior to the submission of the next required periodic report.

3. Annual Reports on Form 20–F

For foreign private issuers that file annual reports on Form 20–F, the 34 Act Order applies to foreign private issuers with fiscal years ending between and including August 31, 2001 and April 15, 2002. The 34 Act Order maintains the existing filing deadline for Form 20–F, but permits eligible foreign private issuers to file their annual reports on Form 20–F with financial statements on an unaudited basis. The 34 Act Order's conditions require these financial statements to include an unaudited reconciliation to U.S. generally accepted accounting principles (GAAP) if the foreign private issuer prepares its financial statements in accordance with local GAAP or international accounting standards (IAS). The 34 Act Order's conditions also require the foreign private issuer to provide disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X in the report.

Within 60 days after the original due date for filing, a foreign private issuer relying on the 34 Act Order must file an amendment presenting the audited financial statements (including the audited reconciliation to U.S. GAAP where the issuer's financial statements are prepared in accordance with local GAAP or IAS) audited by an accountant other than Andersen, a discussion of any material changes from the unaudited financial statements and any other section of the report that should be amended to reflect any changes in the financial statements, including without limitation the Operating and Financial Review and Prospects required by Item 5 of Form 20–F.[94]

For example, the 34 Act Order permits a foreign private issuer with a fiscal year that ended on December 31, 2001 for which Andersen had been engaged as the independent public accountant to examine the financial statements to file timely its annual report on Form 20–F responding to all items required in the report by July 1, 2002,[95] but include the financial statements and the reconciliation to U.S. GAAP on an unaudited basis.[96] Under the 34 Act Order, the foreign private issuer must then file the audited financial statements and reconciliation, any required selected financial data, a discussion of any material changes from the unaudited financial statements and any other section of the annual report that should be amended to reflect any changes in the financial statements as an amendment no later than August 30, 2002.[97]

4. Employee Benefit Plan Annual Reports on Form 11–K

For non-ERISA[98] employee stock purchase, savings and similar plans subject to Section 15(d) of the Exchange Act, the 34 Act Order applies to plans with a fiscal year ending between and including November 30, 2001 and April 15, 2002. The 34 Act Order maintains the existing filing deadlines for Form 11–K,[99] but permits non-ERISA plans whose annual reports would need to include audited plan financial statements for which Andersen had been engaged as the independent public accountant on or after March 14, 2002 to file their annual reports on Form 11–K with unaudited plan financial statements. The 34 Act Order's conditions require the plan to provide disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X in the report. Further, within 60 days of the original due date for filing, the plan must file an amendment presenting the financial statements audited by an accountant other than Andersen and a discussion of any material changes from the unaudited financial statements filed originally.

Exchange Act Rule 15d–21[100] provides plans with the alternative of including audited financial statements in the annual report of the issuer of the stock or other securities offered to employees through their participation in the plan. If the plan follows this alternative procedure, the 34 Act Order permits unaudited plan financial statements (with appropriate disclosures) to be filed in the annual report (or an amendment thereto) of the issuer within 120 days after the end of the fiscal year of the plan. The 34 Act Order's conditions require audited plan financial statements to be filed as an amendment within 180 days after the end of the fiscal year of the plan. Plans with fiscal years that end within 62 days before the end of the fiscal year of the issuer that elect to furnish the

[93] General Instruction A.1. to Form 10–Q and Form 10–QSB set the due date for these reports at 45 days after the end of the issuer's first three fiscal quarters. As with reports on Form 10–K and Form 10–KSB, one-time extensions of time to file the report are available under certain circumstances under Exchange Act Rule 12b–25. If the issuer complies with that rule, it can file its quarterly report no later than the fifth calendar day following the prescribed due date for that report, and the report will be deemed to be filed on the prescribed due date. *See supra* note 89 for additional relief provided by the 34 Act Order regarding Exchange Act Rule 12b–25.

[94] If Andersen or a foreign affiliate of Andersen had been engaged originally as the independent public accountant for the foreign private issuer's financial statements, selected financial data required by Item 3.A. of Form 20–F (and any reconciliation of that data to U.S. GAAP and Regulation S–K if required by Instruction 2 to Item 3.A. of Form 20–F) must also be provided.

[95] General Instruction A.(b) of Form 20–F sets the due date for these annual reports at six months after the end of the fiscal year covered by the report. June 30, 2002 falls on a Sunday, so the report will be due by July 1, 2002 for foreign private issuers with a December 31 fiscal year end.

[96] As with reports on Form 10–K and Form 10–KSB, one-time extensions of time to file the report are available under certain circumstances under Exchange Act Rule 12b–25. If a foreign private issuer complies with that rule, it can file its annual report no later than the fifteenth calendar day following the prescribed due date for that report, and the report will be deemed to be filed on the prescribed due date. *See supra* note 89 for additional relief provided by the 34 Act Order regarding Exchange Act Rule 12b–25.

[97] As with reports on Form 10–K and Form 10–KSB, reliance on the 34 Act Order is conditioned upon filing of the amendment in 60 days after the original due date of the report, excluding any additional period foreign private issuers had to actually file the report under Exchange Act Rule 12b–25. Extensions under Exchange Rule 12b–25 are not available for filing the amendment.

[98] ERISA stands for the Employee Retirement Income Security Act of 1974, as amended [29 U.S.C. §§ 1001–1461].

[99] 17 CFR 249.311.

[100] 17 CFR 240.15d–21.

information as part of the issuer's next annual report, as permitted by Exchange Act Rule 15d–21(b), will not be affected.

For example, the 34 Act Order permits a plan with a fiscal year ending December 31, 2001 for which Andersen had been engaged as the independent public accountant to examine the plan's financial statements on or after March 14, 2002, to file timely its annual report on Form 11–K by April 1, 2002,[101] but include the plan financial statements on an unaudited basis.[102] Under the 34 Act Order, the plan will then file its audited plan financial statements, a discussion of any material changes from the unaudited plan financial statements and any other section of the annual report that should be amended to reflect any changes in the financial statements as an amendment by May 31, 2002.[103]

If the alternative procedure in Exchange Act Rule 15d–21 is followed, the 34 Act Order permits unaudited plan financial statements to be filed in the annual report of the issuer, or as an amendment to that report, by April 30, 2002. Under the 34 Act Order's conditions, audited plan financial statements, a discussion of any material changes from the unaudited plan financial statements and any other section of the annual report related to the plan that should be updated will need to be filed as an amendment by July 1, 2002.[104] If the plan has a fiscal year that ends within 62 days before the end of the fiscal year of the issuer, it may elect to file the plan financial statements in the issuer's next annual report pursuant to Exchange Act Rule 15d–21(b).

Plans subject to ERISA will remain subject to the existing requirements for filing plan financial statements.

5. Filings on Schedules 14A and 14C

For issuers that file proxy statements or information statements that require audited financial statements pursuant to Item 13 or Item 14 of Schedule 14A [105] or Item 1 of Schedule 14C,[106] the 34 Act Order permits the filing of unaudited financial statements of issuers and, where applicable, of acquired companies, where the independent public accountant of the entity in question had been Andersen on or after March 14, 2002.[107] For issuers that are not registered investment companies, the relief provided by the 34 Act Order applies to proxy statements or information statements that are sent on or before September 13, 2002. For registered investment companies, the relief provided by the 34 Act Order applies to proxy statements or information statements that are sent on or before August 13, 2002. The 34 Act Order's conditions require the proxy statement or information statement to include disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X.

Under the 34 Act Order, these issuers must file revised material or amend documents incorporated by reference, as appropriate, containing financial statements audited by an accountant other than Andersen for the required periods by the earlier of 60 days [108] from the date when the financial statements were required to be included in the proxy statement or information statement and the date the audited financial statements are filed in the annual report of the registrant,[109] if the solicitation for purposes of proxy statements (or corporate action for purposes of information statements) has not been completed by such date. The revised material or amended documents must present the audited financial statements, a discussion of any material changes from the unaudited financial statements and any other section of the materials that should be updated to reflect the changes in the financial statements.[110]

Additionally, the Commission recognizes that issuers sending their proxy statement or information statement prior to obtaining their audit report will be unable to provide disclosure regarding audit committee reports pursuant to Item 7(d)(3)(i) of Schedule 14A and audit fees pursuant to Item 9(e) of Schedule 14A or Item 1 of Schedule 14C. The 34 Act Order permits the omission of this information for issuers with a fiscal year end between November 30, 2001 and April 15, 2002 from proxy statements and information statements in full satisfaction of those disclosure requirements if the issuer meets the 34 Act Order's conditions.

The 34 Act Order's conditions require the issuer to send its proxy statement or information statement on or before September 13, 2002.[111] Further, the issuer must respond to all other applicable disclosure requirements in their proxy statement or information statement. Under the 34 Act Order, the issuer will then include disclosure in response to Items 7(d)(3)(i) and Item 9(e) of Schedule 14A in their amended Form 10–K or Form 10–KSB, if this information was required in the Schedule 14A or Schedule 14C.

6. Annual Reports to Shareholders in Connection With Annual Meeting Proxy Solicitations

Issuers furnishing proxy statements or information statements in connection with their annual meeting of security holders, or written consents in lieu of annual meetings, at which directors are to be elected, must accompany or precede that proxy statement with an annual report to shareholders. That annual report to shareholders must satisfy the requirements of Exchange Act Rule 14a–3(b) [112] for proxy statements and Exchange Act Rule 14c–3 [113] for information statements. The 34 Act Order applies to issuers with a fiscal year ending between and including

[101] General Instruction A. to Form 11–K sets the due date for these reports at 90 days after the end of the fiscal year of the plan for non-ERISA plans. March 31, 2002 falls on a Sunday, so the report will be due by April 1 for plans with a December 31 fiscal year end.

[102] As with reports on Form 10–K and Form 10–KSB, one-time extensions of time to file the report are available under certain circumstances under Exchange Act Rule 12b–25. If a plan complies with that rule, it can file its annual report no later than the fifteenth calendar day following the prescribed due date for that report, and the report will be deemed to be filed on the prescribed due date. *See supra* note 89 for additional relief provided by the 34 Act Order regarding Exchange Act Rule 12b–25.

[103] As with reports on Form 10–K and Form 10–KSB, reliance on the 34 Act Order is conditioned upon filing of the amendment in 60 days after the original due date of the report, excluding any additional period the plan had to actually file the report under Exchange Act Rule 12b–25. Extensions under Exchange Rule 12b–25 are not available for filing the amendment.

[104] 180 days after the end of a fiscal year of a plan with a December 31 fiscal year is June 29, 2002, which falls on a Saturday. Accordingly, the amendment will be due by July 1, 2002.

[105] 17 CFR 240.14a–101.

[106] 17 CFR 240.14c–101.

[107] Under the 34 Act Order, the entity in question must also have a fiscal year ending with a date between and including November 30, 2001 and April 15, 2002 (for entities that meet the requirements of Rule 3–01(c) of Regulation S–X (or Item 310(b) of Regulation S–B if the entity is a small business issuer)), a fiscal year ending with a date between and including December 29, 2001 and April 15, 2002 (for entities that do not meet the requirements of Rule 3–01(c) of Regulation S–X (or Item 310(b) of Regulation S–B if the entity is a small business issuer)) or a fiscal year ending with a date between and including January 1, 2002 and April 15, 2002 (if the entity is a registered investment company).

[108] This period is 106 days for an issuer that does not meet all of the conditions in Rule 3–01(c) of Regulation S–X (Item 310(g) of Regulation S–B for small business issuers).

[109] Or the annual report to shareholders in the case of a registered investment company.

[110] Unless the company is eligible to rely on Regulation S–B for its disclosure requirements, if Andersen had been engaged originally as the independent public accountant to examine the company's financial statements, selected financial data required by Item 301 of Regulation S–K based on the audited financial statements are also required to be provided if this information would otherwise have been required in the proxy statement or information statement.

[111] This date is August 13, 2002 in the case of an issuer that is a registered investment company.

[112] 17 CFR 240.14a–3(b).

[113] 17 CFR 240.14c–3.

November 30, 2001 and April 15, 2002 for proxy statements or information statements sent on or before September 13, 2002.

Where their annual reports will include financial statements as to the examination of which Andersen had been engaged as the independent public accountant on or after March 14, 2002, the 34 Act Order permits issuers to provide those financial statements on an unaudited basis, if the document containing the unaudited financial statements includes disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X. The 34 Act Order's conditions require any issuer that does not include audited financial statements to inform its shareholders (i.e., through a press release [114] and posting the audited financial statements on the issuer's website, if it has one) when it files or amends its Form 10–K or Form 10–KSB to include the financial statements audited by an accountant other than Andersen, if the issuer's solicitation or corporate action has not been completed before the time the audited financial statements are filed.

7. Tender Offer Filings on Schedules TO

For offerors that commence tender offers that require financial statements pursuant to Item 10 of Schedule TO,[115] the 34 Act Order permits the filing of unaudited financial statements where the independent public accountant of the entity in question had been Andersen on or after March 14, 2002. The relief provided by the 34 Act Order applies to a Schedule TO filed on or before September 13, 2002 that would need to contain audited financial statements of an entity that has a fiscal year ending between and including November 30, 2001 and April 15, 2002 and where Andersen had been engaged as the independent public accountant on or after March 14, 2002 to examine those financial statements. The 34 Act Order's conditions require the Schedule TO to include disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X.

Under the 34 Act Order, the offeror must file revised material or amend documents incorporated by reference, as appropriate, to provide the financial statements audited by an accountant other than Andersen no later than the earlier of 60 days from the date the audited financial statements were required to be included in the Schedule TO and the date the audited financial statements are filed in the annual report of the registrant,[116] if the tender offer has not been completed by that date. The 34 Act Order's conditions require the revised material or amended documents to present the audited financial statements, a discussion of any material changes from the unaudited financial statements and any other section of the materials that should be updated to reflect the changes in the financial statements.[117]

V. Special Case-by-Case Matters

A. Item 7 of Form 8–K—Financial Statements in Business Combination Transactions

Item 7 of Form 8–K requires the filing by an acquiring company of financial statements of a target company and *pro forma* financial statements within 75 days of the consummation for certain business combination transactions. The Commission invites acquiring companies to seek accommodation, such as extensions of time to file, or other relief, such as permitting use of unaudited financial statements if the acquiring or target company had Andersen as its independent accountant and audited financial statements are not available and cannot be obtained without unreasonable effort and expense, in writing under Rule 3–13 of Regulation S–X. Letters should name all parties involved and state the relief or accommodation sought, the reason(s) the relief or accommodation is being sought and any other relevant information. Letters should be addressed to the Commission at 450 Fifth Street, NW, Washington, DC 20549–0410 (Facsimile: 202–942–9582). For purposes of the significance tests of Regulation S–X used to determine whether financial statements of a target company and *pro forma* financial statements are required, if Andersen was the independent accountant of the issuer, the issuer should use the most recent annual consolidated financial statements filed at, or prior to, the date of acquisition, even though the most recent filing may include unaudited financial statements.

B. Other Matters

We encourage issuers to contact the staff of the Commission and request consideration of the appropriateness of Commission or staff action in connection with their specific factual situation. Some of the areas where these types of requests may be appropriate include: companies with uncommon fiscal year ends, change in fiscal year end and the resultant need to file transition reports pursuant to either Exchange Act Rule 13a–10 [118] or Exchange Act Rule 15d–10, [119] special financial reports required by Exchange Act Rule 15d–2, [120] filings by Canadian issuers under the Multi-Jurisdictional Disclosure System [121] and issues concerning the need to recirculate a prospectus, resolicit a proxy statement or extend an offering.

VI. Broker-Dealers and Transfer Agents Registered Under the Exchange Act; Other Market Regulation Guidance

The 34 Act Order provides affected registered broker-dealers and transfer agents extensions of time to file audited financial statements and audited internal controls reports, respectively, under specified conditions. The 34 Act Order also permits affected registered broker-dealers to furnish unaudited annual financial statements to customers and certain other persons under specified conditions. The relief provided by the 34 Act Order is available with respect to registered broker-dealers and transfer agents that are unable or elect not to obtain from Andersen a manually signed audit report for those financial statements, or a manually signed internal controls report, so long as such manually-signed reports were not received on or before March 14, 2002.

A. Broker-Dealer Financial Statements

The relief provided by the 34 Act Order applies to broker-dealers with a fiscal year ending between and including January 14, 2002 and April 15, 2002. Paragraph (d) of Exchange Act Rule 17a–5 [122] generally requires a registered broker-dealer to file with the Commission annually, on a calendar or fiscal year basis, specified audited

[114] The press release is to announce that the audited financial statements are available and may be found in the issuer's filing on the Commission's website at www.sec.gov and on the issuer's website, citing the address, if the issuer has a website.

[115] 17 CFR 240.14d–100.

[116] Or annual report to shareholders in the case of a registered investment company.

[117] Unless the offeror is eligible to rely on Regulation S–B for its disclosure requirements, if Andersen had been engaged originally as the independent public accountant to examine the offeror's financial statements, selected financial data required by Item 301 of Regulation S–K based on the audited financial statements must also be provided.

[118] 17 CFR 240.13a–10.

[119] 17 CFR 240.15d–13.

[120] 17 CFR 240.15d–2.

[121] As a general matter, it is the view of the Commission that MJDS filers on Forms F–7, F–8, F–9, F–10 or F–80 [17 CFR 239.37, 239.38, 239.39, 239.40 or 239.41] under the Securities Act will be in compliance with the requirements of the form relating to consents of Andersen if the issuer meets the eligibility requirements and conditions of new Securities Act Rule 437a.

[122] 17 CFR 240.17a–5.

financial statements no later than 60 days after the date of the financial statements. The 34 Act Order permits eligible broker-dealers to file their audited financial statements within 60 days after the date the statements otherwise would have been required to have been filed under paragraph (d)(5) of Rule 17a–5. For example, the 34 Act Order permits a broker-dealer with a fiscal year that ended on January 31, 2002, for which Andersen had been engaged as the independent public accountant to examine the broker-dealer's financial statements, and for which the manually-signed audit report has not been received on or before March 14, 2002, to file its audited financial statements no later than May 31, 2002.

In addition, paragraph (c) of Exchange Act Rule 17a–5 generally requires a registered broker-dealer to send to its customers and certain other persons [123] certain audited financial statements within 105 days after the date of the end of the calendar or fiscal year.[124] The 34 Act Order maintains the existing deadline under Rule 17a–5(c), but permits eligible broker-dealers to furnish financial statements on an unaudited basis. For example, the 34 Act Order permits a broker-dealer with a fiscal year that ended on January 31, 2002, for which Andersen had been engaged as the independent public accountant to examine the broker-dealer's financial statements, and for which the manually-signed audit report has not been received on or before March 14, 2002, to furnish unaudited annual financial statements to customers and such other persons no later than May 16, 2002.

B. Transfer Agent Internal Control Reports

Paragraph (a) of Exchange Act Rule 17Ad–13 [125] generally requires a registered transfer agent to file annually with the Commission and the transfer agent's appropriate regulatory agency a report prepared by an independent accountant concerning the transfer agent's system of internal accounting control and related procedures for the transfer of record ownership and the safeguarding of related securities and funds. That internal controls report must be filed within 90 calendar days of the date of the accountant's study and evaluation. The 34 Act Order permits eligible transfer agents to file their internal controls reports within 60 days after the date the reports otherwise would have been required to have been filed under paragraph (a) of Rule 17Ad–13. For example, the 34 Act Order permits a transfer agent, for which Andersen had been engaged to prepare its annual internal controls report and had conducted its study and evaluation as of January 31, 2002, and for which a manually-signed report has not been received on or before March 14, 2002, to file such report no later than June 30, 2002.

C. Other Market Regulation Guidance

1. Listing Requirements of Self-Regulatory Organizations

Self-regulatory organization (''SRO'') listing standards typically require issuers to distribute to shareholders an annual report containing audited financial statements within a prescribed period after the end of the issuer's fiscal year and no later than a prescribed number of days before the issuer's annual meeting.[126] The Commission will work with applicable SROs to encourage them to grant relief to listed companies that are audit clients of Andersen that is consistent with the relief being issued by the Commission today.

2. SRO Member Firm Audit Requirements

To the extent that SRO rules require broker-dealer member firms to file annual audited financial statements,[127] the Commission will work with such SROs to encourage them to grant relief to member firms that are audit clients of Andersen that is consistent with the relief being issued by the Commission today. In addition, the Commission urges broker-dealer audit clients of Andersen with fiscal years ending before January 14, 2002 that have encountered delays in completing their audited financial statements to contact their designated examining authority for an appropriate extension of time to file under Exchange Act Rule 17a–5.[128]

3. Municipal Securities Issuers: Contractual Requirements to Provide Audited Financial Statements

Exchange Act Rule 15c2–12 [129] generally requires underwriters participating in municipal securities offerings to reasonably determine that issuers and certain other ''obligated persons'' have contracted to provide annual financial statements to certain information repositories,[130] and to disclose in material event notices [131] and future official statements [132] failures to do so by the contractual deadline. The Commission urges municipal securities market participants to interpret the filing of annual audited financial statements within 60 days of the contractual deadline, by municipal securities issuers and obligated persons with a fiscal year ending between and including September 15, 2001 and April 15, 2002 that are audited by Andersen, as not creating a material breach of their contractual undertaking. This interpretation would be appropriate, however, only if the issuer or obligated person files unaudited financial statements with the appropriate repositories by the contractual deadline.

VII. Registrants Under the Investment Company Act of 1940 and the Investment Advisers Act of 1940

The Commission is also issuing an order under the Investment Company Act [133] and Investment Adviser Act [134] that address issues investment companies and investment advisers may face that are unable to obtain the services of Andersen or that choose not to continue to engage Andersen as their independent public accountant.

A. Registration Statements and Reports Under the Investment Company Act

1. Eligibility

The 40 Act Order provides relief for investment companies with obligations to file amendments to registration statements under the 1940 Act, annual reports to shareholders, and annual

[123] Subparagraph (c)(1) of Rule 17a–5 requires registered broker-dealers to file specified customer statements with the Commission, at its principal office in Washington, D.C., with the regional office of the Commission for the region in which the broker-dealer has its principal place of business, and with each national securities exchange and national securities association of which it is a member.

[124] Specifically, the audited financial statements must be sent to customers no later than 105 days after the date of the audited report required by paragraph (d) of Rule 17a–5.

[125] 17 CFR 240.17Ad–13.

[126] *E.g.,* NYSE Listed Company Manual Para. 203.01; NASD Rule 4350(b); Amex Listing Standards, Policies and Requirements Sections 610–611.

[127] *E.g.,* NYSE Rule 418; CBOE Rule 15.6.

[128] Subparagraph (l)(1) of Exchange Act Rule 17a–5 permits a broker-dealer's designated examining authority to extend the period for filing annual audit reports under paragraph (d) of Exchange Act Rule 17a–5.

[129] 17 CFR 240.15c2–12.

[130] Annual financial information is to be furnished to each nationally recognized municipal securities information repository and to the appropriate state information depository, if any. (Rule 15c2–12(b)(5)(i)(A)–(B)).

[131] Rule 15c2–12(b)(5)(i)(D).

[132] As defined in Rule 15c2–12(f)(3), the required ''final official statement'' must include a description of any instances in the previous five years in which the issuer or obligated person failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified by Rule 15c2–12(b)(5)(i).

[133] 15 U.S.C. 80a–1 *et seq.*

[134] 15 U.S.C. 80b–1 *et seq.*

reports on Form N–SAR.[135] An investment company is eligible for the relief (an ''Eligible Fund'') if—

- Andersen had been engaged on or after March 14, 2002 as the fund's independent public accountant;
- The Eligible Fund, on or before March 14, 2002, had not obtained a manually signed audit report from Andersen in respect to those financial statements; and
- The Eligible Fund is unable to obtain from Andersen or elects not to have Andersen issue a manually signed audit report with respect to its financial statements.

2. Registration Statement Under the Investment Company Act

For Eligible Funds with a fiscal year ending between January 1, 2002 and April 15, 2002, the 40 Act Order permits them to file a post-effective amendment to their 1940 Act registration statements within six months after their fiscal year end (rather than 120 days) if the fund has timely filed its Form N–SAR as provided in the order. The 40 Act Order thus conforms the 1940 Act registration statement updating requirements to those we are today adopting in 1933 Act Rule 427T.

3. Annual Reports to Shareholders

For Eligible Funds transmitting annual reports to shareholders and that have fiscal years ended between January 1, 2002 and April 15, 2002, the 40 Act Order permits them to mail their annual reports to shareholders with unaudited financial statements that also contain the disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X. The Eligible Fund must file an amended annual report within 60 days of the original due date containing financial statements audited by another independent public accountant and a discussion of any material changes from the unaudited financial statements filed originally. [136]

Most closed-end funds annually furnish shareholders a proxy statement (or information statement) that must be accompanied or preceded by an annual report. The 40 Act Order's conditions require a closed-end fund, when it amends its annual report to include the audited financial statements, to inform its shareholders through a press release and by posting the audited financial statements on the company's web site (if it has one) if the company's solicitation or corporate action has not been completed before the time the audited financial statements are filed.

4. Form N–SAR

For Eligible Funds filing annual reports on Form N–SAR with fiscal years ending between December 15, 2001 and April 15, 2002, the 40 Act Order permits them to file their Form N–SAR with unaudited financial information and without the report of independent accountants on internal controls so long as the Eligible Fund files an amendment providing audited financial information and the report of the independent accountants on internal controls within 60 days of the original due date for the filing.

Investment companies for which Andersen has been acting as independent accountant may report a change in accountant under item 77K of Form N–SAR consistent with our statement on change in accountants as described above in Section II.B.10. of this release.

B. Selection of Independent Public Accountant

Section 32(a)(1) and Rule 32a–3 under the Investment Company Act set forth certain periods at the beginning of each fiscal year during which registered management investment companies (mutual funds, closed-end funds and business development companies) must select an independent public accountant.[137] Some investment companies for which Andersen serves as independent public accountant may need additional time as a result of recent events. The 40 Act Order provides an additional sixty days for an investment company to select an independent public accountant whose financial statements for its last fiscal years was audited by Andersen and whose fiscal year ended on or before April 15, 2002.

Section 32(a) provides that a new accountant may be selected due to the death or resignation of the accountant by a vote of a majority of members of the investment company's board of directors (*i.e.,* without shareholder ratification), but does not address how a fund whose board of directors has terminated the appointment of the accountant may select a new one. The 40 Act Order permits a fund that had selected Andersen as its independent public accountant on or before March 14, 2002, and thereafter terminated the appointment, to select a new independent public accountant by a majority vote of the independent directors of the fund.

Section 32 requires the directors to select the investment company's independent public accountant at a meeting at which their votes would be cast ''in person.'' In light of the events surrounding Andersen, the 40 Act Order permits companies making selections pursuant to the provisions of the 40 Act Order to cast their votes in a meeting in which directors may participate by any means of communicating that allows all directors participating to communicate with each other simultaneously during the meeting.

C. Verification of Assets in Custody

Various Investment Company Act rules (Rules 17f–1, 17f–2, 6e–2 and 6e–3(T)) regarding custody of securities or similar investments of a management investment company or insurance company separate account require that the securities and other investments be verified by actual examination periodically by an independent public accountant.[138] Because clients of Andersen may decide to retain a new independent public accountant and may need additional time to complete their verifications, the 40 Act Order allows an additional 60 days to complete these verifications for investment companies with a fiscal year ending between January 1 and April 15, 2002.

D. Balance Sheets of Investment Advisers

Investment Adviser Act Form ADV requires an investment adviser to include on Schedule G of the Form a balance sheet for its most recent fiscal year, audited by an independent accountant, if the adviser has custody of client funds or securities or if the adviser requires prepayment of more than $500 in fees per client and six or more months in advance.[139] The 40 Act Order permits an adviser that had engaged Andersen (or a foreign affiliate of Andersen) to examine the balance sheet to be included in Schedule G to use an unaudited balance sheet to satisfy the requirements of Schedule G for 60 days if the adviser—

- Had not, on or before April 14, 2002, obtained a manually signed unaudited report from Andersen (or a foreign affiliate of Andersen);
- Is unable or elects not to have Andersen issue a manually signed audit

[135] 17 CFR 274.101.

[136] An investment company that continues to engage Andersen must make the disclosures specified in Temporary Note 3T to Article 3 of Regulation S–X in its annual report to shareholders, although the exact nature of each company's disclosure may vary depending upon the facts and circumstances of each company. *See* discussion in Section II.A. of this release.

[137] 15 U.S.C 80a–31 and 17 CFR 270.32a–3. Section 32(a)(1) also applies to face amount certificate companies.

[138] 17 CFR 270. 17f–1, 17f–2, 6e–2, and 6e–3(T).

[139] 17 CFR 279.1.

report from Andersen in respect to that balance sheet; and

- Has a fiscal year ending between December 1, 2001 and April 15, 2002.

At the end of the 60-day period the adviser must resume furnishing or offering to furnish a disclosure statement containing an audited balance sheet. The 40 Act Order imposes no additional filing requirements.

E. Exemptive Orders

In the past, the Commission has issued a number of orders under the Investment Company Act and the Investment Advisers Act and the rules thereunder exempting investment companies, investment advisers and others from provisions of these statutes and rules. Some of these orders are conditioned upon the involvement of an independent accountant preparing a report, conducting an audit, reviewing various systems or procedures, monitoring ongoing transactions or providing other services. Persons relying on these orders that have retained the services of Andersen will not be in violation of the applicable provisions of law or rule because of an inability to comply with the conditions or representations as a result of their inability to obtain the services of or elects not to continue to engage Andersen. We have provided persons relying on these orders an additional 60 days to comply with the requirements of their orders.

VIII. Registrants Under the Public Utility Holding Company Act of 1935

The Commission is issuing another order under the Public Utility Holding Company Act of 1935 [140] that addresses issues that registered public utility holding companies may face as a result of the circumstances surrounding Andersen.

A. Annual Reports on Form U5S

Public utility holding companies registered under the Public Utility Holding Company Act of 1935 are required to file with the Commission annual reports on Form U5S.[141] Form U5S includes requirements that a registered holding company incorporate by reference annual reports filed by any of its system companies under the Exchange Act (''1934 Act Reports'') as well as the opinion of its independent accountant with respect to the holding company's consolidated financial statements.

The 35 Act Order permits registered public utility holding companies with a fiscal year ending between November 30, 2001 and April 15, 2002 that have retained Andersen as their independent accountant to file their annual report on Form U5S with unaudited financial statements. Specifically, the 35 Act Order permits registered public utility holding companies to incorporate by reference 1934 Act Reports that meet the requirements of the 34 Act Order provided they amend their filing to include any amended report filed in accordance with the 34 Act Order as well as the opinion of their independent accountants within 60 days.

B. Computations Required by Certain Rules and Orders

Rules 53 and 58 under the Public Utility Holding Company Act of 1935 establish safe harbors that permit registered public utility holding companies to invest up to a specified amount in various types of non-utility activities without seeking prior Commission approval.[142] In computing the permitted level of investment, registered public utility holding companies relying on the rules are required to use financial information included in their filings on Form 10–Q and Form 10–K. Other registered utility holding companies with orders under Sections 53, 54 [143] and 58 of the Public Utility Holding Company Act of 1935 permitting them to exceed these safe harbors are required to make analogous computations pursuant to the terms of their orders. The 35 Act Order makes clear that with respect to any computation required by Rule 53(a)(1) or Rule 58(a)(1) or any similar computation required by these rules or orders, a registered public utility holding company that is filing annual reports of Form 10–K or quarterly reports on Form 10–Q in reliance on the 34 Act Order may rely on the financial statements included in those filings in performing the required calculations.

IX. Consideration of Comments

We are publishing final rules and temporary final rules, rather than a notice of proposed rulemaking, for reasons stated in the section entitled ''Procedural Matters.'' We will, however, consider any comments concerning whether other temporary or permanent rule changes are needed.

X. Procedural Matters

The Administrative Procedure Act generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register**.[144] This requirement does not apply, however, if the agency ''for good cause finds * * * that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.'' [145] The Commission believes that it is appropriate to adopt the rules immediately for two reasons. First, some Andersen clients that end their audit relationship with Andersen may be in the middle of, or about to begin, raising capital publicly but will not have the required audited financial statements available when they are needed. The rules are needed immediately to remove regulatory impediments to their capital-raising plans with minimal market disruption. Second, information needs to be available to the investing public, beginning immediately, about the assurances issuers to whom Andersen issues reports after March 14, 2002 have received from Andersen concerning Andersen's quality control procedures in place during the audit. Accordingly, the Commission for good cause finds that delaying adoption of these rules until after a notice and comment period would be impractical and contrary to the public interest.

The Administrative Procedure Act also generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.[146] This requirement, however, does not apply if the agency finds good cause for making the rule effective sooner.[147] For the same reasons as it is waiving notice and comment, the Commission finds good cause to make the rules effective immediately.[148]

XI. Paperwork Reduction Act

This Paperwork Reduction Act (''PRA'') information pertains to both the rules adopted today and the accompanying orders attached to this release as Appendices A–C. Certain provisions of the rules and accompanying orders contain a ''collection of information'' requirement within the meaning of the Paperwork Reduction Act of 1995.[149] We submitted this requirement to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(j) and 5 CFR 1320.13. The title for

[140] 15 U.S.C. 79a *et seq.*

[141] 17 CFR 259.5s.

[142] 17 CFR 250.53 and 58.

[143] 17 CFR 250.54.

[144] *See* 5 U.S.C. 553(b).

[145] *Id.*

[146] *See* 5 U.S.C. 553(d).

[147] *Id.*

[148] This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rules to become immediately effective notwithstanding the requirements of 5 U.S.C. 801 (if agency finds that notice and public procedure are ''impractical, unnecessary, or contrary to the public interest,'' rule ''shall take effect at such time as the Federal agency promulgating the rule determines'').

[149] 44 U.S.C. 3501 *et seq.*

the collection is Temporary Relief for Certain Entities Audited by Arthur Andersen LLP.

As discussed above, the Commission is adopting rules and issuing orders to mitigate the potential consequences to the markets as a result of Andersen's indictment. In order to minimize any market disruption, the Commission is providing relief with respect to certain filing and other requirements for certain clients of Andersen. The collection of information adopted today is necessary to ensure that the market receives disclosure from clients of Andersen that are taking advantage of this relief. The collection of information will supply investors with information they may not otherwise have and will help prevent confusion.

Temporary Relief for Certain Entities Audited by Arthur Andersen LLP. This collection of information encompasses certain new disclosures required by certain clients of Andersen. In general, public companies for whom Andersen does not complete audits or reviews will be allowed to file unaudited financial statements, rather than audited ones, in order to meet existing periodic reporting, proxy statement, tender offer, and registration requirements, as long as they disclose that the financial statements are unaudited (or not reviewed), provide audited (or reviewed) financial statements at a later date, and explain any material differences between the unaudited and audited financial statements. In some cases, issuers must alert the public through a press release that the audited financial statements are available and post the audited financial statements on their websites (if they have websites). Certain investment advisers may provide clients and prospective clients with unaudited balance sheets, with appropriate disclosure, and provide audited balance sheets at a later date. Clients that wish to file financial statements audited by Andersen must file a letter with affected filings concerning representations received from Andersen regarding Andersen's audit quality controls. In certain cases where Andersen clients were required to submit a consent or a reissued accountants' report from their auditor, but cannot obtain the consent or the reissued accountants' report, those requirements have been waived provided the filing includes appropriate disclosure. Because the rules regarding waiver of consents and reissued accountants' reports are permanent, these aspects of the collection of information also have been submitted to OMB for regular review as a stand-alone collection of information.

This collection of information imposes a minimal and temporary burden on some Andersen clients. It is difficult to estimate with precision the burden imposed by this collection of information requirement. We estimate that there are approximately 2,400 clients of Andersen potentially affected by this collection of information. However, some clients may not be subject to the collection of information because these clients may already have filed financial statements audited by Andersen.

We estimate for purposes of the PRA that approximately 1,979 Andersen clients will make new disclosures associated with one periodic report (two burden hours per filing) and approximately 325 will make new disclosures associated with two such reports; approximately 130 Andersen clients will make new disclosures associated with one registration statement each (three burden hours per filing); approximately 2,304 Andersen clients will make new disclosures associated with one proxy-related filing each (two burden hours per filing); approximately 22 Andersen clients will make new disclosures associated with one tender offer-related filing (two burden hours per filing); approximately 83 Andersen clients will make disclosures associated with investment adviser balance sheet requirements (one hour per disclosure); and approximately 2,400 Andersen clients will make one disclosure relating to Andersen's audit quality controls (one burden hour per filing). We recognize that the assumptions necessarily overcount the potential burden, as they assume all clients will both continue to be audited by Andersen and decide not to have Andersen complete the audit. We make these assumptions because the overall burden estimate is minimal and because we cannot estimate which option Andersen clients will choose. Thus, for PRA purposes, we have estimated that the total number of burden hours associated with this collection of information is 12,783.

Waiver of Auditor Consent and Reissued Accountants' Report. The Commission has also submitted, for regular review pursuant to 44 U.S.C. 3507(d) and 5 CFR 1320.11, as a separate collection of information that will not be temporary, two aspects of the above-described collection of information. First, companies currently need to include in their registration statements the consent of auditors for use of their reports related to the three previous years' audits. For Andersen clients unable to obtain these consents, the rule amendments waive the obligation to obtain an auditor's consent for years before 2001, provided that the company discloses any limitations on remedies resulting from the lack of consents. Second, certain issuers that change auditors need to obtain from their predecessor auditor a reissued accountants' report for previously audited financial statements. Under the new rules, if the issuer is unable to obtain the accountants' report after reasonable efforts, the issuer may provide a copy of the latest previously issued accountants' report, as long as it discloses that the report is a copy of a report previously issued and that the report has not been reissued by Andersen. This collection of information is necessary to advise potential purchasers of securities and investors of certain information that they would not receive otherwise.

For the purposes of the collection of information entitled ''Temporary Relief for Certain Entities Audited by Arthur Andersen LLP,'' we estimated that the disclosures associated with registration statements would take three hours and that disclosures associated with periodic reports, proxy statements and tender offers would take two hours. One half hour of these estimates is the estimated time required to make disclosures associated with the waiver of consents and one half hour of these estimates is the estimated time required to make disclosures associated with the waiver of the predecessor auditor's reissued report.

We estimate that last year there were approximately 650 registration statements filed by clients of Andersen. For purposes of the PRA, we assume that 650 Andersen clients will file one registration statement annually requiring waivers of the consent and the reissued predecessor auditor's report. Additionally, we estimate that of Andersen's approximately 2,400 clients, approximately 2,304 are public companies that file annual reports, proxy materials and tender offer filings. We estimate that these clients will file 2,629 annual reports (certain issuers with non-ERISA retirement benefit plans may file additional annual reports for those plans), 2,304 proxy-related filings, and 132 tender offer filings. Because we estimate that each disclosure will require one half hour, we estimate that the total number of burden hours associated with this collection of information is 3,182.5.

The Commission has adopted, and OMB has approved, the collection of information entitled ''Temporary Relief for Certain Entities Audited by Arthur Andersen LLP'' on an emergency basis. The control number for this collection

of information is OMB Control No. 3235–0557. This collection of information will expire on September 30, 2002. As noted above, the Commission has also submitted for regular review pursuant to 44 U.S.C. 3507(d) and 5 CFR 1320.11 the collection of information entitled ''Waiver of Auditor Consent and Reissued Accountants' Report.''

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information entitled ''Waiver of Auditor Consent and Reissued Accountants' Report'' 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 Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirement should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, with reference to File No. S7–03–02. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–03–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning its regular review of the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

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. Compliance with the disclosure requirements is mandatory for those taking advantage of the rules and orders. There is no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential.

XII. Analysis of Costs and Benefits

The Commission is sensitive to the costs and benefits imposed by its rules. [150] The rules we are adopting include a requirement that Andersen clients that continue their audit relationship with Andersen make publicly available certain assurances they receive from Andersen concerning Andersen's quality control procedures in place during the audit (the ''assurance letter requirement''). The rules also provide alternative regulatory requirements that will give Andersen clients certain options regarding compliance with the federal securities laws (the ''temporary rules'').

A. The Assurance Letter Requirement

The assurance letter requirement benefits investors by providing that basic information about Andersen's continued adherence to quality control standards be made publicly available with respect to each Andersen audit during this period of uncertainty and potentially rapid change. The costs of the assurance letter requirement are limited to the minimal costs involved for Andersen to transmit representations to its audit clients and the minimal costs involved for each Andersen audit client to include representations in a letter with certain filings.

B. The Temporary Rules

Before its indictment, Andersen may not have completed its audit or issued audit opinions with respect to many of its clients in registration or about to register securities. Andersen clients that are in that position, but that choose to end their audit relationship with Andersen or are unable to obtain audit services from Andersen to complete their audits (hereafter, the ''terminated clients''), will need to engage new independent public accountants. We recognize that many terminated clients may be unable to engage a new auditor that can, in a timely fashion, complete an audit and sign an audit opinion that normally must be included with a registration statement. The purpose of the temporary rules is to minimize disruption to the capital markets and to the terminated clients while those clients complete certain pending or imminent offerings.

The temporary rules have four primary components:

- The Commission is permitting the terminated clients filing registration statements (other than companies registering initial public offerings) to include unaudited financial statements. Those terminated clients must amend their registration statements to include audited financial statements within 60 days after the date on which the audited financial statements would otherwise be required.
- The Commission is extending from 16 to 18 months the age of audited financial information that a terminated client can include in a prospectus used nine months after the effectiveness of an underlying registration statement.
- The Commission is waiving the requirement for Andersen clients to include in a registration statement the consent of Andersen to use audit reports for prior years for which a consent cannot be obtained; the issuer must include a copy of the latest signed and dated accountants' report issued by Andersen and include certain related disclosure if a reissued accountants' report cannot be obtained.
- Our current rules require issuers that expect to report a loss for the most recent fiscal year, or that had a loss for the last two fiscal years, to file audited financial statements within 45 days of the end of their fiscal year. The Commission is providing relief allowing the affected terminated clients to continue to use their unaudited financial statements for registration statements or any other purpose provided they obtain audited financial statements within 60 days of the original due date.

1. Benefits

The benefit of the temporary rules, like the Orders issued today, is the mitigation of disruption, uncertainty, lost opportunity, and other costs that, however unlikely, might be visited upon the market and the terminated clients. The temporary rules provide the market and the terminated clients with regulatory clarity to help address the disruption in an orderly fashion, and without expending more resources, or forsaking more opportunity, than is necessary.

First, by virtue of addressing and resolving certain questions, the temporary rules mitigate the costs to terminated clients from having to formulate capital-raising plans in an uncertain regulatory environment. It is unavoidable that the terminated clients will need to devote resources to

[150] In companion Orders issued today, we are providing relief under the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and the Public Utility Holding Company Act. This cost-benefit analysis addresses only the relief provided by these rule amendments.

assessment and planning, but a principal benefit of the temporary rules is to facilitate that assessment and planning process by preemptively addressing questions that would arise concerning regulatory compliance.

Second, the temporary rules will help mitigate any possible disruptions to the capital-raising process. The terminated clients currently in registration, or planning to register securities in the very near term, may be unable to obtain audited financial statements in time to support registration statements. They may also face hardship in obtaining necessary consents from Andersen to include accountants' reports related to financial statements Andersen audited in prior years and obtaining a reissued accountants' report for use in future filings. Capital raising frequently is time-sensitive. By preserving for the terminated clients the option of going forward with their capital-raising plans, albeit subject to whatever market risk accompanies going forward with unaudited financial statements, the temporary rules afford issuers and investors a capital-raising and investment option that would otherwise be postponed and possibly lost altogether.

Third, the temporary rules will benefit certain terminated clients by extending a regulatory deadline that would be difficult, and perhaps impossible, to meet because of the transition to a new auditor. Our current rules require issuers that expect to report a loss for the most recent fiscal year, or that had a loss for the last two fiscal years, to file audited financial statements within 45 days of the end of their fiscal year. The temporary rules provide a reasonable regulatory accommodation for the terminated clients in that position.

2. Costs

As described above, the principal purpose of the temporary rules is to mitigate costs and uncertainties. Because the temporary rules, like the Orders issued today, provide optional compliance alternatives, any costs that they impose will be imposed only on those parties that choose to proceed pursuant to them. The terminated clients that opt to proceed pursuant to the temporary rules may incur costs associated with explaining the effect of filing unaudited financial statements, retransmitting financial statements, and obtaining new signatures for the second filing, with attendant liability.

The temporary rules may also impose certain other types of costs. One cost that may result from the rules is the unquantifiable cost of allowing the terminated clients to offer securities for a temporary period with unaudited, rather than audited, financial statements. That cost is borne both by investors, who may bear more risk than usual in purchasing the securities, and by the terminated clients, since that increased investor risk may create a less receptive market and a correspondingly higher cost of capital for those issuers.

The temporary rules limit the time during which potential investors in the securities will need to make investment decisions without the benefit of audited financial statements. The temporary rules do not mitigate the risk to those investors who do in fact purchase the securities in the period before the audited financial statements are filed, nor do they mitigate the risk to issuers that investors may be less receptive to their securities during that period.

Some costs may be associated with allowing a withdrawing client to use audited financial information that is up to 18 months old, rather than 16 months old, in a prospectus used nine months after the effectiveness of the underlying registration statement. The increased age of the information may mean that it is perceived by investors to be less reliable.

Costs may also accompany the waiver, for current and former Andersen clients, of the requirement that a registration statement include the consent of Andersen to use Andersen audit opinions for prior years. Because the registration statements will be supported by prior years' audit opinions that are not backed by the auditor's current consent, the temporary rules may generate a cost in that investors may have less confidence in the issuer's reported financial condition for those earlier years. Similar costs may be associated with the inability of issuers to obtain a reissued accountants' report.

The inability of Andersen clients to obtain Andersen's consent is a consequence of Andersen's status and not a consequence of the temporary rules. That inability alone, however, does not make it impossible for Andersen clients to comply with the consent requirement, since they could decide to retain a different auditor to re-audit prior years. Thus, while it is Andersen's status, and not the temporary rules, that may make it impossible to obtain the relevant consents from Andersen, the temporary rules create the possibility that the affected registration statements will be effective without those issuers otherwise complying with the consent requirement. Issuers may select the approach which they perceive to be most cost-effective.

Finally, there are costs associated with extending the deadline for filing audited financial statements by those terminated clients that expect to report a loss for a recently completed fiscal year or have reported losses for the past two fiscal years. As discussed above, the use of unaudited financial statements can result in unquantifiable costs to investors and issuers. The filing deadline serves a regulatory purpose that will be impeded temporarily because of the delay.

XIII. Regulatory Flexibility Act

The Regulatory Flexibility Act [151] does not apply to the rules we are adopting today. The Regulatory Flexibility Act only requires agencies to prepare analyses for rulemaking when the Administrative Procedure Act requires general notice of proposed rulemaking.[152] As noted above, the Commission is not required to solicit public comment because the Commission is using the expedited rulemaking procedures under section 553(b) of the Administrative Procedure Act.

XIV. Effects on Competition, Efficiency and Capital Formation

Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the anticompetitive effects of any rules it adopts.

A. The Assurance Letter Requirement

We have considered what impact the assurance letter requirement will have on efficiency, competition, and capital formation. The requirement may promote efficiency to some degree by making available to markets information that it would not otherwise be available, at a de minimis cost to those that must supply the information. The assurance letter requirement will neither promote nor impede capital formation or competition, but will only help ensure the availability of relevant information to markets and investors.

B. The Temporary Rules

The temporary rules neither promote nor impede competition. The temporary

[151] 5 U.S.C. 601–612.

[152] 5 U.S.C. 603(a).

rules give the terminated clients the option of proceeding with capital formation as intended before the announcement of Andersen's indictment. Absent the relief we are providing today, some terminated clients might be forced to postpone public offerings of securities until they engage a new auditor and obtain audited financial statements. By affording those terminated clients the option of proceeding, temporarily, with unaudited financial statements, the temporary rules reduce that obstacle to capital formation.

Some terminated clients have made, or will make, financial and economic decisions to raise capital based on their individual needs and will pursue plans toward that end. Absent the relief we are providing today, the temporary adjustments that the terminated clients would need to make to financial and other operations due to the postponement of those plans would likely entail overall inefficiencies in their capital-raising efforts. By giving those terminated clients the option to proceed, the temporary rules provide them with an alternative that would reduce or eliminate those inefficiencies.

We have considered whether the temporary rules promote competition. The temporary rules will neither promote nor impede competition. The terminated clients may have made plans for, and based expectations on, raising capital within a certain time frame. Absent the relief we are providing today, capital raising could be delayed. From this perspective, the temporary rules may well mitigate that possible effect.

We have also considered whether the temporary rules would impede competition by giving terminated clients a competitive advantage relative to other issuers. It might be suggested that other issuers would like to have the option of filing a registration statement with unaudited financial statements and only supplying audited financial statements sixty days later. We cannot conclude that the temporary rules create a competitive advantage for the terminated clients or otherwise impede competition. The terminated clients will be seeking capital without supplying investors with audited financial statements, while competing issuers seeking capital in the same markets will supply audited financial statements. This does not constitute a competitive advantage for the terminated clients. The temporary rules do not pose an impediment to competition or materially impede the competitive position of any issuer.

XV. Statutory Bases

The amendments contained in this release are being adopted under the authority set forth in Sections 2, 4, 6, 7, 8, 10, 19 and 28 of the Securities Act, as amended, Sections 3, 4, 10, 12, 13, 14, 15, 23 and 36 of the Exchange Act, as amended, and Sections 304, 305, 307, 308, 310, 314 and 319 of the Trust Indenture Act of 1939, as amended.

List of Subjects

17 CFR Part 210

Accountants, Accounting.

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small business.

17 CFR Parts 229 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 230

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

17 CFR Part 260

Reporting and recordkeeping requirements, Securities, Trusts and trustees.

Text of the Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78l, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78ll, 78mm, 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), 80b–3, 80b–11 unless otherwise noted.

2. By amending § 210.2–02 by adding paragraph (e) to read as follows:

§ 210.2–02 Accountants' reports.

* * * * *

(e) Paragraph (e) of this section applies only to registrants that are providing financial statements in a filing for a period with respect to which Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP (''Andersen'') issued an accountants' report. Notwithstanding any other Commission rule or regulation, a registrant that cannot obtain an accountants' report that meets the technical requirements of paragraph (a) of this section after reasonable efforts may include in the document a copy of the latest signed and dated accountants' report issued by Andersen for such period in satisfaction of that requirement, if prominent disclosure that the report is a copy of the previously issued Andersen accountants' report and that the report has not been reissued by Andersen is set forth on such copy.

3. By adding Temporary Note 1T, Temporary Note 2T and Temporary Note 3T after the introductory note under the undesignated heading ''General Instructions as to Financial Statements'' preceding § 210.3–01 to read as follows:

GENERAL INSTRUCTIONS AS TO FINANCIAL STATEMENTS

* * * * *

Temporary Note 1T: Notwithstanding any other Commission rule or regulation, every registrant meeting the eligibility requirements in paragraph (a) of this note that files a registration statement on Forms S–1, S–2, S–3, S–4, S–6, S–8, S–11, N–1, N–1A, N–2, N–3, N–4, N–5 or N–14 (§§ 239.11, 239.12, 239.13, 239.25, 239.16, 239.16b, 239.18, 239.15, 239.15A, 239.14, 239.17a, 239.17b, 239.24 or 239.23 of this chapter), or an amendment thereto, that requires audited financial statements for the most recent fiscal year end may file unaudited financial statements in satisfaction of that requirement under the conditions listed in paragraph (b) of this note. In the case of a registered investment company that files a new registration statement on Form S–6 other than an insurance company separate account, however, the relief provided by this note shall not extend to financial statements of the registered investment company itself.

(a) *Eligibility requirements.* An issuer:

(1) That at the time of filing a registration statement is subject to the periodic reporting requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a) or 78o(d)) or, in the case of a registered investment company, has previously filed a registration statement under the Securities Act of 1933 (15 U.S.C. § 77a *et seq.*) that has been declared effective by the Commission;

(2) Whose registration statement will include financial statements:

(i) Of an entity that has a fiscal year ending between and including:

(A) November 30, 2001 and April 15, 2002, if the entity meets all of the conditions in Rule 3–01(c) of Regulation S–X (§ 210.3–01(c)) (or Item 310(g) of Regulation S–B

(§ 228.310(g) of this chapter) if the entity is a small business issuer) (or if the entity is a depositor for a registered unit investment trust and the entity is not subject to the periodic reporting requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a) or 78o(d))) and is not a registered investment company;

(B) December 29, 2001 and April 15, 2002, if the entity does not meet all of the conditions in Rule 3–01(c) of Regulation S–X (§ 210.3–01(c)) (or Item 310(g) of Regulation S–B (§ 228.310(g) of this chapter) if the entity is a small business issuer) and is not a registered investment company; or

(C) January 1, 2002 and April 15, 2002 in the case of a registered investment company;

(ii) As to the examination of which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant on or after March 14, 2002;

(3) That, on or before March 14, 2002, had not obtained a manually signed audit report from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) in respect of those financial statements;

(4) That is unable to obtain from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) or elects not to have Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) issue a manually signed audit report in respect of those financial statements; and

(5) That is not a ''blank check company'' as defined in § 230.419(a)(2) of this chapter.

(b) *Conditions.*

(1) The issuer's registration statement responds to all items required by the applicable registration form, but with unaudited financial statements that meet the timeliness requirements of Rule 3–01 of Regulation S–X (§ 210.3–01) or, for a registered investment company, Rules 3–12 and 3–18 of Regulation S–X (§§ 210.3–12 and 210.3–18) for those financial statements as to the examination of which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant.

(2) The issuer provides in the registration statement disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X (§§ 210.3–01—3–20).

(3) If the registration statement is not yet effective and it will become effective on or after the date specified in paragraph (b)(4) of this section, the issuer must file a pre-effective amendment or an amendment to a document incorporated by reference, as appropriate, before effectiveness. If the registration statement is effective, the issuer must file either a post-effective amendment or an amendment to a document incorporated by reference, as appropriate, not later than the date specified in paragraph (b)(4) of this note; provided that this filing or amendment need not be made if the offering or offerings have been completed (and any prospectus delivery period under Section 4(3) of the Securities Act of 1933 (15 U.S.C. § 77d(3)) and the rules thereunder has expired) prior to the date specified in paragraph (b)(4) of this note. The filing or amendment shall present:

(i) The financial statements audited by an independent public accountant other than Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP);

(ii) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant to examine the issuer's financial statements, selected financial data required by Item 301 of Regulation S–K (§ 229.301 of this chapter) based on the audited financial statements; (iii)A discussion of any material changes from the unaudited financial statements filed originally; and

(iv) Any other section of the registration statement or documents incorporated by reference that should be updated or revised to reflect the changes in the financial statements so filed by amendment.

(4) For purposes of paragraph (b)(3) of this note:

(i) If the issuer (other than a registered investment company) meets all of the conditions in Rule 3–01(c) of Regulation S–X (§ 210.3–01(c)), the date shall be the earlier of:

(A) 60 days from the date the audited financial statements were required to be included in the registration statement; and

(B) The date on which an amended Form 10–K or 10–KSB (§ 249.310 or 249.310b of this chapter) containing audited financial statements is filed in accordance with Release No. 34–45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov);

(ii) If the issuer (other than a registered investment company) does not meet all of the conditions in Rule 3–01(c) of Regulation S–X (§ 210.3–01(c)), the date shall be the earlier of:

(A) 106 days from the date the audited financial statements were required to be included in the registration statement; and

(B) The date on which an amended Form 10–K or 10–KSB containing audited financial statements is filed in accordance with Release No. 34–45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov); and

(iii) If the issuer is a registered investment company, the date shall be the earlier of:

(A) 6 months after the close of the fiscal year of the issuer; and

(B) The date on which an amended annual report to shareholders containing audited financial statements is filed in accordance with Release No. IC–25463 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov).

(c) This temporary note will expire on December 31, 2002.

Temporary Note 2T: (a) This temporary note applies to any issuer that provides unaudited financial statements in a filing in reliance on Release No. 34–45589 (March 18, 2002) or Release Nos. IA–2017 and IC–25463 (March 18, 2002) (each of which may be viewed on the Commission's website at www.sec.gov) or a temporary rule adopted in Release 33–8070 (March 18, 2002) published on March 22, 2002, in the **Federal Register**. The guidance provided by this note is intended to assist issuers in meeting their disclosure obligations under the federal securities laws. The exact content of each issuer's disclosure may vary depending on the facts and circumstances applicable to each of Arthur Andersen LLP's (or a foreign affiliate of Arthur Andersen LLP's) former public company audit clients. To the extent this note requires disclosure on the cover page of a filing, if the subject filing does not have a cover page, present this information as a preface to the disclosure presented in response to the form.

(b) The issuers for which this temporary note applies must provide on the cover page of their filings a prominent statement that the filing includes unaudited financial statements in lieu of audited financial statements because the issuer was unable to obtain from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) or elected not to have Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) issue a manually signed audit report in respect of those financial statements and a cross-reference to additional information contained in the filing.

(c) The issuer for which this temporary note applies also shall provide the prominent statement referred to in paragraph (b) of this note in the filing immediately before the financial statements and shall also disclose:

(1) A statement as to when and how the issuer intends to provide the audited financial statements; and

(2) A statement that no auditor has opined that the unaudited financial statements present fairly, in all material respects, the financial position, the results of operations, cash flows and the changes in shareholders' equity of the company (and, in the case of a registered investment company, the financial highlights) for each of the periods reported in accordance with generally accepted accounting principles.

(d) Further, any audit report previously issued by Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) that is required to be included in a filing should be included as required.

(e) This temporary note will expire on December 31, 2002.

Temporary Note 3T: (a) This temporary note applies to any issuer that provides audited financial statements with an accountant's report issued by Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP (''Andersen'') after March 14, 2002 in a filing. The exact content of each issuer's disclosure may vary depending on the facts and circumstances applicable to each of Andersen's public company audit clients.

(b) The issuers for which this temporary note applies must include as an exhibit (under Exhibit 99) to their filing a letter by the issuer addressed to the Commission that states that Andersen has represented to the issuer that the audit was subject to Andersen's quality control system for the U.S. accounting and auditing practice to provide reasonable assurance that the engagement was conducted in compliance with professional standards and that there was appropriate continuity of Andersen personnel working on audits, availability of national office consultation and availability of personnel at foreign affiliates of Andersen to conduct the relevant portions of the audit.

(c) This temporary note will expire on December 31, 2002.

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

4. The authority citation for Part 228 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37 and 80b–11.

5. By adding § 228.304T to read as follows:

§ 228.304T (Item 304T) Item 304T of Regulation S–B.

Note: This is a special temporary section that applies to issuers for which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant to examine the issuer's financial statements, or for which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged to examine a significant subsidiary's financial statements and on which the principal public accountant expressed reliance in its report, on or after March 14, 2002.

(a) *General rule.* Those issuers for which this Item 304T applies must comply with the requirements of § 228.304, except as indicated in paragraph (b) of this Item 304T.

(b) *Special disclosure standards for issuers to whom this Item 304T applies.* An issuer for which this Item 304T applies may comply with § 228.304(a)(3) in the following manner:

(1) If Arthur Andersen LLP (or the foreign affiliate of Arthur Andersen LLP, if applicable) has already provided the issuer with a letter addressed to the Commission stating whether it agrees with the statements made by the issuer in response to § 228.304, and, if that letter indicates that it does not agree, stating the respects in which it does not agree, the issuer shall file that letter as an exhibit to the report or registration statement containing this disclosure; or

(2) If the issuer has not yet received that letter and cannot obtain it after reasonable efforts, compliance with § 228.304(a)(3) is not required.

(c) This temporary section will expire on December 31, 2002.

6. By amending § 228.310 by adding Temporary Note 1T and Temporary Note 2T after the introductory notes to read as follows:

§ 228.310 (Item 310) Financial Statements.

Notes * * *

Temporary Note 1T: Notwithstanding any other Commission rule or regulation, every registrant meeting the eligibility requirements in paragraph (a) of this note that files a registration statement on Forms SB–1, SB–2, S–3, S–4 or S–8 (§§ 239.9, 239.10, 239.13, 239.25 or 239.16b), or an amendment thereto, that requires audited financial statements for the most recent fiscal year end may file unaudited financial statements in satisfaction of that requirement under the conditions listed in paragraph (b) of this note.

(a) *Eligibility requirements.* An issuer:

(1) That at the time of filing a registration statement is subject to the periodic reporting requirements of Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. §§ 78m(a) or 78o(d));

(2) Whose registration statement will include financial statements:

(i) Of an entity that has a fiscal year ending between and including:

(A) November 30, 2001 and April 15, 2002, if the entity meets all of the conditions in Item 310(g) of Regulation S–B (§ 228.310(g)); or

(B) December 29, 2001 and April 15, 2002, if the entity does not meet all of the conditions in Item 310(g) of Regulation S–B (§ 228.310(g));

(ii) As to the examination of which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant on or after March 14, 2002;

(3) That, on or before March 14, 2002, had not obtained a manually signed audit report from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) in respect of those financial statements;

(4) That is unable to obtain from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) or elects not to have Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) issue a manually signed audit report in respect of those financial statements; and

(5) That is not a ''blank check company'' as defined in § 230.419(a)(2) of this chapter.

(b) *Conditions.*

(1) The issuer's registration statement responds to all items required by the appropriate registration form, but with unaudited financial statements that meet the timeliness requirements of Item 310(g) of Regulation S–B (§ 228.310(g)) for those financial statements as to the examination of which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant.

(2) The issuer provides in the registration statement disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X (§§ 210.3–01—3–20 of this chapter).

(3) If the registration statement is not yet effective and it will become effective on or after the date specified in paragraph (b)(4) of this section, the issuer must file a pre-effective amendment or an amendment to a document incorporated by reference, as appropriate, before effectiveness. If the registration statement is effective, the issuer must file either a post-effective amendment or an amendment to a document incorporated by reference, as appropriate, not later than the date specified in paragraph (b)(4) of this note; provided that this filing or amendment need not be made if the offering or offerings have been completed (and any prospectus delivery period under Section 4(3) of the Securities Act of 1933 (15 U.S.C. § 77d(3)) and the rules thereunder has expired) prior to the date specified in paragraph (b)(4) of this note. The filing or amendment shall present:

(i) The financial statements audited by an independent public accountant other than Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP);

(ii) A discussion of any material changes from the unaudited financial statements filed originally; and

(iii) Any other section of the registration statement or documents incorporated by reference that should be updated or revised to reflect the changes in the financial statements so filed by amendment.

(4) For purposes of paragraph (b)(3) of this note:

(i) If the issuer meets all of the conditions of Item 310(g)(2) of Regulation S–B (§ 228.310(g)(2)), the date shall be the earlier of:

(A) 60 days from the date the audited financial statements were required to be included in the registration statement; and

(B) The date on which an amended Form 10–K or 10–KSB containing audited financial statements is filed in accordance with Release No. 34–45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov); and

(ii) If the issuer does not meet all of the conditions of Item 310(g)(2) of Regulation S–B (§ 228.310(g)(2)), the date shall be the earlier of:

(A) 106 days from the date the audited financial statements were required to be included in the registration statement; and

(B) The date on which an amended Form 10–K or 10–KSB (§ 249.310 or 249.310b of this chapter) containing audited financial statements is filed in accordance with Release No. 34–45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov).

(c) This temporary note will expire on December 31, 2002.

Temporary Note 2T: (a) This temporary note applies to any issuer that provides audited financial statements with an accountant's report issued by Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP (''Andersen'') after March 14, 2002 in a filing. The exact content of each issuer's disclosure may vary depending on the facts and circumstances applicable to each of Andersen's public company audit clients.

(b) The issuers for which this temporary note applies must include as an exhibit (under Exhibit 99) to their filing a letter by the issuer addressed to the Commission that states that Andersen has represented to the issuer that the audit was subject to Andersen's quality control system for the U.S. accounting and auditing practice to provide reasonable assurance that the engagement was conducted in compliance with professional standards and that there was appropriate continuity of Andersen personnel working on audits, availability of national office consultation and availability of personnel at foreign affiliates of Andersen to conduct the relevant portions of the audit.

(c) This temporary note will expire on December 31, 2002.

* * * * *

7. By adding § 228.601T to read as follows:

§ 228.601T (Item 601T) Item 601T of Regulation S–B.

Any issuer that may rely upon the alternative disclosure requirement of § 228.304T shall comply with § 228.601(b)(16) in the following manner:

(a) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) has already provided the issuer with a letter addressed to the Commission stating whether it agrees or disagrees with the statements made by the registrant in response to § 228.304(c), the issuer must comply with § 228.601(b)(16).

(b) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) has not provided the issuer with this letter and the issuer cannot obtain it after reasonable efforts, the issuer need not comply with § 228.601(b)(16).

(c) This temporary section will expire on December 31, 2002.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

8. The authority citation for Part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 78mm, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a) and 80b–11, unless otherwise noted.

9. By adding § 229.304T to read as follows:

§ 229.304T (Item 304T) Item 304T of Regulation S–K.

Note: This is a special temporary section that applies to issuers for which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant to examine the issuer's financial statements, or for which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged to examine a significant subsidiary's financial statements and on which the principal public accountant expressed reliance in its report, on or after March 14, 2002.

(a) *General rule.* Those issuers for which this Item 304T applies must comply with the requirements of § 229.304, except as indicated in paragraph (b) of this Item 304T.

(b) *Special disclosure standards for issuers to whom this Item 304T applies.* An issuer for which this Item 304T applies may comply with § 229.304(a)(3) in the following manner:

(1) If Arthur Andersen LLP (or the foreign affiliate of Arthur Andersen LLP, if applicable) has already provided the issuer with a letter addressed to the Commission stating whether it agrees with the statements made by the issuer in response to § 229.304, and, if that letter indicates that it does not agree, stating the respects in which it does not agree, the issuer shall file that letter as an exhibit to the report or registration statement containing this disclosure; or

(2) If the issuer has not yet received that letter and cannot obtain it after reasonable efforts, compliance with § 229.304(a)(3) is not required.

(c) This temporary section will expire on December 31, 2002.

10. By adding § 229.601T to read as follows:

§ 229.601T (Item 601T) Item 601T of Regulation S–K.

Any issuer that may rely upon the alternative disclosure requirement of § 229.304T shall comply with § 229.601(b)(16) in the following manner:

(a) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) has already provided the issuer with a letter addressed to the Commission stating whether it agrees or disagrees with the statements made by the issuer in response to § 229.304(c), the issuer must comply with § 229.601(b)(16).

(b) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) has not provided the issuer with this letter and the issuer cannot obtain it after reasonable efforts, the issuer need not comply with § 229.601(b)(16).

(c) This temporary section will expire on December 31, 2002.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

11. The general authority citation for Part 230 is revised to read as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z–3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78t, 78w, 77*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

12. By adding § 230.401a to read as follows:

§ 230.401a Requirements as to proper form.

With regard to issuers eligible to rely on Release No. 34–45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov), the filing of reports in accordance with the provisions of that Release shall result in those reports being ''timely filed'' for purposes of all form eligibility standards in registration statement forms under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*).

13. By adding § 230.427T to read as follows:

§ 230.427T Information in prospectuses more than nine months after the effective date of the related registration statement.

(a) Notwithstanding the language in Section 10(a)(3) of the Act (15 U.S.C. § 77j(a)(3)), until December 16, 2002, for a registrant that meets the eligibility requirements in paragraph (a)(1) of this section, the audited financial information in a prospectus used more than nine months after the effective date of the registration statement of which that prospectus is a part must be as of a date not more than eighteen months prior to such use; provided that the conditions specified in paragraph (a)(2) of this section are satisfied.

(1) *Eligibility requirements.* A registrant meets the eligibility requirements of this paragraph (a) of this section if:

(i) The registrant has an effective registration statement under the Act that is required to include financial statements for any entity that has a fiscal year ending between and including November 30, 2001 (or, in the case of a registered investment company, January 1, 2002) and April 15, 2002;

(ii) Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged, on or after March 14, 2002, as the independent public accountant to examine those financial statements for that fiscal year;

(iii) On or before March 14, 2002, the registrant had not obtained a manually signed audit report from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) in respect of those financial statements for that fiscal year;

(iv) The registrant is unable to obtain from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) or elects not to have Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) issue a manually signed audit report in respect of those financial statements; and

(v) The registrant is not a ''blank check company'' as defined in § 230.419(a)(2) of this chapter.

(2) *Conditions.*

(i) A prospectus that is used more than nine months after the effective date of the registration statement of which that prospectus is a part includes unaudited financial information that is as of a date not more than sixteen months prior to such use; provided that the registrant provides in the prospectus disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X (§§ 210.3–01—3–20 of this chapter).

(ii) The audited financial information referred to in paragraph (a)(1)(i) of this section in a prospectus used more than nine months after the effective date of the registration statement of which that prospectus is a part must be audited by an independent public accountant other than Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) and the prospectus must include:

(A) A discussion of any material changes from the unaudited financial information; and

(B) Updated or revised information in any other section of the prospectus or documents incorporated by reference that should be updated or revised to reflect the changes in the audited financial information.

(b) This temporary section will expire on December 31, 2002.

14. By amending § 230.428 by adding Instruction 2T to the Instructions following paragraph (b)(2)(iv) to read as follows:

§ 230.428 Documents constituting a section 10(a) prospectus for Form S–8 registration statement; requirements relating to offerings of securities registered on Form S–8.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

Instructions.

* * * * *

2T. With regard to issuers that are eligible to rely on and are electing to comply with Release No. 34–45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov) or a temporary rule adopted in Release 33–8070 (March 18, 2002) published on March 22, 2002, in the **Federal Register**, until September 13, 2002 (or December 16, 2002 with respect to foreign private issuers), if the latest fiscal year has ended within 180 days (or 250 days with respect to foreign private issuers) prior to the delivery of documents containing the information specified by Part I of Form S–8 (§ 239.16b of this chapter), the issuer may deliver a document containing financial statements for the fiscal year preceding the latest fiscal year, provided that within the 180 or 250 day period a document containing financial statements for the latest fiscal year is furnished to each employee. This temporary instruction will expire on December 31, 2002.

* * * * *

15. By adding § 230.437a to read as follows:

§ 230.437a Written consents.

(a) This section applies only to registrants that:

(1) Are not a ''blank check company'' as defined in § 230.419(a)(2); and

(2) Are filing a registration statement containing financial statements in which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been acting as the independent public accountant.

(b) Notwithstanding any other Commission rule or regulation, every registrant eligible to rely on this section may dispense with the requirement for the registrant to file the written consent of Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) as required by Section 7 of the Act (15 U.S.C. 77g) where:

(1) The registrant has not already obtained the written consent that would be required if not for this section;

(2) The registrant is not able to obtain the written consent after reasonable efforts; and

(3) The registrant discloses clearly any limitations on recovery by investors posed by the lack of consent.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

16. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

17. By adding § 240.12b–37 to read as follows:

§ 240.12b–37 Satisfaction of filing requirements.

With regard to issuers eligible to rely on Release No. 34–45589 (March 18, 2002) or Release No. IC–25463 (March 18, 2002) (each of which may be viewed on the Commission's website at www.sec.gov), filings made in accordance with the provisions of those Releases shall satisfy the issuer's requirement to make such a filing under Section 13(a), 14 or 15(d) of the Act (15 U.S.C. 77m(a), 78n or 78o(d)), as applicable, and the Commission's rules and regulations thereunder.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

18. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.*, unless otherwise noted.

* * * * *

19. By amending Form 20–F (referenced in § 249.220f) by adding General Instruction A–T1. and General Instruction A–T2. after General Instruction A. to read as follows:

Note: Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

United States

Securities and Exchange Commission

Washington, D.C. 20549

Form 20–F

* * * * *

General Instructions

A. * * *

* * * * *

A–T1. Temporary Instructions Relating to Certain Financial Statements.

Notwithstanding any other Commission rule or regulation, every foreign private issuer meeting the eligibility requirements in paragraph (a) of this instruction that files a registration statement on Forms F–1, F–2, F–3, F–4 or S–8, or an amendment thereto, that requires audited financial statements for the most recent fiscal year end may file unaudited financial statements in satisfaction of that requirement under the conditions listed in paragraph (b) of this instruction.

(a) *Eligibility Requirements.* A foreign private issuer:

(1) That at the time of filing a registration statement is subject to the periodic reporting requirements of Section 13(a) or 15(d) of the Exchange Act;

(2) Whose registration statement will include audited financial statements of an entity that has a fiscal year ending between and including November 30, 2001 and April 15, 2002 as to the examination of which Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP had been engaged as the independent public accountant on or after March 14, 2002, unless the foreign private issuer fits within Instruction 2 to Item 8 of Form 20–F, in which case the fiscal year can be between August 31, 2001 and April 15, 2002;

(3) That, on or before March 14, 2002, had not obtained a manually signed audit report from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) in respect of those financial statements;

(4) That is unable to obtain from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) or elects not to have Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) issue a manually signed audit

report in respect of those financial statements; and

(5) That is not a ''blank check company'' as defined in Securities Act Rule 419(a)(2) (§ 230.419(a)(2) of this chapter).

(b) *Conditions.*

(1) The foreign private issuer's registration statement responds to all items required by the appropriate registration form, but with unaudited financial statements that meet the required timeliness requirements for those financial statements as to the examination of which Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP had been engaged as the independent public accountant (including an unaudited reconciliation to U.S. generally accepted accounting principles (GAAP) pursuant to Item 17(c) of Form 20–F if the foreign private issuer prepares its financial statements on a basis of accounting other than U.S. GAAP).

(2) The foreign private issuer provides in the registration statement disclosure reflecting the guidance in Temporary Note 2T of Article 3 of Regulation S–X (17 CFR 210.3–01 '' 3–20).

(3) If the registration statement is not yet effective and it will become effective on or after the date specified in paragraph (b)(4) of this instruction, the foreign private issuer must file a pre-effective amendment or an amendment to a document incorporated by reference, as appropriate, before effectiveness. If the registration statement is effective, the foreign private issuer must file either a post-effective amendment to the registration statement or an amendment to a document incorporated by reference, as appropriate, not later than the date specified in paragraph (b)(4) of this instruction; provided that this filing or amendment need not be made if the offering or offerings have been completed (and any prospectus delivery period under Section 4(3) of the Securities Act of 1933 (15 U.S.C. 77d(3)) and the rules thereunder has expired) prior to the date specified in paragraph (b)(4) of this instruction. The filing or amendment shall present:

(i) The financial statements audited by an independent public accountant other than Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP);

(ii) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant to examine the registrant's financial statements, selected financial data required by Item 3(a) of Form 20–F based on the audited financial statements;

(iii) A discussion of any material changes from the unaudited financial statements filed originally; and

(iv) Any other section of the registration statement or Form 20–F that should be updated or revised to reflect the changes in the financial statements so filed by amendment.

(4) For purposes of paragraph (b)(3) of this instruction, the date shall be the earlier of:

(i) 60 days from the date the audited financial statements were required to be included in the registration statement; and

(ii) The date on which an amended Form 20–F containing audited financial statements is filed in accordance with Release No. 34–45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov).

(c) This temporary instruction will expire on December 31, 2002.

A–T2.Temporary Instructions Relating to Certain Financial Statements

(a) This temporary note applies to any foreign private issuer that provides audited financial statements with an accountant's report issued by Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP (''Andersen'') after March 14, 2002 in a filing. The exact content of each foreign private issuer's disclosure may vary depending on the facts and circumstances applicable to each of Andersen's public company audit clients.

(b) The foreign private issuers for which this temporary note applies must include as an exhibit (under Exhibit 99) to their filing a letter by the foreign private issuer addressed to the Commission that states that Andersen has represented to the foreign private issuer that the audit was subject to Andersen's quality control system for the U.S. accounting and auditing practice to provide reasonable assurance that the engagement was conducted in compliance with professional standards and that there was appropriate continuity of Andersen personnel working on audits, availability of national office consultation and availability of personnel at foreign affiliates of Andersen to conduct the relevant portions of the audit.

(c) This temporary note will expire on December 31, 2002.

* * * * *

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

20. The authority citation for Part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*ll*(d), 80b–3, 80b–4, and 80b–11.

21. By adding § 260.19a–1 to read as follows:

§ 260.19a–1 Compliance with Section 314(a)(1) of the Trust Indenture Act for certain eligible indenture obligors.

(a) This section is applicable only to an ''eligible indenture obligor'' as defined in paragraph (b) of this section.

(b) For purposes of paragraph (c) of this section, an ''eligible indenture obligor'' is any obligor that:

(1) Is required to file reports with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange of 1934 (15 U.S.C. §§ 78m or 78o(d)) (the ''Exchange Act''); and

(2) May rely on any of the provisions of Release No. 34–45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov) with regard to the filing of reports with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act (14 U.S.C. 78m or 78o(d)).

(c) An ''eligible indenture obligor'' that files with the indenture trustee those Exchange Act reports filed with the Commission in accordance with the Release referred to in paragraph (b)(2) of this section has met its duty under Section 314(a)(1) of the Act (15 U.S.C. 77nn(a)(1)) to ''file with the indenture trustee all reports required to be filed with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934.''

By the Commission.

Dated: March 18, 2002.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendices A, B and C to the preamble will not appear in the Code of Federal Regulations.

Appendix A

United States of America Before the Securities and Exchange Commission

Securities Exchange Act of 1934

Release No. 34–45589/March 18, 2002

Order Under Section 36 of the Securities Exchange Act of 1934 Granting Exemptions From Certain Provisions of the Act and Rules Thereunder

To assure a continuing and orderly flow of information to investors and the U.S. capital markets and to minimize any potential disruptions that may occur in light of the circumstances surrounding Arthur Andersen LLP (''Andersen''), the Commission finds that the exemptions set forth below are necessary and appropriate in the public interest and consistent with the protection of investors.[1]

I. Accordingly, *it is ordered,* pursuant to Section 36 of the Securities Exchange Act of 1934 (the ''Exchange Act''), that any one or more of theprovisions of Section I. of this order shall apply to any issuer:

- Whose report, registration statement, amendment or other documents referenced in this order will include financial statements the examination or review of which Andersen (or a foreign affiliate of Andersen) had been engaged, on or after March 14, 2002, as the independent public accountant;
- That, on or before March 14, 2002, had not obtained a manually signed audit report from Andersen (or a foreign affiliate of Andersen) in respect of those financial statements (or a review report in the case of interim financial statements);
- That is unable to obtain from Andersen (or a foreign affiliate of Andersen) or elects not to have Andersen (or a foreign affiliate of Andersen) issue a manually signed audit report in respect of those financial statements (or a review in the case of interim financial statements); and

[1] The Commission is also publishing today a separate release modifying, in a manner appropriate for the protection of investors, the requirements for including audited financial statements in registration statements under the Securities Act of 1933 and filings required by the Trust Indenture Act of 1939. See Release No. 33–8070 (March 18, 2002).

• That is not a ''blank check company'' as defined in Rule 419(a)(2) under the Securities Act of 1933.

The review referenced above is a review in accordance with Rule 10–01(d) of Regulation S–X (or Item 310(b) of Regulation S–B for small business issuers, as defined in Item 10(a)(1) of Regulation S–B).

1. *Annual Reports on Form 10–K/Form 10–KSB.* Notwithstanding any other Commission rule or regulation, an issuer that has a fiscal year ending between and including November 30, 2001 and April 15, 2002 that is required to file an annual report on Form 10–K or Form 10–KSB may file its annual report for that fiscal year under the conditions below.

Conditions.

(a) The issuer timely files its annual report on Form 10–K or Form 10–KSB within the period specified in the appropriate form (including any additional period for filing the report if the issuer relies on Exchange Act Rule 12b–25) responding to all items required by the appropriate form, but with unaudited financial statements for those financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(b) The issuer provides the disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X in the report; and

(c) The issuer files an amendment to the report within 60 days of the original due date of the report (excluding any additional period for filing the original report if the issuer relied on Exchange Act Rule 12b–25 for the filing of that report), that presents:

(1) The financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen);

(2) If the original filing was on Form 10–K and Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant to examine the issuer's financial statements, selected financial data required by Item 6 of Form 10–K based on the audited financial statements;

(3) A discussion of any material changes from the unaudited financial statements filed originally; and

(4) Any other section of the annual report that should be amended, including without limitation, Management's Discussion and Analysis of Financial Condition and Results of Operations, to reflect any changes in the financial statements so filed by amendment.

2. *Quarterly Reports on Form 10–Q/Form 10–QSB.* Notwithstanding any other Commission rule or regulation, an issuer that has a fiscal quarter ending between and including January 26, 2002 and June 15, 2002 that is required to file quarterly reports on Form 10–Q or Form 10–QSB may file its quarterly report for those fiscal quarters under the conditions listed below.

Conditions.

(a) The issuer timely files its quarterly report on Form 10–Q or Form 10–QSB within the period specified in the appropriate form (including any additional period for filing the report if the issuer relies on Exchange Act Rule 12b–25) responding to all items required by the appropriate form, but with interim financial statements that have not been reviewed by an independent public accountant in accordance with Rule 10–01(d) of Regulation S–X (or Item 310(b) of Regulation S–B for issuers filing on Form 10–QSB);

(b) The issuer provides disclosure in the report similar to that reflected in the guidance included in Temporary Note 2T to Article 3 of Regulation S–X, as applicable;

(c) If upon completion of the review by an independent public accountant in accordance with Rule 10–01(d) of Regulation S–X (or Item 310(b) of Regulation S–B for issuers filing on Form 10–QSB) there is a change to the interim financial statements, the issuer must file an amendment to the report upon completion of the review presenting:

(1) The interim financial statements reviewed by an independent public accountant other than Andersen (or a foreign affiliate of Andersen);

(2) A discussion of any material changes from the unreviewed financial statements filed originally; and

(3) Any other section of the quarterly report that should be amended, including without limitation, Management's Discussion and Analysis of Financial Condition and Results of Operations, to reflect any changes in the financial statements so filed by amendment; and

(d) If upon completion of the review there is not a change to the interim financial statements, the issuer must state in its quarterly report for the immediately succeeding fiscal quarter that the interim financial statements for the previous quarter had subsequently been reviewed by an independent public accountant other than Andersen (or a foreign affiliate of Andersen), but no report of that independent public accountant need be presented.

3. *Annual Reports on Form 20–F.* Notwithstanding any other Commission rule or regulation, a foreign private issuer that has a fiscal year ending between and including August 31, 2001 and April 15, 2002 that is required to file an annual report on Form 20–F may file its annual report on Form 20–F for that fiscal year under the conditions listed below.

Conditions.

(a) The foreign private issuer timely files its annual report on Form 20–F within the period specified in Form 20–F (including any additional period for filing the report if the foreign private issuer relies on Exchange Act Rule 12b–25) responding to all items required by Form 20–F, but with unaudited financial statements for those financial statements as to the examination of which either Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant (including an unaudited reconciliation to U.S. generally accepted accounting principles (GAAP) pursuant to Item 17(c) of Form 20–F if the foreign private issuer prepares its financial statements on a basis of accounting other than U.S. GAAP);

(b) The foreign private issuer provides disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X in the report; and

(c) The foreign private issuer files an amendment to the report within 60 days of the original due date of the report (excluding any additional period for filing the original report if the issuer relied on Exchange Act Rule 12b–25 for the filing of that report), that presents:

(1) The financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen);

(2) If Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant to examine the foreign private issuer's financial statements, selected financial data required by Item 3.A. of Form 20–F (including any reconciliation of that data to U.S. GAAP and Regulation S–K if required by Instruction 2 to Item 3.A. of Form 20–F) based on the audited financial statements;

(3) A discussion of any material changes from the unaudited financial statements or unaudited reconciliation filed originally; and

(4) Any other section of the annual report that should be amended, including without limitation, the Operating and Financial Review and Prospects required by Item 5 of Form 20–F, to reflect any changes in the financial statements so filed by amendment.

4. *Rule 12b–25.* Notwithstanding any other Commission rule or regulation, an issuer that files a Notification of Late Filing on Form 12b–25 for its annual report on Form 10–K or Form 10–KSB for its fiscal year ending between and including November 30, 2001 and April 15, 2002, its annual report on Form 20–F for its fiscal year ending between and including August 31, 2001 and April 15, 2002, its annual report on Form N–SAR for its fiscal year ending between and including December 15, 2001 and April 15, 2002 or its quarterly report on Form 10–Q or Form 10–QSB for its fiscal quarter ending between and including January 26, 2002 and June 15, 2002 need not attach as an exhibit a statement by Andersen (or a foreign affiliate of Andersen) as required by Exchange Act Rule 12b–25(c) if such statement cannot be obtained by the issuer after reasonable efforts.

5. *Schedules 14A and 14C.* Notwithstanding any other Commission rule or regulation, every issuer that files either a Schedule 14A or Schedule 14C that requires audited financial statements of an entity with a fiscal year ending between and including:

(i) November 30, 2001 and April 15, 2002, if the entity meets all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g) of Regulation S–B if the entity is a small business issuer), (ii) December 29, 2001 and April 15, 2002, if the entity does not meet all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g) of Regulation S–B if the entity is a small business issuer), or (iii)January 1, 2002 and April 15, 2002, if the entity is a registered investment company, may file unaudited financial statements in satisfaction of that requirement under the conditions listed below.

Conditions.

(a) The issuer sends its proxy statement or information statement on or before September 13, 2002 (or, in the case of an issuer that is a registered investment company, on or before August 13, 2002);

(b) The issuer's proxy statement or information statement responds to all items

required by Schedule 14A or Schedule 14C (taking into account paragraph I.6. below), but with unaudited financial statements for those financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(c) The issuer provides in the proxy statement or information statement disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X;

(d) The issuer must file either revised materials or amended documents incorporated by reference, as appropriate, not later than the date specified in paragraph I.5.(e) below, provided that this filing or amendment need not be made if the solicitation or corporate action has been completed by that date. Such filing or amended document shall present:

(1) The financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen);

(2) If Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant for the issuer's financial statements, selected financial data required by Item 301 of Regulation S–K based on the audited financial statements if this information would otherwise have been required in the proxy statement or information statement;

(3) A discussion of any material changes from the unaudited financial statements filed originally; and

(4) Any other section of the revised materials or filings incorporated by reference that should be updated or revised to reflect any changes in the financial statements contained in the revised materials or amended documents; and

(e) For purposes of paragraph I.5.(d) above:

(1) If the issuer meets all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g)(2) of Regulation S–B for small business issuers, as defined in Item 10(a)(1) of Regulation S–B), the date shall be the earlier of (i) 60 days from the date the audited financial statements were required to be included in the proxy statement or information statement and (ii) the date on which an amended Form 10–K or 10–KSB containing audited financial statements is filed in accordance with this Order;

(2) If the issuer does not meet all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g)(2) of Regulation S–B for small business issuers, as defined in Item 10(a)(1) of Regulation S–B), the date shall be the earlier of (i) 106 days from the date the audited financial statements were required to be included in the proxy statement or information statement and (ii) the date on which an amended Form 10–K or 10–KSB containing audited financial statements is filed in accordance with this Order; and

(3) If the issuer is a registered investment company, the date shall be the earlier of (i) 60 days from the date the audited financial statements were required to be in the proxy statement or information statement and (ii) the date on which an amended annual report to shareholders containing audited financial information is filed in accordance with Release No. IC–25463 (March 18, 2002).

6. *Audit Committee Disclosures in Certain Schedules 14A and 14C.* Notwithstanding any other Commission rule or regulation, every issuer that has a fiscal year ending between and including November 30, 2001 and April 15, 2002 that files either a Schedule 14A or Schedule 14C may omit any disclosure required by Item 7(d)(3)(i) and Item 9(e) of Schedule 14A or Item 7(d)(3)(i) and Item 9(e) of Schedule 14A pursuant to Item 1 of Schedule 14C under the conditions listed below.

(a) The issuer sends its proxy statement or information statement on or before September 13, 2002 (or, in the case of an issuer that is a registered investment company, on or before August 13, 2002).

(b) The issuer's proxy statement or information statement responds to all items required by Schedule 14A or Schedule 14C (taking into account paragraph I.5. above, if applicable) other than Items 7(d)(3)(i) and Item 9(e) for Schedule 14A or Item 7(d)(3)(i) and Item 9(e) of Schedule 14A pursuant to Item 1 of Schedule 14C for Schedule 14C.

(c) The issuer has not filed audited financial statements nor amended its Form 10–K or Form 10–KSB pursuant to paragraph I.1. above prior to sending its proxy statement or information statement to shareholders.

(d) The issuer includes information in its amended Form 10–K or Form 10–KSB (or, in the case of a registered investment company, in its amended annual report to shareholders) that responds to Items 7(d)(3)(i) and Item 9(e) of Schedule 14A, if this information would otherwise have been required in the Schedule 14A or Schedule 14C.

7. *Rule 14a–3.* Notwithstanding any other Commission rule or regulation, every issuer that has a fiscal year ending between and including November 30, 2001 and April 15, 2002 that files either a Schedule 14A that relates to an annual meeting of security holders (or a special meeting in lieu of an annual meeting of security holders), or written consent in lieu of such meeting, at which directors are to be elected shall satisfy the requirements in Rule 14a–3 for audited financial statements in the annual report to security holders for that fiscal year under the conditions listed below.

Conditions.

(a) The proxy statement or information statement is sent on or before September 13, 2002;

(b) The issuer's proxy statement responds to all items required by Schedule 14A (taking into account paragraphs I.5. and I.6. above, if applicable);

(c) The issuer's annual report to security holders responds to all items required in the report, but with unaudited financial statements for those financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(d) The issuer provides in the annual report to security holders disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X; and

(e) The issuer announces in a press release, at the time it files its Form 10–K or Form 10–KSB (or an amendment thereto) that includes the financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen), that these financial statements are available and may be found in that filing on the Commission's website at *www.sec.gov* and on the issuer's website, citing the address, if the issuer has a website; provided that this announcement need not be made if the issuer's solicitation or corporate action has been completed prior to the time these audited financial statements are filed.

8. *Rule 14c–3.* Notwithstanding any other Commission rule or regulation, every issuer that has a fiscal year ending between and including November 30, 2001 and April 15, 2002 that files a Schedule 14C that relates to an annual meeting of security holders (or a special meeting in lieu of an annual meeting of security holders), or written consent in lieu of such meeting, at which directors are to be elected shall satisfy the requirements in Rule 14c–3 for audited financial statements in the annual report to security holders for that fiscal year under the conditions listed below.

Conditions.

(a) The proxy statement or information statement is sent on or before September 13, 2002;

(b) The issuer's information statement responds to all items required by Schedule 14C (taking into account paragraphs I.5. and I.6. above, if applicable);

(c) The issuer's annual report to security holders responds to all items required in the report, but with unaudited financial statements for those financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(d) The issuer provides in the annual report to security holders disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X; and

(e) The issuer announces in a press release, at the time it files its Form 10–K or Form 10–KSB (or an amendment thereto) that includes the financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen), that these financial statements are available and may be found in that filing on the Commission's website at *www.sec.gov* and on the issuer's website, citing the address, if the issuer has a website; provided that this announcement need not be made if the issuer's solicitation or corporate action has been completed prior to the time these audited financial statements are filed.

9. *Schedules TO.* Notwithstanding any other Commission rule or regulation, every issuer whose Schedule TO requires audited financial statements of an entity with a fiscal year ending between and including November 30, 2001 and April 15, 2002 may file the Schedule TO with unaudited financial statements in satisfaction of that requirement under the conditions listed below.

Conditions.

(a) The issuer files its Schedule TO on or before September 13, 2002;

(b) The offering materials respond to all items required by Schedule TO, but with unaudited financial statements for those financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(c) The issuer provides in the offering materials disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X; and

(d) The issuer must either file revised materials or amend documents incorporated by reference to provide the financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen) not later than the earlier of (i) 60 days from the date the audited financial statements were required to be included in the Schedule TO and (ii) the date on which an amended Form 10–K or 10–KSB (or, in the case of a registered investment company, annual report to shareholders) containing audited financial statements is filed in accordance with this Order; provided that such filing or amendment shall not be required if the tender offer has been completed by such date. The revised materials or the periodic report which satisfies this requirement through incorporation by reference, must present:

(1) Those audited financial statements;

(2) If Andersen (or a foreign affiliate of Andersen) had been engaged originally as the independent public accountant for the issuer's financial statements, selected financial data required by Item 301 of Regulation S–K based on the audited financial statements;

(3) A discussion of any material changes from the unaudited financial statements filed originally; and

(4) Any other section of the revised materials or filings incorporated by reference that should be updated or revised to reflect any changes in the financial statements contained in the revised materials or amended documents.

II. *It is further ordered,* pursuant to Section 36 of the Exchange Act, that:

1. *Employee Benefit Plan Annual Reports on Form 11–K.* Notwithstanding any other Commission rule or regulation, employee stock purchase, savings and similar plans meeting the requirements in paragraph II.1.(a) below that are required to file annual reports on Form 11–K may file their annual report on Form 11–K for their fiscal year ending between and including November 30, 2001 and April 15, 2002 under the conditions listed in paragraph II.1.(b) below.

(a) *Eligibility Requirements.* This paragraph II.1. applies to an employee stock purchase, savings or similar plan:

(1) That is subject to Section 15(d) of the Exchange Act;

(2) That is not subject to the Employee Retirement Income Security Act of 1974;

(3) That has a fiscal year ending between and including November 30, 2001 and April 15, 2002;

(4) Whose report for such period will include financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant on or after March 14, 2002;

(5) That, on or before March 14, 2002, had not obtained a manually signed audit report from Andersen (or a foreign affiliate of Andersen) in respect of those financial statements;

(6) That is unable to obtain from Andersen (or a foreign affiliate of Andersen) or elects not to have Andersen (or a foreign affiliate of Andersen) issue a manually signed audit report in respect of those financial statements; and

(7) Where the issuer of the stock or other securities offered to employees through their participation in the plan is not a ''blank check company'' as defined in Rule 419(a)(2) under the Securities Act of 1933.

(b) *Conditions.*

(1) The plan timely files its annual report on Form 11–K within the period specified in Form 11–K (including any additional period for filing the report if the plan relies on Exchange Act Rule 12b–25) responding to all items required by Form 11–K, but with unaudited plan financial statements for those financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(2) The plan provides the disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X in the report;

(3) The plan files an amendment to the report within 60 days of the original due date for filing (excluding any additional period for filing the original report if the issuer relied on Exchange Act Rule 12b–25 for the filing of that report), that presents:

(i) The financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen);

(ii) A discussion of any material changes from the unaudited financial statements filed originally; and

(iii) Any other section of the annual report that should be amended to reflect any changes in the financial statements so filed by amendment.

(4) Notwithstanding paragraphs II.1.(b)(1)–(3) above, if the plan elects to use the alternative filing procedure in Exchange Act Rule 15d–21:

(i) Unaudited plan financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant must be filed in the annual report on Form 10–K, Form 10–KSB or U5S of the issuer, or an amendment thereto, within 120 days after the end of the fiscal year of the plan;

(ii) The issuer provides the disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X in the report with respect to the plan;

(iii) An amendment must be filed to such report within 180 days after the end of the fiscal year of the plan, presenting:

(A) The audited financial statements that would have been required for the plan where Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(B) A discussion of any material changes from the unaudited financial statements filed originally; and

(C) Any other section of the annual report related to the plan that should be amended including without limitation Management's Discussion and Analysis of Financial Condition and Results of Operations, to reflect any changes in the financial statements so filed by amendment; and

(iv) Notwithstanding paragraphs II.1.(b)(4)(i)–(iii) above, a plan whose fiscal year ends within 62 days prior to the end of the fiscal year of the issuer may elect to file the audited plan financial statements as a part of the issuer's next annual report pursuant to Exchange Act Rule 15d–21(b).

2. *Rule 12b–25.* Notwithstanding any other Commission rule or regulation, every plan meeting the eligibility requirements in paragraph II.1.(a) above that files a Notification of Late Filing on Form 12b–25 for its annual report on Form 11–K for its fiscal year ending between and including November 30, 2001 and April 15, 2002 need not attach as an exhibit a statement by Andersen (or a foreign affiliate of Andersen) as required by Exchange Act Rule 12b–25(c) if such statement cannot be obtained by the issuer after reasonable efforts.

III. *It is further ordered,* pursuant to Section 36 of the Exchange Act, that:

1. *Rule 17a–5.* A registered broker-dealer with a contractual commitment from Andersen (or a foreign affiliate of Andersen) to conduct the broker-dealer's annual audit pursuant to Exchange Act Rule 17a–5(d) as of a date between and including January 14, 2002 and April 15, 2002, and for which the manually signed audit report has not been received on or before March 14, 2002, may (i) file its audited financial statements within 60 days after the date the statements would otherwise have been required to have been filed under Exchange Act Rule 17a–5(d)(5); and (ii) comply with the requirements of Exchange Act Rule 17a–5(c)(2) by furnishing unaudited statements to customers and other persons set forth in Exchange Act Rule 17a–5(c)(1) within 105 days after the date as of which audited statements were to have been prepared. The unaudited statements shall contain the information specified in Exchange Act Rule 17a–5(c)(2)(i) and (c)(2)(ii).

2. *Rule 17Ad–13.* A registered transfer agent with a contractual commitment from Andersen (or a foreign affiliate of Andersen) to prepare a report concerning the transfer agent's system of internal accounting control and related procedures for the transfer of record ownership and the safeguarding of related securities and funds pursuant to Exchange Act Rule 17Ad–13(a), and for which the manually signed report has not been received on or before March 14, 2002, may file the report pursuant to such paragraph within 60 days after the date the report otherwise would have been required to have been filed.

By the Commission.

Jonathan G. Katz,
Secretary.

Appendix B

United States of America Before the Securities and Exchange Commission

Investment Company Act of 1940

Release No. IC–25463/March 18, 2002

Investment Advisers Act of 1940

Release No. IA–2017/March 18, 2002

Order Under Sections 6(b), 6(c), and 38(a) of the Investment Company Act of 1940 and Sections 206A and 211(a) of the Investment Advisers Act of 1940 Granting Exemptions From Certain Provisions of the Acts and Rules Thereunder

To assure a continuing and orderly flow of information to investors and the U.S. capital markets and to minimize any potential disruptions that may occur in light of the circumstances surrounding Arthur Andersen LLP (''Andersen''), the Commission finds that the exemptions set forth below:

- Are necessary and appropriate to the exercise of the powers conferred on it by the Investment Company Act of 1940 (Company Act) and Investment Advisers Act of 1940 (Advisers Act); and
- Are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Company Act and Advisers Act.[1]

The necessity for immediate action of the Commission does not permit prior notice of the Commission's action.

Accordingly, IT IS ORDERED, pursuant to Sections 6(b), 6(c), and 38(a) of the Company Act and Sections 206A and 211(a) of the Advisers Act:

I. Selection of Auditors by Investment Companies

1.(a) A registered management investment company, registered face amount certificate company or a business development company:

(i) Whose financial statements for its last fiscal year were audited by Andersen, had not selected its independent public accountant on or before March 14, 2002, and whose fiscal year ends on or before April 15, 2002, is exempt from the requirement of Section 32(a) of the Company Act and Rule 32a–3 thereunder that such company select its independent public accountant within the time periods specified by Section 32(a) or rule 32a–3, provided that it selects its independent public accountant other than Andersen no later than 60 days after it otherwise would have been required to select the independent public accountant; or

(ii) That had selected Andersen as its independent accountant on or before March 14, 2002, and terminates the appointment may, notwithstanding any provision of Section 32(a), select another independent public accountant by vote of a majority of those members of the board of directors who are not interested persons of the registered investment company.

(b) A registered management investment company, registered face amount certificate company or a business development company that selects an independent public accountant pursuant to paragraph I.1.(a) of this Order is exempt from the provisions of Section 32(a) that require that the selection be made by a vote of a majority of those members of the board of directors who are not interested persons, cast in person at a meeting called for that purpose, provided that such votes are instead cast at a meeting in which directors may participate by any means of communicating that allows all directors participating to communicate with each other simultaneously during the meeting.

II. Custody of Investment Company Assets

1. *Self-Custody.* A registered management investment company or business development company having a fiscal year ending between and including January 1, 2002 and April 15, 2002, and which has engaged Andersen for the purpose of verifying assets pursuant to Rule 17f–2, 6e–2 or 6e–3(T) under the Company Act and elects to terminate such engagement is exempt from the requirement of those rules that an independent public accountant conduct an actual examination of such assets at least three times during the company's fiscal year, provided the examinations required by the rules are conducted by an independent public accountant other than Andersen no later than 60 days from the date they were required to be conducted.

2. *Custody with a Member of a National Securities Exchange.* A registered management investment company or business development company having a fiscal year ending between and including January 1, 2002 and April 15, 2002 that has engaged Andersen for the purpose of verifying assets held with a member of a national securities exchange pursuant to Rule 17f–1 under the Company Act and elects to terminate such engagement is exempt from the requirement that an independent public accountant conduct an examination of such assets at the end of the annual fiscal period, semiannual fiscal period and at a time chosen by the accountant, provided that:

(a) The actual examinations are conducted by an independent public accountant other than Andersen no later than 60 days after the date they were required to be conducted; and

(b) In the case of a semiannual or annual verification, the assets are verified as of the end of the annual or semiannual fiscal period.

III. Reports and Registration Statements by Investment Companies

1. The relief provided in Section III of this order shall apply to a registered investment company:

(a) Whose report, registration statement, or amendments referenced in this order will include financial statements or are based on financial statements the examination of which Andersen had been engaged, on or after March 14, 2002, as the independent public accountant;

(b) That, on or before March 14, 2002, had not obtained a manually signed audit report from Andersen in respect of those financial statements; and

(c) That is unable to obtain from Andersen or elects not to have Andersen issue a manually signed audit report in respect of those financial statements.

2. *Annual Reports on Form N–SAR.* A registered management investment company or a unit investment trust having a fiscal year ending between and including December 15, 2001 and April 15, 2002 is exempt from the requirement of Rule 30a–1 under the Company Act to file an annual report to the Commission on Form N–SAR containing financial information based upon audited financial information and without a report of independent accountants on internal controls, provided that such company or trust:

(a) Files Form N–SAR within 60 days of the end of its fiscal year (or 75 days in the case of a company or trust relying on Rule 12b–25 under the Securities Exchange Act of 1934 (''Exchange Act'')) responding to all items required by the form, but with financial information based upon unaudited financial statements, and includes disclosure in an exhibit to the form explaining that financial information in the report is based upon unaudited financial statements because the company or trust was unable to receive services from Andersen or chose not to have Andersen complete those audits; and

(b) Files an amendment to its Form N–SAR no later than 60 days from the date it was required to file Form N–SAR (excluding any additional time period for filing the additional report if the company or trust relied upon Rule 12b–25 under the Exchange Act for the filing of that report) that contains (i) financial information based upon financial statements audited by an independent public accountant other than Andersen, (ii) a report of independent accountants on internal controls issued by an independent public accountant other than Andersen, and (iii) an exhibit that provides a discussion of any material changes from the financial information based upon the unaudited financial statements filed originally and identifies the items of the company's or trust's Form N–SAR that were revised as a result of the amendment.

3. *Annual Reports to Shareholders.* A registered management investment company or a unit investment trust having a fiscal year ending between and including January 1, 2002 and April 15, 2002, is exempt from the requirement of Rule 30e–1 under the Company Act (and registration forms to which the Rule refers) to transmit to each shareholder of record an annual report containing audited financial statements, provided that the company or trust:

(a) Transmits to its shareholders within 60 days after the close of its fiscal year (and files with the Commission no later than 10 days thereafter) an annual report responding to all items required by the appropriate form, but with (i) unaudited financial statements, and (ii) disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X;

[1] The Commission is also publishing today a separate release modifying, in a manner appropriate for the protection of investors, the requirements for including audited financial statements in registration statements under the Securities Act of 1933 and filings required by the Trust Indenture Act of 1939. *See* Investment Company Act Release No. 25464 (March 18, 2002).

(b) Files with the Commission no later than 60 days from the date it was required to file the annual shareholder report an amendment to its shareholder report containing (i) the financial statements audited by an independent public accountant other than Andersen, (ii) a discussion of any material changes from the unaudited financial statements filed originally, and (iii) changes to any other section to reflect any changes in the financial statements filed by amendment; and

(c) In the case of a closed-end management company, announces, at the time it files its amendment that includes financial statements audited by an independent public accountant other than Andersen, that these financial statements are available and may be found in that filing on the Commission's website at *www.sec.gov* and on the company's website, citing the address, if the company has a website; provided that this announcement need not be made if the company's solicitation or corporate action has been completed prior to the time that these audited financial statements are filed.

4. *Amendments to Investment Company Act Registration Statements.* A registered management investment company that has (i) a fiscal year ending between and including January 1, 2002 and April 15, 2002, and (ii) timely filed a report on Form N–SAR as provided in paragraph III.2. of this order, is exempt from the requirement of Rule 8b–16 under the Company Act to amend its registration statement within 120 days of the end of its fiscal year, provided that the company files the amendment not later than six months after the end of the fiscal year.

IV. Balance Sheet Requirement for Certain Investment Advisers

A registered investment adviser that (i) is required by Item 14 of Part II of Form ADV under the Advisers Act to furnish a balance sheet audited by an independent public accountant, (ii) had engaged Andersen (or a foreign affiliate of Andersen) as an independent public accountant to examine the balance sheet to be included in Form ADV; (iii) had not, on or before March 14, 2002, obtained a manually signed audit report from Andersen (or a foreign affiliate of Andersen); (iv) is unable to or elects not to have Andersen issue a manually signed audit report from Andersen in respect of that balance sheet; and (v) has a fiscal year ending between and including December 1, 2001 and April 15, 2002, is exempt from the requirement of Rule 204–3 of the Advisers Act to furnish (in the case of a prospective client) or offer (in the case of a client) Part II of Form ADV (or a written disclosure statement) that contains an audited balance sheet, provided that:

1. The adviser furnishes or offers to furnish to prospective clients and clients on a timely basis Part II of Form ADV (or a written disclosure statement containing at least the information required by Part II) responding to all items required by Form ADV, but with an unaudited balance sheet, and discloses prominently on Schedule G (or the written disclosure statement) that an audited balance sheet is unavailable because the adviser was unable to receive services from Andersen or chose not to have Andersen complete those audits; and

2. The adviser amends its Part II (or written disclosure statement) to include a balance sheet examined by an independent public accountant other than Andersen no later than 60 days from the date it was required to update its Part II (which amendment is not required to be submitted to the Commission).

V. Exemptive Orders

An investment company, investment adviser, employees' securities company or other person relying on a Commission exemptive order issued under the Company Act or the Advisers Act that requires (either as a result of a representation made by the applicant or condition of the order) the involvement of an independent public accountant or independent representative (who may be an independent public accountant), that, on or after March 14, 2002, had engaged but is no longer able to obtain such services from Andersen or elects not to continue to engage Andersen shall not be deemed to have violated the terms or conditions of the order provided:

1. In the case of a report that must be furnished periodically or an audit that must be conducted annually, the report is furnished or audit is conducted by an independent public accountant other than Andersen no later than 60 days after the report was otherwise required to be furnished or the audit was otherwise required to be conducted; and

2. In the case of ongoing transactions that must be reviewed by the independent public accountant (or independent representative), the transactions are effected without the review, provided that the company or adviser engages an independent public accountant (or independent representative) other than Andersen no later than May 15, 2002, and that new engagement requires the independent public accountant (or independent representative) to review the transactions effected during the interim period.

By the Commission.

Jonathan G. Katz,
Secretary.

Appendix C

United States of America Before the Securities and Exchange Commission

Public Utility Holding Company Act of 1935

Release No. 35–27502/March 18, 2002

Order Under Sections 20(a) and 20(d) of the Public Utility Holding Company Act of 1935 Granting Exemptions From Certain Provisions of the Act and Rules Thereunder

To assure a continuing and orderly flow of information to investors and the U.S. capital markets and to minimize any potential disruptions that may occur in light of the circumstances surrounding Arthur Andersen LLP (''Andersen''), the Commission finds that the exemptions set forth below are necessary and appropriate to the exercise of the powers conferred on it by the Public Utility Holding Company of 1935.[1]

The necessity for immediate action of the Commission does not permit prior notice of the Commission's action.

Accordingly, *it is ordered,* pursuant to sections 20(a) and 20(d) of the Public Utility Holding Company Act of 1935:

I. Annual Reports on Form U5S

(1) Notwithstanding any other Commission rule or regulation, every registered public utility holding company that is required to file an annual report on Form U5S and

(a) That has a fiscal year ending from November 30, 2001 to April 15, 2002, and

(b) That meets the requirements of Section I of Securities Exchange Act of 1934 Release No. 45589 (March 18, 2002) (''1934 Act Order'')

may file its annual report on Form U5S for its fiscal year ending from November 30, 2001 to April 15, 2002 under the conditions listed in paragraph (2) below. Reports filed pursuant to this order shall be deemed to have satisfied the registered public utility holding company's requirement to file an annual report for such period under section 14 of the Public Utility Holding Company Act and the Commission's rules and regulations thereunder.

(2) *Conditions:*

(a) The registered public utility holding company files its annual report on Form U5S within the required period, responding to all items required by the form except for any item requiring that (i) the registered public utility holding company provide material including audited financial statements as to the examination of which Andersen had been engaged as the independent public accountant or (ii) the registered public utility holding company provide an opinion of an independent public accountant that would have been provided by Andersen;

(b) With respect to any annual report required to be incorporated by reference in Exhibit A to Form U5S, the registered public utility holding company incorporates by reference an annual report that complies with paragraphs I.1.(a) and I.1.(b) of the 1934 Act Order;

(c) With respect to any amendment to an annual report required by paragraph I.1.(c) of the 1934 Act Order, the registered public utility holding company files the amendment as an amendment to its Form U5S filing on the same day and amends any other section of its Form U5S filing that should be updated as a result; and

(d) With respect to ''the opinion of the independent accountants'' required by Exhibit F to Form U5S, the registered public utility holding company files as an amendment to its Form U5S filing the opinion within 60 days of the original due date of the Form.

II. Computations Required by Certain Rules and Orders

With respect to any computation required by rule 53(a)(1) or rule 58(a)(1) or any similar

[1] The Commission is also publishing today a separate release modifying, in a manner appropriate for the protection of investors, the requirements for including audited financial statements in registration statements under the Securities Act of 1933 and filings required by the Trust Indenture Act of 1939. *See* Release No. 33–8070 (March 18, 2002).

computation required by a Commission order issued under sections 53, 54 or 58 of the Public Utility Holding Company Act of 1935, a registered public utility holding company which is filing annual reports on Form 10–K or quarterly reports on Form 10–Q in reliance on the exemptions provided in the 1934 Act Order may rely on the financial statements included in those filings in performing the required computations.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–6947 Filed 3–19–02; 4:54 pm]

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Federal Register

Friday,
March 22, 2002

Part VIII

Federal Emergency Management Agency

44 CFR Part 62

National Flood Insurance Program (NFIP); Pilot Project—Public Entity Insurers; Final Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067–AD17

National Flood Insurance Program (NFIP); Pilot Project—Public Entity Insurers

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: We (the Federal Insurance and Mitigation Administration of FEMA) are launching a three-year pilot project that will permit governmental risk-sharing pools to sell flood insurance to public entities under the National Flood Insurance Program's Write Your Own (WYO) effort. We are limiting the participants in this pilot effort to a maximum of six such insurers that are able to provide flood insurance only to public entities for their public buildings. The participants in this pilot effort must comply with comparable eligibility criteria and performance standards for operations, reporting, and customer service that we require of private insurance companies that participate in the WYO program. This final rule includes the eligibility criteria for participation in the pilot and an addendum to the WYO Arrangement that construes the term ''the company'' used in the Arrangement to mean not only WYO companies but also the insurers selected for this pilot.

EFFECTIVE DATE: April 22, 2002.

FOR FURTHER INFORMATION CONTACT: Edward T. Pasterick, Federal Emergency Management Agency, Federal Insurance and Mitigation Administration, 500 C Street SW., Washington, DC 20472, 202–646–3443, (facsimile) 202–646–4335, or (e-mail) *Edward.Pasterick@fema.gov.*

SUPPLEMENTARY INFORMATION: On May 8, 2001, we published at 66 FR 23200 a proposed rule that would add, on a pilot project basis, a new category of insurer to the National Flood Insurance Program (NFIP)'s Write Your Own (WYO) system. We proposed the pilot to be for three years with participation limited to no more than three intergovernmental risk-sharing pools sponsored by State municipal leagues.

Our stated purpose for the pilot was to use the WYO program as a model for serving the flood insurance needs of municipalities. We said in the proposed rule, ''One of the inherent strengths of the WYO program, and one of the reasons for its success, is that private insurance companies, writing property insurance for other perils such as wind and fire, provide convenient access to flood insurance coverage for their customers in need of flood insurance protection. This model may also apply to the unique relationship that public entity insurers, especially State municipal league-sponsored or other intergovernmental risk-sharing pools . . . enjoy with local governments.''

We proposed the pilot in response to several organizations—several such risk pools and the National League of Cities—that asked us to consider permitting intergovernmental risk pools sponsored by State municipal leagues to sell flood insurance on a limited basis under the WYO program. We considered the request and agreed to propose such an expansion of the WYO program, but only on a pilot project basis. We saw the pilot as a controlled extension of the proven WYO approach—to use available mechanisms in the insurance marketplace to protect property owners from the peril of flood loss.

We also presented the proposal, during its formative stages and before its publication as a proposed rule, to WYO companies and associations for flood insurance producers. The WYO companies and these associations raised concerns about the proposal. We summarize their concerns under the ''Comments'' section.

In sum, our intention for the pilot has been to determine whether the WYO model would be as successful in the public sector as it has been in the private sector. Using the WYO model we want to see whether the governmental risk pools selected for the pilot will provide more convenient and direct access for municipal governments to obtain flood insurance coverage. We have decided after careful consideration of the public comments on the proposed rule to proceed with the pilot with a number of modifications.

Comments: Summary

During the comment period, we received fifteen written submissions from the public. The following submitted comments on the proposed rule:

- One State Executive Department,
- One international association,
- One insurance agency,
- Two private WYO insurance companies,
- Four national associations, and
- Six State Municipal leagues.

In addition to the written comments, we heard comments from representatives of two national associations—the National League of Cities (NLC) and the National Association of Counties (NACo)—at a meeting on June 20, 2001. FEMA's Office of the General Counsel, in coordination with the Congressional and Intergovernmental Affairs Division of FEMA's External Affairs Directorate, facilitated that meeting. We recorded the comments offered by the two national associations and made them part of the docket for this rule. We summarize that meeting and our decisions under a separate heading of this section.

The public generally favored the proposal. Twelve of the written submissions supported the pilot project while three objected to the proposal. Four of those in support of the proposal expressed an interest in participating in the pilot project.

Each of the following sections treats issues raised by the submitters and explains our reasons for accepting, rejecting, or modifying a given recommendation. We also add a section that summarizes the content of the June 20, 2001 meeting that is included in the rule's docket. Additionally, one set of comments was submitted well after the end of the comment period; however, we considered those comments as well and discuss them in a separate section.

Proposed Pilot: Creating Non-Insurance Company Competitors

Two private insurance companies expressed concern that the pilot would create ''non-insurance company'' competition for the WYO companies ''that may or may not be subject to the same requirements as the WYO participants.''

We modeled the participation criteria for the pilot's participants in 44 CFR 62.24(b) on the participation standards that WYO companies have had to meet under 44 CFR 62.24(a). Also, the pilot participants will participate under the same WYO Arrangement that WYO companies do. To ensure consistent standards and requirements, we added an addendum to the WYO Arrangement that expands the definition of ''WYO company'' to include the public entity insurers that will participate in the pilot. As a result, the pilot participants will be subject to the same requirements for customer service, reporting, financial management, and administration that the private WYO insurance companies must meet.

We would point out that the participants in the pilot project will not be able to sell flood insurance coverage to private consumers—homeowners, business owners, condominium associations, or the owners of multi-family dwellings. They may sell flood insurance only to public entities for their public buildings. Conversely,

WYO companies may still sell flood insurance to public entities for their public buildings as well as to homeowners, business owners, condominium associations, and the owners of multi-family dwellings. The pilot project will not change that.

Use of Cover America II To Promote Flood Coverage for Public Buildings

The two private insurance companies objecting to the proposal asked whether the market of public buildings was in fact an ''under-penetrated'' market. If so, the WYO companies suggested that, instead of launching a pilot project, we should use the NFIP's marketing campaign, Cover America II, to increase education and awareness among municipalities that may need flood insurance protection for their public buildings. The commenters suggested that we target mailings to municipalities for their public buildings and launch awareness and education efforts with municipal leagues, instead of implementing the pilot.

Whether the pilot will serve an ''under-penetrated'' market was not a major factor in proposing the pilot. Rather, the primary purpose of the pilot is to extend to another category of insurer and client the same opportunity for full service that is currently enjoyed by private WYO companies and their policyholders. At the same time, any increase in market penetration resulting from the pilot will be welcome.

We believe using our marketing and education efforts to target public entities is a good suggestion, but it is not a mutually exclusive option to launching the pilot. We plan to look into such a marketing and education effort with the view of increasing the number of public buildings protected by flood insurance. The pilot project will be one of several measures we will use to accomplish that objective.

Cost of Flood Insurance as Deterrent to Sales

The two companies objecting to the pilot, and one municipal league in support of the proposal, believed that public entities have not bought flood insurance to date for their public buildings because of the cost of coverage. The pilot will provide a good opportunity to examine this.

We will also be interested to see whether the convenience for public entities in dealing with one insurance vehicle for all lines of property coverage will increase flood insurance coverage of public buildings in the selected States.

Expansion of the Pilot

Two national associations—the Association of Governmental Risk Pools (AGRIP) and the National Association of Counties—recommended that we expand the pilot project to permit other interested public-entity pools, including county pools, to participate. AGRIP, however, said that a pilot is unnecessary arguing that the need is already clear.

We disagree with the position that a pilot is unnecessary; we believe that we need a pilot project to demonstrate whether using governmental risk-pools will be a useful vehicle for meeting the flood insurance needs of municipal governments and for meeting the standards of the program. We agree, however, with AGRIP and NACo that the expansion of the pilot is warranted.

In the preamble of the proposed rule, we said that the pilot would consist of three intergovernmental risk-sharing pools sponsored by State municipal leagues. As we mentioned earlier, two other national organizations—NACo and AGRIP—that represent the interests of risk pools asked that we expand the scope of the pilot to permit their members to be considered for the pilot as well. Those comments have merit.

We have agreed therefore to expand the scope of the pilot to permit eligible entities from each of these national associations to participate in the pilot. Due to the limitations on NFIP resources, however, we must at this time limit the expanded pilot to a maximum of six participants. In order to ensure that participation in the pilot is fair, representative, and equally distributed among various kinds of governmental risk pools, we will accept two nominations each from NLC, NACo, and AGRIP for this WYO pilot. This represents a doubling of the scope of pilot, which we originally proposed.

Each of the national associations representing governmental risk pools—NLC, NACo, and AGRIP—will nominate two of its interested members to participate in the pilot. We will then review the applications of all candidate organizations and accept up to six organizations that meet our criteria as set forth in the NFIP's regulations, 44 CFR 62.23 and 62.24.

Criteria for Participation

AGRIP recommended a number of changes to 44 CFR 62.23 and 62.24 that would be inclusive enough to accommodate other public entity pools. We believe our language in the proposed rule is already inclusive enough to accommodate such entities and that was certainly our intention in drafting the proposal. And while we have not adopted every change in wording recommended by AGRIP, we have modified the criteria for participation in section 62.23 and 62.24 to ensure that the pilot is open not only to intergovernmental risk-sharing pools sponsored by State municipal leagues but also county pools and other governmental risk pools. For instance, in section 62.23(b), we say that ''the term 'WYO company' shall include public entity risk-sharing organizations, an association of local governments, a State association of political subdivisions, and other intergovernmental risk-sharing pool entities for covering public entity structures.'' We maintain the position that those eligible for the WYO program under this pilot must be an entity already acting as an insurer, that is, an organization that provides property and liability coverage and is subject to State oversight.

Questions

In addition to the questions we have addressed in the preceding sections, one State, which sponsors a local government property insurance fund (''Fund''), asked specific questions on the program's implementation. We restate those questions followed by our answer.

Question: How will, or could participation in the pilot project affect compliance with FEMA (disaster) guidelines? For example, by participating in the pilot program could Fund members, if they elect not to purchase flood coverage, be held to a different (higher) standard of compliance, as it relates to FEMA eligibility guidelines.

Answer: Fund members will not be held to a higher standard.

Question: The Fund does not employ or use agents. Does the Fund need to become an Agent of Record, or appoint an Agent of Record to receive commissions on its behalf? Could the NFIP commissions be paid directly to the Fund?

Answer: Under the WYO program, a portion of the expense allowance—the portion of the premium income that a participating insurer retains—provides for a 15% agent commission; however, it does not have to be used to pay for commissions if a participating insurer does not use agents. (One of the private companies participating in the WYO program does not use agents in selling flood insurance.)

Question: Can separate service fees be paid directly to the Fund for administering/ servicing the NFIP WYO program? If so, what are those fees and how would they be calculated.

Answer: We do not pay service fees directly to participating insurers. Under Article III of the WYO Arrangement, participants retain a certain percentage of the premium for selling and servicing flood insurance. We call the amount of premium participants retain the ''expense allowance.''

Question: Are there any plans for the FEMA/NFIP Application to be streamlined or tailored to the governmental entities in the pilot project?

Answer: No, there are no such plans.

Question: What type of bank account is envisioned to process premium collections and claim payments for a governmental risk-sharing insurer?

Answer: The WYO Arrangement and the WYO Program's Financial Control Plan call for the participating WYO entity to deposit premiums into a separate, restricted account. Article II of the Arrangement requires the participating WYO company to ''separate Federal flood insurance funds from all other Company accounts, at a bank or banks of its choosing, for the collection, retention and disbursement of Federal funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article III.''

Question: Do the FEMA/NFIP Flood Zone maps have a global position or plotting feature whereby the Fund can access them electronically? Can the Fund enter an address or location co-ordinate and automatically determine what Flood hazard Zone or Area the building or location is situated?

Answer: The NFIP does not provide such a service. There are private enterprises called Flood Zone Determination Companies that provide such a service for a fee. Those interested in acquiring such services may find a list of Flood Zone Determination Companies on FEMA's Web site at *www.fema.gov* under ''Flood Zone Determination Companies.''

Question: What types of training programs are available for training and support of producers or administrative staff, if * * * (we) are selected as one of the'candidates for the pilot program?

Answer: The NFIP's Bureau and Statistical Agent conducts training for all the program's major stakeholders, including the WYO companies. We plan during the early implementation of the pilot program for the NFIP Bureau to conduct such specialized training for the selected participants.

Meeting of FEMA and Stakeholders

On June 20, 2001, FEMA's Office of the General Counsel, the Congressional and Intergovernmental Affairs Division of FEMA's External Affairs Directorate, and the Deputy Administrator for the Federal Insurance and Mitigation Administration met with representatives of the NLC and NACo. The NLC and NACo had asked for the meeting so that they could offer comments on the proposed rule, in addition to their written comments, and get clarification on several issues. We made the recorded minutes of that meeting part of the official docket for this rule and they are available upon request from FEMA's Rules Docket Clerk, 500 C Street, SW., Washington, DC 20472.

At the meeting, representatives for NLC and NACo asked whether there was any flexibility for expanding the pilot to accommodate other kinds of qualified pools. The Deputy Administrator responded that the scope of the pilot resulted from ongoing work between FEMA, the NLC, and several of its members that had expressed an interest in providing flood insurance to its members. One representative from NACo stressed that ''we want to be part of the pilot and [can] identify a * * * (member) that is doing a good job.'' The enthusiasm and support by NACo both at the June 20, 2001 meeting and in written comments submitted to the FEMA Rules Docket, as well as the written comments of AGRIP, have prompted us to expand the pilot to accommodate other governmental risk pools. We will ask the NLC, NACo, and AGRIP each to nominate two of its interested and potentially qualified members to us for consideration in the pilot.

Additional Comment

One national association of insurance agents submitted written comments well after the close of the comment period. We reviewed those comments but did not find them persuasive. The association ''does not believe that a new delivery system would change the mindset of public entity risk pools, a market segment that has never been willing to pay the price for flood coverage recommended to them in the past.''

Our philosophy is that we wish to use and, in this case, test every available mechanism within the marketplace that can help property owners—private and public'to protect their interests with flood insurance. The finite nature of the pilot will help us evaluate the effectiveness of applying the successful WYO model to the public sector as well. We believe the pilot's restriction that the pilot's participants may only sell flood insurance to public entities and then again only for their public buildings will preserve the unique relationship that private insurance companies and agents have with their private customers—a market excluded from the participants of this pilot. Conversely, the pilot does not preclude agents and companies from marketing to public entities in addition to their private customers.

National Environmental Policy Act (NEPA)

NEPA imposes requirements for considering the environmental impacts of agency decisions. It requires that an agency prepare an Environmental Impact Statement (EIS) for ''major federal actions significantly affecting the quality of the human environment.'' If an action may or may not have a significant impact, the agency must prepare an environmental assessment (EA). If, as a result of this study, the agency makes a Finding of No Significant Impact (FONSI), no further action is necessary. If it will have a significant effect, then the agency uses the EA to develop an EIS.

Categorical Exclusions. Agencies can categorically identify actions (for example, repair of a building damaged by a disaster) that do not normally have a significant impact on the environment. The purpose of this rule is to launch a three-year pilot project that will permit intergovernmental risk-sharing pools sponsored by State municipal leagues to sell flood insurance to public entities under the National Flood Insurance Program's WYO effort.

Accordingly, we have determined that this rule is excluded from the preparation of an environmental assessment or environmental impact statement under 44 CFR 10.8(d)(2)(ii), where the rule is related to actions that qualify for categorical exclusion under 44 CFR 10.8(d)(2)(i), which addresses the preparation, revision, and adoption of regulations, directives, and other guidance documents related to actions that qualify for categorical exclusions. We have not prepared an environmental assessment or environmental impact statement as defined by NEPA.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or

adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

For the reasons that follow we have concluded that this rule is neither an economically significant nor a significant regulatory action under the Executive Order.

The rule will accomplish one primary purpose: To determine the merit of permanently expanding the WYO program to permit State municipal league-sponsored and other governmental risk-sharing pools to sell flood insurance to public entities to cover their buildings against flood loss. The rule will permit us to analyze the three-year pilot project to determine the merit of permitting such insurers to be eligible to sell flood insurance permanently under the WYO program. There are no major economic impacts resulting from implementation of this rule. Rather, the rule will add a new marketing avenue for writing flood insurance for public buildings.

The Office of Management and Budget has not reviewed this rule under the principles of Executive Order 12866.

Paperwork Reduction Act

This final rule contains information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under the Act, a person does not have to respond to and may not be penalized for failing to comply with an information collection that does not display a currently valid OMB.

The Office of Management and Budget has approved the use of the following information collection requirements for use by a maximum of six pilot participants in the newly added governmental risk-sharing pools category of insurer under the Write Your Own (WYO) program. The criteria for participating in the program are contained in FEMA regulation 44 CFR 62.23(a) and 62.24 and Appendixes A and B of part 62. The information collections are:

Title: Write Your Own (WYO) Program, OMB Number 3067–0169, expiration date March 31, 2002, hour burden—33 minutes per respondent; and

Title: Write Your Own (WYO) Company Participation Criteria; New Applicants, OMB Number 3067–0259, expiration date April 30, 2002, hour burden—7 hours per respondent.

FEMA did not receive any comments on the need for the information, the accuracy of the burden estimate, cost to the respondents, or the methods for minimizing burden on the respondents during the review and comment period for the proposed rule.

Addressee: Interested persons should submit comments to the Desk Officer for the Federal Emergency Management Agency, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 on or before April 22, 2002. Comments may also be sent to the Chief, Records Management Branch, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act agencies must consider the impact of their rulemakings on ''small entities'' (small businesses, small organizations and local governments). When 5 U.S.C. 553 requires an agency to publish a notice of proposed rulemaking, the Act requires a regulatory flexibility analysis for both the proposed rule and the final rule if the rulemaking could ''have a significant economic impact on a substantial number of small entities.'' The Act also provides that if a regulatory flexibility analysis is not required, the agency must certify in the rulemaking document that the rulemaking will not ''have a significant economic impact on a substantial number of small entities.''

For the reasons that follow I certify that a regulatory flexibility analysis is not required for this rule because it would not have a significant economic impact on a substantial number of small entities. This rule revises the NFIP regulations to launch a three-year pilot project that permits governmental risk sharing pools to sell insurance to public entities under the NFIP's WYO Program. We will limit the participants to six such insurers that will be able to provide flood insurance only to public entities for public buildings. Participation in the pilot program is voluntary.

Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this rule under E.O. 13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. The rule adds a new category of insurer under the WYO program—an insurer that would provide another marketing avenue to protect public buildings from flood loss. Inasmuch as the insurance benefits and requirements derive from a Federal statute and program exclusively administered by the Federal Government for the benefit of State, local and tribal governments, individuals, and not-for-profit organizations, the rule neither limits nor preempts any policymaking discretion of the State that the State might otherwise have. We have, nevertheless, consulted with local officials, with the National League of Cities, the National Association of Counties, the Association of Governmental Risk Pools, Write Your Own companies, and several State municipal leagues. We have welcomed their valuable comments, and this rule has benefited from their comments.

The Office of Management and Budget has reviewed this rule under the provisions of Executive Order 13132.

List of Subjects in 44 CFR Part 62

Flood insurance.

Accordingly, we amend 44 CFR Part 62 as follows:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

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

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p.376.

2. Revise paragraphs (a) and (b) of section 62.23 to read as follows:

§ 62.23 WYO Companies authorized.

(a)Pursuant to section 1345 of the Act, the Administrator may enter into arrangements with individual private sector property insurance companies or other insurers, such as public entity risk sharing organizations. Under these arrangements, such companies or other insurers may offer flood insurance coverage under the program to eligible applicants. Such WYO companies may offer flood coverage to policyholders insured by them under their own property business lines of insurance, pursuant to their customary business practices, including their usual arrangements with agents and producers. WYO companies may sell flood insurance coverage in any State in which the WYO company is authorized to engage in the business of property insurance. Other WYO insurers may offer flood insurance coverage to their pool members insured by them under their own property business lines of coverage, pursuant to their customary business practices. These other WYO insurers may provide flood coverage in any State that has authorized the other insurer to provide property coverage to its members. Arrangements entered into by WYO Companies or other insurers under this subpart must be in the form and substance of the standard arrangement, titled ''Financial Assistance/Subsidy Arrangement,'' a copy of which is included in appendix A of this part and made a part of these regulations.

(b)Any duly authorized insurer so engaged in the Program shall be a WYO Company. (The term ''WYO Company'' shall include the following kinds of insurers: Public entity risk-sharing organizations, an association of local governments, a State association of political subdivisions, a State-sponsored municipal league, and other intergovernmental risk-sharing pool for covering public entity structures.)

* * * * *

3. Revise section 62.24 to read as follows:

§ 62.24 WYO participation criteria.

New companies or organizations eligible for the pilot project we describe in paragraph (b) of this section that seek to participate in the WYO program, as well as former WYO companies seeking to return to the WYO program, must meet standards for financial capability and stability for statistical and financial reporting and for commitment to program objectives.

(a) To demonstrate the ability to meet the financial requirements, a private insurance company wishing to enter or reenter the WYO program must:

(1) Be a licensed property insurance company;

(2) Have a five (5) year history of writing property insurance;

(3) Disclose any legal proceedings, suspensions, judgments, settlements, or agreements reached with any State insurance department, State attorney general, State corporation commission, or the Federal Government during the immediately prior five (5) years regarding the company's business practices;

(4) Submit its most recent National Association of Insurance Commissioners (NAIC) annual statement;

(5) Submit information, as data become available, to indicate that the company meets or exceeds NAIC standards for risk-based capital and surplus; and

(6) Submit its last State or regional audit, which should contain no material negative findings.

(b) To demonstrate the ability to meet the financial requirements, a public entity risk-sharing organization, an association of local governments, a State association of political subdivisions, a State-sponsored municipal league, and any other intergovernmental risk-sharing pool for covering public entity structures, wishing to enter the WYO program, which will end September 30, 2004, must:

(1) Have authority by a State to provide property coverage to its members;

(2) Have a five (5) year history of writing property coverage;

(3) Disclose any legal proceedings, suspensions, judgments, settlements, or agreements reached with any State insurance department, State attorney general, State corporation commission, or the Federal Government during the immediately prior five (5) years regarding the other insurer's business practices; and

(4) Submit its most recent two annual audits from an independent accounting firm performed in compliance with generally accepted accounting principles that show no material negative findings; and submit, as data become available, information to indicate that the other insurer meets or exceeds standards comparable to those of the NAIC for risk-based capital and surplus.

(c) An applicant for entry or reentry in the WYO program must also pass a test to determine the applicant's ability to process flood insurance and meet the Transaction Record Reporting and Processing (TRRP) Plan requirements of the WYO Financial Control Plan. Unless the test requirement is waived, e.g., where an already qualified performer will fulfill the applicant's reporting requirements, the applicant must prepare and submit test output monthly tape(s) and monthly financial statements and reconciliations for processing by the NFIP Bureau and Statistical Agent contractor. For test purposes, no error tolerance will be allowed. If the applicant fails the initial test, a second test will be run, which the applicant must pass to participate in the Program.

(d)To satisfy the requirement for commitment to Program goals, including marketing of flood insurance policies, the applicant will submit information concerning its plans for the WYO Program including plans for the training and support of producers and staff, marketing plans and sales targets, and claims handling and disaster response plans. Applicants must also identify those aspects of their planned flood insurance operations to be performed by another organization, managing agent, another WYO Company, a WYO vendor, a service bureau or related organization. Applicants will also name, in addition to a Principal Coordinator, a corporate officer point of contact—an individual, e.g., at the level of Senior Executive Vice President, who reports directly to the Chief Executive Officer or the Chief Operating Officer. Each applicant shall furnish the latest available information regarding the number of its fire, allied lines, farm-owners multiple peril, homeowners multiple peril, and commercial multiple peril policies or coverage documents in force, by line. A private insurance company applying for participation in the WYO program shall also furnish its Best's Financial Size Category for the purpose of setting marketing goals.

3. Add the following ADDENDUM at the end of Appendix A to Part 62:

Addendum to Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance and Mitigation Administration, Financial Assistance/Subsidy Arrangement

Note: This Addendum to Appendix A to Part 62 applies only to a public entity risk-sharing organization, an association of local governments, a State association of political subdivisions, a State-sponsored municipal league, and any other intergovernmental risk-sharing pool for covering public entity structures participating in the pilot project established in § 62.24(b) that permits intergovernmental risk-sharing pools to provide flood insurance to public entities to cover public buildings.

(1) ''Company'' in the preceding Arrangement includes ''a public entity risk-sharing organization, an association of local governments, a State association of political subdivisions, a State-sponsored municipal league, and any other intergovernmental risk-sharing pool for covering public entity structures.''

(2) The references to ''marketing guidelines'' in Article II—Undertaking of the Company and to ''marketing goals'' in Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds shall apply only to the private insurance companies participating in the WYO program.

* * * * *

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: March 12, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–6920 Filed 3–21–02; 8:45 am]

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Federal Register

Friday,
March 22, 2002

Part VIII

Federal Emergency Management Agency

44 CFR Part 62

National Flood Insurance Program (NFIP); Pilot Project—Public Entity Insurers; Final Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067–AD17

National Flood Insurance Program (NFIP); Pilot Project—Public Entity Insurers

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: We (the Federal Insurance and Mitigation Administration of FEMA) are launching a three-year pilot project that will permit governmental risk-sharing pools to sell flood insurance to public entities under the National Flood Insurance Program's Write Your Own (WYO) effort. We are limiting the participants in this pilot effort to a maximum of six such insurers that are able to provide flood insurance only to public entities for their public buildings. The participants in this pilot effort must comply with comparable eligibility criteria and performance standards for operations, reporting, and customer service that we require of private insurance companies that participate in the WYO program. This final rule includes the eligibility criteria for participation in the pilot and an addendum to the WYO Arrangement that construes the term ''the company'' used in the Arrangement to mean not only WYO companies but also the insurers selected for this pilot.

EFFECTIVE DATE: April 22, 2002.

FOR FURTHER INFORMATION CONTACT: Edward T. Pasterick, Federal Emergency Management Agency, Federal Insurance and Mitigation Administration, 500 C Street SW., Washington, DC 20472, 202–646–3443, (facsimile) 202–646–4335, or (e-mail) *Edward.Pasterick@fema.gov.*

SUPPLEMENTARY INFORMATION: On May 8, 2001, we published at 66 FR 23200 a proposed rule that would add, on a pilot project basis, a new category of insurer to the National Flood Insurance Program (NFIP)'s Write Your Own (WYO) system. We proposed the pilot to be for three years with participation limited to no more than three intergovernmental risk-sharing pools sponsored by State municipal leagues.

Our stated purpose for the pilot was to use the WYO program as a model for serving the flood insurance needs of municipalities. We said in the proposed rule, ''One of the inherent strengths of the WYO program, and one of the reasons for its success, is that private insurance companies, writing property insurance for other perils such as wind and fire, provide convenient access to flood insurance coverage for their customers in need of flood insurance protection. This model may also apply to the unique relationship that public entity insurers, especially State municipal league-sponsored or other intergovernmental risk-sharing pools . . . enjoy with local governments.''

We proposed the pilot in response to several organizations—several such risk pools and the National League of Cities—that asked us to consider permitting intergovernmental risk pools sponsored by State municipal leagues to sell flood insurance on a limited basis under the WYO program. We considered the request and agreed to propose such an expansion of the WYO program, but only on a pilot project basis. We saw the pilot as a controlled extension of the proven WYO approach—to use available mechanisms in the insurance marketplace to protect property owners from the peril of flood loss.

We also presented the proposal, during its formative stages and before its publication as a proposed rule, to WYO companies and associations for flood insurance producers. The WYO companies and these associations raised concerns about the proposal. We summarize their concerns under the ''Comments'' section.

In sum, our intention for the pilot has been to determine whether the WYO model would be as successful in the public sector as it has been in the private sector. Using the WYO model we want to see whether the governmental risk pools selected for the pilot will provide more convenient and direct access for municipal governments to obtain flood insurance coverage. We have decided after careful consideration of the public comments on the proposed rule to proceed with the pilot with a number of modifications.

Comments: Summary

During the comment period, we received fifteen written submissions from the public. The following submitted comments on the proposed rule:

- One State Executive Department,
- One international association,
- One insurance agency,
- Two private WYO insurance companies,
- Four national associations, and
- Six State Municipal leagues.

In addition to the written comments, we heard comments from representatives of two national associations—the National League of Cities (NLC) and the National Association of Counties (NACo)—at a meeting on June 20, 2001. FEMA's Office of the General Counsel, in coordination with the Congressional and Intergovernmental Affairs Division of FEMA's External Affairs Directorate, facilitated that meeting. We recorded the comments offered by the two national associations and made them part of the docket for this rule. We summarize that meeting and our decisions under a separate heading of this section.

The public generally favored the proposal. Twelve of the written submissions supported the pilot project while three objected to the proposal. Four of those in support of the proposal expressed an interest in participating in the pilot project.

Each of the following sections treats issues raised by the submitters and explains our reasons for accepting, rejecting, or modifying a given recommendation. We also add a section that summarizes the content of the June 20, 2001 meeting that is included in the rule's docket. Additionally, one set of comments was submitted well after the end of the comment period; however, we considered those comments as well and discuss them in a separate section.

Proposed Pilot: Creating Non-Insurance Company Competitors

Two private insurance companies expressed concern that the pilot would create ''non-insurance company'' competition for the WYO companies ''that may or may not be subject to the same requirements as the WYO participants.''

We modeled the participation criteria for the pilot's participants in 44 CFR 62.24(b) on the participation standards that WYO companies have had to meet under 44 CFR 62.24(a). Also, the pilot participants will participate under the same WYO Arrangement that WYO companies do. To ensure consistent standards and requirements, we added an addendum to the WYO Arrangement that expands the definition of ''WYO company'' to include the public entity insurers that will participate in the pilot. As a result, the pilot participants will be subject to the same requirements for customer service, reporting, financial management, and administration that the private WYO insurance companies must meet.

We would point out that the participants in the pilot project will not be able to sell flood insurance coverage to private consumers—homeowners, business owners, condominium associations, or the owners of multi-family dwellings. They may sell flood insurance only to public entities for their public buildings. Conversely,

WYO companies may still sell flood insurance to public entities for their public buildings as well as to homeowners, business owners, condominium associations, and the owners of multi-family dwellings. The pilot project will not change that.

Use of Cover America II To Promote Flood Coverage for Public Buildings

The two private insurance companies objecting to the proposal asked whether the market of public buildings was in fact an ''under-penetrated'' market. If so, the WYO companies suggested that, instead of launching a pilot project, we should use the NFIP's marketing campaign, Cover America II, to increase education and awareness among municipalities that may need flood insurance protection for their public buildings. The commenters suggested that we target mailings to municipalities for their public buildings and launch awareness and education efforts with municipal leagues, instead of implementing the pilot.

Whether the pilot will serve an ''under-penetrated'' market was not a major factor in proposing the pilot. Rather, the primary purpose of the pilot is to extend to another category of insurer and client the same opportunity for full service that is currently enjoyed by private WYO companies and their policyholders. At the same time, any increase in market penetration resulting from the pilot will be welcome.

We believe using our marketing and education efforts to target public entities is a good suggestion, but it is not a mutually exclusive option to launching the pilot. We plan to look into such a marketing and education effort with the view of increasing the number of public buildings protected by flood insurance. The pilot project will be one of several measures we will use to accomplish that objective.

Cost of Flood Insurance as Deterrent to Sales

The two companies objecting to the pilot, and one municipal league in support of the proposal, believed that public entities have not bought flood insurance to date for their public buildings because of the cost of coverage. The pilot will provide a good opportunity to examine this.

We will also be interested to see whether the convenience for public entities in dealing with one insurance vehicle for all lines of property coverage will increase flood insurance coverage of public buildings in the selected States.

Expansion of the Pilot

Two national associations—the Association of Governmental Risk Pools (AGRIP) and the National Association of Counties—recommended that we expand the pilot project to permit other interested public-entity pools, including county pools, to participate. AGRIP, however, said that a pilot is unnecessary arguing that the need is already clear.

We disagree with the position that a pilot is unnecessary; we believe that we need a pilot project to demonstrate whether using governmental risk-pools will be a useful vehicle for meeting the flood insurance needs of municipal governments and for meeting the standards of the program. We agree, however, with AGRIP and NACo that the expansion of the pilot is warranted.

In the preamble of the proposed rule, we said that the pilot would consist of three intergovernmental risk-sharing pools sponsored by State municipal leagues. As we mentioned earlier, two other national organizations—NACo and AGRIP—that represent the interests of risk pools asked that we expand the scope of the pilot to permit their members to be considered for the pilot as well. Those comments have merit.

We have agreed therefore to expand the scope of the pilot to permit eligible entities from each of these national associations to participate in the pilot. Due to the limitations on NFIP resources, however, we must at this time limit the expanded pilot to a maximum of six participants. In order to ensure that participation in the pilot is fair, representative, and equally distributed among various kinds of governmental risk pools, we will accept two nominations each from NLC, NACo, and AGRIP for this WYO pilot. This represents a doubling of the scope of pilot, which we originally proposed.

Each of the national associations representing governmental risk pools—NLC, NACo, and AGRIP—will nominate two of its interested members to participate in the pilot. We will then review the applications of all candidate organizations and accept up to six organizations that meet our criteria as set forth in the NFIP's regulations, 44 CFR 62.23 and 62.24.

Criteria for Participation

AGRIP recommended a number of changes to 44 CFR 62.23 and 62.24 that would be inclusive enough to accommodate other public entity pools. We believe our language in the proposed rule is already inclusive enough to accommodate such entities and that was certainly our intention in drafting the proposal. And while we have not adopted every change in wording recommended by AGRIP, we have modified the criteria for participation in section 62.23 and 62.24 to ensure that the pilot is open not only to intergovernmental risk-sharing pools sponsored by State municipal leagues but also county pools and other governmental risk pools. For instance, in section 62.23(b), we say that ''the term 'WYO company' shall include public entity risk-sharing organizations, an association of local governments, a State association of political subdivisions, and other intergovernmental risk-sharing pool entities for covering public entity structures.'' We maintain the position that those eligible for the WYO program under this pilot must be an entity already acting as an insurer, that is, an organization that provides property and liability coverage and is subject to State oversight.

Questions

In addition to the questions we have addressed in the preceding sections, one State, which sponsors a local government property insurance fund (''Fund''), asked specific questions on the program's implementation. We restate those questions followed by our answer.

Question: How will, or could participation in the pilot project affect compliance with FEMA (disaster) guidelines? For example, by participating in the pilot program could Fund members, if they elect not to purchase flood coverage, be held to a different (higher) standard of compliance, as it relates to FEMA eligibility guidelines.

Answer: Fund members will not be held to a higher standard.

Question: The Fund does not employ or use agents. Does the Fund need to become an Agent of Record, or appoint an Agent of Record to receive commissions on its behalf? Could the NFIP commissions be paid directly to the Fund?

Answer: Under the WYO program, a portion of the expense allowance—the portion of the premium income that a participating insurer retains—provides for a 15% agent commission; however, it does not have to be used to pay for commissions if a participating insurer does not use agents. (One of the private companies participating in the WYO program does not use agents in selling flood insurance.)

Question: Can separate service fees be paid directly to the Fund for administering/ servicing the NFIP WYO program? If so, what are those fees and how would they be calculated.

Answer: We do not pay service fees directly to participating insurers. Under Article III of the WYO Arrangement, participants retain a certain percentage of the premium for selling and servicing flood insurance. We call the amount of premium participants retain the ''expense allowance.''

Question: Are there any plans for the FEMA/NFIP Application to be streamlined or tailored to the governmental entities in the pilot project?

Answer: No, there are no such plans.

Question: What type of bank account is envisioned to process premium collections and claim payments for a governmental risk-sharing insurer?

Answer: The WYO Arrangement and the WYO Program's Financial Control Plan call for the participating WYO entity to deposit premiums into a separate, restricted account. Article II of the Arrangement requires the participating WYO company to ''separate Federal flood insurance funds from all other Company accounts, at a bank or banks of its choosing, for the collection, retention and disbursement of Federal funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article III.''

Question: Do the FEMA/NFIP Flood Zone maps have a global position or plotting feature whereby the Fund can access them electronically? Can the Fund enter an address or location co-ordinate and automatically determine what Flood hazard Zone or Area the building or location is situated?

Answer: The NFIP does not provide such a service. There are private enterprises called Flood Zone Determination Companies that provide such a service for a fee. Those interested in acquiring such services may find a list of Flood Zone Determination Companies on FEMA's Web site at *www.fema.gov* under ''Flood Zone Determination Companies.''

Question: What types of training programs are available for training and support of producers or administrative staff, if * * * (we) are selected as one of the'candidates for the pilot program?

Answer: The NFIP's Bureau and Statistical Agent conducts training for all the program's major stakeholders, including the WYO companies. We plan during the early implementation of the pilot program for the NFIP Bureau to conduct such specialized training for the selected participants.

Meeting of FEMA and Stakeholders

On June 20, 2001, FEMA's Office of the General Counsel, the Congressional and Intergovernmental Affairs Division of FEMA's External Affairs Directorate, and the Deputy Administrator for the Federal Insurance and Mitigation Administration met with representatives of the NLC and NACo. The NLC and NACo had asked for the meeting so that they could offer comments on the proposed rule, in addition to their written comments, and get clarification on several issues. We made the recorded minutes of that meeting part of the official docket for this rule and they are available upon request from FEMA's Rules Docket Clerk, 500 C Street, SW., Washington, DC 20472.

At the meeting, representatives for NLC and NACo asked whether there was any flexibility for expanding the pilot to accommodate other kinds of qualified pools. The Deputy Administrator responded that the scope of the pilot resulted from ongoing work between FEMA, the NLC, and several of its members that had expressed an interest in providing flood insurance to its members. One representative from NACo stressed that ''we want to be part of the pilot and [can] identify a * * * (member) that is doing a good job.'' The enthusiasm and support by NACo both at the June 20, 2001 meeting and in written comments submitted to the FEMA Rules Docket, as well as the written comments of AGRIP, have prompted us to expand the pilot to accommodate other governmental risk pools. We will ask the NLC, NACo, and AGRIP each to nominate two of its interested and potentially qualified members to us for consideration in the pilot.

Additional Comment

One national association of insurance agents submitted written comments well after the close of the comment period. We reviewed those comments but did not find them persuasive. The association ''does not believe that a new delivery system would change the mindset of public entity risk pools, a market segment that has never been willing to pay the price for flood coverage recommended to them in the past.''

Our philosophy is that we wish to use and, in this case, test every available mechanism within the marketplace that can help property owners—private and public'to protect their interests with flood insurance. The finite nature of the pilot will help us evaluate the effectiveness of applying the successful WYO model to the public sector as well. We believe the pilot's restriction that the pilot's participants may only sell flood insurance to public entities and then again only for their public buildings will preserve the unique relationship that private insurance companies and agents have with their private customers—a market excluded from the participants of this pilot. Conversely, the pilot does not preclude agents and companies from marketing to public entities in addition to their private customers.

National Environmental Policy Act (NEPA)

NEPA imposes requirements for considering the environmental impacts of agency decisions. It requires that an agency prepare an Environmental Impact Statement (EIS) for ''major federal actions significantly affecting the quality of the human environment.'' If an action may or may not have a significant impact, the agency must prepare an environmental assessment (EA). If, as a result of this study, the agency makes a Finding of No Significant Impact (FONSI), no further action is necessary. If it will have a significant effect, then the agency uses the EA to develop an EIS.

Categorical Exclusions. Agencies can categorically identify actions (for example, repair of a building damaged by a disaster) that do not normally have a significant impact on the environment. The purpose of this rule is to launch a three-year pilot project that will permit intergovernmental risk-sharing pools sponsored by State municipal leagues to sell flood insurance to public entities under the National Flood Insurance Program's WYO effort.

Accordingly, we have determined that this rule is excluded from the preparation of an environmental assessment or environmental impact statement under 44 CFR 10.8(d)(2)(ii), where the rule is related to actions that qualify for categorical exclusion under 44 CFR 10.8(d)(2)(i), which addresses the preparation, revision, and adoption of regulations, directives, and other guidance documents related to actions that qualify for categorical exclusions. We have not prepared an environmental assessment or environmental impact statement as defined by NEPA.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or

adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

For the reasons that follow we have concluded that this rule is neither an economically significant nor a significant regulatory action under the Executive Order.

The rule will accomplish one primary purpose: To determine the merit of permanently expanding the WYO program to permit State municipal league-sponsored and other governmental risk-sharing pools to sell flood insurance to public entities to cover their buildings against flood loss. The rule will permit us to analyze the three-year pilot project to determine the merit of permitting such insurers to be eligible to sell flood insurance permanently under the WYO program. There are no major economic impacts resulting from implementation of this rule. Rather, the rule will add a new marketing avenue for writing flood insurance for public buildings.

The Office of Management and Budget has not reviewed this rule under the principles of Executive Order 12866.

Paperwork Reduction Act

This final rule contains information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under the Act, a person does not have to respond to and may not be penalized for failing to comply with an information collection that does not display a currently valid OMB.

The Office of Management and Budget has approved the use of the following information collection requirements for use by a maximum of six pilot participants in the newly added governmental risk-sharing pools category of insurer under the Write Your Own (WYO) program. The criteria for participating in the program are contained in FEMA regulation 44 CFR 62.23(a) and 62.24 and Appendixes A and B of part 62. The information collections are:

Title: Write Your Own (WYO) Program, OMB Number 3067–0169, expiration date March 31, 2002, hour burden—33 minutes per respondent; and

Title: Write Your Own (WYO) Company Participation Criteria; New Applicants, OMB Number 3067–0259, expiration date April 30, 2002, hour burden—7 hours per respondent.

FEMA did not receive any comments on the need for the information, the accuracy of the burden estimate, cost to the respondents, or the methods for minimizing burden on the respondents during the review and comment period for the proposed rule.

Addressee: Interested persons should submit comments to the Desk Officer for the Federal Emergency Management Agency, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 on or before April 22, 2002. Comments may also be sent to the Chief, Records Management Branch, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act agencies must consider the impact of their rulemakings on ''small entities'' (small businesses, small organizations and local governments). When 5 U.S.C. 553 requires an agency to publish a notice of proposed rulemaking, the Act requires a regulatory flexibility analysis for both the proposed rule and the final rule if the rulemaking could ''have a significant economic impact on a substantial number of small entities.'' The Act also provides that if a regulatory flexibility analysis is not required, the agency must certify in the rulemaking document that the rulemaking will not ''have a significant economic impact on a substantial number of small entities.''

For the reasons that follow I certify that a regulatory flexibility analysis is not required for this rule because it would not have a significant economic impact on a substantial number of small entities. This rule revises the NFIP regulations to launch a three-year pilot project that permits governmental risk sharing pools to sell insurance to public entities under the NFIP's WYO Program. We will limit the participants to six such insurers that will be able to provide flood insurance only to public entities for public buildings. Participation in the pilot program is voluntary.

Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this rule under E.O. 13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. The rule adds a new category of insurer under the WYO program—an insurer that would provide another marketing avenue to protect public buildings from flood loss. Inasmuch as the insurance benefits and requirements derive from a Federal statute and program exclusively administered by the Federal Government for the benefit of State, local and tribal governments, individuals, and not-for-profit organizations, the rule neither limits nor preempts any policymaking discretion of the State that the State might otherwise have. We have, nevertheless, consulted with local officials, with the National League of Cities, the National Association of Counties, the Association of Governmental Risk Pools, Write Your Own companies, and several State municipal leagues. We have welcomed their valuable comments, and this rule has benefited from their comments.

The Office of Management and Budget has reviewed this rule under the provisions of Executive Order 13132.

List of Subjects in 44 CFR Part 62

Flood insurance.

Accordingly, we amend 44 CFR Part 62 as follows:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

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

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p.376.

2. Revise paragraphs (a) and (b) of section 62.23 to read as follows:

§ 62.23 WYO Companies authorized.

(a)Pursuant to section 1345 of the Act, the Administrator may enter into arrangements with individual private sector property insurance companies or other insurers, such as public entity risk sharing organizations. Under these arrangements, such companies or other insurers may offer flood insurance coverage under the program to eligible applicants. Such WYO companies may offer flood coverage to policyholders insured by them under their own property business lines of insurance, pursuant to their customary business practices, including their usual arrangements with agents and producers. WYO companies may sell flood insurance coverage in any State in which the WYO company is authorized to engage in the business of property insurance. Other WYO insurers may offer flood insurance coverage to their pool members insured by them under their own property business lines of coverage, pursuant to their customary business practices. These other WYO insurers may provide flood coverage in any State that has authorized the other insurer to provide property coverage to its members. Arrangements entered into by WYO Companies or other insurers under this subpart must be in the form and substance of the standard arrangement, titled ''Financial Assistance/Subsidy Arrangement,'' a copy of which is included in appendix A of this part and made a part of these regulations.

(b)Any duly authorized insurer so engaged in the Program shall be a WYO Company. (The term ''WYO Company'' shall include the following kinds of insurers: Public entity risk-sharing organizations, an association of local governments, a State association of political subdivisions, a State-sponsored municipal league, and other intergovernmental risk-sharing pool for covering public entity structures.)

* * * * *

3. Revise section 62.24 to read as follows:

§ 62.24 WYO participation criteria.

New companies or organizations eligible for the pilot project we describe in paragraph (b) of this section that seek to participate in the WYO program, as well as former WYO companies seeking to return to the WYO program, must meet standards for financial capability and stability for statistical and financial reporting and for commitment to program objectives.

(a) To demonstrate the ability to meet the financial requirements, a private insurance company wishing to enter or reenter the WYO program must:

(1) Be a licensed property insurance company;

(2) Have a five (5) year history of writing property insurance;

(3) Disclose any legal proceedings, suspensions, judgments, settlements, or agreements reached with any State insurance department, State attorney general, State corporation commission, or the Federal Government during the immediately prior five (5) years regarding the company's business practices;

(4) Submit its most recent National Association of Insurance Commissioners (NAIC) annual statement;

(5) Submit information, as data become available, to indicate that the company meets or exceeds NAIC standards for risk-based capital and surplus; and

(6) Submit its last State or regional audit, which should contain no material negative findings.

(b) To demonstrate the ability to meet the financial requirements, a public entity risk-sharing organization, an association of local governments, a State association of political subdivisions, a State-sponsored municipal league, and any other intergovernmental risk-sharing pool for covering public entity structures, wishing to enter the WYO program, which will end September 30, 2004, must:

(1) Have authority by a State to provide property coverage to its members;

(2) Have a five (5) year history of writing property coverage;

(3) Disclose any legal proceedings, suspensions, judgments, settlements, or agreements reached with any State insurance department, State attorney general, State corporation commission, or the Federal Government during the immediately prior five (5) years regarding the other insurer's business practices; and

(4) Submit its most recent two annual audits from an independent accounting firm performed in compliance with generally accepted accounting principles that show no material negative findings; and submit, as data become available, information to indicate that the other insurer meets or exceeds standards comparable to those of the NAIC for risk-based capital and surplus.

(c) An applicant for entry or reentry in the WYO program must also pass a test to determine the applicant's ability to process flood insurance and meet the Transaction Record Reporting and Processing (TRRP) Plan requirements of the WYO Financial Control Plan. Unless the test requirement is waived, e.g., where an already qualified performer will fulfill the applicant's reporting requirements, the applicant must prepare and submit test output monthly tape(s) and monthly financial statements and reconciliations for processing by the NFIP Bureau and Statistical Agent contractor. For test purposes, no error tolerance will be allowed. If the applicant fails the initial test, a second test will be run, which the applicant must pass to participate in the Program.

(d)To satisfy the requirement for commitment to Program goals, including marketing of flood insurance policies, the applicant will submit information concerning its plans for the WYO Program including plans for the training and support of producers and staff, marketing plans and sales targets, and claims handling and disaster response plans. Applicants must also identify those aspects of their planned flood insurance operations to be performed by another organization, managing agent, another WYO Company, a WYO vendor, a service bureau or related organization. Applicants will also name, in addition to a Principal Coordinator, a corporate officer point of contact—an individual, e.g., at the level of Senior Executive Vice President, who reports directly to the Chief Executive Officer or the Chief Operating Officer. Each applicant shall furnish the latest available information regarding the number of its fire, allied lines, farm-owners multiple peril, homeowners multiple peril, and commercial multiple peril policies or coverage documents in force, by line. A private insurance company applying for participation in the WYO program shall also furnish its Best's Financial Size Category for the purpose of setting marketing goals.

3. Add the following ADDENDUM at the end of Appendix A to Part 62:

Addendum to Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance and Mitigation Administration, Financial Assistance/Subsidy Arrangement

Note: This Addendum to Appendix A to Part 62 applies only to a public entity risk-sharing organization, an association of local governments, a State association of political subdivisions, a State-sponsored municipal league, and any other intergovernmental risk-sharing pool for covering public entity structures participating in the pilot project established in § 62.24(b) that permits intergovernmental risk-sharing pools to provide flood insurance to public entities to cover public buildings.

(1) ''Company'' in the preceding Arrangement includes ''a public entity risk-sharing organization, an association of local governments, a State association of political subdivisions, a State-sponsored municipal league, and any other intergovernmental risk-sharing pool for covering public entity structures.''

(2) The references to ''marketing guidelines'' in Article II—Undertaking of the Company and to ''marketing goals'' in Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds shall apply only to the private insurance companies participating in the WYO program.

* * * * *

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: March 12, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

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