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Monday
May 8, 1989

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May 8, 1989

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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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Presidential Documents

Title 3—

The President

Proclamation 5969 of May 3, 1989

Smith-Lever Act 75th Anniversary, 1989

By the President of the United States of America

A Proclamation

For 75 years, the Cooperative Extension Service has made significant contributions to U.S. agriculture by helping rural Americans to apply the latest techniques and state-of-the-art technology to everyday farming.

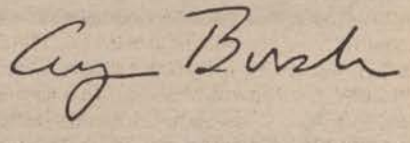
In 1914, Hoke Smith, a Senator from Georgia, and Asbury Lever, a Congressman from South Carolina, proposed the creation of the Cooperative Extension Service as the educational arm of the U.S. Department of Agriculture. The Smith-Lever Act—which President Wilson signed into law on May 8, 1914—established the Cooperative Extension System as a partnership between the U.S. Department of Agriculture and State land-grant universities. Today this beneficial System includes offices in nearly all of the Nation's 3,150 counties, cities, and boroughs, at Tuskegee University, and at land-grant institutions in the 50 States and six territories. In celebrating the 75th Anniversary of the Smith-Lever Act, we pay tribute to our dedicated Extension System educators.

The Cooperative Extension System has done much to ensure that rural and urban adults and youth have the opportunity to develop to their full potential. The System has built on the spirit and traditions of its founders, successfully adapting to new challenges over the years, while assisting the American farm family with the efficient production of a reliable supply of food and fiber for consumers in our country and around the world. System employees and the three million volunteers who ably assist them help individual farmers, families, and communities to apply research-generated knowledge and leadership techniques to the problems facing American agriculture today.

In recognition of the contributions of the Cooperative Extension System, the Congress, by House Joint Resolution 124, has authorized and requested the issuance of a proclamation to commemorate the enactment of the Smith-Lever Act of May 8, 1914.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim May 8, 1989, as the 75th Anniversary of the signing of the Smith-Lever Act of 1914. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of May, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



[FR Doc. 89-11113
Filed 5-4-89; 2:21 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5970 of May 4, 1989

Older Americans Month, 1989

By the President of the United States of America

A Proclamation

Throughout the history of the United States, older Americans have had a profound role in shaping the character and destiny of our Nation. From the days of Ben Franklin, who was 81 years old when he helped to frame our Constitution, to the present time, older Americans have blessed us with their wisdom and leadership. Each May, during Older Americans Month, we express our respect and gratitude to these valued members of our society.

The contributions of older individuals are evident in virtually every aspect of American life: in government, business and industry, and in science and the arts. Today, millions of older Americans are remaining in the work force well past the traditional "retirement age." In fact, many senior citizens are pursuing second careers, while others continue to contribute to our communities and Nation through volunteer work.

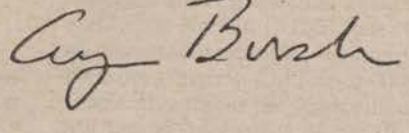
All older Americans—whether they hold jobs, volunteer, or quietly devote their time to family and friends—enrich our lives beyond measure. Therefore, let us honor them not only during Older Americans Month, but throughout the year. Let us always show our appreciation for senior citizens by respecting, in policy as well as practice, their rights and dignity. We can demonstrate our commitment to that end by helping older persons to maintain their independence, and by protecting them from exploitation and discrimination.

Let us also remember that, while most older Americans are healthy and active, some need special care and attention. Across the United States, thousands of community groups, religious societies, voluntary service organizations, and government agencies are working to help meet the special needs of elderly Americans. As individuals and as a Nation, we must ensure that every community provides the services and opportunities that older Americans need and deserve.

The Congress, by Senate Joint Resolution 45, has recognized the month of May 1989, as "Older Americans Month," and has requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the month of May 1989 as Older Americans Month. I call upon the American people to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of May, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



[FR Doc. 89-11163
Filed 5-5-89; 10:26 am]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 201

[Docket No. 89-039]

Federal Seed Act Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the Federal Seed Act Regulations by removing the origin staining requirements for seed of alfalfa or red clover grown in Canada and imported into the United States.

EFFECTIVE DATE: May 8, 1989.

FOR FURTHER INFORMATION CONTACT: Frank E. Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, Room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8393.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the Federal Register on December 30, 1988 (53 FR 52973-52974, Docket No. 88-208), and effective January 1, 1989 (54 FR 4753, Docket No. 89-001), we removed the origin staining requirements for seed of alfalfa or red clover grown in Canada and imported into the United States. As explained in greater detail in the **SUPPLEMENTARY INFORMATION** accompanying the interim rule published December 30, 1988, this change is mandated by section 301(e) of the United States-Canada Free-Trade Implementation Act of 1988 (the Act), and is necessary to conform the Federal Seed Act Regulations (the regulations) with the Act.

Comments

Comments on the interim rule were required to be postmarked or received on or before February 28, 1989. We received two comments that were timely. Both commenters supported removal of the staining requirement for seed of alfalfa or red clover that was certified as to genetic purity, in accordance with §§ 201.67-201.76 of the regulations, by a qualified certifying agency. The commenters were concerned that seed could be imported into Canada from other countries and imported into the United States as Canadian seed. Certification is not a requirement for importing seed into the United States.

The Act removes our statutory authority to require staining of alfalfa or red clover seed that is grown in Canada and imported into the United States. The removal of the staining requirement is not limited to certified seed. Therefore, no change is made on the basis of these comments.

Under the regulations, seed offered for importation into the United States must be labelled to show origin, if known. Such seed must be accompanied by a Declaration of Labeling setting forth the information that is on or attached to the containers of the seed, including, among other things, a statement of origin of the seed. The regulations also provide that seed that is offered for importation into the United States shall be refused admission for false or misleading labelling. These regulatory requirements continue to apply to seed of alfalfa or red clover that is imported into the United States from Canada and should allay the commenters' concerns.

Executive Order 12291 and Regulatory Flexibility Act

This rule deletes a regulatory requirement which is no longer authorized by the Federal Seed Act because of its amendment. It has therefore been determined that it is not a "major rule" within the meaning of Executive Order 12291 and Departmental regulation 1512-1. For the same reason, it is not subject to regulatory analysis under the Regulatory Flexibility Act.

Paperwork Reduction Act

The regulations in this rule contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 201

Advertising, Agricultural commodities, Imports, Labelling, Reporting and recordkeeping requirements, Seeds, Vegetables.

PART 201—FEDERAL SEED ACT REGULATIONS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR Part 201 and that was published at 53 FR 52973-52974 on December 30, 1988.

Done in Washington, DC, this 3rd day of May 1989.

James W. Glosser

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-10948 Filed 5-5-89; 6:45 am]
BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 984

[FV-89-026FR]

Walnuts Grown in California; Increase in Expenses

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This final rule increases expenditures under Marketing Order No. 984 for the 1987-88 marketing year and for the 1988-89 marketing year established under the walnut marketing order. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: August 1, 1987, through July 31, 1988 (1987-88 marketing year) and August 1, 1988, through July 31, 1989 (1988-89 marketing year).

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2524-S, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This rule is issued under marketing agreement and Order No. 984 (7 CFR Part 984), both as amended, regulating the handling of walnuts grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as

amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Department Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. There are approximately 60 handlers of walnuts grown in California subject to regulation under the walnut marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of walnut producers and handlers may be classified as small entities.

The walnut marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable walnut handlers from the beginning of such year. An annual budget of expenses is prepared by the Walnut Marketing Board (Board) and submitted to the U.S. Department of Agriculture for approval. The members of the Board are handlers and producers of walnuts. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The Board met on February 10, 1989, and unanimously recommended increasing expenses for the 1987–88 marketing year by $39,146 bringing the total budget from $1,280,936 to $1,320,082. The reason for the increase in expenses is approval of an additional research program (an acreage survey) and a change in the Board's method of depreciating equipment purchases. During September of 1987, the Board was planning to fund an acreage survey which would aid the walnut industry in estimating the walnut crop more accurately. The budget was not increased at that time because the details of the survey as well as the proposed cost were not complete. Once the details were completed, both the Research Subcommittee and the Board approved the survey, but the budget was not subsequently increased. In addition, the Board altered their method of depreciating equipment purchases during November 1987, after the budget was approved, from a 10-year depreciation schedule to expending the purchases 100 percent in the year purchased.

The cost of the additional research program (an acreage survey) was $40,000 and the change in the Board's method of depreciating equipment purchases resulted in a line-item over-expenditure of $27,093. Funds were available in the budget to cover $27,947 of these costs, leaving $39,146 as the amount over-expended. It will not be necessary to increase the assessment rate for the 1987–88 marketing year as adequate funds are available to cover the increase.

The Board also recommended on February 10, 1989, with one dissenting vote, to increase the expenses for the 1988–89 marketing year by $75,000 bringing the total budget from $1,400,294 to $1,475,294. The reason for this expense increase is that the walnut industry would like to conduct an additional marketing research project. The purpose of the research would be to study the reasons for a decline in domestic walnut shipments and to develop new methods of increasing domestic shipments. This marketing research program accounts for the increase in expenses by $75,000. It will not be necessary to increase the assessment rate for the 1988–89 marketing year because adequate funds are available to cover the expense.

The funds to cover these increased expenses came from uniform assessments paid by handlers. While this action may impose additional costs on handlers, and some handlers may pass these costs on to producers, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action amends §§ 984.339 and 984.340 and is based on Board recommendations and other information. A proposed rule was published in the March 29, 1989, issue of the **Federal Register** (54 FR 12923). Comments on the proposed rule were invited from interested persons until April 10, 1989. No comments were received.

After consideration of the information and recommendations submitted by the Board and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

The approval for the expense increase for the 1988–89 marketing year needs to be expedited, as the Board would like to proceed with the marketing research project approved by the Board. Therefore, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 984

California, Marketing agreements and orders, Walnuts.

For the reasons set forth in the preamble, 7 CFR Part 984 is amended as follows:

PART 984—[AMENDED]

Note: These sections will not appear in the annual Code of Federal Regulations.

1. The authority citation for 7 CFR Part 984 continues to read as follows:

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

§ 984.339 [Amended]

2. Section 984.339 is amended by changing "$1,280,936" to "$1,320,082."

§ 984.340 [Amended]

3. Section 984.340 is amended by changing "$1,400,294" to "$1,475,294."

Dated: May 3, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–10947 Filed 5–5–89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 987

[Docket No. FV–89–032]

Domestic Dates Produced or Packed in Riverside County, California; Increase in Expenses for 1987–88 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes an increase in expenses for the California Date Administrative Committee (committee), established under Marketing Order 987, for the 1987–88

crop year. The expenses are increased from $411,267 to $448,019. The $36,752 increase is needed to cover advertising and promotion expenditures in excess of those authorized in the committee's 1987–88 budget.

EFFECTIVE DATE: October 1, 1987 through September 30, 1988.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–So., Washington, DC, 20090–6456, telephone (202) 475–3862.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 987 (7 CFR Part 987) regulating the handling of dates produced or packed in Riverside County, California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule has been reviewed under Executive Order 12291 and Department Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

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

There are approximately 26 handlers of California dates regulated under this marketing order each season, and approximately 135 date producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

A final rule establishing expenses in the amount of $386,267 for the 1987–88 crop year was published in the **Federal Register** on January 7, 1988 (53 FR 401). The committee's expenses were increased by $25,000 to $411,267 on May 26, 1988 (53 R 18973). Such expenses included $378,253 for advertising and promotion. The committee also had $55,000 in unexpended advertising funds from the 1986–87 crop year.

The committee's 1987–88 financial audit reflects 1987–88 market promotion expenditures of $470,005. After deducting the $55,000 which was budgeted in the 1986–87 crop year, the committee has 1987–88 promotion expenditures of $415,005, which exceeds 1987–88 authorized expenditures by $36,752.

At its March 2 meeting, the committee unanimously recommended that its 1987–88 expenses be increased by $36,752 to cover the expenditures in excess of those approved by the Department. Therefore, authorized expenses for the 1987–88 crop year are increased from $411,267 to $448,019. Adequate funds were available to cover the additional expenses. Hence, no increase in the assessment rate was recommended.

Notice of this action was published in **Federal Register** on April 4, 1989 (54 FR 13526) and interested persons were invited to comment thereon. The comment period ended April 14, 1989. No comments were received.

The over-expenditure was a result of the committee operating on a cash basis of accounting which only accounted for expenses as they are paid and not for financial obligations yet to be met. This, combined with the fact that the committee's advertising agency did not provide a detailed accounting of each individual promotion activity (consumer advertising, food service, bakery, etc.), made it difficult for the committee to accurately determine its financial position each month.

The committee's auditor has suggested various changes in accounting procedures which should make the committee more aware of its financial situation at any given time. The Department has also suggested that the committee request more detailed invoices, separated by expenditure category, from its advertising agency. The committee is implementing these suggestions which should prevent future over-expenditures.

The Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendation submitted by the committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 987

Marketing agreement and order, Dates, California.

For the reasons set forth in the preamble, 7 CFR Part 987 is amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR Part 987 continues to read as follows:

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

§ 987.332 [Amended]

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

2. Section 987.332 is amended by changing "$411,267" to "$448,019".

Dated: May 2, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–10899 Filed 5–5–89; 8:45 am]

BILLING CODE 3410-22-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS Number: 1122–89]

RIN 1115–AB32

School Approval and Withdrawal

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule requires that schools approved by the Immigration and Naturalization Service (INS) for attendance by foreign students report any significant changes made to their names, addresses, or curricula. This requirement is necessary to permit the Service to monitor approved schools to ensure their continued eligibility. The Service will withdraw the approval of a school on notice for failure to comply with this reporting requirement. This rule also updates the regulation regarding withdrawal of school approval to reflect current school transfer procedures for F–1 nonimmigrant students.

EFFECTIVE DATE: June 7, 1989.

FOR FURTHER INFORMATION CONTACT: Pearl B. Chang, Senior Examiner, Immigration and Naturalization Service,

425 I Street NW., Washington, DC 20536, Telephone: (202) 633-3946.

SUPPLEMENTARY INFORMATION: The Service published proposed regulations in the **Federal Register** at 54 FR 4831, on January 31, 1989, announcing the requirement for schools approved for attendance for foreign students to report to the Service any material modification to their names, addresses, or curricula. This requirement is designed to permit the Service to monitor approved schools to ensure their continued eligibility. Failure to comply with this requirement may result in the withdrawal of the Service's approval pursuant to the provisions of § 214.4.

As explained in the preamble of the proposed rule, it is not the Service's intention to require that schools report minor changes made to their academic curricula. Rather, schools are only expected to report substantial changes that will bear on the school's eligibility for continued INS approval.

During the 30-day comment period, which ended on March 2, 1989, the Service received only two written comments on the proposed rule. Both commenters suggest that the Service exempt those educational institutions that are long-established and well-known from the reporting requirement. The Service agrees that institutions of higher education seldom change their names, addresses, or curricula, and that when changes do take place, they rarely affect the schools' eligibility for continued approval by INS. Therefore, it is unlikely that the reporting requirement established by this rule will result in burdensome paperwork for schools or the Service. On the other hand, to exempt some schools from this reporting requirement would create a class system that is inconsistent with the Service's policy of treating all approved schools on an equal basis. To report material changes made to its name, address or curriculum, a school should submit to the district director having jurisdiction over the school a brief letter of explanation along with a current school catalog containing information about the changes.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

This rule contains information collection requirements which have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control number for these collections is contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Schools, Student.

Accordingly, Part 214, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 214–NONIMMIGRANT CLASSES

1. The authority citation for Part 214 continues to read as follows:

Authority: 8 U.S.C. 1103, 1184, and 8 CFR Part 2.

2. In § 214.3, paragraphs (e)(2) and (h) are revised to read as follows:

§ 214.3 Petitions for approval of schools.

* * * * *

(e)* * *

(2) *General.* Upon approval of a petition, the district director shall notify the petitioner. An approved school is required to report immediately to the district director having jurisdiction over the school any material modification to its name, address or curriculum for a determination of continued eligibility for approval. The approval of a school is valid as long as the school operates in the manner represented in the petition. The approval is valid only for the type of program and student specified in the approval notice. The approval may be withdrawn in accordance with the provisions of § 214.4.

* * * * *

(h) *Review of school approvals.* The district director may periodically review the approval of a school in his or her jurisdiction for compliance with the reporting requirements of paragraph (g)(2) of this section and for continued eligibility for approval pursuant to paragraph (e) of this section. The district director shall also, upon receipt of notification, evaluate any changes made to the name, address, or curriculum of an approved school to determine if the changes have affected the school's eligibility for approval. The district director may require the school under review to furnish a currently executed Form I-17 without fee, along with supporting documents, as a petition for continuation of school approval when there is a question about whether the school still meets the eligibility requirements. If upon completion of the review, the district director finds that the approval should not be continued, he or she shall institute withdrawal proceedings in accordance with § 214.4(b).

* * * * *

3. In § 214.4, paragraph (a)(1)(iii) is revised and paragraph (a)(1)(xviii) is added to read as follows:

§ 214.4 Withdrawal of school approval.

(a)* * *

(1)* * *

(iii) Failure of a designated school official to notify the Service of the attendance of an F-1 transfer student as required by § 214.2(f)(8)(ii).

* * * * *

(xviii) Failure of a designated school official to notify the Service of material changes to the school's name, address, or curriculum as required by § 214.3(e)(2).

* * * * *

Dated: April 7, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89-10923 Filed 5-5-89; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

[Revision 3]

RIN 3245-AB 77

Surety Bond Guarantee Regulations

AGENCY: Small Business Administration (SBA).

ACTION: Interim final rules.

SUMMARY: Pub. L. 100-590, the Small Business Administration Reauthorization and Amendment Act of 1988, created within SBA's Surety Bond Guarantee (SBG) program a pilot Preferred Surety Bond Guarantee (PSB) program which allows SBA to authorize selected surety companies to issue, monitor and service surety bonds subject to SBA's guarantee without specific SBA approval. This program, unless extended by Congress, is due to end Sept. 30, 1992. These regulations implement the new statute by establishing selection criteria for such companies, and specifying the principles and procedures (detailed in the Supplementary Information below) by which SBA will administer the new program. The new law also reinstates, with some changes, SBA's authority to prevent imminent breach of contract by financing the principal's performance, or providing other services, with up to 10%

of the contract price. The conditions to the use of this authority are set forth. SBA uses this occasion to make minor changes in existing regulations (specified below) by promulgating a complete revision of the entire regulatory framework in Part 115 of Title 13, Ch. I of the Code of Federal Regulations. Because section 209 of the cited statute makes its provisions effective on May 2, 1989, these regulations are published as "interim final" without opportunity for prior public comments. SBA requests comments on or before July 7, 1989. These comments will be carefully considered, and necessary amendments made as soon thereafter as practicable.

DATES: This rule is effective May 8, 1989. Comments are due on or before July 7, 1989.

ADDRESSES: Comments should be sent to James W. Parker, Jr., Director, Office of Surety Guarantees, Small Business Administration, 4040 N. Fairfax Drive, Suite 500, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: James W. Parker, Jr., Tel: (703) 235–2900.

SUPPLEMENTARY INFORMATION: SBA's Surety Bond Guarantee regulations were last revised on August 24, 1988 (Rev. 2), effective November 28, 1988 (53 FR 32195 and 41149). The present Revision 3 follows Rev. 2 in many respects, and adds new provisions implementing the new Preferred Surety Bond Guarantee program (PSB) enacted as Title II of the cited statute, Pub. L. 100–590, the "Preferred Surety Bond Guarantee Act of 1988", per section 201 thereof (102 Stat. 3007). This supplementary information will first set forth the principal provisions implementing the new Act, and then the complementary changes made to Rev. 2, the prior regulation. Provisions of Rev. 2 carried forward into Rev. 3 are not discussed.

Section 115.3(a) *Policy* has been amended to add the new congressional policy of the preferred surety bond program (PSB) at the end of paragraph (a) thereof.

Section 115.3(b) *Types of bonds* has been amended to delete the term "coterminous" from the discussion of "ancillary" bonds, because the new statute omitted that term, which previously required that ancillary bonds could not, in point of time, extend beyond the life of the main bonds.

A new § 115.3(d) has been inserted in this same section, reflecting the policy that SBA indemnify sureties as follows:

(1) Not to exceed 70% of the loss on bonds issued under the PSB program;

(2) Not to exceed 80% of the loss on bonds issued under the conventional (prior approval) program, except;

(3) 90% of the loss for bonds issued under the prior—approval program if—

- The total amount of the contract at the time of the issuance of the bond is $100,000 or less, or
- The bond was issued to a small concern owned and controlled by socially and economically disadvantaged individuals, as defined in the regulation.

The regulation further provides that if a contract amount of $100,000 or less at the time of bonding is subsequently increased beyond $100,000, SBA's indemnification percentage of 90% shall decrease by one percentage point for each $5,000 of increase in the contract amount above $100,000, but shall not decrease below 80%, the percentage which would have been applicable if the contract amount had exceeded the $100,000 limit at the time of bonding.

A new § 115.3(e) has also been inserted, which sets forth the criteria that SBA will use to select sureties to operate under PSB. These criteria include, but are not limited to the following:

(1) An underwriting limit of at least two and one-half million dollars;

(2) Adherence to Surety Association of America advisory rates;

(3) Underwriting and claims departments staffed by the surety's own employees;

(4) Surety bond volume over the last five years; and

(5) Rating by recognized authority.

The definition section (§ 115.4) has been amended to contain a definition for "imminent breach" (threat to successful performance); and for "PSB Surety" (a surety admitted to PSB and given periodic allocations of guarantee authority).

A new § 115.6 sets forth in paragraph (a) the application procedures for admission to the PSB program, with emphasis on underwriting and claims procedures, compliance with SBA's requirements, and geographic diversification.

Section 115.6(b) emphasizes that SBA's guarantee attaches only to bonds issued within the surety allotment authority. Bid bonds count against the allotment only until contract award, but the discharge of final bonds does not restore allotment authority. A surety admitted to PSB remains free to submit guarantee applications outside PSB if its allotment is exhausted, or if it desires the higher indemnification percentages available outside of PSB.

Section 115.6(c) requires PSB sureties to observe all SBA regulations and collect all the information and certifications that SBA requires in the prior-approval SBG program. PSB sureties must advise SBA of all bid bonds issued within two weeks, and of all final bonds within 45 calendar days, remitting the principal's guarantee fee at the same time. Failure to do so invalidates SBA's guarantee.

Section 115.6(d) requires an annual audit of PSB participants by SBA examiners, as does § 115.18(a).

Section 115.6(e) authorizes SBA to suspend a surety from PSB on 30 days notice, among other reasons, if surety violates SBA regulations or its own underwriting of claims procedures or causes SBA excessive losses. Such suspension may be appealed under SBA's procedures (Part 134).

Section 115.7(a) reflects the changed guarantee requirements of the new statute (section 411(a)), which now include that the contractor is a small business, that the bond is expressly required by the contract, that the bond is not available without SBA's guarantee, and that there is reasonable expectation that the contractor will perform the contract successfully, and that the terms of the bond are reasonable.

Section 115.7 (c) and (d) conform the PSB requirements to those of the prior approval program. A surety issuing a PSB guarantee must collect the same information and certifications and its notices of final bonds must include the principal's guarantee fee.

Section 115.10(b) provides that SBA will verify compliance when PSB claims are received.

Section 115.11(b) requires the surety to notify SBA within 30 days of principal's default, in order to enable SBA to prevent the issuance of further bond guarantees to the same principal. SBA is to be advised of a contractor's reinstatement.

Section 115.13(b) provides that PSB Sureties may also issue bonding lines if they adhere to the same limitations that SBA observes when it issues a bonding line.

Section 115.14(b) implements the restored "imminent breach" authority of the new statute for both prior-approval and PSB bonds. Under a prior-approval bond, the surety must obtain SBA's approval before making payments to prevent a breach, and such payment is generally limited to 10% of the contract price. Under PSB, a surety may use its own judgment, but SBA's total indemnification of the surety cannot exceed its guaranteed share of the bond liability.

Section 115.16 *Defenses of SBA* reflects the statutory change of SBA's defense against liability. The newly added defenses are: material breach of

the guarantee agreement, and substantial regulatory violations. Paragraph (c) defines "material breach", and paragraph (d) defines "substantial regulatory violation" as those which increase SBA exposure to liability by 25% or $50,000, whichever is less. This measure of a material breach of the guarantee agreement applies both to increases in the bond liability, and in the contract amount with no change in the bond liability, without SBA's prior approval. The limit of 25% or $50,000 was selected for liability increases, either for purposes of additional guarantee fee or for denial of liability by SBA, if such increase was not submitted for prior SBA approval. This conforms to the Federal Acquisition Regulation, 48 CFR Ch. I, 28.106—5(a)(2)(ii), which requires a contracting officer to obtain the consent of the surety, among other conditions, only if the contract price is changed upward or downward by more than 25% or $50,000. Since many surety bond guarantees are issued for Federal contracts and since lesser changes can be made without the surety's consent SBA has determined to use the same criteria for these regulations.

Regulatory violations also include acts contrary to the purposes of the program or SBA's mission, or to national policy (e.g. racial discrimination). The new defenses are also reflected in § 115.17 as grounds for refusal to issue further guarantees or to suspend or revoke the PSB status of a surety. In addition, the regulation adds to the examples previously given for the absence of good character, the case of a person or firm debarred from participation in Federal programs.

The following discussion covers the most significant regulatory changes from Revision 2 to Revision 3 which are not mandated by the statute, but are necessary in order to create the two-track system of the dual SBG program.

Former § 115.3(d) *Appeal of surety* has been omitted because informal review by higher officials—as distinguished from formal review by SBA's Office of Hearings and Appeals—is available throughout the SBG program. The termination of a PSB company's status, however, requires a formal proceeding (see § 115.6(e)).

Section 115.3(f)(1) now requires a surety to keep a contemporaneous record of bond issuances, to enable a determination of the exact bond issuance date versus the time work has begun. Paragraph (f)(3) of this section defines the time work has begun as that moment when the contractor exposes his surety to liability. This change is necessary to differentiate between the issuance of bonds under a bonding line, and under PSB. See § 115.3(f).

The definition of "Bid Bond" in § 115.4 has been changed to shorten the SBA guarantee of the bid bond from 12 months to 120 days. This brings the bid bond validity span closer to the Federal Acquisition Regulation, which allows for a 60 day extension of a bid bond beyond the time for bid acceptance without reference back to the surety (Standard Form 24, 48 CFR Ch. I, 53.301–24). Accordingly, SBA's guarantee authority will not unnecessarily remain encumbered with outstanding bid bond guarantees. This change is necessary since PSB sureties will issue bid bonds without prior SBA approval.

The definition of *Loss under Payment Bond* and the definition of *Payment Bond* in § 115.4 have been expanded to include debts of the principal (beyond labor and materials) for which the surety is liable. The definition of *Loss from Attorney's Fees* no longer refers to suits against the surety initiated by "any other person" besides the principal, because SBA did not intend to exclude from compensable loss all tort suits against a surety. These changes give sureties operating under PSB a clearer description of compensable versus noncompensable losses.

The discussion of the absence of good character in § 115.5(b) has been modified to state that it is a person "under indictment" rather than one who "has been indicted" that will be deemed of other than good character, because past indictments which may have been dismissed are not relevant to a later character determination. This change is editorial, and expresses better what SBA always intended.

A new § 115.5(f) provides that persons or firms debarred from transactions with any Federal department or agency are ineligible for participation in this program. This paragraph is necessary to meet the new requirements of government-wide debarment and suspension rules, 13 CFR Part 145 and 48 CFR Subpart 9.4.

Section 115.10 *SBA's review of surety's underwriting standards* has been conformed to the new guarantee conditions of section 411(a) of the Act; see discussion above under § 115.7(a).

Section 115.12(c) *SBA charge to surety* has been changed. SBA's guarantee fee is now 20 percent of the premium which a surety charges under the PSB program, or under the prior-approval program for premiums not in excess of the Surety Association of America's advisory rates. On all other bonds the guaranty fee remains at a flat dollar amount—currently $4—per thousand dollars of bond or contract amount. Both the contractor and the sureties are required to pay additional guarantee fees if the contract amount and/or the bond liability is increased in excess of 25 percent or $50,000, whichever is less. Sureties are entitled to a like refund if the contract amount or the bond liability is decreased to a like extent. This change is necessary to recognize the difference between the PSB and the prior-approval programs.

Section 115.13(b) has been amended to include as work on hand, which is to be reported by a contractor under a bonding line to the surety, jobs bonded "otherwise", meaning bonded by a different surety. This change is necessary because a PSB and a prior-approval surety could bond the same contractor.

In § 115.13(c) the word "determined" has been substituted for "recommendation". While under the prior-approval program the surety recommends limitations on a bonding line to SBA, which SBA usually accepts, the limitations on a bonding line under the PSB program are entirely within the surety's discretion. We felt that "determined" was suitable for both situations.

Section 115.14(c) *Salvage and recovery* has been amended to require remittance by a surety not operating under PSB of salvage and recovery collections to SBA within 90 days of receipt. This change is necessary to differentiate between sureties under PSB and other sureties.

Section 115.15 *Claims for losses* has been amended. A PSB surety may use its own claims form if it has been approved by SBA, whereas non-PSB sureties must use SBA Form 994H. A copy of the bonded contract must be submitted to SBA with surety's initial claim for indemnification. This will save the intervening time when SBA requests the contract for claim verification.

Section 115.17(b) *Business Integrity* has been amended by adding to the eligibility requirements for sureties to participate in the SBG program, a new paragraph (5) which excludes persons debarred or ineligible for participation in any Federal program, pursuant to government-wide debarment and suspension rules, see 13 CFR Part 145 and 48 CFR Subpart 9.4.

Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act and the Paperwork Reduction Act

For purposes of Executive Order 12291, SBA has determined that these rules are major since they restructure a

program with a program level of $1.25 billion.

SBA certifies that these rules do not warrant the preparation of a Federal Assessment in accordance with Executive Order 12612.

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 604, SBA has determined that these rules will have a significant economic impact on a substantial number of small entities.

The following analysis is provided within the context of the review required under Executive Order 12291 and the Regulatory Flexibility Act (5 U.S.C. 603):

These rules are necessary to implement the Preferred Surety Bond Guarantee Program Act of 1988, Pub. L. 100–590, Title II approved November 3, 1988 (102 Stat. 3007). This Act created within SBA's existing surety bond guarantee program a new program under which SBA may authorize selected sureties "without further administration approval, to insure, monitor, and service such bonds subject to the Administration's guarantee."

It is therefore necessary to set forth how such sureties will be selected to issue SBA guarantees on SBA's behalf without prior SBA approval, how they would operate to meet SBA's requirements under the statute and the regulations, how SBA would regulate, audit and, if necessary, terminate the PSB status of such sureties. At the same time, it is necessary to restructure the existing regulatory system to accommodate a two-track surety bond guarantee program.

The change in § 115.12(c) *SBA charge to surety* was made because the prior computation of the guarantee fee, a flat dollar amount, had occasionally led to absurd results, such as in the case of supply bonds, when the SBA charge could exceed the surety's premium. We believe that the present system will avoid such results.

We believe that the new statute and these regulations will result in lower bonding costs and better availability of bonds for small concerns, because the expected entry into the SBG program of major industry members with their wide organizational network, at premiums which do not exceed the Surety Association of America's advisory rates, will make more bonds at lower cost available to the small business market. It should be noted that the PSB represents a trade-off: PSB sureties accept a lower indemnification rate against their losses, and lower premiums, in return for the privilege of protecting their bonds with the SBA guarantee without "second-guessing" by SBA. However, given the finite guarantee authority for SBA, it is conceivable that over time a market shift away from SBA's traditional participants towards the new SBG entrants could occur, although we do not think so. SBA's increased bonding authority, together with the trade-off discussed above, should combine to prevent a detriment to our traditional partners.

SBA is not aware of any suitable alternatives to the rules here set forth.

Because of the statutory deadline for final rule making, as explained in the *Summary*, these rules are published as interim final, with a request for comments.

There are no reporting, recordkeeping and other compliance requirements not approved by the Office of Management and Budget which would come under the Paperwork Reduction Act, 44 U.S.C. Ch. 35.

There are no federal rules which duplicate, overlap or conflict with these rules.

The legal authority for these rule changes is section 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6), section 308(c) of the Small Business Investment Act, 15 U.S.C. 687(c), and section 411(d) of that Act, 15 U.S.C. 694b(d).

List of Subjects in 13 CFR Part 115

Small business, Surety bonds.

Pursuant to the authority contained in section 411(d) of Title IV, Part B, Small Business Investment Act of 1958, as amended, (15 U.S.C. 694b(d)) and in section 203 of the Preferred Surety Bond Guarantee Program Act of 1988, Pub. L. 100–590 (102 Stat. 3007), Title 13, Code of Federal Regulations, Chapter I, Part 115, is hereby revised as follows:

PART 115—SURETY BOND GUARANTEE

Secs.

Authority: Title IV, Part B of the Small Business Investment Act of 1958 (15 U.S.C. 694a, 694b), the Inspector General Act of 1978 (5 U.S.C. App. 1) and Pub. L. 100–590, Title II.

§ 115.1 Statutory provisions.

The relevant statutory provisions will be found at 15 U.S.C. 694a, *et seq.*

§ 115.2 Headings.

Headings are explanatory (for reference ease) and are not regulatory.

§ 115.3 Policy.

(a) *Congressional intent.* It is the intent of Congress to strengthen the competitive free enterprise system by assisting qualified small business concerns to obtain on a prudent and economically justifiable basis, bid, payment, or performance bonds and bonds ancillary thereto, which are otherwise unobtainable without a Small Business Administration (SBA) guarantee. Consequently, Congress has authorized SBA to guarantee partially (upon such terms and conditions as SBA may prescribe) sureties participating in the Surety Bond Guarantee (SBG) program against losses incurred as a result of a principal's breach of the terms of a big bond, payment bond, performance bond, or bonds which are ancillary to such bonds, or any contract not exceeding $1,250,000 in face value. Congress has further authorized SBA to empower selected sureties, without further SBA approval, to issue, monitor, and service such bonds, subject to SBA's guarantee. This latter program is hereafter referred to as the Preferred Surety Bond Program (PSB).

(b) *Types of bonds.* The Administration has determined that only bid, performance, and payment bonds (other than bonds in the nature of a financial guarantee—see definition of "contract," § 115.4) issued in connection with a contract and of a type listed in the "Contract Bonds" section of the current Rating Manual of the Surety Association of America[1] will be eligible for an SBA guarantee. In addition, the SBA guarantee may be extended to such "ancillary" bonds as are incidental to the contract and essential for its performance. See definition of "Contract" in § 115.4.

(c) *Guarantee agreement.* A surety company participating in this program shall be listed by the U.S. Treasury as eligible to issue bonds in connection with Federal procurement contracts, and

[1] 100 Wood Avenue South, Iselin, New Jersey 08830.

be a corporation determined by SBA to be a surety eligible to participate in this program. The terms and conditions of SBA's bond guarantee agreements may vary from surety to surety, depending on SBA's experience with a particular surety. Where the statute does not mandate the division of losses, the Office of Surety Guarantees will consider, among other things, surety's loss rate in this program in comparison to other sureties participating with SBA to a comparable degree, the rating or ranking designation assigned to the surety by recognized authority, the average dollar amount of bond penalty per bond written in this program and the ratio of bid bonds to final bonds written in this program.

(d) *Indemnification.* (1) SBA shall pay to the surety ninety percent (90%) of the loss incurred and paid if:

(i) The total amount of the contract at the time of issuance of the bond is one hundred thousand dollars ($100,000) or less; or

(ii) The bond was issued on behalf of a small concern owned and controlled by socially and economically disadvantaged individuals. "Socially and economically disadvantaged individuals" shall include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Subcontinent Asian Americans, and other minorities or any other individual found to be disadvantaged by SBA pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)). See § 124.105 of this chapter. A concern so owned and controlled shall qualify if it qualifies as small under the size standard for its primary industry as set forth in Part 121 of this chapter and if it is at least fifty-one percent (51%) or more owned by such disadvantaged individuals, and it is managed and its daily business operations are controlled by one or more such individuals.

(iii) In cases where the contract amount, subsequent to the issuance of the bond under paragraph (d)(1)(i) of this section, increases to more than $100,000, through change orders or otherwise, the percentage of SBA's indemnification of the surety shall decrease by one percentage point for each $5,000 of increase or part thereof, but shall not decrease below 80 percent.

(2) SBA shall indemnify a surety not operating under PSB in an amount not to exceed an administrative ceiling of eighty percent (80%) of the loss on bonds issued to other than disadvantaged concerns, or on bonds on contracts in excess of $100,000 (one hundred thousand dollars).

(3) SBA shall indemnify a surety operating under PSB in an amount not to exceed seventy percent (70%) of the loss.

(e) *Selection of sureties for the PSB program.* SBA's selection of sureties empowered to issue, monitor and service bonds subject to SBA's guarantee without prior SBA approval will be guided by, but not limited to, these factors:

(1) An underwriting limitation of at least two and one-half million dollars ($2,500,000) on the U.S. Treasury Department list of acceptable sureties;

(2) An agreement to charge small concerns bonded under PSB no more than the advisory premium rates of the Surety Association of America;

(3) Underwriting authority is vested only in employees of the surety's home office who, as a group, write at least 25 percent of their contract bond business outside the SBA Surety Bond Guarantee program;

(4) Claims are processed and settled only by employees of a permanent claims department satisfactory to SBA;

(5) Number of bid and final contract bonds issued by the surety from year to year for the last five fiscal years;

(6) The rating or ranking designations assigned to the surety by recognized authority.

The PSB program shall terminate on September 30, 1992, unless extended by Act of Congress. SBA guarantees issued under this program on or before September 30, 1992, shall remain in effect after such date.

(f) *Timeliness.* (1) A guarantee issued by SBA, other than pursuant to a surety bonding line (see § 115.13), will be honored only if issued before the issuance of the executed bond(s) and the work under the contract has begun. To establish the exact bond issuance date, a surety shall maintain a contemporaneous record of the issuance of each bond (OMB Approval No. 3245–0007).

(2) A guaranteed bond issued under PSB will be honored by SBA only if the bond was issued within the dollar and time limits allocated to the surety pursuant to § 115.6(b) of this part, and before the work under the contract to be bonded has begun, or in the event work has begun, if the PSB surety's file contains the documentation required under paragraphs (f)(4)(i) through (iii) of this section.

(3) For purposes of this paragraph (f), work on a job shall be considered as having begun when a contractor takes any action which exposes its surety to liability under applicable law.

(4) SBA may guarantee a bond issued after work on the contract has begun, but only by the signature on Form 991 (OMB No. 3245–0007) of an SBA official having delegated authority to approve contract amounts such as underlie the bond in question (see § 101.3–2, Part III(c) of this chapter), upon receipt of all of the following from the surety:

(i) Evidence (certified copy of contract or sworn affidavit) from the principal that the surety bond requirement was contained in the original job contract, or documentation satisfactory to SBA, as to why a surety bond was not previousiy secured and is now being required.

(ii) A certification by the principal listing all suppliers and indicating that they are paid to date, attaching a waiver of lien from each; that all taxes and labor costs are current; that all subcontractors are paid to their current position of work and a waiver of lien from each, or an explanation satisfactory to SBA why such documentation cannot be produced.

(iii) A certification by obligee that all payments due under the contract to present status have been made and that the job has been satisfactorily completed to present status.

§ 115.4 Definitions.

This section includes terms defined at 15 U.S.C. 694a and provides definitions of other terms.

"Affiliate" is defined in § 121.3(a) of this chapter.

"Amount of Contract." The amount of the contract to be bonded shall be established as of the time of issuance of the executed and guaranteed bond or bonds. The contract amount shall not exceed $1,250,000 in face value. The amounts of two or more contracts for a single project, to be performed in phases, shall not be aggregated if the prior bond is released (other than for maintenance or warranty—see definition of "contract" in this section) before the beginning of each succeeding phase. A "single project" means one represented by two or more contracts of one principal or its affiliates with one obligee or its affiliates for performance at the same locality, irrespective of job title or nature of the work to be performed.

"Ancillary Bond" means a bond incidental and essential to performance of the bonded contract.

"Bid Bond" means a bond conditioned upon the bidder on a contract (not to exceed a contract amount of $1,250,000) entering into the contract, if bidder receives the award thereof, and furnishing the prescribed payment bond and performance bond. A bid bond guarantee shall expire 120 days after

issuance of the bond, unless SBA and surety agree otherwise in writing.

"Contract" means an obligation of the principal requiring the furnishing of services, supplies, labor, materials, machinery, equipment or construction (including a warranty up to two years if such warranty is limited to defective materials or workmanship). The contract shall not be a permit, subdivision contract, lease, land contract, evidence of debt, financial guarantee (*e.g.*, a contract requiring payment(s) by principal to obligee), warranty of performance or efficiency, warranty of fidelity, or release of lien (other than for claims under a guaranteed bond) nor shall a contract prohibit a surety from performing the contract upon default of the principal. A warranty in excess of two years or against other than defective materials or workmanship shall not be covered by SBA's guarantee unless SBA, by a separate writing signed by surety and SBA, agrees to a warranty in excess of two years from completion or for other than materials and workmanship, ancillary to an otherwise eligible contract, if such warranty is the immediate contractual responsibility of the principal, upon a showing that such warranty is customarily required in the relevant trade or industry.

"Contractor" means the person with whom the obligee has contracted to perform the contract.

"Imminent Breach" means a threat to the successful performance of a bonded contract which, unless remedied by surety, makes a loss under the bond appear to be inevitable.

"Issuance" or "issued" means the release of the SBA-guaranteed executed bond by the surety, which binds surety to the contract if such contract is awarded to the principal.

"Loss" shall have the following meanings:

(a) Loss Under Bid Bond. In the case of a bid bond, the lesser of the penal sum or the sum which is the difference between the bonded bid and the next higher responsive bid, less any amounts recovered by reason of the principal's defenses against the obligee's demand for performance by the principal and less any sums recovered from indemnitors and other salvage. Only in jurisdictions where statute or settled decisional law requires forfeiture bid bonds for public works contracts, shall forfeitures on such bonds be deemed "Loss."

(b) Loss Under Payment Bond. In the case of a payment bond, at the surety's option, the sums necessary to pay all just and timely claims against the principal which are for the value of labor, materials, equipment and supplies furnished for use in the performance of the contract, and to pay other debts of the principal for which the surety is liable under the bond, or the penal sum of the payment bond, with interest and related court costs and attorney's fees, if any, less any amounts recovered (through offset or otherwise) by reason of the principal's claims against laborers, materialmen, subcontractors, suppliers or other rightful claimants, and less any sums recovered from indemnitors and other salvage.

(c) Loss Under Performance Bond. In the case of a performance bond, at the Surety's option, the sums necessary to meet the cost of fulfilling the terms of a contract, or the penal sum of the bonds, with interest and related court costs and attorneys fees, if any, less amounts recovered (through offset or otherwise) by reason of the principal's defenses or causes of action against the obligee and less any sums recovered from indemnitors and other salvage.

(d) Loss adjustment expense. Amounts actually paid, specifically allocable to the investigation, adjustment, negotiation, compromise, settlement of or resistance to a given claim (including court costs and reasonable attorney's fees) for loss resulting from the asserted breach of the terms of any guaranteed bond, but excluding all unallocated or overhead expenses of surety. Any allocation method must be reasonable and in accord with generally accepted accounting principles.

(e) Loss from litigation cost. Expenses shall also include court costs and reasonable attorney's fees incurred in suits to enforce mitigation of loss as defined in paragraphs (a) through (c) of this definition, including suits to obtain sums due from obligees, indemnitors, principals and others, but no such expense shall be paid for any such suits filed against the United States of America or any of its agencies, officers or employees unless the surety has, prior to filing such suit, received written concurrence from SBA that such suit may be filed, or unless such claim is asserted as a cross-claim or counterclaim.

(f) Loss from attorneys' fees and damages. "Loss" shall not include attorney's fees and court costs incurred by a surety in a suit by or against SBA or its Administrator, and shall not include such costs or payments (*e.g.*, tort damages) arising out of a successful suit sounding in tort initiated under the bond by a principal against such surety.

(g) Loss after excess contract amount. Where the contract amount, through change orders or otherwise, within the limits permitted by § 115.16(e), is increased after issuance of the executed guaranteed bond beyond the statutory limit of $1,250,000, SBA's share of the loss shall be limited to that percentage of the increased contract amount, which the statutory limit represents, multiplied by the guarantee percentage approved by SBA pursuant to § 115.3(d). Thus, if a contract amount has been increased to $1,375,000, SBA's share of the loss under an 80% guarantee would be limited to 72.73% [*1,250,000*/1,375,000=90.91% × 80%=72.73%].

"Obligee" means in the case of a bid bond, the person requesting bids for the performance of a contract, or in the case of a payment bond or performance bond, the person who has contracted with a Principal for the completion of the contract and to whom the primary obligation of the surety runs in the event of a breach by the principal of the conditions of a payment bond or performance bond. No person shall be named co-obligee on the bond unless such person (including a lender to the original obligee) is bond to the principal to the same extent as the original obligee or unless such co-obligee is a Federal department or agency.

"Payment Bond" means a bond conditioned upon the payment by the Principal of money to persons who furnish labor, materials, equipment and supplies for use in the performance of the contract and to other persons who have a right of action against such bond.

"Performance bond" means a bond conditioned upon the completion by the principal of a contract in accordance with its terms. Such bond shall not prohibit a surety from performing the contract upon default of the principal.

"Premium" means in amount determined by applying an approved rate to the bond or contract amount, and does not included surcharges for extra services whether or not considered part of the "premium" under local law.

"Principal" means (a) in the case of a bid bond, a person bidding for the award of a contract, or (b) in the case of final bonds, the person primarily liable to complete a contract for the obligee, or to make payments to other persons in respect of such contract, and for whose performance or payment the surety is bound under the terms of a payment or performance bond. A principal may be a prime contractor or a subcontractor.

"PSB" means the Preferred Surety Bond Program (see "PSB Surety").

"PSB Surety" means a surety admitted by SBA to the Preferred Surety Bond Program (PSB) and authorized by SBA to issue, monitor and service without further SBA approval, bid, payment and

performance bonds, and bonds ancillary thereto, which shall be guaranteed by SBA, subject to these regulations, if issued within the periodic allocations set by SBA for each such preferred surety (see § 115.6(b)).

"Surety" means the person which is listed by the U.S. Treasury, see § 115.3(c), and is a corporation determined by SBA to be a surety eligible to participate in this program, which has entered into a Surety Bond Guarantee Agreement with SBA and (a) Under the terms of a bid bond, undertakes to pay a sum of money to the obligee in the event the principal breaches the conditions of the bond; (b) Under the terms of a performance bond, undertakes to pay a sum of money or to incur the cost of fulfilling the terms of a contract in the event the principal breaches the conditions of the contract; or (c) Under the terms of a payment bond, undertakes to make payment to all persons supplying labor and material in the prosecution of the work under the contract and who have a right of action against the bond under local law, or (d) Is an agent, independent agent, underwriter, or any other company or individual empowered to act on behalf of such person.

§ 115.5 Eligibility of principal.

In order to be eligible for a bond guaranteed by SBA, the principal must:

(a) *Size.* Qualify as a small business under Part 121 of this chapter;

(b) *Character.* Possess good character and reputation, as determined by SBA. A Principal will be deemed to meet this standard if each owner of twenty percent or more of its equity, and each of its officers, directors, or partners possesses good character and reputation. Good character and reputation shall be presumed absent when any such person is under indictment (pending disposition of such indictment) for or convicted of a felony, or has suffered an adverse final civil judgment that he or she has committed a breach of trust or the violation of a law or regulation protecting the integrity of business transactions or business relationships; or a regulatory authority has revoked, cancelled or suspended the license of such person necessary to perform the contract; or has obtained a bond guarantee by fraud or material misrepresentation (as these terms are defined in § 115.16), or has failed to keep Surety informed of unbonded contracts or a contract bonded by another surety as required by a bonding line commitment pursuant to § 115.13.

(c) *Need for bond.* Certify that a bond is required in order to bid on a contract or to serve as a prime contractor or subcontractor thereon;

(d) *Availability of bond.* Certify that a bond is not obtainable or reasonable terms and conditions without SBA's bond guarantee assistance; and

(e) *Partial subcontract.* Certify the percentage of work under the contract to be subcontracted. SBA will not guarantee bonds for contractors who are primarily brokers or packagers, see § 124.109(a) of this chapter.

(f) *Debarment.* Certify that applicant is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transactions with any Federal department or agency, pursuant to government-wide debarment and suspension rules. See, e.g., Part 145 of this chapter, and 48 CFR Subpart 9.4.

§ 115.6 Preferred Surety Bond Program (PSB).

(a) *Applications.* A surety shall make application for admission to PSB in writing to the Director, Office of Surety Guarantees (OSG), Small Business Administration, 4040 N. Fairfax Drive, Suite 500, Arlington, Virginia 22203. That office shall determine the eligibility of the applicant for admission to PSB status (see § 115.3(e)) and review the applicant's standards and procedures for underwriting, administration and claims and for geographic diversification. A surety admitted to PSB shall execute a "Preferred Surety Bond Agreement," before issuing SBA guaranteed bonds, and no SBA guarantee shall attach to bonds issued before SBA's Associate Administrator for Finance and Investment or his designee has countersigned such Agreement.

(b) *Allocation for guarantee authority.* OSG shall allot to each surety admitted to PSB a periodic maximum guarantee authority. No SBA guarantee shall attach to bonds issued by a PSB surety if such bonds are issued within a given period in excess of the allotted authority for such period and no reliance on future authority shall be permitted. A PSB surety's allocation shall be increased only by prior written permission of OSG. Bid bond guarantees shall count against the allocation until the contract has been awarded. The release of final bonds shall not restore such periodic allocation. A PSB surety may submit guarantee applications for prior SBA approval, subject to the regulations for SBA guarantees outside PSB, and such guarantees shall not count against the PSB surety's allocation nor be subject to the limitation on indemnification of § 115.3(d)(3).

(c) *Operations.* (1) A PSB surety shall observe all applicable SBA regulations (including but not limited to Parts 112, 113, 115, 116 and 117) and obtain from its applicants all the information and certification required by SBA. Subject to § 115.7(c), it shall document such observance of regulations and retain such certifications (including a contemporaneous record of the date of issuance of each bond) in its files, for inspection by SBA or its agents and for submission to SBA in connection with claims made under SBA's guarantee. See also § 115.3(f).

(2) A PSB surety shall issue and administer SBA-guaranteed bonds in the same manner and with the same staff as the surety's activity outside the PSB program.

(3) A PSB surety shall advise SBA of all bid bonds issued under PSB within ten working days of such issuance, and within 45 calendar days of the issuance of final bonds or the surety's approval of increases in the bond obligations in excess of 25 percent or $50,000, whichever is less, attaching thereto the principal's initial or (if applicable) additional guarantee fee. See § 115.7(d). Subject also to § 115.8(c), SBA's guarantee shall not cover a final bond for which SBA has not received the principal's initial or (if applicable) additional guarantee fee or has not received notice within 45 calendar days. The notice shall contain the name, trade address and employer ID number of the principal, the surety's SBA bond number, the obligee's name and address, a brief description of the nature, extent and location of the job, the bid or estimated contract and the bond amount.

(4) A PSB surety shall notify SBA of any suspension or debarment action for bonding against a principal within 30 calendar days after such action. See also §§ 115.11(d) and 115.15.

(5) A PSB surety may not accept a compromise proposal without SBA's prior written approval. A PSB surety intending to liquidate a small concern shall submit a liquidation plan to SBA, and SBA may require changes to such plan. Any liquidation plan approved by SBA shall be carried out in a commercially reasonable manner.

(d) *Reports and audits.* Each PSB surety shall make the reports to SBA required by these regulations, and shall be audited at least once each year by examiners selected and approved by the Administration (see § 115.18(a)).

(e) *Suspension and termination of preferred status.* SBA reserves the right to suspend the preferred status of a surety by written notice stating SBA's

reason(s) for such suspension, at least 30 calendar days prior to the effective date of the suspension. Any bonds issued under SBA's guarantee prior to the effective date of such suspension shall remain covered by SBA's guarantee. Reasons for such suspension, in addition to the defenses listed in § 115.16, shall include, but not be limited to, an excessive loss experience as compared to other surety companies participating with SBA to a comparable degree, a finding of violation of the surety's approved underwriting or claims procedures, or of SBA's regulations, or that the surety no longer meets the qualification for preferred status (§ 115.3(e)). Any surety that has been so suspended may file a petition in accordance with § 134.11(a) of this chapter. Proceedings concerning such petition shall be conducted in accordance with the provisions of Part 134 of this chapter and may result in the surety's termination from surety bond program participation (§ 134.3(i)). The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34.

§ 115.7 Procedure for surety bond guarantee assistance.

(a) *General.* By submitting an application to SBA for a bond guarantee, or by issuing a bond under PSB, surety shall be deemed to certify that the contractor is a small business concern, that the bond is expressly required by the terms of the bid solicitation or the contract (as the case may be), that the contractor is not able to obtain such bond on reasonable terms and conditions without an SBA guarantee, that the terms and conditions of the proposed bond are reasonable in the light of the risks involved and the extent of the surety's participation, that there is a reasonable expectation that the principal, if awarded the contract, will perform the conditions of the contract with respect to which the bond is required.

(b) *Application for guarantee.* Application for an SBA guarantee outside PSB (including a bonding line application—see also § 115.13(c)) is made by the contractor and the surety on a form "Application for Surety Bond Guarantee Assistance," SBA Forms 994 and 994B (underwriting Review), respectively. Except for premiums, contractor shall itemize on SBA Form 994 (Application for Surety Bond Assistance) for payments made, or to be made, by contractor to surety (as defined in § 115.4) for whatever purpose as a condition of, or in connection with, the issuance of the bond(s) to be guaranteed by SBA. Contractor and surety, respectively, shall disclose, by separate attachment to SBA Forms 994 and 994 B or C, to the best of their knowledge any business and close family relationship between them (for definition of "close relative," see § 120.2–2(d) of this chapter). No negative statement is required. The contractor shall be required to execute and file SBA Form 1261 (Statements Required by Law or Executive Order) with the initial application. In addition, the contractor shall complete and provide SBA Form 912, Statement of Personal History, for each owner of 20 percentum or more of its equity and each officer, director and partner, for submission with contractor's initial application and on subsequent applications will either certify that the information provided in the initial SBA Forms 912 remains complete and accurate, or will submit updated SBA Forms 912. The completed application, together with the surety's report of underwriting review on SBA Form 994B or 994C, shall be submitted to SBA only by a person empowered and authorized by the surety in writing to issue the bond applied for. A surety shall furnish SBA a true copy of its agent's power-of-attorney (including any dollar or other limitation thereon) before or with such agent's initial request for a guarantee, notice of any subsequent modification thereof, and a renewal notice on or before the expiration date of such power.

(c) *Preferred surety procedure.* A surety issuing bonds under the authority of PSB shall require, and retain in its files for the period of time determined pursuant to § 115.18(b), the information and statements relating to the contractor, required by SBA under the preceding paragraphs (a) and (b) (including the information and statements required by SBA in the SBA forms mentioned therein, see § 115.5 of this part) using either such SBA forms or its own.

(d) *Fees.* SBA makes no charge for bid bond guarantees. The application for a final bond, or a PSB surety's notice pursuant to § 115.6(c)(3), as the case may be, shall include the contractor's guarantee fee (§ 115.12(b)). SBA shall not process an application to which the contractor's guarantee fee is not attached, and a PSB notice pursuant to § 115.6(c)(3) to which the contractor's guarantee fee is not attached shall be ineffective. See § 115.8(c).

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§ 115.8 Approval or decline of surety's guarantee application.

(a) *Approval.* SBA's approval or decline of a guarantee application under the regular (non-PSB) program shall be made in writing only by the SBA officer having delegated authorized ("authority officer") to approve contract amounts such as underlie the bond in question (see § 101.3–2, Part III(c) of this chapter). This paragraph does not prohibit telephone notice by such office to a surety that SBA's guarantee approval form has been signed by such officer, in advance of surety's receipt of such approval (pending receipt by surety of such written approval): *Provided, however,* That the written approval shall be controlling, as against such telephone notice.

(b) *Reconsideration—appeal.* A request by a surety for reconsideration of a decline shall be directed to the appropriate SBA officer who made the decision to be reconsidered. If the decision on reconsideration is negative, the surety may make a further appeal to the Regional Administrator. If the decision is again adverse, surety may direct an appeal to the Associate Administrator for Finance and Investment, who shall make the final Agency decision.

(c) *Notice to SBA.* When surety has issued the final bonds, surety shall complete Items 19 to 26 on SBA Form 990, or in the case of a bonding line, SBA Form 994C, and submit the form, together with the principal's guarantee fee (see § 115.7(d)) to SBA within 45 days after the later date of the award of the bonded contract or the issuance of the bond(s). If surety fails to submit such information and fee in a timely fashion, SBA's guarantee of the bond shall be void from its inception, but may be reinstated, at SBA's discretion, upon a showing that the contract is not in default and a valid reason exists why a timely submission was not made.

§ 115.9 Underwriting standards.

All sureties shall adhere to SBA's general principles and practices used in evaluating the credit, capacity, and character of a contractor as set forth in SBA's Surety Bond Guarantee Program Standard Operating Procedure (SOP 50–45), as amended from time to time,[2] and as supplemented by generally accepted standards of the surety business, to assure a reasonable expectation that the principal will perform the covenants and conditions of the contract, and that the terms and conditions of the bond are

[2] The SOP may be obtained from SBA's Office of Surety Guarantees.

reasonable in the light of the risks involved and the extent of the surety's participation.

§ 115.10 SBA's review of surety's underwriting.

(a) For the non-PSB program, the SBA officer referred to in § 115.8 shall review the surety's underwriting of a bond, taking into consideration the standards specified in § 115.9 for the purpose of making SBA's determination that the principal and the proposed bond(s) are eligible for SBA's guarantee, that there is a reasonable expectation that the principal will perform the covenants and conditions of the contract under consideration, that the terms of the bond are reasonable in the light of the risk involved and the extent of the surety's participation.

(b) For the PSB program, SBA's Office of Surety Guarantees shall determine the eligibility of bonds issued thereunder when a claim is received pursuant to § 115.15.

§ 115.11 Reinstatement after default or failure to pay guarantee fee.

(a) *Conditions for reinstatement.* When legal action against a non-PSB bond has been instituted, or when surety establishes a claim reserve for such bond, or when surety requests reimbursement of loss under such bond from SBA, or a principal on such bond has failed to pay SBA the fee required by § 115.12(b), the principal's file shall be transferred to SBA's Office of Surety Guarantees, unless that office, in its discretion and with the surety's recommendation, determines that further bond guarantees will assist in the prevention or elimination of loss to SBA. The application file will be retained in that office and the principal, including any affiliates, will not be considered for guarantees of bonds until principal pays the fee or surety has repaid SBA in full for all payments due to an imminent breach or due to the principal's default, as the case may be, or one of the following circumstances exists:

(1) Surety has settled its claim with principal for a cash payment of not less than half the amount of loss; principal has paid surety the amount as settled, and has given a note for the balance to surety.

(2) Principal is presented with a claim which it contests the principal provides collateral acceptance to surety which has a liquidation value of not less than the amount of the claim including related expenses.

(3) The principal's indebtedness to the surety is discharged by operation of law as in bankruptcy or any judicial or quasi-judicial process.

(b) Under PSB, the surety shall advise SBA promptly of the name and address of a principal when legal action against such principal's bond has been instituted or when the obligee has declared a default or when the surety has established a claim reserve. SBA will then subject such principal to the same requirements as outlined in paragraph (a) of this section. Such surety shall similarly notify SBA if SBA's payments under its guarantees have been reimbursed and if surety determines to bond such principal again (see paragraph (d) of this section; SBA will then remove the bar on such principal's file.

(c) *Underwriting after reinstatement.* A guarantee application (not under PSB) after default is subject to the most stringent underwriting review, taking into account the previous default, past work experience, present and future financial and work capability, and SBA's budgetary guidelines. While a settlement, as described above, permits reinstatement, prudent underwriting must take into consideration all past experience. Where, however, surety with full knowledge of past experience is willing to bond the principal again, and states its belief that the principal can complete the proposed contract successfully and without another loss, SBA will give careful consideration to the surety's guarantee application.

(d) *Reinstatement under PSB.* Suspension, permanent debarment and reinstatement of contractors for bonding under PSB shall be at such sureties' discretion, but sureties shall notify SBA in writing within 30 calendar days of any such action.

§ 115.12 Fees and premiums.

(a) *Surety's Premium.* A surety shall charge a principal no amount greater than that authorized by the appropriate insurance department. A surety shall make no requirement of a principal that it purchase casualty or other insurance or any other services from the surety or any affiliate or agent of the surety. A surety shall not make non-premium charges to a principal except where other services are performed and the additional charge or fee is permitted by the appropriate State law or regulation and agreed to by the principal.

(b) *SBA charge to principal.* No application or bid bond guarantee fee shall be charged to the small business by SBA. No bid bond guarantee fee shall be charged by SBA to the surety. If SBA guarantees a payment and/or performance bond or a surety issues a final bond under PSB, the principal shall pay to SBA a guarantee fee of $6 (six dollars) per thousand dollars of the contract or bond amount (calculated as in paragraph (c)(3) of this section), to be remitted to SBA by surety together with the notice required under § 115.6(c)(3) or § 115.8(c) of this part. *See* paragraph (c)(6) of this section for additional requirements in the event of certain increase(s) in the bond obligation.

(c) *SBA charge to surety.* A surety shall pay SBA a guarantee fee on each guaranteed bond computed as follows:

(1) Twenty percent (20) of the bond premium upon certification that the premium rate charged does not exceed the applicable Surety Association of America's advisory rate;

(2) Twenty percent (20) of the bond premium on each bond garanteed under the PSB program, irrespective of Surety Association of America's advisory rates;

(3) A guarantee fee expressed as a dollar amount per one thousand dollars (rounded off to the nearest one thousand dollars) of the bond or contract amount, according to the surety's own premium base, as stated on the Surety Bond Guarantee Agreement (SBA Form 990) between SBA and the surety, on all other bonds.

(4) SBA shall not receive any portion of a surety's non-premium charges.

(5) With respect to bonds not issued under the PSB program, surety shall notify SBA of any increases or decreases in such contract or bond amount aggregating $10,000 or more.

(6)(i) With respect to bonds not issued under the PSB program, whenever the contract amount or bond liability is increased by change order or otherwise, in excess of an aggregate amount of 25% or $50,000, whichever is less (see § 115.16(e)), SBA's approval of such increase(s) by SBA's authorized officer (see § 115.8(a)) on a supplemental SBA Form 990 shall be conditioned upon payment by the surety, in the normal course of business, of an additional guarantee fee for such increase(s) computed pursuant to paragraphs (c) (1) through (3) of this section. In these circumstances, the surety's notice pursuant to paragraph (c)(5) of this section shall be accompanied by the principal's additional guarantee fee for such increase computed as prescribed in paragraph (b) of this section. The surety's notice pursuant to this paragraph shall be ineffective without such payment from the principal.

(ii) Whenever such contract amount or bond liability is decreased by an aggregate amount in excess of 25% or $50,000, whichever is less, SBA shall promptly refund to the surety a proportionate amount of the principal's

guarantee fee paid to SBA and rebate such proportionate amount of the surety's guarantee in the normal course of business. The surety shall promptly pay such SBA refund and a proportionate amount of its premium to the principal.

(7)(i) With respect to bonds guaranteed under the PSB program, surety shall process contract amount and/or bond liability increases within its allocation (see § 115.6(b)) in the same manner as initial guaranteed bond issuances (see § 115.6(c)(3)), collect additional fees from the principal computed on the aggregate increase(s) if they exceed 25% or $50,000, whichever is less, computed pursuant to paragraph (b) of this section and attach such payment(s) to the notice to SBA pursuant to § 115.6(c)(3).

(ii) Where such bond liability is decreased to a like extent, the PSB surety shall promptly refund to the principal the proportionate amount of such principal's guarantee fee, and adjust SBA's guarantee fee accordingly in the normal course of business.

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§ 115.13 Surety bonding line.

(a) *General.* A surety bonding line is a written commitment by SBA to a surety or by a preferred surety to a contractor which provides for the issuance of multiple bonds to a specified small business within pre-approved terms, conditions and limitations. A bonding line shall not exceed one year's duration. In addition to the other limitations and provisions set forth in this Part 115, the following conditions apply to each surety bonding line.

(b) *Underwriting.* A bonding line may be issued by SBA or a PSB surety, as the case may be, for a small business if the respective underwriting evaluation is satisfactory. The surety shall require the principal to keep it informed of all its contracts, bonded by the same or another surety or unbonded, during the time limit of the bonding line.

(c) *Application for bonding line.* The surety shall provide SBA, and a preferred surety shall document its file, as the case may be, with:

(1) In addition to the forms required pursuant to § 115.7(b), information about the small business deemed necessary by SBA or by the preferred surety;

(2) A determination regarding the limit on the number of contracts with SBA guaranteed bonds under the bonding line which the small business may undertake;

(3) A determination regarding the maximum dollar amount of any single bonded contract the small business can reasonably be expected to perform;

(4) A determination concerning the number and a limit of the total value of all outstanding bids plus uncompleted contracts ("work on hand," bonded by the same or another surety or unbonded) which the small business can reasonably be expected to perform simultaneously;

(5) A determination whether the small business' bonds should be restricted to a specific type or specialty of work or should be restricted to a geographical area.

(d) *Bonding line commitment conditions.* In the event a bonding line is approved, the written commitment will be conditioned by limitations as follows:

(1) The time period of the bonding line not to exceed one year, subject to renewal in writing;

(2) The total dollar volume of the small concern's bonded and unbonded work on hand during the period of the bonding line;

(3) The number of such contracts during the period of the bonding line;

(4) The maximum dollar amount of any single guaranteed bonded contract;

(5) The bond covering a given contract shall be dated and issued before the work on the contract has begun (see § 115.3(f)(3)), or surety submits to SBA the documentation required under § 115.3(f)(4); and

(6) Any other limitation related to type, specialty of work, geographical area or credit.

(e) *Excess bonding.* If, after a bonding line is committed, the principal desires a bond and the Surety desires a guarantee exceeding a limitation of the bonding line, an application to SBA or the preferred surety may be made under regular procedures.

(f) *Submission of forms to SBA.* Within 45 calendar days after the issuance of any final bonds under a bonding line, the surety shall submit notice to SBA on forms prescribed by SBA showing that the bond or bonds have been issued. Surety may use SBA Form 994C when a completed Form 994B is on file with SBA, except when new financial statements are received from the principal. If the surety fails to submit such form and the related fee to SBA in a timely fashion, SBA's guarantee of the bond shall be void from its inception, but may be reinstated, at SBA's discretion, upon a showing that the contract is not in default—see § 115.3(f)(4)—and a valid reason exists why the timely submission was not made.

(g) *Fees.* With the information required under paragraph (f) of this section, surety shall remit the principal's guarantee fee (see § 115.12(b)) and any additional data deemed necessary by SBA.

(h) *Cancellation.* Upon the occurrence of a default, in the opinion of the surety, whether under a contract bonded by the same or another surety or an unbonded contract, the surety shall cancel the bonding line commitment. SBA, if it has approved the bonding line, or the surety may cancel a bonding line commitment at any other time upon written notice to the other party. In either event surety shall promptly notify the principal in writing. Cancellation by SBA will be effective upon receipt of such notice by the surety: *Provided, however,* That bonds issued before the effective date of cancellation shall remain guaranteed by SBA.

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§ 115.14 Minimization of loss.

(a) *Indemnification agreements and collateral.* Surety shall take all reasonable action to minimize risk of loss, including, but not limited to, securing from each bonded principal a written indemnification agreement which shall cover actual losses under the contract, and payments pursuant to paragraph (b) of this section, secured by such collateral as the surety and/or (for guarantees not issued under PSB) SBA may deem appropriate. Other indemnity agreements from other persons or entities, secured by collateral or unsecured, may also be required by the surety and SBA. In the case of SBA guarantees not issued under PSB, all SBA requirements concerning collateral and indemnity from parties other than the principal shall be communicated to the surety in the written commitments issued pursuant to §§ 115.8(a) or 115.13(d).

(b) *Imminent breach.* (1) A surety not operating under PSB may apply to SBA for an agreement to indemnify such surety against loss sustained when making payments for the purpose of avoiding, or attempting to avoid, a breach of the terms of a specific bond guaranteed by SBA, if the surety can demonstrate to SBA's satisfaction that such breach is imminent and that the principal has no other source of funding to prevent such breach. No payment by SBA to avoid imminent breach shall exceed 10 per centum of the contract price, unless the Administrator finds that a greater payment is necessary and reasonable. In no event shall SBA pay an amount exceeding its guaranteed share of the bond penalty, see § 115.3(d), nor shall SBA make any duplicate

payment pursuant to this provision or any other provision.

(2) A surety operating under PSB may make payments to avoid imminent breach without prior SBA approval whether or not such payment exceeds 10 per centum of the contract price, but SBA's guaranteed share of the aggregate of such payments and of indemnification against loss shall be limited to SBA's guaranteed share of the bond penalty. In no event shall SBA make any duplicate payment pursuant to this paragraph (b) or any other provision of these regulations.

(3) Any surety making payments to avoid imminent breach shall keep records concerning such payments that will enable SBA to ensure that its payments do not exceed its guaranteed share of the bond penalty, and that SBA's total payments under its guarantee of a given bond do not include a share of duplicate payments under such bond.

(c) *Salvage and recovery.* A surety not operating under PSB shall pursue all possible sources of salvage and recovery, until SBA consents to discontinuance of such efforts and such surety shall remit SBA's share of all such collections to SBA within 90 days of receipt by surety. In any dispute between two or more sureties concerning bonds which are guaranteed by SBA, sure dispute shall first be brought to the attention of SBA's Office of Surety Guarantees for an attempt at mediation and settlement.

§ 115.15 Claims for losses.

Claims for reimbursement on account of losses which surety has paid shall be submitted (together with a copy of the bonded contract with the initial claim) to SBA's Office of Surety Guarantees, on SBA Form 994H. A PSB surety shall submit claims for reimbursement of loss to SBA either on SBA Form 994H or on its own form if such form is approved by SBA, together with a copy of the bonded contract. Loss will be determined as of the date of receipt by SBA of such claim for reimbursement, or as of such later date as additional information requested by SBA is received. Surety shall further submit semiannual status reports on each claim, six months after the initial default notice and in six-month intervals thereafter. SBA may request additional information. Subject to Part 140 of this chapter, SBA shall pay its share of loss within ninety (90) days of receipt of the requisite information. Surety shall reimburse or credit SBA (in the same proportion as SBA's share of loss) within ninety (90) days of any recovery or salvage by surety. Claims for reimbursement and any additional information provided are subject to review and audit by SBA, including but not limited to the surety's compliance with SBA's regulations and the requirements of SBA forms.

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§ 115.16 Defenses of SBA.

In addition to equitable and legal defenses and remedies afforded by the general law of contracts, the statute and these regulations, SBA shall be relieved of all liability under any Surety Bond Guarantee, if:

(a) *Excess Contract Amount.* The total contract amount at the time of issuance of the bond or bonds exceeds $1,250,000 in face value; or

(b) *Misrepresentation.* The surety obtained the guarantee agreement or applied for reimbursement for losses by fraud or material misrepresentation. Material misrepresentation includes (but is not limited to) both the making of an untrue statement of material fact and the omission of a statement of material fact necessary to make a statement not misleading in light of the circumstances in which it was made, and includes the adoption by the surety of a material misstatement made by others which the surety knew or under generally accepted underwriting standards should have known to be false or misleading. Failure by the surety (as defined in § 115.4) to disclose its ownership (or the ownership by any owner of twenty percent or more of its equity) of an interest in a principal or an obligee shall be deemed the omission of a statement of material fact; or

(c) *Material breach.* The surety has breached one or more material terms or conditions of its guarantee agreement, whether under PSB or otherwise. For purposes of this paragraph, a breach or breaches of material terms or conditions shall be deemed to have occurred if such breach (or such breaches in the aggregate) expose SBA to an increase in liability of at least 25 percent or $50,000 whichever is less, or if one of the statutory conditions (see §115.7(a)) is not met; or

(d) *Regulatory violation.* The surety has substantially violated the SBA regulations as published in 13 CFR Chapter I, and amended from time to time by publication in the **Federal Register**. For purposes of this paragraph, a substantial violation shall be one which increases the Agency's exposure to liability by more than 25 percent or $50,000 in the aggregate, whichever is less, or is contrary to the purposes of the program (see § 115.3) or to the mission of SBA (see section 2 of the Small Business Act, 15 U.S.C. 631) or to national policy as stated in SBA regulations (see, for example and not as limitation, Parts 112, 113, 116, 117, and 145 of this chapter); or

(e) *Alteration.* Surety agrees to or acquiesces in any material alteration in the terms, conditions or provisions of the bond(s), including but not limited to the following acts, without obtaining prior written approval from SBA which may be conditioned upon payment of additional fees (see § 115.12 (b) and (c)): Name as an obligee on the bond(s) or on a rider to the bond any party (other than a Federal department or agency) which is not bound by the contract to the principal; or make any alterations in such bond(s) not issued under PSB which would increase the bond(s) liability by more than either 25 percent, or $50,000 in the aggregate, whichever is less. See also §§ 115.3(f), 115.6(c)(3), 115.7(a), 115.8(c), and 115.12(c) of this part.

§ 115.17 Refusal to issue further guarantees.

(a) *Improper surety bond guarantee practices.* SBA at its sole discretion may refuse to issue further guarantees to a surety, or to suspend the preferred status of a surety pursuant to § 115.6(e), where SBA finds that the surety, in its underwriting of surety bonds guaranteed by SBA, or in its efforts to minimize loss, or in its claims practices, or its documentation related to such bonds, has failed to adhere to prudent underwriting standards or other prudent surety practices, as compared to those of other sureties participating in the SBA Surety Bond Guarantee Program, including any standards or practices required and communicated by SBA. Acts of wrongdoing such as fraud, material misrepresentation, breach of the guarantee agreement or regulatory violation (as defined in § 115.16 above) shall constitute adequate grounds for refusal to issue further guarantees or to continue preferred status. SBA may also require the renegotiation of the percentage of its loss guarantee under § 115.3(d) (2) and (3) and/or its charge to surety under § 115.12(c), with a surety which experiences excessive losses on SBA-guaranteed bonds, relative to those of other Sureties participating in the program to a comparable degree. Such refusals or sanctions will be issued by SBA's Associate Administrator for Finance and Investment. Any surety that has been so sanctioned may file a petition in accordance with § 134.11(a) of this chapter. Proceedings concerning such petition shall be conducted in accordance with the provisions of Part 134 of this chapter. The Assistant

Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34 of this chapter.

(b) *Business integrity.* Any person qualifying as a surety, including any officer, director, individual partner, other individual holding twenty or more percent of the surety's voting securities, and any agent, independent agent, underwriter or individual empowered to act on behalf of such person shall be presumed to have good character and (subject to § 115.7(a) of this part) be entitled to present applications for guarantees of bonds, except in the following circumstances:

(1) When a State or other authority regulating insurance (including the surety industry) has revoked or cancelled the license required of such person to engage in the surety business, the right of such person to participate in the program may be denied or terminated as applicable. When such authority has suspended such license, the right to participate may be suspended for the duration of such suspension.

(2) When such person has been indicted or otherwise formally charged with a misdemeanor or felony bearing on such person's fitness to participate in the program, the participation of such person may be suspended until the charge is disposed of. Upon conviction, participation may be denied or terminated.

(3) When such person has suffered an adverse final civil judgment holding that such person has committed a breach of trust or violation of a law or regulation protecting the integrity of business transactions or relationships, participation may be denied or terminated.

(4) When such person has made a material misrepresentation or willfully false statement in the presentation of oral or written information to SBA in connection with an application for a surety bond guarantee or the presentation of a claim thereon, or committed a material breach of the guarantee agreement or a material violation of the regulations (all within the meaning of § 115.16 (b) through (d)), the participation may be denied or terminated.

(5) When such person is debarred, suspended, voluntarily excluded from or declared ineligible for participation in Federal programs, participation may be denied or terminated.

(c) *SBA proceedings.* Surety shall notify SBA if and when any of the above mentioned persons does not, or ceases to, qualify as a surety under this section. SBA may require submission of SBA Form 912, Statement of Personal History from any of these individuals. All proceedings for suspensions, terminations from and reinstatements to participation in the surety bond guarantee program shall be conducted in the manner described in paragraph (a) of this section. The Administrator may, pending a hearing and decision pursuant to Part 134 of this Chapter, suspend the participation of any surety for any of the causes listed in paragraphs (1) through (5) of paragraph (b) of this section. A guarantee issued by SBA before a suspension or termination under this section shall remain in effect.

(Approved by the Office of Management and Budget under control number 3245–0178)

§ 115.18 Audit and investigation.

(a) *Audit.* Each PSB surety shall be audited at least once each year by examiners selected and approved by SBA. At all reasonable times, SBA may audit in the office of either a participating surety, whether or not a PSB surety, its attorneys, or the contractor or subcontractor completing the contract all documents, files, books, records, tapes, disks and other material relevant to the Administration's surety bond guarantee, commitments to guarantee a surety bond, or agreements to indemnify the surety. Failure of a surety to consent to such audit or maintain such records shall be grounds for SBA to refuse to issue further surety bond guarantees or to honor claims until such time as the surety consents to such audit; *Provided, however,* That when SBA has so refused to issue further guarantees, the surety may file a petition in accordance with § 134.11(a) of this chapter. Proceedings concerning such appeal shall be conducted in accordance with the provisions of Part 134. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34.

(b) The relevant records within the meaning of paragraph (a) of this section shall be maintained for the term of each bond, plus such additional time as may be required to settle claims for which the surety may seek recovery from SBA or attempt salvage or other recovery and for an additional three years thereafter, and, subject to § 115.7(c), shall include the following records:

(1) The bond agreement;

(2) All documentation submitted by the principal in applying for the bond;

(3) All information gathered by the surety in reviewing the principal's application;

(4) All documentation of any breach by the principal;

(5) All records of any transactions for which the surety makes payment pursuant to the bond, including, but not limited to, copies of all claims, bills, judgments, settlement agreements and court or arbitration decisions, contracts and receipts;

(6) All documentation relating to efforts to mitigate losses, including documentation required by § 115.14(b)(4) concerning imminent breach; and

(7) Records of any accounts into which fees and funds obtained in mitigation of losses have been paid, and from which payments have been made pursuant to the bond.

(c) Such audit shall determine but not be limited to

(1) The adequacy of the surety's underwriting and credit analysis;

(2) The adequacy and accuracy of the documentation of claims and the surety's claims settlement procedures and activities;

(3) The minimization of loss, including the exercise of bond options upon contract default; and

(4) The surety's loss ratio in comparison with other sureties participating with SBA to a comparable degree.

(d) *Investigation.* SBA may conduct such investigations as it deems necessary to inquire into the possible violation by any person of the Small Business Act and the Small Business Investment Act of 1958, as amended, or of any rule or regulation under these Acts, or of any order issued under these Acts, or any Federal law relating to programs and operations of the SBA.

(e) *Authority.* Authority for paragraphs (a), (b), and (d), of this section is contained in sections 310(a) and 411(g) of the Small Business Investment Act of 1958, as amended [15 U.S.C. 687b(a) and 694b(g)], and in the Inspector General Act of 1978 [5 U.S.C., App. I].

§ 115.19 Savings clause.

The legality of transactions, including the issuance by SBA of bond guarantees, pursuant to provisions of SBA regulations in effect before amendment, shall be governed thereby, notwithstanding subsequent changes. Nothing herein shall bar SBA enforcement with respect to any transaction consummated or bond guarantees issued in violation of provisions applicable at the time, but no longer in effect. If any section or part of a section of these regulations should be adjudged invalid, only that section or

part shall be invalid, and no other part or section shall be affected thereby.

(Catalog of Federal Domestic Assistance, No. 59.016 Bond Guarantees for Surety Companies)

Date: April 18, 1989.

James Abdnor,
Administrator.

[FR Doc. 89-10520 Filed 5-5-89; 8:45 am]
BILLING CODE 8025-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 3 and 145

Registration of Leverage Transaction Merchants and Their Associated Persons

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has amended its rules relating to registration of leverage transaction merchants ("LTMs") and their associated persons ("APs") to authorize the National Futures Association ("NFA") to perform the function of processing and granting applications for registration in the categories of LTM and AP of an LTM. However, NFA will not conduct proceedings to deny, condition, suspend, restrict or revoke the registration of any LTM or AP of an LTM, or an applicant for registration in either category, nor will it be authorized to process a request for withdrawal from registration by an LTM, until such time as the Commission authorizes or requires a self-regulatory organization to perform direct regulatory responsibilities under Commission oversight with respect to leverage transactions generally. The Commission anticipates such a larger role for NFA with respect to the regulation of leverage transactions if new entrants to the leverage business are allowed as outlined in the Commission's recent proposed rule amendments with respect to leverage transactions, which would provide for lifting the moratoria on new firms entering the leverage business. Until the leverage business is expanded, the division of direct regulatory authority between the Commission and NFA with respect to registration matters involving LTMs and APs of LTMs would be comparable to the current treatment of floor brokers. The Commission has previously authorized NFA by a series of delegation orders to perform the function of processing the registration applications for all other persons that must register under the Commodity Exchange Act ("Act").

EFFECTIVE DATE: May 15, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Assistant Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone (202) 254-8955; David R. Merrill, Senior Assistant General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone (202) 254-9880; or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone (202) 254-6990.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Notice

While the Commission has determined that these final rule amendments do not affect the existing paperwork burden previously approved by the Office of Management and Budget, the public reporting burden for the collection of information which includes Commission Rules 3.17 and 3.18 and all other rules relating to registration of LTMs and APs of LTMs (3038-0023) is estimated to average 5.17 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The Commission also notes, however, that there is no change in burden hours attributable to the rule amendments discussed herein because the amendments simply transfer certain registration processing functions from the Commission to NFA. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581; and to Office of Management and Budget, Paperwork Reduction Project (3038-0023), Washington, DC 20503.

II. Background

The Commission published its proposed rule amendments with respect to leverage transactions and allowed sixty days for public comment thereon. 54 FR 3476 (January 24, 1989). The Commission received nine written comments on the proposals, none of which addressed the issue of NFA assuming the function of registration processing for LTMs and APs of LTMs. The commenters included the U.S. Department of Justice, NFA, two registered LTMs (one of which submitted two written comments), three contract markets and a private attorney. The Commission indicated in the notice of proposed rulemaking that it was exploring the feasibility of authorizing NFA to perform the registration processing function for the three registered LTMs and their APs without regard to whether the leverage moratoria are repealed. 54 FR 3476, 3477 n.1.

The only registration categories over which the Commission currently has sole regulatory authority are LTM and AP of an LTM. There are currently three registered LTMs and approximately 270 APs of LTMs. These numbers are unlikely to change significantly until the Commission lifts its moratoria on new entrants to the leverage business.

The Commission has maintained a separate computer system to process registration applications of LTMs and their APs, even though only a small number of registrants is involved. The Commission also notes that most of the APs of LTMs are dually registered as APs of futures commission merchants which are affiliated firms of the LTMs, and thus information about such individuals already is contained in NFA's registration system. In light of these factors, and the Commission's increasing shift since 1983 to an oversight role rather than direct processing with respect to registration matters, the Commission believes that a more efficient use of resources would be achieved if NFA undertook the function of processing and granting applications for registration in the categories of LTM and AP of an LTM at the earliest practicable time.

III. Rule Amendments

The principal rules governing the registration of LTMs and their APs are Rules 3.17 and 3.18, respectively (17 CFR 3.17 and 3.18 (1988)). Most of the amendments to those rules changed references from the Commission to the NFA because the Commission is authorizing NFA to perform the function of processing and granting the registration applications of LTMs and their APs.[1] NFA will now assume the registration processing function for all persons who must register under the Act. Since NFA is specifically authorized to perform the registration processing function, NFA is specifically

[1] Since no new applications for registration as an LTM could be considered prior to the lifting of the moratoria set forth in Rules 31.1 and 31.2 (17 CFR 31.1 and 31.2 (1988)), NFA will only be dealing with applications in the registration category of AP of an LTM for the time being.

named in Rules 3.17 and 3.18, as it is throughout the Part 3 registration rules.[2]

The other amendments to the Part 3 rules eliminate the references to the Commission in those rules where there are currently references to both the NFA and the Commission. The Commission has amended Rules 3.2 (notification of registration), 3.21 (fingerprinting exemption), 3.31 (updates), 3.32 (new registration requirements), and 3.40 and 3.43 (temporary licensing of APs). Deletions have been made to Rule 3.3, since NFA will set registration fees for LTMs and their APs instead of the Commission, and Rule 3.20, since there are no more registration renewals. Recent changes to the rules provide for perpetual registration of firms and annual information update filings. 53 FR 8428 (March 15, 1988).

The only Part 3 rule which the Commission proposed to amend which it is not amending at this time is Rule 3.33 regarding withdrawals. NFA is not being authorized at this time to process requests for withdrawal by LTMs, and any such request for withdrawal from the three registered LTMs must be filed with the Commission. Therefore, no amendment to Rule 3.33 is necessary at this time. The Commission anticipates amending Rule 3.33 and authorizing NFA to process withdrawal requests from LTMs, and authorizing NFA to conduct proceedings to deny, condition, suspend, restrict or revoke the registration of any LTM or AP of an LTM, or an applicant for registration in either category, when the Commission finalizes its amendments to the Part 31 rules. At that time, the Commission also anticipates deleting paragraph (g) of Rule 31.5, which currently relates to the denial, conditioning, suspension, restriction or revocation of registration of an LTM or an AP of an LTM. *See* 54 FR 3476, 3477.

The Commission is also making a technical, conforming change to Rule 145.6 to indicate that publicly available portions of registration forms with respect to LTMs and their APs will be available from NFA.

[2] Proposed amendments to Part 31 would generally refer to a registered futures association, rather than to NFA specifically, because it is possible that there could be another registered futures association for the futures industry as a whole, or for a segment thereof such as the leverage business. However, we would not anticipate another futures association being registered in the foreseeable future (no applications are pending), so most of the direct regulatory responsibility will rest with NFA, under Commission oversight, under the Commission's proposed amendments to Part 31 referred to above.

IV. Related Matters

1. Effective Date

The Commission, in accordance with 5 U.S.C. 553(d)(3) (1982), finds good cause for making the rule amendments effective less than 30 days following publication of this release in the **Federal Register**. The Commission and NFA have used a specific target date of May 15, 1989 to accomplish the transfer of functions discussed herein and it is important to affected persons and for administrative efficiency that such a specific date be used rather than merely waiting for 30 days after publication of this notice. There is no change in the substantive burden on LTMs and APs of LTMs or applicants therefor, since the result of these rule amendments is that such persons will now be required to send the materials previously provided to the Commission in connection with their registration to the NFA instead. We further note that relatively few persons are affected since there are only three registered LTMs and approximately 270 registered APs of LTMs. The three registered LTMs have been informed of the adoption of these rule amendments.

2. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 *et seq.* (1982), imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has previously submitted certain of the rules discussed herein as part of information collection number 3038–0023. The Office of Management and Budget last approved the collection of information associated with OMB control number 3038–0023 on June 28, 1988. The Commission has determined that these rule amendments will not change materially the information collection burden approved by OMB at that time because the amendments simply transfer certain registration processing functions from the Commission to NFA. The OMB approved burden for information collection number 3038–0023, which covers all rules relating to registration of LTMs and APs of LTMs, is as follows:

Average burden hours per response..... 5.17
Number of respondents.....588
Frequency of response—on occasion and annually

Persons wishing to comment on these rule amendments should contact Gary Waxman, Office of Management and Budget, Paperwork Reduction Project (3038–0023) Room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581, (202) 254–9735.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.* (1982), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments adopted herein would affect LTMs. The Commission has previously determined that with respect to FCMs, based upon the fiduciary nature of FCM/customer relationships, as well as the requirements that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of a small entity.[3] Since LTMs have a somewhat similar relationship with their customers as do FCMs, and since LTMs have a higher minimum financial requirement than FCMs, LTMs should likewise be excluded from the definition of a small entity. Therefore, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman certifies that these rule amendments will not have a significant economic impact on a substantial number of small entities.

List of Subjects

17 CFR Part 3

Reporting and recordkeeping requirements, Registration.

17 CFR Part 145

Freedom of information, Commission records.

In consideration of the foregoing, and pursuant to the authority contained in sections 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982), as amended by Pub. L. No. 99–641, 100 Stat. 3556 (1986), and pursuant to the authority contained in 5 U.S.C. 552 and 552b (1982), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 3—REGISTRATION

Subpart A—Registration

1. The authority citation for Part 3 is revised to read as follows:

Authority: 7 U.S.C. 2, 4, 4a, 6c, 6d, 6e, 6f, 6k, 6m, 6n, 6p, 12a, 13c, 16a, and 23 unless otherwise noted.

[3] *See* 47 FR 18618, 18619 (April 30, 1982).

2. Section 3.2 is amended by revising paragraph (c) to read as follows:

§ 3.2 Registration processing by the National Futures Association; notification of registration.

* * * * *

(c) The National Futures Association will notify the registrant, or the sponsor in the case of an applicant for registration as an associated person, if registration has been granted under the Act. If an applicant for registration as an associated person receives a temporary license in accordance with § 3.40 of this part, the National Futures Association may notify the sponsor only that a temporary license has been granted.

* * * * *

3. Section 3.3 is amended by revising paragraph (a) to read as follows:

§ 3.3 Registration fees; form of remittance.

(a) *Amount of fees—Floor brokers.* Each application for registration as a floor broker must be accompanied by a fee of $25.

* * * * *

4. Section 3.17 is amended by revising paragraphs (a) and (c) to read as follows:

§ 3.17 Registration of leverage transaction merchants.

(a) *Initial registration.* (1) Application for initial registration as a leverage transaction merchant must be on Form 7–R, completed and filed with the National Futures Association in accordance with the instructions thereto and the provisions of § 31.13 of this chapter.

(2) Each Form 7–R filed in accordance with the requirements of paragraph (a)(1) of this section must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the applicant, and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose. The provisions of this paragraph (a)(2) do not apply to any principal who has a current Form 8–R or Form 94 on file with the Commission or the National Futures Association.

* * * * *

(c) *Annual filing.* Any person registered as a leverage transaction merchant in accordance with paragraph (a) of this section must file with the National Futures Association a Form 7–R, completed in accordance with the instructions thereto, annually on a date specified by the National Futures Association. The failure to file the Form 7–R within thirty days following such date shall be deemed to be a request for withdrawal from registration. On at least thirty days written notice, and following such action, if any, deemed to be necessary by the Commission or the National Futures Association, the National Futures Association may grant the request for withdrawal from registration.

5. Section 3.18 is amended by revising paragraphs (c)(3), (c)(4), (d)(1), (d)(3), (d)(4) and (d)(5) to read as follows:

§ 3.18 Registration of associated persons of leverage transaction merchants.

* * * * *

(c) * * *

(3) Each Form 8–R filed in accordance with the requirements of paragraph (c) of this section must be accompanied by the fingerprints of the applicant on a fingerprint card provided for that purpose by the National Futures Association.

(4) When the National Futures Association determines that an applicant for registration as an associated person is not unfit for such registration, it will provide notification in writing to the sponsor which has made the certifications required by paragraph (c)(1) of this section that the applicant's registration as an associated person is granted contingent upon the sponsor hiring or otherwise employing the applicant as such within thirty days.

(d) *Special temporary licensing and registration procedures for certain persons.*—(1) *Registration terminated within the preceding sixty days.* Except as otherwise provided in paragraphs (d)(4) and (f) of this section, any person whose registration as an associated person in any capacity has terminated within the preceding sixty days and who becomes associated with a new sponsor will be granted a temporary license to act in the capacity of an associated person of such sponsor upon the mailing by that sponsor to the National Futures Association of a Form 8–R, completed in accordance with the instructions thereto, which includes written certifications stating:

* * * * *

(3) *Registration still in effect.* Except as provided for in paragraphs (d)(4) and (f) of this section, any person whose registration as an associated person in any capacity is still in effect and becomes associated with a sponsoring leverage transaction merchant will be registered as an associated person of such sponsor upon mailing by that sponsor to the National Futures Association of a Form 8–R, completed in accordance with the instructions thereto, containing the written certifications required by paragraph (d)(1) of this section.

(4) An applicant will not be registered or granted a temporary license upon mailing of a properly completed Form 8–R pursuant to paragraph (d) of this section unless such form is accompanied by the fingerprints of the applicant on a fingerprint card provided by the National Futures Association for that purpose, and a Supplemental Sponsor Certification Statement signed by the new sponsor if the applicant's prior registration as an associated person was subject to conditions or restrictions.

(5) A temporary license granted in accordance with paragraph (d) of this section will terminate five days after service upon the applicant of a notice by the National Futures Association that such person may be found subject to a statutory disqualification from registration.

* * * * *

§ 3.20 [Amended]

6. Section 3.20 is amended by removing and reserving paragraph (d)(2).

7. Section 3.21 is amended by revising paragraph (a)(1) to read as follows ((a) introductory text is republished):

§ 3.21 Exemption from fingerprinting requirement in certain cases.

(a) Any person who is required by this part to submit a fingerprint card may file, or cause to be filed, in lieu of such card:

(1) A legible, accurate and complete photocopy of a fingerprint card which has been submitted to the Federal Bureau of Investigation for identification and appropriate processing and of each report, record, and notation made available by the Federal Bureau of Investigation with respect to that fingerprint card if such identification and processing has been completed satisfactorily by the Federal Bureau of Investigation not more than ninety days prior to the filing with the National Futures Association of the photocopy; or

* * * * *

8. Section 3.31 is amended by revising paragraphs (c)(1) introductory text and (c)(2) to read as follows:

§ 3.31 Deficiencies, inaccuracies, and changes, to be reported.

* * * * *

(c) (1) After the filing of a Form 8–R or a Form 3–R by or on behalf of any person for the purpose of permitting that person to be an associated person of a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or a

leverage transaction merchant, that futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker or leverage transaction merchant must, within twenty days after the occurrence of either of the following, file a notice thereof with the National Futures Association indicating:

* * * * *

(2) Each person registered as, or applying for registration as, a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker or leverage transaction merchant must, within twenty days after the termination of the affiliation of a principal with the registrant or applicant, file a notice thereof with the National Futures Association.

* * * * *

9. Section 3.32 is amended by revising paragraphs (b), (c), (d)(2), (d)(3), (e), (f), and (h) to read as follows:

§ 3.32 Changes requiring new registration; addition of principals.

* * * * *

(b) Application for a new registration required under paragraph (a) of this section must be on Form 7–R, completed and filed with the National Futures Association in accordance with the instructions thereto.

(c) Notwithstanding any other provision of this part, each Form 7–R filed in accordance with paragraph (b) of this section must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the registrant and who was not listed on the registrant's initial application for registration or any amendment thereto. The Form 8–R for each such principal must be accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose.

(d) * * *

(2) Notification by the National Futures Association of the granting of the new registration; or

(3) Five days after service upon the registrant of a notice by the National Futures Association that the registrant may be found subject to a statutory disqualification from registration.

(e) (1) Except where a registrant chooses to file an application pursuant to paragraph (d) of this section, if applicable, in the event of a change as described in paragraphs (a)(4) or (a)(5) of this section, a new registration will not be required if the registrant submits a written notice on Form 3–R to the National Futures Association prior to the date of such change in control (and such change does not occur until the registrant receives written approval from the National Futures Association) and includes with such notice a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who will become a principal of the registrant. The Form 8–R for each such individual must be accompanied by the fingerprints of that individual on a fingerprint card provided for that purpose by the National Futures Association: *Provided, however,* That a fingerprint card need not be provided under this paragraph for any individual who currently is registered with the Commission as an associated person or floor broker, or is a principal of a Commission registrant for whom the filings required by this part have been made.

(2) No person who submits written notification in accordance with the provisions of paragraph (e)(1) of this section may become a principal of such registrant until that registrant receives a written confirmation from the National Futures Association that such affiliation has been approved.

(f) All documents submitted pursuant to this section shall be filed with the National Futures Association.

* * * * *

(h) Except as otherwise provided in this section, within twenty days after any natural person becomes a principal of an applicant or registrant subsequent to the filing of a Form 7–R in accordance with the requirements set forth in §§ 3.10(a), 3.13(a), 3.14(a), 3.15(a), or 3.17(a) of this part, the applicant or registrant must file a Form 8–R with the National Futures Association. The Form 8–R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of that principal on a fingerprint card provided for that purpose by the National Futures Association. This filing need not be made for any such principal who has a current Form 8–R or Form 94 on file with the Commission or the National Futures Association: *Provided,* That within twenty days the applicant or registrant must notify the National Futures Association of the name of such added principal on Form 3–R.

* * * * *

10. Section 3.40 is amended by revising the introductory text and paragraph (b) to read as follows:

§ 3.40 Temporary licensing of applicants for associated person registration.

Notwithstanding any other provision of these regulations and pursuant to the terms and conditions of this subpart, the National Futures Association may grant a temporary license to any applicant for registration as an associated person upon the contemporaneous filing with the National Futures Association of:

* * * * *

(b) The fingerprints of the applicant on a fingerprint card provided by the National Futures Association for that purpose; and

* * * * *

11. Section 3.43 is amended by revising paragraph (b)(1) to read as follows:

§ 3.43 Relationship to registration.

* * * * *

(b) * * *

(1) A determination by the National Futures Association that the applicant is qualified for registration as an associated person; or

PART 145—COMMISSION RECORDS AND INFORMATION

12. The authority citation for Part 145 continues to read as follows:

Authority: Pub. L. 89–554, 80 Stat. 383, Pub. L. 90–23, 81 Stat. 54, Pub. L. 93–502, 88 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93–463, 88 Stat. 1389 (7 U.S.C. 4a(j)); Pub. L. 99–570.

13. Section 145.6 is amended by revising paragraph (b)(1) to read as follows:

§ 145.6 Commission offices to contact for assistance; registration records available.

* * * * *

(b)(1) The publicly available portions of Form 7–R (application for registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant), Form 8–R (application for registration as an associated person and floor broker and biographical supplement to application on Form 7–R), Form 8–S (certificate of special registration), Form 8–T (notice of termination) and Form 7–W (withdrawal from firm registration) will be available for public inspection and copying. Such registration forms with respect to futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants, and the associated persons of such registrants, and such registration forms with respect to floor brokers will be available in the offices of the National Futures Association, 200 West Madison Street, Chicago, Illinois 60606. Telephone: (312) 781–1300.

* * * * *

Issued in Washington, DC on May 2, 1989 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-10920 Filed 5-5-89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 89-55]

Coastwise Transportation of Certain Articles by Vessels of Antigua and Barbuda

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding Antigua and Barbuda to the list of nations which permit vessels of the United States to transport certain articles specified in section 27, Merchant Marine Act of 1920, as amended, between their ports.

The Department of State has received satisfactory evidence that Antigua and Barbuda places no restrictions on the transportation of certain specified articles by vessels of the United States between ports in that country. This amendment recognizes reciprocal privileges for vessels registered in Antigua and Barbuda.

DATES: The reciprocal privileges for vessels registered in Antigua and Barbuda became effective on October 28, 1988. This amendment is effective May 8, 1989.

FOR FURTHER INFORMATION CONTACT: Paul Hegland, Carrier Rulings Branch, (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

Section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. App. 883) (the "Act"), provides generally that no merchandise shall be transported by water, or by land and water, between points in the United States except in vessels built in and documented under the laws of the United States and owned by U.S. citizens. However, the 6th proviso of the Act, as amended, provides that, upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that a foreign nation does not restrict the transportation of certain articles between its ports by vessels of the United States, reciprocal privileges will be accorded to vessels of that nation, and the prohibition against the transportation of those articles between points in the U.S. will not apply to its vessels.

Section 4.93(b)(1), Customs Regulations (19 CFR 4.93(b)(1)), lists those nations found to extend reciprocal privileges to vessels of the United States for the transportation of empty cargo vans, empty lift vans, and empty shipping tanks. Section 4.93(b)(2), lists those nations found to extend reciprocal privileges to vessels of the U.S. for the transportation of equipment for use with cargo vans, lift vans, or shipping tanks; empty barges specifically designed for carriage aboard a vessel and certain equipment for use with these barges; certain empty instruments of international traffic; and certain stevedoring equipment and material.

On October 28, 1988, the Department of State advised the Chief, Carrier Rulings Branch, that Antigua and Barbuda places no restrictions on the transportation of any of the articles listed in the Act by vessels of the United States between ports in that country.

The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

Finding

On the basis of the information received from the Secretary of State and the Embassy of Antigua and Barbuda, it has been determined that Antigua and Barbuda places no restrictions on the transportation of the articles specified in section 27 of the Merchant Marine Act of 1920, as amended (46 U.S.C. App. 883), by vessels of the United States between ports in that country. Therefore, appropriate reciprocal privileges are accorded to vessels registered in Antigua and Barbuda as of October 28, 1988.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely implements a statutory requirement and involves a matter in which the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1).

Inapplicability of the Regulatory Flexibility Act

This document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a major regulation as defined in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Earl Martin, Regulations and Disclosure Law Branch, U.S. Customs Services. However, personnel from other offices of the Customs Service participated in its development.

List of Subjects in 19 CFR Part 4

Cargo vessels, Coastwise trade, Customs duties and inspection, Maritime carriers, Vessels.

Amendment to the Regulations

To reflect the reciprocal privileges granted to vessels registered in Antigua and Barbuda, Part 4, Customs Regulations (19 CFR Part 4), is amended in the following manner:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority for Part 4 continues to read in part as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624, 46 U.S.C. App. 3;

* * * * *

Section 4.93 also issued under 19 U.S.C. 1322(a), 46 U.S.C. App. 883;

§ 4.93 [Amended]

2. Sections 4.93(b) (1) and (2), are amended by adding "Antigua and Barbuda", in appropriate alphabetical order to the lists of nations entitled to reciprocal privileges.

Dated: May 3, 1989.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 89-10957 Filed 5-5-89; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Part 4

[T.D. 89-56]

Coastwise Transportation of Certain Articles by Vessels of Saudi Arabia

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding the

Kingdom of Saudi Arabia to the list of nations which permit vessels of the United States to transport certain articles specified in section 27, Merchant Marine Act of 1920, as amended, between their ports.

The Department of State has received satisfactory evidence that Saudi Arabia places no restrictions on the transportation of empty cargo vans, empty lift vans, and empty shipping tanks, by vessels of the United States between ports in that country. This amendment recognizes reciprocal privileges for vessels registered in Saudi Arabia.

DATES: The reciprocal privileges for vessels registered in Saudi Arabia became effective on November 7, 1988. This amendment is effective May 8, 1989.

FOR FURTHER INFORMATION CONTACT: Paul Hegland, Carrier Rulings Branch, (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

Section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. App. 883) (the "Act"), provides generally that no merchandise shall be transported by water, or by land and water, between points in the United States except in vessels built in and documented under the laws of the United States and owned by U.S. citizens. However, the 6th proviso of the Act, as amended, provides that, upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that a foreign nation does not restrict the transportation of certain articles between its ports by vessels of the United States, reciprocal privileges will be accorded to vessels of that nation, and the prohibition against the transportation of those articles between points in the U.S. will not apply to its vessels.

Section 4.93(b)(1), Customs Regulations (19 CFR 4.93(b)(1)), lists those nations found to extend reciprocal privileges to vessels of the United States for the transportation of empty cargo vans, empty lift vans, and empty shipping tanks.

On October 31, 1988, the Department of State advised the Chief, Carrier Rulings Branch of the Customs Service Headquarters that the Kingdom of Saudi Arabia places no restrictions on the transportation of empty cargo vans, empty lift vans, and empty shipping tanks, by vessels of the United States between ports in that country.

The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law branch.

Finding

On the basis of the information received from the Secretary of State and the Ministry of Foreign Affairs of the Kingdom of Saudi Arabia, it has been determined that Saudi Arabia places no restrictions on the transportation of empty cargo vans, empty lift vans, and empty shipping tanks, by vessels of the United States between ports in that country. Therefore, appropriate reciprocal privileges are accorded to vessels registered in Saudi Arabia as of November 7, 1988.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because these amendments merely implement a statutory requirement and involve a matter in which the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1).

Inapplicability of the Regulatory Flexibility Act

This document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a major regulation as defined in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Earl Martin, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices of the Customs Service participated in its development.

List of Subjects in 19 CFR Part 4

Cargo vessels, Coastwise trade, Customs duties and inspection, Maritime carriers, Vessels.

Amendment to the Regulations

To reflect the reciprocal privileges granted to vessels registered in Saudi Arabia, Part 4, Customs Regulations (19 CFR Part 4), is amended in the following manner:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority for Part 4 continues to read in part as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624, 46 U.S.C. App. 3,

* * * * *

Section 4.93 also issued under 19 U.S.C. 1322(a), 46 U.S.C. App. 883;

* * * * *

§ 4.93 [Amended]

2. Section 4.93(b)(1), is amended by adding "Saudi Arabia" in appropriate alphabetical order to the list of nations entitled to reciprocal privileges.

Dated: May 3, 1989.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 89-10958 Filed 5-5-89; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Parts 128, 143, and 178

[T.D. 89-53]

RIN 1515-AA64

Procedures for Clearance of Cargo Carried by Express Consignment Operators or Carriers

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to set forth revised special informal entry procedures applicable to the entry and clearance of cargo carried by the various entities which comprise the express consignment industry. These regulations further refine and expand upon the existing procedures which recognize the special needs of the growing express consignment industry. The member countries of the Customs Cooperation Council have recently examined the industry and associated issues and have adopted international guidelines which established various definitions, including the term "Express Consignment Operators or Carriers."

The overwhelming growth of this industry requires Customs to provide more expedited clearance procedures. These amendments will further promote uniform, fair and consistent treatment of the various courier and express air services, while at the same time better assuring the protection of the revenue in accord with all applicable laws and regulations.

DATES: These regulatory amendments are effective June 7, 1989. Current express consignment entities seeking to

continue their previously approved status must file the application by June 7, 1989, and must fully comply with the provisions contained in this document by November 3, 1989.

FOR FURTHER INFORMATION CONTACT: (Operational aspects)—Vincent Dantone, Office of Inspection and Control (202) 566–5354, (Legal aspects)—Ken Paley, Entry Rulings Branch (202) 566–5765.

SUPPLEMENTARY INFORMATION:

Background

On December 16, 1987, Customs published a notice in the **Federal Register** (52 FR 47729), proposing to add a new Part 128 to the Customs Regulations (19 CFR Part 128), to set forth revised special informal entry procedures applicable to the express consignment industry which recognized the needs of this growing industry. The proposed new regulations provided for incorporation of the current provisions of §§ 143.21(1) and 143.29, Customs Regulations (19 CFR 143.21(1) and 143.29), with certain modifications that provided for the filing of a written application and a procedure for Customs aproval of express consignment and hub facilities; established advance manifest requirements; established bond requirements; generally raised the informal entry ceiling to $1,250 for those qualifying to use the procedures; eliminated the distinction between shipments valued at $250 or less and those valued in excess thereof; raised the value level of shipments which must be segregated if an advance manifest is used from $5.00 to $25.00; streamlined informal and formal entry procedures; required all entry numbers to be furnished to Customs in a Customs approved bar coded readable format; and permitted the district director to waive production of entry documents in certain cases.

The proposed regulations also provided for the extension of the district director's authority to require the consolidation of shipments under one entry. The proposed amendments were designed to promote uniform, fair, and consistent treatment of the various courier and express services and make the procedures available to all operators, carriers, and other entities that meet the criteria, while at the same time assuring the protection of the revenue in accord with all applicable laws and regulations.

Comments on the proposal were to have been received on or before February 16, 1988. Pursuant to a request to extend the comment period, Customs extended the comment period to March 1, 1988.

All imported merchandise entering the Customs territory of the U.S. is subject to procedures relating to entry and clearance. The procedures ensure the proper valuation, and tariff classification of the merchandise for the purpose of collecting the lawful amount of duties, as well as compliance with all other laws and regulations administered and enforced by Customs. Depending upon its value, different procedures are provided for the entry and clearance of merchandise.

Formal entry procedures are set forth in Part 141, Customs Regulations (19 CFR Part 141), which are applicable, with certain exceptions, to shipments of merchandise valued in excess of $1,000. Informal entry procedures contained in Part 143, Customs Regulations (19 CFR Part 143), are generally limited to shipments of merchandise valued at $1,000 or less.

Although the procedures for the informal entry of merchandise are less technical and detailed than those for formal entry, they may still present an impediment to courier and express services seeking to fulfill their function of expedited delivery.

The trend in the express consignment industry for time-sensitive clearance of cargo and the processing of entry documents is well recognized by Customs. Because of the special needs of the growing express consignment industry, by T.D. 86–143, published in the **Federal Register** of July 22, 1986 (51 FR 26243), informal entry procedures were adopted. These procedures are set forth in §§ 143.21(1) and 143.29, Customs Regulations (19 CFR 143.21(1), 143.29). These procedures have helped the industry and Customs to cope with an ever-increasing workload. Nevertheless, Customs recognized that the procedures could be improved. In reaching this conclusion, Customs noted that major express consignment companies have averaged over a 400% increase in imported cargo carried during the last 2 years while Customs staffing levels have remained static at express industry facilities due to manpower constraints. A further 150% increase in volume is expected in the coming year.

The Customs Cooperation Council, an international organization in which the United States participates, recently examined the express consignment industry. It noted the problems raised by on-board and fast parcel services as well as the time-sensitive nature of such consignments. The Council's study, as noted in the May 1, 1987, report of its Permanent Technical Committee (Document 34.040), highlighted the need for the Customs services of the Council's member countries to provide a rapid reliable control and clearance system for this type of traffic.

It has now been determined, as stated in the notice, that more detailed and accurate information from the express consignment industry is necessary for Customs to streamline its processing. Certain advance information on incoming shipments and full reimbursement for services rendered is necessary for Customs to assist the industry while maintaining Customs enforcement posture.

The proposed rule set forth revised special informal entry procedures applicable to the express consignment industry in a new Part 128, Customs Regulations (19 CFR Part 128). The new Part 128 defines an express consignment operator or carrier and certain other terms. It establishes an approval process for express consignment facilities that, in addition to other requirements, mandates participation in Customs data processing system for entry and entry release processing. These procedures will be available to all operators, carriers and other entities that can meet the criteria set out in these regulations.

Two types of installations presently utilized by the express consignment industry are being recognized. The first is a centralized hub facility which is a separate, unique, single purpose facility normally operating outside of Customs operating hours; the facility must be approved by the district director for entry filing, examination and release of express consignment shipments. The second type of installation is the express consignment carrier facility, which is a separate or shared specialized facility approved by the district director solely for the examination and release of express consignment shipments.

Because of the high volume of entries that the major overnight courier services handle under existing criteria, they could qualify to be designated as a port of entry. As such, Customs inspectional services would be provided at all times at no additional cost to the courier service. All expenses for providing the service would be allocated out of the annual Customs budget appropriations in the same manner as it is done at other designated ports of entry.

Currently, in accordance with the User Charges Statute (31 U.S.C. 9701), the courier services must reimburse Customs for inspectional service occurring at places other than established ports of entry. The User Charges Statute was enacted to ensure that Federal Governmental services provided to individual recipients, as

opposed to the general public, are self-sustaining to the greatest extent possible. The potential establishment of separate ports of entry for individual couriers would, in effect, be contrary to the Congressional intent concerning the User Charges Statute. Accordingly, by T.D. 87-65, published in the **Federal Register** of May 4, 1987 (52 FR 16328), the port of entry workload criteria were modified to provide that no more than half of the minimum 2500 consumption entries to be filed at a port can be attributed to one entity. The entity must compensate the Government for services provided under 31 U.S.C. 9701.

The new regulations incorporate the current provisions of §§ 143.21(1) and 143.29, Customs Regulations (19 CFR 143.21(1), 143.29), with certain modifications. As revised, they provide for a written application and approval process for express consignment and hub facilities; establish advance manifest requirements; establish bond requirements; raise the informal entry ceiling to $1250 for those qualifying to use the procedures; eliminate the distinction between shipments valued at $250 or less and those valued in excess thereof; streamline informal and formal entry procedures; require that all entry numbers be furnished to Customs in a Customs approved bar coded readable format; and permit the district director to waive production of entry documents in certain cases. The district director's current authority to require the consolidation of shipments under one entry is also extended. These amendments will further promote uniform, fair and consistent treatment of the various courier and express services and make the procedures available to all operators, carriers and other entities that can meet the criteria, while at the same time better assure the protection of the revenue in accord with all applicable laws and regulations.

The new Part 128 provides for an application processing fee in connection with the facility approval process. It is Customs intent to initially implement a two tiered fee system. A $500 fee would apply to the approval of facilities in existence at the time final regulations are published, as well as facilities which are changed or altered after having been previously approved, where such change or alteration does not amount to an expansion. This would cover the expenses of the district director's review of and response to the application, review of the proposed procedures by the port director and higher level Customs officials, and also cover administrative costs. An application fee of $1000 would apply to the approval of new or expanded facilities. The fee would cover, in addition to the expenses noted above, facility design review (including blueprint review) and on-site meetings between company and Customs officials to discuss the facility design, operational and procedural proposals. This fee system would be reviewed and revised periodically to reflect changes in expenses. Changes in the fee system will be published in the **Federal Register** and the Customs Bulletin.

In order to conform the numbers of the new Part 128 to the Customs regulatory numbering scheme, some section numbers are being altered from those appearing in the proposed rule. This does not involve any substantive changes.

Analysis of Comments

Seven hundred thirty-three comments were received in response to the notice published in the **Federal Register** on December 16, 1987 (52 FR 47229), and the comment period extension published in the **Federal Register** on February 19, 1988 (53 FR 4998). A synopsis and analysis of the comments received, identified by the regulatory section, as contained in the notice, to which they refer, is contained in Part I below. General comments are discussed in Part II. References to the aforementioned revised section numbers are parenthetically noted in the heading and/or body of each comment and regulatory provision, as appropriate.

Part I. Section by Section Synopsis and Analysis

1. Section 128.1 Definitions

With respect to the definition of "express consignment operator or carrier" several commenters suggested that the regulations and the benefits provided thereunder be made available for express consignments transported by all express services; i.e., on-board couriers, air freight forwarders, commercial airlines, all-cargo airlines, and post offices, provided that such shipments are in fact handled on a truly express basis and that the carrier involved provides an appropriate level of cooperation with U.S. Customs. We agree and have changed the definition of an express operator to:

An "express consignment operator or carrier" is an entity operating in any mode or intermodally moving cargo by special express commercial service under closely integrated administrative control.

Numerous commenters also requested a softening of the term "guaranteed" contained in the same definition. The requests were based on the fact that most international express consignment companies do not guarantee timely delivery to the public. Therefore, the word "guaranteed" has been deleted from the definition and the word "reliable" substituted.

2. Section 128.1(d) and (e)

Numerous commenters objected to the distinction made in the definitions of a "hub" and an "express consignment carrier facility" and believe that only one definition for a processing facility should exist. We disagree. There is an obvious industry distinction between a "hub" and a "non-hub" operation. Customs developed the two definitions to specifically distinguish processing operations between a hub or spoke operation, where all express consignment cargo is delivered and random airports operations, where express consignment shipments are generally directly delivered to the city of destination. Customs, because of manpower constraints as well as the problems of clearing on-board courier or courier shipments (see § 128.1(c)) in passenger processing facilities, must have the option of directing all shipments to an "express consignment carrier facility" for the examination and release of express consignment cargo. In addition, the centralization of all aspects of the entry processing function has required Customs to establish centralized locations for the presentation of entry documentation, such as the Document Analysis Unit (DAU) at Kennedy Airport in New York.

3. Section 128.1(f)

Several commenters suggested that Customs should only be concerned with the items imported into the United States and not necessarily the entities involved in the importation process, and that the regulations and the definitions contained within should be confined to that issue. We disagree. The intent of the regulations is for the Customs Service to provide special procedures for the cargo imported by the express consignment operators or carriers. The two cannot be separated. That was the intent behind the definitions sections, and, in particular, § 128.1(f) dealing with closely integrated administrative control. However, we do agree with several of the comments suggesting a change in the phrase contained in § 128.1(f), "implemented by" to "indicated by" when referring to the control between the local company and the foreign affiliate.

Several commenters objected to the express consignment operator or carrier

being responsible for reimbursement to Customs for special enforcement operations, as required in § 128.1(g). We agree and have revised the definition of "reimbursable" to include only normal costs.

4. Section 128.2 Express Consignment Carrier Application and Approval Process (New Section 128.11)

Several commenters suggested that the approval process for express consignment carrier hubs or facilities be handled centrally at Customs Headquarters. We disagree. The approval process should remain at the local/district level, since the managers at those levels are more familiar with their particular needs. However, Customs has developed its own handbook for guidance in the requirements of these facilities that will be adopted for national use.

5. Section 128.2(b)(1) and 128.2(c) (New Section 128.11(b)(1) and 128.11(c))

Numerous comments were received regarding § 128.2(b)(1) and 128.2(c) (New § 128.11(b)(1) and 128.11 (c)). The present language seems to imply that Customs would have total approval of the entire express consignment hub or facility construction (see § 128.2(c) (New § 128.11(c)). We agree that a clarification is necessary in those two sections, and that § 128.2(c) (new § 128.11(c)) should also reflect the revocation of approval when changes are implemented to the international cargo processing area without Customs approval. The two sections have been revised. Section 128.2(b)(1), as revised (new § 128.11(b)(1)), refers to a full description of the international cargo facilities rather than the general term facilities. Section 128.2(c) (new § 128.11(c)), as revised, will clarify that the changes or alterations referred to are limited to an approved international cargo processing facility. The revised section will also clarify that the failure to obtain prior approval for changes or alterations to the international cargo facility may result in the suspension of approval as an express consignment facility or hub and the procedures for processing cargo contained in this chapter.

6. Section 128.2(b)(7)(i) (New Section 128.11(b)(7)(i))

One comment was received regarding § 128.2(b)(7)(i) (new § 128.11(b)(7)(i)), suggesting, in connection with the contents of the applications for approval of an express consignment carrier or hub facility, that the language be changed to only require formal entry for cargo to be processed in the Customs Automated Commercial System (ACS) and its associated modules. We disagree. We believe that such a change would be restrictive. It would not allow future changes in the ACS system to permit the processing of informal entries. It also would prohibit processing of informal entries and cargo exempt from entry in the Air Cargo Automated Manifest System.

Also, it became apparent that while express consignment entities were agreeing to use ACS there was no specific provision that entries be submitted thereunder. In order to clarify this point, § 128.5 (New § 128.23) is being revised. The final version thereof provides that the entry data concerning articles subject to entry must be transmitted in accordance with ACS requirements.

7. Section 128.2(b)(7)(v) (New Section 128.11(b)(7)(v))

Several comments were received, in connection with the contents of the agreement an express consignment entity must file in connection with its facility application, that the language in this subsection is too broad. We disagree. This subsection was included to bring uniformity in the reimbursement of costs incurred by the Customs Service and which are currently being reimbursed by express consignment operators and carriers operating at so-called "User Fee" airports.

8. Section 128.2(d) (New Section 128.12)

Numerous commenters indicated problems with § 128.2(d) (new § 128.12) dealing with the appeal of the denial of an application, the lack of specific appeal steps, and the limitation of 14 calendar days in which to appeal the decision of the district director. We agree. We, therefore, have rewritten the provision.

9. Section 128.3 (a) and (b) Manifest Requirements (New Section 128.21 (a) and (b))

All comments received from current express consignment companies reflected strong opposition to segments contained in this subpart. Specifically, the objections were to the requirement of manifesting separately all articles specifically exempt from entry by § 141.4 Customs Regulations (19 CFR 141.4). We strongly disagree. The need to manifest all incoming cargo for control and enforcement screening purposes is a vital and essential concern of the Customs Service. It is necessary if the Customs Service is to continue to achieve its mission to preserve and protect the revenue of the United States while at the same time preventing the importation of contraband. Several commenters observed the so-called disparity of processing and manifesting requirements as related to this issue and the international shipments carried by the United States Postal Service. Many express carriers believe that they should be treated by Customs in the same manner and with the same requirements and regulations imposed upon postal shipments. The Customs Service is bound to observe the numerous bilateral agreements and treaties negotiated by our Government with the International Postal Union and its member countries. We believe that the current procedures established by the Customs Service also achieve their objective with regard to postal importations.

10. Section 128.3(c) Explanation of Manifest Amendments

Although this provision was not the subject of a specific comment, it has been determined that the content of the proposed provision was essentially procedural. Since the procedure for the explanation of manifest amendments for overages and shortages is already covered elsewhere in the Customs Regulations (§ 4.12 as to vessels, § 122.49 as to aircraft, and § 123.9 as to land vehicles) the provision is excluded from the final rule.

11. Section 128.6 Informal Entry Procedures (New Section 128.24)

In the course of reviewing comments on this section we noted that paragraph (a), which generally permits the informal entry of shipments not exceeding $1250 in value and the consolidation of such shipments if each is valued at $1250 or less, was confusing. It appears, as proposed, to only permit the consolidation of shipments which are not subject to this provision, i.e., prohibited or restricted merchandise, quota merchandise, etc. The paragraph has been altered to correct this deficiency while still permitting the consolidation of shipments valued under $1250. Also, several commenters were concerned about the increase in the informal entry ceiling from $1000 to $1250 being limited to the express consignment industry. We agree that such an inequity should not exist and will change the limit for other importations in a separate **Federal Register** document.

A commenter questioned the meaning of the phrase "other necessary information" appearing at the end of the second sentence of § 128.6(c) (new § 128.24(c)) which identifies the documents which must be attached to the Custom Form 3461 and the

information that must appear therein. The provision is being altered to clarify that it covers information which may be necessary in the case of a particular shipment, local condition, or other situation identified from time to time by the district director in charge of the port of entry.

We noted, as a result of several comments, that § 128.6(d) (new § 128.24(d)) conveyed the meaning that articles valued at $25 or less could be administratively exempted from duty and tax. Since the statutory authority for administrative exemptions generally provides for only a $5 limit in such cases, the provision is being altered.

12. Section 128.8 Simplified Entry Document Procedures (New Section 128.26)

Several commenters expressed a lack of understanding of the reasons for the furnishing of entry numbers in approved bar coded readable format as required by § 128.8(a) (new § 128.26(a)). The purpose of this requirement is to permit the expedited processing of entry paperwork and cargo release. The section has been modified to clarify this point.

Part II—General Comments

1. Certain commenters believe that the proposed procedures amount to an *ultra vires* amendment of the governing law in the guise of regulation.

We believe that the regulatory provisions of Part 128 do not exceed the authority provided by the statutes listed in the authority citation for Part 128. Taken together, those statutes provide the Secretary of the Treasury with rather broad discretion in prescribing rules and regulations to govern the areas which are the subject of the regulations.

2. The modified system proposed for the clearance of express consignment cargo, according to some commenters, weakens safeguards and procedures mandated by law covering the entry of merchandise into the United States.

This issue was raised when we proposed the addition of §§ 143.21(1) and 143.29 to the Customs Regulations. We responded in T.D. 86–143 by indicating that we are aware of the potential for smuggling and other abuses, that we currently conduct random intensive examinations of merchandise from courier and air express shipments, that we will conduct audits on the operations of the express companies and brokers to ensure that proper duty has been collected, and that we are negotiating agreements with the companies setting forth specific preventative steps that can be taken to ensure that smuggling and other abuses are detected and reported to us. We should now report that we followed through on those actions and are satisfied with the level of compliance observed. We will continue with these procedures.

3. The proposed procedures, according to certain commenters, vastly magnify the potential for improper classification and valuation of merchandise, and unauthorized release.

The issue was raised in the comments received in connection with T.D. 86–143. Customs will take steps similar to those identified in response to the previous comment, such as audits and intensive examinations to insure proper classification and valuation of merchandise.

4. Some commenters believe that the proposed regulations fail to address the question of adequate bond coverage for the express companies "in-house" brokers.

Customs believes that existing regulations already address this issue and that in appropriate cases bond coverage can be increased.

5. Certain commenters believe that the proposed regulations permit *per se* violation of § 111.36 of the Customs Regulations.

The proposed regulations themselves do not authorize any action which is in direct conflict with § 111.36 of the Customs Regulations. The problem raised is one which could arise from any transaction in which a broker has business relations with an unlicensed person; it is not limited to transactions such as those contemplated by Part 128. Such a problem, when and if it arises, may be dealt with in the same manner as when it arises in any other context.

6. The discriminatory and anti-competitive nature of the present and proposed expedited clearance procedures must be corrected according to some broker commenters.

As we pointed out in T.D. 86–143, courier and express air service companies must still use a licensed broker to transact Customs business. Different brokers will acquire different shares of this business, but the brokerage industry is not being excluded from this category of transactions.

7. Some commenters raised concerns regarding the possible violation of the Regulatory Flexibility Act and E.O. 12291.

The Express Consignment Industry Regulations do not place an increased regulatory burden on a significant number of small entities such as the Regulatory Flexibility Act and E.O. 12291 were designed to prevent. They provide simplified procedures which are available to anyone wishing to take advantage of them. While some entities may be better able to utilize the procedures than others, the ability to do so is based on competitive factors and not on a regulatory burden. In fact, some comments received from small entities praised the proposal.

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1515–0144. The estimated average burden associated with the collection of information in this final rule is 15 minutes per respondent or recordkeeper.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to U.S. Customs Service, Paperwork Management Branch, Washington, DC 20229 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1515–0144) Washington, DC 20503.

Part 178, Customs Regulations (19 CFR Part 178), which lists the information collections contained in the regulations and the control number assigned by OMB is being amended to add § 128.11 thereto.

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Determination

After carefully analyzing the comments received, and further consideration of the matter, it has been determined to adopt the regulatory changes as proposed with the modifications noted.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

List of Subjects

19 CFR Part 128

Carriers, Couriers, Customs duties and inspection, Express consignments, Imports.

19 CFR Part 143

Customs duties and inspection, Imports.

19 CFR Part 178

Reporting and recordkeeping requirements, Paperwork requirements, Collection of information.

Amendments to the Regulations

Parts 143 and 178 are amended and a new Part 128 is added to Chapter I, Title 19, Code of Federal Regulations, as set forth below:

PART 128—EXPRESS CONSIGNMENTS

Sec.

Authority: 19 U.S.C. 66, 1202 (Gen. Headnote 11, TSUS; Gen. Note 8, HTSUS), 1484, 1498, 1551, 1555, 1556, 1565, 1624.

§ 128.0 Scope.

This part sets forth requirements and procedures for the clearance of imported merchandise carried by express consignment operators and carriers, including couriers, under special procedures.

Subpart A—General

§ 128.1 Definitions.

For the purpose of this part the following definitions shall apply:

(a) *Express consignment operator or carrier.* An "express consignment operator or carrier" is an entity operating in any mode or intermodally moving cargo by special express commercial service under closely integrated administrative control. Its services are offered to the public under advertised, reliable timely delivery on a door-to-door basis. An express consignment operator assumes liability to Customs for the articles in the same manner as if it is the sole carrier.

(b) *Cargo.* "Cargo" means any and all shipments imported into the Customs territory of the United States by an express consignment operator or carrier whether manifested, accompanied, or unaccompanied.

(c) *Courier shipment.* A "courier shipment" is an accompanied express consignment shipment.

(d) *Hub.* A "hub" is a separate, unique, single purpose facility normally operating outside of Customs operating hours approved by the district director for entry filing, examination, and release of express consignment shipments.

(e) *Express consignment carrier facility.* An "express consignment carrier facility" is a separate or shared specialized facility approved by the district director solely for the examination and release of express consignment shipments.

(f) *Closely integrated administrative control.* The term "closely integrated administrative control" means operations must be sufficiently integrated at both ends of the service (i.e., pick-up and delivery) so that the express consignment company can exercise a high degree of control over the shipments, particularly in regard to the reliability of information supplied for Customs purposes. Such control would be indicated by substantial common ownership between the local company and the foreign affiliate and/or by a very close contractual relationship between the local company and its foreign affiliate(s) (*e.g.*, a franchise arrangement).

(g) *Reimbursable.* "Reimbursable" means all normal costs incurred at an express consignment operator's hub or an express consignment carrier facility that are required to be reimbursed to the Government.

Subpart B—Administration

§ 128.11 Express consignment carrier application process.

(a) *Facility application.* Requests for approval of an express consignment carrier or hub facility must be in writing to the district director.

(b) *Application contents.* The application for approval of an express consignment carrier or hub facility must include the following:

(1) A full description of the international cargo facilities, including blueprints, floor plans and facility location(s).

(2) A statement of the general character of the express consignment operations.

(3) An estimate of volume of transactions by:

(i) Formal entries.

(ii) Informal entries.

(iii) Shipments not requiring entry (see § 128.23 of this part).

(4) An application processing fee, as set forth in paragraph (e) of this section.

(5) A list of principal company officials or officers.

(6) A projected start-up date, and days and hours of operation.

(7) An agreement that the express consignment entity will:

(i) Ensure that all cargo will be processed in the Customs Automated Commercial System (ACS) and associated modules, including, but not limited to, Automated Broker Interface (ABI), Automated Manifest System (AMS), Cargo Selectivity, and Statement Processing.

(ii) Sign and implement a narcotics enforcement agreement with Customs.

(iii) Provide, without cost to the Government, adequate office space, equipment, furnishings, supplies and security as per Customs specifications.

(iv) Timely pay all reimbursable costs, as determined by the district director.

(v) Pay to Customs all relocation, training and all other exceptional costs and expenses incurred by Customs in relocating necessary staff to the company's hub location to provide service to the company and to pay expenses incurred by Customs due to termination or decline of operations at the facility.

(c) *Changes or alterations to facility.* All proposed changes or alterations to an existing approved international cargo processing facility must be submitted in writing to the district director for approval prior to the implementation thereof and shall contain the information specified in paragraph (b) of this section. Failure to obtain Customs approval by an express consignment operator or carrier for any modifications to the international cargo processing area may result in the suspension of approval as an express consignment facility or hub and the procedures for processing cargo contained in this part.

§ 128.12 Application approval/denial and suspension of operating privileges.

(a) *Notice.* (1) The district director shall promptly notify the applicant in writing of the decision to approve or deny the application to establish an express consignment carrier or hub facility or to suspend or revoke operating privileges at an existing facility.

(2) The notice shall specifically state the grounds for denial or for the proposed suspension or revocation.

(b) *Appeal.* The express consignment entity may file a written notice of appeal seeking review of the denial or proposed suspension or revocation within 30 days after notification.

(c) *Recommendation.* The district director shall consider the allegations and responses in the appeal unless, in the case of a suspension or revocation, the express consignment entity requests a hearing. The appeal along with the district director's recommendation shall be forwarded to the Commissioner of Customs or his designee for a final administrative decision.

(d) *Hearing.* In the case of a proposed suspension or revocation, a hearing may be requested within 30 days after notification. If a hearing is requested, it shall be held before a hearing officer appointed by the Commissioner of Customs or his designee within 30 days following the express consignment entity's request. The entity shall be notified of the time and place of the hearing at least 5 days prior thereto. The express consignment entity may be represented by counsel at such hearing, and all evidence and testimony of witnesses in such proceedings, including substantiation of the allegations and the responses thereto shall be presented, with the right of cross-examination to both parties. A stenographic record of any such proceeding shall be made and a copy thereof shall be delivered to the express consignment entity. At the conclusion of the hearing, all papers and the stenographic record of the hearing shall promptly be transmitted to the Commissioner of Customs or his designee together with a recommendation for final action. The express consignment entity may submit in writing additional views or arguments to the Commissioner or his designee following a hearing on the basis of the stenographic record, within 10 days after delivery to it of a copy of such record. The Commissioner or his designee shall thereafter render the decision in writing, stating the reasons therefor. Such decision shall be served on the express consignment entity, and shall be considered the final administrative action.

§ 128.13 Application processing fee.

Each operator of an express consignment hub or carrier facility will be charged a fee to establish, alter, or relocate such facility which shall be determined under the provisions of 31 U.S.C. 9701. The fee will be periodically reviewed and revised to reflect changes in processing expenses and any changes thereto will be published in the **Federal Register** and "Customs Bulletin".

Subpart C—Procedures

§ 128.21 Manifest requirements.

(a) *Additional information.* Express consignment operators and carriers shall provide the following manifest information in advance of the arrival of all cargo, including all articles for which an entry is not required as noted in § 128.23 (which shall be listed separately and their entry status noted), in addition to the information and documents otherwise required by this chapter:

(1) Country of origin of the merchandise.

(2) Shipper name, address and country.

(3) Ultimate consignee name and address.

(4) Specific description of the merchandise and, unless the commodity is exempt from entry requirements as noted in § 128.23, the Tariff Schedules of the United States (TSUS) item number or the Harmonized Tariff Schedules of the United States (HTSUS) subheading number, as appropriate.

(5) Quantity.

(6) Shipping weight.

(7) Value.

(b) *Sorting of cargo.* If the shipments are physically sorted by country of origin of the merchandise when they arrive at the hub or express consignment facility and are presented to Customs in this manner, the advance manifest information shall also be provided with the merchandise segregated by country of origin.

§ 128.22 Bonds.

Each express consignment operator or carrier must be recognized by Customs as an international carrier and approved as a carrier of bonded merchandise, and shall file bonds on Customs Form 301, containing the bond conditions set forth in §§ 113.62, 113.63, 113.64 and 113.66 of this chapter, to insure compliance with Customs requirements relating to the importation and entry of merchandise as well as the carriage and custody of merchandise under Customs control.

§ 128.23 Entry requirements.

(a) *General rule.* All articles carried by an express consignment entity shall be entered. Except as provided in paragraph (b) of this section, all such entities utilizing the procedures in this part shall comply with the requirements of the Customs Automated Commercial System (ACS). This includes the Automated Manifest System (AMS), Cargo Selectivity, Statement Processing, the Automated Broker Interface System (ABI), and enhancements of ACS.

(b) *Exception.* Articles specifically exempt from entry by § 141.4 need not satisfy the general rule.

§ 128.24 Informal entry procedures.

(a) *Eligibility.* Informal entry procedures may generally be used for shipments not exceeding $1250 in value which are imported by express consignment operators and carriers. Individual shipments valued at $1250 or less may be consolidated on one entry. Such procedures, however, may not be used for prohibited or restricted merchandise, merchandise which is subject to a quota or other quantitative restraints, or for any articles precluded from informal entry procedures by virtue of section 498, Tariff Act of 1930, as amended, (19 U.S.C. 1498).

(b) *Procedures.* Customs Form 3461, appropriately modified to cover all importations under the special procedures contained in this part, shall be submitted prior to the commencement of hub or express consignment carrier facility operations. The party with the right to file entry may submit a copy of the invoice or the advance manifest, as described in § 128.21 in lieu of other control documents.

(c) *Alternative procedure.* The party with the right to file entry may be required to submit an individual Customs Form 3461 covering the eligible shipments on a daily basis or by flight basis. Commercial invoices or advance manifests shall be attached to the Customs Form 3461 which will contain the entry number and such other information deemed necessary by the district director of Customs. A notation shall be placed on the Customs Form 3461 that the entry covers multiple shipments.

(d) *Low value shipments.* Shipments valued at $5 or less must be segregated from those valued at more than $5 if an advance manifest is used as the entry document.

(e) *Entry summary.* An entry summary (Customs Form 7501) must be presented in proper form, and estimated duties deposited, within 10 days of release of the merchandise under either the regular or alternative procedure described in this section.

§ 128.25 Formal entry procedures.

The district director may require a formal entry summary for an individual shipment or may require the consolidation of ships under one such entry in accordance with the provisions of § 143.22 of this chapter.

§ 128.26 Simplified entry document procedures.

(a) *Entry number.* All entry numbers must be furnished to Customs in a Customs approved bar coded readable format in order to assist in the processing of express consignment cargo under the Customs Automated Commercial System (ACS).

(b) *Paper Entry Documentation Waiver.* The district director is authorized, at the time of entry, to accept the appropriate electronic equivalent in lieu of entry documents for those entries designated as not requiring examination or review when the advance manifest requirements of § 128.21(a) of this part have been met.

PART 143—CONSUMPTION, APPRAISEMENT, AND INFORMAL ENTRIES

1. The authority citation for Part 143 would continue to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

§ 143.21 [Amended]

2. Section 143.21 is amended by removing paragraph (l).

§ 143.29 [Removed]

3. Part 143 is amended by removing § 143.29.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by inserting the following in appropriate numerical sequence according to the section number under the columns indicated:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control No.
*	* * * *	*
128.11	Express consignment carrier application and approval process	1515-0144
*	* * * *	*

William Von Raab,
Commissioner of Customs.

Approved: May 1, 1989.

Salvatore R. Martoche,
Assistant Secretary of the Treasury.

[FR Doc. 89-10885 Filed 5-5-89; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 301

[T.D. 8250]

RIN 1545-AM62

Administrative Appeal of the Erroneous Filing of Notice of Federal Tax Lien

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide for the administrative appeal of the erroneous filing of a notice of federal tax lien. The right to an administrative appeal of the erroneous filing of a notice of federal tax lien was established by the Technical and Miscellaneous Revenue Act of 1988. The regulations set forth the situations in which persons may appeal the erroneous filing of a notice of federal tax lien, the office to which appeals may be made, and the information and documents that must be submitted with an appeal. The text of the regulations also cross-references the notice of proposed rulemaking in the proposed rules section of this issue of the **Federal Register.**

EFFECTIVE DATE: The regulations providing the right to an administrative appeal of the erroneous filing of a notice of federal tax lien are effective July 7, 1989.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, 202-535-9684 (not a toll-free call).

SUPPLEMENTARY INFORMATION: This document contains temporary regulations amending the Procedure and Administration Regulations (26 CFR Part 301) under section 6326 of the Internal Revenue Code. The regulations reflect the amendment of section 6326 by section 6238 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647).

Explanation of Provisions

Section 6238 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647, 102 Stat. 3342) redesignated section 6326 of the Internal Revenue Code as section 6327 and added a new section 6326. Section 6326(a) provides that the Secretary shall prescribe regulations that provide for the administrative appeal of the erroneous filing of a notice of federal tax lien. Section 6326(b) provides that if the Secretary determines that the Internal Revenue Service has erroneously filed a notice of federal tax lien, the Secretary must expeditiously, and, to the extent practicable, within 14 days after such determination, issue a certificate of release of the lien. This certificate must include a statement that the filing was erroneous.

The regulations provide that a person may file an administrative appeal of the erroneous filing of a notice of federal tax lien in any of the following situations: (1) The tax liability that gave rise to the lien was satisfied in full prior to the filing of notice; (2) the underlying liability was assessed in violation of the deficiency procedures set forth in section 6213 of the Internal Revenue Code; (3) the underlying liability was assessed in violation of Title 11, *i.e.*, the Bankruptcy Code; or (4) the statute of limitations for collection expired prior to the filing of notice.

The legislative history of section 6326 indicates that the administrative appeal is intended to be used only for the purpose of correcting publicly the erroneous filing of a notice of federal tax lien, not to challenge the underlying deficiency that led to the filing of a lien. In addition to the three situations specifically enumerated in the legislative history, to which section 6326 is meant to apply, the Internal Revenue Service considers it in keeping with the spirit of the Taxpayer Bill of Rights also to allow an appeal when the statute of limitations on collection expired prior to the filing of notice of federal tax lien. This additional situation also involves an erroneous filing of a notice of federal tax lien.

The Internal Revenue Service welcomes comments from the public concerning other possible situations that may involve the erroneous filing of a notice of federal tax lien. Some situations that the public might think should be covered by section 6326 already are covered under other sections of the Internal Revenue Code. For example, it may appear that the filing of a federal tax lien against a person with the same name as the liable taxpayer is erroneous and should be covered by section 6326 and these regulations. This situation, however, is covered by section 6325(e) of the Internal Revenue Code, which gives the Secretary the authority to issue a certificate of nonattachment of lien if, because of confusion of names, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed under section 6323 of the Code refers to such person.

The regulations provide that appeals under section 6326 shall be made to the district director, attention Chief, Special

Procedures Function, of the district in which the lien was filed.

The regulations provide that a request for appeal under section 6326 is to be submitted in writing, and is to include the identity of the appealing party, a copy of the notice of lien affecting the property, if available, and the ground upon which the release of lien is sought. If the ground for release is that the liability was paid prior to the filing, the written request must include proof of full payment. If the ground upon which the filing of notice is being appealed is that the tax liability that gave rise to the lien was assessed in violation of the deficiency procedures set forth in section 6213 of the Internal Revenue Code, the appealing party must explain how the assessment was erroneous. If the ground for appeal is that the tax liability that gave rise to the lien was assessed in violation of Title 11, the appealing party must identify the court and the district in which the bankruptcy petition was filed and provide the docket number and the date of filing of the bankruptcy petition.

Finally, the regulations provide that the appeal provided by section 6326 and these regulations shall be a person's exclusive administrative remedy for the erroneous filing of a notice of federal tax lien.

Special Analysis

It has been determined that these temporary regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It is certified that these rules will not have a significant economic impact on a substantial number of small entities because the regulations only provide procedures for any taxpayer to follow to administratively appeal the erroneous filing of a federal tax lien. Therefore, the analysis requirements of the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply.

Drafting Information

The principal author of these regulations is Kevin B. Connelly of the General Litigation Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Disclosure of information, Employment taxes, Estate tax, Excise taxes, Filing requirements, Gift tax, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes.

Adoption of Addition to the Regulations

Accordingly, Title 26, Part 301 of the Code of Federal Regulations is amended as follows.

Paragraph 1. The authority citation for Part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * *

Par. 2. § 301.6326–1T is added immediately following § 301.6325–1 to read as follows.

§ 301.6326–1T. Administrative appeal of the erroneous filing of notice of federal tax lien (temporary).

(a) *In general.* Any person may appeal to the district director of the district in which a notice of federal tax lien was filed on the property or rights to property of such person for a release of lien alleging an error in the filing of notice of lien. Such appeal may be used only for the purpose of correcting the erroneous filing of a notice of lien, not to challenge the underlying deficiency that led to the imposition of a lien. If the district director determines that the Internal Revenue Service has erroneously filed the notice of any federal tax lien, the district director shall expeditiously, and, to the extent practicable, within 14 days after such determination, issue a certificate of release of lien. The certificate of release of such lien shall include a statement that the filing of notice of lien was erroneous.

(b) *Appeal alleging an error in the filing of notice of lien.* For purposes of paragraph (a) of this section, an appeal of the filing of notice of federal tax lien must be based on any one of the following allegations:

(1) The tax liability that gave rise to the lien, plus any interest and additions to tax associated with said liability, was satisfied prior to the filing of notice of lien;

(2) The tax liability that gave rise to the lien was assessed in violation of the deficiency procedures set forth in section 6213 of the Internal Revenue Code;

(3) The tax liability that gave rise to the lien was assessed in violation of Title 11 of the United States Code (the Bankruptcy Code); or

(4) The statutory period for collection of the tax liability that gave rise to the lien expired prior to the filing of notice of federal tax lien.

(c) *Notice of federal tax lien that lists multiple liabilities.* When a notice of federal tax lien lists multiple liabilities, a person may appeal the filing of notice of lien with respect to one or more of the liabilities listed in the notice, if the notice was erroneously filed with respect to such liabilities. If a notice of federal tax lien was erroneously filed with respect to one or more liabilities listed in the notice, the district director shall issue a certificate of release with respect to such liabilities. For example, if a notice of federal tax lien lists tax liabilities for years 1980, 1981 and 1982, and the entire liabilities for 1981 and 1982 were paid prior to the filing of notice of lien, the taxpayer may appeal the filing of notice of lien with respect to the 1981 and 1982 liabilities and the district director must issue a certificate of release with respect to the 1981 and 1982 liabilities.

(d) *Procedures for appeal*—(1) *Manner.* An appeal of the filing of notice of federal tax lien shall be made in writing to the district director (marked for the attention of the Chief, Special Procedures Function) of the district in which the notice of federal tax lien was filed.

(2) *Form.* The appeal shall include the following information and documents:

(i) Name, current address, and taxpayer identification number of the person appealing the filing of notice of federal tax lien;

(ii) A copy of the notice of federal tax lien affecting the property, if available; and

(iii) The grounds upon which the filing of notice of federal tax lien is being appealed.

(A) If the ground upon which the filing of notice is being appealed is that the tax liability in question was satisfied prior to the filing, proof of full payment as defined in paragraph (e) of this section must be provided.

(B) If the ground upon which the filing of notice is being appealed is that the tax liability that gave rise to lien was assessed in violation of the deficiency procedures set forth in section 6213 of the Internal Revenue Code, the appealing party must explain how the assessment was erroneous.

(C) If the ground upon which the filing of notice is being appealed is that the tax liability that gave rise to the lien was assessed in violation of Title 11 of the United States Code (the Bankruptcy Code), the appealing party must provide the following:

(*1*) The identity of the court and the district in which the bankruptcy petition was filed; and

(*2*) The docket number and the date of filing of the bankruptcy petition.

(*3*) *Time.* An administrative appeal of the erroneous filing of notice of federal tax lien shall be made within 1 year

after the taxpayer becomes aware of the erroneously filed tax lien.

(e) *Proof of full payment.* As used in paragraph (d)(2)(iii) of this section, the term "proof of full payment" means:

(1) An internal revenue cashier's receipt reflecting full payment of the tax liability in question prior to the date the federal tax lien issue was filed;

(2) A canceled check to the Internal Revenue Service in an amount which was sufficient to satisfy the tax liability for which release is being sought; or

(3) Any other manner of proof acceptable to the district director.

(f) *Exclusive remedy.* The appeal established by section 6326 of the Internal Revenue Code and by this section shall be the exclusive administrative remedy with respect to the erroneous filing of a notice of federal tax lien.

(g) *Effective date.* The provisions of this section are effective July 7, 1989.

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

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Approved: April 21, 1989.

John G. Wilkins,

Acting Assistant Secretary of the Treasury.

[FR Doc. 89-10889 Filed 5-5-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 50, 71, 91, 98, 107, 110, 153, 154, 170 and 189

[CGD 89-025]

RIN 2115-AD27

Change of Address for Marine Safety Center

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Due to the relocation of the Marine Safety Center, these rules change the address for submitting vessel plans and other materials for Coast Guard review.

EFFECTIVE DATE: May 8, 1989.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Michael M. Rosecrans, Marine Technical and Hazardous Materials Division, (G-MTH-4/13), Room 1304, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593-0001, (202) 267-2997.

SUPPLEMENTARY INFORMATION: The Marine Safety Center, whose job includes review of commercial vessel plans and calculations as specified in various sections of Title 46 Code of Federal Regulations, has been relocated within the Washington, DC area. These rules provide the new mailing address. In accordance with 5 U.S.C. 553(b), a notice of proposed rulemaking was not published for these regulations. This rule merely notifies the public of the current address of the Coast Guard Marine Safety Center. Therefore, the Coast Guard finds that notice and opportunity for public comment is unnecessary. Further, since the Marine Safety Center has already relocated, and the public has an immediate need to submit materials to the Marine Safety Center for review, good cause exists under 5 U.S.C. 553(d) for making this rule effective in less than 30 days following publication in the **Federal Register**. Since there is no economic impact, an economic evaluation has not been conducted.

Drafting Information

The principal persons involved in drafting this proposal are Lieutenant Commander Michael M. Rosecrans, Project Manager, Office of Merchant Marine Safety, Security and Environmental Protection and Lieutenant Commander Don M. Wrye, Project Counsel, Office of the Chief Counsel.

Regulatory Evaluation

These changes have been evaluated under Executive Order 12291 and DOT Order 2100.5 and have been determined to be non-major and non-significant. These rules reflect a change in address only with no economic impact upon the public.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 through 612), the Coast Guard has considered whether this rulemaking is likely to have a significant economic impact on a substantial number of small entities. Since there are no additional costs involved with these rules, the Coast Guard certifies that the rules would not have a significant economic impact on a substantial number of small entities.

List of Subjects

46 CFR Part 50

Marine safety, Organization and functions (Government Regulations), Reporting and recordkeeping requirements, Vessels.

46 CFR Part 71

Marine safety, Organization and functions (Government Regulations), Passenger vessels, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 91

Cargo vessels, Marine safety, Organization and functions (Government Regulations), Reporting and recordkeeping requirements, Vessels.

46 CFR Part 98

Cargo vessels, Hazardous materials transportation, Marine safety, Organization and functions (Government Regulations), Reporting and recordkeeping requirements, Vessels.

46 CFR Part 107

Incorporation by reference, Marine safety, Occupational safety and health, Oil and gas exploration, Organization and functions (Government Regulations), Vessels.

46 CFR Part 110

Incorporation by reference, Marine safety, Organization and functions (Government Regulations), Reporting and recordkeeping requirements, Vessels.

46 CFR Part 153

Cargo vessels, Hazardous materials transportation, Marine safety, Organization and functions (Government Regulations), Reporting and recordkeeping requirements, Vessels.

46 CFR Part 154

Cargo vessels, Gases, Hazardous materials transportation, Incorporation by reference, Marine safety, Organization and functions (Government Regulations), Reporting and recordkeeping requirements, Vessels.

46 CFR Part 170

Incorporation by reference, Marine safety, Organization and functions (Government Regulations), Reporting and recordkeeping requirements, Vessels.

46 CFR Part 189

Marine safety, Oceanographic research vessels, Organization and functions (Government Regulations), Reporting and recordkeeping requirements, Vessels.

This document is issued under the authority of 14 U.S.C. 633. In consideration of the foregoing, Chapter I of Title 46 of the Code of Federal Regulations is amended as follows:

PART 50—GENERAL PROVISION

1. In § 50.20–5, paragraph (d) is revised to read as follows:

§ 50.20–5 Procedures for submittal of plans.

* * * * *

(d) Plans, except those for boilers and nuclear vessels, may be submitted to Commanding Officer, U.S. Coast Guard Marine Safety Center (G–MSC), 400 Seventh St., SW., Washington, DC 20590–0001.

* * * * *

PART 71—INSPECTION AND CERTIFICATION

2. In § 71.65–15, paragraph (a)(3) is revised to read as follows:

§ 71.65–15 Procedure for submittal of plans.

(a)* * *

(3) The plans may be submitted directly to Commanding Officer, U.S. Coast Guard Marine Safety Center (G–MSC), 400 Seventh St., SW., Washington, DC 20590–0001.

* * * * *

PART 91—INSPECTION AND CERTIFICATION

3. In § 91.55–15, paragraph (a)(3) is revised to read as follows:

§ 91.55–15 Procedure for submittal of plans.

(a) * * *

(3) The plans may be submitted directly to Commanding Officer, U.S. Coast Guard Marine Safety Center (G–MSC), 400 Seventh St., SW., Washington, DC 20590–0001.

* * * * *

PART 98—SPECIAL CONSTRUCTION, ARRANGEMENT, AND OTHER PROVISIONS FOR CERTAIN DANGEROUS CARGOES IN BULK

4. In § 98.35–7, paragraph (b) is revised to read as follows:

§ 98.35–7 Plan Approval.

* * * * *

(b) The plans may be submitted directly to Commanding Officer, U.S. Coast Guard Marine Safety Center (G–MSC), 400 Seventh St., SW., Washington, DC 20590–0001.

* * * * *

PART 107—INSPECTION AND CERTIFICATION

5. In § 107.317, paragraph (b) is revised to read as follows:

§ 107.317 Addresses for submittal of plans, specifications, and calculations.

* * * * *

(b) Commanding Officer, U.S. Coast Guard Marine Safety Center (G–MSC), 400 Seventh St., SW., Washington, DC 20590–0001.

* * * * *

PART 110—GENERAL PROVISIONS

6. In § 110.25–3, paragraph (a)(1) is revised to read as follows:

§ 110.25–3 Procedure for submitting plans.

(a) * * *

(1) Commanding Officer, U.S. Coast Guard Marine Safety Center (G–MSC), 400 Seventh St., SW., Washington, DC 20590–0001.

* * * * *

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

7. In § 153.9, paragraphs (a) introductory text, (b) introductory text, and (c)(1) are revised to read as follows:

§ 153.9 Foreign flag vessel endorsement application.

(a) *Application for a vessel whose flag administration issues IMO Certificates.* A person who desires a Certificate of Compliance [1] endorsed with the name of a cargo in Table 1 of this part, as described in § 153.900, must submit to Commanding Officer, U.S. Coast Guard Marine Safety Center (G–MSC), 400 Seventh St., SW., Washington, DC 20590–0001 an application which includes a copy of IMO Certificates [2] issued by the vessel's administration with:

* * * * *

(b) *Application for a vessel whose flag administration does not issue IMO Certificates.* A person who desires a Certificate of Compliance [1] endorsed with the name of a cargo in Table 1 of this part, as described in § 153.900, must submit to Commanding Officer, U.S. Coast Guard Marine Safety Center (G–MSC), 400 Seventh St., SW., Washington, DC 20590–0001 an application that includes the following information:

* * * * *

(c) * * *

(1) If requested by the Commanding Officer, U.S. Coast Guard Marine Safety Center (G–MSC), 400 Seventh St., SW., Washington, DC 20590–0001, a person desiring a Certificate of Compliance for a vessel must furnish any other vessel information such as plans, design calculations, test results, certificates, and manufacturer's data, that the Coast Guard needs to determine that the vessel meets the standards of this part.

* * * * *

PART 154—SAFETY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES

8. In § 154.22, paragraph (a) introductory text is revised to read as follows:

§ 154.22 Foreign flag vessel: Certificate of Compliance endorsement application.

(a) A person who desires an endorsed Certificate of Compliance to meet § 154.1802(a) for a foreign flag vessel, whose flag administration issues IMO Certificates, must submit to the Commanding Officer, U.S. Coast Guard Marine Safety Center (G–MSC), 400 Seventh St., SW., Washington, DC 20590–0001, an application that includes the following:

* * * * *

[1] Until the Certificate of Compliance form is developed, the Letter of Compliance with a Subchapter O endorsement for the carriage of hazardous liquids will serve the purpose of the endorsed Certificate of Compliance.

[2] Generally, the IMO Certificate is sufficient for the Coast Guard to endorse the vessel's Certificate of Compliance with the names of those cargoes in Table 1 that are listed on the IMO Certificate. The IMO Certificate would not be sufficient when the Certificate authorized a cargo that is not permitted in U.S. waters, when the Certificate is in error or waives part of the Code, or when the regulations in this part exceed those of the Code.

PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

9. Section 170.010 is revised to read as follows:

§ 170.010 Equivalents.

Substitutions for fittings, equipment, arrangements, calculations, information, or tests required in this subchapter may be approved by the Commandant, the Commanding Officer, U.S. Coast Guard Marine Safety Center (G–MSC), 400 Seventh St., SW., Washington, DC 20590–0001 or the Officer in Charge, Marine Inspection, if the substitution provides an equivalent level of safety.

10. In § 170.100, paragraph (b) is revised to read as follows:

§ 170.100 Addresses for submittal of plans and calculations.

* * * * *

(b) Commanding Officer, U.S. Coast Guard Marine Safety Center (G–MSC), 400 Seventh St., SW., Washington, DC 20590–0001.

* * * * *

PART 189—INSPECTION AND CERTIFICATION

11. In § 189.55–15, paragraph (a)(3) is revised to read as follows:

§ 189.55–15 Procedure for submittal of plans.

(a) * * *

(3) The plans may be submitted directly to Commanding Officer, U.S. Coast Guard Marine Safety Center (G–MSC), 400 Seventh St., SW., Washington, DC 20590–0001.

* * * * *

May 1, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

FR Doc. 89–10900 Filed 5–5–89; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–376; FCC 89–118]

AM Broadcast Service; Improvement of Quality by Reducing Adjacent Channel Interference And By Eliminating Restrictions Pertaining to the Protected Daytime Contour

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission amends its Rules to adopt a new emission limitation applicable to AM broadcast station operation. This action is necessary to reduce the level of adjacent channel interference in the AM broadcast service that discourages listeners, particularly at nighttime. The intended effect of this action is to reduce adjacent channel interference in current AM receivers and to produce an AM broadcast band environment which will permit the manufacture of wider bandwidth AM receivers with improved fidelity, thereby making the AM service more competitive with the FM broadcast service.

EFFECTIVE DATE: June 30, 1990.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James E. McNally Jr., Mass Media Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION: This action does not impose a new public reporting burden or information collection requirement. The following is a synopsis of the Commission's *First Report and Order* in MM Docket No. 88–376 adopted on April 12, 1989, and released on April 27, 1989. The full text of this action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this action also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

Summary of the First Report and Order

1. The *Notice of Proposed Rule Making* (*"Notice"*), (53 FR 36870, September 22, 1988) in the captioned matter proposed two changes in the technical rules governing the standard broadcast (AM) service. This action addresses one of these proposals: the matter of adjacent channel emission limits. The other proposal, elimination of the "first service" provision in 47 CFR 73.37(b), will be treated in a subsequent action. After careful consideration of the record, the Commission adopts the National Radio Systems Committee radio frequency emission limitation ("NRSC–2") as a new AM broadcast station standard. However, until June 30, 1994, stations employing the NRSC audio pre-emphasis standard ("NRSC–1") will be presumed to comply with NRSC–2 in the absence of specific information to the contrary.

2. The *Notice* discussed AM adjacent channel interference, AM audio processing practices, and their effects on the quality of the AM broadcast service. It presented two new standards developed by the National Radio Systems Committee ("NRSC"), a cooperative effort of the NAB and EIA. These standards are intended to reduce the occupied radio frequency (RF) bandwidth of AM broadcast transmitters from the current 30 kHz to a nominal 20 kHz in order to reduce interefrence levels and improve reception quality in the AM service.

3. One of the standards, NRSC–1, specifies a particular pre-emphasis characteristic for the audio signal (affecting energy at frequencies between 3.0 kHz and 9.5 kHz.) input to the AM broadcast transmitter. It requires great attenuation of the audio signal at frequencies above 10 kHz in order to reduce adjacent channel interference. However, because of inherent shortcomings associated with use of NRSC–1 alone, the Commission in the *Notice* specifically declined proposing to mandate its use.

4. The other standard, NRSC–2, defines a new emission limitation for AM stations. Because the Commission believes NRSC–2 to be the more comprehensive of the two standards in terms of ensuring a reduction in adjacent channel interference, it was the principal focus of the *Notice* and was specifically proposed for adoption. The fundamental premise of the *Notice* was that application of the emission limitation standard (NRSC–2), being a measure of the entire transmission system output, was a much more comprehensive method of limiting interference than application of an audio standard (NRSC–1), the effectiveness of which could be reduced by the operation of other circuits. However, the Commission did seek comment on a "presumptive compliance" alternative in which licensees using NRSC–1 pre-emphasis would be presumed to comply with the NRSC–2 emission limitation, absent any evidence to the contrary. The record further supports these preliminary findings and convince the Commission that its initial approach, adoption of the NRSC–2 emission limitation, is the more effective course of action.

5. The Commission cites six fundamental reasons for this conclusion: (1) By itself, the NRSC–1 audio standard will not be effective in alleviating interference produced by overmodulation or transmission system anomalies; it requires the NRSC–2 emission limitation to be fully effective; (2) the characteristics of the audio response intended to be produced by the NRSC–1 filter can be readily

circumvented or abused by adjustments made to other audio processing equipment; moreover, to the extent NRSC–1 specifies a particular pre-emphasis of audio signals below 10 kHz, it limits licensees' flexibility in adjusting their audio processing equipment; (3) the NRSC–2 emission limitation alone provides effective control of interference due to emitted signals; thus, it renders NRSC–1 redundant; (4) very few transmitters will be unable to comply with NRSC–2; (5) the NRSC–2 emission limitation is readily enforceable through over-the-air monitoring techniques, whereas determining compliance with NRSC–1 would require an on-site inspection; (6) the cost to licensees of ensuring that a station conforms to NRSC–1 is the same as ensuring that it complies with NRSC–2.

Efficacy of NRSC–2 Versus NRSC–1

6. Implementation of the NRSC–1 audio standard alone would probably lead to some reduction in adjacent channel interference in the AM service. However, because it does not address important transmission system problems such as transmitter overmodulation, incidental phase modulation and spurious signal output, its effectiveness in limiting interference is open to question. The Commission expressed concern about this problem in the *Notice* and noted that the record at that time was deficient with respect to additional rules that would be needed to limit distortion and splatter produced in the transmitter. The record remains silent on this important matter.

7. The comments support the Commission's opinion that the NRSC–1 audio standard does not address the transmitter performance requirements necessary to ensure a reduction in splatter and adjacent channel interference levels. Under the NRSC–1 approach, interference generated in the transmitter that is not in excess of the current, wider bandwidth emission limits would not be subject to regulation and would continue to degrade the AM service. Therefore, the Commission concludes that mandating the use of the NRSC–1 audio standard would not provide sufficient regulatory control to limit splatter interference to any greater extent than its current rules. A survey conducted by one of the commenters confirms this view. Adherence to good engineering practice is more important than mere use of NRSC–1 audio processing alone in reducing adjacent channel interference. The NRSC–2 emission limitation, being a comprehensive measure of compliance with good engineering practice, appears to be a necessary addition to any formal adoption of the NRSC–1 audio standard. Accordingly, the Commission declines to adopt the NRSC–1 audio standard as a mandatory requirement.

Regulatory Flexibility

8. The Commission believes that the NRSC–1 audio standard, which specifies in detail a transmitter input frequency response characteristic, should be considered a highly recommended but nevertheless voluntary standard so that licensees may have maximum flexibility to determine appropriate transmission system input parameters. By mandating transmission system output standards, such as NRSC–2, the Commission fulfills its regulatory mandate to limit interference while allowing licensees to exercise maximum technical creativity in the provision of service.

9. Almost all of the commenters favor the eventual adoption of NRSC–2 as the new AM station emission limitation. NRSC–2 requires that emissions removed more than a 10 kHz from the carrier be substantially attenuated in order to reduce adjacent channel interference. Unlike the NRSC–1 audio standard, the NRSC–2 emission limitation regulates the technical characteristics of the transmitted signal, including interference-causing emissions generated in the transmitter by overmodulation or other causes. Such carefully chosen emission limitations are better able to control interference than an audio-based standard.

10. An important issue is whether NRSC–2 should be implemented now, or some time in the future. In this connection the Commission notes that the current definition of the NRSC–2 emission limitation is intended as an interim standard, and that to accommodate most existing transmitters, it is not as stringent as it might otherwise be. The Commission concurs with this assessment; however, the NRSC–2 emission limitation requires considerable attenuation of sidebands removed 10 kHz or more from the carrier frequency and thus should be quite effective in reducing levels of adjacent channel interference. Its adoption also sends a clear signal to receiver manufacturers that AM technical quality is improving.

Implementation and Compliance Costs

11. Some of the commenters express concern that if the Commission adopts NRSC–2 now, implementation and compliance costs may be greater than if the Commission were to adopt NRSC–1. One argues that the current emission limitations are so loose that licensees need not perform measurements to verify compliance with them, and that compliance with more realistic standards could entail some expense. However, 47 CFR 73.1590 currently requires AM station licensees to perform measurements to verify compliance with the current emission limitations at least once every 14 months. Thus, amendment of the emission limitations does not impose any new regulatory requirement.

12. The Commission is concerned that some commenters who believe that unnecessary additional effort, time or expense would be required to comply with NRSC–2 may fail to recognize that simply installing an NRSC–1 filter may not be sufficient to achieve a real reduction in the levels of adjacent channel interference. After coversion to NRSC–1, it is highly desirable that the station equipment be carefully analyzed, adjusted, and operated in a manner that will produce all the benefits intended by the addition of the NRSC–1 equipment. The Commission believes that in practice, any additional time, effort or expense incurred to verify proper station operation will be the same for either NRSC–1 or NRSC–2.

13. Some commenters express concern that not all transmitters, after having been properly maintained and adjusted, may be able to meet the NRSC–2 requirements, and that this could require purchase of a new transmitter at considerable cost. The record contains no evidence that any particular type of AM transmitter will be unable to meet the NRSC–2 emission limitation. To the contrary, it indicates that NRSC–2 was designed with current broadcast transmitters in mind and that cases requiring transmitter replacement should be few, if any. Any such cases can be handled individually. The record further indicates that a transmitter which is properly adjusted to accommodate stereo operation should easily meet the emission limitation. Thus, the Commission considers it unlikely that transmitter replacement will be necessary or that any increased burden will result from its requiring licensees to comply with the NRSC–2 emission limitations.

Presumptive Compliance

14. The *Notice* also discussed an alternate regulatory approach whereby, in the absence of evidence to the contrary, stations adhering to the NRSC–1 audio standard would be presumed to comply with the NRSC–2 emission limitations. This concept is based upon the assumption that stations employing NRSC–1 audio processing and operating a properly adjusted and maintained transmitter should meet the NRSC–2 emission limitations. Because

reduced second adjacent channel interference has been noticed from many stations that have voluntarily installed NRSC–1 audio processors, such an assumption appears warranted.

15. As discussed above, it appears that there will be little, if any, difference in compliance cost between NRSC–1 and NRSC–2. Nevertheless, many of the commenters favor the presumptive compliance alternative suggested in the *Notice* as a means of ensuring that implementation and compliance costs are minimized. Thus, the Commission is adopting a presumptive compliance approach with respect to implementation of NRSC–2, as described below.

16. Beginning June 30, 1990, all AM stations will be required to comply with the NRSC–2 emission limitations. However, until June 30, 1994, broadcast licensees also may elect to ascertain compliance with the NRSC–2 standard by adhering to the NRSC–1 audio bandpass and pre-emphasis standard. Licensees making this election will be presumed to comply with the new emission limits, and they will not be required to make periodic emission measurements as required by 47 CFR 73.1590(a)(6). The presumption of compliance with the emission limits may be rebutted by technical evidence (e.g., spectrum analyzer measurement results) of non-compliance. If the Commission receives interference complaints containing this evidence, it will require licensees to make their own measurements and take corrective action, if appropriate.

17. Licensees of existing stations who wish to operate pursuant to this presumptive compliance alternative must comply with the NRSC–1 standard by June 30, 1990. Licensees of new AM stations who wish to operate pursuant to this alternative must comply with the NRSC–1 standard upon commencement of operation.

18. The Commission has noted a discrepancy between the audio attenuation required by NRSC–1 and the RF attenuation required by the early version of the NRSC–2 standard contained in the *Notice* in the region 10 kHz–10.133 kHz. The early version of NRSC–2 required an attenuation of 25 dB at 10 kHz, whereas the current specification makes a minor adjustment in the region 10 kHz–10.133 kHz to account for the lesser audio attenuation required by NRSC–1. The Commission believes that the most straightforward way to eliminate ambiguity between the two standards is simply to adjust the initial 25 dB RF attenuation step to begin at a 10.2 kHz offset rather than at 10 kHz as the Commission initially proposed. This 200 Hz adjustment should not detract from the effectiveness of the NRSC–2 emission limitation and should facilitate measurements. Additionally, the early version of NRSC–2 required 80 dB attenuation for emissions beyond 75 kHz of carrier for all transmitters, rather than taking transmitter power into account as do the Commission's current rules and the current NRSC–2 emission limitation. Therefore, the Commission has also revised the minimum attenuation required beyond 75 kHz to conform to the traditional practice. This is consistent with the current NRSC–2 specifications.

19. Based on the foregoing, the Commission concludes that adoption of the NRSC–2 emission limitation will ensure that current levels of splatter and spurious emissions are reduced. Accordingly, the Commission is adopting the NRSC–2 emission limitations as proposed, with the minor modifications discussed above.

Final Regulatory Flexibility Analysis

I. *Reason for Action.* This action is intended to alleviate technical shortcomings characteristic of the AM broadcast service to make it more competitive with alternative audio delivery services (principally, the FM radio service).

II. *Objectives.* The objectives of this proceeding are to adopt a new emission limitation to reduce second and third adjacent channel interference to AM broadcast stations.

III. *Legal Basis.* The action taken by this Order is authorized by sections 4 (i) and (j), 302, 303 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i), (j), 302, 303, 403.

IV *Description, Potential Impact and Number of Small Entities Affected.* The action proposed in this proceeding would benefit nearly 5,000 AM broadcast station licensees by reducing second and third adjacent channel interference. The cost of modifying transmitters to comply with the new emission standard may be several hundred dollars per station.

V. *Recording, Record Keeping and Other Compliance Requirements.* None.

VI. *Federal Rules which Overlap, Duplicate or Conflict with this Rule.* None.

VII. *Any Significant Alternative Minimizing Impact on Small Entities and Consistent with the Stated Objectives.* None.

20. Accordingly, *it is ordered* That effective June 30, 1990, 47 CFR Part 73 *is amended* As set forth below. This action is taken pursuant to authority contained in sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

List of Subjects in 47 CFR Part 73

Radio broadcasting, AM broadcast stations.

For the reasons set forth in the preamble, 47 CFR Part 73 is amended as follows:

PART 73—[AMENDED]

1. The authority citation for 47 CFR Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 73.44 is amended by revising paragraphs (a) and (b) and adding paragraph (e) to read as follows:

§ 73.44 AM transmission system emission limitations.

(a) The emissions of stations in the AM service shall be attenuated in accordance with the requirements specified in paragraph (b) of this section. Emissions shall be measured using a properly operated and suitable swept-frequency RF spectrum analyzer using a peak hold duration of 10 minutes, no video filtering, and a 300 Hz resolution bandwidth, except that a wider resolution bandwidth may be employed above 11.5 kHz to detect transient emissions. Alternatively, other specialized receivers or monitors with appropriate characteristics may be used to determine compliance with the provisions of this section, provided that any disputes over measurement accuracy are resolved in favor of measurements obtained by using a calibrated spectrum analyzer adjusted as set forth above.

(b) Emissions 10.2 kHz to 20 kHz removed from the carrier must be attenuated at least 25 dB below the unmodulated carrier level, emissions 20 kHz to 30 kHz removed from the carrier must be attenuated at least 35 dB below the unmodulated carrier level, emissions 30 kHz to 60 kHz removed from the carrier must be attenuated at least [5 + 1 dB/kHz] below the unmodulated carrier level, and emissions between 60 kHz and 75 kHz of the carrier frequency must be attenuated at least 65 dB below the unmodulated carrier level. Emissions removed by more than 75 kHz must be attenuated at least 43 + 10 Log (Power in watts) or 80 dB below the unmodulated carrier level, whichever is the lesser attenuation, except for transmitters having power less than 158

watts, where the attenuation must be at least 65 dB below carrier level.

* * * * *

(e) Licensees of stations complying with the ANSI/EIA–549–1988, NRSC–1 AM Preemphasis/Deemphasis and Broadcast Transmission Bandwidth Specifications (NRSC–1), prior to June 30, 1990 or from the original commencement of operation will, until June 30, 1994, be considered to comply with paragraphs (a) and (b) of this section, absent any reason for the Commission to believe otherwise. Such stations are waived from having to make the periodic measurements required in § 73.1590(a)(6) until June 30, 1994. However, licensees must make measurements to determine compliance with paragraphs (a) and (b) of this section upon receipt of an Official Notice of Violation or a Notice of Apparent Liability alleging noncompliance with those provisions, or upon specific request by the Commission.

[FR Doc. 89–10656 Filed 5–5–89; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 94

[PR Dkt. 87–5, FCC 89–81 495]

Multiple Address System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Memorandum Opinion and Order (corrected by Erratum DA 89–432), resolving the issues raised in the petitions for reconsideration of the *Report and Order* in PR Docket No. 87–5, 3 FCC Rcd 1564 (1988). In response to petitioners' concerns regarding quality of service, the Commission modified the co-channel separation criteria for Multiple Address System (MAS) master stations. 47 CFR 94.63. Additionally, the definition of "multiple address," 47 CFR 94.3, and the licensing procedure for relocating an existing MAS station if the licensee elects to split the bandwidth of its assigned channel, were clarified. These actions will promote continuing growth of this new service while preserving a judicious balance between spectrum reuse and service quality.

EFFECTIVE DATE: June 19, 1989.

FOR FURTHER INFORMATION CONTACT: Linda B. Blair, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in PR Docket No. 87–5, adopted March 1, 1989 and released March 22, 1989.

The full text of this Commission decision is available for inspection and copying during the normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC 20554. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

Summary of Order

1. In Docket 87–5, the Commission undertook a comprehensive review of the rules and policies governing 900 MHz MAS operations. In its *Report and Order* the Commission revised several rules governing MAS operations.

2. In the *Order* granting partial stay pending reconsideration in this proceeding, the Commission concluded that petitioners' contention that implementation of the new separation criteria would result in harmful interference to existing licensees warranted further study. Order, 3 FCC Rcd 4742 (1988), 53 FR 32901 at ¶ 3 (August 29, 1988) (summary).

3. The Commission has carefully reviewed the record developed herein, with particular attention given to petitioners' concerns regarding quality of service. As a result, the Commission concludes that modification of the separation criteria for MAS master stations is warranted in order to establish a judicious balance between spectrum availability and quality of service.

4. After considering the petitioners' arguments and reassessing the development of the Commission's policies regarding intended use of MAS frequencies, this *Order* refines the scattering requirement for MAS remote stations, and thereby clarifies the definition of "multiple address," operations. 47 CFR 94.3. Finally, the Commission clarifies the licensing procedure for relocating an existing station following a split of the channel, and deferred resolution of MAS grandfathering issues to a later proceeding.

Ordering Clauses

5. Accordingly, pursuant to § 1.106 of the Commission's Rules, 47 CFR 1.106, *It is ordered* the Petitions for Reconsideration in PR Docket 87–5 are *granted* to the extent indicated herein and *denied* in all other respects.

6. *It is further ordered,* That master station co-channel separation criteria set forth in § 94.63 of our Rules, 47 CFR 94.63, are amended as set forth in the Appendix.

7. *It is further ordered,* That the definition of 'multiple address' set forth in § 94.3 of our Rules, 47 CFR 94.3, shall be amended as set forth before.

8. *It is further ordered,* That the revised separation criteria and the attendant licensing procedures shall become effective June 19, 1989, *see* § 1.427, 47 CFR 1.427, June 19, 1989. This will allow time for notice by publication of a summary of this Memorandum Opinion and Order in the **Federal Register**. Applications will be processed under the rules in effect at the time they are filed.

9. *It is further ordered,* That the partial stay of the revised rules regarding the aforementioned separation criteria, granted by separate order in this proceeding, 3 FCC Rcd 4742 (1988), is hereby dissolved.

List of Subjects in 47 CFR Part 94

Private microwave systems, Multiple address systems, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

47 CFR Part 94 of the Commissions Rules is amended as follows:

PART 94—[AMENDED]

1. The authority citation for Part 94 continues to read as follows:

Authority: Sections 4, 303, 48 STAT., as amended, 1066, 1082, 47 U.S.C. 154, 303, unless otherwise noted.

2. 47 CFR 94.3 is amended by revising the definition of "Multiple address system (MAS)" to read as follows:

§ 94.3 Definitions.

* * * * *

Multiple address system (MAS). A multiple address radio system is a point-to-multipoint communications system, either one-way or two-way, utilizing frequencies listed in § 94.65(a)(1) and serving a minimum of four remote stations. If a master station is part of the multiple address system, the remote stations must be scattered over the service area in such a way that two or more point-to-point systems would be needed to serve those remotes.

* * * * *

3. 47 CFR 94.63 is amended by revising paragraph (d)(4)(i) to read as follows:

§ 94.63 Interference protection criteria for operational fixed stations.

* * * * *

(d) * * *

(4) * * *

(i) For multiple address stations in the 928–960 MHz band a statement that the proposed system complies with the following co-channel separations from all existing stations and pending applications.

Fixed-to-fixed	145 km (90 miles)
Fixed-to-mobile	113 km (70 miles)
Mobile-to-mobile	81 km (50 miles)

Multiple address systems employing only remote stations shall be treated as mobile for the purposes of determining the appropriate separation. For mobile operation, the mileage is measured from the reference point specified on the license application.

* * * * *

[FR Doc. 89–10655 Filed 5–5–89; 8:45 am]

BILLING CODE 6712–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1825

Interim Changes to the NASA FAR Supplement on Domestic Preference; Correction

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Interim rule, correction.

SUMMARY: The document published at 54 FR 18112 on Thursday, April 27, 1989, constituted an interim amendment to the NASA Federal Acquisition Regulation Supplement (NFS), but contained two typographical errors which are hereby corrected.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Chief, Regulations Development Branch, Office of Procurement, Procurement Policy Division, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453–8923.

S.J. Evans,

Assistant Administrator for Procurement.

PART 1825—[AMENDED]

1. The authority citation for 48 CFR Part 1825 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

1825.7104 [Corrected]

2. In section 1825.7104(b)(2), "$25,000" is substituted in lieu of "$35,000" and in section 1825.7104(b)(3), "$50,000" is substituted in lieu of $35,000."

[FR Doc. 89–11025 Filed 5–5–89; 8:45 am]

BILLING CODE 7510–01–M

Proposed Rules

Federal Register
Vol. 54, No. 87
Monday May 8, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Customs Field Organization in the Nogales District

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

ACTION: Proposed rule, solicitation of comments.

SUMMARY: This document proposes to amend the Customs Regulations governing the Customs field organization by changing the designation of Tucson from a Customs station to a port of entry. Adoption of this proposal would change the relationship of the Customs operations at Tucson, from that of a station under the supervision of a port, to that of a port, within the Nogales District. This redesignation is proposed as part of Customs efforts to improve the efficiency of its field operations. This document announces the proposed change in designation and invites public comments on the appropriateness of the action.

DATE: Comments must be received on or before July 7, 1989.

ADDRESS: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Headquarters, Room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Linda Walfish, Office of Workforce Effectiveness and Development, Office of Inspection and Control, U.S. Customs Service (202) 566–9425.

SUPPLEMENTARY INFORMATION:

Background

As part of its ongoing effort to improve its efficiency and service to the public, the Customs Service continually reviews its field service organization to assure that it best utilizes its resources. This review has identified the current relationship of the port of entry of Nogales and the Customs station of Tucson as one which is in need of reevaluation and modification. While the current status of Tucson as a Customs station was appropriate at the time it was established in 1963 (T.D. 55986), recent developments have convinced Customs that Tucson should be designated a port of entry. The major elements behind the decision were the level of activity of Tucson, and operational aspects which will be facilitated once Tucson is granted port of entry status.

Tuson either meets or exceeds the minimum criteria for the levels of activity which have been identified in T.D. 82–371, as amended by T.D. 86–14 and T.D. 87–65, as being necessary to be eligible as a port of entry. By designating Tucson a port of entry, Customs management will have the opportunity to fully utilized the automated commercial system and provide the most efficient service possible to the public.

Proposed Port Limits

The limits of the proposed port of entry of Tucson will be the same as those of the current Customs station: "The city of Tucson, Arizona, including the Tucson International Airport."

The Secretary of the Treasury is advised by the Commissioner of Customs in matters affecting the establishment, abolishment, or other changes in ports of entry. Customs ports of entry are established under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order 10289, September 17, 1951 (3 CFR 1949–1953 Comp. Ch. II), and pursuant to authority provided by Treasury Department Order No. 101–5 (47 FR 2449).

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Regulations and Disclosure Law Branch, U.S. Customs Service. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Customs Service Headquarters, Room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

Executive Order 12291

Because this proposal relates to the organization of the Customs Service, it is not a regulation or rule subject to E.O. 12291.

Regulatory Flexibility Act

It is certified that the provisions of the Regulatory Flexibility Act relating to initial and final regulatory analysis (5 U.S.C. 603, 604), are not applicable to this proposal because it will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

Proposed Amendment

It is proposed to amend Part 101, Customs Regulations (19 CFR Part 101), as set forth below:

PART 101—[AMENDED]

1. The general authority citation for Part 101 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624.

§ 101.3 [Amended]

2. It is proposed to amend the list of Customs regions, districts and ports of entry in § 101.3(b) in the following manner: In the South West Region, opposite "Nogales", under the column headed "Ports of entry", insert the word "Tucson", in the appropriate alphabetical order, followed by the number of this Treasury Decision in parenthesis.

§ 101.4 [Amended]

3. It is proposed to amend the list of Customs stations in § 101.4(c) in the following manner: In the list of designated Customs stations and port having supervision, delete Nogales under the listing of districts, Tucson in the column listing Customs stations, and Nogales under ports having supervision.

Approved: May 1, 1989.

Michael H. Lane,

(Acting) Commissioner of Customs.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 89-10886 Filed 5-5-89; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 301

[GL-161-89]

RIN 1545-AN07

Administrative Appeal of the Erroneous Filing of Notice of Federal Tax Lien

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the rules and regulations portion of this issue of the Federal Register, the Internal Revenue Service is issuing temporary regulations relating to the administrative appeal of the erroneous filing of notice of federal tax lien. The text of the temporary regulations also serves as a comment document for this notice of proposed rulemaking.

DATE: Written comments and requests for a public hearing must be delivered or mailed June 22, 1989.

ADDRESS: Send comments and requests for a public hearing to: Internal Revenue Service, Attn: CC:CORP:T:R (GL-161-89), Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, 202-535-9684 (not a toll free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the Federal Register amend the Procedure and Administration Regulations (26 CFR Part 301) pursuant to section 6326 of the Internal Revenue Code. The final regulations, which are proposed to be based on the temporary regulations, reflect the amendment of section 6326 by section 6238 of the Technical and Miscellaneous Revenue Act of 1988. (Pub. L. No. 100-647). For the text of the regulations see T.D. published in the Rules and Regulations portion of this issue of the Federal Register. The preamble to the temporary regulations explains the regulations.

Special Analysis

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact anlaysis is not required. The rule would not significantly alter the reporting or recordkeeping duties of the taxpayer. A regulatory flexibility analysis therefore is not required under the Regulatory Flexibility Act.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Internal Revenue Service by any person who submits written comments. If a public hearing is to be held, notice of time and place will be published in the Federal Register.

Drafting Information

The principal author of these regulations is Kevin B. Connelly of General Litigation, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Disclosure of information, Employment taxes, Estate tax, Excise taxes, Filing requirements, Gift Tax, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

[FR Doc. 89-10890 Filed 5-5-89; 8:45 am]

BILLING CODE 4830-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-15; DA 89-483]

Selection From Among Competing Broadcast Applicants by Lottery

AGENCY: Federal Communications Commission.

ACTION: Proposed rule: extension of time.

SUMMARY: This action extends the time for filing comments and reply comments in response to the *Notice of Proposed Rule Making* in MM Docket No. 89-15, regarding whether it would serve the public interest to utilize lotteries rather than comparative hearings for selecting among competing applicants for new AM, FM, and TV stations. The additional time will facilitate commenters in reviewing the recently-released *Report and Order* in Gen. Docket No. 88-328, amending the construction permit application form, and in preparing meaningful comments.

DATES: Comments and reply comments are new due June 8, 1989, and June 30, 1989, respectively.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Order

In the matter of amendment of the Commission's rules to allow the selection from among competing applicants for new AM, FM and television station by random selection (lottery).

Adopted: April 27, 1989.

Released: April 27, 1989

By the Chief, Mass Media Bureau:

1. On January 30, 1989, a *Notice of Proposed Rule Making*[1] ("*Notice*") was adopted in the above-captioned proceeding, inviting comment on whether use of random selection procedures ("lotteries") to select among competing applicants for new AM, FM, and television stations would, on balance, better serve the public interest than the comparative hearing process presently utilized. The deadlines for filing comments and reply comments in this proceeding are currently May 8, 1989, and June 22, 1989, respectively.

2. On April 21, 1989, a motion for extension of time for filing comments was submitted by the Federal Communications Bar Association

[1] FCC 89-28, released March 10, 1989, and *summarized* at 54 Fed. Reg. 11416 (March 20, 1989).

("FCBA"). The motion requests that the deadline for filing comments be extended by 60 days. FCBA contends that the additional time is needed to review the Commission's recently-released *Report and Order* in Gen. Docket No. 88–328, amending the construction permit application form (FCC Form 301) and the yet-to-be released *Report and Order* in BC Docket No. 81–742, adopted March 30, 1989, modifying procedures to prevent abuse of the comparative renewal process. FCBA asserts that reforms undertaken in both of these proceedings to discourage sham filings are indispensable to a finalization of the FCBA's position with respect to additional reforms to the comparative hearing process. In addition, it believes that the requested extension of time is necessary to allow for consultation between numerous committees and members of the Bar so that, to the maximum extent possible, FCBA may speak with one voice. Finally, FCBA suggests that the additional time may relieve uncertainty that currently exists regarding whether individual law firms and attorneys may file their own comments consistent with the District of Columbia Code of Professional Responsibility.

3. Although § 1.46 of the Commission's Rules provides that extentions of time shall not be routinely granted, we believe that FCBA has presented convincing arguments why some additional time may be warranted, albeit less than the requested 60 days. In this regard, we note that our *Report and Order* in Gen. Docket No. 88–328, amending the construction permit application form (FCC Form 301), referenced by FCBA in support of its extension request, has now been released and thus, is now available to the public.[2] Nevertheless, some additional time would facilitate commenters in reviewing our recent changes to the construction permit application form which, like our lottery proposal, affects the comparative new licensing process and would assist FCBA in its efforts to submit meaningful comment herein. In view of the foregoing, and because we already have provided approximately two months for the filing of initial comments, we will grant a limited extension of time that allows for the filing of initial comments by June 8, 1989, and reply comments by June 30, 1989.

4. Accordingly, *it is ordered*, that the Motion for Extension of Time To File Comments filed by the Federal Communications Bar Association *is granted* to the extent provided in paragraph 3 herein.

5. *It is therefore ordered*, That the time for the filing of comments and reply comments in MM Docket No. 89–15 *is hereby extended* to June 8, 1989, and June 30, 1989, respectively.[3]

6. This action is taken pursuant to authority found in section 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, and §§ 0.204(b), 0.283, and 1.45–46 of the Commission's Rules.

Federal Communications Commission.

Alex D. Felker,

Chief, Mass Media Bureau.

[FR Doc. 89–10591 Filed 5–5–89; 8:45 am]

BILLING CODE 6712–01–M

[2] Although we expect the text of *Report and Order* in BC Docket No. 81–742 to be released shortly, we do not believe that our action in that proceeding is so inextricably tied to our instant proposal as to justify further delay pending the release of that text.

[3] We note that on March 31, 1989, American Women in Radio and Television, Inc. ("AWRT") filed a "Petition for Immediate Termination of [this] Proceeding" based on the assertion that the proceeding directly contravenes the appropriations legislation for the Commission for fiscal year 1989. In the *Notice*, the Commission made an initial determination that it has the authority to proceed in this area. *See Notice, supra* at para. 40 n.62. However, because we invited comment on our interpretation of the appropriations legislation, we shall treat AWRT's petition as comments filed in this proceeding and do likewise with respect to related pleadings filed by FCBA and the National Association of Broadcasters.

Notices

Federal Register
Vol. 54, No. 87
Monday, May 8, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89-073]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Cotton Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an invironmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Agrecetus, to allow the field testing in the State of Mississippi of genetically engineered cotton (*Gossipium hirsutum* L.) plants, modified to express the delta-endotoxin protein from the soil bacterium *Bacillus thuringiensis*. The assessment provides as basis for the conclusion that the field testing of these genetically engineered cotton plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Sivramiah Shanthram, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5940. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession number 88–351–13.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Agrecetus, of Middleton, Wisconsin, has submitted an application for a permit for release into the environment, to field test genetically engineered cotton (*Gossipium hirsutum* L.) plants modified to express the delta-endotoxin protein from the soil bacterium *Bacillus thuringiensis*.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the cotton plant under the conditions described in the Agrecetus application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Agrecetus, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS's finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding delta-endotoxin from *B. thuringiensis* subsp. *kurstaki* has been inserted into the cotton chromosome. The expression of the truncated delta-endotoxin polypeptide results in a certain degree of protection against the feeding damage caused by the larvae of select lepidopteran insects. In nature, chromosomal genetic material in cotton plants can only be transferred to other sexually compatible plants by cross-pollination. In this field trial, the introduced gene in cotton plants cannot spread to other plants by cross-pollination because the field test plots are located at a sufficient distance from any sexually compatible plant. No other cotton plants are being cultivated in the entire county where the test plots are located.

2. Neither the delta-endotoxin gene, nor its gene product confer any plant pest characteristic on cotton plants.

3. *B. thuringiensis* subsp. *kurstaki* from which the delta-endotoxin gene was isolated is not a plant pest and is widely distributed in the environment as a soil inhabitant.

4. The vector (disarmed Ti-plasmid DNA) used to transfer the delta-endoxin gene to cotton plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence of a known plant pest (*Agrobacterium tumefaciens*), has been disarmed; that is, genes that are necessary for producing plant disease (phytohormone genes) have been deleted from the vector. The vector has been tested and shown to be nonpathogenic to susceptible plants.

5. The vector agent is a soil bacterium, *A. tumefaciens*, which was used to deliver the vector DNA and the delta-endotoxin gene into the cotton plant cells in tissue culture. It has been eradicated by the use of appropriate antibiotics to which the bacterium is sensitive.

6. The vector acts by delivering and inserting the gene into the cotton genome (i.e., chromosomal DNA). The vector does not survive in the transformed plants. No natural mechanism for horizontal movement within the genome of the cotton plant

and gene transfer from the transgenic cotton plant is known to exist for a stably inserted gene.

7. The toxic polypeptide produced by the introduced gene is called delta-endotoxin. Upon ingestion, the toxin kills select lepidopteran insects. Delta-endotoxin is not toxic to insects other than the targeted lepidopteran larvae, wild or domestic birds, fish or mammals, and humans. Because of its safety, its topical application on vegetable crops is permitted up to harvest date.

8. The field test will consist of a series of 40-foot-long rows in a split plot arrangement with rows spaced 38 inches apart. The total area of the test site will be 2 acres and will be physically isolated. The plot has good security.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done at Washington, DC, this 3d day of May 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–10949 Filed 5–5–89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 8–89]

Foreign-Trade Zone 43—Battle Creek, Michigan; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Battle Creek, Michigan, grantee of Foreign-Trade Zone 43, requesting authority to expand the zone within the City of Battle Creek's Fort Custer Industrial Park (FCI), within the Battle Creek Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 20, 1989.

The Battle Creek zone was approved on October 19, 1978 (Board Order 138, 43 FR 50233, 10/27/78), and presently involves two warehouses within FCI, one of which is in the Frederick R. Brydges Customs Cargo Center. The grantee is now requesting authority to expand the zone to include the entire 3000-acre Fort Custer Industrial Park. FCI is located adjacent to Battle Creek's W.K. Kellogg Regional Airfield. The site is bounded by Helmer Road on the east, River Road on the north, the City of Battle Creek Boundary line on the west and Business Loop I–94 on the south. FCI is used by a number of firms involved in international trade-related activity, an increasing number of which are interested in zone procedures. The grantee wishes to offer FCI tenants the opportunity to use zone procedures regardless of their location within the complex, subject to activation approval by U.S. Customs. No manufacturing approvals are being sought in the application. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; William L. Morandini, District Director, U.S. Customs Service, North Central Region, Patrick V. McNamara Bldg., 477 Michigan Avenue, Detroit, Michigan 48226–2568; and Colonel John D. Glass, District Engineer, U.S. Army Engineer District Detroit, P.O. Box 1027, Detroit, Michigan 48231–1037.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before June 20, 1989.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, 4950 West Dickman Road, Battle Creek, Michigan 49106.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Room 2835, Washington, DC 20230.

Dated: May 2, 1989.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89–10896 Filed 5–5–89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A–122–057]

Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada; Amendment to Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Amendment to final results of antidumping duty administrative review.

SUMMARY: On March 27, 1989, the Department of Commerce published the final results of its administrative review of the antidumping duty finding on replacement parts for self-propelled bituminous paving equipment from Canada. The review covered two producers and/or exporters of this merchandise to the United States and the period September 1, 1986 through August 31, 1987. That notice incorrectly gave 1.31 percent as the margin for Allatt Paving Equipment Division of Ingersoll-Rand Canada Inc. (formerly Fortress Allatt Ltd.) ("Allatt") and General Construction Equipment Co. ("General"). The correct margin for both companies is 1.39 percent.

EFFECTIVE DATE: May 8, 1989.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Phyllis Derrick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–8312/2923.

SUPPLEMENTARY INFORMATION:

Background

On March 27, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 1752) the final results of its administrative review of the antidumping duty finding on replacement parts for self-propelled bituminous paving equipment from Canada. After publication of our final results we received comments from the petitioner alleging certain errors.

In calculating the margin for Fortress Allatt we made the following errors. In calculating the appropriate tax to add to U.S. price, we failed to deduct brokerage expense from the gross U.S. price. In calculating the U.S. price on sales from the Georgia warehouse, we failed to deduct "other freight". Finally, we misapplied the duty rate for certain chain and sprocket parts.

Since General failed to respond, its rate was based on Fortress Allatt's rate and has been changed accordingly.

Amended Final Results of the Review

The Department has corrected the errors and amended the final results. The amended weighted-average margin for Fortress Allatt and for General Contruction is 1.39.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms.

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after August 31, 1987 and who is unrelated to any reviewed firm a cash deposit of 1.39 percent shall be required. These deposit requirements are effective for all shipments of Canadian replacement parts for self-propelled paving equipment entered, or withdrawn from warehouse, for consumption on or after the date of publication of this amendment to the final results of review.

This amendment to final results of antidumping duty administrative review notice is in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: May 1, 1989.

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-10895 Filed 5-5-89; 8:45 am]

BILLING CODE 3510-DS-M

C-122-807

Preliminary Affirmative Countervailing Duty Determination; Fresh, Chilled, and Frozen Pork from Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to producers or exporters in Canada of fresh, chilled, and frozen pork products, as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is Can$0.077/kg. (Can$0.035/lb.) for all producers or exporters in Canada of fresh, chilled, and frozen pork products. If this investigation proceeds normally, we will make a final determination on or before July 17, 1989.

EFFECTIVE DATE: May 8, 1989.

FOR FURTHER INFORMATION CONTACT: Roy A. Malmrose or Rick Herring, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5414 or 377-0167.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based on our investigation, we preliminarily determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to producers or exporters in Canada of fresh, chilled, and frozen pork products. For purposes of this investigation, the following programs are preliminarily found to confer subsidies:

Federal Programs

- Agricultural Stabilization Act/ National Tripartite Red Meat Stabilization Program
- Feed Freight Assistance Program

Provincial Programs

- Alberta Crow Benefit Offset Program
- Ontario Farm Tax Rebate Program
- Ontario (Northern) Livestock Improvement Program
- Ontario (Northern) Livestock Transportation Assistance Program
- Ontario Pork Industry Improvement Plan
- Ontario Marketing Assistance Program for Pork
- Quebec Farm Income Stabilization Insurance Program
- Quebec Productivity Improvement and Consolidation of Livestock Production Programs
- Quebec Regional Development Assistance
- Saskatchewan Hog Assured Returns Proqram
- Saskatchewan Livestock Investment Tax Credit Program
- Saskatchewan Livestock Facilities Tax Credit Program

We preliminarily determine the estimated net subsidy to be Can$0.077/ kg. (Can$0.035/lb.) for all producers or exporters in Canada of fresh, chilled, and frozen pork products.

Case History

Since the publication of the Notice of Initiation in the **Federal Register** (54 FR 5537, February 3, 1989), the following events have occurred. Prior to our presentation of the questionnaire, we decided to streamline this investigation because of the large number of programs involved, the large number of swine and pork producers in Canada and our experience of previously examining most of the programs upon which we initiated. Toward this end, we decided to examine only swine and pork producers in the provinces of Quebec, Ontario, Alberta, Manitoba and Saskatchewan. These five provinces accounted for 92.5 percent of hogs slaughtered in Canada in 1987.

On February 9, 1989, we presented a questionnaire to the Government of Canada in Washington, DC, concerning petitioner's allegations. On February 22, we received further subsidy allegations from petitioner. We chose to initiate an investigation on all of the additional programs included in that submission with the exception of the Saskatchewan Livestock Cash Advance Program. This program is part of the Saskatchewan Financial Assistance for Livestock and Irrigation Program, which was found to be not countervailable. [See, *Live Swine From Canada: Preliminary Results of Countervailing Duty Administrative Review*, (53 FR 22189, June 14, 1988) and *Live Swine From Canada: Final Results of Countervailing Duty Administrative Review, (Live Swine)* (54 FR 651, January 9, 1989)]. The programs initiated based on the February 22nd allegations were the Special Canada Grains Program, the Feed Freight Assistance Program, the Alberta Crow Benefit Offset Program and the Newfoundland Swine Breeding Stations Program.

On March 9, 1989, we received responses from the Government of Canada and the Provincial Governments of Alberta, Ontario, Manitoba, Quebec, and Saskatchewan. On March 10, we postponed the preliminary determination to no later than May 1, 1989 pursuant to section 703(c)(1)(B) of the Act (54 FR 11024, March 16, 1989).

On April 3, 1989, we delivered a supplemental/deficiency questionnaire to the Government of Canada and the Provincial Governments of Alberta, Ontario, Manitoba, Quebec, and Saskatchewan. On April 17, 1989, we received responses to the questionnaires from the Government of Canada and the five Provincial Governments. On April 21, 1989, we delivered a second

supplemental/deficiency questionnaire to the Government of Canada and the Provincial Government of Alberta. On April 27, 1989, we received responses to this second supplemental/ deficiency questionnaire from the Government of Canada and the Provincial Government of Alberta.

Scope of Investigation

The United. States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), and all merchandise entered or withdrawn from warehouse for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The Department is providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with its product descriptions for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the products covered by this investigation.

The products covered by this investigation are fresh, chilled, and frozen pork, currently provided for under TSUSA item numbers 106.4020 and 1.06.4040, and currently classifiable under HTS item numbers 0203.11.00, 0203.12.90, 0203.19.40, 0203.21.00, 0203.22.90, and 0203.29.40. Specifically excluded from this investigation are any processed or otherwise prepared or preserved pork products such as canned hams, cured bacon, sausage and ground pork.

Application of Section 771B

Section 1313 of the Omnibus Trade and Competitiveness Act of 1988 amended the Tariff Act of 1930 to include a new section 771B. This section reads as follows:

> In the case of an agricultural product processed from a raw agricultural product in which—
>
> (1) the demand for the prior stage product is substantially dependent on the demand for the latter stage product, and
>
> (2) the processing operation adds only limited value to the raw commodity, subsidies found to be provided to either producers or processors of the product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed product.

The subject merchandise in this investigation is fresh, chilled, and frozen pork, an agricultural product, processed from a raw agricultural product, live swine. Therefore, in this investigation we must first determine whether the elements of 771B are met. For the reasons described below, we preliminarily determine that the elements of 771B are met. Thus, subsidies found to be provided to either producers or processors of live swine are deemed to be provided with respect to the production or exportation of fresh, chilled, and frozen pork.

Prior to the enactment of 771B, the Department considered benefits to producers of a raw agricultural product when calculating the benefits to producers of a processed agricultural product. See, *Certain Fish from Canada: Final Countervailing Duty Determination* (43 FR 25996, June 16, 1978), *Lamb Meat from New Zealand: Preliminary Affirmative Countervailing Duty Determination* (46 FR 58128, November 30, 1981), *Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled, and Frozen Pork Products from Canada (Swine)* (50 FR 25098, June 15, 1985), *Final Affirmative Countervailing Duty Determination and Order: Lamb Meat from New Zealand* (50 FR 37708, September 17, 1985), *Preliminary Affirmative Countervailing Duty Determination: Red Raspberries from Canada* (50 FR 42574, October 21, 1985), *Final Affirmative Countervailing Duty Determination and Order: Rice from Thailand* (51 FR 12356, April 10, 1986), and *Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada (Groundfish)* (51 FR 10041, March 24, 1986). In *Swine*, we considered benefits to hog growers as direct benefits to pork producers in measuring the subsidy on fresh, frozen, and chilled pork. Respondents in that case argued that the Department should apply the upstream subsidy provision, section 771A of the Act, to determine if benefits to hog growers passed through to pork producers. We disagreed because we did not consider live swine to be an "input" into unprocessed pork. Therefore, since we otherwise did not have reasonable grounds to believe or suspect that an upstream subsidy was being paid or bestowed with respect to unprocessed pork, we did not conduct an upstream subsidy investigation. Our reasons for determining that hogs were not an input for purposes of section 771A were clearly spelled out in *Swine:* "We believe there are two characteristics which evidence that live swine should not be considered an 'input' into fresh, frozen, and chilled pork products. These characteristics are level of value added and the role of the producer." First, with respect to value added we stated, "A low level of value added at a given level of processing is an indication that the prior stage product entering that level is not an input into the processed product." Second, in our discussion of the role of the processor we said, "The salient criterion is the degree to which the demand for the prior stage product is dependent on the demand for the latter stage product."

Respondents in *Swine* appealed the *Department's* decision not to apply the upstream subsidies provision. The Court of International Trade (CIT) remanded *Swine* to the Department to conduct an upstream subsidy investigation. The CIT ruled that Commerce had to apply the upstream subsidy provision because it found no exception to that provision for agricultural products either in the statute or in the legislative history. *See, Canadian Meat Council* v. *United States*, 661 F. Supp. 622 (1987). The decision of the CIT can only be considered advisory, however, because its later decision to uphold the ITC's negative injury determination regarding the domestic industry for pork products mooted its remand instructions. *See, National Pork Producers Council* v. *United States*, 661 F. Supp. 633 (1987). In light of the Court's decision, Congress amended the Act by adding section 771B to codify the Department's practice. 133 Cong. Rec. S8814–16 (daily ed. June 16, 1989).

We preliminarily determine that the two criteria set out in 771B have been met in this case. The first element, regarding the demand relationship between the raw and the processed product, is shown by the demand relationship between live swine and fresh, chilled, and frozen pork. As we stated in *Swine*, the demand for the slaughtered and quartered swine is by far the predominant determinant of the demand for live swine. Likewise, just as we found in *Swine*, we preliminarily find that substantially all of the raw agricultural product, live swine, is dedicated to the production of unprocessed pork. The fact that many separate processed products can be made beyond this stage, *e.g.*, canned ham and sausage, is irrelevant. The key is that there is a single, continuous line of production from live swine to unprocessed pork.

Furthermore, we preliminarily determine that the second criterion of 771B, limited value added, has also been satisfied in this case. According to the questionnaire responses, the value added to hogs by pork processors is approximately 20 percent. Although we have accepted this figure for purposes of our preliminary determination, we note

that based on our investigation thus far, there is no regularly maintained statistical information or accepted methodology for calculating the value added by pork processors. Moreover, it appears that the value added by pork processors can vary markedly between producers and over time. We will continue to examine other methodologies for calculating the value added and will accept comments on the most appropriate approach for the final determination.

Using the value added figure of 20 percent, however, we must determine whether this figure represents "limited value" as the term is used in section 771B. Although the term "limited value" is not defined in the statute and Congress provided little guidance with respect to how we should interpret the term, we note that 771B was enacted by Congress to codify our practice as set forth in the Department's decision in Swine. In *Swine*, we stated, "[i]n value-added terms, the packing stage consisting of immobilizing, stunning, dehairing, eviscerating, splitting, etc., does not contribute significantly to the value of the live swine." Similarly, in *Groundfish*, Commerce considered the benefits to harvesters as benefits to processors, even though the value added to the raw product by processing was, according to the respondents in that case, 40 to 45 percent. In other agricultural cases, the value added to the raw product has been even higher. Thus, based on the legislative history of 771B, our past practice and our investigation to date, we find it reasonable to determine preliminarily that the process of converting a live hog into pork products adds only limited value added for purposes of 771B.

Therefore, for the reasons set forth above, we preliminarily determine that subsidies found to be provided to live swine shall be deemed to be provided with respect to the production or exportation of fresh, chilled, and frozen pork in accordance with section 771B of the Act.

Analysis of Programs

We used our standard methodology to calculate benefits under grant programs. Grants provided on a recurring basis are expensed in the year of receipt. For non-recurring grants, we totalled the grants provided within each program and divided by the total sales value of the subject merchandise from the five provinces. If the sum was less than 0.5 percent of all sales concerned, we expensed such grants in the year of receipt. Since we have not yet received sales information for the years prior to the review period, we used as best information available the sales value for 1988 as reported in the response to determine if grants received prior to 1988 should be allocated over time or expensed in the year of receipt. For all grant programs reviewed in this investigation, based on this methodology, grants were expensed in the year of receipt.

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or producer under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification under section 776(b) of the Act. If the response cannot be supported at verification and the program is otherwise countervailable, the program will be considered a subsidy in our final determination.

For purposes of this preliminary determination, the period for which we are measuring subsidies ("the review period") is calendar year 1988.

Based on our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined To Confer Subsidies

We preliminarily determine that subsidies are being provided to producers or exporters in Canada of fresh, chilled, and frozen pork under the following programs:

A. Federal Programs

1. Agricultural Stabilization Act/ National Tripartite Red Meat Stabilization Program The Agricultural Stabilization Act (ASA) of 1958 was passed by the Federal Government to provide for the price stabilization of certain agricultural commodities. On June 27, 1985, the ASA was amended by Bill C–25, which authorized the Minister of Agriculture, with the approval of the Governor in Council, to enter into agreements with the provinces and/or producers to provide price stabilization schemes for any natural or processed product of agriculture. The Minister may enter into these tripartite agreements only after he determines that they will not give a financial advantage to some producers in the production or marketing of the product not enjoyed by other producers of the same product in Canada and that the agreements will not provide an incentive to overproduce.

Four groups of commodities are explicitly provided for, or "named," in the ASA: (1) cattle, hogs, lambs and wool; (2) industrial milk and industrial cream; (3) corn and soybeans; and (4) spring wheat, winter wheat, oats and barley. Other natural or processed products of agriculture may be "designated" by the Governor in Council as agricultural commodities for purposes of receiving stabilization payments under the ASA.

Tripartite agreements on hogs were signed effective January 1, 1986, with Alberta, Saskatchewan, Manitoba, and Ontario. An amended agreement was signed on February 8, 1989, adding the Provinces of British Columbia, Quebec, New Brunswick, Prince Edward Island, and Nova Scotia. Under the terms of the Tripartite Agreements on Hogs, the provinces may not offer separate stabilization plans or other *ad hoc* assistance for hogs, nor may the Federal Government offer compensation to hog producers in a province not a party to the agreement. The Tripartite scheme provides for a five-year phase-in period to adjust for differences between the Tripartite scheme and the provincial programs. Existing provincial stabilization plans are to be completely phased out by 1991.

The Tripartite Agreements on Hogs are administered by the Stabilization Committee ("Committee") in conjunction with the Agricultural Stabilization Board ("Board"). The Committee consists of nine voting members, three of which are appointed by the provincial governments, three by the Federal Government, and three by the federal Minister of Agriculture from a list of pork producers. The members of the Board are appointed by the Governor in Council. The Committee calculates the stabilization payments for both named and designated products on a quarterly basis in the following manner. First, it calculates a "support price," which is equal to the cash costs of production in the current 13-week period plus 93 percent of the average margin in the same 13-week period for the preceding five years. The margin for any period is equal to the national average market price for the period minus the national average cash costs in that period. The difference between the support price and the average market price is the amount of the stabilization payment. Stabilization payments are triggered in any 13-week period that the market price falls below the support price. Payments are made only on hogs indexing 80 or above.

As previously stated, certain selected commodities are specifically named in

the ASA and, as such, are guaranteed stabilization schemes under the ASA. Funding for named commodities is approved as a "statutory item" in the budget through existing legislation, *i.e.*, the legal authority exists for the Committee to support named commodities without the need for additional parliamentary approval. In contrast, funding for designated commodities is a "vote item" in the budget and, as such, must be approved by Parliament as a specific appropriation for a specific purpose. Each year, prescribed prices are automatically calculated for named commodities, whereas designated products are only considered for ASA payments if the Governor in Council so directs. Therefore, for designated products, there is no automatic calculation of a prescribed price and no guarantee of ASA payments. The distinction between named and designated items indicates that certain products are specifically targeted for ASA benefits.

Although any other natural or processed products of agriculture aside from the named commodities may be designated by the Governor in Council to receive payments under the ASA, we must look beyond the *de jure* eligibility requirements for a given program to the *de facto* evidence as to which enterprises or industries were actually included in ASA stabilization schemes. In our final administrative review of *Live Swine*, we found that several major agricultural commodities, such as most wheat, dairy products, and poultry, are not included in ASA stabilization schemes. The record in this case is unclear whether the factors that led to a finding of specificity in *Live Swine* have changed. Based on the *de facto* finding in *Live Swine* and the distinction between named and designated products discussed above, we preliminarily determine that payments under the ASA are limited to a specific enterprise or industry, or group of enterprises or industries and are, therefore, countervailable. We will examine this issue further before the final determination.

To calculate the benefit under this program, we first calculated the dressed-weight equivalent of all hogs marketed in the five provinces during the review period. To obtain the dressed-weight equivalent, we used the conversion factor of 79.5 percent as provided in the Government of Canada response. Since the stabilization payments are paid out from a pool of funds which are made up of equal contributions from the federal government, provincial governments, and producer premiums, plus interest, we multiplied the stabilization payments made during the review period by two-thirds to factor out the producer premiums and allocated the result over the dressed-weight equivalent of hogs marketed in the five provinces during the review period to obtain an estimated net subsidy of Can$0.026945/kg. (Can$0.012222/lb.).

Petitioner has argued that we should change our calculation methodology to reflect benefits accrued on sales made during the review period as opposed to cash payments received during the review period. If we find this program to be countervailable in our final determination, we will consider petitioner's comments, as well as comments from other interested parties, as to which is the most appropriate method to calculate the benefit.

2. Feed Freight Assistance Program (FFAP)

In 1966, Parliament enacted the Livestock Feed Assistance Act in response to domestic feed grain supply problems and price fluctuations in Eastern Canada and British Columbia. The Canada Livestock Feed Board oversees the FFAP. The Board ensures the availability of feed grain to meet the needs of livestock feeders, the availability of adequate storage space in Eastern Canada for feed grain, and price stability for feed grain in Eastern Canada, British Columbia, Yukon, and the Northwest Territories. Only users of grain, *i.e.*, those who buy grain to feed livestock (commercial mills and livestock producers), are eligible for assistance.

To qualify for assistance, the feed grain must be transported outside the farm where it is grown and moved through commercial channels. Commercial channels are defined as transactions that provide an invoice, weight certificate, grade certificate, and bill of lading. Payments are made only on grain that will be fed to livestock.

Benefits are provided for transporting and storing feed. Payments for feed grain transportation are set per ton according to the grain's destination. Feed grain storage payments are paid on a product basis.

Because this program is limited to feed grain users in Eastern Canada and British Columbia, we preliminarily determine that it is limited to a specific enterprise or industry, or group of enterprises or industries and is, therefore, countervailable.

According to the responses, the most recent data on this program is for the 1986–1987 crop year. Of the five provinces we are examining for purposes of this investigation, only Ontario and Quebec are eligible for assistance under the program. In its response, the Government of Canada estimated that less than five percent of the program benefits were provided to individuals involved in hog production. To calculate a benefit for the program, we therefore used as best information available five percent of the disbursements made to Ontario and Quebec in 1986–1987, as reported in the latest available annual report of the Livestock Feed Board submitted in the response. We divided this amount by the dressed-weight equivalent of hogs marketed during the review period in the five provinces to obtain an estimated net subsidy of Can$0.000115/kg. (Can$0.000052/lb.).

B. PROVINCIAL PROGRAMS

1. Alberta Crow Benefit Offset Program. The purpose of this program, which is administered by Agriculture Alberta, is to eliminate market distortions in feed grain prices created by the federal government's policy on grain transportation.

Assistance is provided on feed grain produced in Alberta, feed grain produced outside Alberta but sold in Alberta, and feed grain produced in Alberta to be fed to livestock on the same farm. The government provides certificates to registered feed grain users and registered feed grain merchants which can be used as partial payments for grains purchased from grain producers. Feed grain producers who feed their own grain to their own livestock submit a claim directly to the government for payment.

Because this program is limited to feed grain users, we preliminarily determine that it is limited to a specific enterprise or industry, or group of enterprises or industries and is, therefore, countervailable.

Hog producers receive benefits in one of three ways. Hog producers who do not grow any of their own feed grain receive certificates which are used to cover part of the cost of purchasing grain. Hog producers who grow all of their own grain submit a claim to the Government of Alberta for direct payment. Finally, hog producers who grow part of their own grain but who also purchase grain receive both certificates and direct payments.

The Government of Alberta estimated that 12 percent of benefits provided under this program went to swine producers. Therefore, to calculate the benefit, we took 12 percent of the total amount of benefits to feed grain users in Alberta and allocated it over the

dressed-weight equivalent of hogs marketed during the review period in the five provinces. On this basis, we calculated an estimated net subsidy of Can$0.002948/kg. (Can$0.001337/lb.).

2. Ontario Farm Tax Rebate Program

The Ontario Farm Tax Rebate Program replaced the Ontario Farm Tax Reduction Program. While the Ontario Farm Tax Reduction Program provided a rebate of 60 percent of total property taxes levied on eligible farm properties, the current program provides a rebate of 100 percent of taxes levied on outbuildings and properties only. Taxes levied on the residence and one acre of land are no longer rebated.

Any resident of Ontario may receive a rebate if he owns and pays taxes on eligible properties. Eligible properties are farming enterprises that produce farm products with a gross value of Can$8,000 in southern and western Ontario and Can$5,000 in northern and eastern Ontario. Since all farmers in Ontario whose gross output is at least Can$8,000 are eligible to receive a rebate under this program, the program is limited to a specific enterprise or industry, or group of enterprises or industries, and is thus countervailable, only to the extent that farmers in northern and eastern Ontario whose gross output is between Can$5,000 8,000 receive benefits.

Based on data taken from the *1986 Census of Agriculture, Statistics Canada*, the last year for which complete information is available, the Government of Ontario estimated that 4.7 percent of all Ontario swine farmers have sales valued within the Can$5,000–8,000 range. To calculate the benefit, we multiplied the total amount paid to swine producers in eastern and northern Ontario by 4.7 percent during the review period. We divided the result by the dressed-weight equivalent of hogs marketed during the review period in the five provinces to obtain an estimated net subsidy of Can$0.000020/kg. (Can$0.000009/lb.).

3. Ontario (Northern) Livestock Improvement Program

The purpose of this program is to aid livestock producers in northern Ontario by increasing production through herd improvement. Livestock producers in northern Ontario are reimbursed up to 20 percent of the cost of purchasing breeding stock from Ontario, Quebec or Western Canada which meet certain performance requirements. A maximum of Can$2,500 may be reimbursed to an individual during a three-year period.

Because this program is limited to livestock producers in northern Ontario, we preliminarily determine it to be limited to a specific enterprise or industry, or group of enterprises or industries and, therefore, countervailable.

To calculate the benefit to swine growers, we allocated the reimbursements made to swine growers during the review period, as reported in the response, over the dressed-weight equivalent of hogs marketed during the review period in the five provinces to obtain an estimated net subsidy of less than Can$0.000001 in either kilograms or pounds.

4. Ontario (Northern) Livestock Transportation Assistance Program

This program is designed to assist livestock growers in northern Ontario by reducing their relatively higher costs of maintaining and improving herd quality. Livestock growers who purchase breeding stock from Ontario, Quebec or Western Canada which meet certain performance requirements receive a grant equal to 50 percent of the delivery charges for such livestock.

Because this program is limited to livestock growers in northern Ontario, we preliminarily determine that it is limited to a specific enterprise or industry, or group of enterprises or industries and is, therefore, countervailable.

To calculate the benefit, we divided the grants received by swine growers during the review period by the dressed-weight equivalent of hogs marketed during the review period in the five provinces to obtain an estimated net subsidy of less than Can$0.000001 in either kilograms or pounds.

5. Ontario Pork Industry Improvement Plan (OPIIP)

The purpose of the OPIIP is to foster excellence in farm business management and the adoption of improved production technologies. Assistance is provided under a number of subprograms. To be eligible for any of the subprograms, a producer must have at least 20 sow equivalents (one sow equivalent is equal to one sow or 15 market-weight hogs marketed annually) and must submit the required production records. Assistance is provided under the following subprograms:

a. Swine Production Analysis Grants: Hog growers receive a grant of Can$5 per sow equivalent after they submit production records for the calendar year. The maximum grant for finishing operations is Can$200. For farrow-to-finish operations, the minimum is Can$200 and the maximum is Can$500.

b. Enterprise Analysis Grants: A grant of Can$100 is provided to growers who supply financial records annually in the approved format. Growers also receive a confidential business analysis based on their financial records which identifies the strengths and weaknesses of their farm operations.

c. Swine Ventilation Grants: Growers receive a grant of two-thirds of the cost of materials to correct ventilation problems. These grants are given up to a maximum of Can$1,500. Eligible items include fans, thermostats, heat exchangers, insulation materials, air vents, materials for natural ventilation, recirculation systems, heaters, monitoring equipment, electrical wiring and cooling equipment.

d. Productivity and Quality Improvement Grants: Growers receive a grant of two-thirds of the cost of materials for eligible projects which include scales for weighing pigs or feed, swine loading facilities, high pressure washers, electronic pregnancy detection equipment, rodent control barriers, caesarean section or embryo transfer facilities and slatted floors in farrowing pens.

e. Artificial Insemination Grants: Growers receive grants to cover two-thirds of the cost of purchasing and transporting swine semen or of the tuition for approved artificial insemination courses. Grants cannot exceed Can$500.

f. Rodent Control Grants: A grant of Can$250 is paid to growers who complete a 12-month rodent control program by a professional licensed exterminator.

g. Private Veterinary Herd Health Program: Growers who institute a herd health program supervised by a private veterinarian with at least four consultative visits per year receive a grant of Can$200 per year.

h. Education Grants: Growers receive up to Can$100 to cover 50 percent of the tuition fees for approved courses.

i. Feed Analysis Grants: Feed analysis vouchers are provided to growers annually.

j. Herd Health Improvement Grants: Grants are given (1) to establish a primary herd or maintain a closed herd and (2) to depopulate and restock herds with pigs of improved health status. The amount of the grant depends on the performance level of the animals. For animals classified "excellent" the maximum grant is Can$10,000 and for animals classified "good" the maximum grant is Can$5,000.

k. Ontario Swine Artificial Insemination Association Grants: Grants are paid to a farmer cooperative for the purpose of developing swine semen production facilities.

1. Ontario Pork Producers Marketing Board Grants: Education grants are provided to numerous county chapters of the Ontario Pork Producers Marketing Board.

In addition to the subprograms above, grants are also provided to support various research projects related to swine production. For additional information on these grants, see Section II of the notice, *Program Preliminarily Determined to be Not Countervailable.*

Because the OPIIP provides grants to swine growers only, we preliminarily determine that it is limited to a specific enterprise or industry, or group of enterprises or industries and is, therefore, countervailable.

To calculate the benefit, we summed the grants provided under this program during the review period and divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to calculate an estimated net subsidy of Can$0.002332/kg. (Can$0.001058/lb.).

6. Ontario Marketing Assistance Program for Pork (MAPP)

This program, instituted in 1986, assists Ontario pork processors in their efforts to improve domestic market prospects for pork sales and to sustain and enhance their ability to compete in global pork markets. Pork packers and processors receive grants of 25 percent of the total cost of plant upgrading, new technology adoption or new product development. The maximum grant per project is Can$2,000,000. No single firm can receive more than Can$3,000,000 over the five years of the program. Grants under this program were first disbursed in 1987.

Because this program provides grants to pork processors only, we preliminarily determine that it is limited to a specific enterprise or industry, or group of enterprises or industries and is, therefore, countervailable.

To calculate the benefit, we summed the grants provided under this program during the review period and divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to calculate an estimated net subsidy of Can$0.000491/kg. (Can$0.000223/lb.).

7. Quebec Farm Income Stabilization Insurance Program (QFISIP)

This program was started in 1976 to guarantee a net annual income to participating growers. The program is administered by the Regie des Assurance Agricoles du Quebec (Regie), which each year stabilizes the income of growers who operate in accordance with its production and marketing standards. The program covers cow-calf cattle, feeder cattle, potatoes, weaner pigs, feeder hogs, corn, oats, wheat, barley, heavy veal, and sheep. To be eligible for the piglet or feeder hog programs, a grower must own the feeder hogs or sows he insures, be personally involved in raising the feeder hogs or piglets, own at least 300 insurable hogs or 15 insurable sows and enroll in the scheme for at least five years. The coverage year for the feeder hog program is from April 1 to March 31 and from July 1 to June 30 for the piglet program.

The support level is calculated according to a cost of production model that includes an adjustment for the difference between the average wage of farm workers and the average wage of all other workers in Quebec. Payments to growers are calculated on a yearly basis and are made at the end of the covered year. The program is funded two-thirds by the provincial government and one third by producer assessments. For the 1988–1989 insurance year, pursuant to the amendment of July 13, 1988, regarding the QFISIP, producer assessments and the stabilized net annual income have been set according to the size of production.

Since several major agricultural commodities, such as eggs, dairy products, and poultry are not included, we preliminarily determine this program to be limited to a specific enterprise or industry, or group of enterprises or industries and, therefore, countervailable.

We calculated the benefit by multiplying the total amount of stabilization payments made during the review period by two-thirds to factor out the producer assessments. We then divided the result by the dressed-weight equivalent of hogs marketed during the review period in the five provinces to obtain an estimated net subsidy of Can$0.042318/kg. (Can$0.019195/lb.).

8. Quebec Productivity Improvement and Consolidation of Livestock Production Programs (QPICLP)

The QPICLP was started in 1987 and was designed for small livestock farmers, excluding large swine growers and packers. The program is divided into eight subprograms. Swine growers are only eligible for one subprogram, the Farm Building Improvements Program. Under this subprogram, grants are provided to convert existing piggeries to farrow-to-finish operations. Grants cover up to 30 percent of the actual cost of the conversion.

To be eligible for assistance, applicants must be recognized farm producers according to the Farm Producer's Act and be registered with the Bureau de Renseignements Agricoles. Producers operating farrowing piggeries must maintain between 40 and 80 sows, and finishing piggeries must maintain between 500 and 1,000 hogs. Maximum assistance is Can$200 per sow and Can$25 per hog, with a maximum of Can$15,000 per farm operation for the duration of the program.

Because this program is limited to livestock producers, we preliminarily determine it to be limited to a specific enterprise or industry, or group of enterprises or industries and, therefore, countervailable.

To calculate the benefit, we summed the grants provided under this program during the review period and divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to calculate an estimated net subsidy of Can$0.000010/kg. (Can$0.000005/lb.).

9. Quebec Regional Development Assistance (QRDA)

The QRDA was started in 1987 to promote regional development in Quebec. The program consists of four subprograms: Soil Upgrading, Consolidation of Cattle and Sheep Production, Assistance for Transporting Livestock, and Marketing Assistance. Swine growers are only eligible for the Assistance for Transporting Livestock subprogram. This subprogram provides eligible farmers financial assistance for transporting animals to a slaughterhouse or to a public market. To be eligible for assistance under this program, swine growers must be located in one of the following agricultural regions: Bas St-Laurent et Gaspesie, Quebec, Outaouais, or Saguenay. The assistance offered varies according to the zone in which the applicant's operation is located.

Because this program is limited to farmers in specific regions of Quebec, we preliminarily determine that it is limited to a specific enterprise or industry, or group of enterprises or industries and is, therefore, countervailable.

To calculate the benefit, we divided the amount of payments made to hog producers during the review period by the dressed-weight equivalent of hogs marketed during the review period in the five provinces to obtain an estimated net subsidy of Can$0.000025/kg. (Can$0.000011/lb.).

10. Saskatchewan Hog Assured Returns Program (SHARP)

SHARP was established in 1976 pursuant to the Saskatchewan Agricultural Returns Stabilization Act.

SHARP provides stabilization payments to the Saskatchewan hog producers when market returns fall below a designated "floor price." The program is administered by the Saskatchewan Pork Producers, Marketing Board on behalf of the provincial Department of Agriculture. Under the Saskatchewan Agricultural Returns Act, the provincial government may establish a stabilization plan for any agricultural commodity. However, in practice, only hogs and beef have such plans.

To be eligible, a grower must own market hogs which are raised and finished to slaughter weight on the production unit, or which are purchased as weanling or feeder hogs and fed a minimum of 60 days. Coverage is limited to 1,500 hogs per grower per quarter.

The program is funded through producer premiums and matching funds from the provincial government. When Saskatchewan joined the National Tripartite Red Meat Stabilization Program on January 1, 1986, SHARP payments were reduced by the amount of payments received through the Tripartite program. No producers have been eligible to join SHARP since December 31, 1985. SHARP payments are being phased out and will be terminated by March 31, 1991.

Under SHARP, the levy (producer premium) for producers is three percent of market returns on the sale of covered hogs. However, if the interest on the SHARP account for that quarter and the three previous quarters is negative, the levy can range from 3.5 percent to 4.5 percent. If the interest in the account is positive and greater than 3.0 percent, the levy can range from 1.5 percent to 2.5 percent. If the balance in the SHARP account is insufficient to make stabilization payments, the provincial government loans the necessary funds to SHARP.

Stabilization payments are based on the sum of the producer's cash costs plus 75 percent of the sum of non-cash costs for each quarter. Payments are made at the end of each quarter.

Because this program is limited to swine producers, we preliminarily determine it to be limited to a specific enterprise or industry, or group of enterprises or industries and, therefore, countervailable.

To calculate the benefit, we multiplied the total amount of stabilization payments made in 1988 by one-half to factor out producer premiums and divided the result by the dressed-weight equivalent of hogs marketed during the review period in the five provinces to obtain an estimated net subsidy of Can$0.001380/kg. (Can$0.000626/lb.).

11. Saskatchewan Livestock Investment Tax Credit Program (SLITC)

The SLITC provides investment tax credits to livestock growers who pay income taxes and whose livestock are fed in Saskatchewan for slaughter. Hogs, cattle and sheep are covered by this program. To be eligible, hogs must index 80 or higher, must be owned for at least 60 days, and must be fed in Saskatchewan. Hog growers are eligible for a tax credit of Can$3.00 per hog. There is a Can$100 deduction from the credit in each year the tax credit is claimed. If any portion of the tax credit is not used, it may be carried forward for up to seven years.

Because the SLITC is limited to certain livestock growers, we preliminarily determine that it is limited to a specific enterprise or industry, or group of enterprises or industries and is, therefore, countervailable.

To calculate the benefit, we multiplied the estimated number of swine producers who used this program by $100. We then substracted this amount from the estimated amount of credits claimed by swine producers during the review period. We divided the result by the dressed-weight equivalent of hogs marketed during the review period in the five provinces to obtain an estimated net subsidy of Can$0.000553/kg. (Can$0.000251/lb.).

12. Saskatchewan Livestock Facilities Tax Credit Program (SLFTCP).

The SLFTCP, implemented on January 1, 1986, provides tax credits to livestock growers for investment in livestock production facilities. The credits are deductible only from provincial taxes.

Livestock eligible under this program includes cattle, horses, sheep, swine, goats, poultry, bees, or fur-bearing animals raised in captivity. Investments covered under this program include new buildings, improvements to existing livestock facilities and any stationary equipment related to livestock facilities.

During the review period, livestock growers were eligible for a tax credit of 15 percent of 95 percent (14.25 percent) of the total facilities investment. Participants may carry forward any unused credit for up to seven years.

Because this program is limited to certain livestock growers, we preliminarily determine it to be limited to a specific enterprise or industry, or group of enterprises or industries and, therefore, countervailable.

To calculate the benefit, as best information available, we divided the total tax credits claimed in 1987, as estimated in the response, by the dressed-weight equivalent of hogs marketed during the review period in the five provinces to obtain an estimated net subsidy of Can$0.000162/kg. (Can$0.000074/lb.).

II. Program Preliminarily Determined To Be Not Countervailable

Research Grants Under the OPIIP

Research grants under OPIIP are provided to support research projects related to swine production. According to the response, the results of such research are publicly available both inside and outside Canada. Therefore we preliminarily determine that the benefits of such research grants are not limited to a specific enterprise or industry, or group of enterprises or industries, and that the grants are therefore not countervailable.

III. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that the following programs were not used by producers or exporters in Canada of fresh, chilled, and frozen pork during the review period:

1. Canada/Alberta Subsidiary Agreement on Agricultural Processing and Marketing

This subsidiary agreement operates under the Economic and Regional Development Agreement (ERDA) between the Government of Alberta and the Government of Canada which became effective June 8, 1984. The agreement is jointly funded and administered by the federal and the provincial government. The purpose of the agreement is to enhance the agricultural processing sector of Alberta's economy.

Applicants who carry out approved projects within the agricultural processing sector receive non-repayable contributions toward eligible costs incurred. Applications are reviewed by the Management Committee to the Agreement to determine whether the project is eligible and whether it meets the program's objectives. Eligible projects include the establishment, expansion, and modernization of processing operations and testing and research facilities, as well as feasibility studies and product research and development.

Assistance cannot exceed 35 percent of costs for a new facility (25 percent for projects in Calgary or Edmonton) and 25 percent of costs for the modernization of an existing facility (15 percent for projects in Edmonton or Calgary). Funds are not available until the project is commercially operational at which time 90 percent of the non-repayable

contribution is issued. The remaining 10 percent is issued only after 24 months of continuous operation.

According to the responses, no assistance was provided to federally-inspected pork producers (the only producers eligible to export) during the review period.

2. Manitoba Hog Income Stabilization Program.

This program was created to provide income support payments to hog producers when the market price for hogs fell below an established price support level. It was funded by premiums from participating producers and from the provinicial government. This program was terminated effective June 28, 1986.

3. Ontario Export Sales Aid

This program assists agriculture and food producers and processors with their efforts to develop markets abroad by providing financial and technical support for various promotional activities. According to the response of the Government of Ontario, no assistance was provided to hog growers or pork producers during the review period.

4. Ontario Small Food Processors Assistance Program

This program assists eligible small food processing companies by improving their access to market information, strengthening their business planning skills and capabilities and providing financial assistance on eligible capital investments. According to the response of the Government of Ontario, no assistance was provided to hog growers or pork producers during the review period.

5. Quebec Meat Sector Rationalization Program (QMSRP)

The QMSRP was started in 1975 and terminated in 1982, with financial assistance granted until 1984. The program was designed to foster the development of the Quebec meat sector, to provide Quebec producers viable outlets for their production and to improve the industry's competitive position. Under the QMSRP, the Ministry of Agriculture assumes part of the eligible capital costs of investments for the establishment, standardization, expansion, modernization or amalgamation of slaughterhouses or meat processing plants.

Under the QMSRP, producers were eligible for the equivalent of 35 percent of the cost of eligible capital assets, up to a maximum of Can$200,000 per business.

According to the response, no grants were provided under this program during the review period, therefore, we preliminarily determine this program to be not used.

IV. Programs for Which More Information is Needed

1. Alberta Department of Economic Development and Trade Act

Loans, loan guarantees and grants were made to pork packers in Alberta under the Alberta Department of Economic Development and Trade Act. We are seeking additional information to determine whether eligibility for assistance under this program is limited by law or in practice to a specific enterprise or industry, or group of enterprises or industries.

2. Special Canada Grains Program

The Special Canada Grains Program 1987 Extension (SCGP 1987) provides grants to grain, oilseed, special crop and honey producers, who have experienced dramatic drops in income due to international agricultural policies. To be eligible for assistance, producers must have seeded acreage in Canada of eligible crops harvested in 1987 or have seeded acreage which was cut for silage, greenfeed, ploughed down, or left for summerfallow, due to a natural disaster. Eligible crops include wheat, oats, barley, mixed grains, rye, corn, and high moisture grains which are intended to be harvested as grains or fed to livestock.

Payments are based on producers' seeded acreage of eligible crops harvested or intended for harvest in 1987, weighted by representative yields and an assistance rate. Representative yields were averaged from the best three years between 1981 and 1986 to minimize the influence of abnormal crop loss situations. Assistance rates for grains, oilseeds and special crops are calculated based on the decrease in 1987 market prices compared with 1985 prices for the eligible crops. Payments are made yearly, with a Can$25,000 maximum per producer per year.

We are seeking more information to determine whether this program confers countervailable benefits on the production of hogs.

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of fresh, chilled, and frozen pork products from Canada which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register and to require a cash deposit or bond for all entries of this merchandise equal to Can$0.077/kg. (Can$0.035/lb.). This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will make its final determination 45 days after the Department makes its final determination.

Public Comment

In accordance with section 355.38 of the Department's regulations published in the Federal Register on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR section 355.38), we will hold a public hearing, if requested, on June 28, 1989, at 10:00 a.m. in room 1412, to afford interested parties an opportunity to comment on this preliminary determination. Interested parties who wish to request or to participate in the hearing must submit a request within 10 days of the publication of this notice in the Federal Register to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the arguments to be raised at the hearing. In addition, ten copies of the business proprietary version and five copies of the non-proprietary version of case briefs must be submitted to the Assistant Secretary no later than June 21, 1989. Ten copies of the business proprietary version and five copies of the non-proprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than June 26, 1989. An interested party may make

an affirmative presentation at the public hearing only on arguments included in that party's case brief, and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Written argument should be submitted in accordance with § 355.38 of the Commerce Department's regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR section 355.38), and will be considered if received within the time limits specified in this notice.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

May 1, 1989.

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-10893 Filed 5-5-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-614-503]

Lamb Meat From New Zealand; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On January 13, 1989, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on lamb meat from New Zealand. We have now completed that review and determine the total bounty or grant during the period April 1, 1986 through March 31, 1987 to be NZ$0.21/lb. for all firms.

EFFECTIVE DATE: MAY 8, 1989.

FOR FURTHER INFORMATION CONTACT: Paul McGarr or Bernard Carreau, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3337.

SUPPLEMENTARY INFORMATION:

Background

On January 13, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 1402) the preliminary results of its administrative review of the countervailing duty order on lamb meat from New Zealand (50 FR 37708; September 17, 1985). The Department has now completed that administrative review in accordance with section 751(a)(1) of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of lamb meat from New Zealand. During the review period, such merchandise was classifiable under item number 106.3000 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under item numbers 0204.10.0000, 0204.22.2000, 0204.23.2000, 0204.30.0000, 0204.42.2000 and 0204.43.2000 of the Harmonized Tariff Schedule.

The review covers the period April 1, 1986 through March 31, 1987 and eight programs: (1) Export Market Development Taxation Incentive ("EMDTI"); (2) Export Performance Taxation Incentive ("EPTI"); (3) Livestock Incentive Scheme ("LIS"); (4) Meat Producers Board Price Support Scheme ("MPBPS"); (5) Supplementary Minimum Prices/Lump Sum Scheme; (6) Export Programme Suspensory Loan Scheme; (7) Export Suspensory Loan Scheme; and (8) Regional Development Suspensory Loan Scheme.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the New Zealand Meat Producers Board and lamb meat exporters.

Comment 1: The respondents contend that the Department, when converting the volume figures in the response from tons to pounds, incorrectly used the conversion factor for short tons rather than metric tons. Consequently, dividing the EMDTI, the EPTI and the MPBPS benefits by the corrected volume figures in pounds reduces the bounty or grant from these programs.

Department's Position: We agree. We have recalculated the volume figures in pounds using a metric ton conversion factor. Using these corrected volume figures, the EMDTI benefit is NZ$0.14/lb. for all firms, the EPTI benefit is NZ$0.03/lb. for all firms, and the MPBPS benefit is NZ$0.03/lb. for all firms (see also Comment 2).

Comment 2: The respondents maintain that, in calculating the benefit under the MPBPS, the Department inadvertently used the total amount of the benefit provided for lamb meat exports to all countries rather than only that portion of the total benefit attributable to lamb meat exports to the United States.

Department's Position: We agree and have corrected our MPBPS calculations accordingly (see Comment 1).

Comment 3: The respondents contend that, with respect to the LIS, the Department inadvertently calculated a benefit based on the total loans outstanding to all livestock producers rather than on the portion of those loans attributable to sheep production.

Department's Position: We agree and have corrected our calculations accordingly. Therefore, the benefit under the LIS is NZ$0.005/lb. for all companies.

Comment 4: The respondents argue that, for the EMDTI program, the Department should calculate the cash deposit of estimated countervailing duties based on the tax credit rate available for the fiscal year ending March 31, 1989.

Department's Position: We disagree. At the time our notice of preliminary results was published, the fiscal year ending March 31, 1989 was not completed, and the change in the EMDTI program was not yet in effect. It is our policy to take into consideration only those program-wide changes that occur prior to our notice of preliminary results. Therefore, we have calculated the cash deposit of estimated countervailing duties based on the tax credit rate in effect for the fiscal year ending March 31, 1988.

Final Results of Review

After considering all the comments received, we determine the total bounty or grant during the period April 1, 1986 through March 31, 1987 to be NZ$0.21/lb. for all firms.

The Department will instruct the Customs Service to assess countervailing duties of NZ$0.21/lb. on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after April 1, 1986 and exported on or before March 31, 1987.

Because of the termination of the EPTI and the MPBPS programs and changes to the EMDTI program, the Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 0.67 percent of the f.o.b. invoice price for Weddel Crown and 6.07 percent of the f.o.b. invoice price for all other firms on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Commerce

Regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22).
Date: April 24, 1989.

Michael J. Coursey

Acting Assistant Secretary, for Import Administration

[FR Doc. 89-10894 Filed 5-5-89; 8:45 am]
BILLING CODE 3510-DS-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review Respecting Polyphase Induction Motors

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Commerce.

ACTION: Notice of Request for Panel Review of Final Determination of Dumping and Subsidizing Respecting Polyphase Induction Motors of an Output Exceeding 200 Horsepower or 150 Kilowatts made by the Canadian Deputy Minister of National Revenue for Customs and Excise which was filed by Toshiba International Corporation with the Canadian Section of the Binational Secretariat on May 1, 1989.

SUMMARY: On May 1, 1989, Toshiba International Corporation (Houston, Texas) filed a Request for Panel Review with the Canadian Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final determination of dumping and subsidizing respecting polyphase induction motors of an output exceeding 200 horsepower or 150 kilowatts, Revenue Canada File Number 4246-67 (DPC), issued by the Canadian Deputy Minister of National Revenue for Customs and Excise and published in the "Canada Gazette" Part I, No. 14, vol. 123, p. 1745, on April 8, 1989. The Binational Secretariat has assigned Case Number CDA-89-1904-01 to this Request for Panel Review.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Acting U.S. Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the U.S.-Canada Free-Trade Agreement ("Agreement") establishes a mechanism for replacing domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel will be established to act in place of national courts to expeditiously review 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, 1989, the Government of the United States and Government of Canada established "Rules of Procedure for Article 1904 Binational Panel Reviews" ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988, (53 FR 53212). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary to publish Notice of the receipt of a Request for Panel Review stating that a Request for Panel Review was filed with the United States Section of the Binational Secretariat on April 26, 1989, pursuant to Article 1904 of the Agreement.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is May 31, 1989);

(b) A Party, investigating authority or interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is June 15, 1989); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Date: May 3, 1989.

James R. Holbein,

Acting U.S. Secretary, FTA Binational Secretariat.

[FR Doc. 89-10945 Filed 5-5-89; 8:45 am]
BILLING CODE 3510-DA-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Commerce.

ACTION: Notice of request for panel review of final results of an Administrative Review of an antidumping duty order made by International Trade Administration, Import Administration, respecting certain dried heavy salted codfish from Canada filed by the Canadian Saltfish Corporation with the United States Section of the Binational Secretariat on April 26, 1989.

SUMMARY: On April 26, 1989, Canadian Saltfish Corporation filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panal review was requested of the Final Results of an Administrative Review of an Antidumping Duty Order, respecting Certain Dried Heavy Salted Codfish from Canada, Import Administration File Number A-122-057, issued by International Trade Administration, Import Administration, and published in 54 FR 61 on March 31, 1989. The Binational Secretariat has assigned Case Number USA 89-1904-04 to this Request for Panel Review.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Acting U.S. Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the U.S.-Canada Free-Trade Agreement ("Agreement") establishes a mechanism for replacing domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel will be established to act in place of national courts to expeditiously review 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, 1989, the Government of the United States and Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988, (53 FR 53212). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary to publish Notice of the receipt of a Request for Panel Reviw stating that a Request for Panel Review was filed with the United States Section of the

Binational Secretariat on April 26, 1989, pursuant to Article 1904 of the Agreement.

Rule 35(1)(c) of the Rules provides that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is May 26, 1989);

(b) a Party, investigating authority or interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is June 22, 1989); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Date: May 2, 1989.

James R. Holbein,

Acting U.S. Secretary, FTA Binational Secretariat.

[FR Doc. 89-10944 Filed 5-5-89; 8:45 am]

BILLING CODE 3510-DA-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Commerce.

ACTION: Notice of request for panel review of final results of antidumping duty administrative review made by International Trade Administration, Import Administration, respecting replacement parts for self-propelled bituminous paving equipment from Canada filed by Allatt Paving Equipment Division of Ingersoll-Rand Canada Inc. (formerly Fortress Allatt, Ltd.) with the United States Section of the Binational Secretariat on April 26, 1989.

SUMMARY: On April 26, 1989, Allatt Paving Equipment Division of Ingersoll-Rand Canada Inc. (formerly Fortress Allatt, Ltd.) filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the Final Results of an Antidumping Duty Administrative Review, respecting Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada, Import Administration File Number A-122-057, made by the International Trade Administration, Import Administration, and published in 54 FR 12467 on March 27, 1989. The Binational Secretariat has assigned Case Number USA 89-1904-03 to this Request for Panel Review.

In addition, a Request for Joint Panel Review was filed by Allatt Paving Equipment Division of Ingersoll-Rand Canada Inc. (formerly Fortress Allatt, Ltd.) requesting joint panel review of two final determinations respecting Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada, i.e., the ongoing panel review of a Scope Determination made by the International Trade Administration, Import Administration on January 23, 1989, Secretariat Case Number USA 89-1904-02, and the Request for Panel Review described in this Notice, Secretariat Case Number USA 89-1904-03.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Acting U.S. Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the U.S.-Canada Free-Trade Agreement ("Agreement") establishes a mechanism for replacing domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel will be established to act in place of national courts to expeditiously review 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, 1989, the Government of the United States and Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988, (53 FR 53212). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary to publish Notice of the receipt of a Request for Panel Review stating that a Request for Panel Review was filed with the United States Section of the Binational Secretariat on April 26, 1989, pursuant to Article 1904 of the Agreement.

Rule 35(1)(c) of the Rules provides that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is May 26, 1989);

(b) a Party, investigating authority or interested person that does not file a Compliant may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is June 12, 1989); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: May 2, 1989.

James R. Holbein,

Acting U.S. Secretary, FTA Binational Secretariat.

[FR Doc. 89-10943 Filed 5-5-89; 8:45 am]

BILLING CODE 3510-DA-M

COMMISSION ON RAILROAD RETIREMENT REFORM

Meeting

ACTION: Meeting.

SUMMARY: The Commission on Railroad Retirement Reform ("the Commission") will hold its fourth meeting on Tuesday, May 23, 1989. The Commission was established by section 2101 of the Omnibus Budget Reconciliation Act of 1987, Pub.L. 100-203, enacted December 22, 1987.

Date, Time, and Place: Tuesday, May 23, 1989, 9:00 a.m.—4 p.m., Railway Labor Executives Association, 8th Floor, 400 First Street, NW., Washington, DC.

Status: Open meeting except for initial 30 minutes which will be closed to discuss matters exempted from public disclosure pursuant to subseciton (c) of section 552b of title 5, United States Code.

Agenda: The open meeting will be devoted to general discussion of the following areas: long-term trends in railroad employment; relative cost of pensions for non-railroad employers vs Railroad Retirement costs; and possible ways of financing the Railroad Retirement system other than payroll taxes.

FOR ADDITIONAL INFORMATION: Contact Maureen Kiser, 202-254-3223, Commission on Railroad Retirement Reform, 1111 18th Street NW., Washington, DC 20036.

SUPPLEMENTARY INFORMATION: See Federal Register, Volume 54, No. 40, Thursday, March 2, 1989, Page 8856.

Kenneth J. Zoll,

Executive Director.

[FR Doc. 89-11079 Filed 5-5-89; 8:45 am]

BILLING CODE 6820-63-M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted information collection 3038-0012, Futures Volume, Open Interest, Prices, Deliveries and Exchanges of Futures for Physicals, to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. The information collected pursuant to this rule is in the public interest and is necessary for market surveillance.

ADDRESS: Persons wishing to comment on this information collection should contact Gary Waxman, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20502, (202) 395-7340. Copies of the submission are available from Joseph G. Salazar, Agency Clearance Officer, (202) 254-9735.

Title: Futures Volume, Open Interest, Prices, Deliveries and Exchanges of Futures for Physicals

Control Number: 3038-0012

Action: Extension

Respondents: Commodity Exchanges

Estimated Annual Burden: 1320 total hours

Respondents	Regulation (17 CFR)	Estimated No. of Respondents	Annual Responses	Est. Avg. (17 CFR) Hours Per Response
Commodity Exchanges	16.01	12	2640	1/2

Issued in Washington, DC on May 1, 1989.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-10915 Filed 5-5-89; 8:45am]

BILLING CODE 6351-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission .

ACTION: Notice of Information Collection.

SUMMARY: The Commodity Futures Trading Commission has submitted information collection 3038-0003, Regulations Permitting the Grant, Offer and Sale of Dealer Options, to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. The information collected pursuant to this rule is intended to protect the public that trades in dealer options by assuring them of the adequate disclosure of the costs and risks of trading dealer options.

ADDRESS: Persons wishing to comment on this information collection should contact Gary Waxman, Office of Management and Budget, Room 3228, NEOB, Washington, D.C. 20502, (202) 395-7340. Copies of the submission are available from Joseph G. Salazar, Agency Clearance Officer, (202) 254-9735.

Title: Regulations Permitting the Grant, Offer and Sale of Dealer Options.

Control Number: 3038-0003.

Action: Extension.

Respondents: Businesses, excluding small businesses.

Estimated Annual Burden: One total hour.

Respondents	Regulation (17 CFR)	Estimated No. Respondents	Annual Responses	Est. Avg. Hours Per Response
Businesses	Part 32	1	1	1

Issued in Washington, DC on May 1, 1989.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-10916 Filed 5-5-89; 8:45 am]

BILLING CODE 6351-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted information collection 3038-0026, Gross Margining of Omnibus Accounts, to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. A carrying futures commission merchant ("FCM") is required to maintain a written representation from the originating FCM if it allows a person trading through an omnibus account to margin positions in the account at a lower than normal level because a spread or hedge position is involved.

ADDRESS: Persons wishing to comment on this information collection should contact Gary Waxman, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20502, (202) 395-7340. Copies of the submission are available from Joseph G. Salazar, Agency Clearance Officer, (202) 254-9735.

Title: Gross Margining of Omnibus Accounts.
Control Number: 3038-0026

Action: Extension
Respondents: Businesses (excluding small businesses).

Estimated Annual Burden: 500 hours.
Estimated Number of Respondents: 400.

Respondents	Regulation (17 CFR)	Estimated No. respondents	Annual responses	Estimated Average hours per response
Reporting: Businesses	1.58(b)	100	5,000	.04
Recordkeeping: Businesses	1.58(b)	300	300	1

Issued in Washington, DC on May 1, 1989.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 89-10917 Filed 5-5-89; 8:45 am]
BILLING CODE 6351-01-M

Performance of Functions Related to Leverage Transactions by National Futures Association

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and Order authorizing the National Futures Association to process and, where appropriate, grant applications for registration filed by, and to be official custodian of certain registration records of, leverage transaction merchants and their associated persons.

SUMMARY: The Commission is authorizing the National Futures Association ("NFA") to process and, where appropriate, grant applications for registration in the categories of leverage transaction merchant ("LTM") and associated person ("AP") of an LTM, and to assume and maintain, on behalf of the Commission, a system of records regarding applicants and registrants in those categories and to serve as the official custodian of those Commission records.

EFFECTIVE DATE: May 15, 1989.

FOR FURTHER INFORMATION CONTACT: Robert P. Shiner, Assistant Director, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-6112.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

UNITED STATES OF AMERICA

Before the Commodity Futures Trading Commission Order Authorizing the Performance of Functions Related to Leverage Transactions

I. Authority and Background

Following discussions between Commission staff members and NFA staff members, the Commission's Division of Trading and Markets, by letter dated January 10, 1989, requested that NFA consider at its next board meeting and approve the assumption of the function of processing and granting, where appropriate, applications for registration in the categories of LTM and AP of an LTM. Section 19(c)(2) of the Commodity Exchange Act ("Act") provides that the Commission may authorize or require, notwithstanding any other provision of law, a registered futures association to perform such responsibilities in connection with leverage transactions as the Commission may specify.[1]

NFA's Board of Directors voted at its meeting on February 28, 1989 to authorize NFA to perform for the Commission the function of processing and granting, where appropriate, applications for registration in the categories of LTM and AP of an LTM.[2] Upon consideration, the Commission has determined to authorize NFA, effective May 15, 1989, to perform such registration functions in accordance with the standards established by the Act and the regulations promulgated thereunder.[3] The Commission is also permitting NFA immediately to take physical custody of the Commission's hardcopy (paper) registration files on all LTMs and APs of LTMs with active registration status under the Act on or after April 13, 1984, the original effective date of the Commission's comprehensive rules relating to leverage transactions,[4] except for those files pertaining to APs of LTMs who become inactive prior to January 1, 1986, which are being retired to the Federal Records Center. This will facilitate a smooth and orderly transfer of LTM and AP of an LTM registration activities from the Commission to NFA.[5]

In authorizing NFA to undertake these registration and records custodian functions, the Commission is retaining for the time being certain of the responsibilities pertaining to the registration of LTMs and APs of LTMs. Specifically, the Commission has not authorized NFA to refuse to register, to register conditionally, or to suspend, revoke or place restrictions upon the registration of an LTM or an AP of an LTM. NFA also is not authorized to act upon requests for exemption or withdrawal from registration, or to render "no-action" opinions with respect to applicable LTM or AP of an LTM registration requirement. The Commission anticipates, however, that it will authorize NFA to take adverse actions with respect to LTMs, APs of LTMs and applicants for registration in either category, and to act upon requests for withdrawal from registration by LTMs, when the Commission permits new firms to enter the leverage business.

In the absence of authority to institute such adverse actions with respect to an LTM or AP of an LTM, or applicant for registration in either category, NFA shall, except with respect to such categories of statutory disqualifications and in such circumstances as may be specified to NFA by the Commission or authorized staff, forward to the Commission the entire registration file (or such portion as the Commission or its staff may request) on any applicant

[1] Futures Trading Act of 1986, Pub. L. No. 99-641, §109, 100 Stat. 3556 (1986). See also Section 8a(10) of the Act, 7 U.S.C. 12a(10) (1982).

[2] Letter dated March 13, 1989 from Daniel J. Roth, NFA General Counsel, to Andrea M. Corcoran, Director, Division of Trading and Markets, CFTC.

[3] The Commission has previously authorized NFA to perform registration functions with respect to futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors and associated persons of such entities, as well as floor brokers. See 48 FR 15940 (April 13, 1983); 48 FR 35158 (August 3, 1983); 48 FR 51809 (November 14, 1983); 49 FR 8226 (March 5, 1984); 49 FR 39593 (October 9, 1984); 50 FR 34865 (August 28, 1985); 51 FR 25929 (July 17, 1986) and 51 FR 34490 (September 29, 1986). NFA s registration authority with respect to APs of LTMs shall also include granting of temporary licenses, where appropriate.

[4] 49 FR 5498 (February 13, 1984).

[5] Until the Commission lifts its moratoria on the entry of new firms into the leverage business, NFA will essentially be dealing only with APs of LTMs, which currently number approximately 270, most of which are dually registered as APs of futures commission merchants which are affiliated firms of the LTMs, and thus information about such individuals already is contained in NFA's registration system.

or registrant who appears to be subject to a statutory disqualification, and NFA shall not take any final action with respect to such applicant or registrant except in accordance with written instructions from the Commission or authorized staff.

NFA shall make all reasonable efforts to determine whether an applicant is subject to a statutory disqualification arising from or evidenced by a public record of any court or governmental agency. In those cases where it appears to NFA that further investigation may be necessary or appropriate to determine whether an applicant may be subject to a statutory disqualification, NFA, after having conducted any such investigation as NFA may deem appropriate for NFA to conduct, shall forward the entire registration file (or such portion as the Commission or its staff may request) to the Commission along with any information related thereto which NFA may have. NFA shall not take any final action with respect to such applicant except in accordance with written instructions from the Commission or authorized staff.

Although NFA has not been authorized to take any of the listed adverse actions with respect to a registration or an application for registration in the categories of LTM or AP of an LTM, NFA may, of course, notify an applicant or registrant of deficiencies in the application and maintain that application as pending until the applicant corrects the deficiencies to NFA's satisfaction. NFA may also, after reasonable notice to the applicant, deem an application withdrawn in the event the applicant does not, in response to such notice, either correct the deficiencies within a reasonable time or refuse to correct those deficiencies and request continued consideration of the application. In the latter event, NFA shall forward the applicant's file to the Commission for its consideration and shall take no further action with respect to the application except in accordance with written instructions from the Commission or authorized staff.

The Commission has, by prior Order, authorized NFA to maintain various other Commission registration records and certified NFA as the official custodian of such records of this agency.[6] The Commission has now determined, in accordance with its authority under Section 19 of the Act, to authorize NFA to maintain and serve as official custodian of a system of the Commission's records with respect to LTMs and APs of LTMs with active registration status in any capacity under the Act on or after April 13, 1984, except for those who become inactive prior to January 1, 1986.[7] This determination is based upon NFA's representations regarding the implementation of rules and procedures for maintaining and safeguarding all such records, as well as the need to facilitate NFA's assuming responsibility for the processing and related functions concerning applications for registration of LTMs and APs of LTMs.

In maintaining the Commission's registration records pursuant to this Order, NFA shall be subject to all other requirements and obligations imposed upon it, and in the manner prescribed, by the Commission in existing or future Orders or regulations. In this regard, NFA shall also implement such additional procedures (or modify existing procedures) as necessary and acceptable to the Commission to ensure the security and integrity of the LTM and AP of an LTM records in NFA's custody; to facilitate prompt access to those records by the Commission and its staff, particularly as described in other Commission Orders or rules; to facilitate disclosure of public or nonpublic information in those records when permitted by Commission Orders or rules and to keep logs as required by the Commission concerning disclosures of nonpublic information; and otherwise to safeguard the confidentiality of the records.

The Commission wishes to note certain other items. The Commission has amended its rules to delete the reference to registration fees for applicants for registration as an LTM and an AP of an LTM, as indicated in a separate release published elsewhere in this issue. NFA has indicated that its fees in this area will be consistent with those of the Commission, which were $275 for an LTM applicant and $35 for an AP of an LTM applicant. Second, with respect to applications pending at the time NFA is authorized to assume the above-mentioned registration functions, NFA will assume the responsibility to process and act upon such applications in accordance with this Order. Third, the Commission has previously imposed no testing requirement for APs of LTMs. As noted, however, most APs of LTMs are also APs of affiliated futures commission merchants and thus have been subject to NFA's Series 3 testing requirement. Although NFA would not be required to institute a testing requirement for APs of LTMs prior to the expansion of the number of LTMs, NFA has indicated that it would institute a testing requirement for APs of LTMs that is comparable to that for APs of futures commission merchants following the lifting of the leverage moratoria.[8] Further, the Commission notes that NFA plans to submit shortly its rule proposals regarding the assumption of functions with respect to leverage transactions, including registration functions. The Commission believes, however, that NFA's immediate assumption of the registration and records custodian functions referred to herein and agreed to by NFA is both reasonable and feasible.

II. Conclusion and Order

The Commission has determined, in accordance with the provisions of section 19 of the Act, to authorize NFA, effective May 15, 1989, to process and, where appropriate, grant applications for registration under the Act as an LTM or an AP of an LTM in accordance with the standards established by the Act and the regulations promulgated thereunder and to maintain a system of records in connection with NFA's performance of these registration functions. These Commission determinations are based upon the Congressional intent that the Commission be allowed to authorize NFA to perform any portion of the Commission's responsibilities with respect to leverage transactions under the Act for purposes of carrying out these responsibilities in the most efficient and cost-effective manner, and NFA's representations concerning standards and procedures to be followed in administering these functions.

This Order does not, however, authorize NFA to accept or act upon requests for exemption or withdrawal from registration, to render "no-action" opinions or interpretations with respect to applicable registration requirements, or to grant conditional registrations or to deny or take any other adverse actions with respect to such registrations.

Nothing in this Order or section 19 of the Act shall affect the Commission's authority to review the granting of a registration application by NFA in the performance of Commission registration

[6] *Order Authorizing the Performance of Registration Functions*, October 1, 1984 (49 FR 39593, 39595–97 (October 9, 1984)); *see also* 50 FR 34885 (August 28, 1985); 51 FR 25929 (July 17, 1986).

[7] *See also* Notice of Modified Description of Systems of Records issued by the Commission concurrently with this Order. That Notice is published elsewhere in this issue.

[8] *See also* 7 U.S.C. 21(p)(1) (1982).

functions. *See also* section 17(o)(3) of the Act, 7 U.S.C. 21(o)(3) (1982).

Issued in Washington, DC on May 2, 1989 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-10921 Filed 5-5-89; 8:45 am]

BILLING CODE 6351-01-M

Privacy Act of 1974; Notice of Modified Descriptions of Systems of Records

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of modified descriptions of systems of records.

SUMMARY: The Commodity Futures Trading Commission is modifying the descriptions of two existing systems of records to reflect the planned assumption of certain additional registration functions, including the maintenance of corresponding Commission registration records, by the National Futures Association.

EFFECTIVE DATE: May 15, 1989.

FOR FURTHER INFORMATION CONTACT: Robert P. Shiner, Assistant Director, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8112.

SUPPLEMENTARY INFORMATION:

Introduction

Following the directives of the Privacy Act of 1974, the Commodity Futures Trading Commission currently maintains two systems of Commission records related to the registration of persons engaging in certain types of commodity-related activities: CFTC-12 (Fitness Investigations) and CFTC-20 (Registration of Floor Brokers, Futures Commission Merchants, Introducing Brokers, Commodity Trading Advisors, Commodity Pool Operators, Leverage Transaction Merchants and Associated Persons). As currently set forth, these two systems contain registration forms, related supplements and schedules, fingerprint cards, correspondence, and reports reflecting information developed from various sources relating to the registration or fitness of applicants, registrants and persons affiliated with futures commission merchants (FCMs), introducing brokers (IBs), commodity pool operators (CPOs), commodity trading advisors (CTAs), leverage transaction merchants (LTMs) and floor brokers.[1] The National Futures Association (NFA), in performing certain registration functions on behalf of the Commission, currently maintains the Commission's registration records with respect to FCMs, IBs, CPOs, CTAs and their respective associated persons (APs), as well as certain registration records of floor brokers.[2]

NFA has now sought Commission authority to perform certain registration functions with respect to LTMs and APs of LTMs.[3] In particular, NFA has requested the authority to process and, where appropriate, grant the registration applications of LTMs and APs of LTMs. The maintenance of Commission records associated with those activities is an essential aspect of any such authority granted to NFA by the Commission.

In that regard, NFA will be given custody, at the Commission's earliest convenience, of the hardcopy registration records in CFTC-20 with respect to LTMs and APs of LTMs with active registration status on or after April 13, 1984, the original effective date of the Commission's comprehensive rules relating to leverage transactions, except for those files pertaining to APs of LTMs who became inactive prior to January 1, 1986, which are being retired to the Federal Records Center. This will facilitate a smooth and orderly transition of LTM and AP of an LTM registration activities from the Commission to NFA. The Commission concurrently issued an Order authorizing NFA to perform the requested registration functions and to become custodian of the relevant records, which is published elsewhere in the "Notices" Section of this issue.

In light of that Order and in anticipation of the Commission delegating to NFA in the future additional registration processing functions for LTMs and APs of LTMs with respect to adverse actions, the Commission has now modified its description of CFTC-12 and CFTC-20 to provide for both NFA's expanded role and the attendant change in location of the Commission's LTM and AP of an LTM registration records. Because the Commission believes that delegating to NFA physical custody of LTM and AP of an LTM registration records will assist NFA in carrying out responsibilities under the Commodity Exchange Act, the concomitant disclosure to NFA of personal information on individuals that may be contained in those records is permissible under the Commission's current routine use of such information under the Privacy Act.[4] This Notice is being published to inform the public—and, in particular, individuals about whom information is maintained in either system—where these Commission records will be located.

Description of Systems of Records

CFTC-12

SYSTEM NAME:

Fitness Investigations.

SYSTEM LOCATION:

Records for floor brokers; associated persons of leverage transaction merchants where registration status as such was inactive prior to January 1, 1986; and also for all other categories where registration status in every applicable capacity was inactive prior to October 1, 1983: Division of Trading and Markets, 2033 K Street NW., Washington, DC 20581.

Records for futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, their respective associated persons and principals, with active registration status in any capacity on or after October 1, 1983; leverage transaction merchants and their associated persons with active registration status as such on or after April 13, 1984, except as noted above; also limited records for floor brokers: National Futures Association (NFA), 200 West Madison Street, Suite 1400, Chicago, Illinois 60606.

(*See also* "Retention and Disposal," *infra.*)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied or who may apply to the Commission or NFA, as applicable, for registration as floor brokers or as associated persons, and principals (as defined in 17 CFR 3.1) of futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors and leverage transaction merchants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to the fitness of the above-described individuals to engage in business subject to the Commission's jurisdiction. The system includes registration forms, schedules and supplements; fingerprint cards; correspondence relating to registration;

[1] *See* 49 FR 45472 (November 16, 1984).

[2] *Id. See also* 49 FR 39593 (October 9, 1984), 49 FR 45418 (November 16, 1984), 50 FR 34885 (August 28, 1985) and 51 FR 25929 (July 17, 1986).

[3] *See* letter dated January 10, 1989, from Andrea M. Corcoran, Director, Division of Trading and Markets, CFTC, to Robert K. Wilmouth, President of NFA, and letter dated March 13, 1989 from Daniel J. Roth, General Counsel of NFA, to Mrs. Corcoran.

[4] *See* Routine Use No. 3 at 47 FR 44832 (October 12, 1982).

and reports and memoranda reflecting information developed from various sources outside the CFTC or NFA. In addition, the system contains records of each CFTC or NFA fitness investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 4f(1), 4k(4), 4k(5), 4n(1), 8a(1)–(5), 8a(10), 17(o) and 19 of the Commodity Exchange Act, 7 U.S.C. 6f(1) 6k(4), 6k(5), 6n(1), 12a(1)–(5), 12a(10), 21(o) and 23 (1982 & Supp. IV 1986).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses applicable to all of the Commission's systems of records, including this system, were set forth under the caption, "General Statement of Routine Uses," in 47 FR 43759, 43760–61 (October 4, 1982), and subsequently modified in 47 FR 44830, 44831 (October 12, 1982). In addition, information contained in this system of records may be disclosed by the Commission as follows:

1. Information contained in this system of records may be disclosed to any person with whom an applicant or registrant is or plans to be associated as an associated person or affiliated as a principal.

2. Information contained in this system of records may be disclosed to any registered futures commission merchants with whom an applicant or registered introducing broker has or plans to enter into a guarantee agreement in accordance with Commission regulation 1.10 (17 CFR 1.10).

NFA may disclose information contained in those portions of this system of records maintained by NFA, but any such disclosure must be made in accordance with Commission-approved NFA rules and under circumstances authorized by the Commission as consistent with the Commission's regulations and routine uses. The currently authorized circumstances are set forth in the Commission's September 28, 1984 Order authorizing NFA to perform certain Commission registration functions including the maintenance of Commission records and are published at 49 FR 39593, 39596 (October 9, 1984), except that Item 2b therein was modified to eliminate the requirement of specific consent by the applicant or registered introducing broker to the disclosure of information to the futures commission merchant with whom it has or plans to enter a guarantee agreement. 51 FR 25930, 25931 (July 17, 1986).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer memory, computer printouts, index cards, microfiche.

RETRIEVABILITY:

By the name of the individual or firm, or by assigned identification number. Where applicable, the NFA's computer cross-indexes the individual's file to the name of the futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant with which the individual is associated or affiliated.

SAFEGUARDS:

General office security measures including secured rooms or premises and, in appropriate cases, lockable file cabinets with access limited to persons whose official duties require access.

RETENTION AND DISPOSAL:

Applications, biographical supplements, other forms, related documents and correspondence are maintained on the CFTC's or NFA's premises, as applicable, for three years after the individual's registration(s), or that of the firm(s) with which the individual is associated as an associated person or affiliated as a principal, becomes inactive. Records are then stored at an appropriate site for an additional seven years before being destroyed; CFTC-held records are stored in the Federal Records Center, and NFA-held records are to be stored either on NFA's premises or in appropriate fireproof off-site facilities.

Computer records are maintained permanently on the NFA's premises and are updated periodically as long as the individual remains pending for registration, registered in any capacity, or affiliated with any registrant as a principal. Computer records on persons who may apply may be maintained indefinitely. Microfiche records, when produced, are maintained permanently on the CFTC's or NFA's premises.

SYSTEM MANAGERS AND ADDRESSES:

Assistant Director, Registration Unit, Division of Trading and Markets, at the Commission's principal office, or his designee.

For records held by NFA: Vice President for Registration or the Records Custodian, National Futures Association, 200 West Madison Street, Suite 1400, Chicago, Illinois 60606, or a designee.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, seeking access to records about themselves in this system of records, or contesting the content of records about themselves, should address written inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581; telephone (202) 254–3382.

RECORD SOURCE CATEGORIES:

The individual or firm on whom the record is maintained; the individual's employer; federal, state and local regulatory and law enforcement agencies; commodities and securities exchanges, National Futures Association and National Association of Securities Dealers; and other miscellaneous sources. Computer records are prepared from the forms, supplements, attachments and related documents submitted to the Commission or NFA and from information developed during the fitness inquiry.

CFTC–20

SYSTEM NAME:

Registration of Floor Brokers, Futures Commission Merchants, Introducing Brokers, Commodity Trading Advisors, Commodity Pool Operators, Leverage Transaction Merchants, and Associated Persons.

SYSTEM LOCATION:

National Futures Association (NFA), 200 West Madison Street, Suite 1400, Chicago, Illinois 60606. If registration status as an associated person of a leverage transaction merchant was inactive prior to January 1, 1986, or if registration status in every other applicable capacity was inactive prior to October 1, 1983: Division of Trading and Markets (*see* "Retention and Disposal," *infra*).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied to the CFTC or NFA, as applicable, for registration as floor brokers or as associated persons, and principals (as defined in 17 CFR 3.1) of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators, and leverage transaction merchants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to the registration and fitness of the above-described individuals to engage in

business subject to the Commission's jurisdiction. The system includes registration forms, schedules and supplements; fingerprint cards; correspondence relating to registration; and reports and memoranda reflecting information developed from various sources outside the CFTC or NFA.

Computerized systems, consisting primarily of information taken from the registration forms, are maintained by the NFA. Computer records include the name, date and place of birth, social security number (optional), exchange trading privileges (floor brokers only), firm affiliation, and the residence or business address, or both, of each associated person, floor broker, and principal. Computer records also include information relating to name, trade name, principal office address, records address, names of principals and branch managers of futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, and leverage transaction merchants; names of advisory services for commodity trading advisors; and names of pools for commodity pool operators.

Directories and microfiche records, when produced, list the name, business address, and exchange membership affiliation of all registered floor brokers and the name and firm affiliation of all associated persons and principals. These directories and microfiche records, as well as registration forms and biographical supplements, except for any confidential information on supplementary attachments to the forms, are publicly available to any person for disclosure, inspection and copying. Auxiliary records, such as card indices which summarize information contained in this system regarding each associated person, floor broker and principal, may also be maintained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 4f(1), 4k(4), 4k(5), 4n(1), 8a(1), 8a(5), 8a(10) and 19 of the Commodity Exchange Act, 7 U.S.C. 6f(1), 6k(4), 6k(5), 6n(1), 12a(1), 12a(5), 12a(10) and 23 (1982 & Supp. IV 1986).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses applicable to all of the Commission s systems of records, including this system, were set forth under the caption, "General Statement of Routine Uses," in 47 FR 43759, 43760–61 (October 4, 1982), and subsequently modified in 47 FR 44830, 44831 (October 12, 1982). In addition, information contained in this system of records may be disclosed by the Commission as follows:

1. Information contained in this system of records may be disclosed to any person with whom an applicant or registrant is or plans to be associated as an associated person or affiliated as a principal.

2. Information contained in this system of records may be disclosed to any registered futures commission merchant with whom an applicant or registered introducing broker has or plans to enter into a guarantee agreement in accordance with Commission regulation 1.10 (17 CFR 1.10).

NFA may disclose information contained in those portions of this system of records maintained by NFA, but any such disclosure must be made in accordance with Commission-approved NFA rules and under circumstances authorized by the Commission as consistent with the Commission's regulations and routine uses. The currently authorized circumstances are set forth in the Commission's September 28, 1984 Order authorizing NFA to perform certain Commission registration functions including the maintenance of Commission records and are published at 49 FR 39593, 39596 (October 9, 1984), except that Item 2b therein was modified to eliminate the requirement of specific consent by the applicant or registered introducing broker to the disclosure of information to the futures commission merchant with whom it has or plans to enter a guarantee agreement. 51 FR 25930, 25931 (July 17, 1986).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer memory, computer printouts, index cards, microfiche.

RETRIEVABILITY:

By the name of the individual or firm, or by assigned identification number. Where applicable, the NFA's computer cross-indexes the individual's primary registration file to the name of the futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant with which the individual is associated or affiliated.

SAFEGUARDS:

General office security measures including secured rooms or premises and, in appropriate cases, lockable file cabinets, with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Applications, biographical supplements, other forms, related documents and correspondence are maintained on the CFTC's or NFA's premises, as applicable, for three years after the individual's registrations(s), or that of the firm(s) with which the individual is associated as an associated person or affiliated as a principal, becomes inactive. Records are then stored at an appropriate site for an additional seven years before being destroyed; CFTC-held records are stored in the Federal Records Center, and NFA-held records are to be stored either on NFA's premises or in appropriate fireproof off-site facilities.

Computer records are maintained Permanently on Lhe NFA's premises and are updated periodically as long as the individual remains pending for registration, registered in any capacity, or affiliated with any registrant as a principal. Any computer printouts that are produced in order to publish directories are maintained on the premises for six months and then destroyed. Microfiche records, when produced, are maintained permanently on the CFTC's or NFA's premises.

SYSTEM MANAGERS AND ADDRESSES:

Assistant Director, Registration Unit, Division of Trading and Markets, 2033 K Street, NW., Washington, DC 20581, or his designee.

For records held by NFA: Vice President for Registration or the Records Custodian, National Futures Association, 200 West Madison Street, Suite 1400, Chicago, Illinois 60606, or a designee.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves, seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records, should address written inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581; telephone (202) 254–3382.

RECORD SOURCE CATEGORIES:

The individual or firm on whom the record is maintained; the individual's employer; federal, state and local regulatory and law enforcement agencies; commodities and securities exchanges, National Futures Association and National Association of Securities Dealers; and other

miscellaneous sources. The cor records are prepared from the forms, supplements, attachments and related documents submitted to the Commission or NFA and from information developed during the fitness inquiry.

Issued in Washington, DC, on May 2, 1989 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-10922 Filed 5-5-89; 8:45am]

BILLING CODE 6351-01

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. CRT 89-1-87JD]

1987 Jukebox Royalty Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of final determination; Notice of full distribution.

SUMMARY: The Copyright Royalty Tribunal announces the adoption of a final determination in the proceeding concerning the distribution to certain copyright owners and performing rights societies of royalty fees paid by jukebox operators during 1987, and announces a full distribution of the 1987 jukebox royalty fund.

DATES: Distribution of the 1987 jukebox royalty fund shall take place on May 8, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street NW., Suite 450, Washington, DC 20036 (202-653-5175).

SUPPLEMENTARY INFORMATION:

Authority, Background and Chronology

17 U.S.C. 116(c)(3) authorizes the Copyright Royalty Tribunal (Tribunal) to distribute annually royalty fees paid by jukebox operators to certain copyright owners and performing rights societies. First, the Tribunal is to assess the claims of, and make appropriate award to, "every copyright owner not affiliated with a performing rights society." 17 U.S.C. 116(c)(4)(A). Second, the remainder is to be distributed to "the performing rights societies * * * as they shall by agreement stipulate among themselves, or if they fail to agree, the pro rata share to which such performing rights societies prove entitlement." 17 U.S.C. 116(c)(4)(B).

In this proceeding, the Tribunal takes up the distribution of royalty fees deposited by jukebox operators for the calendar year 1987. Four parties filed timely claims: Asociacion de Compositores y Editores de Musica Latinoamericana (ACEMLA), the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (MI) and Italian Book Corporation (IBC).

On October 28, 1988, a fifth party, SESAC, Inc. (SESAC), filed a motion for the acceptance of its late-filed claim.

Justifications of claims were due at the Tribunal on November 1, 1988. All parties except IBC filed their justifications, and IBC later informed the Tribunal by letter dated December 7, 1988 that it was withdrawing its claim.

According to their jointly filed justification of claim, ASCAP and BMI reached an agreement concerning the distribution of 1987 jukebox royalties between them. Consequently, they moved for an immediate partial distribution of the jukebox royalty fund.

On December 9, 1988, the Tribunal published in the **Federal Register** a notice that a controversy existed concerning the distribution of the 1987 jukebox royalty fund, effective December 15, 1988. 53 FR 49731. 90% of the fund was distributed, while 10% was withheld to satisfy the mutually exclusive claims of ACEMLA, ASCAP and BMI, and SESAC (the acceptance or rejection of SESAC's late-filed claim was as of that date still pending).

On January 9, 1989, SESAC withdrew its motion for leave to file a late-filed claim, and its tendered justification of claim. On January 13, 1989, the Tribunal ordered a further partial distribution of 9% of the 1987 jukebox royalty fund. *Order*, dated January 13, 1989.

Procedural dates for the hearing of the ASCAP/BMI—ACEMLA controversy were issued by the Tribunal April 4, 1989. *Order*, dated April 4, 1989. However, on April 24, 1989, ACEMLA informed the Tribunal that it had reached a two-year settlement with ASCAP and BMI and was withdrawing its claims to the 1987 and 1988 jukebox fund (as well as the 1987 cable fund).

On April 27, 1989, citing that there remained no further controversies, ASCAP and BMI filed a joint motion for complete distribution of the remainder of the 1987 jukebox royalty fund.

Conclusions, Allocations and Distribution

The four claimants to the 1987 jukebox copyright royalty fund have reached full settlements of their differences concerning the distribution of the fund. Accordingly, the Tribunal concludes that no more controversies exist, and the 1987 jukebox royalty distribution proceeding is concluded.

The claimants have not divulged the terms of their settlements to the Tribunal, and therefore no official allocations will be made. A complete distribution of the remainder of the 1987 jukebox royalty fund is ordered for May 8, 1989.

Dated: May 2, 1989.

Edward W. Ray,

Chairman.

[FR Doc. 89-10909 Filed 5-5-89; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplement, Part 212, Contract Delivery or Performance; DFSC Form 4.23; and OMB Control Number 0704-0247.

Type of Request: Extension.

Average Burden Hours/Minutes per Response: 9.

Frequency of Response: On occasion

Number of Respondents: 300.

Annual Burden Hours: 2,700.

Annual Responses: 300.

Needs and Uses: This request concerns information collection and recordkeeping requirements related to contract delivery or performance requirements including those related to the acquisition of fuels.

Affected Public: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ms. Eyvette R. Flynn

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway,

Suite 1203, Arlington, Virginia 22202–4302.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

May 3, 1989.

[FR Doc. 89–10968 Filed 5–5–89; 8:45am]

BILLING CODE 3810–01–M

Department of the Army

Intent to Prepare Environmental Impact Statements for the Army's Base Realignment and Closure Actions

AGENCY: Department of the Army, DOD.

ACTION: Notice of intent to prepare environmental impact statements for the Army's Base Realignment and closure actions.

SUMMARY: The Defense Secretary's Commission on Base Realignment and Closure was chartered on May 3, 1988, to recommend military installations within the United States, its commonwealths, territories, and possessions for realignment and closure. The Congress and the President subsequently endorsed this approach through legislation, the Base Closure Realignment Act, Title II, Public Law 100–526. The Commission's report presented to the Secretary of Defense on December 29, 1988, effects approximately 111 Army installations. Pub. L. 100–526 exempted the actions of the Commission from the provisions of the National Environmental Policy Act of 1969 (NEPA) in their decision making process for recommending bases to be closed or realigned. The Army, however, will prepare environmental impact analyses required by NEPA for the implementation of proposed actions involving Army installations. Implementation of these actions will occur only after review and approval by the U.S. Congress.

SCOPING: The Army will conduct scoping meetings to aid in determining the significant issues for each of the actions requiring an environmental impact statement and in special cases for actions requiring an environmental assessment. The public, as well as federal, state, and local agencies are encouraged to participate in the scoping process by submitting data, information, and comments identifying relevant environmental and socioeconomic issues and potential future uses of the excessed real estate that would assist the Army in analyzing potentially significant impacts. Useful information includes other environmental studies, published and unpublished data, and possible mitigation measures associated with the proposed action.

Individuals and agencies may offer information or data relevant to the environmental or socioeconomic impacts by attending public scoping meetings that will be announced in the local media of the affected installation or by writing James B. Hildreth; Assistant Chief, Planning Division; U.S. Army Corps of Engineers District, Mobile; P.O Box 2288; Mobile, Alabama 36628–0001. The scoping meetings are planned to begin within the next two months. Comments, suggestions, and requests to be placed on the mailing list for announcements should be sent to Mr. Hildreth at the above address.

Addressing the cumulative impacts as required by the Presidents Council on Environmental Quality regulations will be accomplished by grouping the mutually affected losing and/or gaining installations into a package for the purpose of preparing the analyses and documentation required by NEPA. The Army intends to prepare an EIS for each of the following packages of proposed actions;

A. U.S. Army Material Technology Lab, Massachusetts

—Transfer Corrosion Research to Fort Belvoir, Virginia
—Transfer Metals Research to Picatinny Arsenal, New Jersey
—Transfer Ceramic Research to Detroit Arsenal, Michigan

A scoping meeting will be held in Watertown, MA.

B. Fort Belvoir, Virginia

—Receive activities from the closure of Cameron Station, Virginia
—Receive Corrosion Research from closure of U.S. Army Material Technology Lab, Massachusetts
—Receive Criminal Investigation Command from Fort Meade, Maryland and from leased space in northern Virginia
—Receive Criminal Records Center from Fort Holabird, Maryland
—Transfer the Information Systems Command to Fort Devens, Massachusetts
—Receive Headquarters, U.S. Army Materiel Command (This is not a part of base closure. It is a separate ongoing action at Fort Belvoir).

A scoping meeting will be held in the northern Virginia area at a location convenient to both Fort Belvoir and Cameron Station.

C. Fort Devens, Massachusetts

—Transfer the Intelligence School to Fort Huachuca, Arizona
—Receive a portion of the Information Systems Command from Fort Monmouth, New Jersey
—Receive a portion of the Information Systems Command from Fort Huachuca, Arizona
—Receive a portion of the Information Systems Command from Fort Belvoir, Virginia

Scoping meetings will be held near Fort Huachuca, Arizona, and Fort Devens, Massachusetts.

D. Fort Dix, New Jersey

—Transfer a segment of Basic Training and Air Base Ground Defense Training to Fort Knox, Kentucky
—Transfer a segment of Basic Training to Fort Leonard Wood, Missouri
—Transfer a segment of Basic Training to Fort Jackson, South Carolina
—Transfer Light Wheel Vehicle Mechanic Advanced Individual Training from Fort Dix and Fort Leonard Wood to Fort Jackson
—Transfer Food Service Advanced Individual Training from Fort Dix and Fort Jackson to Fort Lee, Virginia
—Transfer Motor Vehicle Operator Advanced Individual Training to Fort Leonard Wood
—Transfer Basic Training at Fort Bliss, Texas to Fort Jackson
—Transfer Administrative and Legal Specialist Advanced Individual Training from Fort Benjamin Harrison, Indiana to Fort Jackson
—Transfer Personnel Specialist Advanced Individual Training from Fort Jackson to Fort Benjamin Harrison
—Transfer Supply Specialist Advanced Individual Training from Fort Jackson to Fort Lee

Scoping meetings will be held at locations near Forts Dix and Jackson.

E. Fort Douglas, Utah

—Transfer Reserve Component Pay Input Station to Fort Carson, Colorado
—Segregate and retain a portion of Fort Douglas for Reserve Component activities
—Transfer other activities to leased space in Salt Lake City, Utah

A scoping meeting will be held near Fort Douglas.

F. Hawthorne Army Ammunition Plant, Nevada

—Receive activities from the closure of Fort Wingate, New Mexico
—Receive the Ammunition Storage mission the closure of Navajo Depot Activity, Arizona
—Receive the Conventional Ammunition Storage mission from the

closure of Umatilla Army Depot, Oregon

Scoping meetings will be held at locations near each of the four affected installations.

G. Jefferson Proving Grounds, Indiana

—Transfer activities to Yuma Proving Grounds, Arizona

A scoping meeting will be held near Jefferson Proving Grounds.

H. Lexington Army Depot, Kentucky

—Transfer the Supply and Material Readiness mission to Letterkenny Army Depot, Pennsylvania

—Transfer the Communications-Electronics mission to Tobyhanna, Pennsylvania

—Transfer the Test Management mission to Redstone Arsenal, Alabama

A scoping meeting will be held near Lexington Army Depot.

I. Fort Meade, Maryland

—Transfer the Criminal Investigation Command to Fort Belvoir, Virginia

A scoping meeting will be held near Fort Meade.

J. Presidio of San Francisco, California

—Transfer Sixth Army Headquarters to Fort Carson, Colorado

—Transfer the Letterman Army Medical Center to the Force Structure (i.e., the Center will be assimilated throughout the Army)

—Transfer the Letterman Army Institute of Research to Fort Detrick, Maryland

A scoping meeting will be held near the Presidio.

K. Pueblo Army Depot, Colorado

—Maintain Chemical Demilitarization mission until complete

—Transfer the supply mission to Tooele Army Depot, Utah

—Transfer the ammunition mission to Red River Army Depot, Texas

Scoping meetings will be held at locations near Pueblo Army Depot and Tooele Army Depot.

L. Fort Sheridan, Illinois

—Transfer Fourth Army Headquarters and the U.S. Army Recruiting Command to Fort Benjamin Harrison, Indiana

—Transfer miscellaneous tenants to leased space in the Chicago area.

—Segregate and retain a portion of Fort Sheridan for Reserve Component activities

Scoping meetings will be held near Fort Sheridan and Fort Benjamin Harrison.

The scoping process is the initial exploration and identification of relevant environmental issues to be considered in the environmental impact analyses. As the process evolves it may become beneficial to either the Army or the public to conduct additional meetings. All future meetings will be advertised in the local media of the affected installation.

Draft EISs on each of the above packages are expected to be available to the public in early 1990. Comments received on the Draft EIS will be considered in the preparation of the Final EIS. Persons desiring to be placed on a mailing list to receive Draft EISs should contact Mr. Hildreth at the above address.

May 3, 1989.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health) OASA (I&L).

[FR Doc. 89–10929 Filed 5–5–89; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 24–25 May 1989

Time of Meeting: 0800—1700 hours

Place: The Pentagon, Washington, DC

Agenda: The Army Science Board 1989 Summer Study on International Cooperation and Data Exchange to Enhance the Army's Technology Base will meet for the purpose of reviewing the results of the recent Far East visit and examine US Canadian technology cooperation and related industry issues and considerations. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5. U.S C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer. Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89–10930 Filed 5–5–89; 8:45 am]

BILLING CODE 3710–8–M

DEPARTMENT OF EDUCATION

National Board of the Fund For the Improvement of Postsecondary Education; Closed Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education.

ACTION: Amendment to notice of closed meeting.

DATE: May 11–12, 1989.

TIME: May 11 from 8:00 a.m. to 11:00 a.m. closed; 11:00 a.m. to 12:00 p.m. open; 12:00 p.m. to 5:00 p.m. closed. May 12 from 8:00 a.m. to 2:30 p.m. closed; 2:30 to 7:00 open.

SUMMARY: This amends the notice of a closed meeting of the National Board of the Fund for the Improvement of Postsecondary Education, published on Wednesday, April 26, 1989 in Vol. 54, No. 79, page 18007.

Instead of a closed meeting, the Board will meet in partially closed sessions on May 11–12, 1989. On May 11, 1989 from 11:00 a.m. to 12:00 p.m. the board will meet in open session. The proposed agenda includes the swearing-in of new members, a briefing on the Board's role, and a briefing on the relevent ethics statutes and standards. From 12:00 p.m. to 5:00 p.m. the closed portion will re-convene with set agenda.

On May 12, the open portion will begin at 2:30 p.m. until 7:00 p.m. This proposed agenda for this portion of the meeting is to discuss guidelines for the FY 90 Comprehensive Program competition.

The public is being given less than fifteen days notice because of a change in agenda.

FOR FURTHER INFORMATION CONTACT: Charles Karelis, Director, Fund for the Improvement of Postsecondary Education, 7th & D Streets SW., Washington, DC 20202, (202) 732–5750.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89–11056 Filed 5–5–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent to Award Grant to Lawrence Dobson

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14 it is making a financial assistance

award based on an unsolicited application under Grant Number DE–FG01–89CE15425 to Lawrence Dobson.

Scope: The funding for this grant will aid in the designing and building of a 1.5 million Btu/hr commercial low-pressure steam boiler which is fired by wood waste and/or biomass fuels.

The purpose of this project is to provide a highly efficient and clean-burning biomass combustion system for industrial use which would also be an energy-saving system.

Eligibility: Based on receipt of an unsolicited application, eligibility of this award is being limited to Lawrence Dobson who has specialized in the field of furnace and boiler design. The project represents a unique idea for which a competitive solicitation would be inappropriate. This project has high technical merit and represents an innovative technology which has a strong possibility of allowing for future reductions in the nation's energy consumption.

The term of this grant shall be two years from the effective date of award. The estimated cost of this grant is $79,953.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations Attn: Phyllis Morgan, MA–453.2. 1000 Independence Avenue, SW. Washington, DC

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89–10926 Filed 5–5–89; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent to Award Grant to The University of Missouri-Rolla

AGENCY: U.S. Department of Energy.

ACTION: Notice of Unsolicited Financial Assistance.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14 it is making a financial assistance award based on an unsolicited application under Grant Numher DE–FG01–89CE15419 to the University of Missouri-Rolla.

Scope: The funding for this grant will aid in the designing, building and testing of a rapidly moving high-pressure waterjet system to break coal into a very small particulate size directly from the coal face.

The purpose of this project is to provide a highly efficient, energy-saving approach to coal mining.

Eligibility. Based on receipt of an unsolicited application, eligibility of this award is being limited to the University of Missouri-Rolla, and institute of higher education because of its expertise in this specialized field of technology. This project represents a unique idea for which a competitive solicitation would be inappropriate. This project has high technical merit and represents an innovative technology which has a strong possibility of allowing for future reductions in the nation's energy consumption.

The term of this grant shall be two years from the effective date of award. The estimated cost of this grant is $79,828.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Phyllis Morgan, MA–453.2, 1000 Independence Avenue, SW., Washington, DC 20585

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89–10927 Filed 5–5–89; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent to Award a Cooperative Agreement to the University of Kentucky Research Foundation

AGENCY: U.S. Department of Energy.

ACTION: Acceptance of an unsolicited application.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it intends to make an award based on an unsolicited application submitted to the Pittsburgh Energy Technology Center, Pittsburgh, PA, from the University of Kentucky Research Foundation. The title of this application is "Cooperative Research in Coal Liquefaction."

Scope: This financial assistance award is intended to support a program of research in coal liquefaction to produce concept level technology in bioprocessing, integrated materials characterization research, co-processing, catalysis, novel liquefaction processes, and coal dissolution. This research calls for an overall research integration effort intended to serve as a mechanism for the coordination of research activities and results from various research tasks. Specific areas of concern are biological and materials research on coal liquefaction; novel approaches to the conversion of coal to liquids; liquefaction research in pyrolysis, catalysis and coal extraction; enhanced reactivity and selectivity in coal liquefaction and coprocessing systems, integrated coal liquefaction/characterization/modeling approach; basis resource/process evaluation; and CFFLS network/data base and a program integration project.

This proposal is for a one year period at a total estimated value of $2,797,502 of which the DOE share is $1,399,930.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940, MS 921–165, Pittsburgh, PA 15236, Attn: James W. Huemmrich, Telephone: (412) 892–6597.

Date: April 14, 1989.

Gregory J. Kawalkin,

Director, Acquisition and Assistance Division.

[FR Doc. 89–10961 Filed 5–5–89; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent to Award a Grant to the University of Oklahoma, Oklahoma Geological Survey

AGENCY: U.S. Department of Energy.

ACTION: Acceptance of an unsolicited application for a grant award.

SUMMARY: The Department of Energy (DOE), Bartlesville Project Office announces that pursuant to 10 CFR 600.14, it intends to make an award based on an unsolicited application submitted to the Bartlesville Project Office, Bartlesville, OK. The title of this application is "Natural Resources Information System for the State of Oklahoma".

Scope: The objective of this grant project is to develop, edit, maintain, utilize and make publicly available an information system containing data on natural resources in the State of Oklahoma. The primary goals include Oil and Gas Production Subsystem development, and processing of all historical records for the Oil and Gas Well File. The intended research will (1) develop an Oklahoma oil and gas data base for evaluating resources available for infill drill and/or enhanced recovery, (2) apply geological data base for analyses of reservoir heterogeneity and fluid flow characteristics, and (3) transfer the learned technologies to the oil operators through publications and workshops. The Oklahoma Geological Survey will make available to this research project the state well records, geological data archives, well samples, petrographic equipment, and computer resources.

This project is anticipated to be for a three-year period at an estimated value of $1,875,000.00. The DOE share is anticipated at $1,250,000.00, the

remainder to be non-Federal monies provided by Oklahoma Geological Survey.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–165, Pittsburgh, PA 15236, Attn: Dona G. Sheehan, Telephone: AC 412/892–5918.

Date: April 14, 1989.

Gregory J. Kawalkin,

Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 89–10962 Filed 5–5–89; 8:45 am]

BILLING CODE 6450–01–M

Certification of the Radiological Condition of Middlesex Municipal Landfill in Middlesex, NJ

AGENCY: Office of Remedial Action and Waste Technology, Office of Nuclear Energy, DOE.

ACTION: Notice of certification.

SUMMARY: The Department of Energy has completed radiological surveys and taken remedial action to decontaminate the two properties in Middlesex, New Jersey that comprise the Middlesex Municipal Landfill. The properties were found to contain quantities of radioactive material from activities conducted at the former Middlesex Sampling Plant.

FOR FURTHER INFORMATION CONTACT: J.J. Fiore, Director, Division of Facility and Site Decommissioning Projects, Office of Remedial Action and Waste Technology, U.S. Department of Energy, Washington, DC 20545, (301) 353–5272.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE), Office of Nuclear Energy, Office of Remedial Action and Waste Technology, Division of Facility and Site Decommissioning Projects, has implemented a remedial action project in the Middlesex, New Jersey area as part of the Atomic Energy Act of 1954, as amended. This project is being carried our under the Formerly Utilized Sites Remedial Action Program (FUSRAP), a DOE program to decontaminate or otherwise control sites where residual radioactive materials remain from the early years of the nation's atomic energy program or from commercial operations causing conditions that Congress has mandated DOE to remedy. The ultimate objective of the remedial action program at Middlesex is to ensure that any properties contaminated as a result of activities at the former Middlesex Sampling Plant (MSP) can be certified to be within current radiological guidelines and applicable standards established to protect the general public.

In 1948, during the construction of an asphalt pad at the MSP, dirt contaminated with pitchblende (a naturally occurring uranium ore) was removed from the MSP by a contractor and taken to the Middlesex Municipal Landfill (MML). Subsequent landfill operations resulted in varying depth of cover material being placed over the contaminated materials.

During a local civil defense exercise in May 1960, monitors detected elevated levels of radiation in the landfill. A radiological survey confirmed gamma radiation levels 20 to 50 times the natural background value over an area of less than 0.6 acre. In 1961 the AEC removed the portion of the contaminated materials lying nearest the surface (about 650 yd^3) and covered the area with approximately 2 ft of clean dirt. The contaminated soil was removed to the AEC New Brunswick Laboratory site in New Brunswick, New Jersey.

No further action was taken until 1974, when a radiological survey of the site was conducted by the Atomic Energy Commission (AEC). In 1978, another radiological survey of the site was conducted by Oak Ridge National Laboratory (ORNL) to provide additional data and to provide a basis for evaluating changes in site conditions over the 4-year period since the previous survey.

DOE developed a remedial action plan to remove the materials in the landfill. DOE coordinated its activities with the New Jersey Department of Environmental Protection and the Borough of Middlesex.

In 1984 and 1986, the landfill was decontaminated, resulting in the removal of 31,000 yd^3 of contaminated materials. The materials removed during remedial action are being stored temporarily at MSP. Post-remedial action surveys have demonstrated and DOE has certified that radiological conditions on the affected properties are consistent with applicable criteria and that the use of the two properties comprising the landfill presents no radiological hazard to the general public or to site occupants. These findings are supportd by the DOE "Certification Docket for the Remedial Action Performed at the Middlesex Municipal Landfill in Middlesex, New Jersey in 1984 and 1986." Accordingly, the two properties comprising the landfill are released from the Formerly Utilized Sites Remedial Action Program.

The certification docket will be available for review between 8:00 a.m. and 4:00 p.m., Monday through Friday (except Federal holidays), in the U.S. Department of Energy Public Reading Room located in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue SW., Washington, DC. The certification docket will also be available in the Public Document Room, U.S. Department of Energy, Oak Ridge Operations Office, Oak Ridge, Tennessee, and at the Middlesex Borough Library, Mountain Avenue, Middlesex, New Jersey.

The U.S. Department of Energy, Oak Ridge Operations Office, Technical Services Division, has issued the following statement:

Statement of Certification: The Two Properties Comprising the Middlesex Municipal Landfill

The U.S. Department of Energy, Oak Ridge Operations Office, Technical Services Division, has reviewed the radiological data obtained following remedial action at the two subject properties. Based on this review, DOE has certified that the properties listed below are in compliance with all applicable decontamination criteria and standards. This certification of compliance provides assurance that use of the properties will result in no radiological exposure above DOE criteria and standards to members of the general public or to site occupants. Accordingly, the following properties are released from the Formerly Utilized Sites Remedial Action Program:

Parcel 1 located on 1190 Mountain Avenue, Borough of Middlesex, identified as Block 219, Lot 1.

Parcel 2 located on Mountain Avenue, Borough of Middlesex, identified as Block 219, Lot 2.

Dated: April 21, 1989.

J.E. Baublitz,

Acting Director, Office of Remedial Action and Waste Technology, Office of Nuclear Energy, U.S. Department of Energy.

[FR Doc. 89–10965 Filed 5–5–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Conservation and Renewable Energy

[Solicitation Number DE–PS01–89CE21034]

Announcement of Competitive Grant Program; Existing Building Efficiency Research

Purpose: The United States Department of Energy, Office of Conservation and Renewable Energy,

Office of Buildings and Community Systems is entering into a competitive assistance program to Advance the Use of Energy Conservation Measures in Existing Buildings.

Background: The U.S. Department of Energy (DOE) is interested in promoting the performance of research aimed to improve the energy efficiency of the nation's existing buildings. The Department's primary focus of the program includes single family and multi-family residences and commercial buildings. For the purpose of the forthcoming solicitation, the Existing Building Efficiency Research program is working to overcome the technical, financial and behavioral barriers to the implementation of building energy retrofits. Retrofits are changes to buildings that reduce their energy use and costs. They include changes to the thermal envelope, space conditioning systems, energy management or control systems, or major energy end uses (i.e., lighting); and improved operating procedures and maintenance (O&M).

The purpose of this solicitation will be to solicit research for the following efforts: (1) Field monitoring projects measuring the efficiency of a retrofit or series of retrofits; (2) field tests of tools or methods developed to diagnose energy use in buildings, building equipment, equipment controls or operations and maintenance; (3) field test of non-proprietary models developed to predict accurately the energy usage in a structure and predict the savings due to a specific retrofit or the total savings due to a specific retrofit or the total savings from a series of retrofits; (4) measurement of energy savings and effectiveness of educational programs and delivery systems developed to increase energy efficiency awareness and achievement of energy savings; (5) innovative and effective methods of technology transfer; (6) laboratory or field test of innovative or creative technologies which lead to documented energy savings in single-family, multi-family or commercial buildings; and (7) programs that measure the persistence of energy savings from retrofit activities. Research is to be completed in 18 months.

Up to 10 cooperative agreement awards pursuant to this solicitation are expected to be made in late 1989. Up to $634,000 will be allocated for this program by DOE. DOE will also provide technical support of the existing buildings researchers at the DOE National Laboratories.

Eligibility: Any public or private entity may respond to this solicitation.

It is anticipated that a formal solicitation will be issued on or about June 1, 1989. Written request for copies of this solicitation should be sent to: U.S. Department of Energy, Office of Procurement Operations, Forrestal Building, Room 1J-005, 1000 Independence Avenue, SW., Washington, DC 20585, ATTN: Document Control Specialist, MA-451.1.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89-10966 Filed 5-5-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

National Coal Council; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Coal Council.

Date and Time: Wednesday, June 7, 1989, 9:30 a.m.

Place: Four Seasons/Inn on the Park, Grand Salon East, 4 Riverway, Houston, TX.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586/4695.

Purpose of the Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Tenative Agenda:

—Call to order by James G. Randolph, Chairman.
—Remarks by Chairman Randolph.
—Remarks by Admiral James Watkins, USN (Ret.), Secretary of Energy. (Invited)
—Report of the Coal Policy Committee.
—Report of the Finanace Committee.
—Report of the Nominating Committee and Election of Officers.
—Discussion of any other business property brought before the Council.
—Public comment—10-minute rule.
—Adjourment.

Public Participation. The meeting is open to the public. The chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of businss. Any member of the public who wishes to fire a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to inlcude the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on May 2, 1989.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 89-10963 Filed 5-5-89; 8:45 am]

BILLING CODE 6450-01-M

Coal Policy Committee National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Coal Policy Committee of the National Coal Council.

Date and Time: Tuesday, June 6, 1989, 8:30 a.m.

Place: Four Seasons/Inn on the Park, Grand Salon East, 4 Riverway, Houston, TX.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Purpose of the Meeting: To discuss new studies.

Tentative Agenda:

—Call to order by Irving Leibson, Chairman.
—Discussion of new study to be undertaken, "The Future Long-Range Role of Coal in the United States, Its Strategic Economic and Environmental Considerations."
—Discussion of two new studies for consideration: 1. "The Impact of the Drought on Both Coal Consumption and Coal Transportation." and 2. "Disincentives that Currently Impede Coal and Clean Coal Technology Utilization in the Industrial Sector and Identification of Incentives that Could be considered a More Viable Option for the Industrial Sector."
—Discuss any other business properly brought before the National Coal Council Coal Policy Committee.
—Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will facilitate

the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on: May 2, 1989.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 89-10964 Filed 5-5-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER89-355-000 et al.]

CP National Corp. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 1, 1989.

Take notice that the following filings have been made with the Commission:

1. CP National Corporation

[Docket No. ER89-355-000]

Take notice that on April 18, 1989, CP National Corporation (CP) tendered for filing a Petition for an adjustment of the average system cost found by Bonneville Power Administration for the exchange period, November 26, 1986 through July 22, 1987.

Comment date: May 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Orange and Rockland Utilities, Inc.

[Docket No. ER89-249-000]

Take notice that on April 10, 1989, Orange and Rockland Utilities, Inc. (O&R) tendered for filing its response to a March 9, 1989 deficiency letter with regard to its earlier filing of January 15, 1989 concerning Wakefern Food Corporation.

Comment date: May 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Northern States Power Company

[Docket Nos. ER88-343-002 and EL88-17-000]

Take notice that on April 4, 1989, Northern States Power Company (NSP) tendered for filing an additional refund compliance report in this docket.

Comment date: May 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Orange and Rockland Utilities Inc.

[Docket No. ER89-193-000]

Take notice that on April 10, 1989, Orange and Rockland Utilities, Inc. (O&R) tendered for filing its response to a March 9, 1989 deficiency letter with regard to its earlier filing of January 19, 1989 concerning Mid-Orange Correctional Facility.

Comment date: May 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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.

Lois D. Cashell,

Secretary.

[FR Doc. 89-10906 Filed 5-5-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF89-152-000 et al.]

Drew University, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 1, 1989.

Take notice that the following filings have been made with the Commission:

1. Drew University

[Docket No. QF89-152-000]

On April 17, 1989, Drew University (Applicant), of 36 Madison Avenue, Madison, New Jersey 07940, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Madison, New Jersey. The facility will consist of an internal combustion engine generator set. Thermal energy recovered from the facility will be used for production of domestic hot water and space heating. The electric power production capacity of the facility will be 60 kw. The primary source of energy will be natural gas. Construction of the facility was scheduled to begin February 1989.

Comment date: June 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Sani-Dairy Division of Penn Traffic Company

[Docket No. QF89-215-000]

On April 12, 1989, Sani-Dairy, Division of Penn Traffic Company (Applicant), of 400 Franklin Street, Johnstown, Pennsylvania 15901, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing. The topping-cycle cogeneration facility will be located adjacent to Applicant's dairy at 400 Franklin Street, Johnstown, Pennsylvania. The facility will consist of two internal combustion engine generator sets with a combined net electric power production capacity of 1850 kw. Applicant states that the useful thermal output of the facility consists of hot engine jacket cooling water, after-cooler heat and radiant heat from the engines. According to Applicant, the facility's thermal output will be used in the dairy production process, to preheat water for cleaning purposes and for winter space heating. Construction of the facility is expected to begin in April 1989.

Comment date: June 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of Indiana

[Docket No. ER82-773-000]

Take notice that Public Service Company of Indiana, Inc. on April 24, 1989 tendered for filing pursuant to the Power Coordination Agreement between Public Service Company of Indiana, Inc. (PSI) and Indiana Municipal Power Agency (IMPA) a Third Amendment.

The Third Amendment modifies the agreement by modifying § 2.01 to transfer the Town of Edinburgh, Indiana from PSI's FERC Electric Tariff—Original Volume No. 1 to the Power

Coordination Agreement as a member of IMPA.

Copies of the filing were served upon the Indiana Municipal Power Agency, the City of Edinburgh, Indiana and Indiana Utility Regulatory Commission.

PSI has requested waiver of the Commission's notice requirement to permit the filing to become effective June 1, 1989.

Comment date: May 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Carolina Power & Light Company

[Docket No. ER89-124-000]

Take notice that on April 6, 1989, Carolina Power & Light Company (CP&L) filed a letter containing information in response to a directive by the FERC staff that CP&L modify certain interchange rate schedules, to state that no customer taking hourly transmission service would pay more than the daily rate per kW times the highest amount (kW) transmitted in an hour of the day. The modifications affect CP&L's interchange service schedules with South Carolina Electric & Gas Company, South Carolina Public Service Authority, Virginia Electric and Power Company, and Duke Power Company. Copies of this filing have been sent to these utilities. The modifications to all interchange rate schedules are requested to become effective on the date the FERC accepts the modifications for filing.

Comment date: May 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp, Doing Business as Pacific Power & Light Company and Utah Power & Light Company

[Docket No. ER89-356-000]

Take notice that on April 18, 1989, PacifiCorp, doing business as Pacific Power & Light Company and Utah Power & Light Company (PacifiCorp), tendered for filing, in accordance with 18 CFR 35.12 of the Commission's Rules and Regulations, a South Idaho Exchange Agreement (Agreement) with Bonneville Power Administration dated February 13, 1989.

PacifiCorp requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that the rate schedule become effective on February 13, 1989, corresponding to the effective date of the Agreement.

Copies of this filing have been supplied to Bonneville Power Administration and the Idaho Public Utilities Commission.

Comment date: May 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power Corporation

[Docket No. ER89-357-000]

Take notice that on April 19, 1989, Florida Power Corporation (Florida Power) tendered for filing amended revisions to the capacity charges, reservation fees and energy adder for various interchange services provided by Florida Power pursuant to interchange contracts with Florida Power & Light Company, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Kissimmee Utility Authority, Orlando Utilities Commission, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., Tampa Electric Company, and the Cities of Gainesville, Homestead, Key West, Lakeland, Lake Worth, New Smyrna Beach, St. Cloud, Starke, Tallahassee and Vero Beach, Florida. The interchange services which are affected by these revisions are Services Schedule B—Short Term Firm, current negotiated commitments under Service Schedule D—Long Term Firm, Service Schedule F—Assured Capacity and Energy, Service Schedule G—Backup Service, Service Schedule H—Reserve Service, and the Contract for Assured Capacity and Energy with Florida Power & Light Company. Florida Power states that the revised capacity charges, reservation fees, and energy adder were developed using the same methodology as used in the original filings.

Florida Power requests that the amended revised capacity charges reservation fees and energy adder be made effective on May 1, 1989 through April 30, 1990. Florida Power therefore requests waiver of the Commission's sixty day notice requirement. According to Florida Power, the filing has been served on each of the affected utilities and the Florida Public Service Commission.

Comment date: May 15, 1989, in accordance with Standard Paragraph end of this notice.

7. Oklahoma Gas and Electric Company

[Docket No. ER89-358-000]

Take notice that on April 19, 1989, Oklahoma Gas and Electric Company (OG&E) tendered for filing a Power Exchange Agreement between OG&E and KAMO Electric Cooperative, Inc. (KAMO). Also included in the filing is a revised Index of Purchasers.

The Agreement provides for KAMO to deliver certain amounts of power and energy into the system of OG&E and then to receive credit to KAMO's accounts of Muldrow and Otoe based upon the value of the power and energy provided by KAMO.

Copies of this filing have been served upon KAMO, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: May 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Bangor Hydro-Electric Company

[Docket No. ER89-369-000]

Take notice that April 24, 1989, Bangor Hydro-Electric Company (Bangor) tendered for filing a proposed rate schedule pertaining to a Power Sale Agreement (Agreement) made as of May 1, 1989, between Bangor Hydro-Electric Company (Bangor) and Boston Edison Company (Boston) for the sale of power to Boston.

Bangor states that the Agreement provides for a sale to Boston of 12,000 kilowatts of unit power from Bangor's entitlements in William F. Wyman #4 fossil-fired steam-electric unit located in Yarmouth, Maine, for a period of approximately six months commencing on May 1, 1989.

Bangor requests that the Commission permit the rate schedule to become effective on May 1, 1989.

Bangor states that a copy of the rate schedule has been mailed or delivered to Boston Edison Company.

Comment date: May 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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.

Lois D. Cashell,

Secretary.

[FR Doc. 89-10907 Filed 5-5-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1247-000 et al.]

United Gas Pipe Line Co. et al.; Natural Gas Certificate Filings

May 1, 1989.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket No. CP89-1247-000]

Take notice that on April 19, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1247-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on an interruptible basis for Centran Corporation (Centran), under the blanket certificate issued in Docket No. CP88-6-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport for Centran 10,039 MMbtu on a peak day, 10,039 MMBtu on an average day and 3,664,235 MMBtu on an annual basis. United also states that pursuant to a Transportation Agreement dated December 12, 1988 between United and Centran (Transportation Agreement) proposes to transport natural gas for Centran from points of receipt located in various counties in Louisiana. The points of delivery and ultimate points of delivery are located in multiple states.

United further states that it commenced this service March 13, 1989, as reported in Docket No. ST89-2955-000.

Comment date: June 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP89-1256-000]

Take notice that on April 24, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-1256-000, an application pursuant to section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing the continued operation of certain existing natural gas storage fields and related facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Because of a holding in *Columbia Gas Transmission Corp.* v. *An Exclusive Gas Storage Easement*, 578 F. Supp. 930 (N.D. Ohio 1983, *aff'd* 776 F. 2d 125 (6th Cir. 1985) where the District Court held that Columbia could condemn under NGA section 7(h) for underground storage easements only within the geographical boundaries of its storage field as represented in its original certificate application, Natural has conducted a review of its certification of its storage fields. It was determined that for five (5) of Natural's storage fields the maps currently filed with the Commission do not reflect an adequate "buffer zone" and therefore, under the holding in *Columbia*, Natural would not be able to use Section 7(h) of the Natural Gas Act to condemn exclusive storage easements to assure the continued integrity of its storage fields. The five (5) storage fields are: Cairo St. Peter Storage Field located in Louisa County, Iowa; Columbus City St. Peter Storage Field located in Louisa County, Iowa; Loudon (Devonian) Storage Field located in Fayette and Effingham Counties, Illinois; Sayre (Brown Dolomite) Storage Field, a leased storage field, located in Beckham County, Oklahoma; and North Lansing (Rodessa Young) Storage Field located in Harrison and Gregg Counties, Texas.

Natural in this filing presents information and maps establishing new field boundaries for the five (5) fields involved herein that will provide the required buffer zone needed to assure the integrity of the fields.

Comment date: May 22, 1989, in accordance with Standard Paragraph F at the end of this notice.

3. K N Energy, Inc.

[Docket No. CP89-1265-000]

Take notice that on April 24, 1989, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP89-1265-000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity for authority to construct and operate facilities related to the Huntsman and Big Springs storage facilities, all, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, K N requests authorization to:

(1) Install, own and operate three additional injection/withdrawal wells in the Huntsman Storage Facility,

(2) Install, own and operate approximately 0.6 mile of 6-inch pipeline, together with measurement and other appurtenant facilities necessary to connect the three new Huntsman storage wells to the Huntsman Storage Field gathering system,

(3) Install, own and operate five additional injection/withdrawal wells in the Big Springs Storage Facility,

(4) Install, own and operate approximately 0.9 miles of 6-inch pipeline, together with measurement and other appurtenant facilities necessary to connect the five new Big Springs Storage wells to the Big Springs Storage Field gathering system.

K N estimates the cost of facilities at $1,929,000, which would be financed from internally generated funds or would be obtained from interim bank loans which at a later date may be funded through a security issue.

K N proposes to use the additional facilities to increase the peak day deliverability on its system. It is indicated that the additional deliverability is needed to permit K N to retain its merchant function and expand its transportation services.

Comment date: May 22, 1989 in accordance with Standard Paragraph F at the end of the notice.

4. CNG Transmission Corporation [Docket No. CP89-1267-000]

Take notice that on April 25, 1989, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP89-1267-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a new delivery point to Rochester Gas & Electric (RG&E), an existing jurisdictional customer, and to construct and operate appurtenant facilities, under the certificate issued in Docket No. CP82-537-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG proposes to add the new delivery point at a new sales meter station between CNG and Tennessee Gas Pipeline Company (Tennessee) near the town of Avon, Livingston County, New York, to be known as the Avon/Livonia Connection. It is stated that CNG and Tennessee will construct and CNG will operate the facilities necessary to deliver the gas to RG&E, including measurement and pressure regulating facilities. It is further stated that the estimated cost for all delivery facilities required is $270,000 with RG&E reimbursing CNG for 70 percent of the cost of constructing all associated facilities. It is also stated that a daily maximum quantity of 4,400 dekatherms of natural gas will be delivered to RG&E at this point.

CNG states that RG&E has requested the delivery point and additional sales quantities to meet the total current and future requirements of its customers in

the vicinity of Livingston County, New York and that its requirements-types service to RG&E under Rate Schedule RQ of its FERC Gas Tariff, Original Volume No. 1, permits such deliveries. CNG states that RG&E has advised it that the volumes RG&E will purchase at the new delivery point will be used in its system supply to meet its market requirements in Livingston County and surrounding area.

Comment date: June 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Gas Transmission

[Docket No. CP89–1268–000]

Take notice that on April 25, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky, 42301, filed in Docket No. CP89–1268–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for TXG Gas Marketing Company (TXG) under its blanket certificate issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas states that it would receive the gas for TXG at existing points of receipt in Louisiana, Texas, offshore Louisiana, offshore Texas, Arkansas, Indiana, Illinois, Kentucky and Ohio, and would redeliver the gas for TXG at existing interconnections located in Louisiana for ultimately delivery to Florida Gas Transmission Company.

Texas Gas further states that the maximum daily, average daily and annual quantities that it would transport for TXG would be 100,000 MMBtu equivalent of natural gas, 100,000 MMBtu equivalent of natural gas and 36,500,000 MMBtu equivalent of natural gas, respectively.

Texas Gas indicates that in a filing made with the Commission in Docket No. ST89–2812, it reported that transportation service for TXG commenced on March 11, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: June 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Texas Gas Transmission Corporation

[Docket No. CP89–1269–000]

Take notice that on April 25, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–1269–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Texas-Ohio Gas, Inc. (Texas-Ohio) under the blanket certificate issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport on a peak day up to 7,000 MMBtu of natural gas for Texas-Ohio, with an estimated average daily quantity of 7,000 MMBtu. On an annual basis, Texas-Ohio estimates a volume of 2,555,000 MMBtu. Texas-Ohio has identified the ultimate end-user of the gas as Laminates, Inc.

Transportation service for Texas-Ohio commenced March 14, 1989, under the 120-day automatic provisions of section § 284.223(a) of the Commission's Regulations as reported in Docket No. ST89–2716.

Comment date: June 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Tarpon Transmission Company

[Docket No. CP89–1272–000]

Take notice that on April 26, 1989, Tarpon Transmission Company (Applicant), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1272–000 a prior notice filing, pursuant to § 157.205 and § 284.223 of the Commission's Regulations, for authorization to provide interruptible transportation service for Kimball Resources, Inc. (Kimball), a marketer of natural gas, under Applicant's blanket certificate issued in Docket No. CP88–89–000, all as more fully set forth in the prior notice filing on file with the Commission and open to public inspection.

Applicant states that under an interruptible gas transportation service agreement between Applicant and Kimball dated August 25, 1988, Applicant proposes to transport natural gas from points of receipt located in Eugene Island Area, Blocks 380, (Platform "A"), 381 and 361, all located offshore Louisiana, to a point of delivery located in Block 274 of the Ship Shoal Area, South Addition, offshore Louisiana.

Applicant further states that the peak daily, average daily and annual quantities transported would be 51,100 MMBtu, 1,250 MMBtu and 456,250 MMBtu, respectively. It is asserted that service commenced March 1, 1989, as reported in Docket No. ST89–2853–000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: June 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn

within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–10908 Filed 5–5–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2607 North Carolina]

Duke Power Co.; Intent to File an Application for a New License

May 1, 1989.

Take notice that on December 29, 1988, Duke Power Company, the existing licensee for the Spencer Mountain Hydroelectric Project No. 2607, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2607 was issued effective May 1, 1969, and expires December 31, 1993.

The project is located on the South Fork Catawba River in Gaston County, North Carolina. The principal works of the Spencer Mountain Project include a rubble masonry overflow dam about 12 feet high and 636 feet long; a reservoir of 68 acres at elevation 634.7 feet m.s.l.; a headworks and a 3,640-foot-long canal, about 30 feet wide; a powerhouse with an installed capacity of 640 kW; a substation and a 3,300-foot-long, 44-kV transmission feeder line; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 422 South Church Street, Charlotte, NC 28242.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 10909 Filed 5–5–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2275 Colorado]

Public Service Co. of Colorado; Intent to File an Application for a New License

May 1, 1989.

Take notice that on December 22, 1988, Public Service Company of Colorado, the existing licensee for the Salida Hydroelectric Project No. 2275, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), l6 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2275 was issued effective March 22, 1960, and expires December 31, 1993.

The project is located on the South Arkansas River in Chaffee County, Colorado, and occupies some United States lands. The principal works of the Salida Project include: Salida No. 1 with a 10-foot-high, 50-foot-long concrete diversion dam, a 4,806-foot-long steel pipeline to Fooses Creek Reservoir from which extends an 8,080-foot-long steel pipeline to a powerhouse with an installed capacity of 750 kW; Salida No. 2 using the afterbay of Salida No. 1, an 11,668-foot-long steel pipeline to a powerhouse with an installed capacity of 560 kW; substations, transmission line connections and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 5900 East 39th Avenue, Denver, CO 80207.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89–10910 Filed 5–5–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2550 Wisconsin]

Wisconsin Electric Power Co.; Intent To File an Application for a New License

May 1, 1989.

Take notice that on December 19, 1988, Wisconsin Electric Power Company, the existing licensee for the Weyauwega Hydroelectric Project No. 2550, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2550 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on the Waupaca River in Waupaca County, Wisconsin. The principal works of the Weyauwega Project include a dam with 161-foot-long steel sheet pile faced earth sections and a 50-foot-wide spillway; a reservoir of 286 acres; a powerhouse with an installed capacity of 400 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Real Estate Department, Public Service Building Room 452, 231 West Michigan Street, Milwaukee, WI 53201.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary,

[FR Doc. 89–10911 Filed 5–5–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2471 Michigan]

Wisconsin Electric Power Co.; Intent To File an Application for a New License

May 1, 1989.

Take notice that on December 19, 1988, Wisccnsin Electric Power Company, the existing licensee for the Sturgeon Hydroelectric Project No. 2471,

filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2471 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Sturgeon River in Dickinson County, Michigan. The principal works of the Sturgeon Project include a 217-foot-long concrete arch dam, a 14-foot-wide penstock intake, and a 7.5-foot-wide trash gate; a reservoir of 248 acres; a 7-foot-diameter, 260-foot-long penstock; a powerhouse with an installed capacity of 800 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Real Estate Department, Public Service Building Room 452, 231 West Michigan Street, Milwaukee, WI 53201.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89–10912 Filed 5–5–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2523 Wisconsin]

Wisconsin Electric Power Co.; Intent To File an Application for a New License

May 1, 1989.

Take notice that on December 19, 1988, Wisconsin Electric Power Company, the existing licensee for the Oconto Falls Hydroelectric Project No. 2523, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2523 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Oconto River in Oconto County, Wisconsin. The principal works of the Oconto Project include a 175-foot-long earth dike to the left, a 120-foot-long gravity dam, a spillway with three Taintor gates, another 110-foot-long gravity dam, and a 1,350-foot-long earth dike to the right of the powerhouse; a reservoir of 240 acres; a powerhouse with an installed capacity of 1,320 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE, Washington, DC 20426. The above information as described in the rule is now available from the licensee at Real Estate Department, Public Service Building Room 452, 231 West Michigan Street, Milwaukee, WI 53201.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89–10913 Filed 5–5–89; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $90,000, plus accrued interest, obtained through a plea bargaining agreement between the U.S. Department of Justice and F. Lee Thorne and Charles Pabian of Elias Oil Company, a firm that operated a number of service stations in Florida. The money is currently being held in escrow.

DATE AND ADDRESS: Comments must be filed on or before June 7, 1989, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should conspicuously display a reference to case number KEF–0022.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2400.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $90,000, plus accrued interest, obtained by the DOE through plea bargaining agreements between the U.S. Department of Justice and two individuals: F. Lee Thorne (Thorne) and Charles Pabian (Pabian). Thorne was the owner of Elias Oil Company (Elias) and Pabian was the Atlanta Regional Manager for CITCO, Elias' diesel fuel supplier. Both Thorne and Pabian made restitution to the Department of Energy for willful violation of 10 CFR Part 205.22 by falsely certifying on Form FEO–17 the figures of Elias' historical purchases of diesel fuel.

The Office of Hearings and Appeals proposes that the funds should be distributed to CITCO customers that purchased diesel fuel during the months of February 1974, April 1974, and June 1975 (the settlement period). In order to be considered for a portion of the funds remitted by Thorne and Pabian, a claimant must indicate, for each month of the settlement period, its base period allocation of diesel fuel from CITCO and the number of gallons actually purchased from CITCO, and the base period allocation and gallons purchased from other suppliers.

Applications for Refund should *not* be filed at this time. Appropriate public notice will be given when the submission of claims is authorized. Any member of the public may submit written comments regarding the proposed refund procedures. Such parties are requested to submit two copies of their comments. Comments should be submitted June 7, 1989. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located

in Room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: April 28, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 28, 1989.

Name of Firm: Elias Oil Company
Date of Filing: March 26, 1986
Case Number: KEF–0022

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. *See* 10 CFR Part 205, Subpart V. Such procedures enable the DOE to refund monies to those injured by violations of the DOE regulations. On March 26, 1986, the ERA requested that the OHA formulate and implement procedures to distribute $90,000 (the settlement fund) which it received in accordance with two plea bargaining agreements. This Proposed Decision contains the OHA's tentative plan for distributing these monies.

The monies involved in this proceeding were obtained through plea agreements that became final on August 17, 1983 between the U.S. Department of Justice and two individuals: F. Lee Thorne (Thorne) and Charles Pabian (Pabian). Thorne was the owner of Elias Oil Company (Elias), a firm that operated a number of service stations in Florida. Pabian was the Atlanta Regional Manager for Cities Services Oil Company (CITCO), Elias' diesel fuel supplier. In a criminal action brought against Thorne and Pabian, the U.S. Attorney and the U.S. Department of Justice charged that Thorne falsely certified on Form FEO–17 that Elias' statements of its purchases of diesel fuel during the months of February 1974, April 1974, and June 1975 (hereinafter referred to as the settlement period) were accurate, although he knew these figures were substantially inflated. Thorne's action resulted in an increase in Elias' diesel fuel allocation. Furthermore, Pabian, Elias' diesel fuel supplier, falsely certified Elias' FEO–17 forms as true. Thorne and Pabian pleaded guilty to the charges against them for the settlement period. As part of the plea, Thorne paid $80,000 and Pabian paid $10,000 to the DOE. These monies have been deposited in an escrow account pending ultimate disposition by the DOE. This Proposed Decision and Order concerns the distribution of those funds. Comments are solicited on these proposed procedures.

We propose to distribute the settlement fund to any firm or individual demonstrating injury as a result of Thorne's and Pabians' actions. We do not have a record of CITCO's diesel fuel customers during the settlement period. Therefore, we propose to invite claims from any purchaser of CITCO diesel fuel during the settlement period who can demonstrate that it was injured by Thorne's and Pabian's actions. We propose to adopt the following standards and presumptions to assess the claims of these customers.[1]

First, we will generally assume that all purchasers of CITCO diesel fuel during the settlement period were injured by Thorne's and Pabian's actions. This assumption is based on the evidence that during the settlement period, all of CITCO's diesel fuel customers were unable to receive a portion of their own adjusted base period allocations because of Elias' artificially inflated diesel fuel allocation. Therefore, we propose to adopt the presumption that all CITCO purchasers of diesel fuel, with the exception of Elias, were injured with respect to any gallons of diesel fuel to which they were entitled, but did not receive from CITCO during the settlement period.[2]

Second, we propose to adopt a volumetric method to divide the settlement fund among applicants who demonstrate that they are eligible to receive refunds. Under this methodology, we will presume that all customers experienced an equal amount of loss per gallon as a result of not receiving the correct adjusted base period allocation of Second, we propose to adopt a volumetric method to divide the settlement fund among applicants who demonstrate that they are eligible to receive refunds. Under this methodology, we will presume that all customers experienced an equal amount of loss per gallon as a result of not receiving the correct adjusted base period allocation of diesel fuel from CITCO during the settlement period. *See Gibbs Industries, Inc.*, 14DOE ¶ 85,460 (1986) (*Gibbs*). As we have stated in prior cases, allocating refunds on a volumetric basis is efficient, treats all firms similarly, and avoids detailed examination of the impact of the violation on each firm. *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,199 (1982).

Utilizing the volumetric refund presumption will also further our goal of granting restitution to as many claimants as possible by simplifying the process through which refund applications are prepared and analyzed. In this case, the volumetric refund amount will be calculated by dividing the settlement amount ($90,000) by the total estimated volume of diesel fuel sold by CITCO during the settlement period (141,876,000 gallons), yielding a per gallon volumetric refund amount, exclusive of interest, of $0.0006 ($90,000/141,876,000 gallons = $0.0006 per gallon).[3] We recognize that dividing by gallons not supplied by CITCO would also be a reasonable method of calculating a volumetric. *Gibbs*, 14 DOE at 88,846. However, in this case, that number is not reasonably determinable and would leave refund applicants in the difficult position of showing the gallons not received. Also the amount allocated to each customer under either method should be identical. Therefore, each claimant's allocable share will be determined by multiplying the volumetric refund amount by the number of CITCO gallons it purchased during the settlement period.[4] In addition, successful applicants will receive a pro rata share of the interest that has accrued since the deposit of the funds into an escrow account.

In addition, an applicant must demonstrate injury by showing a contemporaneous complaint to the DOE or other evidence that the firm was unable to make up the supply shortfall or other evidence of injury. An applicant attempting to indicate injury by showing a supply shortfall might make the showing by substantiating its base period allocation of diesel fuel from CITCO, as well as the number of gallons actually purchased from CITCO, and the base period allocation and gallons purchased from all other suppliers.

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b). The same principle applies here.

Refund applications in the Elias proceeding should *not* be filed until after issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. We intend to publicize the distribution process to solicit comments on the Proposed Decision and Order. Comments regarding the tentative distribution process set forth in the Proposed Order should be filed with the OHA June 7, 1989.

In the event that money remains after all refund claims from the Elias fund have been analyzed, the funds in that account will be disbursed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, H.R. 5400, Title III, 99th Cong. 2d Session., Cong. Rec. H11319–21, (Daily E. October 17, 1986).

It Is Therefore Ordered That: The refund amount remitted to the Department of Energy by F. Lee Thorne and Charles Pabian pursuant to the plea agreements that became final on August 17, 1983 will be distributed in accordance with the foregoing Decision.

[FR Doc. 89–10967 Filed 5–5–89; 8:45 am]
BILLING CODE 6450–01–M

[1] Presumptions in refund cases are specifically authorized by § 205.282(e) of the DOE procedural regulations in order that refund applications may be considered in an efficient and equitable manner.

[2] This presumption will not apply to firms that were able to obtain sufficient quantities of diesel fuel elsewhere during the settlement period. The acquisition of product from other sources would have mitigated the injury that such customers experienced as a result of CITCO's failure to supply them with their full allocation because of Thorne's and Pabian's actions. However, a claimant that purchased product from alternate sources during the settlement period will still be eligible for a refund, if, for example, it shows that it paid a significantly higher price for the product and was not able to pass the higher price through to its customers.

[3] CITCO's diesel fuel sales were estimated from a 1979 CITCO annual report that details its product sales for the settlement period.

[4] Some customers may claim that they suffered an allocation shortfall greater than that which has been approximated by the volumetric refund amount. These claimants must demonstrate an injury from that shortfall.

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3567-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 17, 1989 through April 21, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1989 (54 FR 15006).

Draft EISs

ERP No. D–FHW–C40124–PR, Rating EO2, PR–26/Baldorioty De Castro Avenue Freeway Construction, KM. 2.87 to KM. 8.2, Funding, Municipalities of San Juan and Carolina, PR.

Summary: EPA has environmental objections to the selected alternative, because of impacts to wetlands and the secondary impacts which could further degrade these areas. Additionally, EPA believes that supplemental the alternative alignments is required in the final EIS.

ERP No. DA–OSM–A01052–00, Rating 3, Office of Surface Mining Reclamation and Enforcement (OSMRE) Revisions to Permanent Program Regulations Implementing Section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

Summary: EPA has determined that neither the proposed rule nor draft EIS provide sufficient information to adequately assess the magnitude of projected impacts associated with the options and alternatives for establishing: (1) standards to demonstrate valid existing rights to mine in section 522(e) areas, and (2) the degree to which subsidence effects of underground mining are covered by the section 522(e) prohibitions. EPA requested that the draft EIS be formally revised or supplemented.

Final EISs

ERP No. F–AFS–E65036–00, Coastal Plain/Piedmont National Forests and Grasslands Vegetation Management Plan, Implementation, US Forest Service Southern Region, AL, GA, FL, SC, NC, LA, MS, and TX.

Summary: EPA withdraws its earlier reservation to the preferred alternative based on modifications made to reduce reliance on herbicide use and the increased safeguards and mitigation measures. Close tracking ovral program, site-specific NEPA analysis, and monitoring of mitigation is requested.

ERP No. F–BLM–K61088–00, Arizona Mohave Wilderness Study Areas, Wilderness Recommendations, Designation, Greenlee, Maricopa, Mohave, Pinal, Pima, and Yavapai Counties, AZ and Grant County, NM.

Summary: EPA supported the proposed actions recommendation of wilderness status for 202,210 acres of BLM lands. EPA requested that the Record of Decision contain a commitment for BLM to closely coordinate resource protection with Federal and State natural resources agencies.

ERP No. F–BLM–L67021–AK, Minto Flats Watershed, Placer Mining Management Plan, Approval and 404 Permit, Implementation, AK.

Summary: EPA supports the additional potential placer mining reclamation requirements which have been incorporated into the Proposed Action. It remains unclear what criteria would be considered in decisions regarding the necessity for implementing any of the additional requirements on a site-specific basis. Therefore, EPA has remaining concerns regarding the degree of actual improvement in environmental conditions that may result from the Proposed Action. EPA also has remaining concerns regarding the limited water quality data incorporated into the final EIS and associated effects.

ERP No. F–COE–E32068–FL, Miami Harbor Channel Navigation Improvements, Implementation, Dade County, FL.

Summary: EPA's major environmental concern with the project design centered around the increased losses to valuable seagrasses caused by the shifted alignment of the turning basin. EPA's objections, however, were rendered moot when this alternative was discarded and the initial alignment was reinstated. Other important environmental ramifications attendant to this upgrade of the port's capabilities, have been discussed by the principals and appropriate mitigation will be attended.

ERP No. F–NAS–E12003–00, Advance Solid Rocket Motor Program, Design, Construction and Operation, Site Selection, John C. Stennis Space Center, Hancock Co., MS; Yellow Creek Site, Tishomingo Co., MS; John F. Kennedy Space Center, Brevard Co., FL; Michoud Assembly Facility, New Orleans Parish, LA, and Slidell Computer Center, St. Tammany Parish, LA.

Summary: EPA will work with NASA during the 404 Permit process to develop mitigation to any unavoidable wetland losses.

Dated: May 3, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–10974 Filed 5–5–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW, Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200241.

Title: North Carolina State Ports Authority Terminal Agreement.

Parties: North Carolina State Ports Authority (NCSPA) Senator Linie (Senator).

Synopsis: The Agreement provides that Senator will guarantee NCSPA a minimum of 40,000 tons of cargo subject to wharfage for each contract year in return for volume incentive wharfage rates. It also provides that Senator will guarantee a minimum of twelve hours dockage per vessel in return for one–half the dockage rates provided in the Wilmington Terminal Tariff. The Agreement provides that the crane rental rate will not increase more than 5% of the tariff rate during any contract year. The Agreement also provides specific container handling rates for each year of the two year Agreement. Senator has an option to renew the Agreement for one additional year.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: May 2, 1989.

[FR Doc. 89–10918 Filed 5–5–89; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89M-0134]

Sherman Laboratories, Inc.; Premarket Approval of de-STAT 3 ®

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Sherman Laboratories, Inc., Abita Springs, LA, for premarket approval, under the Medical Device Amendments of 1976, of de-STAT 3®. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of March 31, 1989, of the approval of the application.

DATE: Petitions for administrative review by June 7, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On May 6, 1987, Sherman Laboratories, Inc., Abita Springs, LA 70420, submitted to CDRH an application for premarket approval of de-STAT 3® indicated for use in the cleaning, chemical disinfection and storage of silicone acrylate rigid gas permeable contact lenses.

On June 21, 1988, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On March 31, 1989, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 7, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 28, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89-10934 Filed 5-5-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89M-0133]

Sherman Laboratories, Inc.; Premarket Approval of Stay-Wet 3 ®

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Sherman Laboratories, Inc., Abita Springs, LA, for premarket approval, under the Medical Device Amendments of 1976, of STAY-WET 3® to wet silicone acrylate rigid gas permeable contact lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of March 31, 1989, of the approval of the application.

DATE: Petitions for administrative review by June 7, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On May 6, 1987, Sherman Laboratories, Inc., Abita Springs, LA 70420, submitted to CDRH an application for premarket approval of STAY-VET 3® indicated for use to wet silicone acrylate rigid gas permeable contact lenses prior to insertion and to lubricate lenses while they are on the eye.

On June 21, 1988, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On March 31, 1989, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 7, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 28, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89-10935 Filed 5-5-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Transfer of Excess Federal Property to the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation

April 24, 1989.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of transfer of excess federal property.

SUMMARY: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs at 209 DM 8.1.

By letter dated March 11, 1986, the property described below was transferred by the Director, Disposal Division, Office of Public Buildings and Real Property, General Services Administration, to the Secretary of the Interior, without reimbursement, to be held in trust for the use and benefit of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation. The transfer was authorized by the Federal Property and Administrative Services Act of 1949, as amended on January 2, 1975, by the enactment of Pub. L. 93-599 (88 Stat. 1954).

T. 26 N., R. 43 E., Principal Meridian, Valley County, Montana.
Sec. 1: SE¼;
Sec. 11: SE¼SE¼;
Sec. 12: W½NE¼, E½W½, E½SW¼NW¼, E½NW¼SW¼, SW¼SW¼;
Sec. 13: W½NW¼;
Sec. 14: Lots 4, 5, and 6, E½NE¼, SW¼NE¼.

Containing 759.36 acres, more or less.

These lands are to be administered in the same manner as other trust lands held for the benefit and use of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation. This transfer will be appropriately documented in the land records of the Bureau of Indian Affairs.

W. P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 89-10931 Filed 5-5-89; 8:45 am]

BILLING CODE 4310-02-M

Transfer of Excess Federal Property to the Winnebago Tribe of Nebraska

April 11, 1989.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of transfer of excess federal property.

SUMMARY: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs at 209 DM 8.1.

By memorandums dated July 25 and August 10, 1988, the property described below was transferred by the Administrator of General Services to the Secretary of the Interior, without reimbursement, to be held in trust for the use and benefit of the Winnebago Tribe of Nebraska. The transfer was authorized by the Federal Property and Administrative Services Act of 1949, as amended on January 2, 1975, by the enactment of Pub. L. 93-599 (88 Stat. 1954).

NE¼NE¼SW¼, N½NW¼NW¼SE¼, Section 18, Township 26 North, Range 9 East, Sixth Principal Meridian, Thurston County, Nebraska, containing 7.50 acres, more or less.

These lands are to be administered in the same manner as other trust lands held for the benefit and use of the Winnebago Tribe. This transfer will be appropriately documented in the land records of the Bureau of Indian Affairs.

W.P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 89-10932 Filed 5-5-89; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Reclamation

Realty Action; Competitive Sale of Public Land; Arizona

AGENCY: Bureau of Reclamation.

ACTION: Notice of realty action.

SUMMARY: The following described land has been identified for disposal under the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374). The Bureau of Reclamation will accept bids on the following land, and will reject any bids, written or oral, for less than $750,000, the appraised fair market value.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Burgett, Realty Specialist, Bureau of Reclamation, P.O. Box 9980, Phoenix, Arizona 85068, telephone (602) 870-6734, FTS 765-1734.

Land Identified for Disposal as Follows

Tract APO-GR-11-56-3

A strip of land 100 feet wide lying southerly and contiguously to Reach 11 of the Granite Reef Aqueduct, Central Arizona Project, westerly of Pima Road and easterly and northerly of Frank Lloyd Wright Boulevard in the Southeast Quarter (SE¼) of section 1, Township 3 North, Range 4 East, Gila and Salt River Meridian, City of Scottsdale, Arizona containing an area of 3.82 acres, more or less. A more complete legal description may be obtained from the local Reclamation office referenced above.

The land will be offered for sale through the competitive bidding process. The sale will be held at the Bureau of Reclamation, Arizona Projects Office, 23636 North Seventh Street, Phoenix, Arizona 85024 on July 12, 1989. Registration of qualified bidders will begin at 9:00 a.m. Bid opening will be at 10:00 a.m. at which time sealed bids will be opened and oral bids will be accepted. Sealed bids will be received at the foregoing address until 4:00 p.m. July 10, 1989. The Bureau of Reclamation may accept or reject any or all offers; or withdraw any land or interest in land for sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374), or other applicable laws.

Should the parcel remain unsold at the close of the public auction, interested buyers may purchase the property over-the-counter as a first come-first serve basis until 4:00 p.m. September 12, 1989.

The sale of the land is consistent with the Bureau of Reclamation land use planning and it was determined that the public interest would be best served by offering these lands for sale; the parcel listed and platted is offered for sale "as is" and "where is."

Resource clearances consistent with the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) requirements have been completed and approved. A land report including categorical exclusion No. APO–87–30 dated October 13, 1987 is available for review at the Bureau of Reclamation, Arizona Projects Office, 23636 North Seventh Street, Phoenix, Arizona 85024.

The deed issued for the parcel sold will be subject to rights-of-way for ditches and canals constructed by the authority of the United States in accordance with the Act of August 30, 1890 (26 Stat. 391, 86 U.S.C. 945), and reservations for public road and utility easements identified by the City of Scottsdale and the County of Maricopa. This land sale will be for the surface estate only.

For a period of 45 days from the date of this notice, interested parties may submit comments to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005. Any adverse comments will be evaluated by the Regional Director who may vacate or modify this Notice of Realty Action and issue a final determination. In the absence of any action by the Regional Director, this Notice of Realty Action will become final determination of the Department of the Interior.

John D. Brown,

Acting for Edward M. Hallenbeck, Regional Director, Lower Colorado Region, Bureau of Reclamation.

[FR Doc. 89–10928 Filed 5–5–89; 8:45 am]

BILLING CODE 4310–09–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31450]

Burlington Northern Railroad Co.; Trackage Rights Exemption; Duluth, Missabe and Iron Range Railway Co.; Exemption

Duluth, Missabe and Iron Range Railway Company has agreed to grant overhead trackage rights to Burlington Northern Railroad Company between milepost 17.26 and milepost 17.45, a distance of approximately 981 feet, at Saunders, WI. The trackage rights became effective on April 26, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Alice C. Saylor, Duluth, Missabe and Iron Range Railway Company, P.O. Box 68, 135 Jamison Lane, Monroeville, PA 15146.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: April 24, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–10938 Filed 5–5–89; 8:45 am]

BILLING CODE FR–7035–01

[Finance Docket No. 31320]

Indiana & Ohio Railway Co.; Construction and Operation; in Hamilton, Warren and Butler Counties, Ohio

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final scope of study for environmental impact statement.

SUMMARY: This notice presents a final scope of study prepared in response to written comments and oral presentations at a public meeting, for the environmental impact statement being prepared for the above-referenced proceeding. Written comments on the final scope are solicited.

DATE: Written comments on the final scope of work must be received no later than June 7, 1989.

ADDRESS: Interstate Commerce Commission, Section of Energy and Environment, Room 3214, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: John O'Connell, (202) 275–6842.

SUPPLEMENTARY INFORMATION: On September 30, 1988, the Indiana and Ohio Railway Company (I&O) notified the Commission that it intends to file an application seeking authorization to construct a 2.9 mile line of railroad located between Brecon and Mason, in Hamilton, Warren and Butler Counties, Ohio.[1] The Commission anticipates that I&O will apply for this authority in the coming months. The purpose of the construction is to connect two I&O line segments that currently terminate at Brecon and Mason. The connector line will provide I&O with a less circuitous route for traffic originating or terminating on its Middleton Branch. Currently there is no rail-related business along the proposed construction route.

We believe that issuance by the Commission of a license to construct and operate the line segment would constitute a major Federal action with the potential to affect significantly the quality of the human environment. Therefore, we will prepare an environmental impact statement. A notice of intent to prepare an environmental impact statement (EIS) for this proceeding was published on December 10, 1988. The notice presented a preliminary scope of study for the EIS and requested comments in writing or orally at a public scoping meeting which was held subsequently on January 20 and 21, 1989. Over 50 parties commented in response to the notice. In accordance with the ICC's environmental rules (40 CFR 1105.8(b), the final scope of study is presented below.

Scope of Study

Construction and operation of the proposed Indiana and Ohio's Brecon to Mason rail line segment will affect the local environment in a variety of ways. Each of the components of construction and operation of the subject line gives

[1] The application will be filed under the Commission's regulations pursuant to 49 U.S.C. Sec. 10901.

rise to specific types of impact-generating activity which include: Land disturbance along the rail corridor, and possible displacement of residences during construction; safety, noise/vibration, effects of land use plans and visual intrusion, during operations. The above-mentioned areas of concern are considered the major environmental issues in this proceeding.

Due to the projected low traffic levels the effects of this proposal on air pollution, energy consumption, water quality and historic resources are expected to be minor. The EIS will address these issues, however, it will concentrate on those issues that are considered to have the greatest potential to cause adverse effects on the human environment.

Construction

Since the proposed right-of-way follows a previously abandoned Penn Central rail corridor major cut and fill operations and construction of rail structures will be avoided. Construction will necessitate the removal of trees and brush which have grown on the right-of-way over the last eighteen years since rail service ceased. The preparation of the rail corridor will result in a short term increase in air pollution during construction.

Alignment of the rail line as initially proposed by I&O may necessitate the relocation of approximately 31 mobile homes that are located within 30 feet of the center of the rail corridor. Possible relocation is viewed as a major concern to the local community. At this time it is not possible to evaluate the number of residences which may be affected since the I&O's application will address alternate rail routes which may alleviate the need for relocation. Environmental data associated with alternative routes will be analyzed to determine which route is the least likely to cause adverse environmental effects on the local environment.

Safety

Safety impacts associated with the operational aspects of the line generated considerable concern among commenting parties. Consequently, four components of safety will be addressed in the EIS, these include: grade crossing conflicts, pedestrian safety, train derailments and hazardous material spills.

A number of different types of grade crossing safety devices will be studied such as crossbucks, flashing lights, and automatic gates to determine which is most suitable for each crossing. The EIS will recommend the type of safety device that will best protect the public safety.

One of the most difficult safety issues to resolve is pedestrian safety, especially since many children reside in residences adjacent to the proposed rail corridor. The EIS process will evaluate different types of barriers and recommend mitigation to assist in alleviating the concern among local citizens. In addition, alternate rerouting of the rail corridor could, in some instances, remove the rail line from the proximity of some residential structures.

The Commission will investigate I&O's, as well as Ohio Railroad's in general, previous record of derailments and hazardous waste spills in order to project the possibility of future incidents of this nature. The quality of the proposed rail structure is also a factor which will be evaluated. Although I&O does not currently carry hazardous materials, any future shipments of such materials will require I&O to meet all existing federal and state regulations which apply to their movement. It is anticipated that the slow operating speed that I&O projects for its train movements as well as adherence to regulations should mitigate concerns regarding hazardous spills.

Noise and Vibration

The project will cause an increase in noise level exposure to many residents as a result of the rail operations. Although I&O projects that rail service over the subject line will be comprised of only two trains daily, the Commission will review the possibility of additional traffic which could be generated over a five-year period. At this time it is anticipated that a noise level of 65 DBL,[2] a level which is normally unacceptable for housing environments, will be exceeded for a short duration twice daily. The EIS will study the effects of noise and vibration utilizing projected frequency of railroad operations and will recommend suitable types of sound barriers, where necessary, in order to diminish the effects of this intrusion.

Upon completion of the draft EIS, a notice of its availability will be published in the **Federal Register** and served on all parties to the proceeding. The notice will prescribe a comment period. A final EIS, prepared in response to comments received, will be issued subsequently.

Dated: April 28, 1989.

[2] DBL is a noise description that is used to derive sound levels in decibels.

Decided by:

John F. Hennigan, Jr.,

Director, Office of Transportation Analysis.

Noreta R. McGee,

Secretary.

[FR Doc. 89-10939 Filed 5-5-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31455]

Soo Line Railroad Co.; Trackage Rights Exemption; Cedar Valley Railroad Co.

Cedar Valley Railroad Company (CVAR) has agreed to grant overhead trackage rights to Soo Line Railroad Company (Soo) between milepost 75.8 at Lyle, MN, and milepost 42.5 at Charles City, IA. The transaction also involves the construction of a connection between Soo's facilities at Lyle and CVAR's line.[1] The trackage rights became effective April 25, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Larry D. Starns, Soo Line Railroad Company, Soo Line Building, Box 530, 105 South Fifth Street, Minneapolis, MN 55440; and Willis L. Hodge, Cedar Valley Railroad Company, The Old Depot, P.O. Box 266, Osage, IA 50461.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: April 24, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-10940 Filed 5-5-89; 8:45 am]

BILLING CODE 7035-01-M

[1] The Commission will assume jurisdiction over construction projects only in cases where the proposal involves, for example, a change in service to shippers; expansion into new territory; or a change in existing competitive situations. *See, generally, Denver & R.G.W.R. Co.—Jt. Proj.—Relocation Over BN*, 4 I.C.C.2d 95 (1987). It appears that the construction of railroad lines involved here, which is to facilitate Soo's use of CVAR's line as an alternate route, is not subject to the Commission's jurisdiction under these standards.

[Docket No. AB-55 (Sub 299X)]

CSX Transportation, Inc.—Abandonment Exemption in St. Clair County, MI

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 9.82-mile line of railroad between milepost 73.46 at Avoca and milepost 83.28 at Port Huron, in St. Clair County, MI.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on June 7, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by May 18, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by May 30, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environments or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by May 12, 1989. Interested persons may obtain a copy to the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: April 26, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–10937 Filed 5–5–89; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C. 2d 400 (1988). Any entity seeking a stay involving environmental concens is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under Office of Management and Budget Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by June 7, 1989.

ADDRESS: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Dance Program Application Guidelines for FY 1991

Frequency of Collection: One-time

Respondents: Individuals or households; Non-profit institutions

Use: Guidelines instructions and applications elicit relevant information from individual artists and non-profit organizations that apply for funding under specific Dance Program categories. This information is necessary for the accurate, fair, and thorough consideration of competing proposals in the peer review process

Estimated Number of Respondents: 1,100

Average Burden Hours per Response: 13.23

Total Estimated Burden: 14,550.

Anne C. Doyle,

Administrative Services Division, National Endowment of the Arts.

[FR Doc. 89–10905 Filed 5–5–89; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The U.S. Nuclear Regulatory Commission has recently submitted to the OMB for review the following for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: New.

2. The title of the information collection: 10 CFR Part 52, "Early Site Permits, Standard Design Certifications, and Combined Licenses for Nuclear Power Reactors".

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion and every ten to twenty years for applications for renewal.

5. Who will be required or asked to report: Designers of commercial nuclear power plants, electric power utilities, and any person eligible under the Atomic Energy Act to apply for a construction permit for a nuclear power plant.

6. An estimate of the number of responses: One application for certification of a standard design is expected in each of the next three years.

7. An estimate of the total number of hours needed to complete the requirement or request: For applicants for a design certification, 22,000 hours per response.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: 10 CFR Part 52 establishes requirements for the granting of early site permits, certifications by rulemaking of standard nuclear power plant designs, and licenses which combine in a single license a construction permit and an operating license with conditions (combined licenses). The new Part will also establish requirements for renewal of these permits, certifications, and licenses; amendments to them; exemptions from certifications; and variences from early site permits.

ADDRESSES: Copies of the submittals may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Comments and questions should be directed to the OMB reviewer: Nicolas B. Garcia, Paperwork Reduction Project (3150–0000), Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 1st day of May 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89–10954 Filed 5–5–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–498]

Houston Lighting & Power Co., et al.; South Texas Project, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. NPF–76, issued to Houston Lighting & Power Company, *et al.*, (the licensee) for the South Texas Project, Unit 1, located at the licensee's site in Matagorda County, Texas.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise provisions in the Final Safety Analysis Report (FSAR) and modify the logic of the Engineered Safety Feature Actuation System (ESFAS) such that failure of radiation monitors located in three areas of the plant would annunciate in the control room instead of actuating Engineered Safety Features (ESF).

The proposed action is in accordance with the licensee's application for amendment dated February 24, 1988.

The Need for the Proposed Action

The proposed change will reduce the number of unnecessary ESF actuations.

Environmental Impacts of the Proposed Action

The proposed change would modify the ESFAS logic such that radiation monitor failures will annunciate in the control room rather than cause an ESF actuation. Currently, ESF actuation will occur automatically upon either failure of a radiation monitor or a high radiation signal in either of two redundant monitors. The consequences of an accident could increase only if the accident is postulated to occur while one radiation monitor is out of service and the other fails simultaneously. In that situation, the ESF would not be actuated on a high radiation condition. However, the Technical Specifications require immediate action (within 1 hour) if the appropriate number of monitors are not operable. Consequently, there is no significant hazard associated with the change. Moreover, the slightly increased consequences of such an accident would not affect offsite releases. Therefore, the proposed changes only very slightly increase the consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on September 12, 1988 (53 FR 35244). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement (NUREG–171) for the South Texas Project, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For information concerning this action, see the application of amendment dated February 24, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701.

Dated at Rockville, Maryland this 1st day of May 1989.

For The Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV, Division, of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–10951 Filed 5–5–89; 8:45 am]

BILLING CODE 7590-01-M

Nuclear Safety Research Review Committee; Meeting

In accordance with the requirements of the Federal Advisory Committee Act (FACA), the Nuclear Safety Research Committee (NSRRC) will hold a full committee meeting on May 23 and 24, 1989. The meeting will be held at the Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland.

Tuesday, May 23, 1989

8:30 a.m.–8:45 a.m.: Comments by NSRRC Chairman (Open)—The NSRRC Chairman will review the agenda

8:45 a.m.–10:00 a.m.: General Statement by Director, RES (Open)—The Director, Office of Nuclear Regulatory Research (RES) will review developments since the last full committee meeting held in June 1988, including changes in 5 Year Plan, final NRC disposition of the National Academy of Sciences (NAS) report and high priority User Need items

10:30 a.m.–11:30 a.m.: Planning of RES Programs (Open)—Discuss the recently-published prioritization report (NUREG–1319), long range research allocations and summary of the Severe Accident Research Plan (SARP)

11:30 a.m.–12:30 p.m.: Grant/Contract Procurement (Open)—An overview of RES sponsored research activities at National Laboratories and universities

12:30 p.m.–1:00 p.m.: Discussion (Open)

2:00 p.m.–2:30 p.m.: Thermal Hydraulic Research (Open)—Discuss project completion in context of recently published Appendix K Final Rule

2:30 p.m.–3:30 p.m.: NUREG–1150 (Open)—Discuss the peer review process, anticipated uses of results following the review and potential impact on future research

3:45 p.m.–4:00 p.m.: NSSRC Report Dated 2/7/89 (Open)—Review RES response to the second NSRRC report which highlighted subcommittee visits to RES contractors

4:00 p.m.–5:00 p.m.: Human Factors Research (Open)—Briefing regarding revisions of Human Factors research relative to user need statement, contractor selection process and strategies for managing the program

5:00 p.m.–5:30 p.m.: Discussion (Open)

5:30 p.m. Adjourn.

Wednesday, May 24, 1989

8:30 a.m.–9:30 a.m.: Waste Disposal (Open)—Briefing on the waste research program relative to Subcommittee site review

9:30 a.m.–10:30 a.m.: Severe Accident/ Accident Management (Open)—Summary of Severe Accident Research Plan (SARP) and definition of accomplishments necessary for closure

10:45 a.m.–11:15 a.m.: Aging and Containment (Open)—Briefing regarding degradation of structural elements in nuclear power plants

11:15 a.m.–12:30 p.m.: Licensing Activities (Open)—Discuss License Renewal, Containment Performance Improvements (CPIs) and Individual Plant Examinations (IPEs) (If Time Permits)

1:30 p.m.–2:30 p.m.: Rulemaking (Open)—Discuss Maintenance Rule, Pressurized Thermal Shock (PTS) Rule, and other regulatory initiatives whose technical bases are founded on RES programs (If Time Permits)

2:30 p.m.–3:00 p.m.: Executive Session (Closed)—Discuss personnel matters which represent personal privacy

3:00 p.m.–3:30 p.m.: Committee Discussion (Open)—Establish topics, subcommittees and dates for Fall 1989 field review of research

3:30 p.m. Adjourn.

In accordance with the FACA procedures, those portions of the meeting that are open will be transcribed and the transcription will be placed in the Public Document Room (PDR). Members of the public desiring to make oral statements should notify the NSRRC Chairman as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close a portion of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by calling the Designated Federal Official (DFO), Dr. Robert L. Shepard (telephone: 301/942–3723), between 8:15 a.m. and 5:00 p.m.

Date: May 3, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–10971 Filed 5–5–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–313]

Arkansas Power and Light Co.; Arkansas Nuclear One, Unit No. 1; Withdrawal of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by Arkansas Power and Light Company (the licensee) to withdraw part of its December 12, 1986, application for an amendment to Facility Operating License No. DPR–51, issued to the licensee for operation of the Arkansas Nuclear One, Unit No. 1, located in Pope County, Arkansas. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on July 1, 1987 (52 FR 24544).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to (1) Change the fuel enrichment limit from "3.5 percent of U–235" to: "shall be of low enrichment." (TS 5.3.1.6), and (2) change the active height value of the core from "144 inches." to "approximately 142 inches." (TS 5.3.1.2).

Subsequently the second part of the proposed amendment was granted as part of Amendment No. 113. And recently, the licensee informed the staff that part of the amendment is no longer requested. Thus, the amendment application is considered to be withdrawn by the licensee.

For further details with respect to this action, see (1) the application for amendment dated December 12, 1986, and (2) the staff's letters dated April 11, 1989 and May 1, 1989.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas.

Dated at Rockville, Maryland, this 1st day of May 1989.

For the Nuclear Regulatory Commission.

C. Craig Harbuck,

Project Manager, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–10950 Filed 5–5–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–272]

Public Service Electric and Gas Co.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request for Public Service Electric and Gas Company (the licensee) to withdraw a portion of its January 27, 1983 (LCR 82–16) application for proposed amendments to Facility Operating License No. DPR–70 for the Salem Generating Station, Unit 1, located in Salem County, New Jersey.

The amendment requested approval of the system operability requirements for the transfer functions of the emergency core cooling system semiautomatic switchover from safety injection to recirculation during a loss of coolant accident for Salem Unit 1. The portion of the requested amendment applicable to Salem Unit 1 was withdrawn in the licensee's February 3, 1986 submittal.

The Commission issued a Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing which was published in the **Federal Register** on August 2, 1983 (48 FR 35055).

For further details with respect to this action, see the application for amendment dated January 27, 1983 (LCR 82–16) and the licensee's letter dated January 3, 1986 that withdrew the portion applicable to Salem Unit 1. The above documents are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 27th day of April 1989.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–10952 Filed 5–5–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–395]

South Carolina Electric & Gas Co., South Carolina Public Service Authority; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) has denied a request by the licensee for an amendment to Facility Operating License No. NPF–12 issued to the South Carolina Electric & Gas Company and South Carolina Public Service Authority (the licensee) for operation of the V.C. Summer Nuclear Station, Unit 1 (the facility), located in Fairfield County, South Carolina.

The denied portion of the amendment, as proposed by the licensee, would modify the Technical Specification (TS) 4.6.1.6.1.a to utilize 21 tendons rather than 15 tendons for the 10 year surveillance and subsequent five year intervals. Currently TS 4.6.1.6.1.a contains a requirement to utilize 15 tendons for the 10 surveillance and subsequent five year intervals. The amendment was requested September 16, 1986 and supplemented August 18, 1987 and July 22 and September 29, 1988.

The Notice of Consideration of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing of the licensee's application for the amendments was published in the **Federal Register** on November 5, 1986 (51 FR 40282).

TS 4.6.1.6.1.a presently requires that 15 tendons be sampled at the 10 year surveillance intervals and at subsequent five year intervals. The licensee had requested approval to change the requirements to 21 tendons. The staff had denied the request because the proposed change is unnecessary. There is nothing in TS 4.6.1.6.1.a which would prohibit 21 sample tendons. Such a sample size would still be in conformance with the existing TS. Therefore, the proposed TS change was denied. The licensee was notified of the Commission's denial of this request by letter dated April 28, 1989.

By June 5, 1989, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by the proceeding may file a written petition for leave to intervene.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J.B. Knotts, Jr., Esquire, Bishop, Cook, Purcell, and Reynolds, 1400 L Street NW., Washington, DC 20005–3502, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated September 16, 1986, as supplemented August 18, 1987 and July 22 and September 29, 1988, and (2) the Commission's letter to South Carolina Electric & Gas Company, dated April 28, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Fairfield County Library, Garden and Washington Streets, Winnsboro, SC 29180. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 28th day of April 1989.

For the Nuclear Regulatory Commission.

John J. Hayes, Jr.,

Project Manager, Project Directorate II–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–10953 Filed 5–5–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26771; File No. SR–NASD–89–14]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Qualification Examination Waiting Periods

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") on March

21, 1989, and amended on April 25, 1989, the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 would amend Part VI of Schedule C to NASD By-Laws to establish waiting periods between attempts to pass qualification examinations.

III. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD 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

In response to certain recommendations of the NASD Regulatory Review Task Force, the Qualifications Committee of the NASD Board of Governors has undertaken to review the NASD qualification system and to consider additional means to maintain an appropriate level of knowledge and professionalism for persons associated with NASD members. This review has not only addressed the adequacy of existing NASD qualification standards, but has also considered issues relating to the need to afford reasonable assurance to the investing public that registered persons remain knowledgeable about products and services available to investors, as well as applicable rules, regulations, and policies governing the investment banking and securities business.

The NASD proposed to amend Part VI of Schedule C to the By-Laws to establish waiting periods between attempts to pass NASD qualification examinations. Waiting periods were in effect in the NASD qualification program until 1979 and now are used in connection with the qualification examinations of the Municipal Securities Rulemaking Board ("MSRB"). The extensive automation of the registration and qualification process has made it possible for applicants to make multiple attempts to pass examinations in rapid succession, often within very brief periods.

The NASD believes this practice promotes "test learning" rather than a proper understanding of the substantive material covered in the various qualification examinations. The proposed waiting periods are intended to encourage a more professional approach to the examination process and to the training of applicants, as well as to protect the integrity of the qualification examinations. In the interest of uniformity, the proposed waiting periods are the same as those prescribed by the MSRB—30 days between the first and second attempts, 30 days between the secnd and third attempts, and six months after the third and all subsequent attempts.

The NASD believes that the proposed rule change is consistent with section 15A(b)(6) of the Act. In pertinent part, section 15A(b)(6) mandates that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, among other things. The NASD believes the proposed waiting periods will encourage a more professional approach to the training and examination process and will help protect the integrity of qualification examinations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were solicited in NASD Notice to Members 88–90.[1]

Ten (10) commentators addressed this proposal. One (1) commentator was in favor of the proposal and seven (7) were generally opposed. Six (6) of those opposed the concept of any waiting period between attempts, citing concerns regarding the need for candidates to earn a living, unfairness to candidates who tend to freeze on examinations and unfairness of candidates whose primary language is not English. Two (2) commentators suggested less stringent alternatives: (a) Limiting the waiting period to 30 days for any re-attempt; or (b) no waiting period between the first and second and the second and third attempts, 30 days between the third and fourth and fourth and fifth attempts, and six months thereafter. Two (2) commentators noted that Series 7 attempts would need special administrative treatment since the number of days between successive third Saturdays is frequently less than 30 days.

In addressing these comments, the Board determined to modify the waiting period for the Series 7 examination to take into consideration that this examination is given on monthly basis and less than 30 days may transpire between examinations.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All

[1] The Notice of Members, a list of commentators and the comment letters are attached as Exhibits 2 and 3 to the rule filing. The NASD solicited comments on other changes to Schedule C and these changes are being filed separately.

submissions should refer to the file number in the caption above and should be submitted by May 30, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: May 1, 1989.

[FR Doc. 89-10901 Filed 5-5-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26772; File No. SR-NASD-89-13]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Providing Broader Access to Information Contained on Form U-5

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") on March 21, 1989, and amended on April 25, 1989, the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 amendments to Article IV, section 3 of the NASD By-Laws and Article III, section 27 of the Rules of Fair Practice would require NASD members to provide a copy of the Form U-5, the Uniform Termination Notice for Securities Industry Registration, to persons who terminate or are terminated by the member and would require each NASD member seeking to associate a person in a registered capacity to use reasonable efforts to obtain the most recent Form U-5 from any person seeking employment.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD 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

Article IV, section 3 of the NASD By-Laws does not now require NASD members to give terminated employees a copy of the Form U-5 filed with the NASD. The NASD believes that the policy of providing broader access to the information on the Form U-5 requires that terminated persons be given the Form U-5 so that they can verify the accuracy and completeness of the representations in the form. The terminated individual can then express any disagreement with the Form U-5 to his or her subsequent NASD member employer. Therefore, the NASD is proposing to implement the recommendations of the NASD Regulatory Review Task Force by amending Aricle IV, section 3 of the NASD By-Laws to require that a member submitting to the NASD a Form U-5, pursuant to Article IV, section 3 of the By-Laws, provide a copy to the terminated employee. In addition, the NASD is proposing to amend the same provision to codify the requirement that an amendment to the Form U-5 be filed if later-discovered information causes any statements in the form to be inaccurate or incomplete.

Article III, section 27(e) of the Rules of Fair Practice requires that "each member shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications and experience of any person prior to making such a certification in the application of such person for registration with this Association." Members are not currently required to obtain the Form U-5 for the person's most recent employment with an NASD member.

The NASD believes, however, that the circumstances of a termination, as disclosed on the Form U-5, may well be relevant to the hiring decision and that this information should be readily available to any NASD member for that purpose. This information is particularly pertinent in the situation where the person was terminated for cause or where affirmative answers have been provided to Items 13-15 of the Form U-5 regarding possible rule violations during the period of employment. As part of the hiring process, members should be allowed to compare the Form U-5 with any statements made by the potential employee regarding the termination.

Therefore, the NASD is proposing to amend Article III, section 27(e) to require NASD members who employ persons previously registered with another NASD member to obtain a copy of the Form U-5 (and any amendments thereto) filed by the person's most recent employer. The NASD believes that, by making the Form U-5 available in this manner, members will be better able to meet their obligation under Article III, section 27(e) of the Rules of Fair Practice to adequately investigate the background of potential employees. The proposed rule change would establish the requirement to obtain the Form U-5, set forth timeliness standards for compliance, and provide for obtaining the Form U-5 through the NASD Firm Access Query System (FAQS) for FAQS subscribers or from the prospective employee for firms that do not subscribe to FAQS.

The proposed rule change is consistent with section 15A(b)(6) of the Act, which mandates that the rules of a national securities association be designed to promote just and equitable principles of trade and to remove impediments to, and perfect the mechanism of, a free and open market, because the NASD believes that a policy of providing broader access to the information on the Form U-5 allows the terminated person to verify the accuracy and completeness of representations on the Form U-5 and allows NASD members to have additional relevant information available to them in order to make more informed hiring decisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed amendment imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in NASD Notice to Members 88-68 in September 1988. As a result of this Notice, the NASD received 15 comment letters. Of these, 11 commentators generally favored the proposed amendments and 4 were opposed.

With respect to the proposed change to Article III, section 27(e), commentators expressed concern regarding the proposed different requirements for a member using its FAQS computer connection to the NASD and a member requesting a hard copy of the Form U-5 from the applicant. As originally drafted, the FAQS firm

would have been required to "obtain" the Form U–5 prior to the filing of an application for registration, while the non-FAQS firm would only be required to "request" a copy of the Form U–5. Second, concern was raised over the two different time parameters required for compliance as contained in the proposed Rules of Fair Practice amendment. A member could have had either 30 days or 60 days to comply with the Rules of Fair Practice amendment depending on the date on which a registration application was filed. The Board determined that this requirement was both confusing and placed an unrealistic administrative burden on the member. Finally, it was noted that an associated person might change the Form U–5 prior to providing it to the prospective employer and thereby alter the nature of the reported information.

The NASD determined that both the issues of the differing requirements for FAQS and non-FAQS users and the variation in the time parameters in the proposed Rules of Fair Practice amendment would be resolved if there were a single uniform time frame for compliance with the proposed rule and modified the proposal to impose a uniform sixty-day period for compliance.

Concern was expressed by some that an unethical individual might change derogatory information contained on a Form U–5 from his or her previous employer before presenting it to a new firm. The NASD review process for both Form U–5 and Form U–4 includes a system of checks that alleviates these concerns and no changes have been made relating to this issue.

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 finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by May 30, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: May 1, 1989.

[FR Doc. 89–10902 Filed 5–5–89; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

May 1, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B), of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

CPI Corp.
Common Stock, $.40 Par Value (File No. 7–4500)

VMS Mortgage Investment Fund
Common Stock, $.01 Par Value (File No. 7–4501)

Atlas Corp.
Warrants, No Par Value (File No. 7–4502)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 22, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–10903 Filed 5–5–89; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

May 1, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Putnam Managed Municipal Income Trust
Shares of Beneficial Interest (File No. 7–4496)

Scotty's Incorporated
Common Stock, $1 Par Value (File No. 7–4497)

Shoney's Inc.
Common Stock, $1 Par Value (File No. 7–4498)

Silicon Systems, Inc.
Common Stock, $0.01 Par Value (File No. 7–4499)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 22, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair

and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-10904 Filed 5-5-89; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Telecommunications Trade; Review of Agreements; Determination and Hearing

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Section 1377 Determination; Notice of Public Hearing and Request for Public Comments on Possible U.S. Action in Response to Certain Japanese Restrictions Regarding Telecommunications Trade.

SUMMARY: Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 requires that the USTR annually review each trade agreement concerning telecommunications products or services, and in each review determine whether a foreign country is

(1) Not in compliance with the terms of the agreement; or

(2) Otherwise denying, "within the context of the terms of" the agreement, mutually advantageous market opportunities.

Pursuant to section 1377, the USTR has determined that certain practices of Japan with respect to third party radio and cellular phone products and services are not in compliance with Japan's commitments under the MOSS agreements on telecommunications. Under section 1377, this affirmative determination is treated as an affirmative determination under section 304(a)(1) of the Trade Act of 1974, as amended. Accordingly, the USTR has directed the Section 301 Committee to conduct a public hearing on measures that might be taken under section 301 as a result of this affirmative determination. This hearing will be held on May 24, 1989.

FOR FURTHER INFORMATION: Questions about this affirmative determination should be directed to Mr. Don Eiss, Deputy Assistant United States Trade Representative for Industry, Office of the United States Trade Representative (202) 395-5656; questions regarding the products identified in Annex A should be directed to Patrick Hughes, Office of Industrial Trade, Department of Commerce (202) 377-3703; questions concerning Customs classification matters should be directed to Matt Rohde, U.S. Customs Service (202) 566-8933; questions regarding the services sectors identified in Annex B should be directed to Carol Balassa, Office of the United States Trade Representative, (202) 395-4510.

SUPPLEMENTARY INFORMATION: The MOSS (Market-Oriented, Sector-Selective) Agreements on telecommunications are embodied in a series of letters and joint communications between U.S. and Japanese Officials. Under these agreements, the Government of Japan committed to a number of steps to open the Japanese market for telecommunications products and services of the United States and other countries, and to reduce regulation of the Japanese market for telecommunications products and services. The Government of Japan undertook these commitments in the context of a broad initiative to de-regulate its telecommunications market beginning in 1985.

In accordance with section 1377, USTR, with advice from the private sector and executive agencies, reviewed all existing trade agreements affecting telecommunications products or services with Japan and other countries. Problems identified in this review were also discussed with the country concerned. An interagency team held consultations with Japan during the weeks of April 3 and April 24, 1989.

As a result of this review, certain practices of Japan have been determined by the USTR to be not in compliance with the MOSS agreements on telecommunications, as described below. There are a number of other matters of concern that were considered in connection with the review of compliance with, and the marketing opportunities available in the context of, the NTT and MOSS Agreements. USTR, in conjunction with other agencies, will continue to gather information on these matters, and is prepared to consider them in the context of other trade remedies and other opportunities to remedy restrictions on market access.

Notice of Determination and Public Hearing

On April 28, 1989, the USTR, as a result of the review summarized above, determined that the following practices of Japan are inconsistent with the MOSS agreements on telecommunications:

(1) The Ministry of Posts and Telecommunications (MPT) operates its third-party radio licensing and approval in a manner that denies U.S. companies market access in the following ways:

- MPT discriminates against U.S. companies in licensing frequencies.
- MPT discriminates against U.S. companies by applying more burdensome licensing requirements to them than are applied to Japanese companies.
- MPT requires U.S. companies to pre-sign customers before thay can obtain MPT approval to build and operate a new system. This requirement does not apply to Japanese companies.
- MPT does not allow full foreign ownership and operation of third-party radio systems.

(2) There is inadequate transparency in MPT's process for allocating radio frequencies. MPT prohibits one cellular radio system, which uses U.S. equipment, from operating in the Tokyo and Nagoya area, despite the recent identification of spectrum which would make "roaming" into that market feasible. The competing Japanese system can "roam" throughout the country.

The USTR also directed the Section 301 Committee to conduct a public hearing pursuant to section 304(b)(1)(A) on possible U.S. action as a result of this determination.

Legal Authority

The requirements of section 1377 are summarized above with respect to affirmative determination. An affirmative determination under section 1377 must be treated as an affirmative determination of a violation of a trade agreement under section 304(a)(1) of the Trade Act of 1974, as amended for purposes of Chapter 1 of Title III of the latter Act. In such event, the USTRA Must take appropriate and feasible action in response, subject to the specific direction, if any, of the President, unless an exception specified in section 301(a)(2) applies. Section 301(c)(1)(B) expressly authorizes the USTR to impose duties or other import restrictions on the goods of a foreign country or to impose fees or restrictions on the services of such country for such time as the USTR determines appropriate.

Measures under section 301 may be taken against the country concerned or against all countries, at the discretion of the USTR. Action under 301 may be delayed up to 180 days if the USTR finds that delay is necessary or desirable to secure a satisfactory solution with respect to the matters giving rise to the affirmative determination.

Public Hearing

The Section 301 Committee will hold a public hearing on: (1) A list of products

exported from Japan that are under consideration for inclusion on a final list of products that could be subject to increased duties or other trade restrictions and (2) services of Japan that could be considered for imposition of increased fees or other restrictions. The hearing will be held on May 24, 1989, at 9:00 a.m. in Court Room A, Room 100, of the U.S. International Trade Commission, 500 E Street, SW., Washington, DC.

The public is invited to comment at the hearing on: (1) The appropriateness of subjecting products listed in Annex A or services listed in Annex B to an increase in duties or fees or to other restrictions; (2) the levels at which fees on services, or U.S. customs duties, or other restrictions on particular products or services should be set; and (3) the degree to which new or increases duties, fees, or other restrictions might have an adverse effect on U.S. consumers of the products concerned The comments submitted will be considered in recommending any action under section 301 to the USTR.

Interested persons wishing to testify must provide written notice of their intention by noon, May 15, 1989, to Ms. Dorothy Balaban, Office of the General Counsel, Office of the United States Trade Representative, Room 222, 600 17th Street, NW., Washington, DC 20506. The written notice must provide the following information: (1) Name, firm or affiliation, address and telephone number; and (2) a summary of the proposed testimony, including the products, by tariff subheading numbers, or the services proposed to be discussed. In addition, such persons must submit a complete written statement in 20 copies, in English, by noon, May 18, 1989, at the above address. Remarks at the hearing will be limited to five minutes.

Persons not wishing to participate in the public hearing may submit written comments, in 20 copies, by noon, May 22, 1989, at the same address. Written comments in rebuttal to any written or oral comments will be considered if submitted prior to May 30, 1989. All written comments must be filed in accordance with 15 CFR 2006.8.

Joshua Bolten,

General Counsel.

Annex (A)

Articles, the product of Japan, classified in the following provisions of the Harmonized Tariff Schedule of the United States (HTS) are being considered for increased duties or other import restrictions:

HTS heading or subheading [1]	Article
	[The bracketed language in this list is included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]
	Hydrides, nitrides, azides, silicides and borides, whether or not chemically defined:
	[Of calcium; of titanium; of tungsten; of vanadium]
	Other:
2850.00.50(pt.)	Aluminum nitride.
3304	Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations.
	[Ceramic articles provided for in headings 6901 through 6913]
	Other ceramic articles:
	[Of porcelain or china.]
	Other:
6914.90.00(pt.)	Of aluminun nitride.
	Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included:
	[Analog or hybrid automatic data processing machines]
	Digital automatic data processing machines, containing in the same housing at least a central processing unit and an input and output unit, whether or not combined:
8471.20.00(pt.)	Digital automatic data processing machines of the type which have a theoretical peak performance capability greater than or equal to 100 million floating-point operations per second (100 MFLOPS), including such machines of all architectures (e.g., vector, array, parallel, etc.) [2]

[1] Harmonized Tariff Schedule of the United States (USITC Publication 2030).

[2] In calculating the theoretical peak performance capability of a single processor, the formula is:

$$\frac{\text{Number of operations}}{\text{1 cycle}} \times \frac{\text{1 cycle}}{\text{cycle time}} = \text{Number of MFLOPS}$$

In measuring theoretical peak performance, the following assumptions are used:

(A) The number of operations per cycle should be measured by counting the maximum number of floating-point additions and/or multiplications that can be completed during one cycle time of the machine.

(B) The results will be measured on 64-bit word lengths, regardless of the word length of the processor.

(C) For machines with more than one processor, the MFLOPS for all floating-point processors that work independently of each other in the same machine cycle should be added together to derive the total theoretical peak performance of the machine.

Annex (2)

HTS heading or subheading [1]	Article
	Automactic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included (con.):
	Other:
	Digital processing units, whether or not entered with the rest of a system, which may contain in the same housing one or two of the following types of units: storage units, input units, output units:
8471.91.00(pt.)	Digital automatic data processing machines of the type which have a theoretical peak performance capability greater than or equal to 100 million floating-point operations per second (100 MFLOPS), including such machines of all architectures (e.g., vector, array, parallel, etc.) [2]
	Input or output units, whether or not entered with the rest of a system and whether or not containing storage units in the same housing:
	[Combined input/output units.]
	Other:
	Display units:
	Without cathode-ray tube (CRT), having a visual display diagonal not exceeding 30.5 cm:
8471.92.30(pt.)	Having a visual display diagonal of 29.5 cm or greater.
	Other:
	[With cathode-ray tube (CRT).]
8471.92.4085	Other.

[1] Harmonized Tariff Schedule of the United States (USITC Publication 2030).
[2] In calculating the theoretical peak performance capability of a single processor, the formula is:

$$\frac{\text{Number of operations}}{\text{1 cycle}} \times \frac{\text{1 cycle}}{\text{cycle time}} = \text{Number of MFLOPS}$$

In measuring theoretical peak performance, the following assumptions are used:

(A) The number of operations per cycle should be measured by counting the maximum number of floating-point additions and/or multiplications that can be completed during one cycle time of the machine.

(B) The results will be measured on 64-bit word lengths, regardless of the word length of the processor.

(C) For machines with more than one processor, the MFLOPS for all floating-point processors that work independently of each other in the same machine cycle should be added together to derive the total theoretical peak performance of the machine.

Annex (3)

HTS heading or subheading [1]	Article
	Machines and mechanical appliances having individual functions, not specified or included elsewhere in chapter 84; parts thereof:
	[Articles provided for in subheadings 8479.10.00 through 8479.40.00].
	Other machines and mechanical appliances:
	[Articles provided for in subheadings 8479.81.00 and 8479.82.00].
	Other:
	[Electromechanical appliances with self-contained electric motor; carpet sweepers].
	Other:
	[Industrial robots.]
	Other:
	Machines for production and assembly of diodes, transistors and similar semiconductor devices and electronic integrated circuits:
8479.89.9070(pt.)	Electron-beam lithography apparatus used for the production of semiconductor maskworks.
	Electric (including electrically heated gas), laser or other light or photon beam, ultrasonic, electron beam, magnetic pulse or plasma arc soldering, brazing or welding machines and apparatus, whether or not capable of cutting; electric machines and apparatus for hot spraying of metals or sintered metal carbides; parts thereof:
	[Articles provided for in subheadings 8515.11.00 through 8515.39.00].
	Other machines and apparatus:
	[Ultrasonic welding machines.]
	Other:
8515.80.0080(pt.)	Die bonding assembly equipment for integrated circuits; wire bonding assembly equipment for integrated circuits.
	Parts:
	Of welding machines and apparatus:
8515.90.20(pt.)	Of die bonding assembly equipment for integrated circuits; of wire bonding assembly equipment for integrated circuits.

[1] Harmonized Tariff Schedule of the United States (USITC Publication 2030).

Annex (4)

HTS heading or subheading [1]	Article
	Electrical apparatus for line telephony or telegraphy, including such apparatus for carrier-current line systems; parts thereof:
	Telephone sets:
	Single line:
	[Without special features.]
	Other (such as memory, redial, autodial, speaker and the like):
8517.10.0050	Incorporating an automatic answering device
8517.10.0070	Other
8517.10.0080	Multiline (including key, call director and consoles)
	[Teleprinters, including teletypewriters.]
8517.30	Telephonic or telegraphic switching apparatus
8517.40	Other apparatus, for carrier-current line systems
	Other apparatus:
8517.81.00	Telephonic
	Parts:
	Of telephonic apparatus:
	Of telephonic switching apparatus:
8517.90.05	Of the switching apparatus of subheading 8517.30.15
8517.90.10	Of the switching apparatus of subheading 8517.30.20
8517.90.15	Other
8517.90.30	Of telephone sets
8517.90.35	Of other terminal apparatus
8517.90.40	Other
	Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones, earphones and combined microphone/speaker sets; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof:
	Headphones, earphones and combined microphone/speaker sets:
8518.30.10	Telephone handsets
	Magnetic tape recorders and other sound recording apparatus, whether or not incorporating a sound reproducing device:
8520.20.00	Telephone answering machines

[1] Harmonized Tariff Schedule of the United States (USITC Publication 2030).

Annex (5)

HTS heading or subheading [1]	Article
	Parts and accessories of apparatus of headings 8519 to 8521:
	[Pickup cartridges].
	Other:
8522.90.60	Parts of telephone answering machnines.
	Transmission apparatus for radiotelephony, radiotelegraphy, radiobroadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras:
	Transmission apparatus incorporating reception apparatus:
	Transceivers:
	[Citizen Band (CB); low-power radiotelephonic transceivers operating on frequencies from 49.82 to 49.90 MHz.]
	Other:
	Hand-held:
8525.20.3025	For frequencies exceeding 400 MHz.
	Other:
	[Marine VHF-FM.]
	Other:
8525.20.3080	For frequencies exceeding 400 MHz.
	Other:
8525.20.50	Cordless handset telephones.
8525.20.60	Other.
	Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock:
	[Radiobroadcast receivers provided for in subheadings 8527.11.11 thru 8527.39.00.]
	Other apparatus:
	[Articles designed for connection to telegraphic or telephonic apparatus or instruments or to telegraphic or telephonic networks.]
	Other:
8527.90.8010	Radiotelephonic or radiotelegraphic receivers:
	Radio paging receivers.

[1] Harmonized Tariff Schedule of the United States (USITC Publication 2030).

Annex (6)

HTS heading or subheading [1]	Article
	Television receivers (including video monitors and video projection television receivers), whether or not combined, in the same housing, with radiobroadcast receivers or sound or video recording or reproducing apparatus:
	Color:
	[Video recording or reproducing apparatus incorporating a television tuner.]
	Other television receivers:

HTS heading or subheading [1]	Article
	Not having a picture tube:
8528.10.8055	Apparatus for the reception of television signals relayed by television satellite.
	Flat panel television receivers:
8528.10.8058(pt.)	With a video display diagonal exceeding 29.5 cm.
	Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528:
	Antennas and antenna reflectors of all kinds; parts suitable for use therewith:
	[Television; radar, radio navigational aid and radio remote control.]
	Other:
8529.10.60(pt.)	Satellite ground station antennas for sending and receiving signals, having a diameter not exceeding 3 meters.
	Other:
	[Of television apparatus.]
	[Of radar, radio navigational aid or radio remote control apparatus.]
	Other:
8529.90.50(pt.)	Parts of apparatus of subheading 8525.20.3025 or 8525.20.3080.

[1] Harmonized Tariff Schedule of the United States (USITC Publication 2030).

Annex (7)

HTS heading or subheading [1]	Article
	Electric sound or visual signaling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530; parts thereof:
8531.10.00	Burglar or fire alarms and similar apparatus.
	[Indicator panels incorporating liquid crystal devices (LCD's) or light emitting diodes (LED's).]
	Other apparatus:
8531.80.0038	Radar detectors of a kind used in motor vehicles.
	Parts:
8531.90.00 (pt.)	Of burglar or fire alarms and similar apparatus; of radar detectors of a kind used in motor vehicles.
	Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof:
	Mounted piezoelectric crystals:
8541.60.00 (pt.)	With a capability greater than 24 MHz.
	Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fiber cables, made up of individually sheathed fibers, whether or not assembled with electric conductors or fitted with connectors:
8544.70.00	Optical fiber cables.
	Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars:
	[Vehicles specially designed for traveling on snow; golf carts and similar vehicles.]
	Other vehicles, with spark-ignition internal combustion reciprocating piston engine:
	Of a cylinder capacity exceeding 1,500 cc but not exceeding 3,000 cc:
8703.23.00 (pt.)	Motor vehicles of the type having a single side sliding door, whether or not rear seats, rearview windows, or sideview windows are present.
	Of a cylinder capacity exceeding 3,000 cc:
8703.24.00 (pt.)	Motor vehicles of the type having a single side sliding door, whether or not rear seats, rearview windows, or sideview windows are present.

[1] Harmonized Tariff Schedules of the United States (USITC Publication 2030).

Annex (8)

HTS heading or subheading [1]	Article
	Motor vehicles for the transport of goods:
	[Dumpers designed for off-highway use.]
	[Other, with compression-ignition internal combustion piston engine (diesel or semi-diesel).]
	Other, with spark-ignition internal combustion piston engine:
	G.V.W. not exceeding 5 metric tons:
8704.31.00 (pt.)	Motor vehicles of the type having a single side sliding door, whether or not rear seats, rearview windows, or sideview windows are present.
	Other aircraft (for example, helicopters, airplanes); spacecraft (including satellites) and spacecraft launch vehicles:
	Spacecraft (including satellites) and spacecraft launch vehicles:
8802.50.30	Communications satellites.
	Parts of goods of heading 8801 or 8802:
	[Propellers and rotors and parts thereof.]
	[Undercarriages and parts thereof.]
	[Other parts of airplanes or helicopters.]
	Other:
8803.90.30	Parts of communications satellites.
	Optical fibers and optical fiber bundles; optical cables other than those of heading 8544; sheets and plates of polarizing material; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked:

HTS heading or subheading[1]	Article
9001.10.00	Optical fibers, optical fiber bundles and cables.

[1] Harmonized Tariff Schedule of the United States (USITC Publication 2030).

Annex (9)

HTS heading or subheading[1]	Article
	Photocopying apparatus incorporating an optical system or of the contact type and thermocopying apparatus; parts and accessories thereof:
	Electrostatic photocopying apparatus:
	Operating by reproducing the original image directly onto the copy (direct process):
9009.11.00 (pt.)	With a capability of producing more than 50 copies per minute.
	Operating by reproducing the original image via an intermediate onto the copy (indirect process):
9009.12.00 (pt.)	With a capability of producing more than 50 copies per minute.
	Other photocopying apparatus:
	Incorporating an optical system:
9009.21.00 (pt.)	With a capability of producing more than 50 copies per minute.
	Of the contact type:
9009.22.00 (pt.)	With a capability of producing more than 50 copies per minute.
	Apparatus and equipment for photographic (including cinematographic) laboratories (including apparatus for the projection of circuit patterns on sensitized semiconductor materials), not specified or included elsewhere in chapter 90; negatoscopes; projection screens; parts and accessories thereof:
	[Apparatus and equipment for automatically developing photographic (including cinematographic) film or paper in rolls or for automatically exposing developed film to rolls of photographic paper.]
	Other apparatus and equipment for photographic (including cinematographic) laboratories; negatoscopes:
	[Contact printers.]
	[Developing tanks.]
	[Photographic film viewers, titlers, splicers and editors, all the foregoing and combinations thereof.
	Other:
9010.20.6040	Apparatus for the projection of circuit patterns on sensitized semiconductor materials.
	Parts and accessories:
	[Of photographic film viewers, titlers, splicers, editors or any combination of the foregoing.]
	Other:
9010.90.80 (pt.)	Of apparatus for the projection of circuit patterns on sensitized semiconductor materials.

[1] Harmonized Tariff Schedule of the United States (USITC Publication 2030).

Annex (10)

HTS heading or subheading[1]	Article
	Oscilloscopes, spectrum analyzers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 9028; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionizing radiations; parts and accessories thereof:
	[Instruments and apparatus for measuring or detecting ionizing radiations.]
	[Cathode-ray oscilloscopes and cathode-ray oscillographs.]
	Other instruments and apparatus, for measuring or checking voltage, current, resistance or power, without a recording device:
	[Multimeters.]
	Other:
	For measuring or checking voltage, current or resistance:
9030.39.0040 (pt.)	For electrical testing of linear and mixed signals (analog and digital) in integrated circuits;
	For testing logic circuits of application-specific-integrated-circuits and microprocessors capable of handling data words of at least 16 bits.
	Parts and accessories
	[For articles of subheading of 9030.10.]
	Other:
9030.90.80 (pt.)	Of instruments and apparatus for electrical testing of linear and mixed signals (analog and digital) in integrated circuits; Of instruments and apparatus for testing logic circuits of application-specific-integrated-circuits and microprocessors capable of handling data words of at least 16 bits.
9903.85.00	Microprocessors (provided for in subheading 8542.11.0045), software (provided for in subheadings 8524.21 through 8524.90) and all articles (however provided for in the HTS) designed for use with the operating system referred to as The Real-time Operating Nucleus (TRON), including but not limited to industrial robots, video cassette recorders, computer workstations, industrial control systems, and telecommunications switching apparatus.

[1] Harmonized Tariff Schedule of the United States (USITC Publication 2030).

Annex B

Telecommunications Services to be Considered for Possible Imposition of Fees or Restrictions

In providing comments on the following services sectors, the public is requested to address specifically:

(a) The extent of current, or anticipated participation of Japanese-owned or -controlled firms in the service sector;

(b) What type of fees or restrictions on Japanese services would be most appropriate or effective in responding to Japan's non-compliance with its commitments under the MOSS Telecommunications Agreements.

1. Common carrier services: A common carrier is a telecommunications company that offers communications transmission services indiscriminately to the general public. Common carrier services include, but are not limited to, voice telephone, packet-switched services, facsimile, private leased circuits.

2. Submarine cable facilities

3. Private radio service

4. Enhanced services: An enhanced service is any offering over the telecommunications network which is more than a basic transmission service. Enhanced services include, but are not limited to, electronic mail, code and protocol processing, voice mail.

[FR Doc. 89-10955 Filed 5-5-89; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: May 2, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0028

Form Number: 940 and 940PR

Type of Review: Extension

Title: Employer's Annual Federal Unemployment (FUTA) Tax Return; Planilla Para La Declaracion Anual Del Patrono—La Contribucion Federal Para El Desempleo (FUTA)

Description: Internal Revenue Code section 3301 imposes a tax on employers based on the first $7,000 of taxable annual wages paid each employee. IRS uses the information reported on Forms 940 and 940PR (Puerto Rico) to ensure that employers have reported and figured the correct FUTA wages and tax

Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations

Estimated Number of Respondents: 1,299,394

Estimated Burden Hours Per Response/Recordkeeping: Recordkeeping, 14 hours 7 minutes; Learning about the law or the form, 18 minutes; Preparing and sending the form to IRS, 32 minutes

Frequency of Response: Annually

Estimated Total Recordkeeping/Reporting Burden: 19,425,940 hours

Clearance Officer: Garrick Shear (202) 535-4297; Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-10941 Filed 5-5-89; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF VETERANS AFFAIRS

Wage Committee; Reestablishment

This gives notice under the Federal Advisory Committee Act (Pub. L. 92-463) of October 6, 1972, that the Department of Veterans Affairs Wage Committee has been reestablished for a two-year period beginning April 25, 1989, through April 25, 1991.

Dated: April 27, 1989.

By direction of the Secretary.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89-10925 Filed 5-5-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 87
Monday, May 8, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (Eastern Time) Monday, May 15, 1989.

PLACE: Clarence M. Mitchell, Jr., Conference room, No. 200–C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations—(Given by the Office of Inspector General)

Closed Session

1. Agency Adjudication and Determination on Federal Agency Discrimination Complaint Appeals
2. Litigation Authorization: General Counsel Recommendations

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at any time for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 634–6748.

Dated: May 3, 1989.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 89–11067 Filed 5–4–89; 1:05 pm]

BILLING CODE 6750–06–M

Corrections

Federal Register
Vol. 54, No. 87
Monday, May 8, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[Federal Acquisition Circular 84-45]

Federal Acqusistion Regulation (FAR); Prompt Pay and Definition of A-E Services

Correction

In rule document 89-7614 beginning on page 13332 in the issue of Friday, March 31, 1989, make the following correction:

52.232-26 [Corrected]

On page 13339, in the second column, in the seventh line, after "day" insert "after the due date, except where the interest penalty is".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 761, 785, 816 and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Areas Unsuitable for Mining; Special Categories of Mining; Surface Mining Activities; Underground Mining Activities

Correction

In proposed rule document 88-24976 beginning on page 43970 in the issue of Monday, October 31, 1989, make the following correction:

§ 785.16 [Corrected]

On page 43980, in the second column, in § 785.16, in the first paragraph, in the eighth line, insert "816.105" immediately after "816.104,".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

RIN 3150-AC61

Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Reactors

Correction

In rule document 89-8832 beginning on page 15372 in the issue of Tuesday, April 18, 1989, make the following corrections:

§ 52.43 [Corrected]

1. On page 15390, in the first column, in § 52.43(b), in the fourth line, "is" should read "in".

§ 52.68 [Corrected to read § 52.63]

2. On page 15392, in the second column, **§ 52.68 Finality of standard design certification** should read **§ 52.63 Finality of standard design certification.**

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-159-86]

Permitted Disparity With Respect to Benefits and Contributions

Correction

In proposed rule document 88-26071 beginning on page 45917 in the issue of Tuesday, November 15, 1988, make the following corrections:

1. On page 45918, in the 1st column, under **Explanation of Provisions**, in the 1st paragraph, in the 6th line, "because" was misspelled; and in the 20th line, "contributions" should read "contribution".

2. On the same page, in the same column, under **Explanation of Provisions**, in the 2nd paragraph, in the 18th line, "compensations" should read "compensation".

3. On the same page, in the 3rd column, in the 1st complete paragraph, in the 25th line, "not" should read "to".

4. On page 45919, in the second column, under **Defined Benefit Offset Plans**, in the second line, "benefits" should read "benefit".

5. On the same page, in the third column, under **Defined Benefit Excess Plans and Offset Plans**, in the first paragraph, in the fifth line, "plans" should read "plan".

6. On the same page, in the same column, under **Defined Benefit Excess Plans and Offset Plans**, in the 2nd paragraph, in the 11th line, after "to" insert "a".

7. On page 45920, in the second column, in the ninth line, "two" was misspelled.

8. On the same page, in the 3rd column, in the 2nd complete paragraph, in the 8th line, remove the period and insert a comma; and in the 10th line, after "disability" insert "benefit".

9. On page 45921, in the 3rd column, under **Benefits Limited by Reference to Final Pay**, in the 1st paragraph, in the 20th line, "years" was misspelled.

10. On page 45922, in the first column, under **Effective Date**, in the sixth line, "1.401(l)-3(1)"should read "1.401(l)-3(l)"

§ 1.401(a)(5)-1 [Corrected]

11. On page 45924, in § 1.401(a)(5)-1(d)(7), in *Example (3)*, in the third column, in the paragraph designated (c), in the 15th line, "(15,400)" should read "($15,400)".

§ 1.401(l)-1 [Corrected]

12. On page 45925, in the 1st column, in § 1.401(l)-1(a), in the 12th line, "section 414(g)" should read "section 414(q)".

§ 1.401(l)-2 [Corrected]

13. On page 45927, in the second column, in the section heading, "§ 1401(1)-2" should read "§ 1.401(l)-2".

§ 1.401(l)-3 [Corrected]

14. On page 45929,in the first column, in § 1.401(l)-3(b)(4)(iii)(C)(*2*), in the third line, "not only highly" should read "not highly".

15. On the same page, in § 1.401(l)-3(b)(5), in the 2nd column, in the 14th line, "above" was misspelled.

16. On the same page, in the 3rd column, in § 1.401(l)-3(b)(6)(ii), in the 14th line, "paragraphs (d)(1) (e)" should read "paragraphs (d)(1) and (e)".

17. On page 45930, in the 1st column, in § 1.401(l)-3(b)(7), in *Example (4)*, in

paragraph (a), in the 23rd line, after "years" insert "and 1.65% for each plan year after the first 10 plan years".

18. On the same page, in the 3rd column, in § 1.401(l)-3(c)(2)(iv), in the *Example*, in the 31st line, "must" was misspelled".

19. On page 45931, in the 3rd column, in § 1.401(l)-3(c)(6), in *Example (1)*, in the 27th line, "service of" should read "service for".

20. On page 45933, in the second column, in § 1.401(l)-3(d)(2), in the ninth line, "excess" should read "offset".

21. On page 45935, in the second column, in § 1.401(l)-3(d)(6), in *Example (4)*, below the table, in the 11th line, after "retirement" insert "benefit"; and in the 23rd line, "to" should read "the".

22. On page 45940, in the 2nd column, in § 1.401(l)-3(l)(4), in the 9th and 10th lines, "(1), (2), and (3)" should read "(l)(2), and (3)"

23. On page 45941, in the 3rd column, in § 1.401(l)-3(l)(6), in *Example (4)*, in paragraph (b), in the 26th line, before "years" insert "17".

BILLING CODE 1505-01-D

federal register

Monday
May 8, 1989

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 412

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1990 Rates; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BERC-630-P]

RIN 0938-AE02

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1990 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the Medicare inpatient hospital prospective payment system to implement necessary changes arising from legislation and our continuing experience with the system. In addition, in the addendum to this proposed rule, we are proposing changes in the amounts and factors necessary to determine prospective payment rates for Medicare inpatient hospital services. These changes would be applicable to discharges occurring on or after October 1, 1989. We are also setting forth proposed rate-of-increase limits for hospitals and hospital units excluded from the prospective payment system.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on July 7, 1989.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-630-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BERC-630-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave. SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

For individual copies of this proposed rule, contact the following: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

The charge for individual copies is $1.50 for each issue or for each group of pages as actually bound, payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT:

John Eppinger—Cancer Hospitals, (301) 966-4516

Barbara Wynn—All Other Issues, (301) 966-4529

To obtain copies of this document, see the "**ADDRESS**" section, above. To obtain data used in deriving the standardized amounts and DRG relative weights, see section VI.B., Public Requests for Data.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary

Under section 1886(d) of the Social Security Act (the Act), a system of payment for acute inpatient hospital stays under Medicare Part A (Hospital Insurance) based on prospectively-set rates was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment is made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). The regulations governing the inpatient hospital prospective payment system are located in 42 CFR Part 412.

On September 30, 1988, we published a final rule with comment period (53 FR 38476) to implement the sixth year of the prospective payment system. In addition to the many changes made by that rule that were final, we requested public comment on the revisions we made to the regulations to implement two provisions of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360 enacted on July 1, 1988) that affect payment to hospitals in Federal fiscal year (FY) 1989. Those revisions concern—

- The commuting criteria used to determine if hospitals located in a rural county adjacent to one or more urban areas may be deemed to be located in one of those urban areas (section 1886(d)(8)(B) of the Act, as amended by section 411(b)(4) of Pub. L. 100-360); and
- Adjustments made to the prospective payment system and the rate-of-increase ceiling (for hospitals and units excluded from the prospective payment system) to take into consideration the reductions in payments to hospitals by Medicare beneficiaries resulting from the elimination of a day limitation on Medicare inpatient hospital services (section 101 of Pub. L. 100-360).

The comment period for the September 30, 1988 final rule ended on November 29, 1988. We are developing a final rule to respond to the comments received from the public.

B. Major Contents of this Proposed Rule

This proposed rule would be effective for the seventh year of operation of the prospective payment system, beginning October 1, 1989. Following is a summary of the major changes that we are proposing to make to the system:

1. Changes to the DRG Classification and Weighting Factors

As required by section 1886(d)(4)(C) of the Act, we must adjust the DRG classifications and weighting factors at least annually. Our proposed changes for FY 1989 are set forth in section II of this preamble.

2. Changes in the Wage Index

We are proposing to update the wage index by basing it entirely on 1984 wage data. In addition, we would make adjustments to the wage data to reflect the provisions of section 8403(a) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647). These proposed changes are set forth in section III of this preamble

3. Other Decisions and Regulations Changes

In section IV of this preamble, we discuss several current provisions of the regulations in 42 CFR Part 412 and set forth certain proposed changes concerning—

- Annual publication of prospective payment rates;
- Payment for burn outlier cases;
- Payments to sole community hospitals;
- Beneficiary access to care in rural areas;
- Payments to cancer hospitals;
- Rural referral center criteria;
- Payment for disproportionate share hospitals; and
- Payment for the indirect costs of medical education.

4. Determining Prospective Payment Rates and Rate of-Increase Limits

In the addendum to this proposed rule, we set forth proposed changes to the amounts and factors for determining the FY 1990 prospective payment rates. We are also proposing new target rate percentages for determining the rate-of-

increase limits for FY 1990 for hospitals and hospital units excluded from the prospective payment system.

5. Impact Analysis

In Appendix A, we set forth an analysis of the impact that the proposed changes described in this rule would have on affected entities.

6. Report to Congress on the Update Factor

Section 1886(e)(3)(B) of the Act requires the Secretary report to Congress no later than March 1, 1989 on our initial estimate of an update factor for FY 1990 for both prospective payment hospitals and hospitals excluded from the prospective payment system. This report is included as Appendix B of this proposed rule.

7. Proposed Recommendation of Update Factor

As required by sections 1886(e)(4) and (e)(5) of the Act, Appendix C provides our recommendation of the appropriate percentage change for FY 1990 in the—

- Large urban, other urban, and rural average standardized amounts for inpatient hospital services paid for under the prospective payment system; and
- Target rate-of-increase limits to the allowable operating costs of inpatient hospital services furnished by hospitals and hospital units excluded from the prospective payment system.

8. Discussion of Prospective Payment Assessment Commission Recommendations

The Prospective Payment Assessment Commission (ProPAC) is directed by section 1886(d)(4)(D) of the Act to make recommendations to the Secretary with respect to adjustments to the DRG classifications and weighting factors and to report to Congress with respect to its evaluation of any adjustments made by the Secretary. ProPAC is also directed, by the provisions of sections 1886(e)(2) and (e)(3) of the Act, to make recommendations to the Secretary on the appropriate percentage change factor to be used in updating the average standardized amounts beginning with FY 1986 and thereafter. These recommendations for FY 1990 were submitted to the Secretary on March 1, 1989.

We are printing ProPAC s report, which includes its recommendations, as Appendix D of this document. The recommendations, and the actions we are proposing to take with regard to them (when an action is recommended), are discussed in detail in the appropriate sections of this preamble or the appendixes of this proposed rule. Those recommendations that are not specifically relevant to matters presented below are discussed in section V of this preamble. For a brief summary of the ProPAC recommendations, we refer the reader to pages 5 through 7 of the ProPAC report as set forth in Appendix D of this proposed rule. ProPAC also produced technical appendixes in its March 1, 1989 report that provide background material and detailed analyses used in preparation of the ProPAC recommendations. For further information relating specifically to the ProPAC report or to obtain a copy of the technical appendixes, contact ProPAC at (202) 453–3986.

II. Changes to DRG Classifications and Weighting Factors

A. Background

Under the prospective payment system, we pay for inpatient hospital services on the basis of a rate per discharge that varies by the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the national average of resources used to treat all Medicare cases. Thus, cases in a DRG with a weight of 2.0 would, on average, require twice as many resources as the average Medicare case.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and weighting factors annually beginning with discharges occurring in FY 1988. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The proposed changes to the DRG classification system and the proposed recalibration of the DRG weights for discharges occurring on or after October 1, 1989 are discussed below.

B. Reclassification of DRGs

1. General

Cases are classified into DRGs for payment under the prospective payment system based on the principal diagnosis, up to four additional diagnoses, and any procedures performed during the stay, as well as age, sex, and discharge status of the patient. The diagnostic and procedure information is expressed by the hospital using codes from the International Classification of Diseases, Ninth Edition, Clinical Modification (ICD–9–CM). The intermediary enters the information into its claims system and subjects it to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG can be accomplished.

After screening through the MCE and any further development of the claims, cases are classified by the GROUPER software program into the appropriate DRG. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). It is used 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.

Currently, there are 477 DRGs in 23 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body (for example, MDC 6, Diseases and Disorders of the Digestive System); however, some MDCs are not constructed on this basis since they involve multiple organ systems (for example, MDC 22, Burns).

Principal diagnosis determines MDC assignment. Within most MDCs, cases are then divided into surgical DRGs (based on a surgical hierarchy that orders individual procedures or groups of procedures by resource intensity) and medical DRGs. Medical DRGs generally are differentiated on the basis of diagnosis, age, and presence or absence of complications or comorbidities (hereafter CC) only. Generally, GROUPER does not consider other procedures; that is, nonsurgical procedures or minor surgical procedures generally not done in an operating room are not listed as operating room (OR) procedures in the GROUPER decision tables. However, there are a few non-OR procedures that do affect DRG assignment for certain principal diagnoses, such as extracorporeal shock wave lithotripsy for patients with a principal diagnosis of urinary stones.

We are proposing to make some changes to the DRG classification system on the basis of problems identified over the past year. These proposed changes are set forth below.

2. MDC 4: Diseases and Disorders of the Respiratory System

We have received a number of requests from hospitals and other organizations for the expansion of DRG 474 (Respiratory System Diagnosis with Tracheostomy) and DRG 475 (Respiratory System Diagnosis with Ventilator Support) to include principal diagnoses from any MDC when ventilator support is used. In addition, we have received reports of problems experienced by hospitals in the coding and billing of those cases in MDC 4 involving ventilator support.

Beginning with discharges occurring on or after October 1, 1987, cases with a principal diagnosis in MDC 4 and one of the tracheostomy procedure codes (31.1 (Temporary tracheostomy), 31.21 (Mediastinal tracheostomy), or 31.29 (Other permanent tracheostomy)) were assigned to the new DRG 474. Cases involving mechanical ventilation through endotracheal intubation were assigned to the medical DRG 475. DRG 475 includes cases presenting a principal diagnosis assigned to MDC 4 and showing both non-OR procedure codes 93.92 (Other mechanical assistance to respiration) and 96.04 (Insertion of endotracheal tube). Beginning with discharges occurring on or after October 1, 1988, the title for procedure code 93.92 was revised to "Other mechanical ventilation". We will discuss the change in the definition of this code as part of our proposed GROUPER change, below.

DRG 475 is assigned to cases with a respiratory system principal diagnosis when neither a temporary tracheostomy nor any operating room procedure is performed and both procedure code 96.04 and 93.92 are performed. The majority of cases involving surgery for respiratory diagnoses are routinely intubated endotracheally, if only on a prophylactic basis. This procedure is considered a part of the surgery and is not normally coded. Assuming that the hospital charges for the procedure, even when it is not coded, the weighting factors for surgical DRGS already account for the resources involved in intubating patients. Thus, DRG 475 was intended to account only for those cases for which there is no surgical procedure and the intubation will be likely to be of longer duration.

Before presenting our proposals in this area, we would like to review the circumstances surrounding the development of these DRGs. In reviewing the FY 1985 Medicare provider analysis and review (MEDPAR) data, we found that cases involving mechanical ventilation had average charges that were 2 to 10 times the average charge for other patients in the same DRG for each DRG of MDC 4. In further evaluating the cases requiring ventilation, we noted a significant difference in use of resources between patients for whom ventilator access was achieved through endotracheal intubation as opposed to tracheostomy. The average charge for cases involving tracheostomies was three times the average charge for other ventilator cases. Our medical consultants speculated that this related primarily to ventilator time as opposed to actual resource difference associated with the method used in creating access. That is, in patients expected to be ventilated for extended periods of time, tracheostomy is the preferred access due to irritations of the larynx and other complications frequently associated with prolonged endotracheal intubation.

There were two factors in the ICD–9–CM coding applicable to the procedures involved when these DRGs became effective in October 1987 that governed our decision to base the two new DRGs on procedures performed. First, the ICD–9–CM codes provide no means of representing the amount of time spent on the ventilator. This distinction would have eliminated the need to know where the patient had been ventilated and by what means. In order to recognize the significant difference in use of resources in ventilator cases related to time on the ventilator, we chose to use the procedures involved in the different means of access as proxies for these data that were not available through the entries on the Medicare claim form. Second, at that time, procedure code 93.92 (Other mechanical assistance to respiration) was defined in the ICD–9–CM as including the Bennett respirator, the Byrd respirator, endotracheal respiratory assistance, and mechanical ventilation. The code also included, by indexing, continuous positive airway pressure, which is achieved through a mask or nasal cannula as opposed to the endotracheal tube or tracheostomy required for use of the other respirators. Since 93.92 then included at least one form of respiratory assistance that could be used without an endotracheal tube, DRG 475 was initially defined as requiring both the ventilator code (93.92) and the code for endotracheal intubation (96.04) in order to exclude those less invasive forms of respiratory assistance.

The American Association for Respiratory Care, the American College of Chest Physicians, the National Association of Medical Directors of Respiratory Care (NAMDRC), ProPAC, and numerous other commenters have expressed general support for the creation of DRGs 474 and 475. In addition, many commenters at that time encouraged the expansion of the DRGs to include patients with other than respiratory diagnoses. We stated that we would continue our research in this area, including analysis of superior means of identifying ventilator cases and ways to address this issue in postsurgical cases or for patients with nonrespiratory diagnoses. NAMDRC, however, questioned the use of the procedure codes to define discrete DRGs. To quote part of its comment:

> * * * the decision to perform a tracheostomy versus continuing treatment with an endotracheal tube is not as simple as inferred by the proposed notice [May 19, 1987; 52 FR 18880]. Recent advances in technology have vastly improved the high volume, low pressure cuff endotracheal tube and, therefore, it is not uncommon to leave a patient intubated endotracheally for extended periods of time, perhaps as long as three weeks. There is no question that there are many cases where the long term prognosis indicates the appropriateness of a tracheostomy, but we are not confident that the new system would appropriately reimburse a lengthy and costly stay simply because a physician made a judgement to keep a patient intubated with an oral or nasal endotracheal tube and spare the patient the inconvenience and possible complications associated with a tracheostomy.

Both NAMDRC and ProPAC shared our concern that the new DRGs would create financial incentives for hospitals to pressure physicians to intubate patients or perform tracheostomies. Although several commenters did not believe that any physician would perform a procedure that was not needed by the patient, we believe that our caution was justified. As the basis for their recommendations for DRG classification changes, many commenters routinely claim that the DRG definitions and weighting factors affect medical practice patterns, limit Medicare beneficiary access to the most up-to-date and sophisticated technologies, and subject physicians to financially-motivated pressure by hospital managers. If we are to believe that failure of the DRGs to provide higher payment for cases involving certain technologies may discourage their use, we may reasonably anticipate that the recognition of procedures and technologies such as tracheostomies and mechanical ventilation in relatively high-weighted DRGs may encourage their use.

We advised the medical community of our intent to target DRGs 474 and 475 for medical review by the Peer Review Organizations (PROs) to ensure that use

of the diagnoses and procedures that result in assignment of cases to these DRGs was reasonable and appropriate. In fact, we were not aware of the extent of the problems experienced by hospitals until they were revealed by PRO review. In retrospect, we believe that we should have described in greater detail the situations in which these two new procedure-based DRGs would be assigned. In originally describing these DRGs, we did not reiterate that the necessary procedures had to be performed when the patient was an inpatient of the hospital submitting the bill.

Some hospital staffs believe that the GROUPER logic for DRGs 474 and 475 should be applied whenever prolonged ventilation is involved, regardless of where the intubation or tracheostomy was performed. This is a logical argument, since a hospital will very likely use as many resources in treating a ventilator patient who was intubated or received a tracheostomy in an ambulance or in another hospital's emergency room. Many hospitals requested a waiver of the rules governing billing and payment for inpatient and outpatient services under both Parts A and B of Medicare. In the current situation, the stay in a second hospital will not be assigned DRG 474 or 475, respectively, since the procedures necessary for this assignment are not performed on an inpatient of that hospital and, thus, cannot be coded on the hospital's bill.

At least one of the situations that governed the development of these DRGs has changed since October 1987, and we believe that we can revise DRG 475 to address the problems that hospitals have experienced with transfer and emergency room patients. As we stated earlier, procedure code 93.92 was revised beginning with discharges occurring on or after October 1, 1988 to "Other mechanical ventilation". More significant is the fact that continuous positive airway pressure was reclassified to its own code, 93.90, at that time. Since procedure code 93.92 now only refers to mechanical ventilation achieved by insertion of an endotracheal tube, we propose to revise DRG 475 to remove the requirement of the coding of the insertion of an endotracheal tube. This would mean that cases would be assigned to DRG 475 when a ventilator patient with a principal diagnosis in MDC 4 is intubated elsewhere. When a patient is transported with an established tracheostomy, the receiving hospital would be paid under DRG 475 if the principal diagnosis is still classified in MDC 4, the patient receives mechanical ventilation, and no operating room procedures were performed during the stay in that hospital.

We recognize that ventilator cases in other MDCs tend to be more resource intensive than other cases within the same DRG. There is, however, no agreement as to the mechanism to be used in classifying them. After its review of the many decisions involved in choosing an endotracheal intubation over a tracheostomy, NAMDRC has recommended that there be one ventilator DRG for all MDCs with a weight somewhere between that of DRGs 474 and 475. This DRG would apply to patients requiring mechanical ventilation for a total of 5 or more days during a hospitalization. As NAMDRC stated in its comment to the May 19, 1987 proposed notice (see quoted material, above), it believes that the use of the tracheostomy procedure in our definitions incorrectly assigns short-term ventilation to DRG 474 and long-term ventilation by intubation to DRG 475.

We are concerned that a single ventilator DRG for all MDCs may not be appropriate unless it is based upon an objective measure of the ventilator time involved, independent of the procedures performed. NAMDRC recommended that we conduct research to determine which "medical record identifier" would best identify patients to be assigned to this DRG. In this regard, the ICD–9–CM Coordination and Maintenance Committee received a recommendation for a duration indicator in cases with mechanical ventilation from the National Association of Childrens Hospitals and Related Institutions (NACHRI) in 1987. This was included in the NACHRI recommendations for newborn birthweight categories and separate procedure codes for continuous positive airway pressure and extracorporeal membrane oxygenation. NACHRI's recommendation for a duration indicator was not adopted by the Committee, in part because it could not reach a consensus on the best way for coders to assign the time increments. We will revisit this subject with the Committee and urge interested parties to provide suggestions to it.

Studies by the Yale DRG Refinement Project and by Health Systems International (HSI) under its contract with HCFA have both constructed models with a DRG for tracheostomies. The HSI model would designate two separate DRGs for tracheostomies: One for tracheostomies with a principal diagnosis related to the mouth, larynx or pharynx and the other for tracheostomies in all other MDCs. The Yale model would group all cases involving procedure code 31.1 (Temporary tracheostomy) within a given MDC to a separate DRG; that is, there is a DRG for temporary tracheostomies within each DRG. The other manifestations of respiratory failure are represented in the Yale model by the ranking of that diagnosis code in the severity categories established for the medical and surgical DRGs in each MDC. Respiratory failure is ranked in the most severe category for every DRG.

We intend to analyze the impact these alternative models would have on the DRG classification system. However, this analysis will not be completed in time to consider changes in the classification of tracheostomy cases in FY 1990.

3. Surgical Hierarchies

Some inpatient stays entail multiple surgical procedures, each one of which, occurring by itself, could result in assignment of the case to a different DRG within the MDC to which the particular principal diagnosis is assigned. It is therefore necessary to have a decision rule by which these cases are assigned to a single DRG. The surgical hierarchy, an ordering of groups of procedures from most to least resource intensive, performs that function. Its application ensures that cases involving multiple surgical procedures are assigned to the DRG associated with the most resource-intensive procedure group.

Because the relative resource intensity of procedure groups can shift as a function of DRG reclassification and recalibration, we reviewed the surgical hierarchy of each MDC, as we have for previous reclassifications, to determine if the ordering of procedures coincided with the intensity of resource utilization, as measured by the same billing data used to compute the DRG relative weights.

The surgical hierarchy is based upon procedure groups. Consequently, in many cases, hierarchy has an impact on more than one DRG. The methodology for determining the most resource-intensive procedure groups, therefore, involves weighting each DRG for frequency to determine the average resources for each procedure group. For example, assume procedure group A includes DRGs 1 and 2 and procedure group B includes DRGs 3, 4, and 5, and that the weighting factor for DRG 1 is higher than that for DRG 3, but the weights for DRGs 4 and 5 are higher than the weight for DRG 2. To determine

the surgical hierarchy, we would weight the weighting factor of each DRG by frequency to determine average resource consumption for the group of procedures and order the procedure groups from that with the highest to that with the lowest average resource utilization, with the exception of "other (OR) procedures" as discussed below.

This methodology may occasionally result in a case involving multiple procedures being assigned to the lower weighted DRG of the available alternatives. However, given that the logic underlying the surgical hierarchy provides that the GROUPER searches for procedures that sometimes occur in cases involving multiple procedures, this result is unavoidable.

We would like to point out, notwithstanding the foregoing discussion, that there are a few instances where a procedure group with a smaller average relative weight is ordered above a procedure group with a higher average relative weight. First, the "other OR procedures" group is uniformly ordered last in the surgical hierarchy of each MDC in which it occurs regardless of the fact that the weighting factor for the DRG or DRGs in that procedure group may be higher than that for other procedure groups in the MDC. The "other OR procedures" group is a group of procedures that are least likely to be related to the diagnoses in the MDC but are occasionally performed on patients with these diagnoses. Therefore, these procedures should only be considered if no other procedure more closely related to the diagnoses in the MDC has been performed.

The second type of situation occurs when the difference between the two average weights for two procedure groups is very small. We have found that small differences generally do not warrant reordering the hierarchy since, by virtue of the hierarchy change, the weighting factors are likely to shift such that the higher-ordered procedure group has a lower average weight than the group ordered below it.

Based on the preliminary recalibration of the DRGs, we are proposing to modify the surgical hierarchy as set forth below. As discussed below in section II.C. of this preamble, we anticipate that the final recalibrated weights will be somewhat different from those proposed since they will be based on more complete data. Consequently, further revision of the hierarchy, using the above principles, may be necessary in the final rule.

At this time, we would revise the surgical hierarchy for MDC 5 (Diseases and Disorders of the Circulatory System) and MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue) as follows:

a. In MDC 5, we would reorder Cardiac Pacemaker Replacement and/or Revision (DRGs 117 and 118) [1] above Vascular Procedures Except Major Reconstruction Without Pump (DRG 112).

b. In MDC 8, we would reorder Biopsies (DRG 216) above Back and Neck Procedures (DRGs 214 and 215); and we would reorder Arthroscopy (DRG 232) above Major Shoulder/Elbow Procedures or Other Upper Extremity Procedures With CC (DRG 223).

4. Refinement of Complications and Comorbidities List

There is a standard list of diagnoses that are considered complications and comorbidities (CCs). This list was developed by physician panels to include those diagnoses that, when present as a secondary condition, would be considered a substantial complication or comorbidity. A substantial CC, in turn, is defined as a condition that, because of its presence with a specific principal diagnosis, would cause an increase in length of stay by at least one day for at least 75 percent of the patients.

Based upon analysis by our medical consultants, we propose to eliminate the following minor cardiac block and dysrhythmia diagnoses from the CC list:

426.10 Atrioventrical block, not otherwise specified (NOS)
426.11 Atrioventrical block, lst degree
426.12 Atrioventrical block—Mobitz (type) II
426.13 Atrioventrical block, 2nd degree, Not elsewhere classified (NEC)
426.2 Left bundle branch hemiblock
426.3 Left bundle branch block NEC
426.4 Right bundle branch block
426.50 Right bundle branch block NOS
426.51 Right bundle branch block and left posterior fascicular block
426.52 Right bundle branch block and left anterior fascicular block
426.53 Bilateral bundle branch block NEC

Each of these procedures would no longer be considered a CC for any principal diagnosis.

In the September 1, 1987 final notice concerning changes to the DRG classification system (52 FR 33143), we modified the GROUPER logic so that certain diagnoses included on the standard list of complications and comorbidities would not be considered a valid CC in combination with a particular principal diagnosis. (Thus, we created the CC Exclusions List.) We made these changes to preclude coding of closely related conditions, to preclude duplicative coding or inconsistent coding from being treated as complications or comorbidities, and to ensure that cases are appropriately classified between the complicated and uncomplicated DRGs in a pair.

In the May 19, 1987 proposed notice concerning changes to the DRG classification system (52 FR 33143), we explained that the excluded secondary diagnoses were established using the following five principles:

- Chronic and acute manifestations of the same condition should not be considered CCs for one another (as subsequently corrected in the September l, 1987 final notice (52 FR 33154)).
- Specific and nonspecific (that is, not otherwise specified (NOS)) diagnosis codes for a condition should not be considered CCs for one another.
- Conditions that may not co-exist, such as partial/total, unilateral/bilateral, obstructed/unobstructed, and benign/malignant, should not be considered CCs for one another.
- The same condition in anatomically proximal sites should not be considered as CCs for one another.
- Closely related conditions should not be considered as CCs for one another.
- We indicated in the September l, 1987 final notice (52 FR 33154) that the creation of the CC Exclusions List was a major project involving hundreds of thousands of codes and that the FY 1988 revisions were intended to be only a first step toward refinement of the CC list in that the criteria used for eliminating certain diagnoses from consideration as CCs were intended to identify only the most obvious diagnoses that should not be considered complications of another diagnosis. For that reason and in light of comments and questions on the CC list, we have continued to review the remaining CCs to identify additional exclusions and to remove diagnoses from the master list that have been shown not to meet the definition of a CC, stated above, as appropriate. See the September 30, 1988 final rule for the revision made for the discharges occurring in FY 1989 (53 FR 38485).

We are proposing a limited revision of the CC Exclusions List, which includes corrections of errors in the existing list, addition of a number of excluded CCs, and the deletion of a number of excluded CCs. These proposed changes are being made in accordance with the

[1] A single title combined with two DRG numbers is used to signify pairs, the first DRG of which is cases with CC and the second of which is cases without CC. If a third number is included, it represents cases of patients who are age 0–17.

principles established when we created the Exclusions List in 1987.

Table 6f in section IV of the addendum to this proposed rule contains the proposed additions to the CC Exclusions List that would be effective for discharges occurring on or after October 1, 1989. The table shows the principal diagnoses with proposed changes to the excluded CCs. Each of these principal diagnoses is shown with an asterisk and the additions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis. The indented diagnosis would not be recognized by the GROUPER as a valid CC for the asterisked principal diagnosis beginning with discharges on or after October 1, 1989.

This year, many four digit diagnosis codes on the master CC list are included on Table 6d, since they have been replaced by two or more new five-digit diagnosis codes. Since the five-digit definitions provide greater specificity in classifying the diagnoses, some of the new codes will no longer describe a CC or will describe a CC in a four-digit category that was not previously on the CC list.

Example

*25060
34501
34510
34511

The four-digit diagnosis code 3450 (Generalized nonconvulsive epilepsy) was not on the master CC list while 3451 (Generalized convulsive epilepsy) was on the list. Code 3451 was excluded as a CC for the principal diagnosis 25060 (Diabetes with neurological manifestations, adult or unspecified onset) for discharges occurring on or after October 1, 1988. Beginning with discharges on or after October 1, 1989, the ICD 9–CM adds a fifth digit designating whether or not intractable epilepsy is involved. The four-digit diagnosis codes are eliminated wherever they occurred on the Exclusion List. Both of the five-digit codes 34510 and 34511 are added to the Exclusion List in place of 3451. Even though the code 3450 was not considered a CC, 34501 (Generalized nonconvulsive epilepsy with intractible epilepsy) is considered a CC and is added to the master list. Code 34501 will be excluded as a CC for the principal diagnosis 25060.

The only CCs that would be deleted from the CC Exclusions List are those deleted diagnosis codes in Table 6d that are currently on the CC list and those diagnoses listed above that we are proposing to delete from the main CC list. The following diagnoses codes from Table 6d should be deleted from the CC list and wherever they appear on the CC Exclusions List: 345.1; 403.0; 404.0; 410.0–410.9; 411.8; 996.6; and 996.7.

Copies of the original CC Exclusions List applicable to FY 1988 can be obtained from the National Technical Information Service (NTIS) of the Department of Commerce. It is available in hard copy for $64.95 and on microfiche for $18.50. These prices include $3.00 for shipping and handling. A request for the FY 1988 CC Exclusions List (which should include the identification accession number, ((PB) 88–133970), should be made to the following address: National Technical Information Service, United States Department of Commerce, Springfield, Virginia 22161, or by calling (703) 487–4650.

Users should be aware of the fact that both the revisions in Tables 6d and 6e of the September 30, 1988 final rule and those in Table 6f of this document must be incorporated into the list purchased from NTIS in order to obtain the CC Exclusions List applicable for discharges occurring on or after October 1, 1989. (We do not intend to update the listing available from NTIS to reflect these or any future revisions.)

Alternatively, the complete documentation of the GROUPER logic, including the current CC Exclusions List is available from Health Systems International (HSI). HSI, under contract with HCFA, is responsible for updating and maintaining the GROUPER program. The current DRG Definitions Manual, Fifth Revision is available for $165.00, which includes $15.00 for shipping and handling. The Sixth Revision of this manual, which will include the changes proposed on this document as finalized in response to public comment, will be available in September 1989 for $195.00. These manuals may be obtained by writing HSI at: 100 Broadway, New Haven, Connecticut 06511, or by calling (203) 562–2101.

Please specify the revisions requested.

5. Review of Procedure Codes in DRGs 468 and 477

Each year, we review cases assigned to DRG 468 (Unrelated Operating Room Procedures) in order to determine whether, in conjunction with certain principal diagnoses, there were certain procedures performed that are not currently included in the surgical hierarchy for the MDC in which the diagnosis falls. In FY 1989, this review resulted in the addition of DRG 476 (Prostatic OR Procedure Unrelated to Principal Diagnosis) and DRG 477 (Non-Extensive OR Procedure Unrelated to Principal Diagnosis). For a detailed discussion of the changes, see the September 30, 1988 final rule (53 FR 38487).

Since DRG 468 is reserved for those cases in which none of the OR procedures is related to the principal diagnosis, it is intended to capture atypical medical cases, that is, those cases not occurring with sufficient frequency to represent a distinct recognizable clinical group. DRGs 476 and 477 are assigned to specific subsets of these codes. DRG 476 is assigned to those discharges in which one of the following prostatic procedures is performed that is unrelated to the principal diagnosis:

60.2—Transurethral prostatectomy
60.61—Local excision of lesion of prostate
60.69—Prostatectomy NEC
60.94—Control of postoperative hemorrhage of prostate

DRG 477 is assigned to those discharges in which the only procedure performed is a nonextensive procedure that is unrelated to the principal diagnosis.

In Table 6c in section IV of the addendum to the September 30, 1988 final rule, we listed the ICD–9–CM procedure codes for all of the procedures we consider nonextensive procedures if performed with an unrelated principal diagnosis. These cases are grouped in DRG 477.

Because of the addition of DRG 477, we conducted this year's review of procedures producing DRG 468 or 477 assignments on the basis of volume of cases with each procedure. Our medical consultants then identified those procedures occurring in conjunction with certain diagnoses with sufficient frequency to justify adding them to one of the surgical DRGs for the MDC in which the diagnosis falls. On the basis of this review, we are proposing two DRG classification changes in order to reduce unnecessary assignment of cases to DRG 477.

In MDC 14 (Pregnancy, Childbirth and Puerperium), we are proposing to add two procedure codes to the operating room procedures in DRG 374 (Vaginal Delivery With Sterilization and/or D&C). Currently these procedures, when combined with a principal diagnosis in MDC 14 such as 665.41 (High vaginal laceration), group to DRG 477. The two procedure codes to be added to DRG 374 are procedure codes 69.09 (Other dilation and curettage) and 69.52 (Aspiration curettage following delivery or abortion).

6. Changes to the ICD–9–CM Coding System.

As discussed above in section II.B.1. of this preamble, ICD–9–CM is a coding system for the reporting of diagnostic information and procedures performed on a patient. In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee charged with the mission of maintaining and updating the ICD–9–CM. This includes approving new coding changes, developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The Committee is co-chaired by the National Center for Health Statistics (NCHS) and HCFA. The NCHS has responsibility for the ICD–9–CM diagnoses codes included in Volumes 1 and 2—Diseases: Tabular List and Diseases: Alphabetic Index, while HCFA has responsibility for the ICD–9–CM procedure codes included in Volume 3—Procedures: Tabular List and Alphabetic Index.

The Committee encourages participation in the above process by major 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 input into coding matters from representatives of recognized organizations in the coding fields, such as the American Medical Record Association, the American Hospital Association, and the Commission on Professional and Hospital Activities, as well as physicians, medical record administrators, and other members of the public. Considering the opinions expressed at the public meetings, the Committee formulates recommendations, which then must be approved by the agencies.

The Committee presented proposals for coding changes at public meetings held on April 14, 1988, July 21–22, 1988, and December 1, 1988 and finalized the coding changes after consideration of comments received at the meetings and in writing in the 30 days following the December 1, 1988 meeting. The initial meeting for consideration of coding issues for resolution in FY 1990 was held on April 4, 1989. Copies of the minutes of these meetings may be obtained by writing to the co-chairpersons representing NCHS and HCFA. We encourage commenters to address suggestions on coding issues involving diagnosis codes to: Ms. Sue Meads, R.R.A, Co-Chairperson, ICD–9–CM Coordination and Maintenance Committee, NCHS, Rm 2–19, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782.

Questions and comments concerning the procedure codes should be addressed to: Ms. Patricia E. Brooks, Co-Chairperson, ICD–9–CM Coordination and Maintenance Committee, HCFA, Office of Coverage Policy, Rm 1–J–2 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

The additional new ICD–9–CM codes that have been approved will become effective October 1, 1989. The new ICD–9–CM codes are listed, along with their proposed DRG classifications, in Tables 6a, 6b, and 6c in section IV of the addendum to this proposed rule. As we stated above, the code numbers and their titles were presented for public comment in the ICD–9–CM Coordination and Maintenance Committee meetings. Both oral and written comments were considered before the codes were approved. Therefore, we are soliciting comments on the proposed DRG classification only.

Further, the Committee has recommended the expansion of the ICD–9–CM diagnosis codes shown on Table 6d to categories requiring a fifth digit for valid diagnosis code assignment. Thus, these diagnosis codes would not be recognised by GROUPER 7 beginning with discharges occurring on or after October 1, 1989. The corresponding five digit codes are shown in Table 6a. Finally, the Committee has recommended the deletion of the ICD–9–CM procedure codes shown in Table 6e. These codes were vacated because of the new and revised codes established by the Committee and will be reserved for future refinements of the ICD–9–CM.

7. Other Issues

a. *Cochlear Implants.* In the September 30, 1988 final rule (53 FR 38476), we agreed to reevaluate the placement of cochlear implant discharges in DRG 49 (Major Head and Neck Procedures) based upon billing data from FY 1988. While cochlear implant cases may not be clinically coherent with other discharges assigned to DRG 49, the FY 1988 Medicare data still do not indicate there would be a material difference in the weighting factors if a separate DRG were created for cochlear implants.

We examined the mean standardized charge for all cochlear implants and separately examined the mean standardized charges for single channel and multichannel implants. The mean standardized charge for all cochlear implants was approximately 17 percent less than the mean standardized charge for all other procedures in DRG 49. Although the number of cochlear implant cases in FY 1988 has almost doubled (113), these discharges only represent two percent of the total discharges in DRG 49.

In the event that the number of cases involving the cochlear implant continues to rise, we will, of course, consider classifying them in a separate DRG. However, if we were to remove cochlear implants from DRG 49 to create a separate DRG based upon the FY 1988 data, payment for cochlear implants would be less since the lower mean standardized charge in cases involving these procedures would result in a lower relative weighting factor. Thus, we find no compelling reason to create a new DRG at this time.

We recognize that hospitals may be experiencing some problems with the coding of cochlear implants. For a discussion of these problems, see the September 30, 1988 final rule (53 FR 38490). We have notified interested organizations of the importance of educating hospital coders and hospital management of the need to use the device-specific code. In addition, we have provided materials on coding changes through the intermediaries.

b. *Partitioned by Expansion of the List of DRGs Complications and Comorbidities (CCs).* In the September 30, 1988 final rule (53 FR 38491), we agreed to reevaluate the importance of CCs in DRGs not currently partitioned by the presence or absence of CCs. We have funded a number of studies in recent years designed to evaluate and improve the measurement of hospital case mix. In one recently completed study, Yale University has developed a refined DRG system that differentiates patients within each DRG based on whether they had a catastrophic, major, moderate, or minor or no CCs.

The DRG refinement model produces significant improvements in predicting resource use and does not represent a radical departure from the current structure of the DRGs nor does it require the collection of any additional data. Although the results of this study appear promising, we are unable to implement the refined DRG system at this time. We believe that more analyses are needed to confirm the appropriateness of the expanded DRGs and to determine

whether adoption of the refined DRG system would require other conforming changes to the payment system (that is, reestimation of the indirect medical education adjustment factor and the disproportionate share adjustment factor and reevaluation of the need for separate urban and rural rates) in order to mitigate a potentially large redistribution of Medicare payments across different categories of hospitals. We intend to reevaluate over the next year the importance of CCs in the nonpaired DRGs as part of our analysis of the Yale study results.

c. *Limb Salvage Surgery.* In the September 30, 1988 final rule (53 FR 38483), we stated that we had become involved in a broad analysis of the classification of certain major cardiovascular procedures that could potentially result in the restructuring of DRG 108 (Other Cardiothoracic or Vascular Procedures With Pump), DRG 109 (Other Cardiothoracic Procedures Without Pump), DRGs 110 and 111 (Major Reconstructive Vascular Procedures Without Pump), and DRG 112 (Vascular Procedures Except Major Reconstruction Without Pump). This analysis evolved from our ongoing DRG refinement analysis.

We were contacted in January 1988 by the co-chairmen of an ad hoc committee of the joint councils of the combined vascular societies in the United States (The Society for Vascular Surgery and The North American Chapter of the International Cardiovascular Society). The ad hoc committee had been appointed at a June 1987 meeting after its membership agreed that there was a need to change the existing DRG structure for vascular surgery. The problem that the committee had observed is that the DRG system provides the same payment to hospitals for patients who require an arterial reconstruction for intermittent claudication (rest pain) as it does for those patients who require the same kind of operation for limb threatening ischemia (that is, for gangrene, a nonhealing ischemic ulcer, or severe ischemic rest pain). The committee had been referred to HCFA by ProPAC staff members who had been communicating with the committee on this subject since July 1987.

From their own experience and that of six other hospitals, these vascular surgeons believe that it would be possible to identify two distinct groups of cases in the Medicare data base. Both groups are found in DRGs 110, 111, and 112 and involve bypass surgery of the lower limbs. The committee submitted data from their own hospitals identifying one group of cases, referred to as "limb salvage", in the high range of average standardized charges and length of stay, and another group of cases, referred to as "claudicants", that is considerably lower in charges and length of stay. The committee believes that it is inappropriate to include the lower-cost bypasses for intermittent claudication or rest pain in the same DRG with the limb salvage cases.

We have shared information with ProPAC on this problem and tried to expand on the analysis, using the FY 1988 MEDPAR data. ProPAC's staff has also used case examples from a hospital with a relatively high volume of limb salvage surgery. A high percentage of the hospital's Medicare patients have a principal or secondary diagnosis of diabetes mellitis. Many of these patients require limb salvage surgery as an alternative to amputation of gangrenous tissue of the lower limbs.

At this point, we have not determined if this problem can be solved through a change in the GROUPER logic. Since the same surgical procedure is performed for each group, it is impossible to differentiate on that basis alone. However, we have tried to identify the separate groups using the specific descriptions given by the hospitals. First, we searched for the principal diagnosis code 443.9 (Intermittent claudication) without the secondary diagnosis codes 785.4 (Gangrene) or 707 (Decubitus ulcers). We selected only those cases with procedure code 39.29 (Femoral-popliteal bypass) and no debridement or bone surgery. We found that about six percent of the 59,499 cases in DRG 110 and about six percent of the 20,300 cases in DRG 111 fell into this basic group. When we expanded the principal diagnosis to include any of several peripheral vascular disease diagnosis codes, we found 42 percent of the cases in DRG 110 ad 41.8 percent of the cases in DRG 111.

In an effort to capture the data for other cases that do not exhibit the CCs or multiple procedures that typify the limb salvage case, we expanded the procedure codes to find cases where the surgery performed was 39.29 or 38.38 (Resection of lower limb arteries with anastomosis), or 39.25 (Aorta-iliac femoral bypass). This description includes 46.5 percent of the cases in DRG 110 and 45.5 percent of the cases in DRG 111.

At the other extreme, we searched under the same criteria with a secondary diagnosis of either gangrene or decubitus ulcers. We found that 8.1 percent of the cases in DRG 110 and less than 0.01 percent of the cases in DRG 111 met these criteria. Although we will continue to examine this issue, it appears from all the data we have analyzed thus far that we are dealing with different quantities that legitimately fall under virtually identical categories in the ICD 9–CM. Different surgeons are performing the same basic procedures on patients who fall at the opposite ends of the range in severity of the manifestations of peripheral vascular disease. The GROUPER program can assign only the codes listed on the billing record, and the distinguishing secondary diagnoses of gangrene and decubitus ulcers are perhaps not shown as often as they actually occur. As long as the procedures involved are found to be medically appropriate, it would be contrary to one of the basic premises of the prospective payment system to create expensive and inexpensive subcategories of cases exhibiting similar ICD–9–CM coding.

We reviewed some of the secondary diagnoses involved here under the principles of the Yale DRG Refinement model (see discussion in section II.B.7.b. of this preamble, above) and found that many of the CCs that are described as being unique to the more expensive cases fall into the same general severity categories as those shared by the claudication cases. However, a number of the secondary diagnoses for bone and necrotic tissue involvement fall into the catastrophic and major surgical categories.

d. *Reassignment of Patents with Guillain-Barre Syndrome.* Guillain-Barre syndrome is a postinfectious polyneuropathy in which patients may require plasmapheresis, ventilation assistance, and long intensive-care stays. Guillain-Barre syndrome discharges have been assigned to DRGs 18 and 19 (Cranial and Peripheral Nerve Disorders). ProPAC believes that the classification of Guillain-Barre syndrome cases into DRGs 18 and 19 is inappropriate in terms of resource use; that is, the average resource use associated with Guillain-Barre syndrome cases is higher than the resource use for average cases in DRGs 18 and 19. In its recommendation 13, PROPAC recommends that the Secretary reassign patients with Guillain-Barre syndrome from DRGs 18 and 19 to DRG 20 (Nervous System Infection Except Viral Meningitis) and DRG 34 (Other Disorders of Nervous System With CC); alternatively, a new DRG could be established.

We are unable to evaluate appropriateness of a classification change for Guillain-Barre syndrome

patients without further analysis of the FY 1988 MEDPAR data. Moreover, the issue of whether reclassification to DRGs 20 and 34 would be clinically consistent warrants further examination. We will examine this issue as part of our ongoing DRG refinement analyses.

C. Recalibration of DRG Weights

One of the basic issues in recalibration is the choice of a data base that allows us to construct relative DRG weights that most accurately reflect current relative resource use. Since FY 1986, the DRG weights have been based on charge data. The latest recalibration, which was published as a part of the FY 1989 prospective payment final rule, used hospital charge information from the FY 1987 MEDPAR file. For a discussion of the options we considered and the reasons we chose to use charge data beginning in FY 1986, we refer the reader to the rules published on June 10, 1985 (50 FR 24372) and September 3, 1985 (50 FR 35652).

We are proposing to use the same basic methodology for the FY 1990 recalibration as we did for FY 1989. That is, we would recalibrate the weights based on charge data for Medicare discharges. However, we would use the most current charge information available, the FY 1988 MEDPAR file, rather than the FY 1987 MEDPAR file. The MEDPAR file is based on fully-coded diagnostic and surgical procedure data for all Medicare inpatient hospital bills.

The proposed recalibrated DRG relative weights are constructed from FY 1988 MEDPAR data, received by HCFA through December 1988, from all hospitals subject to the prospective payment system and short-term acute care hospitals in waiver States. The FY 1988 MEDPAR file includes data for approximately 9.5 million Medicare discharges.

The methodology used to calculate the proposed DRG weights from the FY 1988 MEDPAR file is as follows:

- All the claims were regrouped using the revised DRG classifications discussed above in section II.B. of this preamble.
- Charges were standardized to remove the effects of differences in area wage levels, indirect medical education costs, disproportionate share payments, and, for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment.
- The average standardized charge per DRG was calculated by summing the standardized charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG.
- We then eliminated statistical outliers using the same criterion as was used in computing the current weights. That is, all cases outside of 3.0 standard deviations from the mean of the log distribution of charges per case for each DRG were eliminated.
- The average charge for each DRG was then recomputed excluding the statistical outliers and divided by the national average standardized charge per case to determine the weighting factor.
- We established the weighting factor for heart transplants (DRG 103) in a manner consistent with the methodology for all other DRGs except that the heart transplant cases that were used to establish the weight were limited to those Medicare-approved heart transplant centers that have cases in the FY 1988 MEDPAR file.
- Kidney acquisition costs continue to be paid on a reasonable cost basis but, unlike other excluded costs, kidney acquisition costs are concentrated in a single DRG (DRG 302, Kidney Transplant). For this reason, it was necessary to make an adjustment to prevent the relative weight for DRG 302 from including the effect of kidney acquisition costs, since these costs are paid separately from the prospective payment rate. For purposes of this proposed rule, we used estimated kidney acquisition charges since actual FY 1988 kidney acquisition charges were not available. Therefore, estimated kidney acquisition charges were subtracted from the total charges for each case involving a kidney transplant prior to computing the average charge for the DRG and prior to eliminating statistical outliers. In the recalibration for the final FY 1990 weights, we plan to use actual kidney acquisition charges.
- Heart acquisition costs, like kidney acquisition costs, continue to be paid on a reasonable cost basis and are similarly concentrated in a single DRG (DRG 103, Heart Transplant). Accordingly, for the heart transplant cases in the updated MEDPAR file used for recalibration, we subtracted from the total charges of each case an estimate of heart acquisition charges prior to computing the average charge for the DRG and prior to eliminating statistical outliers, identical to the adjustment we make for removing kidney acquisition charges from cases in DRG 302. For additional information about the methodology for estimating heart acquisition costs, see the September 1, 1987 final rule at 52 FR 33037. Although actual heart acquisition charges were not available for purposes of developing the proposed FY 1990 DRG weights, some heart acquisition charge data may be available from the bills used to determine the final DRG weights. If our analysis of the actual heart acquisition charges indicate the data are adequate, we plan to use the actual acquisition charges in the recalibration of the final FY 1990 weight for DRG 103.

When we recalibrated the DRG weights for FY 1986, FY 1988, and FY 1989, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight. In the FY 1987 MEDPAR data used to establish the FY 1989 weights, there were 35 DRGs that contained fewer than 10 cases. We propose to use that same case threshold in recalibrating the DRG weights for FY 1990. In the FY 1989 recalibration, we computed the weight for the 35 low-volume DRGs by adjusting the original weights of these DRGs by the percent change in the weight of the average case in the remaining DRGs. We propose to use this same methodology for the FY 1990 recalibration. Using the FY 1988 MEDPAR data set, there are 37 DRGs that contain fewer than 10 cases.

ProPAC, in its March 1, 1988 report, had recommended that the DRG weights be recalibrated annually on the basis of costs rather than charges. However, ProPAC indicated concern about the Medicare cost-finding methods for estimating costs because the limitations of the Medicare cost report data may in some cases produce imprecise DRG weights. In the May 27, 1988 proposed rule, we indicated that we would examine the feasibility of adopting cost-based DRG weights (53 FR 19507).

Accordingly, we contracted with the Rand Corporation to evaluate both methodologies to determine which provided the better measure of resource consumption across DRGs. While there were noted differences in the recalibration results using each methodology (that is, charge-based weights resulted in higher weights for surgical DRGs and lower weights for medical DRGs, on average, relative to cost-based weights), Rand found no conclusive evidence favoring one methodology over the other. We continue to believe that the disadvantages associated with charge-based weights are compensated for by the fact that, for purposes of recalibration, charge data are available on a more timely basis than cost data. For example, for the proposed recalibrated weights for FY 1990, we are using FY 1988 Medicare billing data from the MEDPAR file. However, we have yet to obtain a full file of FY 1987 Medicare cost reports. Thus, any cost data we were to use for recalibration

would be at least one year and perhaps as much as two years older than the most recent available charge data.

In addition, since costs are not accumulated on an individual case basis, DRG by DRG, it is necessary even in developing cost-based weights to link ancillary charge data from the claims file to cost report data as part of the process of estimating the average costs of cases in each DRG. In an attempt to make more timely estimates of costs, ProPAC also proposed in its March 1, 1988 report that the latest cost report data be used in conjunction with the most recent patient bills. However, as noted in the Rand study, this mismatch of data causes distortions in estimating costs because it assumes that per diem costs rise uniformly across hospitals and that cost-to-charge ratios remain constant over time. In order to maintain consistency and to accurately determine relative resource use, we believe that charge data for the same period as the cost-data should be used in cost based recalibration. Therefore, if we were to recalibrate on the basis of costs, both the charge and cost data that would be used would be significantly older than the most recently available charge data.

We believe that using old data is inappropriate, particularly given the rapid advances in medical technology and resulting changes in treatment patterns. We further believe that it is in the best interest of the hospitals and Medicare beneficiaries that the resource use associated with these major new medical advances be reflected in the DRG weights as soon as possible. This can be accomplished by the use of charge based-weights computed on an annual recalibration schedule. We are concerned that use of cost-based weights would significantly delay recognition of new technologies or greatly complicate the recalibration process by necessitating a number of special adjustments to take such new technologies into account. Therefore, absent conclusive evidence that cost-based DRG weights provide a better measure of resource consumption across DRGs, we propose to continue using charges as the basis for recalibrating the DRG relative weights.

The purpose of making changes in the DRG classifications and weights is to reflect changes in the relative resource costs across DRGs. Thus, the changes are intended to affect the relative distribution of payments across DRGs and should not affect aggregate payments to hospitals under the prospective payment system. Each time we have recalibrated (beginning with the first recalibration in FY 1986), we have normalized the new weights by an adjustment factor intended to ensure that recalibration by itself neither increases nor decreases projected total payments under the prospective payment system. With normalization, the average case weight after recalibration equals the average case weight prior to normalization for the same set of cases.

The case-mix index is a measurement of the average DRG weight for a given set of cases. In theory, any changes in the average case-mix index value for Medicare cases after recalibration and implementation of the new GROUPER and corresponding DRG weights should be attributable to an increase in the complexity of cases that are treated or to coding changes. However, our analysis indicates that the case-mix index value for FY 1988 cases is higher when those cases are processed with the FY 1988 GROUPER than when the same cases are processed with the FY 1986 GROUPER. This demonstrates that changes we made to the GROUPER program between FY1986 and FY 1988, coupled with changes in hospital diagnostic and reporting practices made in response to those GROUPER changes, inflated the case-mix index and, therefore, program expenditures.

Several changes were introduced into the GROUPER 4 program used to pay for discharges in FY 1987. These changes, which are discussed in detail in a June 3, 1986 final notice on changes to the DRG classification system (51 FR 20192) and the September 3, 1986 final rule (51 FR 31476), included the following:

- Creation of a new DRG for extensive burns with a burn-related operating procedure.
- Elimination of age considerations from the criteria for classification of two pairs of DRGs in MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue).

Changes that were made in the GROUPER 5 program used to pay for discharges in FY 1988 are discussed in detail in a September 1, 1987 final notice on changes to the DRG classification system (52 FR 33143). The most significant of these changes were—

- Creation within MDC 4 (Diseases and Disorders of the Respiratory System) of two new DRGs for tracheostomy and mechanical ventilator cases;
- Reconfiguration of the alcohol and drug DRGs;
- Elimination of age over 69 as a criterion for classification in all of the pairs of DRGs in which age over 69 and/or CC was a factor; and
- Changes to the CC list.

We have analyzed the changes in the case-mix index between FY 1986 and FY 1988 because the FY 1986 cases were used to recalibrate the DRG weights in the GROUPER 5 program, which, in turn, was used to pay the FY 1988 cases that are being used to recalibrate the proposed FY 1990 weights that will be used in GROUPER 7. To the extent that the average case weight for FY 1988 was higher when processed through the FY 1988 GROUPER than the average case weight of the same cases processed through the FY 1986 GROUPER, an adjustment should be made to the FY 1990 weights in order not to build the inflated FY 1988 case weights permanently into the average case weight values.

Our analysis indicates that there has been a total increase in the case-mix index of 6.4 percent between FY 1986 and FY 1988, as follows:

CASE-MIX INDEX CHANGE—FYS 1986–1988

FY	No. of discharges	GROUPER version	Case-mix index [1]	Percent increase over FY 1986
1986	8,842,953	3	1.2045	
1987	9,501,374	4	1.2367	2.7
1988	9,142,064	5	1.2824	6.4

[1] Index values reflect GROUPER version and MEDPAR data set appropriate to each year.

We analyzed the case-mix change in order to determine what portion of the increase was attributable to changes made in the GROUPER program from FY 1986 to FY 1988.

To evaluate this question, we used each of the three GROUPER programs to process and classify the bills from the FY 1988 MEDPAR. In order to process the FY 1988 cases through the earlier GROUPER versions, FY 1988 diagnostic and surgical codes were remapped into their FY 1987 equivalents prior to being processed with GROUPER 4, and then remapped into their FY 1986 equivalents prior to being processed with GROUPER 3. Since the same FY 1988 cases were processed through each of the GROUPER versions, any differences in the average case-mix index values between the three GROUPER versions cannot be attributable to increases in case complexity, rather, they are attributable to recalibration and the changes in the GROUPER program.

We found that the FY 1988 case-mix index value was 1.35 percent greater when the cases were processed using GROUPER 5 than when using GROUPER 3, as shown below:

EFFECT OF GROUPER VERSION ON FY 1988 CASE-MIX INDEX

	FY 1988 discharges	Case-mix index [1]	Percent difference from GROUPER 3
GROUPER 3	9,142,064	1.2653	
GROUPER 4	9,142,064	1.2696	.34
GROUPER 5	9,142,061	1.2824	1.35

[1] Represents FY 1988 MEDPAR run through each GROUPER version.

Based on this analysis, we have concluded that, of the total increase in the case-mix index value from FY 1986 to FY 1988 (that is, 6.4 percent), 1.35 percent is the result of recalibration and changes made to the GROUPER program.

In normalization, we compare the average case weight before recalibration (for FY 1990, this is determined by mapping the FY 1988 claims into their FY 1989 equivalents and processing them through GROUPER 6) to the average case weight after recalibration. Based on the above analysis, we are proposing to reduce the average GROUPER 6 case weight before recalibration by 1.35 percent prior to normalization. Without this adjustment, we would build into the FY 1990 weights an inflated average case-weight value. We are not proposing to recover the excess payments that have already been made based on the inflated weights; however, it would be inappropriate to continue to pay based on these weights. Therefore, we are proposing to normalize the FY 1990 weights by an adjustment factor so that the average GROUPER 7 case weight after recalibration is equal to the average GROUPER 6 case weight prior to recalibration reduced by 1.35 percent.

III. Proposed Changes to the Hospital Wage Index

A. Background

Section 1886(d)(2)(C)(ii) of the Act required, as a part of the process of developing separate urban and rural standardized amounts for FY 1984, that we standardize the average cost per case of each hospital for differences in area wage levels. Section 1886(d)(2)(H) of the Act required that the standardized urban and rural amounts be adjusted for area variations in hospital wage levels as part of the methodology for determining prospective payments to hospitals for FY 1984. To fulfill both requirements, we constructed an index that reflects average hospital wages in each urban or rural area as a percentage of the national average hospital wage.

For purposes of determining the prospective payments to hospitals in FY 1984 and 1985, we constructed the wage index using calendar year 1981 hospital wage and employment data obtained from the Bureau of Labor Statistics' (BLS) ES 202 Employment, Wages and Contributions file for hospital workers. Beginning with discharges occurring on or after May 1, 1986, we have been using a hospital wage index based on HCFA surveys of hospital wage and salary data as well as data on paid hours in hospitals. The methodology used to compute the first HCFA wage index was set forth in detail in the September 3, 1985 final rule (50 FR 35661).

For discharges occurring on or after May 1, 1986 and before September 30, 1987, the wage index was based on wage data from calendar year 1982. For discharges occurring on or after October 1, 1987 and before September 30, 1988, the wage index was based on an equal blend of calendar year 1982 and 1984 wage data.

In the September 1, 1987 final rule, we made a change in the methodology for computing the national average hourly wage, which serves as the basis for indexing the area wage levels (52 FR 33039). To minimize the impact on the national average hourly wage when the wage data for hospitals in an area are adjusted or when hospitals are reclassified from one area to another, we moved from an area-weighted national average hourly wage index to an hour-weighted wage index. That is, we now compute the national average hourly wage by dividing the total wages for all hospitals in the data base by the total paid hours for all hospitals in the data base.

In the September 30, 1988 final rule, we continued to use the blended wage index based on 1982 and 1984 data for determining prospective payments to hospitals in FY 1989. However, we did make some changes to the index because of the enactment of section 4005(a) of the Omnibus Reconciliation Act of 1987 (Pub. L. 100-203), which added a new section 1886(d)(8)(B) to the Act, as discussed below in section III.C. of this preamble.

B. Updating the Wage Index Data

Although we are not proposing to change the methodology for computing the wage, for FY 1990, we are proposing to base the wage index solely on 1984 wage data. In the May 27, 1988 proposed rule, we proposed to base the wage index for FY 1989 solely on 1984 wage data (53 FR 19508). However, as a result of a number of revisions to the 1984 wage data that were made between the proposed and final rule, the national average hourly wage increased slightly, thereby reducing the wage index values for areas not affected by the changes. Therefore, given our concern about the negative impact on aggregate payments to hospitals, we decided to postpone adoption of a wage index based solely on the 1984 wage data. Our current analysis indicates that moving from a blended wage index to one based solely on 1984 data does not significantly impact aggregate prospective payments.

The method used to compute the proposed wage index is as follows:

Step 1—Each of the non-Federal acute care hospitals subject to the prospective payment system for which 1984 data have been received was classified into its appropriate urban or rural area based on the urban area definitions to be used in the prospective payment system in FY 1990.

Step 2—For each hospital, the total gross hospital salaries as reported for hospital fiscal years that began in FY 1984 were inflated from the end of the hospital's cost reporting year through August 31, 1985 using the percentage change in average hourly earnings of hospital industry workers (S.I.C. 806) in BLS Employment and Earnings Bulletin. This was done to eliminate any distortion in the data caused by differing hospital cost reporting years. (August 31, 1985 was the latest end date for hospital cost reporting years in the data collection.)

Step 3—For each hospital, the inflated gross hospital salaries computed in step 2 were divided by the reported number of total paid hours to yield an average

hourly wage. Hospitals with an aberrant average hourly wage, which was defined as an average hourly wage either less than $3.35 (the minimum wage in 1984) or greater than $23.61 (2½ times the national average hourly wage as computed from the data collection at the time the 1984 data were first used in computing a wage index), were excluded.

Step 4—Within each urban or rural area, the result computed in step 2 was summed for all remaining hospitals to yield the total gross hospital salaries in each area.

Step 5—The total gross hospital salary result computed in step 4 was divided by the corresponding total number of paid hours in the area to yield an average hourly wage for each urban or rural area.

Step 6—The inflated gross hospital salaries computed in Step 2 for all hospitals not eliminated due to aberrant wage data were divided by the reported number of total paid hours in these hospitals to obtain the national average hourly hospital wage based on gross salaries. This national average is $9.82.

Step 7—For each urban or rural area, the hospital wage index value was calculated by dividing the average hourly wage computed in step 5 by the national average hourly wage.

C. Revisions to Wage Index for Rural Counties Whose Hospitals Are Deemed Urban

Under section 1886(d)(8)(B) of the Act, for discharges occurring on or after October 1, 1988, hospitals in certain rural counties adjacent to one or more Metropolitan Statistical Areas (MSAs) are considered to be located in one of the adjacent MSAs if certain standards are met. Because of this provision, as a part of the September 30, 1988 final rule, we reclassified the wage data for those rural areas as if the hospitals in those areas were located in the adjacent MSAs and recomputed the wage index values for the affected MSAs and rural areas.

Because inclusion of the wage data from rural hospitals that are considered to be located in an adjacent MSA under section 1886(d)(8)(B) of the Act resulted in the reduction of the wage index values of several MSAs and rural areas, Congress enacted section 8403(a) of Pub. L. 100-647. Under that provision, which added a new section 1886(d)(8)(C) to the Act, if the inclusion of wage data from rural hospitals now considered to be located in an urban area results in a reduction of the wage index value for the affected MSA or rural area, then the wage index values for those affected areas must be recomputed as if section 1886(d)(8)(B) of the Act had not been enacted. The wage index value for those rural counties with hospitals that were deemed urban and that are affected by this recomputation must be calculated separately. This provision is effective for discharges occurring on or after October 1, 1989 and before October 1, 1991.

Therefore, we propose to calculate the wage index for FY 1990 in the following manner with respect to the geographic classification of hospitals:

- MSAs whose wage index values are reduced because of the inclusion of wage data from hospitals in adjacent rural counties that have been deemed to be located in the MSAs would have their wage index values recalculated as if section 1886(d)(8)(B) of the Act had never been enacted; that is, data from the rural hospitals would be excluded in calculating these MSAs' wage index values.
- Each county whose hospitals have been deemed to be located in such an MSA would have its own unique wage index value, that is, a wage index value calculated on a county-specific basis.
- Rural areas whose wage index values are reduced by the exclusion of wage data from hospitals that have been deemed to be located in adjacent MSAs would have their wage index recalculated as if those hospitals were not deemed to be urban. In this case, the wage data for hospitals located in the rural counties that have been deemed urban would be included in two wage areas, that is, both the affected rural area and the county-specific wage area for the deemed hospitals. Those rural areas whose wage index values are increased by the exclusion of the wage data for those hospitals that have been deemed urban would retain the increased wage index value.

In addition to this change, we are proposing to compute the wage index for FY 1990 based solely on 1984 wage data. Using 1984 data, the wage index value for every MSA in which rural hospitals have been deemed to be located is lower than it would have been if those hospitals had not been included. Therefore, the wage index value for the MSA would be computed without including data from the deemed rural hospitals and the wage index value would be computed on a county-specific basis for every rural county whose hospitals have been deemed to be urban. There are seven rural areas that would have their wage index recalculated to include the hospitals that have been deemed urban. Since we have traditionally designated the urban and rural wage index as Tables 4a and 4b, we have designated this new county-specific set of wage index values as Table 4c (see section IV of the addendum to this proposed rule).

D. Future Updates to the Hospital Wage Index

Section 1886(d)(3)(E) of the Act (as amended by section 4004(a) of Pub. L. 100-203) requires that wage indexes that are applied to the labor-related portion of the national average standardized amounts of the prospective payment system be updated not later than October 1, 1990 and at least every 36 months thereafter. This section further provides that the Secretary base the update on a survey of the wages and wage-related costs of hospitals in the United States that participate in the prospective payment system. The survey must measure, to the extent feasible, the earnings and paid hours of employment by occupational category and must exclude data with respect to the wages and wage-related costs incurred in furnishing skilled nursing facility services.

To accomplish this task, we developed two wage index survey forms. The first form (Form A) requested data similar to past surveys, with a few noted exceptions. In addition to the total wages and hours collected in past surveys, Form A also asked for data relative to the salary and hours associated with direct patient-care contracted labor, home office, and fringe benefits. Form A excluded salary and hours associated with the skilled nursing facilities and other related cost centers. The second form (Form B), in addition to the data requested on Form A, requested data relative to several occupational categories.

Before initiating the new hospital wage survey, the proposed forms (A & B) were submitted for prior consultation to various hospital industry representatives, including the major hospital associations, as well as to the fiscal intermediaries. We solicited comments on both forms, including the feasibility of obtaining accurate data. The comments we received suggested that most hospitals would be unable to accurately provide data by occupational categories at this time. As a result of the comments on these two forms, we have modified Form A, now referred to as HCFA-2561.

The HCFA 2561 is currently being used to collect data for the FY 1991 update to the wage index as required by section 1886(d)(3)(E) of the Act. However, before implementing this updated wage index or reaching decisions in the future on the collection of data by occupational categories and

incorporating future wage survey forms into the hospital cost report, we are soliciting comments on the following issues:

- Should the wage index include data on contracted labor? For purposes of the wage index survey, contracted labor has been defined as direct patient-care contract labor such as registry nurses. Should the definition be expanded to include contracted services indirectly related to patient-care, such as billing or housekeeping services?
- What portion, if any, of home-office salaries and hours should be added to the wages and hours incurred solely by the hospital?
- Which fringe benefits, if any, should be included in computing the wage index? How should they be valued?
- Would hospitals be capable of providing and identifying verifiable salaries and hours by occupational categories? What occupational groupings would be appropriate?
- If occupational data were collected, what formula or methodology should be used in calculating an occupational-mix index? How would the methodology reflect the varying personnel and hiring decisions made by hospitals, that is, one hospital may hire registered nurses for patient-care whereas another hospital in the same geographic area may employ licensed practical nurses instead?
- Should the HCFA-2561 be incorporated into the hospital cost report in order to obtain wage data on a regular basis? What level of hospital-specific wage data should be available to the public, including other hospitals? Can the occupational category data be retrieved by adding new schedules to the hospital cost report?

In order to give the public ample time to thoroughly evaluate the six issues listed above, we will accept comments on these issues up to September 30, 1989. Because of the extended time for public comment, we will not respond to these comments in the final prospective payment rule applicable to FY 1990, but we will respond to them in the proposed rule concerning the FY 1991 changes to the prospective payment system. Comments on these six issues should be submitted separately from comments addressing the other issues of this proposed rule to the following address: Health Care Financing Administration, Office of Reimbursement Policy, Division of Hospital Payment Policy, Attn: Wage Index Issues, 1-H-1 East Low Rise, 6325 Security Boulevard, Baltimore, Maryland 21207.

IV. Other Decisions and Proposed Changes to the Regulations

A. Annual Publication of Prospective Payment Rates (§ 412.8)

The September 1, 1983 final rule (47 FR 39819) added a provision to the regulations stating that when prospective payment rates are not published by September 1 before the beginning of the Federal fiscal year in which the rates would apply, the rates in effect on September 1 of the year in question will apply unchanged for the following Federal fiscal year. This provision in § 412.8(b)(4) has been superseded by changes to the statute. Specifically, section 1886(b)(3)(B) of the Act, as amended by section 9109(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272), and section 4002 of Pub. L. 100-203, specifies the update factors for prospective payment hospitals beginning in FY 1986 and each year thereafter. Because the law sets the rates for each Federal fiscal year, which are effective October 1 of each year, the provisions of § 412.8(b)(4) no longer conform to the law. Therefore, we are proposing to delete this section.

B. Burn Outliers (§ 412.84)

Section 4008(d)(1)(A) of Pub. L. 100-203 changed the marginal cost factor to 90 percent for day and cost outliers in DRGs related to burn cases. This provision was effective for discharges occurring on or after April 1, 1988 and expires as of October 1, 1989. We are proposing to retain the marginal cost factor for cost outliers at 90 percent; however, we would reduce the marginal cost factor for day outlier cases to 60 percent effective for discharges occurring on or after October 1, 1989 (that is, the same marginal cost factor as other DRGs). Therefore, we would amend § 412.84 accordingly.

In the September 30, 1988 final rule (53 FR 38505), we indicated that ProPAC had issued a report that addressed outlier payments for burn cases and that we would review ProPAC's findings and recommendations to determine if changes in the burn outlier policy may be appropriate for FY 1990.

ProPAC's report indicated that increased outlier payments may only be appropriate for those cases treated in specialized burn centers and units. However, recognizing that no clear criteria currently exist to classify such centers, ProPAC postponed making specific recommendations pending further evaluation. While we recognize ProPAC's concern that outlier cases result in a more serious impact on specialized burn centers and units than to general hospitals treating burn cases, we generally do not believe it appropriate to create a new class of hospital (that is, burn hospitals and burn units) simply for purposes of targeting outlier payments.

As an interim measure ProPAC recommended that burn cases be paid cost outliers only based on a 90 percent marginal cost factor. In addition, ProPAC believes that the outlier payment pool for burn cases should be maintained at 19 percent of total payment for burn cases. This 19 percent figure represents the impact on burn outlier payments of increasing the marginal cost factor from 60 percent to 90 percent. ProPAC also recommended separate outlier thresholds for burn cases be established in order to maintain the 19 percent outlier payment pool.

While ProPAC's recommendation may target more burn outlier payments to specialized burn treatment centers, there is currently no statutory authority to eliminate day outlier payments. However, we agree that the 90 percent marginal cost factor may not be appropriate for less severe burn cases. Therefore, we believe it would be appropriate to reduce the marginal cost factor from 90 percent to 6 percent for day only outliers associated with burn cases since these generally represent less resource-intensive cases. Exceptionally costly day outliers, that is, those that meet both the day and cost outlier thresholds, would be paid the greater of 60 percent of the per diem Federal rate for each day beyond the length of stay threshold or 90 percent of the difference between adjusted charges and the cost thresholds.

Under the proposed policy for burn outlier cases and the outlier thresholds we are proposing for FY 1990, we estimate that approximately 20 percent of total payments for burn cases would represent outlier payments. About 69 percent of those outlier payments would be made using the cost outlier methodology.

We considered retaining the current 90 percent marginal cost factor for both day and cost outliers. We rejected this approach because it would result in outlier payments of approximately 23 percent of total payments for burn cases. Only 57 percent of those payments would be made using the cost outlier methodology. We also examined the impact using a 60 percent marginal cost factor for day outliers and 75 percent marginal cost factor for cost outliers would have on payments for burn outlier cases. If we were to adopt this policy, which would treat burn

outliers the same as other outlier cases, outlier payments would constitute 18 percent of total payments for burn cases. Only 64 percent of those payments would be made using the cost outlier, methodology.

We believe our proposed policy most closely achieves the policy goals of targeting outlier payments for the most costly, burn cases and maintaining outlier payments approximately the same percentage of total payments for burn cases. The distribution of burn outlier cases under the proposed policy is shown in the chart below.

DISTRIBUTION OF BURN OUTLIER CASES USING 60 PERCENT MARGINAL COST FACTOR FOR DAY OUTLIERS AND 90 PERCENT MARGINAL COST FACTOR FOR COST OUTLIERS AND PROPOSED FY 1990 THRESHOLDS

Type of outlier	Percent of cases	Percent of payments
Day only	42.6	13.8
Day and cost-paid day	10.9	16.8
Day and cost-paid cost	29.0	59.1
Cost only	17.5	10.3
Total	100.0	100.0

C. Payments to Sole Community Hospitals (§ 412.92)

Section 1886(d)(5)(C)(ii) of the Act provides special payment protections under the prospective payment system to sole community hospitals (SCHs). The statute defines an SCH as a hospital that, by reason of factors such as isolated location, weather conditions, travel conditions, or absence of other hospitals (as determined by the Secretary), is the sole source of inpatient hospital services reasonably available to Medicare beneficiaries. The regulations that set forth the criteria that a hospital must meet to be classified as an SCH are at § 412.92(a). To be classified as an SCH, a hospital must either have been designated as an SCH prior to the beginning of the prospective payment system or meet one of the following requirements:

- It must be located more than 50 miles from other like hospitals.
- It must be located between 25 and 50 miles from other hospitals, and it must—

—Serve at least 75 percent of inpatients in its market area;
—Be isolated by local topography or extreme weather conditions for one month of each year; or
—Have fewer than 50 beds and would qualify on the basis of market share except that some patients seek specialized care unavailable at the hospital.

- It must be located between 15 and 25 miles from other hospitals and isolated by local topography or extreme weather for one month of each year.

SCHs are paid a blended rate based on 75 percent of the hospital-specific rate and 25 percent of the Federal regional rate. An SCH is eligible for a payment adjustment if, for reasons beyond its control, it experiences a yearly decline in volume of greater than five percent compared to its preceding cost reporting period. (This adjustment is also available to a hospital that could qualify as an SCH but chooses not to be paid as an SCH.) In addition, an SCH is eligible for an adjustment to its hospital-specific rate if it adds new services or facilities. SCHs are also exempt from the percentage reductions in reasonable cost payments for capital-related costs, as provided in section 1886(g)(3) of the Act.

In the September 30, 1988 final rule (53 FR 38513), we noted, in response to several ProPAC recommendations concerning SCHs, that our analysis of the SCH provisions is an on-going process. We also noted that we would continue to study whether our criteria are appropriate for determining which hospitals are the sole source of care for Medicare beneficiaries and whether sufficient protections are in place to assure beneficiary access to inpatient hospital services in rural areas.

Our analysis indicates that some SCHs would receive higher Medicare payments if they were to forego SCH status and be paid at the national rate. We believe these SHCs may be reluctant to give up their status because they may have difficulty requalifying if circumstances change to make SCH status more favorable in the future.

With this concern in mind, we are proposing a revision to § 412.92(b)(4)(iii). That section currently states that if a hospital cancels its classification as an SCH, the hospital may not apply for reclassification as an SCH unless all hospitals within 50 miles of it have closed. Because we believe this provision is restrictive and may prevent some existing SCHs from relinquishing their status even though it might be financially advantageous for them to do so, we are proposing elimination of the hospital-closure-within-50 miles provision in §412.92(b)(4)(iii). Instead, we propose that, if a hospital cancels its status as an SCH, it may requalify for classification as an SCH only after one full year has passed since the cancellation was effective and only if the hospital meets the criteria for qualification that are in effect at the time it reapplies.

Section 1886(d)(5)(C)(ii) of the Act provides for reasonable compensation for significant increases in operating costs resulting from the addition of new services or facilities. Although a similar provision was originally proposed by regulation, Congress explicitly provided for the payment adjustment for new inpatient facilities or services in section 9111(a) of Pub. L. 99–272, which amended section 1886(d)(5)(C)(ii) of the Act. The payment adjustment was established effective with cost reporting periods beginning on or after October 1, 1983 and before October 1, 1989 as a temporary measure until a permanent payment methodology could be developed to recognize significant distortions in operating costs resulting from the addition of new services or facilities. The regulations implementing the payment adjustment are at § 412.92(g).

To date, there has been no legislative change to establish a different payment methodology to provide reasonable compensation for significant cost increases resulting from the addition of new services or facilities. In view of the expiration of the statutory provision explicitly providing for this payment adjustment, we are proposing to extend indefinitely by regulation the provisions at § 412.92(g) In order not to disadvantage any SCH that experiences a significant increase in operating costs resulting from new inpatient services or facilities.

Currently, if a hospital wishes to receive a payment adjustment because it experienced a significant volume decrease, it must submit a request for the adjustment to its intermediary along with documentation demonstrating the size of the decrease in discharges and explaining the circumstances giving rise to the decline in discharges and how they were beyond the hospital's control. The hospital must also furnish evidence of the actions it took to control costs in the face of the circumstances cited and the resulting decline in discharges. The intermediary reviews and analyzes the documentation and then forwards the documentation along with its analysis and recommendation on approval to HCFA. HCFA determines the volume adjustment within 180 days from the date HCFA receives the hospital's request and all other necessary information from the intermediary.

In an effort to streamline and expedite this process, we are proposing that this determination process be decentralized and handled entirely by the

intermediaries. We believe that there is now sufficient experience reviewing hospitals' applications for volume adjustments for intermediaries to make these determinations. We would revise § 412.92(e)(3) to make this change. We also propose that the intermediaries use the same criteria for review that are currently in place in § 412.92(e). For further discussion of this process, see the September 1, 1983 final rule (48 FR 39786), the June 10, 1987 proposed rule (52 FR 22090), and the September 30, 1987 final rule (53 FR 38510).

We are preparing manual instructions for the intermediaries concerning the determinations of volume adjustments. We propose that any requests for a volume adjustments that intermediaries have not submitted to HCFA by September 30, 1989 be processed for a final determination by the intermediaries.

With the deterioration in the financial condition of many rural hospitals, our ability to define appropriately those hospitals that represent the sole source of care reasonably available to Medicare beneficiaries has become increasingly important. In this regard, our criteria for SCH designation have remained largely unchanged since the beginning of the prospective payment system. The regulations reflect an assumption that any hospital located more than 50 miles from the nearest like hospital is the sole source of care reasonably available; conversely, it is assumed that a hospital located within 25 miles of a like hospital would not be the sole source of care reasonably available unless weather conditions make other hospitals inaccessible at least one month per year.

For hospitals located between 25 and 50 miles of another hospital, a market test or a measure of extremes in topography or weather conditions is used to determine whether the hospital qualifies for SCH designation. As clarified in the September 30, 1988 final rule (53 FR 38510), a hospital located between 25 and 50 miles of a like hospital may qualify as an SCH if, during the cost reporting period ending before it applies for SCH status, it admitted at least 75 percent of all the hospitalized residents or 75 percent of all the Medicare beneficiaries who were admitted to any like hospital located within the larger of the requesting hospital's service area or a 50 mile radius. A hospital's service area is the area from which a hospital draws at least 75 percent of its inpatients or a service area defined by a health systems agency. Thus, while a hospital located between 25 and 50 miles of the nearest like hospital cannot be presumed to be or not to be an SCH, it can demonstrate by the size of its market share that it serves as the sole source of inpatient services reasonably available. Also, if a hospital located between 25 and 50 miles of the nearest like hospital has fewer than 50 beds, it can be deemed to meet the market share criterion if its intermediary certifies that the hospital would have met this criterion were it not for the fact that some Medicare beneficiaries or residents of the hospital's service area were forced to seek care outside the service area due to the unavailability of certain specialty services at the hospital with fewer than 50 beds.

In assessing whether the SCH market share criteria should be improved, we have studied ProPAC's recommendations from last year and the analysis performed by Systemetrics under contract with ProPAC. The Systemetrics study attempted to identify all rural hospitals eligible for SCH designation and to simulate the impact of altering criteria. Systemetrics found that most rural hospitals are closely spaced. Ninety percent are within 35 miles of their nearest neighbor hospital and only three percent are more than 50 miles from another hospital.

With regard to the market share test, Systemetrics found that there is an interrelationship between the definition of market area and market share. Generally speaking, the more broadly a hospital's market area is defined, the lower the hospital's market share percentage will be. Further, the greater the distance to the nearest neighbor hospital, the more broadly the market area is defined. One result of the relationship between market share and distance to the nearest hospital is that only a small percentage of the hospitals located more than 50 miles from another hospital would meet the market test. Moreover, the proportion of facilities meeting the 75 percent market test is smaller for those 35 to 39 miles from their nearest neighbor than for those isolated by 25 to 34 miles.

We have concluded from our analysis of the Systemetrics data that the current market share test is inappropriate for hospitals that are located more than 35 miles from a like hospital. The market area for these hospitals, as currently defined, is sufficiently broad to make the 75 percent market share standard unreasonable. The Systemetrics data show only nine percent of hospitals between 35 to 49 miles from another hospital had a market share greater than 75 percent even though the estimated travel time between two hospitals located 35 miles apart would be 45 minutes on the average.

We considered modifying the SCH criteria for hospitals located 35 to 50 miles from a like hospital by narrowing the definition of market area or relaxing the 75 percent market share standard for these hospitals, or implementing both of these changes. We rejected this approach for several reasons. First, we believe that the SCH criteria are already too complicated and that increasing the complexity by adding unique criteria for hospitals located between 35 to 50 miles would be undesirable. Second, given the worsening financial condition of many rural hospitals, we do not believe it would be appropriate to delay changing the criteria until the analyses that would be needed to develop appropriate modifications in the market share test are completed. Finally, considering that the average travel time between two hospitals 35 miles apart is 45 minutes, we believe it is reasonable to assume that a hospital more than 35 miles from a like hospital is the sole source of care reasonably available to Medicare beneficiaries. Therefore, effective October 1, 1989, we are proposing to modify our SCH criteria as set forth at § 412.92(a) (1) and (2) by eliminating the market share test for hospitals located more than 35 miles from a like hospital.

We invite comment on how the SCH criteria might be improved or simplified. In this regard, we are continuing to analyze whether modifications should be made in the market share test for hospitals located between 25 to 35 miles from a like hospital. In particular, we are interested in comments concerning whether the market share test should be simplified by removing the special consideration for hospitals with less than 50 beds whose residents were forced to seek care outside the service area due to the unavailability of certain specialty services. We have found this provision to be problematic and burdensome to implement. One alternative to the provision would be to relax the market share standard from 75 percent to a lower percentage that would be applicable to all inpatient services received by residents of the hospital's service area. Another alternative would be to apply the market share test only to those residents that receive inpatient services for the DRGs that are most commonly treated by small rural hospitals. Finally, we are considering whether any modifications in this regard should be limited to hospitals with fewer than 50 beds or whether it would be more appropriate to modify the market share test for all hospitals regardless of bed size in

recognition that a portion of residents will seek specialized care outside the service area of most rural hospitals.

We believe the Systemetrics data confirm the appropriateness of our standard that a hospital located within 25 miles of a like hospital would not be the sole source of care reasonably available unless topography or weather conditions make other hospitals inaccessible at least 1 month per year. The data show that only one percent of hospitals within 25 miles of another hospital provide at least 75 percent of the inpatient services received by Medicare beneficiaries residing within their service area. However, concern has been expressed regarding our criteria in § 412.92(a) (2) and (3), which define isolation of hospitals due to local topography or periods of prolonged severe weather. Under current policy, we require that a hospital must document its inaccessibility for 30 consecutive days in each of the past 3 years in order to qualify as an SCH on this basis (see 48 FR 39781, September 1, 1983). The documentation must be substantiated by an outside source, for example, the State Highway Department or a local public safety official.

We are considering modifying this policy to require the hospital to document its inaccessibility for 30 nonconsecutive days in 2 out of the last 3 years. We are soliciting comments at this time regarding whether this standard would be appropriate. If commenters believe the standard should be revised and do not believe our proposed modification would be appropriate, we would like to know what they consider to be a reasonable alternative and what documentation should be required to support a hospital's application under the standard. Commenters should keep in mind that any standard proposed must be designed so that it can be implemented on a nationwide basis.

D. Beneficiary Access to Care in Rural Areas

The nation's rural health care system is undergoing a difficult period of transition in response to several complex factors including changing practice patterns evolving delivery systems, regional economic change, facility conversion, declining admissions, patient mobility, and demographic change. These factors, coupled with the incentives for efficiency offered by Medicare's prospective payment system, present increasing pressures on the rural health care delivery system.

The challenge facing rural providers, State and local governments, Medicare, and other third-party insurers is to adopt policies that acknowledge the variety of factors affecting the long-term financial viability of rural providers and assure essential access to health care for rural residents.

In light of this, we are proposing several changes in this proposed rule that would improve our policies for sole community hospitals (SCHs). These administrative proposals would accomplish the following:

- Ease the requirements for qualifying for SCH status by eliminating the market share test for hospitals that are more than 35 miles from another hospital. In addition, we solicit public comment on how our criteria for SCH status could be improved.
- Extend indefinitely the payment adjustment for significant cost increases resulting from the addition of new services or facilities.
- Streamline the review and approval process for payment adjustments for SCHs that experience significant declines in volume by delegating the responsibility for making these adjustments to the fiscal intermediaries.
- Allow a hospital that gives up SCH status to regain its status after 1 year; our current regulations allow a hospital to regain SCH status only if any other hospital within 50 miles has closed. As indicated in Appendix C, we are also recommending that rural hospitals receive a higher annual update than urban hospitals for FY 1990.

As a longer term initiative, we are evaluating whether further refinements to the prospective payment system would be appropriate to improve our payment policy for rural hospitals. This evaluation includes—

- An assessment of whether the special payment protections for SHCs are adequate to provide beneficiaries with continued access to quality care;
- Examination of whether it would be appropriate to establish separate outlier thresholds for cases in urban and rural hospitals; and
- Research to replace the separate urban and rural rates with a single rate adjusted for severity and other factors that explain differential hospital cost experience.

Although we believe that it is important to implement appropriate Medicare payment policies for rural hospitals, we note that the critical issue facing the nation is assuring continued access to health care for all rural residents. Medicare payments account for 34 percent of rural hospitals' total revenues. Other revenue sources, such as Medicaid, private insurance, and self pay, make up the remaining 66 percent of revenues. A policy involving changes to the Medicare program alone would not be sufficient to assure essential access to rural health care. A viable and effective rural health care policy must involve Federal, State and local governments, and private insurers.

To assist the Department in examining the many important issues affecting this principle of assuring "essential access", we request comments on the following:

- How should the existing SCH policy be reformed and targeted to protect beneficiaries in' rural areas with "essential access" problems?
- What are an appropriate operational definitions of "essential access" (for example, distance, market share, patient mobility, transportation, weather, or types of essential services provided)?
- What roles should Federal and State government play in identifying "essential access" facilities?
- Should the Federal government and States ensure that Medicaid payment policies acknowledge the need to assure "essential access" to care for beneficiaries in rural areas and, if so, how?
- Should States take actions to encourage third-party payors to acknowledge the need to assure "essential access" to care for rural residents?
- How can the rural transition grant program (authorized by section 4005(e) of Pub. L. 100–203) be targeted to specifically assist "essential access" facilities in planning, coordination, service delivery modification, and conversion efforts?
- How can the Federal government best coordinate rural health policy with those of the State governments?

In order to give the public ample time to respond to the issues raised regarding "essential access" to health care by rural residents, we will accept comments on these issues up to September 30, 1989. Because the issues are not directly related to the Medicare prospective payment system, we will not respond to these comments in the final prospective payment rule applicable to FY 1990, but we will take them into consideration as we develop a Departmental rural health policy designed to assure essential access to health care in rural areas. Comments on these issues should be submitted separately from comments addressing the other issues of this proposed rule to the following address:

Health Care Financing Administration,
Office of Reimbursement Policy,
Division of Hospital Payment Policy,
Attn: Rural Access Issues, 1–H–l East

Low Rise, 6325 Security Boulevard, Baltimore, Maryland 21207.

E. Cancer Hospitals (§ 412.94)

Section 1886(d)(5)(C)(iii) of the Act authorizes special treatment for hospitals involved extensively in treatment for and research on cancer. In our regulations at § 412.94(a), we set forth the criteria a hospital must meet to be considered a cancer hospital. In § 412.94(b), we provide that, during its first cost reporting period subject to the prospective payment system, a qualifying cancer hospital may elect to be reimbursed on a reasonable cost basis, subject to the rate of increase limit. We have received inquiries concerning whether the provisions of sections 1815(e)(1) and 1886(g)(3) of the Act, which apply generally to prospective payment hospitals and not to hospitals excluded from the prospective payment system that receive payment on a reasonable cost basis, apply to these cancer hospitals since they are paid on a reasonable cost basis rather than on the basis of a prospective payment rate.

Section 1815(e)(1) of the Act provides that, effective with claims received on or after July 1, 1987, certain requesting prospective payment hospitals will receive payment for Medicare services on a periodic interim payment (PIP) basis. Under PIP, payment is based on the estimated annual payments for care provided to Medicare patients, and equal biweekly payments are made to hospitals without regard to the submission of individual bills. However, an end-of-year settlement is made once all bills for that year have been submitted and processed. Generally, under the provisions of section. 1815(e)(1) of the Act and the regulations that implement it, § 412.116, an otherwise qualifying prospective payment hospital receives PIP only if its intermediary fails to make prompt payment of the hospital's bills, or if the hospital previously qualified as a hospital serving a disproportionate share of low-income patients or as a small rural hospital. Hospitals that are not "subsection (d) hospitals," as well as other providers such as skilled nursing facilities and home health agencies, continue to be eligible for PIP if they meet the other qualifying conditions.

Section 1886(g)(3) of the Act requires, effective October 1, 1986, specified reductions in the amount of payment for capital-related costs of inpatient hospital services of all prospective payment hospitals except sole community hospitals. This provision is set forth in regulation at § 412.113.

Except for sole community hospitals as provided in section 1886 (g)(3)(B) of the Act, sections 1815(e)(1) and 1886(g)(3) of the Act apply to all subsection (d) hospitals and subsection (d) Puerto Rico hospitals (as defined in sections 1886(d)(1)(B) and (9)(A) of the Act, respectively). The authority in section 1886(d)(5)(C)(iii) of the Act that permits special treatment under the prospective payment system for a cancer hospital does not alter that hospital's status as a subsection (d) hospital (that is, a prospective payment hospital). Therefore, there is no legislative authority for exempting cancer hospitals from the provisions of sections 1815(e)(1) and 1886(g)(3) of the Act merely because they are paid on the same basis as hospitals excluded from the prospective payment system (that is, on a reasonable cost basis).

We have recently advised the HCFA regional offices to direct fiscal intermediaries that have not already done so to begin applying the provisions of §§ 412.113 and 412.116 to cancer hospitals receiving payments under § 412.94. The intermediaries were directed to apply the provisions of § 412.113 retroactively, beginning with portions of cost reporting periods occurring during FY 1987 as required by section 1886(g)(3) of the Act. However, the provisions of § 412.116 can not be applied retroactively due to the nature of PIP. Therefore, we directed the intermediaries to terminate current PIP payments to cancer hospitals that do not qualify to receive PIP under the provisions of § 412.116(b)(1)(i), (ii), or (iii). As with other prospective payment hospitals that no longer receive PIP, these cancer hospitals that have their PIP payments terminated will receive payments for inpatient operating costs related to care of Medicare patients on the basis of submitted bills rather than receiving equal biweekly payments.

Accordingly, we are proposing to revise § 412.94(b) to clarify that cancer hospitals receiving payment on a reasonable cost basis retain their status as subsection (d) hospitals and are subject to all other regulations governing hospitals subject to the prospective payment system. Specifically, we would add a new paragraph (b)(4) to state specifically that the provision of §§ 412.113 and 412.116 are applicable to cancer hospitals.

F. Rural Referral Centers (§ 412.96)

Under the authority of section 1886(d)(5)(C)(i) of the Act, § 412.96 sets forth the criteria a hospital must meet in order to receive special treatment under the prospective payment system as a referral center (that is, payment is based on the other urban payment rate rather than the rural payment rate). One of the criteria under which a rural hospital may qualify as a referral center is to have 275 or more beds available for use.

A rural hospital that does not meet the bed size criterion can qualify as a rural referral center if the hospital meets two mandatory criteria (number of discharges and case-mix index) and at least one of three optional criteria (medical staff, source of inpatients, or volume of referrals). With respect to the two mandatory criteria, currently a hospital is classified as a rural referral center if its—

- Case-mix index is equal to the lower of the median case-mix index for urban hospitals in its census region, excluding hospitals with approved teaching programs, or the median case-mix index for all urban hospitals nationally; and
- Number of discharges is at least 5,000 discharges per year or, if fewer, the median number of discharges for urban hospitals in the census region in which the hospital is located. (We note that the number of discharges criterion for an osteopathic hospital is at least 3,000 discharges per year.)

1. Case-Mix Index

Section 412.96(c)(1) provides that HCFA will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining referral center status. In determining the proposed national and regional case-mix index values, we would follow the same methodology we used in the November 24, 1986, final rule, as set forth in regulations at § 412.96(c)(1)(ii). Therefore, the proposed national case-mix index value would include all urban hospitals nationwide and the proposed regional values are the median values of urban hospitals within each census region, excluding those with approved teaching programs (that is, those hospitals receiving indirect medical education payments as provided in § 412.118).

These values are based on discharges occurring during FY 1988 (October 1, 1987, through September 30, 1988) and include bills posted to HCFA's records through December 1988. Therefore, in addition to meeting other criteria, we are proposing that to qualify for or to retain rural referral center status for cost reporting periods beginning on or after October 1, 1989, a hospital's case-mix index value for FY 1988 would have to be at least—

- 1.2187; or

• Equal to the median case-mix index value for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.118) calculated by HCFA for the census region in which the hospital is located as indicated in the table below.

Region	Case-mix index value
1. New England (CT, ME, MA, NH, RI, VT)	1.1598
2. Middle Atlantic (PA, NJ, NY)	1.1595
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	1.2107
4. East North Central (IL, IN, MI, OH, WI)	1.1644
5. East South Central (AL, KY, MS, TN)	1.1598
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	1.1742
7. West South Central (AR, LA, OK, TX)	1.2082
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	1.2379
9. Pacific (AK, CA, HI, OR, WA)	1.2272

The above numbers will be revised in the final rule to the extent that additional bills are received for discharges through September 30, 1988.

For the benefit of hospitals seeking to qualify as referral centers or those wishing to know how their case-mix index value compares to the criteria, we are publishing the FY 1988 case mix index values in Table 3c in section IV of the addendum to this proposed rule. In keeping with our policy on discharges, these case-mix index values are computed based on all Medicare patient discharges subject to DRG based payment.

2. Discharges

Section 412.96(c)(2)(i) provides that HCFA will set forth the national and regional numbers of discharges in each year's annual notice of prospective payment rates for purposes of determining referral center status. As specified in section 1886(d)(5)(C)(i)(II) of the Act, the national standard is set at 5,000 discharges. However, we are proposing to update the regional standards, which are based on discharges for urban hospitals during the fourth year of the prospective payment system (that is, October 1, 1986 through September 30, 1987), which is the latest year for which we have complete discharge data available.

Therefore, in addition to meeting other criteria, we are proposing that to qualify for or to retain rural referral center status for cost reporting periods beginning on or after October 1, 1989, a hospital's number of discharges for its cost reporting period that began during FY 1988 would have to be at least—

• 5,000; or

• Equal to the median number of discharges for urban hospitals in the census region in which the hospital is located as indicated in the table below. We again note that to qualify for or to retain rural referral center status for cost reporting periods beginning on or after October 1, 1989, an osteopathic hospital's number of discharges for its cost reporting period that began during FY 1988 would have to be at least 3,000.

Region	Number of discharges
1. New England (CT, ME, MA, NH, RI, VT)	6749
2. Middle Atlantic (PA, NJ, NY)	8138
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	6451
4. East North Central (IL, IN, MI, OH, WI)	7850
5. East South Central (AL, KY, MS, TN)	6113
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	5832
7. West South Central (AR, LA, OK, TX)	4528
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	7403
9. Pacific (AK, CA, HI, OR, WA)	4927

3. Retention of Referral Center Status

In the August 31, 1984 final rule, we announced that we were instituting a periodic review of the status of hospitals that qualified for a payment adjustment as referral centers (49 FR 34746). That final rule stated that this review would allow us to determine if these hospitals continued to meet the criteria for referral center status. The final rule stated that we would grant referral center status to a hospital for a 3-year period. At the end of the 3 years, we would evaluate a hospital's performance in meeting the criteria for qualifying as a referral center. A hospital would have been required to meet the criteria for at least 2 of those 3 years. If it did, the hospital would retain its referral center status for another 3-year period. If the hospital did not meet the criteria for at least 2 of the 3 years, the hospital's status as a referral center would end with the last day of the third cost reporting period for which it received the referral center payment adjustment.

Before we were able to implement this review, the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) was enacted on October 21, 1986. Section 9302(d)(2) of Pub. L. 99-509 stated that any hospital that was classified as a rural referral center on the date of the enactment of that law will continue to be classified as a referral center for cost reporting periods beginning on or after October 1, 1986 and before October 1, 1989. Thus, any hospital that was classified as a referral center as of October 21, 1986 (the date of enactment of Pub. L. 99-509) is guaranteed this status through its cost reporting period beginning before October 1, 1989.

We believe it is important that the rural referral center benefit be available only to those hospitals that continue to be in compliance with the statutory criteria for designation. Therefore, with the expiration of the requirement of section 9302(d)(2) of Pub. L. 99-509 on October 1, 1989, we are proposing to implement essentially the same retention criteria and methodology specified in § 412.96(f) that we had developed prior to the enactment of Pub. L. 99-509. These criteria and methodology were discussed in the June 10, 1985 proposed rule (50 FR 24380) and the September 3, 1985 final rule (50 FR 35676).

Basically, to retain status as a referral center, a hospital must meet the criteria for classification as a referral center specified in § 412.96(b) or (c) for at least 2 of the 3 years after it qualifies as a referral center or it must qualify on the basis of the requirements for the current year. A hospital may meet the specific criteria in either paragraph for individual years during the 3-year period or the current year. For example, a hospital may meet the two mandatory requirements in § 412.96(c)(1) (case mix index) and (c)(2) (number of discharges) and the optional criterion in paragraph (c)(3) (medical staff) during the first year. During the second and third year, the hospital may meet the criteria under § 412.96(b)(1) (rural location and appropriate bed size).

A hospital must meet all of the criteria within any section of the regulations in order to meet the retention criteria for a given year. That is, it must meet all of the criteria of § 412.96(b)(1) or § 412.96(b)(2) or § 412.96(c). For example, if a hospital meets the case mix index standards in § 412.96(b)(2) in years 1 and 3 and the number of discharge standards in years 2 and 3, it would not meet the retention criteria. All of the standards must be met in the same year.

When we begin implementation of the provisions of § 412.96(f), some hospitals will have been classified as referral centers for more than 3 years without having been reviewed for continuing compliance with the referral center criteria. We are proposing that the review process be limited to the hospital's compliance during the last 3 years. Thus, if a hospital meets the criteria for at least 2 of the last 3 years or for the current year, it would retain its status for another 3 years. No

hospital would be subject to a review until the end of its third full cost reporting period as a referral center. Therefore, those hospitals that first qualified as referral centers as of April 1, 1988 by virtue of having at least 275 beds would not be subject to review until the end of their third full cost reporting period as a referral center.

In the past few years, there have been several changes in the methodology used to set the case-mix index and the number of discharges criteria. We have constructed the following chart and example to aid hospitals that qualify as referral centers under the criteria in § 412.96(c) in projecting whether they would retain their status as a referral center.

Under § 412.96(f), to qualify for a 3-year extension effective with cost reporting periods beginning in FY 1990, a hospital must meet the mandatory criteria in § 412.96(c) for FY 1990 or it must meet the criteria for 2 of the last 3 years as follows.

For the cost reporting period beginning during FY	Use hospital's case-mix index for FY	Use the discharges for the hospital's cost reporting period beginning during FY	Use numerical standards as published in the **Federal Register** on
1989	1987	1987	September 30, 1988.
1988	1986	1986	September 1, 1987.
1987	1985	1985	November 24, 1986 and August 24, 1987.

Example: A hospital with a cost reporting period beginning July 1 qualified as a referral center effective July 1, 1985. The hospital has fewer than 275 beds. Its status as a referral center is protected through the end of its cost reporting period beginning July 1, 1989. To determine if the hospital should retain its status as a referral center for an additional 3-year period, we would review its compliance with the applicable criteria for its cost reporting periods beginning July 1, 1987, July 1, 1988, July 1, 1989, and July 1, 1990. The hospital must meet the criteria either for its cost reporting beginning July 1, 1990 or for two out of the three past periods. For example, to be found to have met the criteria, at § 412.96(c)(2) for its cost reporting period beginning July 1, 1988, the hospital's case-mix index value during FY 1986 must have equaled or exceeded the lower of the national or the appropriate regional standard as published in the September 1, 1987 final rule. The hospital's total number of discharges during its cost reporting year beginning July 1, 1986 must have equaled or exceeded 5,000 or the regional standard as published in the September 1, 1987 final rule.

For those hospitals that seek to retain referral center status by meeting the criteria of § 412.96 (b)(i) and (b)(1)(ii) (that is, rural location and appropriate bed size (500 or more beds for discharges occurring before April 1, 1988 and 275 or more beds thereafter)), we would look at the number of beds shown for indirect medical education purposes (as defined at § 412.118(b)) on the hospital's cost report for the appropriate year. As discussed above, we would consider only full cost reporting periods beginning on or after April 1, 1988 when determining a hospital's status under § 412.96(b)(1)(ii). This definition varies from the bed size criterion used to determine a hospital's initial status as a referral center because we believe it is important for a hospital to demonstrate that it has maintained at least 275 beds throughout its entire cost reporting period, not just for a particular portion of the year.

We project that 25 percent of hospitals currently designated as rural referral centers will not meet the retention criteria. Approximately three-quarters of these hospitals do not meet the proposed case-mix index criterion for qualifying as a rural referral center in FY 1990; based on MEDPAR data processed through December 31, 1988, the average case-mix index value for the hospitals not meeting the case-mix index criterion is six percent lower than the applicable criterion and is comparable to the FY 1988 case-mix index for other rural hospitals. Approximately 44 percent of the hospitals had fewer than 5,000 discharges in FY 1987. Among these, the average number of FY 1987 discharges was slightly more than 4,000. As a group, the average hospital cost per case in FY 1987 was approximately 10 percent lower than the cost per case of the hospitals that we project will retain rural referral center status.

G. Disproportionate Share Adjustment (§ 412.106)

Section 8401 Pub. L. 100–647 amended section 1886(d)(5)(F)(i) of the Act to extend payment of the disproportionate share adjustment through discharges that occur before October 1, 1995. Prior to enactment of Pub. L. 100–203, the payment adjustment for disproportionate share hospitals was to be made only through discharges occurring before October 1, 1990. We would revise § 412.106 (b)(1) and (b)(2) to conform our regulations with this statutory provision.

H. Indirect Medical Education Costs (§ 412.118)

Section 1886(d)(5)(B) of the Act provides that prospective payment hospitals that operate medical education programs receive an additional payment for the indirect costs of medical education. The regulations governing the calculation of this additional payment are set forth at § 412.118. Each hospital's additional indirect medical education payment is determined by multiplying the hospital's total DRG revenue by the applicable education adjustment factor.

Section 4003(a) of Pub. L. 100–203 revised section 1886(d)(5)(B)(ii) of the Act to reduce the education adjustment factor used to determine the indirect medical education payment from approximately 8.1 percent to approximately 7.7 percent for discharges occurring on or after October 1, 1988 and before October 1, 1990. Section 8401 of Pub. L. 100–647 extended the applicability of this education adjustment factor through discharges occurring before October 1, 1995. We note that the education adjustment factor is an approximation because the adjustment factor is applied on a curvilinear or variable basis. An adjustment made on a curvilinear basis reflects a nonlinear cost relationship; that is, each absolute increment in a hospital's ratio of interns and residents to beds does not result in an equal proportional increase in costs.

For discharges occurring on or after October 1, 1988 and before October 1, 1995, the indirect medical education factor equals the following:

$$1.89 \times \left[\left(1 + \frac{\text{interns and residents}}{\text{beds}}\right)^{.405} - 1\right]$$

For discharges occurring on or after October 1, 1995, the indirect medical education factor equals the following:

$$1.43 \times \left[\left(1 + \frac{\text{interns and residents}}{\text{beds}}\right)^{.5795} - 1\right]$$

We would amend § 412.118 (c) and (d) to implement the provisions of amended section 1886(d)(5)(B)(ii) of the Act.

V. Other ProPAC Recommendations

As required by law, we have reviewed the March 1, 1989 report submitted by ProPAC and have given its recommendations careful consideration in conjunction with the proposals set

forth in this document. Recommendations 1 through 7 concerning the update factors are discussed in Appendix C. Recommendation 13 concerning reassignment of patients with Guillain-Barre syndrome is discussed in section II.B. of this preamble. The remainder of the recommendations are discussed below.

A. Adjustments to the Prospective Payment System Payment Formula

1. Indirect Medical Education Adjustment (Recommendation 8)

Recommendation: The Secretary should seek legislation to reduce the indirect medical education adjustment from 7.7 percent to 6.6 percent for FY 1990. This reduction should be implemented in a budget neutral fashion with the savings returned to all hospitals through corresponding increases in the standardized amounts. ProPAC estimates that the indirect medical education adjustment should be 4.4 percent. However, concern about implementing such a large reduction led ProPAC to recommend that only one third of the total reduction be implemented this year. ProPAC also recommends that further reductions should be made only after review of costs and analysis of impact.

Response: We agree that the current indirect medical education adjustment paid to teaching hospitals is excessive and should be reduced. We believe that the adjustment should be reduced to 4.05 percent for each 10 percent increment in the intern and resident-to-bed ratio applied on a curvilinear basis. That figure represents our estimate of the actual impact of the indirect costs of teaching activity on hospital costs. We note that this figure does not differ significantly from the ProPAC estimate, which is 4.4 percent for each 10 percent increment in the ratio of interns and residents-to-beds.

Our analyses indicate that teaching hospitals have had favorable Medicare operating margins under the prospective payment system. Hospitals, on average, experienced operating margins of 5.3 percent during FY 1987. Teaching hospitals, on the average, experienced higher Medicare operating margins. Teaching hospitals with an intern and resident-to-bed ratio of less than 25 percent had Medicare operating margins of 7.6 percent during FY 1987; teaching hospitals with greater than a 25 percent intern and resident-to-bed ratio had Medicare operating margins of 13.6 percent on average during FY 1987.

We believe that teaching hospitals have fared exceptionally well under the prospective payment system and are able to absorb a reduction in the indirect medical education adjustment. Therefore, while we recognize that a change in the adjustment from 7.7 percent to 4.05 percent is sizeable, we do not believe that gradually reducing the adjustment, as ProPAC has recommended, is justified. Moreover, in view of the budgetary constraints, we believe it would be inappropriate to pay in excess of the estimate of the actual indirect costs of teaching activity. Further, because we believe payments to other hospitals are adequate, we believe that the change in the indirect medical education adjustment formula should not be implemented in a budget neutral fashion.

2. Outlier Payment Policy (Recommendation 9)

Recommendation: ProPAC believes that the modifications in the outlier payment methodology that were implemented during FY 1989 represent an improvement in the payment system. The Secretary should continue to examine methods for improving the effectiveness of outlier payment in accomplishing its two major objectives; that is, protecting hospitals from the risk of extraordinarily costly cases and protecting those patients who are more likely to be extraordinarily costly cases from a potential decrease in access to inpatient hospital services. This examination should include a review of the fundamental structure of outlier payment policy.

Response: We are pleased that ProPAC comments favorably on the changes in outlier payment policy that were made for FY 1989. We agree with ProPAC that we should continue to study and evaluate this area, and we are prepared to work with ProPAC on further studies. In particular, we are interested in developing policies to protect small rural hospitals from the financial impact of extraordinarily costly cases. We are also interested in assessing the impact of our changes on those hospitals that believe they have been harmed due to the greater emphasis on cost rather than length of stay as a criteria for paying for outliers. We believe that any assessment of whether certain patients are denied access to health care is most appropriated performed as a part of the review conducted by the Peer Review Organizations (PRO).

B. Data Collection and Measurement

1. Updating the Area Wage Index (Recommendation 10)

Recommendation: ProPAC believes that the availability of timely and accurate hospital wage data is critical in maintaining the equity of payments to hospitals under the prospective payment system. However, the data currently in use are six years old and are unlikely to provide an accurate measure of current relative wage levels. Therefore, ProPAC urges the Secretary to replace these data with more current information and to use the more current data to update the wage index for FY 1990. The Secretary also should develop a permanent mechanism for obtaining accurate hospital wage data on an annual basis. In addition, ProPAC urges the Secretary to update the wage index at least every other year.

Response: We share ProPAC's concern that the wage index reflect as accurately as possible the current wage and salary trends experienced by hospitals and we are taking steps to obtain more recent data.

We had attempted to collect wage data from 1986 through HCFA Form 339, Exhibit 7, which involved categorizing wages according to occupational mix. However, over 60 percent of the expected respondents failed to complete a form, and those that did reply experienced numerous difficulties completing the form.

After consultation with hospital industry representatives, we have revised the survey format and have initiated a new hospital wage survey. This survey will collect calendar year 1988 wage data from all prospective payment hospitals. We carefully examined the feasibility of expediting the survey process using an abbreviated format in an attempt to update the wage index for FY 1990. Unfortunately, time constraints preclude us from developing a reliable updated wage index prior to FY 1991.

We examined the time required to complete each step in the process of obtaining, editing, analyzing, and correcting hospital wage data and found that, absent any delays, the earliest we could develop a wage index was September 1989. This process was an expedited one that did not include requesting, receiving, and considering comments on the methodology from the hospital industry. We have been advised by the hospital industry that it would want the opportunity to comment on any survey methodology. A complete wage survey that included hospital industry input and took into account

possible delays by fiscal intermediaries and hospitals, would result in a new proposed wage index being developed no earlier than March 1990. Therefore, the hospital wage data we are currently collecting will be used to update the wage index for discharges occurring in FY 1991.

In addition, we are considering a process for gathering data on a continuing basis as part of the hospital cost report. Such a system, once it is in place, would enable us to update the wage index on an annual basis.

2. Improving the Cost Data Used for Decision Making (Recommendation 11)

Recommendation: The Secretary should begin the development work necessary to secure the future role of the Medicare cost report as a vital source for policy evaluation and decision making. Although the cost report was originally developed and continues to be used as a reimbursement tool, it is also increasingly used as a source of data. This trend will continue and should be encouraged. Efforts to improve the cost report should attempt to minimize the administrative burden on hospitals, fiscal intermediaries, and the Federal government.

Response: The Secretary plans to conduct a demonstration project in the States of California and Colorado to develop and determine the cost and benefits of a uniform system of cost reporting for hospitals participating in the Medicare program. The purpose of this demonstration is to collect the additional uniform cost report data required by section 4007(c)(1) of Pub. L. 100–203. In addition, we have modified the Hospital and Hospital Health Care Complex Cost Report (Form HCFA–2552) to enable it to be used as a standardized electronic cost report format in accordance with section 4007(b) of Pub. L. 100–203. We believe that these changes could result in data that are received in a more uniform and timely fashion and that are more accurate.

3. Improvements in Case-Mix Measurement (Recommendation 12)

Recommendation: The Secretary should begin immediately to thoroughly evaluate the potential consequences of adopting the DRG refinements recently developed at Yale University. Preliminary results from this project appear to be very promising. Much work remains to be done, however, to understand fully all of the implications of applying these refinements in the prospective payment system. ProPAC will be pleased to cooperate fully with the Secretary to further this effort.

Response: We are studying the DRG refinements developed by Yale and agree that they appear to be a promising improvement in measuring variations in resource intensity within DRGs. We agree that it is critical that we undertake a full assessment of the implications of this system and will be pleased to work with ProPAC in this regard. It is necessary to evaluate the redistributional effects of the Yale refinements and the appropriateness of current payment adjustments such as indirect medical education and disproportionate share, which are designed to account for higher resource intensity within certain classes of hospitals that is not recognized under the current DRG system. In addition, we are concerned with the potential impact the Yale refinements may have on the relative levels of payment to urban and rural hospitals.

C. Quality of Care

Evaluation of PRO Review of Quality of Care (Recommendation 14)

Recommendation: The Secretary should evaluate the impact of the PROs on quality of care. Intensified analysis of the PRO findings and validation of the PRO quality review process should be included in the evaluation. The validity, reliability, and efficiency of the PRO quality screens should receive special emphasis in the evaluation. In addition, the Secretary should continue to develop, test, and implement more sophisticated methods of inpatient and outpatient quality review. The Secretary should also develop additional mechanisms to identify and evaluate quality of care beyond the immediate period of hospitalization, placing more emphasis on outcomes of care.

Response: We agree with the recommendation for evaluation of the impact of PROs on quality of care. We have the following two mechanisms in place that evaluate a PRO's application of quality screens:

- An independent contractor, Systemetrics, Inc. (the so-called "SuperPRO") validates the determinations made by a PRO specifically to identify quality issues that should have been addressed by the PRO using generic screening criteria. This review is a rereview of the medical records originally examined by the PRO. Whenever discrepancies arise, the PRO is given an opportunity to rebut the SuperPRO's findings. The final SuperPRO decisions are used as educational tools for PROs. HCFA also reviews these decisions to identify areas in which corrective action is needed. During the PRO contract negotiations, SuperPRO findings, including those related to generic quality screens, will be considered in the PRO evaluation process.
- The Peer Review Organization Monitoring Protocol and Tracking System (PROMPTS) monitors the PROs performance in the area of quality of care. PROMPTS involves regional office rereview of PRO clinical decisions, including generic screen failures. If the regional office disagreements with a PRO's decisions exceeds a specific threshold, the PRO must submit a corrective action plan. These corrective actions are then monitored by HCFA, and subsequent SuperPRO findings are closely examined to monitor a PRO's performance. We routinely analyze those areas where the disagreement rate exceeds the threshold and require the PRO to take additional corrective action, if necessary. Additionally, the PRO's performance in this activity is considered in the PRO evaluation process.

SuperPRO and PROMPTS are essential parts of the PRO evaluation process and are used to carefully monitor and evaluate the validity, reliability, and efficiency of PRO application of quality screens. HCFA agrees with ProPAC's recommendation that the Secretary should continue to develop, test, and implement more sophisticated methods of inpatient and outpatient quality review.

Additionally, we are developing methodology for the PROs to use in proposing pilot projects in each of these areas. For example, we will be looking at proposals under which the PROs would review the quality of care in physicians' offices and in other outpatient settings. The pilot studies would be designed to track the patient across all settings in which care is received to assess health longitudinally. We also will be planning pilot projects under which PRO review will be lessened in hospitals whose performance appears superior, as judged by such things as consistently lower than expected risk-adjusted mortality and rehospitalization rates. This will help us to determine whether patient outcomes in these hospitals differ significantly from those where the normal PRO review process is in place.

D. Rural Hospitals

Rural Hospitals (Recommendation 15)

Recommendation: ProPAC is concerned about the problems affecting rural hospitals and the rural health care system, as well as the implication of these problems on access to needed

health care. ProPAC recognizes that these problems extend beyond the prospective payment system and Medicare. ProPAC urges the Secretary to continue the Department's rural health care research and policy agenda. Meanwhile, ProPAC will continue its analysis of the effects of the prospective payment system on rural hospitals.

Response: We recognize that rural hospitals have not fared as well as urban hospitals under the prospective payment system. The original design of the payment system initially underpaid rural hospitals relative to urban hospitals. We believe the comparative disadvantages experienced by rural hospitals in the early years of the prospective payment system have been largely addressed by numerous administrative and legislative changes designed to improve payment equity for rural hospitals. However, changes in the prospective payment system cannot address the more fundamental problems affecting rural hospitals that arise from changing economic circumstances in rural areas and from declining occupancy rates.

As discussed in section IV.D. of this preamble, we are continuing to study the problems facing rural hospitals and are examining whether further refinements to the prospective payment system are needed. We are particularly concerned over the adequacy of the payments to sole community hospitals and are examining whether legislative changes in the payment methodology for these hospitals would be appropriate. In section IV.C. of this preamble, we are proposing changes in the criteria for designating sole community hospitals. In addition, we are placing priority on research related to replacing the separate payment rates for urban and rural areas with a single payment rate adjusted for severity and other factors that more closely capture differential hospital cost experience.

E. Ambulatory Surgery Payment

1. Medicare Payment for Hospital Outpatient Surgery (Recommendation 16)

Recommendation: Beginning in FY 1990, Medicare payment for the facility component of hospital outpatient surgery including capital should be entirely prospective. Separate rates should be established for each of the six groups proposed for payment of services furnished in ambulatory surgery centers (ASCs). The rate for FY 1990 should be based on a blend of hospital-specific costs, average hospital costs, and the rate paid to freestanding ASCs. The rate should be updated annually.

The level of the prospective rates should be the same in FY 1990 as they would have been under current policy. Payments should be adjusted to reflect differences in area wages. These changes in hospital outpatient surgery payment policy should apply to the list of ASC-approved procedures only; other Medicare payment provisions should continue for all other procedures. ProPAC does not recommend special treatment of eye and ear specialty hospitals.

Response: We agree with ProPAC's objective to develop a prospective payment system for hospital outpatient ambulatory surgical services. However, we do not agree with the approach ProPAC has recommended. As we stated in our interim report to Congress last year on this subject, a prospective payment system for hospital outpatient ambulatory surgical services should be based on two basic principles. First, Medicare program outlays should be no greater under a hospital outpatient prospective payment system than under the current system. Second, the prospective payment system should create a level playing field between ASC and hospital outpatient departments; that is, any difference between hospital-based payments and ASC payments should be based on justifiable differences in cost.

We plan on continuing to study different approaches to incorporate hospital outpatient surgical services into a prospective payment system that is based on the principles stated above. Thus, we recommend no further changes to the hospital outpatient ambulatory surgical payment system at this time.

2. Beneficiary Liability for Hospital Outpatient Surgery (Recommendation 17)

Recommendation: The Secretary should modify the methodology used to determine Medicare Part B coinsurance for certain ambulatory surgery services performed in hospital outpatient departments. Currently, beneficiary coinsurance is based on hospital submitted charges. ProPAC believes that beneficiary coinsurance should be limited to 20 percent of the payment amount allowed by Medicare. The Medicare program should bear the costs of the change.

Response: As was stated in our response to Recommendation 16, we oppose making any changes to the present payment system for ambulatory surgical services. Therefore, we would be unable to implement this ProPAC recommendation for the present time.

In addition, the present system pays in the aggregate for surgery performed in a hospital outpatient setting based on the lesser of cost or charges or a blend of a hospital specific amount and the ASC payment amount. Because the system is based on payments in the aggregate, calculated upon retroactive settlement, it is not possible to determine the actual payment amount based on individual bills, as would be necessary to implement ProPAC's proposal. Therefore, we believe that no changes should be made at this time.

VI. Other Required Information

A. Paperwork Reduction Act

This proposed rule does not impose information collection requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

B. Public Requests for Data

In order to respond promptly to public requests for data related to the prospective payment system, we have set up a process under which commenters can gain access to the raw data on an expedited basis. Generally, the data are available in computer tape format and are listed below with the cost of each tape. Anyone wishing to purchase data tapes should submit a written request along with a check to cover the cost of the tapes to the following address: HCFA Office of Statistics and Data Management, Bureau of Data Management and Strategy, Room 1–F–2, Oak Meadows Building, 6325 Security Boulevard, Baltimore, MD 21207.

1. MEDPAR Public Use File

This file contains billing and medical data for Medicare beneficiaries using short-stay hospital inpatient services for a 20 percent sample determined by the terminal digits in the beneficiary's Health Insurance Claim Number. The file is stripped of most data elements that would identify either the beneficiary or the hospital.

Periods Available: Calendar Year (CY) 1980 through CY 1988

Price: $840.00 for each calendar year

2. Expanded Modified MEDPAR File

The file contains records for 100 percent of Medicare beneficiaries using short-stay hospital inpatient services. The file is stripped of most data elements that would identify beneficiaries. The hospitals are identified. The file is available to persons qualifying under the terms of the Notice of Proposed New Routine Use

for an Existing System of Records published in the Federal Register on December 24, 1984 (49 FR 49941), which was amended by the July 2, 1985 Notice of Proposed new Routine Use for an Existing System of Records (50 FR 27361). Under the requirements of these notices, a data use agreement must be signed by the purchaser before release of these data.

Periods Available: FY 1984 through FY 1988

Price: $2760.00 for each fiscal year

3. HCFA Hospital Wage Index Survey

Wage indexes for acute care hospitals are used to adjust payments in the prospective payment system. Both the 1982 and 1984 wage index files include the following data items for each hospital: provider number, intermediary number, beginning and ending dates of the cost reporting period, total gross hospital salaries, total paid hours, and state and county codes. In addition, the 1982 wage index file includes the date the hospital became subject to the prospective payment system. These files are generated upon special request.

Periods Available: Cost reporting periods ending in calendar year 1982 and cost reporting periods ending September 30, 1984 through September 29, 1985

Price: $390.00 each

4. H180 Extract, Cost Reporting Periods Ending January 1, 1981 Through December 31, 1981

This file contains selected data items from cost reports. These data were used in computing the initial Federal prospective payment rate.

Price: $560.00

5. H180 Extract, Cost Reporting Periods Ending January 1, 1982 Through September 29, 1983

This file contains the target amount computations that provide the basis for the determination of the final prospective payment system hospital-specific rates and rate-of-increase limits hospital-specific target amounts per case.

Price: $560.00

6. TEFRA Minimum Data Set, Cost Reporting Periods Ending September 30, 1983 Through September 29, 1984

The TEFRA Minimum Data Set contains cost, statistical, financial, and other information from the Medicare hospital cost report (Form HCFA 2552–83). There is a single record for each of 6,679 Medicare participating hospitals. This data set includes capital-related cost (fixed and moveable) information used in the early analyses of prospective capital payment. Most of these files are taken from cost reports that have been settled by the intermediaries.

Price: $560.00

7. PPS–I Minimum Data Set, Cost Reporting Periods Ending September 30, 1984 Through September 29, 1985

The PPS–I Minimum Data Set contains cost, statistical, financial, and other information from the Medicare hospital cost report (Form HCFA 2552–84). There is a single record for each Medicare participating hospital. The data files include submitted, final settled, and reopened cost reports received from the intermediary.

Price: $560.00

8. PPS–II Minimum Data Set, Cost Reporting Periods Ending September 30, 1985 through September 29, 1986

The PPS–II Minimum Data Set contains cost, statistical, financial, and other information from the Medicare hospital cost report (Form HCFA 2552 85). There is a single record for each Medicare participating hospital. The data set includes submitted, final settled, and reopened cost reports received from the intermediaries.

Price: $560.00

9. PPS–III Minimum Data Set, Cost Reporting Periods Ending September 30, 1986 Through September 29, 1987

The PPS–III Minimum Data Set contains cost, statistical, financial, and other information from the Medicare hospital cost report (Form HCFA 2552–86). There is a single record for each Medicare participating hospital. The data set includes submitted, final settled, and reopened cost reports received from the intermediaries.

Price: $560.00

10. PPS–IV Minimum Data Set, Cost Reporting Periods Ending September 30, 1987 Through September 29, 1988

The PPS–IV Minimum Data Set, contains cost, statistical, financial, and other information from the Medicare hospital cost report (HCFA Form 2552–85). There is a single record for each Medicare participating hospital. The data set includes submitted, final settled, and reopened cost reports received from the intermediaries.

Price: $560.00

11. Provider-Specific Variable File

This file is a component of the PRICER program used in an intermediary's system to compute individual DRG payments. The file contains records for all prospective payment system hospitals and short stay acute care hospitals in waiver States, and data elements used in standardizing hospital charges for recalibration and in simulating payments to hospitals.

Periods Available: 1984, 1986, 1987, and 1988

Price: $390.00

For further information concerning these data tapes, contact Rose Connerton at (301) 966–5300.

In addition, certain other data, such as area wage data and data used to construct the Puerto Rico standardized amounts, are available in hard copy format. Commenters interested in examining hard copy data should contact Lana Price at (301) 966–4534.

We realize that commenters may be interested in obtaining data other than those we have discussed above. These commenters should direct their requests to Lana Price at the number provided above.

Finally, in lieu of obtaining data through the mail, certain data may also be available for inspection at the central office of the Health Care Financing Administration in Baltimore, Maryland. Commenters interested in obtaining more information about this alternative for reviewing data should also contact Lana Price.

C. Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments concerning the provisions of this proposed rule that we receive by the date and time specified in the "Dates" section of this preamble and respond to those comments in the preamble to that rule. We emphasize that, given the statutory requirement under section 1886(e)(5) of the Act that our final rule for FY 1990 be published by September 1, 1989, we will consider only those comments that deal specifically with the matters discussed in this proposed rule.

List of Subjects in 42 CFR Part 412

Health facilities, Medicare.

42 CFR Part 412 would be amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBCHAPTER B—MEDICARE PROGRAMS

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

A. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1122, 1815(e), 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1320a–l, 1395g(e), 1395hh, and 1395ww).

B. Subpart A is amended as follows:

Subpart A—General Provisions

§ 412.8 [Amended]

In § 412.8, paragraph (b)(4) is removed.

C. Subpart F is amended as follows:

Subpart F—Payment for Outliers

§ 412.84 [Amended]

In § 412.84(k), the phrase "and before October 1, 1989" is removed.

D. Subpart G is amended as follows:

Subpart G—Special Treatment of Certain Facilities

1. In § 412.92(a), in paragraphs (a)(1) and the introductory text of paragraph (a)(2), the number "50" is revised to read "35"; paragraph (b)(4)(iii) is revised; in the introductory text of paragraph (e)(3) and paragraph (e)(3)(i), the term "HCFA" is replaced with the phrase "the intermediary"; paragraph (e)(3)(ii) is revised; in paragraph (e)(3)(iii), the term "HCFA" is replaced with the phrase "the intermediary"; and, in paragraph (g)(6), the phrase "before October 1, 1989" is deleted to read as follows:

§ 412.92 Special treatment: Sole community hospitals.

* * * * *

(b) *Classification procedures.* * * *

(4) *Cancellation of classification.*

* * *

* * * * *

(iii) If a hospital requests that its sole community hospital classification be cancelled, it may not be reclassified as a sole community hospital unless it meets the following conditions:

(A) At least one full year has passed since the effective date of its cancellation.

(B) The hospital meets the qualifying criteria set forth in paragraph (a) of this section in effect at the time it reapplies.

* * * * *

(e) *Additional payments to sole community hospitals experiencing a significant volume decrease.* * * *

(3) * * *

(ii) The intermediary makes its determination within 180 days from the date it receives the hospital's request and all other necessary information.

2. In § 412.94, a new paragraph (b)(4) is added to read as follows:

§ 412.94 Special treatment: Cancer hospitals.

* * * * *

(b) *Payment.* * * *

(4) A hospital that elects reasonable cost reimbursement continues to be subject to the prospective payment system with respect to hospital inpatient services, as provided in § 412.20. The provisions in §§ 412.113 and 412.116 concerning payment for capital-related costs and method of payment for inpatient hospital services, respectively, are applicable to such a hospital.

3. In § 412.96, paragraph (f) is revised to read as follows:

§ 412.96 Special treatment: Referral centers.

* * * * *

(f) *HCFA review of referral center status.*—(1) *General rule.* The status of each hospital that is receiving a referral center adjustment is reviewed by the HCFA regional office every 3 years to determine if the hospital continues to meet the applicable criteria

(2) *Retention criteria.* To retain referral center status, a hospital must meet the applicable criteria—

(i) In at least 2 of the last 3 years; or

(ii) For the current year.

(3) *Cancellation of referral center status.* If a hospital does not meet either of the retention criterion in paragraph (f)(2) of this section and no longer qualifies for a referral center adjustment, HCFA discontinues the adjustment beginning on the first day of the hospital's next cost reporting period.

* * * * *

§ 412.106 [Amended]

In § 412.106, in paragraphs (b)(1) and (b)(2), the phrase "October 1, 1990" is revised to read "October 1, 1995".

E. Subpart H is amended as follows:

Subpart H—Payments to Hospitals Under the Prospective Payment System

§ 412.118 [Amended]

In § 412.118, in paragraphs (c)(1), (c)(2), (d)(1), and (d)(2), the phrase "October 1, 1990" is revised to read "October 1, 1995".

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: April 25, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: May 1, 1989.

Louis W. Sullivan,

Secretary.

[**Editorial note:** The following addendum and appendixes will not appear in the Code of Federal Regulations.]

Addendum—Proposed Schedule of Standardized Amounts Effective with Discharges On or After October 1, 1989 and Update Factors and Target Rate Percentages Effective With Cost Reporting Periods Beginning On or After October 1, 1989

I. Summary and Background

In this addendum, we are proposing changes in the amounts and factors for determining prospective payment rates for Medicare inpatient hospital services. We are also proposing new target rate percentages for determining the rate-of-increase limits (target amounts) for hospitals and hospital units excluded from the prospective payment system.

For hospital cost reporting periods beginning on or after October 1, 1989, except for sole community hospitals and hospitals located in Puerto Rico, each hospital's payment per discharge under the prospective payment system will be comprised of 100 percent of the Federal rate. Except for hospitals affected by the regional floor, the Federal portion of a hospital's prospective payment rate is based on 100 percent of the national rate.

Sole community hospitals are to be paid on the basis of a rate per discharge composed of 75 percent of the hospital-specific rate and 25 percent of the applicable Federal regional rate (section 1886(d)(5)(C)(ii) of the Act). Hospitals in Puerto Rico are paid on the basis of a rate per discharge composed of 75 percent of a Puerto Rico rate and 25 percent of a national rate (section 1886(d)(9)(A) of the Act). Hospitals affected by the regional floor are paid on the basis of 85 percent of the Federal national rate and 15 percent of the Federal regional rate.

As discussed below in section II, we are proposing to make changes in the determination of the prospective payment rates. The changes, to be applied prospectively, would affect the calculation of the Federal rates. Section III sets forth our proposed changes for determining the rate-of-increase limits for hospitals excluded from the prospective payment system. The tables to which we refer in the preamble to the

proposed rule are presented at the end of this addendum in section IV.

II. Proposed Changes to Prospective Payment Rates For Hospitals for FY 1990

The basic methodology for determining prospective payment rates is set forth at § 412.63 for hospitals located outside of Puerto Rico. The basic methodology for determining the prospective payment rates for hospitals located in Puerto Rico is set forth at §§ 412.210 and 412.212. Below we discuss the manner in which we are proposing to change some of the factors used for determining the prospective payment rates. The Federal and Puerto Rico rate changes, once issued as final, would be effective with discharges occurring on or after October 1, 1989. As required by section 1886(d)(4)(C) of the Act, we must adjust the DRG classifications and weighting factors for discharges in FY 1990.

In summary, the standardized amounts set forth in Tables 1a, 1b, and 1c of section IV of this addendum were—

- Adjusted to ensure budget neutrality as provided in section 1886(d)(8)(D) of the Act;
- Adjusted by the revised urban and rural outlier offsets; and
- Updated by 5.8 percent (that is, the market basket percentage increase).

A. Calculation of Adjusted Standardized Amounts

1. Standardization of Base-Year Costs or Target Amounts

Section 1886(d)(2)(A) of the Act required the establishment of base-year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the interim final rule, published September 1, 1983 (48 FR 39763), contains a detailed explanation of how base-year cost data were established in the initial development of standard amounts for the prospective payment system and how they are used in computing the Federal rates.

Section 1886(d)(9)(B)(i) of the Act required that Medicare target amounts be determined for each hospital located in Puerto Rico for its cost reporting period beginning in FY 1987. The September 1, 1987 final rule contains a detailed explanation of how the target amounts were determined and how they are used in computing the Puerto Rico rates (52 FR 33043, 33066).

The standardized amounts are based on per discharge averages of adjusted hospital costs or, for Puerto Rico, adjusted target amounts, from a base period, updated and otherwise adjusted in accordance with the provisions of section 1886(d) of the Act. Sections 1886(d)(2)(C) and (d)(9)(B)(ii) of the Act required that the updated base-year per discharge costs and, for Puerto Rico, the updated target amounts, respectively, be standardized in order to remove from the cost data the effects of certain sources of variation in cost among hospitals. These include case mix, differences in area wage levels, cost of living adjustments for Alaska and Hawaii, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients.

Since all adjustments for variation in hospital operating costs or target amounts have already been accounted for consistent with the construction of the standardized amounts, no revision was made at the hospital level for those factors. That is, the adjustments for differences in case mix, wages, cost-of-living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients reflected in the FY 1990 proposed standardized amounts are identical to those reflected in the current (FY 1989) standardized amounts.

2. Computing Urban and Rural Averages Within Geographic Areas

In determining the prospective payment rates for FY 1984, section 1886(d)(2)(D) of the Act required that the average standardized amounts be determined for hospitals located in urban and rural areas of the nine census divisions and the nation. Under section 1886(d)(9)(B)(iii) of the Act, the average standardized amount per discharge for FY 1988 must be determined for hospitals located in urban and rural areas in Puerto Rico.

For FY 1990, except for hospitals in Puerto Rico and those hospitals that are affected by the regional floor, the Federal rates will be comprised of 100 percent of the national rate (section 1886(d)(1)(A)(iii) of the Act). The Federal rate for hospitals affected by the regional floor is based on 85 percent of the national rate and 15 percent of the regional rate. Section 1886(d)(5)(C)(ii) of the Act specifies that a sole community hospital's Federal rate is based on 100 percent of the regional rate. Hospitals in Puerto Rico are paid a blend of 75 percent of the applicable Puerto Rico standardized amount and 25 percent of a national standardized payment amount.

Section 4002(c)(1) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) amended section 1886(d)(3) of the Act to require the Secretary to compute three average standardized amounts for discharges occurring in a fiscal year beginning on or after October 1, 1987: one for hospitals located in rural areas; one for hospitals located in large urban areas; and one for hospitals located in other urban areas. Section 4002(b) of Pub. L. 100–203 amended section 1886(d)(2)(D) of the Act to define a "large urban area" as an urban area with a population of more than 1,000,000. In addition, section 4009(i) of Pub. L. 100–203 provides than a New England County Metropolitan Area (NECMA) with a population of more than 970,000 is classified as a large urban area. As required by section 1886(d)(2)(D) of the Act, population size is determined by the Secretary based on the latest population data published by the Bureau of the Census. Under that section as now amended, urban areas are referred to as "other urban areas."

Based on 1987 population estimates published by the Bureau of the Census, the current 46 large urban areas continue to meet the criteria to be defined as large urban areas for FY 1990. A list of those areas was set forth in the April 5, 1988 notice at 53 FR 11138. In addition, these areas are identified by an asterisk in Tables 4a and 4c. No additional areas were identified. Therefore, we are proposing no change in these areas for purposes of this proposed rule. If new population estimates are published by the Bureau of the Census before we publish the final rule, we would include any resulting additions to and deletions from the list of large urban areas in that rule.

Table 1a contains the three national standardized amounts that would be applicable to most hospitals. Table 1b sets forth the 27 regional standardized amounts that would be applicable to sole community hospitals and to hospitals subject to the regional floor. Under section 1886(d)(9)(A)(ii) of the Act, the national standardized payment amount applicable to hospitals in Puerto Rico consists of the discharge weighted average of the national rural standardized amount, the national large urban standardized amount, and the national other urban standardized amount (as set forth in Table 1a). The national average standardized amount for Puerto Rico is set forth in Table 1c. This table also includes the three standardized amounts that would be applicable to most hospitals in Puerto Rico.

The methodology for computing the national average standardized amounts is identical to the methodology for determining the regional amounts.

The Office of Management and Budget (OMB) may announce revised listings of

the Metropolitan Statistical Area (MSA) and NECMA designations that are used in calculating the standardized amounts. If OMB makes the announcement before we issue the final rule, we will list the revised MSA/NECMA designations in the addendum to the final rule. Consistent with Medicare policy and our regulations at § 412.63(b)(4), the changes in designation will be effective for discharges occurring on or after October 1, 1989.

3. Updating the Average Standardized Amounts

In accordance with section 1886(d)(3)(A) of the Act, we are proposing to update the large urban, other urban, and rural average standardized amounts and the hospital-specific rate (which applies only to sole community hospitals) using the applicable percentage increase specified in section 1886(b)(3)(B)(i) of the Act. The percentage increase to be applied is mandated under that section of the law as the estimated percentage increase in the hospital market basket for hospitals located in all areas. The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. The most recent forecasted hospital market basket increase and, thus, the applicable percentage increase for FY 1990 is 5.8 percent.

Although the update factor for FY 1990 is set by law, we were required by section 1886(e)(3)(B) of the Act to report to Congress no later than March 1, 1989 on our initial recommendation of update factors for FY 1990 for both prospective payment hospitals and hospitals excluded from the prospective payment system. For general information purposes, we have included this report as Appendix B of this proposed rule. Our proposed recommendation on the update factors (which is required by sections 1886 (e)(4) and (e)(5)(A) of the Act), as well as our responses to ProPAC's recommendations concerning the update factors, are set forth as Appendix C to this proposed rule.

4. Other Adjustments to the Average Standardized Amounts

a. *Indirect Medical Education.* Section 1886(d)(3)(C)(ii)of the Act provides that, effective for discharges occurring on or after October 1, 1986, the average standardized amounts be further reduced, taking into consideration the effects of the standardization for indirect medical education costs as described in section II.A.1. of this addendum. The required adjustment is to ensure that the program savings that would be achieved through standardizing for indirect medical education on one basis and computing indirect medical education payments on another basis are preserved.

The first such adjustment was implemented for the standardized amounts effective October 1, 1986. (See the September 3, 1986 final rule (51 FR 31521).) Since section 1886(d)(3)(C)(ii) of the Act, as amended by section 4003(a)(2) of Pub. L. 100–203, required a revision of the adjustment due to the reduction of the adjustment factor for computing indirect medical education payments effective October 1, 1988, we made a further adjustment to the standardized amounts effective October 1, 1988 to achieve the incremental savings that resulted from that reduction in indirect medical education payments. See the September 30, 1988 final rule (53 FR 38539) for the factors used to make this adjustment. Since there has been no change in the indirect medical education factor for FY 1990, we are not proposing to make any further adjustment to the standardized amounts for FY 1990.

b. *Rural Hospitals Deemed to be Urban.* Section 1886(d)(8)(B) of the Act provides that certain rural hospitals are deemed urban effective with discharges occurring on or after October 1, 1988. Section 1886(d)(8)(C) of the Act, as added by section 8403(a) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647), specifies that if the wage index values applicable to MSAs that are now deemed to include certain rural hospitals and to the rural areas in which those hospitals are actually located were reduced because of the provisions of section 1886(d)(8)(B) of the Act, those wage index values must be recalculated as if that section had not been enacted. A separate wage index value is calculated for each of the affected counties (that is, those rural counties whose hospitals are deemed urban).

Section 1886(d)(8)(D) of the Act specifies two payment conditions that must be met. First, the FY 1990 urban standardized amounts are to be adjusted so as to ensure that total aggregate payments under the prospective payment system after implementation of the provisions of sections 1886(d)(8) (B) and (C) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. Second, the rural standardized amounts are to be adjusted to ensure that aggregate payments to rural hospitals not affected by these provisions neither increase nor decrease as a result of implementation of these provisions. The following adjustment factors, necessary to achieve the requisite budget neutrality constraints, were applied to the proposed standardized amounts:

Urban	Rural
.99943	1.00030

c. *Outliers.* Section 1886(d)(5)(A) of the Act requires that, in addition to the basic prospective payment rates, payments must be made for discharges involving day outliers and may be made for cost outliers. Section 1886(d)(3)(B) of the Act correspondingly requires that the urban and rural standardized amounts, respectively, be separately reduced by the proportion of estimated total DRG payments attributable to estimated outlier payments for hospitals located in urban areas and those located in rural areas. Section 1886(d)(9)(B)(iv) of the Act requires that the urban and rural standardized amounts be reduced by the proportion of estimated total payments made to hospitals in Puerto Rico attributable to estimated outlier payments.

Consequently, instead of a uniform reduction factor applying equally to all the standardized amounts, there are two separate reduction factors, one applicable to the urban national and regional standardized amounts and the other applicable to the rural national and regional standardized amounts. Furthermore, sections 1886(d)(5)(A)(iv) and 1886(d)(9)(i) of the Act direct that outlier payments may not be less than five percent nor more than six percent of total payments projected to be made based on the prospective payment rates in any year.

In the September 30, 1988 final rule, we set the outlier thresholds so as to result in estimated outlier payments (prior to consideration of the additional covered days that will result from the elimination of a day limitation on Medicare inpatient hospital services under section 101 of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360)) equal to 5.1 percent of total prospective payments. We also set the same outlier thresholds and offsets for the Puerto Rico prospective payment standardized amounts as we had for hospitals located outside Puerto Rico. Because certain changes we made to the outlier policy were not effective until November 1, 1988, we had two sets of outlier thresholds for FY 1989. For discharges on or after October 1, 1988 and before November 1, 1988, the day outlier threshold is the geometric mean length of stay for each DRG plus the

lesser of 22 days or 2.0 standard deviations and the cost outlier threshold is the greater of 2.0 times the prospective payment rate for the DRG or $23,750. For discharges on or after November 1, 1988, the day outlier threshold is the geometric mean length of stay for each DRG plus the lesser of 24 days or 3.0 standard deviations and the cost outlier threshold is the greater of 2.0 times the prospective payment rate for the DRG of $28,000. The outlier adjustments for FY 1989 were .9437 for the urban rates and .9777 for the rural rates.

We are proposing to continue to set the outlier thresholds so as to result in estimated outlier payments equal to 5.1 percent of total prospective payments. Therefore, for FY 1990, we would set the day outlier threshold at the geometric mean length of stay for each DRG plus the lesser of 27 days or 3 standard deviations and the cost outlier threshold at the greater of 2.0 times the prospective payment rate for the DRG or $32,000.

The proposed thresholds would essentially maintain the current outlier payment split with 33.5 percent of cases being paid using the cost outlier methodology and 66.5 percent using the day outlier methodology. However, 17.5 percent of the cases meeting the day outlier threshold would be paid using the cost outlier methodology because it yields the higher payment. Our simulation of FY 1990 outlier payments based on FY 1988 Medicare provider analysis and review file (MEDPAR) data indicates that the percentage of cases that qualify as day outliers is about 80.6 percent. The cases qualifying as day outliers are expected to receive 84.4 percent of outlier payments in FY 1990. An estimated 19.4 percent of outlier cases would be cost only outlier cases, which are expected to receive about 15.6 percent of outlier payments. The following table illustrates this finding in greater detail:

Type of outlier	Percentage of outlier cases	Percentage of outlier payments
Meets day threshold only	56.1	28.5
Meets day and cost thresholds, paid using day methodology	10.4	18.7
Meets day and cost thresholds, paid using cost methodology	14.1	37.2
Subtotal—All cases meeting day threshold	80.6	84.4
Meets cost threshold only	19.4	15.6
Total	100.0	100.0

The proposed outlier adjustment factors for FY 1990 are as follows:

Urban	Rural
.943686	.977956

The 5.1 percent projection of outlier payments is based on covered days in the FY 1988 MEDPAR file and does not reflect the increase in outlier payments that will occur in FY 1990 as a result of the elimination of the day limitation on Medicare inpatient hospital services under section 101 of Pub. L. 100–360. Based on FY 1988 data currently available regarding noncovered days of hospital care furnished to Medicare beneficiaries under the benefit structure in effect prior to the effective date of Pub. L. 100–360, we estimate that outlier payment for the additional days of covered care will be about one percent of total DRG payments. By making an average 5.1 percent offset to the standardized amounts in 1990 instead of the 6.1 percent that will result from Pub. L. 100–360, we are ensuring that the additional benefits are financed out of additional Federal monies rather than through the updated standardized amounts and outlier funds. For a more detailed explanation of this adjustment made to account for the effect of section 101 of Pub. L. 100–360, see the September 30, 1988 final rule (53 FR 38519). In that rule, we requested comments on the methodology we were using to take the effects of section 101 of Pub. L. 100–360 into account. We are developing a final rule to respond to the comments received from the public; however, we are proposing to use the same methodology in FY 1990 as was used to make the adjustment in FY 1989.

Table 8 of section IV of this addendum updates the Statewide average cost-to-charge ratios for urban hospitals and for rural hospitals to be used in calculating cost outlier payments for those hospitals for which the intermediary is unable to compute a reasonable hospital-specific cost-to-charge ratio. Effective October 1, 1989, these Statewide average ratios replace the ratios published in the September 30, 1988 final rule (53 FR 38628). We propose that these average ratios would be used to calculate cost outlier payments for those hospitals for which the intermediary computes cost-to-charge ratios lower than 0.36 or greater than 1.23. This range represents 3.0 standard deviations (plus or minus) from the mean of the log distribution of cost-to-charge ratios for all hospitals. These revised parameters would be applied to all updates to hospital-specific cost-to-charge ratios based on cost report settlements occurring during FY 1990.

B. Adjustments for Area Wage Levels and Cost-of-Living

This section contains an explanation of the application of two types of adjustments to the adjusted standardized amounts that will be made by the intermediaries in determining the prospective payment rates as described in section II.D. of this addendum. For discussion purposes, it is necessary to present the adjusted standardized amounts divided into labor and nonlabor portions. Tables 1a, 1b, and 1c, as we propose in this addendum, contain the actual labor related and nonlabor-related shares that would be used to calculate the prospective payment rates for hospitals located in the 50 States, the District of Columbia, and Puerto Rico.

Adjustment for Area Wage Levels

Sections 1886(d)(2)(H) and 1886(d)(9)(C)(iv) of the Act require that an adjustment be made to the labor-related portion of the prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by the intermediaries by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. In section III of the preamble to this proposed rule, we discuss certain revisions we are making to the wage index. This index is set forth in Tables 4a, 4b, and 4c of this addendum.

2. Adjustment for Cost of Living in Alaska and Hawaii

Section 1886(d)(5)(C)(iv) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States are taken account of in the adjustment for area wages above. For FY 1990, the adjustment necessary for nonlabor-related costs for hospitals in Alaska and Hawaii would be made by the intermediaries by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below.

TABLE OF COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

Alaska—All areas	1.25
Hawaii:	
Oahu	1.225
Kauai	1.175
Maui	1.20
Molokai	1.20

TABLE OF COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS—Continued

Lanai	1.20
Hawaii	1.15

(The above factors are based on data obtained from the U.S. Office of Personnel Management.)

C. DRG Weighting Factors

As discussed in section II of the preamble to this proposed rule, we have developed a classification system for all hospital discharges, sorting them into DRGs, and have developed weighting factors for each DRG that are intended to reflect the resource utilization of cases in each DRG relative to that of the average Medicare case.

Table 5 of section IV of this addendum contains the weighting factors that we propose to use for discharges occurring in FY 1990. These factors have been recalibrated as explained in section II.C. of the preamble to this proposed rule.

D. Calculation of Prospective Payment Rates for FY 1990

General Formula for Calculation of Prospective Payment Rates for FY 1990:

Prospective Payment Rate for all hospitals located outside Puerto Rico except sole community hospitals = Federal Portion

Prospective Payment Rate for Sole Community Hospitals = 75 percent of the hospital-specific portion + 25 percent of the Federal portion

Prospective Payment Rate for Puerto Rico Hospitals = 75 percent of the Puerto Rico rate + 25 percent of a discharge-weighted average of the large urban, other urban, and rural national rates

1. Federal Portion

For discharges on or after October 1, 1989 and before October 1, 1990, except for sole community hospitals and hospitals located in Puerto Rico, the hospital's rate is comprised exclusively of the Federal rate. The Federal rate is comprised of 100 percent of the Federal national rate except for those hospitals located in Census regions that have a regional rate that is higher than the national rate. The Federal rate for these hospitals equals 85 percent of the Federal national rate and 15 percent of the Federal regional rate. For discharges occurring on or after October 1, 1989 and before October 1, 1990, rural hospitals in regions I, II, III, and IV and urban and large urban hospitals in regions I, IV, and VI are affected by the regional floor. For sole community hospitals, the 25 percent Federal portion is based entirely on the Federal regional rate. The Federal rates are determined as follows:

Step 1—Select the appropriate regional or national adjusted standardized amount considering the type of hospital and designation of the hospital as large urban, other urban, or rural (see Tables 1a and 1b, section IV of this addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the applicable wage index for the geographic area in which the hospital is located (see Tables 4a, 4b, and 4c, section IV of this addendum).

Step 3—For hospitals in Alaska and Hawaii, multiply the nonlabor-related portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4—Sum the amount from step 2 and the nonlabor portion of the standardized amount (adjusted if appropriate under step 3).

Step 5—Multiply the final amount from step 4 by the weighting factor corresponding to the appropriate DRG (see Table 5, section IV of this addendum).

Step 6—For sole community hospitals, multiply the result in step 5 by 25 percent. The result is the Federal portion of the FY 1990 prospective payment for a given discharge for a sole community hospital.

2. Hospital-Specific Portion (Applicable Only to Sole Community Hospitals)

The hospital-specific portion of the prospective payment rate is based on a hospital's historical cost experience. For the first cost reporting period under prospective payment, a hospital-specific rate was calculated for each hospital, derived generally from the following formula:

$$\frac{\text{Base year costs per discharge}}{\text{1981 case-mix index}} \times \text{update factor} = \text{Hospital-specific rate}$$

For sole community hospitals, the hospital-specific portion equals 75 percent of the hospital-specific rate for all cost reporting periods beginning on or after October 1, 1983. For each subsequent cost reporting period, the hospital-specific portion is derived as follows:

Hospital-Specific Rate x Update Factor x DRG Weight x .75

For a more detailed discussion of the hospital-specific portion, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772).

a. *Updating the Hospital-Specific Rates for FY 1990 Cost Reporting Periods.* For cost reporting periods beginning on or after October 1, 1989, we are proposing to increase the hospital-specific rates by 5.8 percent (the market basket percentage increase) for hospitals located in all areas. As required by section 1886(b)(3)(B) of the Act, this is the same percentage increase by which we are proposing to change the Federal rates for FY 1990.

b. *Calculation of Hospital-Specific Portion.* For sole community hospital cost reporting periods beginning on or after October 1, 1989 and before October 1, 1990, the hospital-specific portion of a hospital's payment for a given discharge would be calculated by—

Step 1—Mulltiplying the hospital's hospital-specific rate for the preceding cost reporting period by the applicable update factor (that is, 5.8 percent);

Step 2—Multiplying the amount resulting from Step 1 by the specific DRG weighting factor applicable to the discharge; and

Step 3—Multiplying the result in step 2 by 75 percent. (The result is the hospital-specific portion of the FY 1990 prospective payment for a given discharge for a sole community hospital. The prospective payment rate is the sum of this amount and the 25 percent Federal portion, which is based entirely on the Federal regional rate.)

3. General Formula for Calculation of Prospective Payment Rates for Hospitals Located in Puerto Rico Beginning On or After October 1, 1989 and Before October 1, 1990.

a. *Puerto Rico Rate.* The Puerto Rico prospective payment rate is determined as follows:

Step 1—Select the appropriate adjusted average standardized amount considering the large urban, other urban, or rural designation of the hospital (see Table 1c, section IV of the addendum).

Step 2— Multiply the labor related portion of the standardized amount by the appropriate wage index (see Tables 4a and 4b, section IV of the addendum).

Step 3—Sum the amount from step 2 and the nonlabor portion of the standardized amount.

Step 4—Multiply the result in step 3 by 75 percent.

Step 5—Multiply the amount from step 3 by the weighting factor corresponding to the appropriate DRG weight (see Table 5, section IV of the addendum).

b. *National Rate.* The national prospective payment rate is determined as follows:

Step 1—Multiply the labor-related portion of the national average standardized amount (see Table 1c, section IV of the addendum) by the appropriate wage index.

Step 2—Sum the amount from step 1 and the nonlabor portion of the national average standardized amount.

Step 3—Multiply the result in step 2 by 25 percent.

Step 4—Multiply the amount from step 3 by the weighting factor corresponding to the appropriate DRG weight (see Table 5, section IV of the addendum).

The sum of the Puerto Rico rate and the national rate computed above equals the prospective payment for a given discharge for a hospital located in Puerto Rico.

III. Proposed Target Rate Percentages for Hospitals and Hospital Units Excluded From the Prospective Payment System

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in § 413.40 of the regulations. Under these limits, an annual target amount (expressed in terms of the inpatient operating cost per discharge) is set for each hospital, based on the hospital's own historical cost experience, trended forward by the applicable update factors. This target amount is applied as a ceiling on the allowable costs per discharge for the hospital's next cost reporting period.

A hospital that has inpatient operating costs per discharge in excess of its target amount would be paid no more than that amount. However, a hospital that has inpatient operating costs less than its target amount would be paid its costs plus the lower of (1) 50 percent of the difference between the inpatient operating cost per discharge and the target amount, or (2) 5 percent of the target amount.

Each hospital's target amount is adjusted annually, before the beginning of its cost reporting period, by an applicable target rate percentage. For cost reporting periods beginning on or after October 1, 1989 and before October 1, 1990, section 1886(b)(3)(B)(ii) of the Act provides that the applicable percentage increase is the market basket percentage increase. In order to determine a hospital's target amount for its cost reporting period beginning in FY 1990, the hospital's target amount for its reporting period that began In FY 1989 is increased by the market basket percentage increase for FY 1990. The most recent forecasted hospital market basket increase for FY 1990 is 5.8 percent. Therefore, the applicable percentage increase is also 5.8 percent.

IV. Tables

This section contains the tables referred to throughout the preamble to this proposed rule and in this addendum. For purposes of this proposed rule, and to avoid confusion, we have retained the designations of Tables 1 through 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1a. 1b. 1c, 3c. 4a, 4b, 4c, 5, 6a, 6b, 6c, 6d, 6e, 6f, 7a, 7b, and 8 are presented below. The tables are as follows:

Table 1a—National Adjusted Standardized Amounts, Labor/Nonlabor
Table 1b—Regional Adjusted Standardized Amounts, Labor/Nonlabor
Table 1c—Adjusted Standardized Amounts for Puerto Rico, Labor/Nonlabor
Table 3c—Hospital Case-Mix Indexes for Discharges Occurring in FY 1988
Table 4a—Wage Index for Urban Areas
Table 4b—Wage Index for Rural Areas
Table 4c—Wage Index for Rural Counties Whose Hospitals are Deemed Urban
Table 5—Diagnosis-Related Groups
Table 6a—New Diagnosis Codes
Table 6b—New Procedure Codes
Table 6c—Revised Procedure Code Titles and Inclusion Terms that Affect DRG Assignment
Table 6d—Expanded Diagnosis Codes That Are No Longer Accepted in GROUPER
Table 6e—Deleted Procedure Codes
Table 6f—Additions to the CC Exclusions List
Table 7a—Length-of-Stay Percentiles Using FY 1989 DRG Classification
Table 7b—Length-of-Stay Percentiles Using Proposed FY 1990 DRG Classification
Table 8—Statewide Average Cost-to-Charge Ratios for Urban and Rural Hospitals

TABLE 1a—NATIONAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR

Large urban		Other urban		Rural	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
2512.40	889.89	2487.94	881.22	2348.00	650.30

TABLE 1b—REGIONAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NNONLABOR

	Large urban		Other urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
1. New England (CT, ME, MA, NH, RI, VT)	2637.84	928.96	2612.15	919.92	2601.62	771.34
2. Middle Atlantic (PA, NJ, NY)	2369.78	881.53	2346.70	872.95	2494.61	727.69
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2529.70	812.22	2505.07	804.31	2381.76	632.30
4. East North Central (IL, IN, MI, OH, WI)	2667.08	960.61	2641.11	951.26	2413.41	702.48
5. East South Central (AL, KY, MS, TN)	2427.84	735.45	2404.19	728.29	2360 58	589.62
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	2530.39	875.63	2505.75	867.10	2294.38	629.93
7. West South Central (AR, LA, OK, TX)	2522.84	806.72	2498.28	798.86	2200.37	579.31
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2426.03	864.85	2402.40	856.43	2237.04	670.65
9. Pacific (AK, CA, HI, OR, WA)	2360.68	987.06	2337.69	977.44	2164.15	750.62

TABLE 1c—ADJUSTED STANDARDIZED AMOUMTS FOR PUERTO RICO, LABOR/NONLABOR

	Large urban		Other urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
Puerto Rico	2231.78	399.27	2210.06	395 38	1569.17	290.47
National	2461.90	826.10				

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TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 1 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
010001	01.3283	010059	00.9476	010121	01.1169	030003	01.2718	030072	00.8297
010004	00.9768	010060	00.9855	010122	00.9695	030004	00.8996	030073	01.1666
010005	01.2001	010061	00.9974	010123	01.2412	030006	01.3812	030074	00.9363
010006	01.1990	010062	01.0261	010124	01.2410	030007	01.1921	030075	00.8773
010007	00.9652	010064	01.4727	010125	01.0655	030008	01.6115	030076	00.8608
010008	00.9958	010065	01.1052	010126	01.0308	030009	01.2573	030077	00.9223
010009	01.0950	010066	00.8811	010127	01.3196	030010	01.3640	030078	01.0313
010010	00.9382	010067	00.8548	010128	00.9590	030011	01.2534	030079	00.7847
010011	01.3046	010068	01.1417	010129	01.0156	030012	01.1492	030080	01.4615
010012	01.2934	010069	01.1119	010130	01.0768	030013	01.1678	030081	01.0099
010015	01.1283	010070	01.2462	010131	01.2927	030014	01.3299	030082	01.0390
010016	01.1348	010072	01.1022	010134	00.8996	030016	01.1499	030083	01.2078
010018	00.9271	010073	01.0158	010136	00.9974	030017	01.2632	030084	01.0519
010019	01.1173	010074	01.0147	010137	01.2552	030018	01.4275	030085	01.0836
010020	01.0713	010075	01.1006	010138	00.9890	030019	01.1481	030086	01.1595
010021	01.2613	010078	01.2224	010139	01.4275	030020	01.3534	030087	01.2610
010022	00.9906	010079	01.1598	010142	00.9163	030022	01.2992	030088	01.2386
010023	01.1987	010080	00.9305	010143	01.1188	030023	01.1928	030089	01.1795
010024	01.2797	010081	01.5190	010144	01.2128	030024	01.4094	030091	01.0044
010025	01.2001	010083	01.0273	010145	01.2506	030025	01.2551	030092	01.2174
010026	00.9159	010084	01.3181	010146	01.1305	030027	01.0461	030093	01.2927
010027	01.0265	010085	01.2934	010148	00.9776	030030	01.5190	040001	01.0680
010028	01.0693	010086	01.0361	010149	01.3321	030033	01.2807	040002	01.0554
010029	01.3331	010087	01.2834	010150	01.0093	030034	01.2289	040003	00.9772
010030	01.0211	010089	01.0220	010152	01.2228	030035	01.1503	040004	01.2487
010031	01.2237	010090	01.3308	010153	00.9076	030036	01.1692	040005	01.0712
010032	00.9153	010091	01.0665	020001	01.4113	030037	01.6452	040006	00.9881
010033	01.6757	010092	01.3211	020002	01.0832	030038	01.4408	040007	01.4063
010034	01.1167	010094	01.1642	020004	01.0198	030040	01.0113	040008	01.0500
010035	01.1321	010095	00.9746	020005	00.6805	030041	00.9199	040010	01.1601
010036	01.0820	010096	00.9394	020006	01.0576	030043	01.0334	040011	00.8876
010038	01.0802	010097	01.0463	020007	00.8032	030044	01.0714	040013	00.9844
010039	01.5408	010098	01.0958	020008	00.9918	030046	01.0271	040014	01.1526
010040	01.1958	010099	00.9993	020009	00.8053	030047	00.9949	040015	01.2027
010041	00.7688	010100	01.1768	020010	00.7503	030049	01.0177	040016	01.3506
010043	00.9790	010101	01.0933	020011	00.9485	030051	01.2033	040017	01.1998
010044	00.9449	010102	00.9108	020012	01.3403	030054	00.9308	040018	01.1105
010045	01.0497	010103	01.4844	020013	00.9343	030055	01.1131	040019	01.2392
010046	01.2028	010104	01.5079	020014	01.0007	030057	01.2373	040020	01.3731
010047	00.9099	010108	01.1473	020017	01.2285	030059	01.4298	040021	01.0498
010049	01.0474	010109	01.0060	020018	01.0145	030060	01.2129	040022	01.4767
010050	00.9518	010110	00.8905	020019	00.9458	030061	01.3310	040024	00.9438
010051	00.9054	010112	01.0848	020020	00.9096	030062	01.2427	040025	00.9454
010052	01.0251	010113	01.3528	020021	00.8567	030063	01.1536	040026	01.2794
010053	00.9681	010114	01.2401	020024	01.0108	030064	01.4190	040027	01.1696
010054	01.1545	010115	00.9533	020025	00.9763	030065	01.3331	040028	01.0431
010055	01.2428	010117	00.9695	020026	01.3357	030067	01.0187	040029	01.1043
010056	01.1752	010118	01.1595	020027	00.9599	030068	01.0702	040030	00.9644
010057	01.1231	010119	01.1738	030001	01.2353	030069	01.1765	040031	00.9605
010058	01.0472	010120	00.9839	030002	01.4858	030071	00.9596	040032	00.9867

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1988.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 2 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
040033	00.8427	040109	01.1731	050053	01.2662	050112	01.3542	050174	01.5072
040035	00.9682	040114	01.6582	050054	01.2020	050113	01.1762	050175	01.2281
040036	01.1891	040115	01.0539	050055	01.1735	050114	01.4367	050177	01.3370
040037	01.0248	040116	01.2855	050056	01.2209	050115	01.3941	050179	01.2390
040039	00.9698	040118	01.0822	050057	01.2995	050116	01.3900	050180	01.3991
040040	00.9521	040119	01.1286	050058	01.3433	050117	01.2495	050181	01.2989
040041	01.1647	040122	01.0917	050060	01.3374	050118	01.1858	050183	01.2275
040042	01.2508	040123	00.9324	050061	01.2165	050121	01.1558	050186	01.3349
040043	01.1359	040124	01.1261	050063	01.3476	050122	01.4416	050187	00.8493
040044	00.9018	040126	00.9616	050065	01.3989	050124	01.2534	050188	01.3616
040045	00.9934	040130	01.0423	050066	01.2228	050125	01.2077	050189	00.9784
040047	00.9985	040131	00.9772	050067	01.1906	050126	01.2758	050190	01.1255
040048	01.1054	050002	01.1747	050068	01.1434	050127	01.2292	050191	01.3895
040050	01.0832	050004	01.1613	050069	01.4303	050128	01.4197	050192	01.0348
040051	00.9325	050006	01.2641	050070	01.2173	050129	01.4901	050193	01.3571
040053	01.0286	050007	01.3882	050071	01.1614	050131	01.2589	050194	01.2509
040054	01.0773	050008	01.4082	050072	01.2314	050132	01.2185	050195	01.3239
040055	01.2635	050009	01.4149	050073	01.1769	050133	01.1617	050196	01.2292
040058	00.9483	050011	01.1029	050074	00.9898	050134	01.1857	050197	01.7067
040060	01.0273	050013	02.1109	050075	01.2018	050135	01.4385	050199	01.2068
040062	01.1704	050014	01.1109	050076	01.4447	050136	01.2170	050201	01.1347
040063	01.3162	050015	01.2820	050077	01.4231	050137	01.1680	050202	01.2520
040064	00.9926	050016	01.1302	050078	01.1862	050138	01.4661	050204	01.3810
040066	00.9448	050017	01.6505	050079	01.3670	050139	01.2149	050205	01.1546
040067	01.0037	050018	01.2015	050080	01.1988	050140	01.2092	050207	01.1718
040069	01.0309	050019	00.9254	050081	01.5107	050141	01.0951	050208	01.2135
040070	00.8965	050021	01.2384	050082	01.3353	050143	01.2441	050211	01.2678
040071	01.2274	050022	01.3737	050084	01.4210	050144	01.3533	050212	01.0578
040072	01.0783	050024	01.2342	050086	01.1019	050145	01.2140	050213	01.2373
040074	01.1025	050025	01.5282	050087	01.3799	050146	01.3133	050214	01.3458
040075	01.1270	050026	01.5369	050088	01.0089	050147	00.7515	050215	01.4169
040076	00.9487	050028	01.2168	050089	01.3096	050148	01.1166	050217	01.1311
040077	00.9457	050029	01.2387	050090	01.2531	050149	01.2100	050219	01.4071
040078	01.2031	050030	01.2180	050091	01.1475	050150	01.2330	050220	01.2640
040080	01.0356	050032	01.1491	050092	01.1185	050151	01.2009	050221	01.4387
040081	00.9424	050033	01.3271	050093	01.4729	050152	01.3136	050222	01.3160
040082	01.1086	050034	01.2114	050095	01.0919	050153	01.5058	050224	01.3882
040084	01.0493	050036	01.5066	050096	01.1601	050154	01.2760	050225	01.2460
040085	01.0805	050038	01.2440	050097	01.2729	050155	01.1990	050226	01.4159
040088	01.1084	050039	01.4938	050099	01.3792	050158	01.4219	050228	01.2714
040090	00.9643	050040	01.1204	050100	01.6499	050159	01.2751	050229	01.2637
040091	01.0989	050041	01.1596	050101	01.3458	050161	01.6487	050230	01.3161
040093	00.9771	050042	01.2169	050102	01.2815	050164	01.3729	050231	01.4461
040095	00.9981	050043	01.5265	050103	01.4681	050166	01.2698	050232	01.6305
040098	01.1435	050045	01.1583	050104	01.3270	050167	01.3096	050233	01.1955
040100	01.0910	050046	01.2075	050107	01.3240	050168	01.4881	050234	01.2482
040105	01.0275	050047	01.5080	050108	01.3475	050169	01.3921	050235	01.3639
040106	01.0296	050049	01.2851	050109	01.9215	050170	01.3574	050236	01.2389
040107	01.0540	050051	01.2040	050110	01.1036	050172	01.2055	050238	01.3060
040108	00.9177	050052	01.0888	050111	01.2088	050173	01.3663	050239	01.3298

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1988.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 3 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
050240	01.3193	050312	01.5653	050390	01.2633	050459	01.2643	050549	01.5566
050241	01.1620	050313	01.1370	050391	01.2101	050464	01.8406	050550	01.2746
050242	01.3396	050315	01.3484	050392	00.9564	050467	01.2437	050551	01.3326
050243	01.2707	050317	01.2467	050393	01.3962	050468	01.3704	050552	01.1313
050245	01.5349	050319	01.2829	050394	01.3568	050469	01.0038	050557	01.2623
050248	01.1355	050320	01.1985	050395	01.1767	050470	01.1079	050559	01.3506
050251	01.0948	050324	01.6812	050396	01.4089	050471	01.6311	050560	01.1562
050253	01.1636	050325	01.2384	050397	01.0948	050473	01.2550	050561	01.0843
050254	01.1344	050326	01.3240	050401	01.2542	050476	01.2616	050564	01.1767
050256	01.5246	050327	01.5262	050404	01.1219	050477	01.2197	050565	01.1893
050257	01.3963	050328	01.2588	050406	00.9981	050478	01.1013	050566	01.0171
050258	01.3549	050329	01.2693	050407	01.1717	050481	01.3719	050567	01.4074
050260	01.0412	050331	01.3011	050410	01.0756	050482	00.9927	050568	01.2754
050261	01.1526	050333	01.0584	050411	01.2506	050483	01.3362	050569	01.2310
050262	01.5056	050334	01.3408	050413	01.2563	050485	01.4996	050570	01.5415
050263	01.2836	050335	01.2106	050414	01.2858	050486	01.5430	050571	01.3952
050264	01.3300	050336	01.3005	050417	01.1372	050488	01.2219	050573	01.4033
050267	01.4400	050337	01.1405	050418	01.1477	050489	01.1804	050575	01.0257
050268	01.2155	050342	01.2756	050419	01.1203	050491	01.3105	050577	01.2624
050269	01.2030	050343	01.1012	050420	01.3582	050492	01.2908	050578	01.1269
050270	01.2986	050345	01.3225	050421	01.2607	050494	01.1559	050579	01.3686
050272	01.1734	050348	01.3111	050423	01.0724	050496	01.5993	050580	01.1670
050273	00.5383	050349	01.0660	050424	01.5782	050497	00.9653	050581	01.3250
050274	00.9618	050350	01.3408	050425	01.1858	050498	01.1853	050583	01.7609
050276	01.0589	050351	01.4593	050426	01.2456	050502	01.6757	050584	01.2787
050277	01.2828	050352	01.2602	050427	00.9871	050503	01.4079	050585	01.2542
050278	01.3589	050353	01.5958	050430	00.9355	050506	01.2788	050586	01.2527
050279	01.1645	050355	00.8458	050431	01.1377	050510	01.2255	050587	01.2292
050280	01.2462	050357	01.6647	050432	01.3526	050512	01.1605	050588	01.2003
050281	01.2612	050359	01.0594	050433	01.0383	050515	01.2973	050589	01.3886
050282	01.2078	050360	01.2492	050434	01.1191	050516	01.3488	050590	01.3086
050283	01.3035	050362	00.8828	050435	01.1184	050517	01.1663	050591	01.2145
050286	01.0268	050363	01.2514	050436	01.0650	050522	01.3111	050592	01.2762
050289	01.6264	050366	01.1774	050438	01.3937	050523	01.1031	050593	01.2364
050290	01.3780	050367	01.2238	050440	01.1166	050526	01.2240	050594	01.9708
050291	01.1505	050369	01.2568	050441	01.6038	050527	01.3012	050597	01.2091
050292	01.1410	050371	00.9156	050442	01.1948	050528	01.1574	050598	01.2532
050293	00.9848	050372	01.0992	050443	00.9143	050530	01.2306	050599	01.3867
050295	01.3250	050373	01.0951	050444	01.1922	050531	01.1123	050601	01.1729
050296	01.1450	050376	01.2770	050446	00.8702	050534	01.2952	050603	01.3970
050298	01.1643	050377	01.0313	050447	01.3295	050535	01.3755	050604	01.3157
050299	01.3014	050378	01.1315	050448	01.0279	050537	01.1846	050605	00.6935
050300	01.2771	050379	01.0548	050449	01.2504	050539	01.2295	050607	01.1731
050301	01.2649	050380	01.5331	050450	01.1153	050541	01.4249	050608	01.1388
050302	01.2255	050381	01.0593	050451	01.0262	050542	01.1192	050609	01.2453
050305	01.3546	050382	01.3058	050454	01.6473	050543	01.2723	050613	01.0398
050307	01.3422	050383	01.3050	050455	01.5239	050544	01.2521	050615	01.2281
050308	01.5003	050385	01.2373	050456	01.3335	050545	00.8149	050616	01.1597
050309	01.2865	050387	00.9741	050457	01.4856	050546	01.0439	050618	01.1738
050310	01.1224	050388	00.8695	050458	01.1321	050547	00.8379	050619	01.3208

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1988.

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
050622	01.2019	060018	01.1015	060076	01.3107	080002	01.1626	100036	01.2915
050623	01.2737	060019	01.5793	060077	01.1313	080003	01.2396	100038	01.4740
050624	01.1623	060020	01.3951	060083	00.6641	080004	01.2091	100039	01.3709
050625	01.3727	060022	01.4930	060085	00.9961	080005	01.1203	100040	01.4375
050630	01.0703	060023	01.3181	060087	01.2385	080006	01.1392	100042	01.2027
050633	01.2048	060024	01.4661	060088	01.1188	080007	01.1617	100043	01.2585
050635	01.3025	060026	01.3577	060090	00.9943	090001	01.3465	100044	01.2894
050636	01.2431	060027	01.2184	060092	00.7116	090002	01.1372	100045	01.2839
050637	01.2534	060028	01.3609	060093	01.0628	090003	01.3843	100046	01.2375
050638	00.9127	060029	00.9855	060096	01.0744	090004	01.4648	100047	01.1883
050641	01.0439	060030	01.2242	060098	01.2236	090005	01.2578	100048	00.9591
050643	00.9180	060031	01.3747	060099	00.9765	090006	01.2370	100049	01.2856
050644	01.2581	060032	01.3272	060100	01.1018	090007	01.0997	100050	01.1028
050649	01.2914	060033	01.1873	060101	01.4707	090008	01.2203	100051	01.1564
050650	01.2411	060034	01.2366	070001	01.7252	090009	01.2011	100052	01.2448
050651	01.2542	060035	01.2224	070002	01.5609	090010	01.0295	100053	01.1234
050655	01.1354	060036	01.1337	070003	01.1990	090011	01.5670	100054	01.3635
050660	01.1240	060037	01.0163	070004	01.2202	100001	01.3058	100055	01.2601
050661	00.9288	060038	01.1698	070005	01.2852	100002	01.3513	100056	01.2733
050663	01.2331	060039	01.1339	070006	01.2305	100004	01.1059	100057	01.2518
050666	00.9799	060041	01.1037	070007	01.2447	100005	01.0262	100059	01.4901
050667	01.1776	060042	00.9443	070008	01.1458	100006	01.4364	100060	01.4989
050668	01.2579	060043	01.0355	070009	01.2514	100007	01.7440	100061	01.3183
050669	00.9627	060044	01.1870	070010	01.4241	100008	01.5507	100062	01.3110
050670	00.8219	060045	01.0163	070011	01.2690	100009	01.3568	100063	01.2653
050671	00.9437	060046	01.1143	070012	01.2004	100010	01.2828	100065	01.0761
050672	00.6709	060047	01.0551	070013	01.2340	100011	00.9355	100067	01.3055
050674	01.1651	060049	01.1105	070014	01.1135	100012	01.3405	100068	01.2242
050675	01.2063	060050	01.1554	070015	01.2546	100013	00.7921	100069	01.3041
050676	00.9595	060051	01.3255	070016	01.2616	100014	01.1441	100070	01.3329
050677	01.2118	060052	00.9187	070017	01.3543	100015	01.2547	100071	01.2738
050678	01.1855	060053	00.8646	070018	01.1643	100016	01.0029	100072	01.1688
050679	01.1289	060054	01.2171	070019	01.1996	100017	01.3490	100073	01.5942
050680	01.1273	060056	00.9162	070020	01.3582	100018	01.3385	100074	01.2246
060001	01.3760	060057	01.2870	070021	01.2182	100019	01.4172	100075	01.5708
060003	01.1847	060058	00.8522	070022	01.6087	100020	01.2483	100076	01.2343
060004	01.0812	060060	01.0444	070023	01.2008	100021	01.2192	100077	01.2373
060005	01.4927	060062	00.9475	070024	01.1744	100022	01.4529	100078	01.1765
060006	01.1415	060063	01.1085	070025	01.5234	100023	01.3246	100079	01.2233
060007	01.1591	060064	01.2838	070026	01.2655	100024	01.1624	100080	01.4242
060008	01.1681	060065	01.2221	070027	01.2851	100025	01.4596	100081	01.1212
060009	01.2713	060066	01.0278	070028	01.3645	100026	01.3600	100082	01.3687
060010	01.5097	060067	01.0026	070029	01.2723	100027	00.9281	100083	01.1814
060011	01.1978	060068	01.1854	070030	01.1809	100028	01.2159	100084	01.3185
060012	01.3752	060070	01.1977	070031	01.2598	100029	01.2666	100085	01.1885
060013	01.2428	060071	01.2069	070033	01.1792	100030	01.0405	100086	01.2320
060014	01.4481	060072	00.9829	070034	01.2401	100032	01.3119	100087	01.5105
060015	01.3353	060073	00.8826	070035	01.2749	100033	01.3322	100088	01.3093
060016	01.1399	060074	00.9830	070036	01.2940	100034	01.3764	100089	01.2391
060017	01.2586	060075	01.1971	080001	01.4041	100035	01.3112	100090	01.1900

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: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1988.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 5 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
100092	01.1717	100159	01.0178	100225	01.2302	110007	01.3935	110066	01.2321
100093	01.3049	100160	01.1517	100226	01.1981	110008	01.1121	110069	01.1050
100098	01.0060	100161	01.3282	100227	01.0150	110009	01.0698	110070	00.9521
100099	01.2199	100162	01.2497	100228	01.1835	110010	01.8303	110071	00.9574
100100	01.1459	100164	00.9849	100229	01.3805	110011	01.1312	110072	00.9561
100102	01.1485	100165	00.9453	100230	01.1996	110013	01.0559	110073	01.0301
100103	00.9799	100166	01.3327	100231	01.4917	110014	01.1591	110074	01.2205
100105	01.2317	100167	01.2745	100232	01.1498	110015	01.0548	110075	01.1623
100106	01.1255	100168	01.2907	100234	01.2962	110016	01.1823	110076	01.2742
100107	01.2233	100169	01.5804	100235	01.2860	110017	00.9324	110077	01.0031
100108	01.0492	100170	01.1987	100236	01.3115	110018	01.1212	110078	01.4363
100109	01.2131	100172	01.2418	100237	01.7582	110020	01.1601	110079	01.0614
100110	01.3738	100173	01.2371	100238	01.3457	110023	01.1293	110080	01.1164
100112	00.9977	100174	01.4617	100239	01.3812	110024	01.2554	110081	01.0115
100113	01.5849	100175	01.1158	100240	00.7383	110025	01.2097	110082	01.7378
100114	01.2713	100176	01.7422	100241	00.9698	110026	01.0997	110083	01.2727
100115	01.2045	100177	01.3246	100242	01.2074	110027	01.0290	110085	01.1042
100117	01.1615	100179	01.4845	100243	01.2779	110028	01.3422	110086	01.1433
100118	01.1313	100180	01.3988	100244	01.2615	110029	01.2092	110087	01.1894
100120	01.2415	100181	01.1257	100246	01.2414	110030	01.1792	110088	00.8405
100121	01.1394	100183	01.2508	100248	01.4686	110031	01.1145	110089	01.1161
100122	01.3265	100185	01.0834	100249	01.2482	110032	01.1495	110091	01.2250
100124	01.3134	100186	01.3344	100252	01.2234	110033	01.2230	110092	01.1230
100125	01.1124	100187	01.2612	100253	01.2083	110034	01.2226	110093	01.0375
100126	01.3166	100189	01.2364	100254	01.2384	110035	01.1759	110094	01.0037
100127	01.4016	100191	01.2562	100255	01.2796	110036	01.4944	110095	01.2338
100128	02.1579	100194	01.2435	100256	01.3105	110037	01.1439	110096	01.0883
100129	01.2490	100195	01.2177	100258	01.4649	110038	01.1970	110097	01.0661
100130	01.2300	100196	01.2445	100259	01.2020	110039	01.1749	110098	00.9565
100131	01.2401	100199	01.2981	100260	01.2005	110040	00.9314	110099	00.8753
100132	01.3198	100200	01.2610	100262	01.2691	110041	01.1543	110100	01.0774
100134	00.9977	100203	01.2130	100263	01.2551	110042	01.0298	110101	00.9860
100135	01.4516	100204	01.4515	100264	01.3141	110043	01.4233	110103	00.9274
100137	01.1897	100206	01.2504	100265	01.2030	110044	01.0800	110104	01.0679
100138	00.9774	100207	01.3026	100266	01.1605	110045	01.0355	110105	01.1138
100139	01.1808	100208	01.3713	100267	01.2968	110046	01.1951	110107	01.4768
100140	01.1073	100209	01.3287	100268	01.2467	110048	01.1241	110108	00.9164
100142	01.0629	100210	01.3811	100269	01.2332	110049	00.9984	110109	00.9811
100143	01.0912	100211	01.2653	100270	00.8866	110050	01.0348	110111	00.9821
100144	01.0446	100212	01.3440	100271	01.4322	110051	00.9431	110112	00.9590
100145	01.2215	100213	01.3522	100273	01.0613	110052	00.8837	110113	00.9716
100146	01.0774	100214	01.3612	100275	01.1872	110054	01.1593	110114	01.0571
100147	01.0827	100217	01.1281	100276	01.2513	110055	00.9331	110115	01.3646
100149	01.1914	100218	01.0147	100277	01.0931	110056	00.9201	110117	01.0081
100150	01.2337	100219	01.3073	110001	01.1350	110059	01.1312	110118	00.9332
100151	01.6291	100220	01.6354	110002	01.2192	110061	00.9541	110120	01.0603
100152	01.1645	100221	01.6748	110003	01.1616	110062	00.9545	110121	00.9772
100154	01.3387	100222	01.2097	110004	01.2399	110063	01.0536	110122	01.1807
100156	01.0964	100223	01.3405	110005	01.1741	110064	01.1912	110123	00.8763
100157	01.3803	100224	01.1718	110006	01.1973	110065	01.0899	110124	01.0405

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: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1988.

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
110125	01.0972	110189	01.0189	130019	01.1813	140030	01.3899	140089	01.1507
110127	00.9815	110190	01.0167	130021	01.0548	140031	01.0116	140090	01.2517
110128	01.1901	110191	01.2128	130022	01.1940	140032	01.1313	140091	01.3244
110129	01.3609	110192	01.2950	130024	01.1800	140033	01.2264	140093	01.1223
110130	01.0226	110193	01.0673	130025	00.9403	140034	01.1223	140094	01.2104
110131	00.9934	110194	00.9756	130026	01.1158	140035	01.0920	140095	01.3263
110132	01.1256	110195	01.0813	130027	00.9153	140036	01.0615	140097	01.0382
110133	00.9571	110196	01.8065	130028	01.1900	140037	01.0623	140098	01.2364
110134	00.8848	110198	01.2101	130029	01.0933	140038	01.0597	140099	01.1639
110135	01.0741	110200	01.4933	130030	00.9279	140039	01.0229	140100	01.3380
110136	01.1307	110201	01.2020	130031	01.0477	140040	01.1955	140101	01.1204
110140	00.9175	110202	01.0912	130034	00.9343	140041	01.0677	140102	01.0347
110141	00.9063	110203	00.9262	130035	01.0184	140042	01.0256	140103	01.1260
110142	01.1410	120001	01.4916	130036	01.1200	140043	01.1401	140104	01.1193
110143	01.2187	120002	01.0566	130037	01.2706	140045	01.0290	140105	01.2388
110144	01.2080	120003	01.0356	130038	00.9003	140046	01.1749	140107	00.9422
110146	00.8993	120004	01.2532	130039	01.0687	140047	01.0695	140108	01.1732
110149	01.0609	120005	01.0976	130040	01.0453	140048	01.1387	140109	00.9949
110150	01.1385	120006	01.1457	130043	01.0576	140049	01.2623	140110	01.1904
110151	01.0658	120007	01.5433	130044	00.9937	140051	01.1666	140112	01.1142
110152	00.9401	120008	01.0272	130045	00.9365	140052	01.1945	140113	01.4125
110153	01.0097	120009	00.8924	130048	00.9719	140053	01.5275	140114	01.1638
110154	00.9924	120010	01.4065	130049	01.2511	140054	01.3170	140115	01.1152
110155	00.9971	120011	01.2881	130050	01.0363	140055	01.0359	140116	01.2417
110156	00.9316	120012	01.0283	130051	01.0412	140058	01.0870	140117	01.1880
110157	01.1217	120014	01.1479	130054	00.8653	140059	01.0546	140118	01.3846
110161	01.2419	120015	00.7445	130056	00.9555	140061	01.1311	140119	01.4599
110162	00.8512	120016	00.9906	140001	01.2628	140062	01.2365	140120	01.1507
110163	01.2505	120018	00.9022	140002	01.2181	140063	01.2284	140121	00.9932
110164	01.2909	120019	01.0524	140003	00.9699	140064	01.2075	140122	01.2389
110165	01.1460	120021	00.8121	140004	01.0425	140065	01.2437	140123	01.1787
110166	01.2717	120022	01.4033	140005	00.8718	140066	01.1686	140124	01.1729
110168	01.3248	120024	00.9604	140007	01.1614	140067	01.4828	140125	01.2047
110169	00.7015	130001	00.9957	140008	01.2523	140068	01.2325	140126	01.4399
110170	00.8625	130002	01.3376	140010	01.3230	140069	01.0015	140127	01.1250
110171	01.1932	130003	01.2410	140011	01.0323	140070	01.3347	140128	01.0014
110172	01.0925	130005	01.2713	140012	01.2524	140072	01.1410	140129	01.0483
110174	00.9884	130006	01.5848	140013	01.2893	140074	01.0557	140130	01.1264
110175	00.9588	130007	01.3844	140014	00.9651	140075	01.2695	140132	01.3250
110176	01.1102	130008	00.8475	140015	01.1724	140077	01.0023	140133	01.2732
110177	01.3614	130009	01.0138	140016	00.9750	140079	01.1966	140134	00.7201
110178	01.0646	130010	01.0144	140017	01.2759	140080	01.5694	140135	01.1660
110179	01.1389	130011	01.3076	140018	01.3262	140081	01.0784	140136	01.1644
110181	01.0322	130012	00.9967	140019	00.9351	140082	01.1968	140137	01.0099
110183	01.1184	130013	01.1959	140023	01.1490	140083	01.1567	140138	01.1573
110184	01.0992	130014	01.2684	140024	00.9608	140084	01.2128	140139	01.0746
110185	01.0878	130015	01.0457	140025	01.0829	140085	01.1526	140140	01.0389
110186	01.0920	130016	00.9319	140026	01.1282	140086	01.0874	140141	01.0078
110187	01.0271	130017	00.9894	140027	01.1106	140087	01.2825	140142	01.0733
110188	01.2572	130018	01.3663	140029	01.2809	140088	01.5157	140143	01.0940

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1988.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 7 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
140144	01.0641	140207	01.2588	140291	01.2073	150047	01.4417	150102	01.0198
140145	01.1319	140208	01.3544	140292	01.1996	150048	01.2001	150103	00.9667
140146	00.9714	140209	01.3543	140293	00.9559	150049	01.0360	150104	01.1067
140147	01.0415	140210	00.9896	140294	01.0758	150050	01.1493	150105	01.1163
140148	01.4147	140211	01.1138	140295	01.2090	150051	01.2317	150106	00.9933
140150	01.2823	140212	01.1204	140297	01.3377	150052	01.0624	150109	01.2811
140151	01.0242	140213	01.1970	140298	01.5154	150053	00.9872	150110	00.9243
140152	01.0620	140215	01.1467	140299	01.0564	150054	01.0602	150111	01.0903
140154	01.1674	140217	01.2755	150001	01.1448	150056	01.5424	150112	01.1211
140155	01.1530	140218	01.0234	150002	01.2084	150057	02.2533	150113	01.1637
140156	01.2690	140219	01.2277	150003	01.4533	150058	01.3601	150114	01.0244
140158	01.2398	140220	01.0644	150004	01.2266	150059	01.0950	150115	01.2101
140159	01.2068	140223	01.3664	150005	01.2013	150060	01.1444	150122	01.0909
140160	01.2592	140224	01.2837	150006	01.1988	150061	01.1952	150123	00.9874
140161	00.9844	140226	00.8939	150007	01.1655	150062	00.9952	150124	01.1420
140162	01.1581	140228	01.5346	150008	01.2591	150063	01.1523	150125	01.2755
140164	01.2144	140229	01.0605	150009	01.2296	150064	01.0578	150126	01.6361
140165	01.0352	140230	00.9743	150010	01.0756	150065	01.1201	150127	01.1781
140166	01.1474	140231	01.2709	150011	01.2151	150066	01.0993	150128	01.1267
140167	01.1486	140232	01.0203	150012	01.4148	150067	00.9466	150129	01.1838
140168	01.0593	140233	01.4067	150013	01.0268	150069	01.2050	150130	01.1747
140170	01.0230	140234	01.2048	150014	01.2490	150070	01.0108	150132	01.3121
140171	00.9364	140235	01.0237	150015	01.1224	150071	01.2286	150133	01.2237
140172	01.4076	140236	01.0312	150017	01.4535	150072	01.2490	150134	01.3078
140173	00.9767	140239	01.4324	150018	01.1815	150073	01.0533	150135	00.9272
140174	01.2403	140240	01.1818	150019	01.2260	150074	01.3924	150136	00.9843
140176	01.1802	140241	00.9005	150020	01.0255	150075	01.2149	160001	01.1404
140177	01.1565	140242	01.3024	150021	01.4473	150076	01.0200	160002	01.3229
140179	01.2478	140243	01.1024	150022	01.1247	150077	01.0818	160003	01.0387
140180	01.3038	140245	01.0090	150023	01.2786	150078	01.0467	160005	01.1165
140181	01.1939	140246	01.0302	150024	01.1705	150079	01.0430	160007	01.0580
140182	01.2861	140247	00.9889	150025	01.3705	150081	01.0846	160008	01.0990
140184	01.1215	140249	00.8511	150026	01.1424	150082	01.3337	160009	01.0710
140185	01.2479	140250	01.2537	150027	01.0645	150083	00.8155	160012	01.0834
140186	01.1437	140251	01.2605	150029	01.1122	150084	01.5649	160013	01.1814
140187	01.3228	140252	01.2532	150030	01.1030	150085	00.9337	160014	00.9828
140188	00.9994	140253	01.2881	150031	00.9642	150086	01.1946	160016	01.2161
140189	01.1292	140258	01.3124	150032	01.5972	150088	01.1722	160018	00.9667
140190	01.0310	140261	01.1714	150033	01.4801	150089	01.1902	160020	01.0726
140191	01.1814	140271	01.0975	150034	01.2224	150090	01.3066	160021	01.0415
140192	01.1106	140273	01.1149	150035	01.1592	150091	01.0716	160023	01.1173
140193	00.9786	140275	01.1294	150036	01.0455	150092	01.1446	160024	01.1890
140197	01.2970	140276	01.7959	150037	01.2041	150094	00.9976	160025	01.5248
140199	01.0903	140280	01.1411	150038	01.1536	150095	01.0423	160026	01.1418
140200	01.3575	140281	01.3854	150039	01.0025	150096	01.0136	160027	01.1215
140202	01.1763	140285	01.1030	150042	01.2078	150097	01.0365	160028	01.1351
140203	01.1029	140286	01.1496	150043	01.1433	150098	01.0621	160029	01.2082
140204	01.1832	140288	01.4635	150044	01.1975	150099	01.2628	160030	01.2510
140205	01.0511	140289	01.2849	150045	01.1078	150100	01.4395	160031	01.0491
140206	01.1186	140290	01.2378	150046	01.2956	150101	01.0534	160032	01.0512

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1988.

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
160033	01.2426	160086	00.9920	160151	01.1121	170053	00.9993	170112	00.9919
160034	01.0004	160088	01.0675	160152	00.9988	170054	01.2198	170113	01.0817
160035	00.9922	160089	01.1440	160153	01.4818	170055	01.0232	170114	01.0634
160036	01.2080	160090	01.0184	170001	01.1832	170056	00.9735	170115	01.0901
160037	01.0618	160091	01.1855	170002	01.3194	170057	01.0546	170116	01.1520
160038	01.2112	160092	01.0193	170003	01.1001	170058	01.0819	170117	00.9610
160039	01.0265	160093	00.9461	170004	01.0809	170060	00.9671	170119	00.9825
160040	01.2136	160094	01.0917	170005	00.8991	170061	01.0274	170120	01.2010
160041	01.0719	160095	01.1245	170006	01.1367	170062	00.9697	170121	00.7789
160043	00.9591	160097	01.2786	170007	01.1291	170063	00.9240	170122	01.7028
160044	01.2791	160098	01.1037	170008	00.9787	170064	01.0121	170123	01.3999
160045	01.4456	160099	01.0915	170009	01.1362	170066	00.9782	170124	01.0703
160046	01.0713	160101	01.1730	170010	01.1116	170067	01.0992	170125	00.8854
160047	01.3097	160102	01.2762	170011	01.2234	170068	01.1596	170126	00.9186
160048	01.0741	160103	00.9053	170012	01.4140	170069	00.9789	170128	00.9879
160049	00.9087	160104	01.1382	170013	01.2633	170070	00.9663	170131	01.1532
160050	01.0135	160106	01.1497	170014	01.0763	170072	00.9600	170133	01.1928
160051	01.1907	160107	01.0543	170015	01.1088	170073	01.1564	170134	00.9813
160052	01.0823	160108	01.1633	170016	01.4689	170074	01.1289	170137	01.1467
160053	01.1197	160109	00.9880	170017	01.1410	170075	00.8709	170138	01.1915
160054	01.0109	160110	01.4057	170018	01.0174	170076	01.1685	170139	01.0726
160055	01.0244	160111	01.1612	170019	01.2487	170077	00.9513	170140	01.0227
160056	01.0485	160112	01.2213	170020	01.1669	170079	00.9264	170142	01.2404
160057	01.2274	160113	01.0815	170021	01.0350	170080	01.0116	170143	01.1541
160058	01.5243	160114	01.0216	170022	01.1175	170081	01.1675	170144	01.3438
160059	01.1858	160115	01.0561	170023	01.2851	170082	00.9302	170145	01.1961
160060	01.0323	160116	01.0693	170024	01.1326	170084	00.9276	170146	01.2493
160061	01.0738	160117	01.3242	170025	01.1899	170085	01.0548	170147	01.1702
160062	01.0672	160118	01.0934	170026	01.0553	170086	01.4623	170148	01.2683
160063	01.1549	160119	00.8776	170027	01.0969	170087	01.3155	170150	01.0662
160064	01.2421	160120	00.9865	170030	01.0331	170088	01.0575	170151	01.0075
160065	01.0849	160122	01.1781	170031	00.9733	170089	00.8960	170152	00.9713
160066	01.1114	160123	01.1192	170032	01.1166	170090	00.9560	170159	00.9357
160067	01.1866	160124	01.2231	170033	01.1865	170092	01.0121	170160	00.8992
160068	00.9529	160126	01.1374	170034	00.9462	170093	01.0467	170164	01.0640
160069	01.2579	160129	01.0915	170035	00.9608	170094	01.0135	170166	01.0800
160070	00.9529	160130	01.1266	170036	01.0132	170095	01.0905	170168	00.9479
160071	01.1363	160131	01.1836	170037	01.1547	170097	00.9168	170170	01.1753
160072	01.0710	160132	01.2312	170038	01.0260	170098	01.0610	170171	01.1770
160073	00.9686	160133	01.1827	170039	01.0371	170099	01.1514	170172	00.9506
160074	01.1939	160134	00.9614	170040	01.3684	170100	00.8375	170173	01.0687
160075	01.0582	160135	00.8762	170041	01.0742	170101	01.1500	170174	00.9140
160076	00.9237	160138	01.0561	170043	01.0316	170102	00.9853	170175	01.1636
160077	00.9808	160140	01.0756	170044	01.2686	170103	01.2079	170176	01.3388
160079	01.2347	160141	00.9540	170045	01.0781	170104	01.3322	180001	01.1146
160080	01.0718	160142	01.0757	170046	00.9033	170105	01.0649	180002	01.0302
160081	01.0991	160143	01.0156	170049	01.2427	170106	01.0453	180004	01.1116
160082	01.4985	160145	01.0100	170050	01.2862	170108	01.0752	180005	01.0418
160083	01.3691	160146	01.2688	170051	01.0571	170109	01.1114	180006	00.8814
160085	01.1909	160147	01.2600	170052	01.1265	170110	00.9384	180007	01.3053

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1988.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 9 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
180009	01.0914	180064	01.0440	190001	01.0509	190075	01.2005	190146	01.3962
180010	01.5675	180065	00.9600	190002	01.4543	190077	00.9526	190147	00.9935
180011	01.0538	180066	01.0524	190003	01.2726	190078	01.1652	190148	00.8719
180012	01.1402	180067	01.4795	190004	01.1976	190079	01.1202	190149	01.0238
180013	01.2279	180069	01.0407	190005	01.2017	190081	00.9543	190151	01.1724
180014	01.4600	180070	01.1188	190006	01.1127	190083	00.8912	190152	01.2617
180015	01.1599	180072	01.1896	190007	01.0063	190086	01.2186	190155	01.0330
180016	01.1789	180075	00.9264	190008	01.3664	190088	01.1346	190156	00.8814
180017	01.2352	180078	00.9679	190009	01.0408	190089	01.1483	190157	00.9404
180018	01.1610	180079	00.9821	190010	01.1142	190090	01.1578	190158	01.1735
180019	01.1280	180080	01.1439	190011	01.0407	190092	01.1466	190160	01.0351
180020	01.0278	180081	01.2943	190012	01.0522	190095	00.9930	190161	01.0536
180021	00.9203	180085	01.2179	190013	01.1746	190098	01.3150	190162	01.2600
180023	00.8447	180087	00.9859	190014	00.9742	190099	01.1465	190164	01.0976
180024	00.9974	180088	01.5105	190015	01.2299	190101	00.9177	190165	00.9857
180025	01.1553	180092	01.0243	190017	01.1859	190102	01.3207	190166	00.8786
180026	01.0601	180093	01.2826	190018	01.2013	190103	00.9478	190167	01.3171
180027	01.0506	180094	00.9727	190019	01.3896	190106	01.1558	190169	00.9510
180028	00.9358	180095	01.1607	190020	01.1167	190109	01.0355	190170	00.9999
180029	01.1667	180099	01.0033	190023	00.9550	190110	00.9714	190173	01.2460
180030	00.9855	180100	01.1498	190025	01.2145	190111	01.3584	190175	01.1515
180031	01.0250	180101	01.1917	190026	01.2602	190112	01.2561	190176	01.4011
180032	00.9063	180102	01.2725	190027	01.3111	190113	01.1296	190177	01.2470
180033	01.0705	180103	01.4702	190029	01.1317	190114	00.9386	190178	00.9371
180034	01.0410	180104	01.3047	190033	00.9089	190115	01.2181	190179	00.9648
180035	01.2288	180105	00.9034	190034	01.2149	190116	01.2370	190180	01.0193
180036	01.0621	180106	00.8846	190035	01.3016	190117	01.0285	190182	01.1137
180037	01.2288	180108	00.8976	190036	01.4427	190118	01.0504	190183	01.0550
180038	01.1839	180115	01.0567	190037	01.0438	190119	00.9744	190184	00.9231
180040	01.5423	180116	01.2272	190039	01.4340	190120	00.9696	190185	01.1675
180041	00.9725	180117	01.0343	190040	01.3819	190122	01.1853	190186	00.9878
180042	00.9824	180118	00.9485	190041	01.3427	190124	01.3518	190187	00.8982
180043	01.0234	180120	00.9335	190043	01.0849	190125	01.2213	190188	01.0223
180044	01.0064	180121	01.0908	190044	01.0491	190127	01.2086	190189	01.1116
180045	01.1140	180122	00.9988	190045	01.2051	190128	00.9026	190190	01.0716
180046	01.0027	180123	01.2308	190046	01.3893	190130	01.0305	190191	01.1362
180047	00.9960	180124	01.2863	190047	01.1226	190131	01.1383	190193	01.1991
180048	01.0861	180125	00.9510	190048	01.0400	190132	01.0860	190194	01.1263
180049	01.1578	180126	01.0276	190049	01.0600	190133	01.0278	190195	01.1142
180050	01.2423	180127	01.1034	190050	01.0690	190134	00.8757	190196	00.8783
180051	01.1972	180128	01.1258	190053	01.1699	190135	01.3459	190197	01.2233
180053	00.9250	180129	00.9763	190054	01.2651	190136	01.0107	190198	01.0956
180054	01.0587	180130	01.2884	190058	00.9690	190137	01.0198	190199	01.3423
180055	01.0014	180132	01.2297	190059	01.0191	190138	00.8126	190200	01.3255
180056	01.0950	180133	01.1796	190060	01.1466	190139	01.2885	190201	01.0678
180058	00.9051	180134	01.0740	190064	01.3616	190140	00.9818	190202	01.1842
180059	00.9525	180136	01.2255	190065	01.4369	190141	00.9410	190203	01.4552
180060	00.9452	180137	01.4392	190067	00.8838	190142	00.9255	190204	01.2794
180062	00.9017	180138	01.2166	190071	01.0322	190144	01.1289	190205	01.2190
180063	01.0139	180139	00.9785	190073	00.6197	190145	00.9852	190206	01.4462

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1988.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 10 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
190207	01.1244	210006	01.0410	220002	01.3658	220066	01.2947	220135	01.1039
190208	00.8408	210007	01.4002	220003	01.0548	220067	01.1905	220153	01.0097
200001	01.2873	210008	01.1651	220004	01.1282	220068	00.6137	220154	00.9380
200002	01.0770	210009	01.3726	220005	01.7524	220070	01.1251	220156	01.1526
200003	00.9500	210010	01.1485	220006	01.2267	220071	01.6193	220162	01.1003
200005	00.8966	210011	01.2200	220008	01.1804	220073	01.2230	220163	01.7796
200006	01.2584	210012	01.1846	220009	01.1059	220074	01.0915	220171	01.3215
200007	00.9942	210013	01.2688	220010	01.1781	220075	00.7354	230001	01.1531
200008	01.2090	210015	01.2058	220011	01.1840	220076	01.2049	230002	01.1407
200009	01.5554	210016	01.4862	220012	01.2377	220077	01.5360	230003	01.1690
200012	01.0664	210017	01.1415	220015	01.1761	220079	01.1438	230004	01.4956
200013	01.1209	210018	01.2302	220016	01.1733	220080	01.1984	230005	01.1678
200015	01.2170	210019	01.2792	220017	01.2283	220081	00.9026	230006	01.0426
200016	01.1129	210021	01.1705	220019	01.1561	220082	01.2314	230007	01.0232
200017	01.2286	210022	01.1698	220020	01.0960	220083	01.1520	230012	01.0956
200018	01.1301	210023	01.1468	220021	01.1598	220084	01.1980	230013	01.2174
200019	01.2496	210024	01.1970	220022	01.0512	220086	01.5085	230014	01.0943
200020	01.0845	210025	01.1037	220023	01.1999	220088	01.4545	230015	01.1249
200021	01.1469	210026	01.1960	220024	01.2102	220089	01.2644	230017	01.3687
200023	00.9255	210027	01.2127	220025	01.0927	220090	01.1471	230019	01.2551
200024	01.1654	210028	01.0635	220026	01.2297	220092	01.1770	230020	01.2549
200025	01.1803	210029	01.3243	220028	01.2288	220094	01.1946	230021	01.2092
200026	01.0182	210030	01.0654	220029	01.1229	220095	01.0839	230022	01.2084
200027	01.0955	210031	01.5729	220030	01.0597	220097	01.1258	230023	01.4729
200028	01.0253	210032	01.0734	220031	01.5975	220098	01.1609	230024	01.4329
200031	01.1879	210033	01.0931	220033	01.2083	220099	01.1084	230027	01.1041
200032	01.2929	210034	01.1554	220034	01.0699	220100	01.2899	230029	01.3630
200033	01.5830	210035	01.1405	220035	01.1433	220101	01.2588	230030	01.2200
200034	01.2384	210036	01.1887	220036	01.4174	220102	00.7213	230031	01.3423
200037	01.1435	210037	01.1613	220038	01.1818	220104	01.1538	230032	01.7113
200038	01.0452	210038	01.2146	220040	01.2194	220105	01.1067	230034	01.0654
200039	01.2635	210039	01.0845	220041	01.1001	220106	01.1253	230035	01.0875
200040	01.0790	210040	01.3040	220042	01.1133	220107	01.0773	230036	01.2495
200041	01.1403	210043	01.1603	220045	01.1506	220108	01.1050	230037	00.9791
200043	00.8415	210044	01.1591	220046	01.2781	220110	01.7849	230038	01.5008
200044	01.1153	210045	01.0580	220048	01.1922	220111	01.1625	230039	01.2813
200047	01.0054	210046	01.0760	220049	01.1720	220114	01.0659	230040	01.2098
200049	01.0784	210047	01.1680	220050	01.0065	220115	01.3208	230041	01.0931
200050	01.1621	210048	01.1376	220051	01.1834	220116	01.7127	230042	01.1170
200051	00.9902	210049	01.1907	220052	01.2162	220117	00.9714	230043	00.7616
200052	01.0780	210050	00.6770	220053	01.2289	220118	01.7532	230046	01.5496
200055	01.1033	210051	01.2026	220055	01.1758	220119	01.2492	230047	01.1295
200062	01.0102	210052	00.8868	220057	01.2396	220120	01.0168	230051	01.0258
200063	01.2190	210054	01.2065	220058	01.0750	220121	01.1060	230053	01.3462
200066	01.2242	210055	01.1620	220060	01.1236	220123	00.9662	230054	01.3991
210001	01.2441	210056	01.3264	220061	01.2309	220126	01.2393	230055	01.0977
210002	01.5400	210057	01.1375	220062	01.0143	220128	01.1644	230056	00.9816
210003	01.2067	210058	01.7026	220063	01.1225	220129	01.0464	230058	01.0970
210004	01.1861	210059	01.2025	220064	01.1961	220131	01.0787	230059	01.4039
210005	01.2414	220001	01.0915	220065	01.1364	220133	00.8098	230060	01.0968

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1988.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 11 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
230062	01.0957	230122	01.2596	230189	00.9572	240002	01.5267	240063	01.3505
230063	01.1921	230124	01.0639	230190	01.0699	240003	01.1592	240064	01.2288
230065	01.2436	230125	01.3118	230191	00.9167	240004	01.3819	240065	01.0109
230066	01.1619	230128	01.3358	230193	01.2204	240005	00.9738	240066	01.1810
230067	00.7144	230129	01.7934	230194	01.1866	240006	01.2952	240069	01.1173
230068	01.3218	230130	01.3625	230195	01.2949	240007	01.0426	240071	01.0803
230069	01.1113	230132	01.2536	230197	01.2324	240008	01.0385	240072	00.9846
230070	01.3021	230133	01.1773	230199	01.1996	240009	01.1253	240073	00.9695
230071	00.6700	230134	01.0532	230201	01.0925	240010	01.8288	240074	00.9808
230072	01.1194	230135	01.2282	230204	01.2803	240011	01.0461	240075	01.1779
230075	01.2543	230137	01.1026	230205	01.2319	240013	01.1217	240076	01.1258
230076	01.1376	230138	00.8716	230207	01.1686	240014	01.0859	240077	00.9802
230077	01.7614	230140	01.0920	230208	01.2577	240016	01.2636	240078	01.3173
230078	01.0815	230141	01.3901	230211	00.9515	240017	01.1693	240079	01.1445
230080	01.1828	230142	01.1502	230212	01.0271	240018	01.2206	240080	01.3624
230081	01.1157	230143	01.3386	230213	01.0130	240019	01.4872	240081	01.1889
230082	01.1562	230144	01.1742	230216	01.3183	240020	01.1873	240082	01.3032
230084	01.0410	230145	01.1573	230217	01.2699	240021	00.9817	240083	01.1718
230085	01.0963	230146	01.1807	230219	00.8932	240022	01.0317	240084	01.2569
230086	01.0325	230147	01.2450	230221	01.2282	240023	01.0216	240085	00.9219
230087	01.1028	230149	01.1484	230222	01.1928	240025	01.2381	240086	01.1230
230089	01.2737	230150	01.5367	230223	01.2800	240026	01.3241	240087	01.1908
230090	01.4175	230151	01.3471	230224	01.0834	240027	01.0641	240088	01.4172
230092	01.2753	230153	01.1971	230225	01.2882	240028	01.1822	240089	00.9529
230093	01.1311	230154	01.1142	230227	01.2038	240029	01.1556	240090	01.0581
230095	01.0699	230155	01.0370	230228	01.2480	240030	01.2939	240091	01.0893
230096	01.0978	230156	01.5072	230230	01.2832	240031	00.9188	240093	01.2928
230097	01.2505	230157	01.2549	230232	01.0349	240033	00.8306	240094	01.0505
230098	01.1965	230158	00.9803	230235	01.0139	240035	01.2757	240096	01.0722
230099	01.1056	230159	01.2334	230236	01.2741	240037	01.0055	240097	01.1256
230100	01.1019	230161	01.1336	230237	01.2035	240038	01.2969	240098	00.9338
230101	01.0984	230162	00.9906	230239	01.0890	240040	01.1080	240099	01.1483
230102	01.1992	230163	00.9430	230241	01.0963	240041	01.1371	240100	01.2069
230103	01.0658	230165	01.5568	230244	01.2725	240043	01.1435	240101	01.1650
230104	01.3795	230167	01.2107	230253	01.1031	240044	01.0742	240102	00.9537
230105	01.4095	230169	01.2187	230254	01.1878	240045	00.9917	240103	01.1567
230106	01.0574	230171	01.1927	230256	01.0278	240046	01.2625	240104	01.2081
230107	01.0318	230172	01.0921	230257	00.9697	240047	01.2736	240105	00.9208
230108	01.1253	230173	01.1650	230259	01.1007	240048	01.2484	240106	01.2279
230110	01.1903	230174	01.1692	230264	01.2024	240049	01.5794	240107	01.0270
230111	00.9925	230175	00.9666	230265	01.0106	240050	01.0606	240108	01.0346
230113	00.9671	230176	01.1020	230266	01.2604	240051	00.9522	240109	01.0560
230114	00.8695	230178	01.0980	230269	01.2199	240052	01.2303	240110	01.0371
230115	00.9262	230179	00.9244	230270	01.1945	240053	01.4150	240111	00.9866
230116	00.8713	230180	01.0886	230271	02.2639	240056	01.3158	240112	01.0595
230117	01.7313	230181	01.0476	230273	01.3063	240057	01.5731	240114	01.0467
230118	01.1951	230184	01.0606	230275	01.0927	240058	00.9351	240115	01.2470
230119	01.0719	230186	01.0490	230276	00.6869	240059	01.1023	240116	00.9573
230120	01.0794	230187	00.9695	230277	01.1154	240061	01.4296	240117	01.2101
230121	01.1285	230188	01.0982	240001	01.3484	240062	01.0980	240118	00.9715

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1988.

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
240119	00.9360	240180	00.9153	250043	00.8897	250107	00.9070	260022	01.4030
240121	00.9217	240183	01.1660	250044	01.0049	250109	00.9624	260023	01.2950
240122	01.0784	240184	00.9839	250045	01.1037	250110	00.9197	260024	01.0833
240123	01.0576	240187	01.1414	250046	00.9830	250111	00.8417	260025	01.1727
240124	01.0331	240192	01.0696	250047	00.9174	250112	00.9938	260026	01.0363
240125	01.0021	240193	00.9259	250048	01.2491	250113	01.0041	260027	01.3942
240127	01.0015	240196	01.4054	250049	00.8869	250114	00.8587	260029	01.1971
240128	01.0772	240200	00.9244	250050	01.0879	250117	01.0090	260030	01.1802
240129	00.8935	240201	01.0851	250051	00.9281	250118	01.0515	260031	01.4099
240130	01.0261	240205	00.8379	250057	01.0706	250119	00.9648	260032	01.4602
240131	01.1856	240206	00.9036	250058	01.1283	250120	00.9791	260033	01.3279
240132	01.2016	240207	01.1764	250059	00.9959	250121	00.9895	260034	01.0358
240133	01.1796	240210	01.2800	250060	00.8452	250122	01.2011	260035	00.9978
240134	01.1610	250001	01.3723	250061	00.9898	250123	01.1339	260036	01.0726
240135	00.8689	250002	00.8897	250062	00.9426	250124	00.9025	260037	01.2638
240136	00.9744	250003	00.9502	250063	00.8947	250125	01.0856	260039	01.2049
240137	01.1060	250004	01.3140	250065	00.9994	250126	01.0144	260040	01.4106
240138	00.8480	250005	00.9543	250066	00.9376	250127	00.8804	260041	00.9879
240139	01.0198	250006	00.9919	250067	01.0855	250128	01.0268	260042	01.1829
240140	00.8248	250007	01.1219	250068	00.8595	250129	01.0529	260044	01.1700
240141	00.9528	250008	00.8756	250069	01.1863	250131	00.9977	260047	01.1755
240142	01.1018	250009	01.0844	250071	01.0250	250132	01.0568	260048	01.1586
240143	01.0834	250010	01.0195	250072	01.1473	250133	00.8258	260049	00.9466
240144	01.0192	250012	00.9590	250073	00.9391	250134	01.0431	260050	01.0373
240145	01.0826	250014	01.1290	250075	00.9233	250136	00.7681	260051	01.0640
240146	00.9977	250015	01.0108	250076	00.9249	250137	00.9034	260052	01.1482
240148	00.9128	250016	00.8866	250077	00.9839	250138	01.0295	260053	01.0690
240150	01.0321	250017	00.9190	250078	01.2683	250139	00.9400	260054	01.2751
240152	01.0346	250018	00.9404	250079	00.8428	250140	00.8219	260055	01.1060
240153	00.9811	250019	01.2457	250081	01.1191	260001	01.4605	260057	01.1710
240154	01.0208	250020	00.9571	250082	01.1326	260002	01.3383	260058	01.2248
240155	00.9948	250021	00.9262	250083	00.9046	260003	01.0504	260059	00.9706
240156	01.1353	250023	00.8785	250084	01.1147	260004	01.0587	260061	01.1307
240157	01.0929	250024	00.9386	250085	00.9591	260005	01.2137	260062	01.1361
240158	01.1451	250025	01.0594	250086	01.0431	260006	01.2737	260063	01.1928
240160	00.9786	250026	00.8533	250088	01.0489	260007	01.1654	260064	01.2824
240161	01.0598	250027	00.9238	250089	01.0248	260008	01.2418	260065	01.4101
240162	01.1404	250029	00.8682	250091	00.9567	260009	01.1670	260066	01.0214
240163	00.9417	250030	00.9184	250093	01.1425	260010	01.2179	260067	01.0436
240165	00.8948	250031	01.1538	250094	01.1658	260011	01.2860	260068	01.7465
240166	01.0550	250032	01.1813	250095	01.0628	260012	00.9590	260070	01.1210
240167	00.8967	250033	00.9462	250096	01.1517	260013	01.1539	260073	00.9948
240169	00.9657	250034	01.3000	250097	01.1124	260014	01.4946	260074	01.1108
240170	01.1109	250035	00.8839	250098	00.9063	260015	01.0500	260077	01.2553
240171	01.1122	250036	00.9561	250099	01.1277	260016	01.0957	260078	01.1370
240172	01.0675	250037	00.9589	250100	01.1660	260017	01.2741	260079	01.0372
240173	01.0593	250038	00.8637	250101	00.8905	260018	00.9877	260080	01.1356
240175	00.8033	250039	01.0046	250102	01.3812	260019	01.0361	260081	01.4223
240176	00.8914	250040	01.1009	250104	01.2091	260020	01.4170	260082	01.1772
240179	01.0370	250042	01.0953	250105	00.9580	260021	01.2169	260085	01.4005

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1988.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 13 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
260086	01.0656	260166	01.1659	270036	00.9561	280023	01.3270	280082	00.8880
260088	01.0519	260171	00.8655	270039	01.0263	280024	00.8983	280083	01.0258
260089	01.1039	260172	01.1082	270040	01.0931	280025	01.0444	280084	00.9707
260090	01.3182	260173	01.1360	270041	00.9262	280026	01.0503	280085	01.3838
260091	01.5310	260175	01.1549	270042	01.3576	280028	00.9281	280088	01.4877
260092	01.0229	260176	01.4169	270043	00.7848	280029	01.0149	280089	00.9779
260093	00.9616	260177	01.3093	270044	00.9844	280030	01.5138	280090	01.0121
260094	01.0687	260178	01.3468	270046	00.9269	280031	01.1076	280091	01.0634
260095	01.3196	260179	01.4450	270047	00.8121	280032	01.1614	280092	00.9136
260096	01.3380	260180	01.4739	270048	00.9988	280033	00.9846	280093	00.9867
260097	01.2367	260182	01.0712	270049	01.2791	280034	01.2651	280094	00.9418
260100	01.1985	260183	01.2804	270050	00.9384	280035	01.0509	280097	00.8409
260102	01.1032	260186	01.1024	270051	01.1106	280037	01.0334	280098	01.0114
260103	01.2901	260188	01.1742	270052	00.8966	280038	01.1077	280101	00.9747
260104	01.4369	260189	01.0087	270053	00.7984	280039	01.0480	280102	00.9476
260105	01.7323	260190	01.1231	270055	00.7776	280040	01.4746	280103	00.9304
260107	01.3000	260191	01.2155	270057	01.1679	280041	01.0166	280104	01.0364
260108	01.6015	260192	00.7833	270058	00.9681	280042	01.1271	280105	01.1515
260109	00.9226	260193	01.1518	270059	00.9312	280043	00.9767	280106	01.0672
260110	01.4084	260195	01.0348	270060	00.8394	280045	01.0798	280107	01.2157
260111	01.0905	260197	01.1311	270063	00.9684	280046	01.0506	280108	01.0473
260112	01.3301	260198	01.2938	270067	00.9062	280047	01.1798	280109	00.9487
260113	01.1616	260200	01.0808	270068	00.9168	280048	01.1625	280110	01.0547
260115	01.1864	270001	00.9084	270071	00.9423	280049	01.0825	280111	01.1792
260116	01.0910	270002	01.1827	270072	00.8826	280050	01.0127	280114	00.9454
260118	01.2309	270003	01.0720	270073	01.0281	280051	01.0289	280115	01.0942
260119	01.1914	270004	01.6619	270074	00.9182	280052	01.1284	280117	01.1863
260120	01.2190	270006	01.0249	270075	00.8894	280054	01.2115	280118	01.1493
260122	01.1288	270007	00.8926	270076	00.9307	280055	00.9586	280119	00.8622
260123	00.9902	270008	00.9746	270079	00.9348	280056	01.1634	280122	00.8607
260127	01.0226	270009	00.9791	270080	01.0833	280057	01.0294	280123	01.4823
260128	01.0300	270011	01.1064	270081	00.9849	280058	01.1003	290001	01.3895
260129	01.0567	270012	01.3480	270082	00.8939	280060	01.3316	290002	01.0208
260131	01.2696	270013	01.1941	270083	01.0620	280061	01.2897	290003	01.5343
260134	01.0844	270014	01.4079	280001	01.2036	280062	01.1553	290005	01.2119
260137	01.1879	270016	00.8422	280003	01.6668	280064	01.0866	290006	01.0044
260138	01.5667	270017	01.2422	280004	01.1297	280065	01.2586	290007	01.4588
260141	01.7441	270019	00.8790	280005	01.3798	280066	01.1372	290008	01.2725
260142	01.1988	270021	01.0755	280009	01.3336	280068	00.9498	290009	01.3289
260143	01.3511	270023	01.3220	280010	01.1496	280070	00.9622	290010	01.0835
260146	01.0107	270024	00.9163	280011	01.0473	280071	00.9253	290011	01.0840
260147	01.0395	270026	00.9395	280012	01.2662	280073	00.9980	290012	01.1719
260148	00.8993	270027	01.0651	280013	01.4863	280074	01.1119	290013	00.9590
260158	01.0904	270028	01.0219	280014	01.0935	280075	01.1273	290014	00.9332
260159	01.0499	270029	01.0196	280015	01.0826	280076	00.9954	290015	00.9224
260160	01.1339	270030	00.9879	280017	01.2091	280077	01.3049	290016	01.1048
260162	01.1713	270031	00.9192	280018	00.9910	280078	01.0287	290018	01.0130
260163	01.1594	270032	01.1306	280020	01.4121	280079	00.9440	290019	01.1336
260164	01.0837	270033	00.9151	280021	01.3499	280080	01.0132	290020	00.9942
260165	01.0365	270035	01.0231	280022	01.0361	280081	01.3529	290021	01.5087

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1988.

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
290022	01.5715	310020	01.1805	310078	01.2706	320032	00.9738	330030	01.1693
290027	01.0797	310021	01.1952	310081	01.1543	320033	01.1536	330033	01.3072
290029	00.9766	310022	01.2122	310083	01.2006	320035	00.9506	330034	01.2134
290031	00.9368	310024	01.2095	310084	01.1794	320037	01.2218	330036	01.0448
290032	01.3110	310025	01.1182	310085	01.2071	320038	01.1488	330037	01.1371
290033	01.1124	310026	01.1950	310086	01.2124	320045	01.0080	330038	01.1612
300001	01.2247	310027	01.2001	310087	01.1828	320048	01.0763	330039	01.0632
300002	01.0326	310028	01.1345	310088	01.2080	320053	00.9867	330041	01.3411
300003	01.6187	310029	01.6316	310090	01.2112	320056	00.8362	330043	01.1540
300005	01.3290	310031	02.0553	310091	01.1835	320057	00.9977	330044	01.2156
300006	01.0625	310032	01.0905	310092	01.2407	320058	00.8264	330045	01.2499
300007	01.1058	310033	01.1895	310093	01.0686	320059	00.9864	330046	01.4673
300008	01.2133	310034	01.1541	310094	01.1235	320060	01.0122	330047	01.2490
300009	01.1572	310036	01.1992	310096	01.4283	320061	01.0402	330048	01.1995
300010	01.2831	310037	01.2100	310105	01.1674	320062	00.8876	330049	01.3414
300011	01.2294	310038	01.4759	310108	01.1637	320063	01.2376	330052	01.3484
300012	01.2518	310039	01.1907	310110	01.1413	320065	01.1459	330053	01.0923
300013	01.2140	310040	01.0861	310111	01.2250	320067	00.9025	330055	01.2801
300014	01.2197	310041	01.2264	310112	01.1111	320068	01.0080	330056	01.2880
300015	01.0855	310042	01.1082	310113	01.2015	320069	01.0913	330057	01.3541
300016	01.1716	310043	01.2058	310115	01.1745	320070	00.8854	330058	01.2257
300017	01.1899	310044	01.2250	310116	01.2054	320072	01.7165	330059	01.3785
300018	01.1432	310045	01.0668	310118	01.1773	320074	01.0756	330061	01.2714
300019	01.1334	310047	01.2624	310119	01.2532	320076	01.1359	330062	01.1071
300020	01.1581	310048	01.1886	310120	01.0913	320077	00.8985	330064	01.2851
300021	01.1808	310049	01.2419	310121	00.9561	330001	01.1452	330065	01.2483
300022	01.1372	310050	01.1680	310515	00.8209	330002	01.3245	330066	01.1495
300023	01.2352	310051	01.2931	310529	01.8877	330003	01.2876	330067	01.2997
300024	01.2057	310052	01.2032	310534	01.3369	330004	01.2427	330072	01.2304
300028	01.1191	310054	01.2530	320001	01.3126	330005	01.4465	330073	01.1572
300029	01.2609	310056	01.2005	320002	01.2060	330006	01.3395	330074	01.1698
300033	01.0382	310057	01.2534	320003	01.2491	330007	01.1949	330075	01.0161
300034	01.4566	310058	01.1084	320004	01.1179	330008	01.1723	330076	01.1781
310001	01.4459	310059	00.9008	320005	01.2053	330009	01.0963	330078	01.3171
310002	01.6966	310060	01.1802	320006	01.1595	330010	01.1977	330079	01.1725
310003	01.1524	310061	01.1389	320009	01.2400	330011	01.1399	330080	01.1772
310005	01.1524	310062	01.1195	320010	01.2343	330012	01.4551	330082	01.2256
310006	01.1337	310063	01.2653	320011	00.9935	330013	01.8157	330084	01.0303
310008	01.2201	310064	01.2057	320012	00.9958	330014	01.2231	330085	01.3181
310009	01.1404	310067	01.1932	320013	00.9931	330015	01.2964	330086	01.1795
310010	01.2090	310068	01.1926	320014	00.8886	330016	01.0425	330088	01.1622
310011	01.2131	310069	01.0755	320016	01.0724	330019	01.2590	330090	01.5452
310012	01.2790	310070	01.2247	320017	01.1722	330020	01.0041	330091	01.1891
310013	01.2619	310071	01.1858	320018	01.2079	330022	01.0110	330092	01.0834
310014	01.4514	310072	01.1971	320019	01.2515	330023	01.2510	330094	01.2601
310015	01.3029	310073	01.1879	320021	01.5623	330024	01.5173	330095	01.2253
310016	01.1446	310074	01.2542	320022	01.2552	330025	01.0601	330098	01.0874
310017	01.2803	310075	01.1938	320023	01.0740	330027	01.3463	330097	01.1941
310018	01.0939	310076	01.2684	320030	01.0069	330028	01.1984	330100	00.5942
310019	01.4940	310077	01.5074	320031	00.9303	330029	01.1829	330101	01.4415

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1988.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 15 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
330102	01.1855	330176	00.8787	330238	01.1072	330335	01.1535	340016	01.1886
330103	01.1846	330177	01.1146	330239	01.1520	330336	01.1457	340017	01.1933
330104	01.2734	330179	00.9536	330240	01.1379	330338	01.1140	340018	01.1911
330106	01.5426	330180	01.2314	330241	01.6691	330339	01.0528	340019	01.1238
330107	01.1413	330181	01.2496	330242	01.2707	330340	01.0781	340020	01.2051
330108	01.2809	330182	02.0660	330244	00.9916	330350	01.6039	340021	01.2980
330110	00.9979	330183	01.3245	330245	01.2063	330351	01.1040	340022	01.1409
330111	01.1513	330184	01.2444	330246	01.1889	330353	01.1682	340023	01.2865
330114	00.9999	330185	01.1366	330247	00.5663	330354	01.0628	340024	01.2221
330115	01.1756	330186	01.1317	330249	01.1953	330357	01.2415	340025	01.1131
330116	00.9541	330188	01.1570	330250	01.1943	330359	01.0307	340026	01.0012
330118	01.4593	330189	00.7820	330252	00.9576	330362	00.6841	340027	01.1485
330119	01.2932	330191	01.2447	330254	00.9769	330363	00.7458	340028	01.3111
330120	01.6232	330193	01.3194	330257	01.0250	330366	00.7163	340030	01.6466
330121	01.0398	330194	01.3934	330258	01.2626	330367	00.6262	340031	01.0477
330122	01.1828	330195	01.4347	330259	01.1942	330368	00.7001	340032	01.3274
330125	01.5725	330196	01.2529	330261	01.2128	330369	00.7122	340034	01.2766
330126	01.1313	330197	01.0453	330263	01.0893	330371	00.7597	340035	01.0778
330127	01.2159	330198	01.2332	330264	01.1409	330372	01.2247	340036	01.1237
330128	01.2077	330199	01.1817	330265	01.2850	330373	00.6566	340037	01.1852
330132	01.0934	330201	01.3819	330267	01.1756	330381	01.1121	340038	01.1930
330133	01.2144	330202	01.1626	330268	01.1510	330383	01.2011	340039	01.1860
330135	01.1722	330203	01.3410	330270	01.8443	330385	01.2036	340040	01.6316
330136	01.3132	330204	01.1593	330272	00.9740	330386	01.1847	340041	01.2108
330140	01.5025	330205	01.1222	330273	01.1762	330387	01.0465	340042	01.2630
330141	01.2120	330208	01.1900	330275	01.2295	330389	01.7929	340044	01.0171
330142	01.1916	330209	01.1652	330276	01.2431	330390	01.1820	340045	00.9930
330144	01.0269	330210	01.0955	330277	01.1285	330391	01.4956	340047	01.5988
330148	01.0404	330211	01.1275	330279	01.2006	330393	01.4555	340049	00.6100
330151	01.1789	330212	01.0843	330281	00.7315	330394	01.2088	340050	01.1872
330152	01.3045	330213	01.1259	330285	01.4460	330395	01.2992	340051	01.2719
330153	01.2899	330214	01.5614	330286	01.1870	330396	01.1962	340052	00.9809
330154	01.3671	330215	01.2017	330288	01.0610	330397	01.2757	340053	01.4502
330155	01.1182	330217	01.1202	330290	01.5515	330398	01.1975	340054	01.1411
330157	01.2646	330218	01.2065	330291	01.1086	330399	01.2260	340055	01.1818
330158	01.2454	330219	01.3283	330293	01.1125	340001	01.2236	340060	01.1538
330159	01.3181	330221	01.2533	330297	01.1595	340002	01.6485	340061	01.5447
330160	01.2498	330222	01.1746	330304	01.1873	340003	01.1713	340063	01.0746
330161	01.0448	330223	01.1479	330306	01.2908	340004	01.3683	340064	01.0498
330162	01.2515	330224	01.2271	330307	01.1261	340005	01.2678	340065	01.1625
330163	01.1630	330225	01.1999	330308	01.1992	340006	01.0926	340067	01.0317
330164	01.3430	330226	01.2194	330309	01.2182	340007	01.1613	340068	01.2265
330165	01.0418	330229	01.2115	330314	01.1921	340008	01.0624	340069	01.6269
330166	00.9976	330230	01.3716	330315	01.1145	340009	00.9199	340070	01.2494
330167	01.3587	330231	01.1268	330316	01.2965	340010	01.3085	340071	01.0057
330168	01.0526	330232	01.1945	330320	01.1441	340011	01.1096	340072	01.1255
330169	01.2050	330233	01.2982	330327	00.9622	340012	01.0703	340073	01.2652
330171	01.2741	330234	01.7215	330331	01.1551	340013	01.2367	340075	01.1682
330174	00.9787	330235	01.1840	330332	01.1346	340014	01.4403	340076	01.0846
330175	01.0688	330236	01.3258	330333	01.1921	340015	01.2418	340079	00.9868

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1988.

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
340080	01.1219	340146	00.9754	350039	00.8993	360035	01.3692	360088	01.0360
340084	01.0877	340147	01.2212	350041	00.9910	360036	01.1462	360089	01.0908
340085	01.2072	340148	01.2555	350042	00.9563	360037	01.5423	360090	01.2088
340087	01.1172	340151	01.0962	350043	01.1444	360038	01.2884	360091	01.2656
340088	01.1355	340153	01.9121	350044	00.8910	360039	01.1888	360092	01.1550
340089	00.9796	340154	00.9332	350047	01.0168	360040	01.1329	360093	01.1352
340090	01.1647	340155	01.3566	350049	01.0128	360041	01.2202	360094	01.1865
340091	01.4669	340156	00.8753	350050	00.8586	360042	01.1830	360095	01.2241
340093	01.0287	340157	01.2383	350051	00.8536	360044	01.1308	360096	01.0637
340094	01.3887	340158	01.1247	350053	00.9632	360045	01.3541	360098	01.2661
340096	01.1475	340159	01.1761	350055	00.8576	360046	01.0799	360099	01.0657
340097	01.0630	340160	01.0697	350056	00.9231	360047	01.0565	360100	01.2963
340098	01.5527	340162	01.2593	350058	00.9663	360048	01.4201	360101	01.3107
340099	01.2342	340164	01.2392	350060	00.9323	360049	01.1508	360102	01.2195
340100	01.3744	340166	01.2575	350061	00.9817	360050	01.1961	360103	01.2566
340101	01.3020	340167	00.7110	350063	00.8571	360051	01.3732	360104	01.0157
340104	00.9866	350001	01.0678	350064	00.8751	360052	01.4307	360106	01.1388
340105	01.3206	350002	01.4178	350065	00.9877	360053	01.2351	360107	01.0900
340106	01.1727	350003	01.1801	350066	00.9049	360054	01.2354	360108	01.1283
340107	01.2388	350004	01.6330	350067	00.8309	360055	01.1719	360109	01.0714
340109	01.3202	350005	01.1783	360001	01.1513	360056	01.2096	360112	01.4070
340111	01.2403	350006	01.1591	360002	01.1293	360057	01.0023	360113	01.1891
340112	01.0665	350007	00.9513	360003	01.3049	360058	01.0860	360114	01.0435
340113	01.8238	350008	00.8963	360006	01.5366	360059	01.2994	360115	01.1218
340114	01.2713	350009	01.1531	360007	01.0533	360061	00.4262	360116	01.0591
340115	01.3244	350010	01.1128	360008	01.1990	360062	01.4388	360118	01.2174
340116	01.4716	350011	01.4828	360009	01.2068	360063	00.9957	360119	01.0913
340119	01.2554	350012	00.9534	360010	01.1222	360064	01.3357	360120	00.8748
340120	01.1138	350013	00.9851	360011	01.2671	360065	01.2072	360121	01.0716
340121	01.1100	350014	00.9629	360012	01.2676	360066	01.1598	360122	01.1983
340122	00.9960	350015	01.5164	360013	01.1232	360067	01.1816	360123	01.1357
340123	01.1921	350016	01.1008	360014	01.1847	360068	01.3128	360124	01.2741
340124	01.0845	350017	01.2456	360015	01.3776	360069	01.0633	360125	01.1281
340125	01.4429	350018	00.9561	360016	01.3220	360070	01.2386	360126	01.2129
340126	01.2612	350019	01.3759	360017	01.4848	360071	01.1821	360127	00.9885
340127	01.1850	350020	01.1776	360018	01.3037	360072	01.2347	360128	01.1450
340129	01.1858	350021	01.0109	360019	01.1492	360074	01.2410	360129	01.0418
340130	01.2810	350023	00.9419	360020	01.2011	360075	01.3246	360130	01.1314
340131	01.3126	350024	00.9744	360021	01.2137	360076	01.2011	360131	01.1644
340132	01.2275	350025	01.0146	360022	01.1448	360077	01.3364	360132	01.1534
340133	01.1056	350027	01.0132	360024	01.1255	360078	01.2426	360133	01.3506
340135	01.0016	350029	00.8766	360025	01.1033	360079	01.4645	360134	01.3374
340136	00.9424	350030	01.0995	360026	01.1052	360080	01.1768	360135	01.1058
340137	01.0961	350031	01.0236	360027	01.4117	360081	01.2485	360136	01.0503
340138	01.1009	350032	01.0077	360028	01.2053	360082	01.2491	360137	01.4460
340141	01.4126	350033	00.9012	360029	01.1130	360083	01.0963	360139	01.0891
340142	01.1743	350034	00.9724	360030	01.0810	360084	01.3311	360140	01.0097
340143	01.3143	350035	00.8310	360031	01.1769	360085	01.4914	360141	01.2822
340144	01.2125	350036	00.9750	360032	01.1413	360086	01.2102	360142	01.0352
340145	01.1938	350038	00.9284	360034	01.0689	360087	01.2226	360143	01.1572

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: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1988.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 17 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
360144	01.2914	360230	01.2514	370049	01.0471	370130	01.0499	380018	01.6146
360145	01.3141	360231	01.1089	370050	00.9759	370131	00.9458	380019	01.2313
360147	01.1922	360232	01.0775	370051	01.0239	370133	00.9540	380020	01.3519
360148	01.2011	360234	01.2045	370054	01.1100	370138	01.0744	380021	01.2090
360149	01.0690	360236	01.1505	370056	01.2309	370139	01.0816	380022	01.2291
360150	01.1574	360238	01.0078	370057	01.1646	370140	01.0072	380023	01.1975
360151	01.2694	360239	01.1960	370059	01.1442	370141	01.3550	380024	01.2867
360152	01.3113	360240	01.1825	370060	01.0043	370144	01.1838	380025	01.2807
360153	01.1223	360241	00.6092	370061	00.8973	370146	00.9794	380026	01.2411
360154	01.1005	370001	01.6098	370063	01.1212	370148	01.2455	380027	01.2938
360155	01.1069	370002	01.1026	370064	00.9772	370149	01.1860	380029	01.1081
360156	01.0996	370004	01.0819	370065	01.1727	370153	01.0936	380030	00.8795
360159	01.1733	370005	00.9288	370069	01.0605	370154	00.9723	380031	00.9789
360161	01.2424	370006	01.1028	370071	00.9025	370156	01.0191	380033	01.5034
360162	01.1349	370007	01.1360	370072	00.9991	370157	00.9519	380035	01.2419
360163	01.4392	370008	01.2040	370076	01.0978	370158	01.0688	380036	01.0718
360164	01.2098	370011	00.9382	370077	01.1827	370159	01.1566	380037	01.1794
360165	00.9790	370012	00.9412	370078	01.4765	370161	00.9983	380038	01.2046
360166	00.9810	370013	01.3356	370079	00.9268	370163	00.9154	380039	01.2715
360168	00.9513	370014	01.2139	370080	01.0129	370165	00.9904	380040	01.1170
360169	01.0459	370015	01.1472	370082	00.9404	370166	01.0230	380042	01.0973
360170	01.0525	370016	01.2149	370083	01.0178	370168	00.8976	380043	01.0051
360171	01.1438	370017	00.9509	370084	00.9305	370169	01.0577	380044	01.0846
360172	01.2767	370018	01.1958	370085	00.9643	370170	01.0693	380045	01.1670
360174	01.1187	370019	01.0664	370086	01.0457	370171	00.9838	380047	01.4490
360175	01.1463	370020	01.1859	370089	01.2420	370172	00.9610	380048	00.9763
360176	01.2083	370021	01.0661	370091	01.4279	370173	01.0377	380050	01.2805
360177	01.0741	370022	01.1721	370092	01.0179	370174	00.8956	380051	01.2781
360178	01.2144	370023	01.1624	370093	01.4512	370176	01.1737	380052	01.1829
360179	01.1796	370025	01.2443	370094	01.1835	370177	00.9239	380055	01.1526
360180	01.8371	370026	01.2621	370095	00.9668	370178	01.0226	380056	00.9974
360184	01.0749	370028	01.4640	370096	00.9789	370179	01.0655	380059	01.0176
360185	01.2212	370029	01.2566	370097	01.2547	370180	01.1871	380060	01.2924
360186	00.9282	370030	01.1822	370099	01.0240	370182	01.0120	380061	01.4305
360187	01.1972	370032	01.2625	370100	01.1236	370183	01.0671	380062	00.9230
360188	01.0632	370033	01.0705	370103	01.0414	370184	01.2632	380063	01.1307
360189	01.1033	370034	01.1147	370105	01.8091	380001	01.3672	380064	01.2469
360192	01.2234	370035	01.3548	370106	01.3073	380002	01.1801	380065	01.1213
360193	01.1979	370036	01.1158	370107	00.9912	380003	01.0882	380066	01.1324
360194	01.1116	370037	01.5234	370108	00.9485	380004	01.6618	380068	01.0570
360195	01.2214	370038	00.9197	370110	00.9742	380005	01.1402	380069	01.0728
360197	01.1090	370039	01.1513	370112	00.9948	380006	01.1596	380070	01.0145
360200	01.1503	370040	01.1119	370113	01.1618	380007	01.5232	380071	01.2161
360203	01.1243	370041	00.9921	370114	01.4603	380008	01.1424	380072	00.8757
360204	01.1471	370042	00.8774	370117	01.1682	380009	01.5260	380075	01.2609
360210	01.1793	370043	00.9664	370121	01.1269	380010	01.1580	380077	00.9016
360211	01.1101	370045	01.0729	370122	00.9480	380011	01.0331	380078	01.1266
360212	01.3309	370046	01.0676	370123	01.1292	380013	01.0947	380079	01.1403
360213	01.0885	370047	01.0514	370125	00.9866	380014	01.1839	380081	00.9824
360218	01.2838	370048	00.9973	370126	01.0273	380017	01.5634	380082	01.2019

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
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PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
380083	01.1058	390045	01.2267	390102	01.2203	390160	01.1439	390223	01.5397
380084	01.4420	390046	01.3572	390103	01.0906	390161	01.0767	390224	00.9382
380087	01.0110	390047	01.3938	390104	01.1441	390162	01.1727	390225	01.2602
380088	01.0781	390048	01.1507	390106	01.0102	390163	01.1656	390226	01.4642
380089	01.2593	390049	01.3228	390107	01.1665	390164	01.5150	390228	01.2123
380090	01.3435	390050	01.7158	390108	01.2396	390165	01.0894	390229	01.3242
380091	01.2185	390051	01.9648	390109	01.2309	390166	01.1402	390231	01.2667
380094	01.1203	390052	01.0827	390110	01.1718	390167	01.1871	390232	01.0569
390001	01.1828	390054	01.1933	390111	01.6479	390168	01.1500	390233	01.2259
390002	01.2206	390055	01.4691	390112	01.1375	390169	01.1997	390234	01.3256
390003	01.1074	390056	01.1331	390113	01.1715	390170	01.5480	390235	01.6057
390004	01.2560	390057	01.2458	390114	01.0299	390171	01.0622	390236	01.0875
390005	01.1114	390058	01.2722	390115	01.2372	390172	01.1221	390237	01.4307
390006	01.4839	390059	01.4124	390116	01.1886	390173	01.0950	390238	00.8379
390007	01.1639	390060	01.1818	390117	01.0765	390174	01.4958	390242	01.1934
390008	01.1564	390061	01.2258	390118	01.1356	390176	01.1043	390244	00.9401
390009	01.3469	390062	01.1185	390119	01.2118	390178	01.3302	390245	01.2529
390010	01.0991	390063	01.4782	390121	01.1829	390179	01.2103	390246	01.1144
390011	01.1846	390064	01.3096	390122	01.0939	390180	01.2766	390247	01.0623
390012	01.2118	390065	01.1986	390123	01.1981	390181	01.0834	390249	01.0606
390013	01.1804	390066	01.2226	390125	01.1638	390183	01.0688	390252	00.9029
390014	00.8444	390067	01.4907	390126	01.1991	390184	01.0925	390256	01.5601
390015	01.1313	390068	01.2724	390127	01.1287	390185	01.1705	390258	01.1610
390016	01.1148	390069	01.1586	390128	01.1109	390186	01.1190	390260	01.2524
390017	01.0706	390070	01.1237	390130	01.0049	390187	01.1609	390261	01.5792
390018	01.1786	390071	01.1088	390131	01.2106	390188	01.0681	390262	01.3908
390019	01.0871	390072	00.9844	390132	01.0011	390189	01.0671	390263	01.4242
390020	01.2618	390073	01.1878	390133	01.3279	390191	01.1231	390265	01.2554
390021	01.0675	390074	01.1655	390135	01.2733	390192	01.0572	390266	01.1376
390022	01.1038	390075	01.2726	390136	01.1954	390193	01.1716	390267	01.1508
390023	01.1904	390076	01.2125	390137	01.0935	390194	01.0614	390268	01.1418
390024	00.7171	390077	01.2885	390138	01.2506	390195	01.3510	390270	01.2246
390025	00.8804	390078	01.0871	390139	01.4370	390196	01.1365	390272	00.6153
390026	01.2149	390079	01.6129	390142	01.5172	390197	01.2536	390275	00.5811
390027	01.5460	390080	01.1767	390143	00.9140	390198	01.2474	390276	00.9783
390028	01.5845	390081	01.1878	390145	01.1776	390199	01.2430	390277	01.1862
390029	01.4933	390083	01.1924	390146	01.1234	390200	01.0161	410001	01.1909
390030	01.1269	390084	01.1492	390147	01.1515	390201	01.3294	410002	01.1497
390031	01.1572	390086	01.1456	390148	01.0720	390203	01.2623	410004	01.3009
390032	01.1546	390088	01.3169	390149	01.2035	390204	01.1703	410005	01.2590
390034	01.0901	390090	01.5431	390150	01.1249	390205	01.1567	410006	01.2278
390035	01.2995	390091	01.1445	390151	01.2000	390206	01.2324	410007	01.4229
390036	01.2675	390092	01.1454	390152	01.0667	390209	01.0370	410008	01.0860
390037	01.1900	390093	01.1235	390153	01.1699	390211	01.1671	410009	01.2105
390039	01.0859	390095	01.2438	390154	01.1077	390213	01.0104	410010	00.9906
390040	01.0464	390096	01.2153	390155	01.2759	390215	01.1624	410011	01.1585
390041	01.1326	390097	01.3454	390156	01.2436	390217	01.0757	410012	01.3785
390042	01.1913	390098	01.5587	390157	01.1698	390219	01.1961	410013	01.1454
390043	01.0413	390100	01.5833	390158	01.2564	390220	01.2060	410014	01.1262
390044	01.4270	390101	01.2048	390159	01.1791	390222	01.2258	410016	01.0016

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1988.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 19 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
420002	01.2702	420067	01.1604	430037	00.9371	440019	01.4278	440084	01.1097
420003	01.1195	420068	01.2245	430038	01.0376	440020	01.0247	440087	00.9138
420004	01.7647	420069	01.1276	430039	01.0604	440022	01.0751	440090	01.0436
420005	01.0519	420070	01.2601	430040	00.9352	440023	00.9221	440091	01.2706
420006	01.2361	420071	01.2110	430041	01.0617	440024	01.1118	440095	00.9960
420007	01.4325	420072	00.9418	430042	00.9878	440025	01.0687	440100	01.0457
420009	01.2109	420073	01.2552	430043	01.0311	440026	01.1551	440102	01.0175
420010	01.0775	420074	01.0072	430044	00.8688	440029	01.2014	440103	01.1309
420011	01.0676	420075	01.0134	430047	01.1763	440030	01.0491	440104	01.3809
420014	01.0682	420076	01.0701	430048	01.0697	440031	01.0178	440105	00.9769
420015	01.1358	420078	01.3808	430049	00.9688	440032	00.9767	440109	01.0561
420016	01.1598	420079	01.3732	430051	00.9081	440033	01.0561	440110	01.0304
420017	01.0401	420080	01.2470	430054	00.9273	440034	01.2691	440111	01.1742
420018	01.5045	420081	01.0168	430056	00.8848	440035	01.1499	440113	01.0855
420019	01.2004	420082	01.3552	430057	00.9206	440038	00.9405	440114	01.0032
420020	01.1764	420083	01.1731	430060	01.0620	440039	01.4641	440115	01.0522
420022	01.2012	420084	00.6649	430062	00.8991	440040	00.9802	440117	00.8720
420023	01.2583	420085	01.2723	430064	01.0446	440041	00.9155	440120	01.2845
420026	01.7612	420086	01.2045	430065	00.9846	440046	00.9736	440121	01.1189
420027	01.1314	420087	01.3616	430066	01.0064	440047	00.9205	440125	01.1988
420028	01.0252	420088	01.1656	430072	01.1500	440048	01.3286	440128	00.7718
420029	01.4406	420089	01.1680	430073	01.0658	440049	01.4158	440130	01.1348
420030	01.1530	430004	01.0288	430076	01.0175	440050	01.0617	440131	01.0674
420031	00.9010	430005	01.1916	430077	01.3015	440051	01.0022	440132	00.9799
420032	00.9227	430007	01.0554	430079	01.0152	440052	00.9113	440133	01.3502
420033	01.2310	430008	01.2139	430080	00.9604	440053	01.1801	440135	01.1654
420035	00.7569	430009	01.0656	430081	01.0347	440054	00.9507	440136	01.0919
420036	01.2263	430010	00.9815	430082	00.8908	440055	01.1187	440137	01.0695
420037	01.2155	430011	01.2552	430083	00.8873	440056	00.9367	440141	00.9636
420038	01.0689	430012	01.2162	430084	00.8943	440057	00.9363	440142	00.8563
420039	01.1018	430013	01.1429	430085	00.9087	440058	01.0573	440143	01.0167
420040	01.3285	430014	01.3190	430086	00.8754	440059	01.0727	440144	01.0747
420042	01.0774	430015	01.0487	430087	00.8315	440060	01.0332	440145	00.9506
420043	01.1575	430016	01.3595	430088	01.1000	440061	01.1435	440146	01.0539
420044	01.1824	430017	01.1134	440001	01.0240	440063	01.1796	440147	00.6826
420048	01.0318	430018	00.9516	440002	01.3382	440064	00.9661	440148	00.9857
420049	01.1238	430020	01.0696	440003	01.0971	440065	01.0144	440149	01.1456
420050	00.9787	430022	00.9350	440005	00.9542	440067	01.0969	440150	01.2532
420051	01.4446	430023	00.9348	440006	01.2227	440068	01.0931	440151	01.0955
420053	01.1105	430024	01.0666	440007	00.9757	440069	01.2228	440152	01.3656
420054	01.1236	430025	00.9320	440008	01.0260	440070	00.9642	440153	00.9150
420055	01.1287	430026	01.0075	440009	00.9725	440071	01.1561	440154	00.8031
420056	01.1034	430027	01.5959	440010	00.9920	440072	01.2298	440156	01.2419
420057	01.2094	430028	00.9756	440011	01.2368	440073	01.1514	440157	00.8669
420059	01.0600	430029	00.8877	440012	01.2156	440074	00.9359	440159	01.1504
420061	01.1487	430030	01.0127	440014	00.9290	440078	00.9188	440160	01.0592
420062	01.0735	430031	00.9432	440015	01.3928	440079	00.8155	440161	01.5441
420064	01.0689	430033	01.0390	440016	00.9801	440081	01.1415	440162	01.0798
420065	01.2961	430034	01.0698	440017	01.2555	440082	01.6355	440166	01.2356
420066	00.9658	430036	01.0793	440018	01.1647	440083	00.9372	440167	01.1759

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1988.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 20 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
440168	00.9651	450032	01.1298	450097	01.2460	450163	01.1572	450237	01.3776
440170	01.2843	450033	01.4801	450098	01.0577	450164	01.0832	450239	01.1288
440171	00.9394	450034	01.4385	450099	01.1827	450165	01.0359	450241	00.9424
440173	01.2931	450035	01.3889	450101	01.2578	450166	01.0422	450242	00.8334
440174	00.9109	450037	01.4164	450102	01.4321	450169	00.9154	450243	00.9782
440175	01.0515	450039	01.1435	450104	01.2073	450170	01.1385	450246	01.2289
440176	01.1683	450040	01.4687	450107	01.2707	450175	01.1524	450248	01.1121
440177	00.8927	450041	01.0751	450108	01.0038	450176	01.1844	450249	00.9862
440178	01.1796	450042	01.4796	450109	01.0436	450177	01.1002	450250	01.0288
440180	00.9668	450043	01.2757	450110	01.1777	450178	01.0781	450253	01.0397
440181	00.9887	450044	01.5299	450111	01.2876	450179	01.0641	450256	01.0640
440182	00.8789	450045	01.0524	450112	01.2381	450181	01.0383	450258	00.9129
440183	01.2187	450046	01.3347	450113	01.0539	450182	00.8907	450259	01.2962
440184	01.0822	450047	01.0547	450115	01.1002	450183	01.1956	450263	01.2475
440185	01.0963	450048	01.0952	450116	01.0570	450184	01.3677	450264	00.8743
440186	01.0006	450050	01.1580	450118	01.3092	450185	01.1118	450268	01.2062
440187	00.9446	450051	01.5625	450119	01.2375	450187	01.3674	450269	00.9856
440189	01.4078	450052	01.1154	450121	01.3469	450188	01.0593	450270	01.0897
440191	01.1967	450053	01.0825	450122	00.9370	450190	01.2159	450271	01.2371
440192	01.0466	450054	01.4818	450123	01.2133	450191	01.2181	450272	01.2072
440193	01.0996	450055	01.1087	450124	01.4680	450192	01.0938	450275	01.0523
440194	01.1251	450056	01.3812	450126	01.2011	450193	02.0213	450276	01.1921
440196	01.0215	450057	01.0964	450127	01.0101	450194	01.1782	450278	00.9931
440197	01.3165	450058	01.3677	450128	01.2381	450195	01.2462	450280	01.2899
440200	01.0449	450059	01.1734	450130	01.4671	450196	01.2653	450281	01.3581
440203	01.0084	450060	01.3099	450131	01.1881	450197	01.1638	450283	01.1112
440205	00.8976	450063	00.9608	450132	01.3775	450200	01.2078	450286	01.1700
450002	01.2404	450064	01.3790	450133	01.2415	450201	01.0633	450288	01.1267
450004	01.0901	450065	01.1103	450134	01.1696	450203	01.1640	450289	01.1529
450005	00.9855	450066	01.6111	450135	01.4542	450206	00.9687	450292	01.1969
450007	01.3395	450068	01.3646	450137	01.2054	450207	01.1504	450293	00.8811
450008	01.2577	450070	01.0862	450140	00.8849	450208	01.0974	450296	01.1114
450010	01.2162	450072	01.1825	450141	00.9897	450209	01.2241	450297	01.0624
450011	01.3356	450073	01.0320	450142	01.2713	450210	01.1182	450299	01.2684
450013	01.3727	450074	01.1081	450143	01.0465	450211	01.2161	450303	00.9654
450014	01.0885	450076	01.1278	450144	01.1342	450213	01.3319	450305	00.8984
450015	01.4030	450077	01.0150	450145	01.0444	450214	01.1499	450306	01.0812
450016	01.4122	450078	01.0082	450146	00.9317	450217	00.9727	450307	01.1231
450018	01.3387	450079	01.3486	450147	01.2606	450218	01.0205	450309	01.1158
450019	01.1817	450080	01.2502	450148	01.3110	450219	01.1270	450315	01.3030
450020	01.0918	450081	01.1904	450149	01.2875	450221	01.1133	450317	00.9526
450021	01.5059	450082	00.9997	450150	01.0110	450222	01.3120	450320	01.2329
450022	01.0892	450083	01.3332	450151	01.0405	450224	01.0663	450321	00.9919
450023	01.3433	450084	01.1233	450152	01.3926	450229	01.3333	450322	00.9369
450024	01.0794	450085	01.1735	450153	01.3587	450230	01.1397	450324	01.4043
450025	01.3644	450087	01.2796	450154	01.2038	450231	01.4566	450325	01.2368
450027	01.1037	450090	01.2605	450155	01.0766	450233	01.0671	450327	01.1260
450028	01.2988	450092	01.2665	450157	01.0429	450234	00.9017	450330	01.2293
450029	01.1731	450094	01.2231	450160	00.9278	450235	01.1789	450331	01.2416
450031	01.2051	450096	01.3904	450162	01.3810	450236	01.1124	450332	01.1618

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1988.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 21 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
450333	01.1013	450429	00.9877	450568	00.5500	450651	01.4322	450716	01.1297
450334	01.0272	450431	01.3879	450569	01.0406	450652	00.9429	450717	01.2792
450337	01.0790	450438	01.2331	450570	00.9634	450653	01.3250	450718	01.1056
450340	01.2437	450446	00.9716	450571	01.2539	450654	00.9785	450719	01.1382
450341	00.9570	450447	01.2849	450573	01.1017	450656	01.2733	450722	00.9258
450342	00.8975	450450	01.0044	450574	00.9550	450658	00.9963	450723	01.2372
450346	01.2591	450451	01.1808	450575	01.0542	450659	01.4034	450724	01.3068
450347	01.2091	450457	01.4353	450578	01.1206	450660	01.4586	450725	00.8773
450348	01.0774	450458	00.9885	450580	01.1548	450661	01.0264	450726	01.0030
450349	01.2960	450460	00.9950	450581	01.1466	450662	01.2299	450727	01.0704
450351	01.3361	450462	01.3282	450583	01.0636	450665	01.1006	450728	01.0567
450352	01.2285	450464	00.8654	450584	01.2528	450666	01.2770	450729	00.8368
450353	01.1950	450465	01.1465	450586	01.1687	450667	00.9903	450730	01.3278
450355	00.9848	450467	01.1101	450587	01.1745	450668	01.4270	450732	01.0249
450357	01.1862	450469	01.2235	450588	00.9021	450669	01.2378	450733	01.2177
450358	01.6622	450472	01.1599	450590	00.9091	450670	01.1351	450734	01.1014
450359	00.7835	450473	01.0583	450591	01.1552	450671	00.5912	450735	00.8393
450362	00.9869	450475	01.0657	450596	01.2663	450672	01.3999	450737	00.8470
450365	01.1122	450476	00.9470	450597	01.1018	450673	00.9837	450740	01.1782
450366	01.3959	450484	01.2632	450600	01.0378	450674	00.9794	450742	01.2331
450369	01.1345	450486	00.9926	450603	00.9369	450675	01.1810	450743	01.2283
450370	01.0809	450488	01.0376	450604	01.2552	450677	01.3533	450744	01.0596
450371	01.0596	450489	01.0782	450605	01.3127	450678	01.3307	450745	00.9790
450372	01.2887	450492	00.9097	450607	00.9047	450679	00.9681	450746	00.9397
450373	01.0862	450497	01.1907	450609	00.9557	450681	01.4591	450747	01.1137
450374	00.8977	450498	00.9733	450610	01.2727	450682	01.2141	450748	00.9566
450376	01.3568	450508	01.2839	450613	00.9796	450683	01.2366	450749	01.1042
450378	01.2781	450514	01.1689	450614	01.1150	450684	01.2040	450750	00.9640
450379	01.4144	450517	01.0044	450615	00.9869	450685	01.2730	450751	01.6273
450381	01.0551	450518	01.1734	450617	01.3660	450686	01.3093	450752	01.3399
450388	01.5597	450523	01.3888	450620	01.2071	450687	01.0993	450753	00.9626
450389	01.1847	450527	01.0593	450621	01.0351	450688	01.1331	450754	01.0180
450391	01.1555	450530	01.3102	450623	01.0524	450690	01.2285	460001	01.5604
450393	01.2752	450534	01.0544	450626	01.0483	450691	01.3296	460003	01.4717
450394	01.2482	450535	01.2343	450628	00.9597	450694	01.1746	460004	01.5095
450395	01.2082	450537	01.1973	450630	01.5158	450696	01.1253	460005	01.2561
450399	01.0906	450538	01.3176	450631	01.5243	450697	01.3533	460006	01.2571
450400	01.1669	450539	01.1829	450632	01.1401	450698	00.8417	460007	01.1750
450403	01.2829	450544	01.2290	450633	01.4518	450700	00.9664	460008	01.2854
450410	01.0541	450545	01.2850	450634	01.2006	450702	01.2414	460009	01.5058
450411	01.0404	450546	01.2698	450637	01.1902	450703	01.1150	460010	01.7481
450415	01.1704	450547	00.9781	450638	01.4224	450704	01.1908	460011	01.2025
450416	01.2251	450550	01.1562	450639	01.3316	450705	00.9313	460012	01.4429
450417	00.9414	450551	00.9789	450641	00.9144	450706	01.1843	460013	01.4247
450418	01.3126	450557	00.9786	450643	01.1204	450709	01.1277	460014	01.0803
450419	01.2670	450558	01.6697	450644	02.3731	450710	00.5681	460015	01.1865
450422	00.7636	450559	01.0473	450646	01.3207	450711	01.4639	460016	00.9438
450423	01.1998	450561	01.3492	450647	01.6860	450712	00.7196	460017	01.2886
450424	01.1189	450563	01.1499	450648	01.1467	450713	01.2332	460018	00.9071
450425	01.0805	450565	01.1785	450649	01.0369	450715	01.2655	460019	01.0814

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1988.

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
460020	00.8993	490013	01.1042	490085	01.0167	500014	01.5669	500075	01.1958
460021	01.2565	490014	01.4117	490088	01.1523	500015	01.2808	500076	01.2637
460022	00.9717	490015	01.2481	490089	00.9919	500016	01.3260	500077	01.2297
460023	01.1254	490017	01.2593	490090	01.1648	500017	01.2342	500078	01.2947
460024	00.8837	490018	01.0995	490091	01.2268	500019	01.1221	500079	01.2316
460025	00.9890	490019	01.1441	490092	01.0834	500021	01.3804	500080	01.0415
460026	01.0060	490020	01.0681	490093	01.2312	500023	01.1459	500084	01.0322
460027	00.9141	490021	01.0942	490094	01.0655	500024	01.3334	500085	01.0093
460029	00.8781	490022	01.2137	490095	01.2224	500025	01.8076	500086	01.2970
460030	01.0276	490023	01.1266	490097	01.0908	500026	01.2436	500087	01.2891
460032	00.9561	490024	01.4157	490098	01.2390	500027	01.5056	500088	01.3355
460033	00.9139	490027	01.0815	490099	01.0694	500028	00.8942	500089	01.0425
460035	00.9401	490028	01.1412	490100	01.2357	500029	00.9446	500090	00.8102
460036	00.9881	490029	01.0522	490101	01.0624	500030	01.3857	500092	01.0542
460037	00.9628	490030	01.2505	490104	00.8539	500031	01.1017	500093	01.1754
460039	00.9390	490031	01.0866	490105	00.8704	500033	01.1779	500094	01.1481
460041	01.1900	490032	01.6098	490106	00.9383	500034	01.0590	500096	01.0853
460042	01.2948	490033	01.2002	490107	01.2116	500035	01.4129	500097	01.0852
460043	01.3454	490035	01.0748	490108	00.9787	500036	01.2597	500098	00.9204
460044	01.1640	490037	01.1175	490109	00.8156	500037	01.0694	500100	00.9496
460046	01.3230	490038	01.1751	490110	01.0811	500039	01.2227	500101	01.0205
460047	01.4713	490040	01.1711	490111	01.0915	500040	01.1226	500102	00.9181
470001	01.1725	490041	01.1102	490112	01.3884	500041	01.2068	500104	01.1932
470003	01.6495	490042	01.1821	490113	01.1381	500042	01.2146	500106	00.9877
470004	01.1480	490043	01.1716	490114	01.0312	500043	01.2332	500107	01.1045
470005	01.2578	490044	01.1912	490115	01.1531	500044	01.8630	500108	01.6279
470006	01.2217	490045	01.1726	490116	01.0463	500045	01.1653	500110	01.1861
470008	01.1587	490046	01.2477	490117	01.0555	500046	01.3346	500114	01.2724
470010	01.0747	490047	01.1863	490118	01.4875	500048	00.9750	500118	01.2114
470011	01.2122	490048	01.2107	490119	01.2295	500049	01.2763	500119	01.3025
470012	01.2300	490050	01.1861	490120	01.2607	500050	01.1138	500122	01.2675
470013	01.0992	490052	01.3192	490122	01.1535	500051	01.6544	500123	00.9112
470015	01.1941	490053	01.2109	490123	01.0702	500052	01.1853	500124	01.2401
470016	01.0633	490054	01.1365	490124	01.2438	500053	01.1458	500125	01.1665
470018	01.0261	490057	01.2263	490125	00.9664	500054	01.7006	500129	01.5808
470020	00.9876	490059	01.2730	490126	01.1542	500055	01.0376	500132	00.9220
470023	01.2344	490060	01.0036	490127	01.0364	500057	01.1396	500135	01.1699
470024	01.1378	490063	01.3967	490129	00.8734	500058	01.2442	500138	01.9087
490001	01.0131	490066	01.0720	490130	01.1962	500059	01.2495	500139	01.1958
490002	00.9414	490067	01.1173	490131	00.9854	500060	01.1027	500140	00.9230
490003	00.7000	490069	01.1822	500001	01.3051	500061	01.1352	500141	01.2263
490004	01.1771	490071	01.1491	500002	01.3653	500062	01.0272	510001	01.3943
490005	01.2831	490073	01.1561	500003	01.3256	500064	01.3968	510002	01.1604
490006	01.1815	490074	01.2472	500005	01.5524	500065	01.1721	510004	00.9758
490007	01.6010	490075	01.1993	500007	01.2846	500068	01.0123	510005	01.0283
490008	01.0244	490077	01.1517	500008	01.9265	500069	01.0468	510006	01.2582
490009	01.5358	490078	00.8858	500009	01.3180	500071	01.1452	510007	01.2584
490010	01.2051	490079	01.1462	500010	01.1591	500072	01.1879	510008	01.1726
490011	01.2032	490083	00.7296	500011	01.2423	500073	01.1024	510009	01.1199
490012	01.0826	490084	01.1202	500012	01.4422	500074	01.1144	510011	00.9213

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1988.

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1988 PAGE 23 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
510012	01.0819	510080	00.9099	520049	01.6154	520115	01.1649	530001	01.0675
510013	01.1934	510081	01.0976	520051	01.6850	520116	01.1980	530002	01.1850
510014	01.1260	510082	00.9620	520053	01.0523	520117	01.0288	530003	00.8730
510015	00.9670	510084	00.9761	520054	01.1336	520118	00.9364	530004	01.0629
510016	00.9756	510085	01.1892	520056	01.1869	520120	01.0229	530005	01.0616
510018	01.1529	510086	00.9809	520057	01.0626	520121	01.0165	530006	01.0734
510019	00.8450	520001	01.1949	520058	01.0502	520122	00.9632	530007	01.1879
510020	01.0283	520002	01.2622	520059	01.2456	520123	01.0329	530008	01.0550
510022	01.4211	520003	01.1539	520060	01.1767	520124	01.1167	530009	01.0338
510023	01.0254	520004	01.2577	520062	01.2310	520126	00.9387	530010	01.1745
510024	01.2110	520006	01.0780	520063	01.2347	520127	00.8891	530011	01.1983
510025	00.9534	520007	01.0451	520064	01.3944	520130	00.9908	530012	01.4458
510026	00.9734	520008	01.1794	520066	01.1963	520131	01.1155	530014	01.1333
510027	01.1055	520009	01.3018	520068	00.9942	520132	01.2210	530015	01.0898
510028	01.1439	520010	01.1235	520069	01.2680	520134	01.0401	530016	01.1550
510029	01.1977	520011	01.1047	520070	01.2958	520135	00.9642	530017	00.9766
510030	01.0870	520012	01.0153	520071	01.0957	520136	01.3734	530018	01.0470
510031	01.1957	520013	01.2127	520074	01.0770	520138	01.5892	530019	00.9082
510033	01.2079	520014	01.2045	520075	01.2860	520139	01.2602	530022	01.0222
510035	00.9848	520015	01.2367	520076	01.1959	520140	01.3348	530023	00.8874
510036	01.1424	520016	01.0401	520077	01.0287	520141	01.0117	530024	01.0700
510038	01.1202	520017	01.1179	520078	01.2655	520142	00.9680	530025	01.2338
510039	01.1446	520018	01.1261	520081	01.2068	520143	00.9658	530026	01.0614
510040	00.9947	520019	01.2198	520082	01.2109	520144	01.0095	530027	00.9366
510043	01.0647	520020	01.3559	520083	01.4216	520145	01.0625	530029	01.0806
510045	00.9141	520021	01.2195	520084	01.0777	520146	01.1074	530031	00.9073
510046	01.2988	520022	00.9047	520087	01.3936	520148	01.1568	530032	00.9023
510047	01.1456	520024	00.9524	520088	01.1712	520149	01.1420		
510048	01.1120	520025	01.1072	520089	01.2975	520151	00.9911		
510050	01.2000	520026	01.0399	520090	01.1268	520152	01.1212		
510053	00.9966	520027	01.1808	520091	01.3535	520153	01.0040		
510054	00.9477	520028	01.3292	520092	01.1230	520154	01.1223		
510055	01.1586	520029	00.9192	520094	01.1785	520156	01.1368		
510058	01.2016	520030	01.3817	520095	01.2135	520157	01.0202		
510059	00.7978	520031	01.1439	520096	01.1593	520159	00.9563		
510060	01.1323	520032	01.2196	520097	01.2397	520160	01.6293		
510061	01.0148	520033	01.2076	520098	01.5265	520161	01.0851		
510062	01.1138	520034	01.2507	520100	01.1309	520167	01.2027		
510063	01.2070	520035	01.1810	520101	01.1309	520170	01.1604		
510064	01.1978	520037	01.5323	520102	01.1009	520171	00.9931		
510065	01.0167	520038	01.2741	520103	01.2681	520173	01.0734		
510066	01.1245	520039	01.0440	520104	00.9321	520174	01.3542		
510067	01.1726	520040	01.2809	520105	00.9918	520175	00.7845		
510068	01.2139	520041	01.0956	520107	01.1927	520176	01.0310		
510070	01.1188	520042	01.0829	520109	01.0309	520177	01.3402		
510071	01.2877	520043	01.5211	520110	00.9798	520178	01.2155		
510072	01.0904	520044	01.3068	520111	01.0840	520180	00.8769		
510074	00.9719	520045	01.4415	520112	01.0582	520182	00.5903		
510076	00.9474	520047	00.9806	520113	01 1846	520184	00.5903		
510077	01.0175	520048	01.3285	520114	01.0578	520185	00.7765		

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1988.

BILLING CODE 4120-01-C

TABLE 4a—WAGE INDEX FOR URBAN AREAS

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (Constituent Counties or County Equivalents	Wage index
Abilene, TX	0.8842
Taylor, TX	
Aguadilla, PR	0.4596
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	0.9630
Portage, OH	
Summit, OH	
Albany, GA	0.7799
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	0.8706
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	0.9960
Bernalillo, NM	
Alexandria, LA	0.8476
Rapides, LA	
Allentown-Bethlehem, PA-NJ	0.9884
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	0.9523
Blair, PA	
Amarillo, TX	0.9624
Potter, TX	
Randall, TX	
*Anaheim-Santa Ana, CA	1.2194
Orange, CA	
Anchorage, AK	1.4335
Anchorage, AK	
Anderson, IN	0.9158
Madison, IN	
Anderson, SC	0.7807
Anderson, SC	
Ann Arbor, MI	1.1592
Washtenaw, MI	
Anniston, AL	0.7685
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	0.9522
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	0.4374
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	0.8681
Buncombe, NC	
Athens, GA	0.7727
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
*Atlanta, GA	0.9303
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	0.9859
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	0.8787
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	0.9889
Kane, IL	
Kendall, IL	
Austin, TX	1.0307
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.0890
Kern, CA	
*Baltimore, MD	0.9874
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	0.9079
Penobscot, ME	
Baton Rouge, LA	0.9566
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	0.9651
Calhoun, MI	
Beaumont-Port Arthur, TX	0.9307
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0465
Beaver, PA	
Bellingham, WA	1.0857
Whatcom, WA	
Benton Harbor, MI	0.8491
Berrien, MI	
*Bergen-Passaic, NJ	1.0488
Bergen, NJ	
Passaic, NJ	
Billings, MT	0.9893
Yellowstone, MT	
Biloxi-Gulfport, MS	0.8039
Hancock, MS	
Harrison, MS	
Binghamton, NY	0.9222
Broome, NY	
Tioga, NY	
Birmingham, AL	0.9362
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	0.9280
Burleigh, ND	
Morton, ND	
Bloomington, IN	0.9122
Monroe, IN	
Bloomington-Normal, IL	0.9666
McLean, IL	
Boise City, ID	1.0178
Ada, ID	
*Boston-Lawrence-Salem-Lowell-Brockton, MA	1.0778
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.0782
Boulder, CO	
Bradenton, FL	0.8941
Manatee, FL	
Brazoria, TX	0.8443
Brazoria, TX	
Bremerton, WA	0.9583
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1317
Fairfield, CT	
Brownsville-Harlingen, TX	0.8632
Cameron, TX	
Bryan-College Station, TX	0.9750
Brazos, TX	
Buffalo, NY	0.9405
Erie, NY	
Burlington, NC	0.7641
Alamance, NC	
Burlington, VT	0.9401
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	0.3977
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	0.8912
Carroll, OH	
Stark, OH	
Casper, WY	0.9286
Natrona, WY	
Cedar Rapids, IA	0.8919
Linn, IA	
Champaign-Urbana-Rantoul, IL	0.8913
Champaign, IL	
Charleston, SC	0.8551
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	0.9657
Kanawha, WV	
Putnam, WV	
*Charlotte-Gastonia-Rock Hill, NC-SC	0.8391
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	0.8854

TABLE 4a—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (Constituent Counties or County Equivalents	Wage index
Albermarle, Va	
Charlottesville City, VA	
Fluvanna, VA	
Greene, Va	
Chattanooga, TN-GA	0.8889
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	0.8795
Laramie, WY	
*Chicago, IL	1.0812
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.0575
Butte, CA	
*Cincinnati, OH-KY-IN	1.0247
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	0.7276
Christian, KY	
Montgomery, TN	
*Cleveland, OH	1.0776
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	1.0273
El Paso, CO	
Columbia, MO	1.0389
Boone, MO	
Columbia, SC	0.8280
Lexington, SC	
Richland, SC	
Columbus, GA-AL	0.7354
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
*Columbus, OH	0.9482
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	0.8298
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	0.9132
Allegeny, MD	
Mineral, WV	
*Dallas, TX	1.0117
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	0.7637
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	0.9456
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	0.9929
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	0.8496
Volusia, FL	
Decatur, AL	0.7093
Lawrence, AL	
Morgan, AL	
Decatur, IL	0.8912
Macon, IL	
*Denver, CO	1.1770
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	0.9721
Dallas, IA	
Polk, IA	
Warren, IA	
*Detroit, MI	1.0795
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	0.7900
Dale, AL	
Houston, AL	
Dubuque, IA	0.9466
Dubuque, IA	
Duluth, MN-WI	0.9613
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	0.8875
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	0.8824
El Paso, TX	
Elkhart-Goshen, IN	0.9207
Elkhart, IN	
Elmira, NY	0.9144
Chemung, NY	
Enid, OK	0.9196
Garfield, OK	
Erie, PA	0.9578
Erie, PA	
Eugene-Springfield, OR	1.0209
Lane, OR	
Evansville, IN-KY	1.0313
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	1.0050
Clay, MN	
Cass, ND	
Fayetteville, NC	0.8167
Cumberland, NC	
Fayetteville-Springdale, AR	0.7391
Washington, AR	
Flint, MI	1.1665
Genesee, MI	
Florence, AL	0.7093
Colbert, AL	
Lauderdale, AL	
Florence, SC	0.7712
Florence, SC	
Fort Collins-Loveland, CO	1.0303
Larimor, CO	
*Fort Lauderdale-Hollywood-Pompano Beach, FL	1.0271
Broward, FL	
Fort Myers-Cape Coral, FL	0.9013
Lee, FL	
Fort Pierce, FL	1.0491
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	0.8759
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	0.8190
Okaloosa, FL	
Fort Wayne, IN	0.9018
Allen, IN	
De Kalb, IN	
Whitley, IN	
*Fort Worth-Arlington, TX	0.9545
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.1148
Fresno, CA	
Gadsden, AL	0.8532
Etowah, AL	
Gainesville, FL	0.8737
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	1.0831
Galveston, TX	
Gary-Hammond, IN	1.0504
Lake, IN	
Porter, IN	
Glens Falls, NY	0.8745
Warren, NY	
Washington, NY	
Grand Forks, ND	0.9638
Grand Forks, ND	
Grand Rapids, MI	1.0087
Kent, MI	
Ottawa, MI	
Great Falls, MT	0.9849
Cascade, MT	
Greeley, CO	1.0225
Weld, CO	
Green Bay, WI	0.9672
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	0.8592
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	0.9331
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	0.8725
Washington, MD	
Hamilton-Middletown, OH	0.9691
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	1.0526
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
*Hartford-Middletown-New Britain-Bristol, CT	1.1015
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	0.8224

TABLE 4a—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (Constituent Counties or County Equivalents	Wage index
Alexander, NC	
Burke, NC	
Catawaba, NC	
Honolulu, HI	1.1379
Honolulu, HI	
Houma-Thibodaux, LA	0.7493
Lafourche, LA	
Terrebonne, LA	
*Houston, TX	0.9697
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	0.9187
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	0.8269
Madison, AL	
*Indianapolis, IN	0.9920
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	1.0962
Johnson, IA	
Jackson, MI	0.9293
Jackson, MI	
Jackson, MS	0.8084
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	0.7567
Madison, TN	
Jacksonville, FL	0.8930
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	0.7226
Onslow, NC	
Janesville-Beloit, WI	0.9008
Rock, WI	
Jersey City, NJ	1.0748
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	0.8785
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	0.9159
Cambria, PA	
Somerset, PA	
Joliet, IL	1.0432
Grundy, IL	
Will, IL	
Joplin, MO	0.8644
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.1100
Kalamazoo, MI	
Kankakee, IL	0.9034
Kankakee, IL	
*Kansas City, KS-MO	1.0103
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	1.0538
Kenosha, WI	
Killeen-Temple, TX	1.1238
Bell, TX	
Coryell, TX	
Knoxville, TN	0.8211
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	0.9420
Howard, IN	
Tipton, IN	
LaCrosse, WI	0.9696
LaCrosse, WI	
Lafayette, LA	0.9012
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	0.8852
Tippecanoe, IN	
Lake Charles, LA	0.8909
Calcasieu, LA	
Lake County, IL	1.0865
Lake, IL	
Lakeland-Winter Haven, FL	0.8198
Polk, FL	
Lancaster, PA	0.9953
Lancaster, PA	
Lansing-East Lansing, MI	1.0371
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	0.7367
Webb, TX	
Las Cruces, NM	0.8478
Dona Ana, NM	
Las Vegas, NV	1.1158
Clark, NV	
Lawrence, KS	0.9920
Douglas, KS	
Lawton, OK	0.8256
Comanche, OK	
Lewiston-Auburn, ME	0.9201
Androscoggin, ME	
Lexington-Fayette, KY	0.9170
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	0.9188
Allen, OH	
Auglaize, OH	
Lincoln, NE	0.9439
Lancaster, NE	
Little Rock-North Little Rock, AR	0.8555
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	0.8163
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	0.9372
Lorain, OH	
* Los Angeles-Long Beach, CA	1.2428
Los Angeles, CA	
Louisville, KY-IN	0.9557
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	0.9610
Lubbock, TX	
Lynchburg, VA	0.8507
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	0.7811
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0083
Dane, WI	
Manchester-Nashua, NH	0.9396
Hillsborough, NH	
Merrimack, NH	
Mansfield, OH	0.8905
Richland, OH	
Mayaguez, PR	0.4813
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllan-Edinburg-Mission, TX	0.7687
Hidalgo, TX	
Medford, OR	0.9663
Jackson, OR	
Melbourne-Titusville, FL	0.8903
Brevard, FL	
Memphis, TN-AR-MS	0.9422
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.0064
Merced, CA	
* Miami-Hialeah, FL	1.0235
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	0.9939
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	
Midland, TX	
* Milwaukee, WI	1.0142
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
* Minneapolis-St. Paul, MN-WI	1.1358

TABLE 4a—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (Constituent Counties or County Equivalents	Wage index
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	0.8243
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.0710
Stanislaus, CA	
Monmouth-Ocean, NJ	0.9397
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	0.8158
Ouachita, LA	
Montgomery, AL	0.7977
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	0.9662
Delaware, IN	
Muskegon, MI	0.9915
Muskegon, MI	
Naples, FL	1.0011
Collier, FL	
Nashville, TN	0.8902
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
* Nassau-Suffolk, NY	1.2120
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	0.9489
Bristol, MA	
New Haven-Waterbury-Meriden, CT	1.0779
New Haven, CT	
New London-Norwich, CT	1.0680
New London, CT	
* New Orleans, LA	0.9362
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
*New York, NY	1.3196
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
*Newark, NJ	1.0890
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
*Niagara Falls, NY	0.8555
Niagara, NY	
*Norfolk-Virginia Beach-Newport News, VA	0.9277

TABLE 4a—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (Constituent Counties or County Equivalents	Wage index
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
*Oakland, CA	1.4039
Alameda, CA	
Contra Costa, CA	
Ocala, FL	0.8151
Marion, FL	
Odessa, TX	0.8793
Ector, TX	
Oklahoma City, OK	0.9854
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0551
Thurston, WA	
Omaha, NE-IA	0.9761
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	0.8909
Orange, NY	
Orlando, FL	0.9133
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	0.8960
Daviess, KY	
Oxnard-Ventura, CA	1.3918
Ventura, CA	
Panama City, FL	0.7908
Bay, FL	
Parkersburg-Marietta, WV-OH	0.9074
Washington, OH	
Wood, WV	
Pascagoula, MS	0.8758
Jackson, MS	
Pensacola, FL	0.8259
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	0.9804
Peoria, IL	
Tazewell, IL	
Woodford, IL	
*Philadelphia, PA-NJ	1.0785
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
*Phoenix, AZ	1.0026
Maricopa, AZ	
Pine Bluff, AR	0.7999
Jefferson, AR	
*Pittsburgh, PA	1.0119

TABLE 4a—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (Constituent Counties or County Equivalents	Wage index
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0252
Berkshire, MA	
Ponce, PR	0.5479
Juana Diaz, PR	
Ponce, PR	
Portland, ME	0.9628
Cumberland, ME	
Sagadahoc, ME	
York, ME	
*Portland, OR	1.1229
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	0.9409
Rockingham, NH	
Strafford, NH	
Poughkeepsi, NY	09.738
Dutchess, NY	
*Providence-Pawtucket-Woonsocket, RI	0.9745
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
Provo-Orem, UT	0.9285
Utah, UT	
Pueblo, CO	0.9305
Pueblo, CO	
Racine, WI	0.9192
Racine, WI	
Raleigh-Durham, NC	0.9405
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	0.8358
Pennington, SD	
Reading, PA	0.9127
Berks, PA	
Redding, CA	0.9911
Shasta, CA	
Reno, NV	1.1269
Washoe, NV	
Richland-Kennewick, WA	0.9730
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	0.8873
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
*Riverside-San Bernardino, CA	1.1303
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	0.8233
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.0550

TABLE 4a—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (Constituent Counties or County Equivalents	Wage index
Olmsted, MN	
Rochester, NY	0.9500
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	0.9816
Boone, IL	
Winnebago, IL	
*Sacramento, CA	1.2084
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0780
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	0.9900
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	0.8700
Buchanan, MO	
*St. Louis, MO IL	0.0138
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR	1.0514
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.2595
Monterey, CA	
*Salt Lake City-Ogden, UT	0.9281
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	0.8404
Tom Green, TX	
*San Antonio, TX	0.8343
Bexar, TX	
Comal, TX	
Guadalupe, TX	
*San Diego, CA	1.2377
San Diego, CA	
*San Francisco, CA	1.4365
Marin, CA	
San Francisco, CA	
San Mateo, CA	
*San Jose, CA	1.4717
Santa Clara, CA	
*San Juan, PR	0.5368
Barcelona, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	

TABLE 4a—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (Constituent Counties or County Equivalents	Wage index
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trojillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1734
Santa Barbara, CA	
Santa Cruz, CA	1.2338
Santa Cruz, CA	
Santa Fe, NM	0.9498
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.4206
Sonoma, CA	
Sarasota, FL	0.9265
Sarasota, FL	
Savannah, GA	0.8424
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	0.9249
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
*Seattle, WA	1.0913
King, WA	
Snohomish, WA	
Sharon, PA	0.9219
Mercer, PA	
Sheboygan, WI	0.9339
Sheboygan, WI	
Sherman-Denison, TX	0.8462
Grayson, TX	
Shreveport, LA	0.8949
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE	0.9036
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	0.9502
Minnehaha, SD	
South Bend-Mishawaka, IN	0.9723
St. Joseph, IN	
Spokane, WA	1.0775
Spokane, WA	
Springfield, IL	1.0051
Menard, IL	
Sangamon, IL	
Springfield, MO	0.8875
Christian, MO	
Greene, MO	
Springfield, MA	1.0051
Hampden, MA	
Hampshire, MA	

TABLE 4a—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (Constituent Counties or County Equivalents	Wage index
State College, PA	1.0474
Centre, PA	
Steubenville-Weirton, OH-WV	0.9131
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.1384
San Joaquin, CA	
Syracuse, NY	0.9770
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0257
Pierce, WA	
Tallahassee, FL	0.8123
Gadsden, FL	
Leon, FL	
*Tampa-St. Petersburg-Clearwater, FL	0.9006
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	0.8226
Clay, IN	
Vigo, IN	
Texarkana, TX-Texarkana, AR	0.8007
Miller, AR	
Bowie, TX	
Toledo, OH	1.0670
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	0.9912
Shawnee, KS	
Trenton, NJ	1.0321
Mercer, NJ	
Tucson, AZ	0.9787
Pima, AZ	
Tulsa, OK	0.9167
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	0.9432
Tuscaloosa, AL	
Tyler, TX	0.9215
Smith, TX	
Utica-Rome, NY	0.8109
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.2292
Napa, CA	
Solano, CA	
Vancouver, WA	1.0581
Clark, WA	
Victoria, TX	0.8266
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	0.9818
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.2810
Tulare, CA	
Waco, TX	0.8597
McLennan, TX	
*Washington, DC-MD-VA	1.0839
District of Columbia, DC	

TABLE 4a—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (Constituent Counties or County Equivalents	Wage index
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	0.9466
Black Hawk, IA	
Bremer, IA	
Wausau, WI	0.9628
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	0.9482
Palm Beach, FL	
Wheeling, WV-OH	0.8563
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	1.0236
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	0.8324
Wichita, TX	
Williamsport, PA	0.9096
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0290
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	0.8188
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	0.9427
Worcester, MA	
Yakima, WA	0.9929
Yakima, WA	
York, PA	0.9413
Adams, PA	
York, PA	
Youngstown-Warren, OH	1.0027
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0101
Sutter, CA	
Yuba, CA	

TABLE 4b—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.6972
Alaska	1.3749
Arizona	0.8791
Arkansas	0.6999
California	1.0152
Colorado	0.8562
Connecticut	1.0186
Delaware	0.8340
Florida	0.8157
Georgia	0.7454
Hawaii	0.8849
Idaho	0.8069
Illinois	0.8002
Indiana	0.8041
Iowa	0.7942
Kansas	0.7917
Kentucky	0.7948
Louisiana	0.7593
Maine	0.8242
Maryland	0.7974
Massachusetts	1.0145
Michigan	0.9120
Minnesota	0.8940
Mississippi	0.7183
Missouri	0.7469
Montana	0.8508
Nebraska	0.7688
Nevada	0.9482
New Hampshire	0.8882
New Jersey [1]	
New Mexico	0.8058
New York	0.8067
North Carolina	0.7647
North Dakota	0.8405
Ohio	0.8659
Oklahoma	0.7917
Oregon	0.9919
Pennsylvania	0.8771
Puerto Rico	0.5376
Rhode Island [1]	
South Carolina	0.7200
South Dakota	0.7566
Tennessee	0.7053
Texas	0.7599
Utah	0.8627
Vermont	0.8415
Virginia	0.7876
Washington	0.9931
West Virginia	0.8516
Wisconsin	0.8463
Wyoming	0.9036

[1] All counties within the State are classified urban.

Table 4c—WAGE INDEX FOR RURAL COUNTIES WHOSE HOSPITALS ARE DEEMED URBAN

Areas that Qualify as Large Urban Areas Are Designated with an Asterisk

County	Urban Area	Wage Index
Limestone, AL	Huntsville, AL	0.7462
Marshall, AL	Huntsville, AL	0.7215
Charlotte, FL	Sarasota, FL	0.8320
Indian River, FL	Fort Pierce, FL	0.8622
Christian, IL	Springfield, IL	0.7904
Macoupin, IL	*St. Louis, MO–IL	0.7600
Mason, IL	Peoria, IL	0.7372
Clinton, IN	Lafayett, IN	0.8104
Henry, IN	Anderson, IN	0.8419
Owen, IN [1]	Bloomington, IN	
Jefferson, KS	Topeka, KS	0.6047
Allegan, MI	Grand Rapids, MI	1.0085
Barry, MI	Battle Creek, MI	0.8345
Cass, MI	Benton Harbon, MI	0.7965
Ionia, MI	Lansing-East Lansing, MI.	0.8394
Lenawee, MI	Ann Arbon, MI	1.0253
Shiawassee, MI	Flint, MI	0.0247
Tuscola, MI	Saginaw-Bay City-Midland, MI.	0.9030
Van Buren, MI	Kalamazoo, MI	0.8619
Clinton, MO	*Kansas City, KS–MO.	0.6313
Cass, NE [1]	Omaha, NE	
Caswell, NC [1]	Danville, VA	
Currituck, NC [1]	*Norfolk-Virginia Beach-Newport News, VA.	
Harnett, NC	Fayetteville, NC	0.7505
Genesee, NY	Rochester, NY	0.7182
Columbiana, OH	Beaver Country, PA	0.9098
Morrow, OH	Mansfield, OH	0.6749
Preble, OH [1]	Dayton-Springfield, OH.	
Van Wert, OH	Lima, OH	0.8384
Lawrence, PA	Beaver County, PA	0.8478
Cherokee, SC	Greenville-Spartanburg, SC.	0.6073
Bedford, VA	Roanoke, VA	0.7268
Fredericksburg City, VA.	*Washington, DC–MD–VA.	0.8241
Isle of Wight, VA	*Norfork-Virginia Beach-Newport News, VA.	
Spotsylvania, VA [1]	*Washington, DC–MD–VA.	
Jefferson, VA [1]	*Milwaukee, WI	0.8749
Walworth, WI	*Milwaukee, WI	0.9485
Jefferson, WV	*Washington, DC–MD–VA.	0.6893
Lincoln, WV [1]	Charleston, WV	

[1] There are no prospective payment hospitals in these counties.

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

					RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
1	01	SURG		CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.5392	13.7	41
2	01	SURG		CRANIOTOMY FOR TRAUMA AGE >17	4.0845	12.7	40
3	01	SURG	*	CRANIOTOMY AGE 0-17	2.9183	12.7	40
4	01	SURG		SPINAL PROCEDURES	2.6380	11.8	39
5	01	SURG		EXTRACRANIAL VASCULAR PROCEDURES	1.5226	6.1	33
6	01	SURG		CARPAL TUNNEL RELEASE	.4666	2.0	17
7	01	SURG		PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC WITH CC	2.9760	12.7	40
8	01	SURG		PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	.7343	3.2	30
9	01	MED		SPINAL DISORDERS & INJURIES	1.3659	7.0	34
10	01	MED		NERVOUS SYSTEM NEOPLASMS WITH CC	1.2459	7.8	35
11	01	MED		NERVOUS SYSTEM NEOPLASMS W/O CC	.7456	4.7	32
12	01	MED		DEGENERATIVE NERVOUS SYSTEM DISORDERS	.9363	6.9	34
13	01	MED		MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	.8664	7.0	34
14	01	MED		SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.2281	7.4	34
15	01	MED		TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	.6375	4.2	31
16	01	MED		NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.0883	6.7	34
17	01	MED		NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	.6415	4.6	32
18	01	MED		CRANIAL & PERIPHERAL NERVE DISORDERS WITH CC	.9530	6.2	33
19	01	MED		CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	.5857	4.1	31
20	01	MED		NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.7868	8.2	35
21	01	MED		VIRAL MENINGITIS	1.4269	7.6	35
22	01	MED		HYPERTENSIVE ENCEPHALOPATHY	.7025	4.4	31
23	01	MED		NONTRAUMATIC STUPOR & COMA	.8703	4.4	31
24	01	MED		SEIZURE & HEADACHE AGE >17 WITH CC	.9632	5.3	32
25	01	MED		SEIZURE & HEADACHE AGE >17 W/O CC	.5257	3.6	29
26	01	MED		SEIZURE & HEADACHE AGE 0-17	.6741	3.2	30
27	01	MED		TRAUMATIC STUPOR & COMA, COMA >1 HR	1.5600	4.6	32
28	01	MED		TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 WITH CC	1.2630	6.0	33
29	01	MED		TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	.5637	3.4	30
30	01	MED	*	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	.3539	2.0	17
31	01	MED		CONCUSSION AGE >17 WITH CC	.6966	4.3	31
32	01	MED		CONCUSSION AGE >17 W/O CC	.3998	2.7	25
33	01	MED	*	CONCUSSION AGE 0-17	.2457	1.6	9
34	01	MED		OTHER DISORDERS OF NERVOUS SYSTEM WITH CC	1.1977	6.0	33
35	01	MED		OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	.5598	3.7	31

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** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

					RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
36	02	SURG		RETINAL PROCEDURES	.6472	2.6	14
37	02	SURG		ORBITAL PROCEDURES	.7432	3.1	30
38	02	SURG		PRIMARY IRIS PROCEDURES	.3587	2.1	16
39	02	SURG		LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.4482	1.7	7
40	02	SURG		EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.4798	2.0	20
41	02	SURG	*	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	.3657	1.6	7
42	02	SURG		INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	.6338	2.3	16
43	02	MED		HYPHEMA	.3344	3.7	25
44	02	MED		ACUTE MAJOR EYE INFECTIONS	.6018	5.5	32
45	02	MED		NEUROLOGICAL EYE DISORDERS	.5483	3.3	30
46	02	MED		OTHER DISORDERS OF THE EYE AGE >17 W CC	.6470	4.0	31
47	02	MED		OTHER DISORDERS OF THE EYE AGE >17 W/O CC	.3556	2.6	28
48	02	MED	*	OTHER DISORDERS OF THE EYE AGE 0-17	.4018	2.9	30
49	03	SURG		MAJOR HEAD & NECK PROCEDURES	2.8531	10.9	38
50	03	SURG		SIALOADENECTOMY	.6323	2.3	15
51	03	SURG		SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	.5628	2.1	18
52	03	SURG		CLEFT LIP & PALATE REPAIR	.8606	2.8	30
53	03	SURG		SINUS & MASTOID PROCEDURES AGE >17	.6171	2.0	20
54	03	SURG	*	SINUS & MASTOID PROCEDURES AGE 0-17	.6889	3.2	22
55	03	SURG		MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	.4861	1.7	13
56	03	SURG		RHINOPLASTY	.4848	1.8	14
57	03	SURG		T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.9090	3.5	30
58	03	SURG	*	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.3097	1.5	4
59	03	SURG		TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.3897	1.6	11
60	03	SURG	*	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.2616	1.5	4
61	03	SURG		MYRINGOTOMY W TUBE INSERTION AGE >17	.7014	2.3	29
62	03	SURG	*	MYRINGOTOMY W TUBE INSERTION AGE 0-17	.3089	1.3	5
63	03	SURG		OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.1870	4.3	31
64	03	MED		EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.1709	5.1	32
65	03	MED		DYSEQUILIBRIUM	.4583	3.4	23
66	03	MED		EPISTAXIS	.4520	3.3	24
67	03	MED		EPIGLOTTITIS	.8537	4.3	31
68	03	MED		OTITIS MEDIA & URI AGE >17 WITH CC	.7251	5.0	32
69	03	MED		OTITIS MEDIA & URI AGE >17 W/O CC	.5293	3.9	25
70	03	MED		OTITIS MEDIA & URI AGE 0-17	.4693	3.3	23

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					RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
71	03	MED		LARYNGOTRACHEITIS	.7372	4.5	31
72	03	MED		NASAL TRAUMA & DEFORMITY	.5567	3.3	30
73	03	MED		OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	.7522	4.0	31
74	03	MED	*	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	.3427	2.1	20
75	04	SURG		MAJOR CHEST PROCEDURES	2.9600	11.9	39
76	04	SURG		OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.2936	10.4	37
77	04	SURG		OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.0910	4.8	32
78	04	MED		PULMONARY EMBOLISM	1.4386	8.9	36
79	04	MED		RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 WITH CC	1.8426	9.3	36
80	04	MED		RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	1.1360	7.1	34
81	04	MED	*	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	1.1032	6.1	33
82	04	MED		RESPIRATORY NEOPLASMS	1.2022	6.6	34
83	04	MED		MAJOR CHEST TRAUMA WITH CC	.9878	6.5	33
84	04	MED		MAJOR CHEST TRAUMA W/O CC	.4903	3.9	31
85	04	MED		PLEURAL EFFUSION WITH CC	1.1409	6.8	34
86	04	MED		PLEURAL EFFUSION W/O CC	.7229	4.6	32
87	04	MED		PULMONARY EDEMA & RESPIRATORY FAILURE	1.4326	6.0	33
88	04	MED		CHRONIC OBSTRUCTIVE PULMONARY DISEASE	1.0150	6.1	33
89	04	MED		SIMPLE PNEUMONIA & PLEURISY AGE >17 WITH CC	1.2034	7.2	34
90	04	MED		SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	.7806	5.7	32
91	04	MED		SIMPLE PNEUMONIA & PLEURISY AGE 0-17	.7357	4.7	32
92	04	MED		INTERSTITIAL LUNG DISEASE WITH CC	1.2148	6.9	34
93	04	MED		INTERSTITIAL LUNG DISEASE W/O CC	.7892	5.2	32
94	04	MED		PNEUMOTHORAX WITH CC	1.3275	7.4	34
95	04	MED		PNEUMOTHORAX W/O CC	.6583	4.8	32
96	04	MED		BRONCHITIS & ASTHMA AGE >17 WITH CC	.9739	6.0	33
97	04	MED		BRONCHITIS & ASTHMA AGE >17 W/O CC	.6824	4.7	27
98	04	MED		BRONCHITIS & ASTHMA AGE 0-17	.9036	6.2	33
99	04	MED		RESPIRATORY SIGNS & SYMPTOMS WITH CC	.8401	4.4	31
100	04	MED		RESPIRATORY SIGNS & SYMPTOMS W/O CC	.5122	2.8	20
101	04	MED		OTHER RESPIRATORY SYSTEM DIAGNOSES WITH CC	.9808	5.2	32
102	04	MED		OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	.5607	3.5	30
103	05	SURG		HEART TRANSPLANT	13.4829	26.5	54
104	05	SURG		CARDIAC VALVE PROCEDURE W PUMP & W CARDIAC CATH	7.8257	18.3	45
105	05	SURG		CARDIAC VALVE PROCEDURE W PUMP & W/O CARDIAC CATH	5.9657	13.1	40

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
106	05	SURG	CORONARY BYPASS W CARDIAC CATH	5.6593	14.2	41
107	05	SURG	CORONARY BYPASS W/O CARDIAC CATH	4.2455	10.8	38
108	05	SURG	OTHER CARDIOTHORACIC OR VASCULAR PROCEDURES, W PUMP	5.7337	11.4	38
109	05	SURG	OTHER CARDIOTHORACIC PROCEDURES W/O PUMP	3.7831	7.5	35
110	05	SURG	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP WITH CC	3.5731	12.3	39
111	05	SURG	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP W/O CC	2.0376	8.3	35
112	05	SURG	VASCULAR PROCEDURES EXCEPT MAJOR RECONSTRUCTION W/O PUMP	1.9203	5.3	32
113	05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	2.4586	14.2	41
114	05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.6133	9.8	37
115	05	SURG	PERM CARDIAC PACEMAKER IMPLANT W AMI, HEART FAILURE OR SHOCK	3.8562	12.5	40
116	05	SURG	PERM CARDIAC PACEMAKER IMPLANT W/O AMI, HEART FAILURE OR SHOCK	2.5931	6.1	33
117	05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	1.8998	4.8	32
118	05	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	2.0366	3.9	31
119	05	SURG	VEIN LIGATION & STRIPPING	.8303	3.7	31
120	05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	2.6982	10.8	38
121	05	MED	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE	1.6279	8.6	36
122	05	MED	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE	1.1281	6.2	33
123	05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.3966	3.0	30
124	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	1.1921	4.5	31
125	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	.6894	2.3	20
126	05	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.9840	16.7	44
127	05	MED	HEART FAILURE & SHOCK	1.0195	6.2	33
128	05	MED	DEEP VEIN THROMBOPHLEBITIS	.8159	7.8	35
129	05	MED	CARDIAC ARREST, UNEXPLAINED	1.4004	2.7	30
130	05	MED	PERIPHERAL VASCULAR DISORDERS WITH CC	.8905	5.9	33
131	05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	.5815	4.2	31
132	05	MED	ATHEROSCLEROSIS WITH CC	.7528	4.3	31
133	05	MED	ATHEROSCLEROSIS W/O CC	.5380	3.2	27
134	05	MED	HYPERTENSION	.5990	4.3	31
135	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE > 17 WITH CC	.8953	5.1	32
136	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE > 17 W/O CC	.5424	3.4	28
137	05	MED	* CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	.6315	3.3	30
138	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS WITH CC	.8631	4.8	32
139	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	.5700	3.3	26
140	05	MED	ANGINA PECTORIS	.6417	3.9	25

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NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
141	05	MED	SYNCOPE & COLLAPSE WITH CC	.6870	4.4	31
142	05	MED	SYNCOPE & COLLAPSE W/O CC	.5144	3.3	23
143	05	MED	CHEST PAIN	.5249	2.9	19
144	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.0984	5.6	33
145	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	.6216	3.4	30
146	06	SURG	RECTAL RESECTION WITH CC	2.7303	13.8	41
147	06	SURG	RECTAL RESECTION W/O CC	1.7409	9.9	37
148	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES WITH CC	3.2524	14.2	41
149	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.5669	9.9	33
150	06	SURG	PERITONEAL ADHESIOLYSIS WITH CC	2.6527	12.3	39
151	06	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.3545	8.0	35
152	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES WITH CC	1.4526	7.7	35
153	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.0175	6.5	33
154	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE > 17 WITH CC	3.7904	13.0	40
155	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE > 17 W/O CC	1.6083	8.0	35
156	06	SURG	* STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	.8382	6.0	33
157	06	SURG	ANAL & STOMAL PROCEDURES WITH CC	.9507	5.3	32
158	06	SURG	ANAL & STOMAL PROCEDURES W/O CC	.5146	2.9	23
159	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 WITH CC	1.0913	5.4	32
160	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	.6323	3.3	23
161	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 WITH CC	.7200	3.5	30
162	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	.4485	2.1	14
163	06	SURG	HERNIA PROCEDURES AGE 0-17	.7882	3.5	27
164	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG WITH CC	2.3565	10.8	38
165	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.3425	7.6	26
166	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG WITH CC	1.3837	6.7	34
167	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	.7946	4.4	17
168	03	SURG	MOUTH PROCEDURES WITH CC	1.0095	3.6	31
169	03	SURG	MOUTH PROCEDURES W/O CC	.5483	2.2	19
170	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES WITH CC	2.7799	11.3	38
171	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.2484	6.0	33
172	06	MED	DIGESTIVE MALIGNANCY WITH CC	1.2194	7.0	34
173	06	MED	DIGESTIVE MALIGNANCY W/O CC	.6667	4.0	31
174	06	MED	G.I. HEMORRHAGE WITH CC	.9636	5.5	33
175	06	MED	G.I. HEMORRHAGE W/O CC	.5990	4.1	25

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NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
176	06	MED	COMPLICATED PEPTIC ULCER	.9848	6.0	33
177	06	MED	UNCOMPLICATED PEPTIC ULCER WITH CC	.7623	5.3	32
178	06	MED	UNCOMPLICATED PEPTIC ULCER W/O CC	.5649	4.1	23
179	06	MED	INFLAMMATORY BOWEL DISEASE	1.0641	7.2	34
180	06	MED	G.I. OBSTRUCTION WITH CC	.9116	5.8	33
181	06	MED	G.I. OBSTRUCTION W/O CC	.5239	4.0	28
182	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 WITH CC	.7404	4.9	32
183	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	.5218	3.6	26
184	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	.5479	3.1	30
185	03	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17	.7674	4.3	31
186	03	MED	* DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17	.4112	2.9	23
187	03	MED	DENTAL EXTRACTIONS & RESTORATIONS	.4818	2.2	20
188	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 WITH CC	.9714	5.1	32
189	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	.4757	2.9	30
190	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	.7617	4.3	31
191	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES WITH CC.	5.2591	17.5	44
192	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	2.4010	11.4	38
193	07	SURG	BILIARY TRACT PROC W CC EXCEPT ONLY TOT CHOLECYST W OR W/O C.D.E	3.0033	14.6	42
194	07	SURG	BILIARY TRACT PROC W/O CC EXCEPT ONLY TOT CHOLECYST W OR W/O C.D.E	1.7644	10.3	37
195	07	SURG	TOTAL CHOLECYSTECTOMY W C.D.E. WITH CC	2.2844	11.5	39
196	07	SURG	TOTAL CHOLECYSTECTOMY W C.D.E. W/O CC	1.5131	8.9	30
197	07	SURG	TOTAL CHOLECYSTECTOMY W/O C.D.E. WITH CC	1.7282	8.7	36
198	07	SURG	TOTAL CHOLECYSTECTOMY W/O C.D.E. W/O CC	.9843	5.9	21
199	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.2640	12.0	39
200	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	2.6811	9.6	37
201	07	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2.4071	8.9	36
202	07	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.1969	7.2	34
203	07	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.1196	6.7	34
204	07	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.0434	6.1	33
205	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA WITH CC	1.2090	6.8	34
206	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	.6091	3.7	31
207	07	MED	DISORDERS OF THE BILIARY TRACT WITH CC	.9552	5.6	33
208	07	MED	DISORDERS OF THE BILIARY TRACT W/O CC	.5655	3.5	29
209	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES	2.3650	11.3	38
210	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 WITH CC	2.0409	12.6	40

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
211	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	1.4739	10.1	37
212	08	SURG *	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.4611	11.1	38
213	08	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	1.7648	9.9	37
214	08	SURG	BACK & NECK PROCEDURES WITH CC	1.9860	11.0	38
215	08	SURG	BACK & NECK PROCEDURES W/O CC	1.2184	7.5	34
216	08	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	1.6810	8.6	36
217	08	SURG	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS	3.0317	13.9	41
218	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 WITH CC	1.5089	8.1	35
219	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC	.9397	5.2	32
220	08	SURG *	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17	.9242	5.3	32
221	08	SURG	KNEE PROCEDURES WITH CC	1.5267	6.7	34
222	08	SURG	KNEE PROCEDURES W/O CC	.8811	3.7	31
223	08	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	1.0252	4.4	31
224	08	SURG	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC	.6250	2.8	19
225	08	SURG	FOOT PROCEDURES	.7110	3.2	30
226	08	SURG	SOFT TISSUE PROCEDURES WITH CC	1.4097	6.8	34
227	08	SURG	SOFT TISSUE PROCEDURES W/O CC	.6626	3.1	30
228	08	SURG	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC	.7873	2.8	27
229	08	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	.5137	1.9	15
230	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	.8752	4.3	31
231	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR	.9132	3.6	31
232	08	SURG	ARTHROSCOPY	1.1299	3.7	31
233	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC WITH CC	1.6641	8.4	35
234	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	.8444	4.5	32
235	08	MED	FRACTURES OF FEMUR	1.1571	8.1	35
236	08	MED	FRACTURES OF HIP & PELVIS	.8566	6.9	34
237	08	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	.5589	4.5	32
238	08	MED	OSTEOMYELITIS	1.5879	10.5	37
239	08	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY	.9853	7.6	35
240	08	MED	CONNECTIVE TISSUE DISORDERS WITH CC	1.0721	7.1	34
241	08	MED	CONNECTIVE TISSUE DISORDERS W/O CC	.6273	5.1	32
242	08	MED	SEPTIC ARTHRITIS	1.3317	8.6	36
243	08	MED	MEDICAL BACK PROBLEMS	.6522	5.0	32
244	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES WITH CC	.7125	5.4	32
245	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	.5079	4.1	31

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

					RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
246	08	MED		NON-SPECIFIC ARTHROPATHIES	.5947	4.6	32
247	08	MED		SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	.5304	3.7	31
248	08	MED		TENDONITIS, MYOSITIS & BURSITIS	.6137	4.4	31
249	08	MED		AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	.6314	4.1	31
250	08	MED		FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 WITH CC	.6757	4.5	31
251	08	MED		FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	.4207	2.5	24
252	08	MED	*	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	.3496	1.8	15
253	08	MED		FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 WITH CC	.7923	5.9	33
254	08	MED		FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC	.4331	3.7	31
255	08	MED	*	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	.4638	2.9	30
256	08	MED		OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	.6260	3.9	31
257	09	SURG		TOTAL MASTECTOMY FOR MALIGNANCY WITH CC	.9396	5.5	27
258	09	SURG		TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.7477	4.4	18
259	09	SURG		SUBTOTAL MASTECTOMY FOR MALIGNANCY WITH CC	.9805	4.8	32
260	09	SURG		SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.5651	2.7	18
261	09	SURG		BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	.6271	2.4	16
262	09	SURG		BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	.4500	2.0	13
263	09	SURG		SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS WITH CC	2.6338	15.4	42
264	09	SURG		SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.4175	9.6	37
265	09	SURG		SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	1.3742	6.4	33
266	09	SURG		SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC	.6852	3.2	30
267	09	SURG		PERIANAL & PILONIDAL PROCEDURES	.5751	2.7	30
268	09	SURG		SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	.6423	2.5	29
269	09			OTHER SKIN, SUBCUT TISS & BREAST PROCEDURE WITH CC	1.7125	8.2	35
270	09			OTHER SKIN, SUBCUT TISS & BREAST PROCEDURE W/O CC	.6751	3.2	30
271	09	MED		SKIN ULCERS	1.1806	8.5	36
272	09	MED		MAJOR SKIN DISORDERS WITH CC	1.0114	7.2	34
273	09	MED		MAJOR SKIN DISORDERS W/O CC	.6778	5.7	33
274	09	MED		MALIGNANT BREAST DISORDERS WITH CC	1.0655	6.4	33
275	09	MED		MALIGNANT BREAST DISORDERS W/O CC	.5764	3.4	30
276	09	MED		NON-MALIGANT BREAST DISORDERS	.5558	3.3	30
277	09	MED		CELLULITIS AGE >17 WITH CC	.9420	7.1	34
278	09	MED		CELLULITIS AGE >17 W/O CC	.6495	5.6	32
279	09	MED	*	CELLULITIS AGE 0-17	.7367	4.2	24
280	09	MED		TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 WITH CC	.6584	4.7	32

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
281	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	.4231	3.3	30
282	09	MED	* TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	.3424	2.2	19
283	09	MED	MINOR SKIN DISORDERS WITH CC	.7586	5.5	32
284	09	MED	MINOR SKIN DISORDERS W/O CC	.4661	3.7	31
285	10	SURG	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS	2.7897	16.1	43
286	10	SURG	ADRENAL & PITUITARY PROCEDURES	2.5249	10.8	38
287	10	SURG	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	2.2297	13.7	41
288	10	SURG	O.R. PROCEDURES FOR OBESITY	1.9326	7.5	34
289	10	SURG	PARATHYROID PROCEDURES	1.0555	4.7	32
290	10	SURG	THYROID PROCEDURES	.7847	3.4	21
291	10	SURG	THYROGLOSSAL PROCEDURES	.4644	1.9	10
292	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC WITH CC	2.7537	12.3	39
293	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.1432	6.2	33
294	10	MED	DIABETES AGE >35	.7526	5.9	33
295	10	MED	DIABETES AGE 0-35	.7317	4.5	31
296	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 WITH CC	.9366	6.1	33
297	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	.5478	4.2	31
298	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	.6941	3.7	31
299	10	MED	INBORN ERRORS OF METABOLISM	.8576	4.8	32
300	10	MED	ENDOCRINE DISORDERS WITH CC	1.1058	7.0	34
301	10	MED	ENDOCRINE DISORDERS W/O CC	.6218	4.4	31
302	11	SURG	KIDNEY TRANSPLANT	3.3468	15.5	42
303	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	2.6826	12.3	39
304	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL WITH CC	2.4656	10.9	38
305	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC	1.2826	5.9	33
306	11	SURG	PROSTATECTOMY WITH CC	1.3943	7.7	35
307	11	SURG	PROSTATECTOMY W/O CC	.7931	4.6	29
308	11	SURG	MINOR BLADDER PROCEDURES WITH CC	1.4873	6.8	34
309	11	SURG	MINOR BLADDER PROCEDURES W/O CC	.7925	3.6	31
310	11	SURG	TRANSURETHRAL PROCEDURES WITH CC	.8918	4.3	31
311	11	SURG	TRANSURETHRAL PROCEDURES W/O CC	.5229	2.5	18
312	11	SURG	URETHRAL PROCEDURES, AGE >17 WITH CC	.7999	4.1	31
313	11	SURG	URETHRAL PROCEDURES, AGE >17 W/O CC	.4786	2.4	21
314	11	SURG	* URETHRAL PROCEDURES, AGE 0-17	.4323	2.3	26
315	11	SURG	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.3482	8.2	35

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					RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
316	11	MED		RENAL FAILURE	1.2717	6.4	33
317	11	MED		ADMIT FOR RENAL DIALYSIS	.3890	2.3	23
318	11	MED		KIDNEY & URINARY TRACT NEOPLASMS WITH CC	1.0627	6.1	33
319	11	MED		KIDNEY & URINARY TRACT NEOPLASMS W/O CC	.5429	2.8	30
320	11	MED		KIDNEY & URINARY TRACT INFECTIONS AGE >17 WITH CC	1.0260	6.9	34
321	11	MED		KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	.6832	5.2	31
322	11	MED		KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	.6871	4.6	32
323	11	MED		URINARY STONES WITH CC, &/OR ESW LITHOTRIPSY	.7732	3.0	30
324	11	MED		URINARY STONES W/O CC	.3969	2.2	16
325	11	MED		KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 WITH CC	.6681	4.5	31
326	11	MED		KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	.4270	3.0	25
327	11	MED	*	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	.5511	3.1	30
328	11	MED		URETHRAL STRICTURE AGE >17 WITH CC	.6484	3.9	31
329	11	MED		URETHRAL STRICTURE AGE >17 W/O CC	.4045	2.3	19
330	11	MED	*	URETHRAL STRICTURE AGE 0-17	.2788	1.6	9
331	11	MED		OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 WITH CC	.9489	5.3	32
332	11	MED		OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	.5545	3.3	20
333	11	MED		OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	.9006	4.9	32
334	12	SURG		MAJOR MALE PELVIC PROCEDURES W CC	1.8148	10.3	37
335	12	SURG		MAJOR MALE PELVIC PROCEDURES W/O CC	1.3497	8.4	24
336	12	SURG		TRANSURETHRAL PROSTATECTOMY WITH CC	.9722	5.7	30
337	12	SURG		TRANSURETHRAL PROSTATECTOMY W/O CC	.6607	4.2	15
338	12	SURG		TESTES PROCEDURES, FOR MALIGNANCY	.7625	3.1	30
339	12	SURG		TESTES PROCEDURES, NON-MALIGNANCY AGE >17	.5859	2.5	30
340	12	SURG	*	TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	.4335	2.4	13
341	12	SURG		PENIS PROCEDURES	.9875	3.8	29
342	12	SURG		CIRCUMCISION AGE >17	.4852	2.1	23
343	12	SURG	*	CIRCUMCISION AGE 0-17	.3788	1.7	6
344	12	SURG		OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.0591	5.3	32
345	12	SURG		OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	.7930	4.1	31
346	12	MED		MALIGNANCY, MALE REPRODUCTIVE SYSTEM, WITH CC	.9227	5.5	33
347	12	MED		MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	.4674	2.5	29
348	12	MED		BENIGN PROSTATIC HYPERTROPHY WITH CC	.6595	3.8	31
349	12	MED		BENIGN PROSTATIC HYPERTROPHY W/O CC	.3846	2.1	19
350	12	MED		INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	.6732	5.0	28

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
351	12	MED	* STERILIZATION, MALE	.3333	1.3	5
352	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.5439	3.1	30
353	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	2.0692	11.4	38
354	13	SURG	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG WITH CC	1.4140	8.1	35
355	13	SURG	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	.8932	5.7	15
356	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	.7329	4.8	19
357	13	SURG	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIG	2.1672	10.8	38
358	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY WITH CC	1.1959	7.0	28
359	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	.8141	5.4	14
360	13	SURG	VAGINA, CERVIX & VULVA PROCEDURES	.7831	3.8	31
361	13	SURG	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	.6745	2.7	30
362	13	SURG	ENDOSCOPIC TUBAL INTERRUPTION	.3370	1.5	6
363	13	SURG	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	.6980	3.5	31
364	13	SURG	D&C, CONIZATION EXCEPT FOR MALIGNANCY	.4678	2.3	21
365	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.8977	8.9	36
366	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM WITH CC	1.1766	6.6	34
367	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	.4861	2.9	30
368	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	.9030	6.0	33
369	13	MED	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	.5128	3.1	30
370	14	SURG	CESAREAN SECTION W CC	.9851	6.2	33
371	14	SURG	CESAREAN SECTION W/O CC	.6563	4.5	13
372	14	MED	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	.4530	3.1	20
373	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.2988	2.2	8
374	14	SURG	VAGINAL DELIVERY W STERILIZATION &/OR D&C	.5036	2.7	8
375	14	SURG	* VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	.6817	4.4	29
376	14	MED	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	.3608	2.8	26
377	14	SURG	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	1.5847	3.7	31
378	14	MED	ECTOPIC PREGNANCY	.7085	4.2	15
379	14	MED	THREATENED ABORTION	.2478	2.0	14
380	14	MED	ABORTION W/O D&C	.2710	1.8	14
381	14	SURG	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	.3698	1.7	13
382	14	MED	FALSE LABOR	.1339	1.3	5
383	14	MED	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	.3796	3.3	30
384	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	.3419	2.3	29
385	15		* NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.2232	1.8	29

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

					RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
386	15		*	EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	3.6480	17.9	45
387	15		*	PREMATURITY W MAJOR PROBLEMS	1.8267	13.3	40
388	15		*	PREMATURITY W/O MAJOR PROBLEMS	1.1571	8.6	36
389	15			FULL TERM NEONATE W MAJOR PROBLEMS	1.3648	7.4	34
390	15			NEONATE W OTHER SIGNIFICANT PROBLEMS	.8503	3.8	31
391	15		*	NORMAL NEWBORN	.2218	3.1	11
392	16	SURG		SPLENECTOMY AGE >17	3.5145	12.4	39
393	16	SURG	*	SPLENECTOMY AGE 0-17	1.5206	9.1	36
394	16	SURG		OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS	1.5066	5.6	33
395	16	MED		RED BLOOD CELL DISORDERS AGE >17	.7495	4.6	32
396	16	MED		RED BLOOD CELL DISORDERS AGE 0-17	.3715	1.9	16
397	16	MED		COAGULATION DISORDERS	1.0972	5.5	33
398	16	MED		RETICULOENDOTHELIAL & IMMUNITY DISORDERS WITH CC	1.2221	6.7	34
399	16	MED		RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	.6922	4.1	31
400	17	SURG		LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.6686	10.4	37
401	17	SURG		LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	2.2146	10.2	37
402	17	SURG		LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	.9003	4.1	31
403	17	MED		LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.6029	8.3	35
404	17	MED		LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	.7807	4.6	32
405	17		*	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	1.0407	4.9	32
406	17	SURG		MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC	2.7284	11.8	39
407	17	SURG		MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	1.3027	6.3	33
408	17	SURG		MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC	.9560	4.0	31
409	17	MED		RADIOTHERAPY	1.0285	6.9	34
410	17	MED		CHEMOTHERAPY	.4903	2.6	20
411	17	MED		HISTORY OF MALIGNANCY W/O ENDOSCOPY	.4484	2.6	26
412	17	MED		HISTORY OF MALIGNANCY W ENDOSCOPY	.4025	2.1	19
413	17	MED		OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG WITH CC	1.2837	7.3	34
414	17	MED		OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	.7569	4.7	32
415	18	SURG		O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.6231	15.0	42
416	18	MED		SEPTECEMIA AGE >17	1.5380	7.4	34
417	18	MED		SEPTECEMIA AGE 0-17	.8658	5.6	33
418	18	MED		POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	.9530	6.6	34
419	18	MED		FEVER OF UNKNOWN ORIGIN AGE >17 WITH CC	.9554	5.9	33
420	18	MED		FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	.6770	4.7	32

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

					RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
421	18	MED		VIRAL ILLNESS AGE >17	.6343	4.3	31
422	18	MED		VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	.6053	4.1	28
423	18	MED		OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.5799	8.0	35
424	19	SURG		O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.2907	13.5	41
425	19	MED		ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	.6476	4.5	31
426	19	MED		DEPRESSIVE NEUROSES	.6278	5.7	33
427	19	MED		NEUROSES EXCEPT DEPRESSIVE	.6139	5.4	32
428	19	MED		DISORDERS OF PERSONALITY & IMPULSE CONTROL	.7312	6.2	33
429	19	MED		ORGANIC DISTURBANCES & MENTAL RETARDATION	.8999	7.4	34
430	19	MED		PSYCHOSES	.8941	8.8	36
431	19	MED		CHILDHOOD MENTAL DISORDERS	.6415	5.9	33
432	19	MED		OTHER MENTAL DISORDER DIAGNOSES	.7374	4.5	32
433	20			ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	.3999	3.2	30
434	20			ALC/DRUG ABUSE OR DEPENDENCE, DETOX OR OTHER SYMPT TRT WITH CC	.7895	5.7	33
435	20			ALC/DRUG ABUSE OR DEPENDENCE, DETOX OR OTHER SYMPT TRT W/O CC	.5532	4.9	32
436	20			ALC/DRUG DEPENDENCE W REHABILITATION THERAPY	.9874	12.0	39
437	20			ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY	1.2048	13.8	41
438	20			NO LONGER VALID	.0000	.0	0
439	21	SURG		SKIN GRAFTS FOR INJURIES	1.6317	6.6	34
440	21	SURG		WOUND DEBRIDEMENTS FOR INJURIES	2.4584	10.6	38
441	21	SURG		HAND PROCEDURES FOR INJURIES	.7162	2.5	29
442	21	SURG		OTHER O.R. PROCEDURES FOR INJURIES WITH CC	1.8531	5.6	33
443	21	SURG		OTHER O.R. PROCEDURES FOR INJURIES W/O CC	1.1821	4.2	31
444	21	MED		MULTIPLE TRAUMA AGE >17 WITH CC	.7615	5.3	32
445	21	MED		MULTIPLE TRAUMA AGE >17 W/O CC	.4893	3.7	31
446	21	MED	*	MULTIPLE TRAUMA AGE 0-17	.4796	2.4	22
447	21	MED		ALLERGIC REACTIONS AGE >17	.4710	2.6	24
448	21	MED	*	ALLERGIC REACTIONS AGE 0-17	.3470	2.9	17
449	21	MED		POISONING & TOXIC EFFECTS OF DRUGS AGE >17 WITH CC	.7970	4.4	31
450	21	MED		POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	.4642	2.7	28
451	21	MED	*	POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	.4819	2.1	17
452	21	MED		COMPLICATIONS OF TREATMENT WITH CC	.8926	4.6	32
453	21	MED		COMPLICATIONS OF TREATMENT W/O CC	.4668	3.0	30
454	21	MED		OTHER INJURY, POISONING & TOXIC EFF DIAG WITH CC	.9037	4.5	32
455	21	MED		OTHER INJURY, POISONING & TOXIC EFF DIAG W/O CC	.4280	2.7	28

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
456	22		BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	2.9238	5.6	33
457	22	MED	EXTENSIVE BURNS W/O O.R. PROCEDURE	1.8343	2.7	30
458	22	SURG	NON-EXTENSIVE BURNS W SKIN GRAFT	3.8041	16.3	43
459	22	SURG	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROC	1.9141	10.0	37
460	22	MED	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	1.0253	6.3	33
461	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	.7839	2.5	30
462	23	MED	REHABILITATION	1.8904	14.4	41
463	23	MED	SIGNS & SYMPTOMS W CC	.7524	5.1	32
464	23	MED	SIGNS & SYMPTOMS W/O CC	.4702	3.3	30
465	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	.3301	1.8	12
466	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	.5323	2.7	30
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.4355	2.4	29
468			EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3.3087	12.7	40
469		**	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	.0000	.0	0
470		**	UNGROUPABLE	.0000	.0	0
471	08	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	3.9786	15.4	42
472	22	SURG	EXTENSIVE BURNS W O.R. PROCEDURE	12.8143	18.7	46
473	17		ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	3.0979	9.3	36
474	04		RESPIRATORY SYSTEM DIAGNOSIS WITH TRACHEOSTOMY	13.2512	37.0	64
475	04	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3.4852	9.4	36
476			PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2.2504	15.0	42
477			NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.4313	6.6	34

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TABLE 6a—NEW DIAGNOSIS CODES

Diagnosis code	Description	DRG
088.81	Lyme disease	423
088.89	Other specified arthropod-borne diseases	423
345.00	Generalized nonconvulsive epilepsy, without mention of intractable epilepsy	024, 025, 026
345.01	Generalized nonconvulsive epilepsy, with intractable epilepsy	024, 025, 026
345.10	Generalized convulsive epilepsy, without mention of intractable epilepsy	024, 025, 026
345.11	Generalized convulsive epilepsy, with intractable epilepsy	024, 025, 026
345.40	Partial epilepsy, with impairment of consciousness, without mention of intractable epilepsy	024, 025, 026
345.41	Partial epilepsy, with impairment of consciousness, with intractable epilepsy	024, 025, 026
345.50	Partial epilepsy, without mention of impairment of consciousness, without mention of intractable epilepsy	024, 025, 026
345.51	Partial epilepsy, without mention of impairment of consciousness, with intractable epilepsy	024, 025, 026
345.60	Infantile spasms, without mention of intractable epilepsy	024, 025, 026
345.61	Infantile spasms, with intractable epilepsy	024, 025, 026
345.70	Epilepsia partialis continua, without mention of intractable epilepsy	024, 025, 026
345.71	Epilepsia partialis continua, with intractable epilepsy	024, 025, 026
345.80	Other forms of epilepsy, without mention of intractable epilepsy	024, 025, 026
345.81	Other forms of epilepsy, with intractable epilepsy	024, 025, 026
345.90	Epilepsy, unspecified, without mention of intractable epilepsy	024, 025, 026
345.91	Epilepsy, unspecified with intractable epilepsy	024, 025, 026
403.00	Hypertensive renal disease, malignant, without mention of renal failure	331, 332, 333
403.01	Hypertensive renal disease, malignant, with renal failure	316
403.10	Hypertensive renal disease, benign, without mention of renal failure	331, 332, 333
403.11	Hypertensive renal disease, benign, with renal failure	316
403.90	Hypertensive renal disease, unspecified, without mention of renal failure	331, 332, 333
403.91	Hypertensive renal disease, unspecified, with renal failure	316
404.00	Hypertensive heart and renal disease, malignant, without mention of congestive heart failure or renal failure	134
404.01	Hypertensive heart and renal disease, malignant, with congestive heart failure	127
404.02	Hypertensive heart and renal disease, malignant, with renal failure	316
404.03	Hypertensive heart and renal disease, malignant, with congestive heart failure or renal failure	316
404.10	Hypertensive heart and renal disease, benign, without mention of congestive heart failure or renal failure	134
404.11	Hypertensive heart and renal disease, benign, with congestive heart failure	127
404.12	Hypertensive heart and renal disease, benign, with renal failure	316
404.13	Hypertensive heart and renal disease, benign, with congestive heart failure or renal failure	127
404.90	Hypertensive heart and renal disease, unspecified, without mention of congestive heart failure or renal failure	134
404.91	Hypertensive heart and renal disease, unspecified, with congestive heart failure	127
404.92	Hypertensive heart and renal disease, unspecified, with renal failure	316
404.93	Hypertensive heart and renal disease, unspecified, with congestive heart failure and renal failure	127
410.00	Acute myocardial infarction, of anterolateral wall, episode of care, unspecified	132, 133
410.01	Acute myocardial infarction, of anterolateral wall, initial episode of care	121, 122, 123
410.02	Acute myocardial infarction, of anterolateral wall, subsequent episode of care	132, 133
410.10	Acute myocardial infarction, of other anterior wall, episode of care unspecified	132, 133
410.11	Acute myocardial infarction, of other anterior wall, initial episode of care	121, 122, 123
410.12	Acute myocardial infarction, of other anterior wall, subsequent episode of care	132, 133
410.20	Acute myocardial infarction, of inferolateral wall, episode of care unspecified	132, 133
410.21	Acute myocardial infarction, of inferolateral wall, initial episode of care	121, 122, 123
410.22	Acute myocardial infarction, of inferolateral wall, subsequent episode of care	132, 133
410.30	Acute myocardial infarction, of inferoposterior wall, episode of care unspecified	132, 133
410.31	Acute myocardial infarction, of inferoposterior wall, initial episode of care	121, 122, 123
410.32	Acute myocardial infarction, of inferoposterior wall, subsequent episode of care	132, 133
410.40	Acute myocardial infarction, of other inferior wall, episode of care unspecified	132, 133
410.41	Acute myocardial infarction, of other inferior wall, initial episode of care	121, 122, 123
410.42	Acute myocardial infarction, of other inferior wall, subsequent episode of care	132, 133
410.50	Acute myocardial infarction, of other lateral wall, episode of care unspecified	132, 133
410.51	Acute myocardial infarction, of other lateral wall, initial episode of care	121, 122, 123
410.52	Acute myocardial infarction, of other lateral wall, subsequent episode of care	132, 133
410.60	Acute myocardial infarction, true posterior wall infarction, episode of care unspecified	132, 133
410.61	Acute myocardial infarction, true posterior wall infarction, initial episode of care	121, 122, 123
410.62	Acute myocardial infarction, true posterior wall infarction, subsequent episode of care	132, 133

TABLE 6a—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	DRG
410.70	Acute myocardial infarction, subendocardial infarction, episode of care unspecified	132, 133
410.71	Acute myocardial infarction, subendocardial infarction, initial episode of care	121, 122, 123
410.72	Acute myocardial infarction, subendocardial infarction, subsequent episode of care	132, 133
410.80	Acute myocardial infarction, of other specified sites, episode of care unspecified	132, 133
410.81	Acute myocardial infarction, of other specified sites, initial episode of care	121, 122, 123
410.82	Acute myocardial infarction, of other specified sites, subsequent episode of care	132, 133
410.90	Acute myocardial infarction, unspecified site, episode of care unspecified	132, 133
410.91	Acute myocardial infarction, unspecified site, initial episode of care	121, 122, 123
410.92	Acute myocardial infarction, unspecified site, subsequent episode of care	132, 133
411.81	Acute ischemic heart disease without myocardial infarction	124
411.89	Other acute and subacute forms of ischemic heart disease	124
429.71	Acquired cardiac septal defect	124
429.79	Other certain sequelae of myocardial infarction, not elsewhere classified	124
493.20	Chronic obstructive asthma (with obstructive pulmonary disease), without mention of status asthmaticus	088
493.21	Chronic obstructive asthma (with obstructive pulmonary disease), with status asthmaticus	088
651.30	Twin pregnancy with fetal loss and retention of one fetus, unspecified as to episode of care or not applicable	370, 371, 372, 373, 374, 375
651.31	Twin pregnancy with fetal loss and retention of one fetus, delivered, with or without mention of antepartum condition	370, 371, 372, 373, 374, 375
651.33	Twin pregnancy with fetal loss and retention of one fetus, antepartum condition or complication	383, 384

TABLE 6a—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	DRG
651.40	Triplet pregnancy with fetal loss and retention of one or more fetus(es), unspecified as to episode of care or not applicable	370, 371, 372, 373, 374, 375
651.41	Triplet pregnancy with fetal loss and retention of one or more fetus(es), delivered, with or without mention of antepartum condition	370, 371, 372, 373, 374, 375
651.43	Triplet pregnancy with fetal loss and retention of one or more fetus(es), antepartum condition or complication	383, 384
651.50	Quadruplet pregnancy with fetal loss and retention of one or more fetus(es), unspecified as to episode of care or not applicable	370, 371, 372, 373, 374, 375
651.51	Quadruplet pregnancy with fetal loss and retention of one or more fetus(es), delivered, with or without mention of antepartum condition	370, 371, 372, 373, 374, 375
651.53	Quadruplet pregnancy with fetal loss and retention of one or more fetus(es), antepartum condition or complication	383, 384
651.60	Other multiple pregnancy with fetal loss and retention of one or more fetus(es), unspecified as to episode of care or not applicable	370, 371, 372, 373, 374, 375
651.61	Other multiple pregnancy with fetal loss and retention of one or more fetus(es), delivered, with or without mention of antepartum condition	370, 371, 372, 373, 374, 375
651.63	Other multiple pregnancy with fetal loss and retention of one or more fetus(es), antepartum condition or complication	383, 384
759.81	Prader-Willi syndrome	390
759.82	Marfan syndrome	390
759.89	Other specified anomalies	390
996.60	Infection and inflammatory reaction due to unspecified device, implant, and graft	452, 453
996.61	Infection and inflammatory reaction due to cardiac device, implant, and graft	144, 145

TABLE 6a—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	DRG
996.62	Infection and inflammatory reaction due to other vascular device, implant, and graft	144, 145
996.63	Infection and inflammatory reaction due to nervous system device, implant, and graft	034, 035
996.64	Infection and inflammatory reaction due to indwelling urinary catheter	331, 332, 333
996.65	Infection and inflammatory reaction due to other genitourinary device, implant, and graft	331, 332, 333
996.66	Infection and inflammatory reaction due to internal joint prosthesis	249
996.67	Infection and inflammatory reaction due to other internal orthopedic device, implant, and graft	249
996.69	Infection and inflammatory reaction due to other internal prosthetic device, implant, and graft	452, 453
996.70	Other complications due to unspecified device, implant, and graft	452, 453
996.71	Other complications due to heart valve prosthesis	144, 145
996.72	Other complications due to other cardiac device, implant, and graft	144, 145
996.73	Other complications due to renal dialysis device, implant, and graft	144, 145
996.74	Other complications due to other vascular device, implant, and graft	144, 145
996.75	Other complications due to nervous system device, implant, and graft	034, 035
996.76	Other complications due to genitourinary device, implant, and graft	331, 332, 333
996.77	Other complications due to internal joint prosthesis	249
996.78	Other complications due to other internal orthopedic device, implant, and graft	249
996.79	Other complications due to other internal prosthetic device, implant, and graft	452, 453
V23.7	Insufficient prenatal care	469
V30.00	Single liveborn, born in hospital, delivered without mention of cesarean section	391
V30.01	Single liveborn, born in hospital, delivered by cesarean section	391
V31.00	Twin, mate liveborn, born in hospital, delivered without mention of cesarean section	391
V31.01	Twin, mate liveborn, born in hospital, delivered by cesarean section	391

TABLE 6a—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	DRG
V32.00	Twin, mate stillborn, born in hospital, delivered without mention of cesarean section	391
V32.01	Twin, mate stillborn, born in hospital, delivered by cesarean section	391
V33.00	Twin, unspecified, born in hospital, delivered without mention of cesarean section	391
V33.01	Twin, unspecified, born in hospital, delivered by cesarean section	391
V34.00	Other multiple, mates all liveborn, born in hospital, delivered without mention of cesarean section	391
V34.01	Other multiple, mates all liveborn, born in hospital, delivered by cesarean section	391
V35.00	Other multiple, mates all stillborn, born in hospital, delivered without mention of cesarean section	391
V35.01	Other multiple, mates all stillborn, born in hospital, delivered by cesarean section	391
V36.00	Other multiple, mates live- and stillborn, born in hospital, delivered without mention of cesarean section	391
V36.01	Other multiple, mates live- and stillborn, born in hospital, delivered by cesarean section	391
V37.00	Other multiple, unspecified, born in hospital, delivered without mention of cesarean section	391
V37.01	Other multiple, unspecified, born in hospital, delivered by cesarean section	391
V39.00	Unspecified, born in hospital, delivered without mention of cesarean section	391
V39.01	Unspecified, born in hospital, delivered by cesarean section	391

TABLE 6b—NEW PROCEDURE CODES

Procedure code	Description	DRG
11.75	Radial Keratotomy*	42; 442, 443
11.76	Epikeratophakia*	40, 41; 442, 443
31.95	Tracheoesophageal fistulization.	Non-OR
32.01	Endoscopic excision or destruction of lesion or tissue of bronchus.	Non-OR, 412
32.09	Other local excision or destruction of lesion or tissue of bronchus.	75

TABLE 6b—NEW PROCEDURE CODES—Continued

Procedure code	Description	DRG
32.28	Endoscopic excision or destruction of lesion or tissue of lung.	Non-OR, 412
38.95	Venous catheterization for renal dialysis.	Non-OR
42.33	Endoscopic excision or destruction of lesion or tissue of esophagus.	Non-OR, 412
43.11	Percutaneous (endoscopic) gastrostomy (PEG).	Non-OR
43.19	Other gastrostomy	Non-OR
44.43	Endoscopic control of gastric or duodenal bleeding.	Non-OR
44.44	Transcatheter embolization for gastric or duodenal bleeding.	Non-OR
44.49	Other control of hemmorrhage of stomach or duodenum.	Non-OR
45.30	Endoscopic excision or destruction of lesion of duodenum.	Non-OR, 412
45.43	Endoscopic destruction of other lesion or tissue of large intestine.	Non-OR, 412
46.32	Precutaneous (endoscopic) jejunostomy (PEJ).	Non-OR
46.85	Dilation of colon	Non-OR
49.31	Endoscopic excision or destruction of lesion or tissue of anus.	Non-OR, 412
49.39	Other local excision or destruction of lesion or tissue of anus.	157, 158; 267
51.10	Endoscopic retrograde cholangiopancreatography (ERCP).	Non-OR, 412
51.14	Other closed (endoscopic) biopsy of biliary duct or sphincter of Oddi.	Non-OR, 412
51.15	Pressure measurement of sphincter of Oddi.	Non-OR
51.64	Endoscopic excision or destruction of lesion of biliary ducts or sphincter of Oddi.	Non-OR, 412
51.84	Endoscopic dilation of ampulla and biliary duct.	Non-OR, 412
51.86	Endoscopic insertion of nasobiliary drainage tube.	Non-OR, 412
51.87	Endoscopic insertion of stent (tube) into bile duct.	Non-OR, 412
51.88	Endoscopic removal of stone(s) from biliary tract.	Non-OR
52.13	Endoscopic retrograde pancreatography (ERP).	Non-OR, 412
52.14	Closed (endoscopic) biopsy of pancreatic duct.	Non-OR, 412
52.21	Endoscopic excision or destruction of lesion or tissue of pancreatic duct.	Non-OR, 412
52.22	Other excision or destruction of lesion or tissue of pancreas or pancreatic duct.	191, 192; 292, 293
52.97	Endoscopic insertion of nasopancreatic drainage tube.	Non-OR, 412
52.98	Endoscopic dilation of pancreatic duct.	Non-OR, 412
57.17	Percutaneous cystostomy	Non-OR
57.18	Other suprapubic cystostomy.	308, 309; 344, 345; 360; 400, 406, 407; 442, 443

TABLE 6b—NEW PROCEDURE CODES—Continued

Procedure code	Description	DRG
77.56	Repair of hammer toe	63; 225; 233, 234; 292, 293, 442, 443
77.57	Repair of claw toe	7, 8; 63; 225, 226, 227; 292, 293; 442, 443
77.58	Other excision, fusion, and repair of toes.	225; 442, 443
81.40	Repair of hip, not elsewhere classified.	210, 211; 442, 443
81.52	Partial hip replacement	209, 471; 292, 293; 442, 443
81.53	Revision of hip replacement	209, 471; 292 293; 442, 443
81.54	Total knee replacement	209, 471; 442, 443
81.55	Revision of knee replacement.	209, 471; 442, 443
81.56	Total ankle replacement	209, 471; 442, 443
81.57	Replacement of joint of foot and toe.	7, 8; 225; 442, 443
81.72	Arthroplasty of metacarpophalangeal and interphalangeal joint without implant.	7, 8, 228; 441
81.73	Total wrist replacement	209, 442, 443
81.74	Arthroplasty of carpocarpal or carpometacarpal joint with implant.	7, 8, 228, 441
81.75	Arthroplasty of carpocarpal or carpometacarpal joint without implant.	7, 8, 228, 441
81.80	Total shoulder replacement	209; 442, 443
88.97	Magnetic resonance imaging of other and unspecified sites.	Non-OR
88.98	Bone mineral density studies*.	Non-OR
88.10	Intracarotid amobarbital test	Non-OR
89.19	Video and radio-telemetered electroencephalographic monitoring.	Non-OR
94.61	Alcohol rehabilitation	433, 436
94.62	Alcohol detoxification	433, 434, 435
94.63	Alcohol rehabilitation and detoxification.	433, 437
94.64	Drug rehabilitation	433, 436
94.65	Drug detoxification	433, 434, 435
94.66	Drug rehabilitation and detoxification.	433, 437
94.67	Combined alcohol and drug rehabilitation.	433, 436
94.68	Combined alcohol and drug detoxification.	433, 434, 435
94.69	Combined alcohol and drug rehabilitation and deoxification.	433, 437
97.05	Replacement of stent (tube) in biliary or pancreatic duct.	Non-OR
98.51	Extracorporeal shockwave lithotripsy (ESWL) of the kidney, ureter and/or bladder.	Non-OR, 323

TABLE 6b—NEW PROCEDURE CODES—Continued

Procedure code	Description	DRG
98.52	Extracorporeal shockwave lithotripsy (ESWL) of the gallbladder and/or bile duct*.	Non-OR
98.59	Extracorporeal shockwave lithotripsy of other sites*.	Non-OR

*These procedures are not covered under Medicare. See Medicare Coverage Issues Manual 35-54; 35-81 and 50-44. Procedures potentially classified under code 98.59 will be evaluated for Medicare Coverage as they are developed.

TABLE 6c—REVISED PROCEDURE CODE TITLES AND INCLUSION TERMS THAT AFFECT DRG ASSIGNMENT

Procedure code	Description	DRG
38.93	Venous catheterization, not elsewhere classified.	No change.
43.41	Endoscopic excision or destruction of lesion or tissue of stomach.	Non-OR; 412.
45.31	Other local excision of lesion of duodenum.	No change.
45.41	Excision of lesion or tissue of larger intestine.	No change.
45.42	Endoscopic polypectomy of large intestine.	Non-OR; 412.
51.11	Endoscopic retrograde cholangiography [ERC].	Non-OR; 412.
51.12	Percutaneous biopsy of gallbladder or bile ducts.	Non-OR.
51.82	Pancreatic sphincterotomy	154, 155, 156; 191, 192; 442, 443.
52.2	Local excision or destruction of pancreas and pancreatic duct.	191, 192, 292, 293.
52.92	Cannulation of pancreatic duct.	No change.
52.93	Endoscopic insertion of stent (tube) into pancreatic duct [1].	Non-OR; 412.
52.94	Endoscopic removal of stone(s) from pancreatic duct [1].	Non-OR.
52.99	Other operation on pancreas, not elsewhere classified [1].	170, 171; 192, 193; 442, 443.
57.19	Other cystostomy	308, 309; 442, 443.
57.21	Vesicostomy	308, 309; 344, 345; 360; 400, 406, 407; 442, 443.
57.22	Revision or closure of vesicostomy.	308, 309; 344, 345; 365, 400; 406, 407; 442, 443.
77.54	Excision or correction of bunionette.	No change.
81.02	Other cervical fusion, anterior technique.	4; 214, 215; 442, 443.
81.03	Other cervical fusion, posterior technique.	4; 214, 215; 442, 443.
81.04	Dorsal and dorsolumbar fusion, anterior technique.	4; 214, 215; 442, 443.

TABLE 6c—REVISED PROCEDURE CODE TITLES AND INCLUSION TERMS THAT AFFECT DRG ASSIGNMENT—Continued

Procedure code	Description	DRG
81.05	Dorsal and dorsolumbar fusion, posterior technique.	4; 214, 215; 442, 443.
81.06	Lumbar and lumbosacral fusion, anterior technique.	4; 214, 215; 442, 443.
81.07	Lumbar and lumbosacral fusion, lateral transverse process technique.	4; 214, 215; 442, 443.
81.08	Lumbar and lumbosacral fusion, posterior technique.	4; 214, 215; 442, 443.
81.09	Refusion of spine, any level or technique.	4; 214, 215; 442, 443.
81.51	Total hip replacement	209, 471; 442, 443.
81.59	Revision of joint replacement, not elsewhere classified.	233, 234; 442, 443.
81.71	Arthroplasty of metacarpophalangeal and interphalangeal joint with implant.	7, 8; 228; 441.
81.79	Other repair of hand, fingers, and wrist.	7, 8, 228; 441.
81.81	Partial shoulder replacement.	209; 442, 443.
81.84	Total elbow replacement	209; 442, 443.
89.68	Monitoring of cardiac output by other technique.	Non-OR.

[1] The notes for code 52.99 were revised to include the open procedures formerly included in codes 52.93 and 52.94, thus adding 52.99 to DRGs 170 and 171.

TABLE 6d—EXPANDED DIAGNOSIS CODES THAT ARE NO LONGER ACCEPTED IN GROUPER [1]

Diagnosis code	Description	DRG
088.8	Other specified arthropod-borne disease	423
345.0	Generalized nonconvulsive epilepsy	024, 025, 026
345.1	Generalized convulsive epilepsy	024, 025, 026
345.4	Partial epilepsy, with impairment or consciousness	024, 025, 026
345.5	Partial epilepsy, without mention of impairment of consciousness	024, 025, 026
345.6	Infantile spasms	024, 025, 026
345.7	Epilepsia partialis continua	024, 025, 026
345.8	Other forms of epilepsy	024, 025, 026
345.9	Epilepsy, unspecified	024, 025, 026
403.0	Hypertensive renal disease, malignant	331, 332, 333
403.1	Hypertensive renal disease, benign	331, 332, 333
403.9	Hypertensive renal disease, unspecified	331, 332, 333
404.0	Hypertensive heart and renal disease, malignant	134
404.1	Hypertensive heart and renal disease, benign	134
404.9	Hypertensive heart and renal disease, unspecified	134
410.0	Acute myocardial infarction, of anterolateral wall	121, 122, 123
410.1	Acute myocardial infarction, of other anterior wall	121, 122, 123
410.2	Acute myocardial infarction, of inferolateral wall	121, 122, 123
410.3	Acute myocardial infarction, of inferoposterior wall	121, 122, 123
410.4	Acute myocardial infarction, of other inferior wall	121, 122, 123
410.5	Acute myocardial infarction, of other lateral wall	121, 122, 123
410.6	True posterior wall infarction	121, 122, 123
410.7	Acute myocardial infarction, subendocardial infarction	121, 122, 123
410.8	Acute myocardial infarction of other specified sites	121, 122, 123
410.9	Acute myocardial infarction, unspecified site	121, 122, 123
411.8	Other acute and subacute forms of ischemic heart disease, unspecified	140
759.8	Other specified congenital anomalies	390
996.6	Infection and inflamatory reaction due to internal prosthetic device, implant, and graft	452, 453
996.7	Other complications of internal prosthetic device, implant, and graft	452, 453
V30.0	Single liveborn, born in hospital	391
V31.0	Twin, mate liveborn, born in hospital	391
V32.0	Twin, mate stillborn, born in hospital	391
V33.0	Twin, unspecified, born in hospital	391
V34.0	Other multiple, mates all live-born, born in hospital	391
V35.0	Other multiple, mates all stillborn, born in hospital	391
V36.0	Other multiple, mates live- and stillborn, born in hospital	391
V37.0	Other multiple unspecified, born in hospital	391
V39.0	Liveborn unspecified, born in hospital	391

[1] See Table 6a for New Diagnosis Codes (5 digits).

TABLE 6e—DELETED PROCEDURE CODES

43.2	Permanent gastrostomy
51.97	Therapeutic endoscopic procedures on biliary tract, oral route
52.91	Endoscopic retrograde cannulation of pancreatic duct [ERCP]
59.96	Extracorporeal shockwave lithotripsy [ESWL]
81.18	Other fusion of toe
81.31	Arthroplasty of foot and toe with synthetic prosthesis
81.39	Other arthroplasty of foot and toe
81.41	Total knee replacement
81.48	Total ankle replacement
81.6	Other arthroplasty of hip
81.61	Replacement of head of femur with use of methyl methacrylate
81.62	Other replacement of head of femur
81.63	Replacement of acetabulum with use of methyl methacrylate
81.64	Other replacement of acetabulum
81.69	Other repair of hip
81.86	Arthroplasty of carpals with synthetic prosthesis
81.87	Other repair of wrist
88.99	Magnetic resonance imaging of other and unspecified sites

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Table 6f.--Additions to the CC Exclusions List

CCs that are added to the list are in Table 6f--Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

*25060	34581	34551	34591	34510	34510	40311	40493
34501	34591	34561	7803	34511	34511	40391	*40290
34510	7803	34571	*34570	3452	34541	40400	40300
34511	*34511	34581	34501	3453	34551	40401	40301
34541	34501	34591	34510	34541	34561	40402	40311
34551	34510	7803	34511	34551	34571	40403	40391
34561	34511	*34550	3452	34561	34581	40411	40400
34571	3452	34501	3453	34571	34591	40412	40401
34581	3453	34510	34541	34581	*4010	40413	40402
34591	34541	34511	34551	34591	40300	40491	40403
*25061	34551	3452	34561	7803	40301	40492	40411
34501	34561	3453	34571	*34591	40311	40493	40412
34510	34571	34541	34581	34501	40391	*40201	40413
34511	34581	34551	34591	34510	40400	40300	40491
34541	34591	34561	7803	34511	40401	40301	40492
34551	7803	34571	*34571	3452	40402	40311	40493
34561	*3452	34581	34501	3453	40403	40391	*40291
34571	34501	34591	34510	34541	40411	40400	40300
34581	34510	7803	34511	34551	40412	40401	40301
34591	34511	*34551	3452	34561	40413	40402	40311
*34500	34541	34501	3453	34571	40491	40403	40391
34501	34551	34510	34541	34581	40492	40411	40400
34510	34561	34511	34551	34591	40493	40412	40401
34511	34571	3452	34561	7803	*4011	40413	40402
3452	34581	3453	34571	*3488	40300	40491	40403
3453	34591	34541	34581	34501	40301	40492	40411
34541	*3453	34551	34591	34510	40311	40493	40412
34551	34501	34561	7803	34511	40391	*40210	40413
34561	34510	34571	*34580	34541	40400	40300	40491
34571	34511	34581	34501	34551	40401	40301	40492
34581	34541	34591	34510	34561	40402	40311	40493
34591	34551	7803	34511	34571	40403	40391	*40300
7803	34561	*34560	3452	34581	40411	40400	4010
*34501	34571	34501	3453	34591	40412	40401	40200
34501	34581	34510	34541	*3489	40413	40402	40201
34510	34591	34511	34551	34501	40491	40403	40211
34511	*34540	3452	34561	34510	40492	40411	40291
3452	34501	3453	34571	34511	40493	40412	40300
3453	34510	34541	34581	34541	*4019	40413	40301
34541	34511	34551	34591	34551	40300	40491	40311
34551	3452	34561	7803	34561	40301	40492	40391
34561	3453	34571	*34581	34571	40311	40493	40400
34571	34541	34581	34501	34581	40391	*40211	40401
34581	34551	34591	34510	34591	40400	40300	40402
34591	34561	7803	34511	*34989	40401	40301	40403
7803	34571	*34561	3452	34501	40402	40311	40411
*34510	34581	34501	3453	34510	40403	40391	40412
34501	34591	34510	34541	34511	40411	40400	40413
34510	7803	34511	34551	34541	40412	40401	40491
34511	*34541	3452	34561	34551	40413	40402	40492
3452	34501	3453	34571	34561	40491	40403	40493
3453	34510	34541	34581	34571	40492	40411	40501
34541	34511	34551	34591	34581	40493	40412	40509
34551	3452	34561	7803	34591	*40200	40413	*40301
34561	3453	34571	*34590	*3499	40300	40491	4010
34571	34541	34581	34501	34501	40301	40492	40200

40201	40412	40291	40491	40301	40493	40391	40401
40211	40413	40300	40492	40311	40501	40400	40402
40291	40491	40301	40493	40391	40509	40401	40403
40300	40492	40311	40501	40400	*40490	40402	40411
40301	40493	40391	40509	40401	4010	40403	40412
40311	40501	40400	*40403	40402	40200	40411	40413
40391	40509	40401	4010	40403	40201	40412	40491
40400	*40390	40402	40200	40411	40211	40413	40492
40401	4010	40403	40201	40412	40291	40491	40493
40402	40200	40411	40211	40413	40300	40492	*40511
40403	40201	40412	40291	40491	40301	40493	40300
40411	40211	40413	40300	40492	40311	40501	40301
40412	40291	40491	40301	40493	40391	40509	40311
40413	40300	40492	40311	40501	40400	*40493	40391
40491	40301	40493	40391	40509	40401	4010	40400
40492	40311	40501	40400	*40412	40402	40200	40401
40493	40391	40509	40401	4010	40403	40201	40402
40501	40400	*40401	40402	40200	40411	40211	40403
40509	40401	4010	40403	40201	40412	40291	40411
*40310	40402	40200	40411	40211	40413	40300	40412
4010	40403	40201	40412	40291	40491	40301	40413
40200	40411	40211	40413	40300	40492	40311	40491
40201	40412	40291	40491	40301	40493	40391	40492
40211	40413	40300	40492	40311	40501	40400	40493
40291	40491	40301	40493	40391	40509	40401	*40519
40300	40492	40311	40501	40400	*40491	40402	40300
40301	40493	40391	40509	40401	4010	40403	40301
40311	40501	40400	*40410	40402	40200	40411	40311
40391	40509	40401	4010	40403	40201	40412	40391
40400	*40391	40402	40200	40411	40211	40413	40400
40401	4010	40403	40201	40412	40291	40491	40401
40402	40200	40411	40211	40413	40300	40492	40402
40403	40201	40412	40291	40491	40301	40493	40403
40411	40211	40413	40300	40492	40311	40501	40411
40412	40291	40491	40301	40493	40391	40509	40412
40413	40300	40492	40311	40501	40400	*40501	40413
40491	40301	40493	40391	40509	40401	40300	40491
40492	40311	40501	40400	*40413	40402	40301	40492
40493	40391	40509	40401	4010	40403	40311	40493
40501	40400	*40402	40402	40200	40411	40391	*40591
40509	40401	4010	40403	40201	40412	40400	40300
*40311	40402	40200	40411	40211	40413	40401	40301
4010	40403	40201	40412	40291	40491	40402	40311
40200	40411	40211	40413	40300	40492	40403	40391
40201	40412	40291	40491	40301	40493	40411	40400
40211	40413	40300	40492	40311	40501	40412	40401
40291	40491	40301	40493	40391	40509	40413	40402
40300	40492	40311	40501	40400	*40492	40491	40403
40301	40493	40391	40509	40401	4010	40492	40411
40311	40501	40400	*40411	40402	40200	40493	40412
40391	40509	40401	4010	40403	40201	*40509	40413
40400	*40400	40402	40200	40411	40211	40300	40491
40401	4010	40403	40201	40412	40291	40301	40492
40402	40200	40411	40211	40413	40300	40311	40493
40403	40201	40412	40291	40491	40301	40391	*40599
40411	40211	40413	40300	40492	40311	40400	40300

40301	41081	4130	41011	41061	41181	*41061	41041
40311	41091	4131	41021	41071	41189	41001	41051
40391	4111	4139	41031	41081	4130	41011	41061
40400	41181	*41020	41041	41091	4131	41021	41071
40401	41189	41001	41051	4111	4139	41031	41081
40402	4130	41011	41061	41181	*41051	41041	41091
40403	4131	41021	41071	41189	41001	41051	4111
40411	4139	41031	41081	4130	41011	41061	41181
40412	*41010	41041	41091	4131	41021	41071	41189
40413	41001	41051	4111	4139	41031	41081	4130
40491	41011	41061	41181	*41041	41041	41091	4131
40492	41021	41071	41189	41001	41051	4111	4139
40493	41031	41081	4130	41011	41061	41181	*41072
*41000	41041	41091	4131	41021	41071	41189	41001
41001	41051	4111	4139	41031	41081	4130	41011
41011	41061	41181	*41031	41041	41091	4131	41021
41021	41071	41189	41001	41051	4111	4139	41031
41031	41081	4130	41011	41061	41181	*41062	41041
41041	41091	4131	41021	41071	41189	41001	41051
41051	4111	4139	41031	41081	4130	41011	41061
41061	41181	*41021	41041	41091	4131	41021	41071
41071	41189	41001	41051	4111	4139	41031	41081
41081	4130	41011	41061	41181	*41052	41041	41091
41091	4131	41021	41071	41189	41001	41051	4111
4111	4139	41031	41081	4130	41011	41061	41181
41181	*41011	41041	41091	4131	41021	41071	41189
41189	41001	41051	4111	4139	41031	41081	4130
4130	41011	41061	41181	*41042	41041	41091	4131
4131	41021	41071	41189	41001	41051	4111	4139
4139	41031	41081	4130	41011	41061	41181	*41080
*41001	41041	41091	4131	41021	41071	41189	41001
41001	41051	4111	4139	41031	41081	4130	41011
41011	41061	41181	*41032	41041	41091	4131	41021
41021	41071	41189	41001	41051	4111	4139	41031
41031	41081	4130	41011	41061	41181	*41070	41041
41041	41091	4131	41021	41071	41189	41001	41051
41051	4111	4139	41031	41081	4130	41011	41061
41061	41181	*41022	41041	41091	4131	41021	41071
41071	41189	41001	41051	4111	4139	41031	41081
41081	4130	41011	41061	41181	*41060	41041	41091
41091	4131	41021	41071	41189	41001	41051	4111
4111	4139	41031	41081	4130	41011	41061	41181
41181	*41012	41041	41091	4131	41021	41071	41189
41189	41001	41051	4111	4139	41031	41081	4130
4130	41011	41061	41181	*41050	41041	41091	4131
4131	41021	41071	41189	41001	41051	4111	4139
4139	41031	41081	4130	41011	41061	41181	*41081
*41002	41041	41091	4131	41021	41071	41189	41001
41001	41051	4111	4139	41031	41081	4130	41011
41011	41061	41181	*41040	41041	41091	4131	41021
41021	41071	41189	41001	41051	4111	4139	41031
41031	41081	4130	41011	41061	41181	*41071	41041
41041	41091	4131	41021	41071	41189	41001	41051
41051	4111	4139	41031	41081	4130	41011	41061
41061	41181	*41030	41041	41091	4131	41021	41071
41071	41189	41001	41051	4111	4139	41031	41081

41091	4131	*4220	7457	41071	49321	*74511	42979
4111	4139	42971	*42979	41081	*49301	42971	74100
41181	*41092	42979	3980	41091	49320	42979	74101
41189	41001	*42290	4220	41181	49321	*74512	74102
4130	41011	42971	42290	41189	*49310	42971	74103
4131	41021	42979	42291	42971	49320	42979	74190
4139	41031	*42291	42292	42979	49321	*74519	74191
*41082	41041	42971	42293	*4599	*49311	42971	74192
41001	41051	42979	42299	40300	49320	42979	74193
41011	41061	*42292	4290	40301	49321	*7452	7450
41021	41071	42971	4294	40311	*49320	42971	74510
41031	41081	42979	4295	40391	4911	42979	74511
41041	41091	*42293	4296	40400	4912	*7453	74512
41051	4111	42971	42971	40401	4918	42971	74519
41061	41181	42979	42979	40402	4919	42979	7452
41071	41189	*42299	42981	40403	4928	*7454	7453
41081	4130	42971	42982	40411	49301	42971	7454
41091	4131	42979	7450	40412	49311	42979	74560
4111	4139	*4290	74510	40413	49320	*7455	74569
41181	*4110	42971	74511	40491	49321	42971	7457
41189	41181	42979	74512	40492	49391	42979	74601
4130	41189	*4294	74519	40493	*49321	*74560	74602
4131	*4111	42971	7452	41001	4911	42971	7461
4139	41181	42979	7453	41011	4912	42979	7462
*41090	41189	*4295	7454	41021	4918	*74561	7463
41001	*41181	42971	74560	41031	4919	42971	7464
41011	4110	42979	74569	41041	4928	42979	7465
41021	4111	*4296	7457	41051	49301	*74569	7466
41031	41181	42971	*42981	41061	49311	42971	7467
41041	41189	42979	42971	41071	49320	42979	74681
41051	4130	*42971	42979	41081	49321	*7457	74682
41061	4131	3980	*42982	41091	49391	42971	74683
41071	4139	4220	42971	41181	*49390	42979	74684
41081	*41189	42290	42979	41189	49320	*7458	74686
41091	4110	42291	*45989	42971	49321	42971	74711
4111	4111	42292	40300	42979	*49391	42979	74722
41181	41181	42293	40301	*4911	49320	*7459	*75982
41189	41189	42299	40311	49320	49321	42971	42971
4130	4130	4290	40391	49321	*5178	42979	42979
4131	4131	4294	40400	*4912	49320	*74689	74100
4139	4139	4295	40401	49320	49321	42971	74101
*41091	*4130	4296	40402	49321	*51889	42979	74102
41001	41181	42971	40403	*4918	49320	*7469	74103
41011	41189	42979	40411	49320	49321	42971	74190
41021	*4131	42981	40412	49321	*5198	42979	74191
41031	41181	42982	40413	*4919	49320	*74789	74192
41041	41189	7450	40491	49320	49321	42971	74193
41051	*4139	74510	40492	49321	*5199	42979	7450
41061	41181	74511	40493	*4920	49320	*7479	74510
41071	41189	74512	41001	49320	49321	42971	74511
41081	*4148	74519	41011	49321	*7450	42979	74512
41091	41181	7452	41021	*4928	42971	*7597	74519
4111	41189	7453	41031	49320	42979	42971	7452
41181	*4149	7454	41041	49321	*74510	42979	7453
41189	41181	74560	41051	*49300	42971	*75981	7454
4130	41189	74569	41061	49320	42979	42971	74560

74569	*99600	99674	99678	99661	99679	99660	99665
7457	99660	99679	99679	99662	*99667	99661	99669
74601	99661	*9962	*99653	99669	9964	99662	99670
74602	99662	99660	99660	99670	99660	99669	99676
7461	99669	99663	99669	99671	99666	99670	99679
7462	99670	99669	99670	99672	99667	99671	*99677
7463	99671	99670	99679	99674	99669	99672	9964
7464	99672	99675	*99654	99679	99670	99674	99660
7465	99674	99679	99660	*99662	99677	99679	99666
7466	99679	*99630	99669	99600	99678	*99672	99667
7467	*99601	99660	99670	99660	99679	99600	99669
74681	99660	99664	99679	99661	*99669	99660	99670
74682	99661	99665	*99659	99662	99659	99661	99677
74683	99662	99669	99660	99669	99660	99662	99678
74684	99669	99670	99661	99670	99661	99669	99679
74686	99670	99676	99662	99671	99662	99670	*99678
74711	99672	99679	99663	99672	99663	99671	9964
74722	99674	*99639	99664	99674	99664	99672	99660
*75989	99679	99660	99665	99679	99665	99674	99666
42971	*99602	99664	99666	*99663	99666	99679	99667
42979	99660	99665	99667	9962	99667	*99673	99669
74100	99661	99669	99669	99660	99669	99600	99670
74101	99662	99670	99670	99663	99670	99660	99677
74102	99669	99676	99671	99669	99671	99661	99678
74103	99670	99679	99672	99670	99672	99662	99679
74190	99671	*9964	99673	99675	99673	99669	*99679
74191	99672	99660	99674	99679	99674	99670	99659
74192	99674	99666	99675	*99664	99675	99671	99660
74193	99679	99667	99676	99630	99676	99672	99661
7450	*99603	99669	99677	99639	99677	99673	99662
74510	99660	99670	99678	99660	99678	99674	99663
74511	99661	99677	99679	99664	99679	99679	99664
74512	99662	99678	*99660	99665	*99670	*99674	99665
74519	99669	99679	99659	99669	99600	99600	99666
7452	99670	*99651	99660	99670	99659	99660	99667
7453	99674	99660	99661	99676	99660	99661	99669
7454	99679	99669	99662	99679	99661	99662	99670
74560	*99609	99670	99663	*99665	99662	99669	99671
74569	99660	99679	99664	99630	99663	99670	99672
7457	99661	*99652	99665	99639	99664	99671	99673
74601	99662	99660	99666	99660	99665	99672	99674
74602	99669	99661	99667	99664	99666	99674	99675
7461	99670	99662	99669	99665	99667	99679	99676
7462	99671	99663	99670	99669	99669	*99675	99677
7463	99672	99665	99671	99670	99670	9962	99678
7464	99674	99666	99672	99676	99671	99660	99679
7465	99679	99667	99673	99679	99672	99663	*9979
7466	*9961	99669	99674	*99666	99673	99669	99660
7467	99660	99670	99675	9964	99674	99670	99661
74681	99661	99671	99676	99660	99675	99675	99662
74682	99662	99672	99677	99666	99676	99679	99663
74683	99669	99673	99678	99667	99677	*99676	99664
74684	99670	99674	99679	99669	99678	99630	99665
74686	99671	99675	*99661	99670	99679	99639	99666
74711	99672	99676	99600	99677	*99671	99660	99667
74722	99673	99677	99660	99678	99600	99664	99669

99670	*V230
99671	V237
99672	*V231
99673	V237
99674	*V232
99675	V237
99676	*V233
99677	V237
99678	*V234
99679	V237
*9988	*V235
99660	V237
99661	*V237
99662	V237
99663	V238
99664	V239
99665	*V238
99666	V237
99667	*V239
99669	V237
99670	
99671	
99672	
99673	
99674	
99675	
99676	
99677	
99678	
99679	
*9989	
99660	
99661	
99662	
99663	
99664	
99665	
99666	
99667	
99669	
99670	
99671	
99672	
99673	
99674	
99675	
99676	
99677	
99678	
99679	
*V220	
V237	
*V221	
V237	
*V222	
V237	

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 12/88 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
001	25387	19.2607	5	8	14	23	38
002	5240	19.8128	4	7	13	23	41
003	4	22.0000	12	12	12	32	32
004	4533	17.0951	4	7	12	21	34
005	46998	7.8691	3	4	6	9	15
006	1710	2.9029	1	1	2	3	6
007	5757	25.2850	3	6	13	26	57
008	3923	5.1269	1	2	3	6	11
009	1958	11.2319	2	4	7	13	24
010	17873	11.6501	2	4	8	15	24
011	4762	7.0939	1	3	5	9	14
012	23863	10.8081	2	4	7	12	20
013	5015	9.3488	3	4	8	11	16
014	319025	10.7896	3	5	8	13	20
015	147914	5.5251	2	3	4	7	10
016	13327	9.6404	3	4	7	11	18
017	5284	6.4090	2	3	5	8	12
018	12586	9.1216	2	4	6	11	18
019	10135	5.7360	1	2	4	7	11
020	5905	12.2955	2	5	9	15	25
021	757	10.6526	3	5	7	13	20
022	11658	5.8084	2	3	4	7	11
023	3957	6.8137	1	3	5	8	13
024	47907	7.8081	2	3	5	9	15
025	26456	4.6919	1	2	4	6	9
026	48	4.2708	1	2	3	5	8
027	2539	9.4793	1	1	5	12	22
028	6616	10.0245	1	3	6	12	21
029	4271	5.1370	1	2	3	6	11
030	1	1.0000	1	1	1	1	1
031	4150	6.7586	1	2	4	8	13
032	4232	3.8121	1	2	3	5	8
034	11859	9.4303	2	3	6	11	18
035	4715	5.5334	1	2	4	7	10
036	21025	3.0972	1	2	3	4	5
037	3098	4.7101	1	2	3	5	10
038	1243	2.9936	1	1	2	3	6
039	26694	2.0199	1	1	2	2	3
040	4988	3.1061	1	1	2	3	7
041	1	2.0000	2	2	2	2	2
042	23749	3.0352	1	1	2	3	5
043	311	4.5563	2	2	4	6	9
044	2277	6.7378	3	4	6	8	12
045	3151	4.3831	1	2	3	6	8
046	3243	5.9482	1	2	4	7	12
047	2993	3.8817	1	1	2	5	8
048	1	12.0000	12	12	12	12	12
049	7238	15.5529	3	7	12	19	30
050	5549	2.9499	1	2	2	3	5
051	718	3.1950	1	1	2	3	6
052	162	4.6111	1	2	3	4	9

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SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 12/88 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
053	8924	3.2543	1	1	2	3	7
055	7573	2.7152	1	1	1	2	5
056	1293	2.4695	1	1	2	3	5
057	820	6.2317	1	2	3	7	14
059	272	2.3015	1	1	1	2	5
061	447	4.2953	1	1	2	4	10
062	1	2.0000	2	2	2	2	2
063	6132	7.6440	1	2	4	8	16
064	6088	9.5386	1	2	5	11	21
065	30507	4.1896	2	2	3	5	9
066	10483	4.1992	1	2	3	5	7
067	416	5.5010	2	3	4	7	11
068	16871	6.2131	2	3	5	7	11
069	7007	4.7521	2	3	4	6	9
070	20	4.1000	2	2	3	5	7
071	144	6.2153	2	3	4	7	11
072	742	5.0930	1	2	3	6	10
073	8362	5.0490	1	2	4	7	10
074	1	3.0000	3	3	3	3	3
075	29202	14.5959	6	8	11	18	27
076	30341	14.9119	3	7	11	18	29
077	4586	7.3123	1	2	5	10	15
078	27211	10.6329	4	7	10	13	17
079	101164	12.4565	4	6	10	15	23
080	12750	9.1197	3	5	7	11	16
081	8	11.5000	2	7	9	10	16
082	77020	9.6317	2	4	7	12	20
083	7096	8.7525	3	4	7	11	16
084	2323	5.0667	2	2	4	6	9
085	14944	9.0850	2	4	7	12	18
086	2443	6.2051	2	3	5	8	12
087	53301	8.7842	2	4	7	11	17
088	90805	7.9201	3	4	6	9	14
089	325982	9.1530	3	5	7	11	16
090	61697	6.7541	3	4	6	8	11
091	33	5.7576	2	2	5	7	11
092	8320	9.1450	3	4	7	11	17
093	2131	6.4988	2	3	5	8	12
094	8522	9.9926	3	5	7	12	19
095	1661	6.0993	2	3	5	8	12
096	204225	7.3478	3	4	6	9	13
097	49470	5.5919	2	3	5	7	10
098	14	8.3571	2	4	6	9	20
099	34970	6.0902	2	3	4	7	12
100	12125	3.5127	1	2	3	4	7
101	21623	7.4208	2	3	6	9	14
102	5452	4.7689	1	2	4	6	9
103	103	36.7573	11	16	30	47	74
104	11075	22.6104	10	13	18	26	40
105	11628	16.6894	8	10	12	18	30
106	59877	16.9319	9	11	14	19	27

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 12/88 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
107	40007	12.9225	7	8	10	14	20
108	5103	15.6539	5	9	12	18	29
109	10871	12.4483	1	4	9	16	26
110	56644	16.3386	6	9	12	19	31
111	18274	9.5294	5	7	9	11	15
112	99966	7.5291	2	3	5	9	15
113	32320	19.0047	6	9	14	22	36
114	8425	13.6542	3	6	10	17	27
115	5348	15.1401	6	9	13	18	26
116	44807	7.9327	2	4	6	10	15
117	5679	7.0745	2	3	5	9	14
118	9939	6.0321	1	2	4	7	13
119	4056	6.0123	1	2	3	7	14
120	22212	17.4320	3	6	12	22	36
121	136196	10.6464	4	7	9	13	18
122	122639	7.6644	2	5	7	10	13
123	65015	5.5491	1	1	3	7	13
124	84322	6.2633	1	2	5	8	13
125	104015	3.1167	1	1	2	4	7
126	3624	22.0891	5	10	19	31	43
127	519318	8.1076	3	4	6	10	15
128	30885	8.9639	4	6	8	11	14
129	7954	5.4386	1	1	2	7	13
130	58541	8.1922	2	4	7	10	15
131	30189	5.8800	1	2	5	8	11
132	16883	5.8076	2	3	4	7	11
133	6806	4.2917	1	2	3	5	8
134	35139	5.6859	2	3	4	7	10
135	7188	7.2021	2	3	5	8	14
136	1896	4.3961	1	2	3	5	8
137	2	3.0000	2	2	4	4	4
138	169997	6.3683	2	3	5	8	12
139	78499	4.2675	1	2	3	5	8
140	363637	4.8818	2	3	4	6	9
141	71234	5.8659	2	3	4	7	11
142	40399	4.1993	1	2	3	5	7
143	94288	3.6315	1	2	3	4	6
144	42794	7.8139	2	3	6	10	15
145	7966	4.5980	1	2	4	6	9
146	7263	16.1629	8	10	13	18	27
147	2730	10.7271	6	8	10	13	16
148	121723	17.6065	8	10	14	20	31
149	28485	10.8084	7	8	10	12	16
150	17228	15.2170	6	9	12	18	27
151	6761	9.2409	4	6	8	11	15
152	7546	9.8577	3	5	8	12	17
153	3981	7.3542	3	5	7	9	11
154	46874	17.4763	5	8	13	21	34
155	8768	9.6631	4	6	8	12	17
156	2	12.5000	12	12	13	13	13
157	25156	7.4219	2	3	5	9	14

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DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
158	20621	3.7538	1	2	3	5	7
159	13270	7.2420	2	4	6	9	13
160	15447	4.0861	1	2	4	5	7
161	31398	4.9237	1	2	3	6	10
162	46490	2.6468	1	1	2	3	5
163	27	5.0741	2	2	4	6	8
164	4152	13.0039	6	8	11	15	21
165	2803	8.2790	5	6	8	10	13
166	2457	8.5128	3	5	7	10	14
167	2704	4.9993	3	3	4	6	8
168	2174	6.4094	1	2	3	7	14
169	2455	3.1637	1	1	2	3	6
170	12053	16.8085	3	7	12	21	34
171	2323	8.2725	2	4	7	10	16
172	29780	10.5859	2	4	7	13	22
173	5267	6.0230	1	2	4	7	12
174	131309	7.2679	2	4	6	9	13
175	33891	4.9606	2	3	4	6	8
176	11577	7.8672	3	4	6	9	15
177	18011	6.4597	3	4	5	8	11
178	9093	4.8344	2	3	4	6	8
179	7121	9.8476	3	5	7	12	18
180	54360	7.8974	2	4	6	9	15
181	25940	5.0642	2	3	4	6	9
182	234981	6.4321	2	3	5	8	12
183	92850	4.5494	1	2	4	6	8
184	53	4.2642	1	2	3	5	9
185	3953	6.4594	1	2	4	8	13
186	2	2.0000	2	2	2	2	2
187	1515	3.2568	1	1	2	3	7
188	34864	7.5094	2	3	5	9	15
189	11437	4.2514	1	1	3	5	9
190	155	5.8839	2	3	4	7	13
191	7421	23.0533	7	11	17	28	45
192	1297	13.6901	6	8	11	16	23
193	12859	17.5075	8	10	14	21	31
194	2666	11.9779	5	8	10	15	20
195	22154	13.5603	7	8	11	15	22
196	3934	9.7140	5	7	9	12	15
197	58406	10.5133	5	6	9	12	18
198	39429	6.5480	4	4	6	8	10
199	3231	15.3587	5	8	12	19	29
200	2006	14.4626	3	6	10	18	29
201	4749	13.4296	2	5	9	17	28
202	13948	10.0439	2	4	8	12	20
203	29163	9.8364	2	4	7	13	20
204	32935	8.1048	3	4	6	10	15
205	19077	9.5942	2	4	7	12	19
206	3520	5.4020	1	2	4	7	11
207	34584	7.4499	2	4	6	9	14
208	16781	4.4973	1	2	4	6	8

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DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
209	201405	12.6912	7	9	11	14	19
210	90506	15.4235	7	9	12	17	25
211	44319	11.4759	6	8	10	13	17
212	9	7.8889	3	4	7	9	10
213	5157	13.7008	4	6	10	16	27
214	26124	13.8446	5	7	11	16	25
215	32440	6.7446	4	5	8	10	15
216	4713	13.7619	2	4	10	18	30
217	13910	22.6346	3	8	15	29	48
218	11917	10.9339	3	5	8	13	20
219	16345	6.4431	2	4	5	8	11
220	5	22.2000	4	4	5	7	90
221	3750	10.0440	2	4	7	12	20
222	7634	5.2603	1	2	4	7	11
223	15073	5.9688	2	3	4	7	11
224	8351	3.5829	1	2	3	4	6
225	14189	4.9264	1	2	3	5	11
226	4430	10.7652	2	4	7	13	23
227	8000	4.2746	1	2	3	5	8
228	5179	4.1226	1	2	3	4	8
229	4023	2.6371	1	1	2	3	5
230	2851	7.0544	1	2	4	8	15
231	6457	6.3616	1	2	3	7	14
232	719	7.1460	1	1	3	9	18
233	5617	12.2720	3	5	9	15	25
234	5886	6.0914	2	3	5	8	12
235	6284	13.7869	2	4	8	15	33
236	38688	10.0280	2	4	7	12	19
237	1766	6.0759	2	3	5	7	11
238	5281	14.3770	4	7	11	18	29
239	57597	10.3027	3	5	8	12	20
240	10414	9.7269	3	4	7	12	18
241	5645	6.4193	2	3	5	8	12
242	2246	11.5459	3	5	8	15	24
243	127802	6.9166	1	3	6	9	13
244	11209	7.6021	2	3	6	9	14
245	7747	5.5170	1	3	4	7	10
246	2099	6.0048	2	3	5	7	11
247	9868	5.0930	1	2	4	6	10
248	6665	5.9543	2	3	5	7	11
249	5452	6.3135	1	2	4	8	13
250	3588	6.7611	2	3	5	8	13
251	4841	3.4640	1	1	2	4	7
252	2	5.0000	3	3	7	7	7
253	15487	8.9039	2	3	6	10	17
254	16374	5.1767	1	2	4	6	10
255	1	2.0000	2	2	2	2	2
256	8758	5.6367	1	2	4	7	11
257	27005	6.5516	3	4	5	8	11
258	31131	4.8885	2	3	4	6	8
259	3253	7.4427	2	3	4	8	16

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 12/88 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
260	4128	3.2756	1	2	3	4	5
261	4064	3.0118	1	2	2	4	5
262	3347	2.6696	1	1	2	3	5
263	28326	22.1287	6	9	15	26	44
264	6793	13.5737	3	6	10	17	28
265	5254	10.8515	2	3	7	13	23
266	6251	4.8431	1	2	3	6	10
267	546	4.6465	1	1	2	5	9
268	1733	4.1546	1	1	2	4	8
269	9432	12.8428	2	5	9	16	27
270	6483	4.8754	1	2	3	6	10
271	16715	11.6841	3	6	8	14	21
272	6498	9.6517	3	5	7	11	19
273	3192	7.6404	2	4	5	9	15
274	3948	10.0917	2	4	7	12	21
275	715	6.5706	1	2	3	6	11
276	1096	5.0584	1	2	4	7	10
277	54299	9.0214	3	5	7	11	16
278	27001	6.7282	3	4	6	8	12
279	9	4.7778	2	2	4	6	6
280	12491	6.8035	2	3	5	8	13
281	9412	4.6336	1	2	3	6	9
283	5899	7.7469	2	3	6	9	14
284	3363	4.9697	1	2	4	6	10
285	3569	22.7837	6	10	16	28	44
286	1506	13.6653	6	7	10	15	26
287	7530	20.5695	5	8	13	23	41
288	466	12.1373	3	5	7	11	27
289	3682	6.8574	2	3	4	7	14
290	8906	4.5909	2	2	3	5	8
291	187	2.2406	1	1	2	3	4
292	4946	18.2268	4	8	13	22	35
293	936	8.9541	2	4	7	11	16
294	98332	7.6390	3	4	6	9	13
295	2999	6.1304	2	3	5	7	11
296	182335	8.6891	2	4	6	10	16
297	54930	5.7014	2	3	4	7	10
298	77	6.4935	1	2	4	6	11
299	883	7.2480	1	3	5	9	15
300	10548	9.5872	3	4	7	12	18
301	2924	6.0260	2	3	5	7	11
302	5475	18.2104	8	10	15	21	32
303	15670	14.9220	7	9	12	17	26
304	14168	14.5670	4	7	11	18	28
305	5892	7.7755	2	4	7	10	14
306	11257	10.2647	3	5	8	13	19
307	5957	5.6874	2	3	5	7	10
308	8326	10.2753	2	4	7	13	21
309	4893	5.0106	1	2	4	7	10
310	32782	8.2839	2	3	4	7	12
311	27340	3.2050	1	2	3	4	6

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 12/88 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
312	3979	5.9306	1	2	4	7	12
313	3063	3.2550	1	1	2	4	7
314	3	5.3333	2	2	3	11	11
315	26591	14.0835	2	4	9	17	30
316	38374	9.4756	2	4	7	12	19
317	1493	3.4240	1	1	2	4	6
318	7474	9.2695	2	3	6	12	20
319	1653	4.8518	1	1	3	5	9
320	140077	8.8730	3	5	7	10	15
321	38667	6.3606	3	4	5	8	11
322	67	5.5970	2	3	5	7	12
323	24994	4.2613	1	2	3	5	9
324	15986	2.8449	1	1	2	4	5
325	10688	6.1404	2	3	5	7	12
326	5600	4.0421	1	2	3	5	7
327	9	3.2222	1	1	3	4	4
328	1951	5.6023	1	2	4	7	11
329	677	2.9483	1	1	2	4	6
330	2	4.0000	3	3	5	5	5
331	25765	7.7462	2	3	6	10	16
332	9003	4.6697	1	2	3	6	10
333	334	7.6257	1	3	5	11	16
334	10095	11.8083	6	8	10	14	19
335	8340	8.9670	6	7	8	10	13
336	98617	7.0362	3	4	5	8	12
337	105120	4.6797	3	3	4	5	7
338	10362	5.6904	1	1	3	7	14
339	5423	4.1101	1	1	2	4	9
340	5	3.4000	3	3	3	4	4
341	15943	4.8353	1	3	4	6	8
342	837	3.2820	1	1	2	3	8
344	3492	7.1924	2	4	6	8	12
345	2215	5.9269	1	2	4	7	12
346	10014	8.3523	2	3	6	10	17
347	2324	3.6923	1	1	2	4	8
348	5389	5.6474	1	2	4	7	11
349	3789	2.9881	1	1	2	3	6
350	8747	6.0043	2	4	5	7	10
351	1	1.0000	1	1	1	1	1
352	1050	4.6552	1	2	3	5	9
353	1993	13.9177	6	8	11	16	25
354	7143	9.6885	5	6	8	11	16
355	6966	6.1061	4	5	6	7	9
356	29335	5.4489	3	4	5	7	8
357	6410	13.3474	6	7	10	16	24
358	15096	8.1981	4	5	7	9	13
359	27137	5.6859	4	4	5	6	8
360	4646	6.0321	1	2	4	7	13
361	435	4.3931	1	1	2	5	11
362	29	1.6897	1	1	1	2	2
363	4096	5.5354	1	2	3	5	11

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 12/88 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
364	4199	3.4168	1	1	2	4	7
365	3456	12.3438	3	5	8	15	26
366	5418	10.5341	2	3	7	13	23
367	1451	4.3563	1	1	3	5	9
368	1484	7.8646	3	4	6	9	14
369	2964	4.7719	1	2	3	6	9
370	426	8.0399	4	4	6	7	14
371	630	4.8905	3	4	4	5	6
372	245	4.1102	2	2	3	4	8
373	1646	2.5395	1	2	2	3	4
374	261	2.9119	2	2	3	3	4
375	5	9.2000	2	2	7	11	24
376	85	4.2706	1	2	3	4	9
377	24	5.6667	1	2	3	7	10
378	116	4.5345	3	3	4	5	7
379	214	2.5187	1	1	2	3	5
380	74	2.3784	1	1	2	3	5
381	268	2.3022	1	1	1	3	5
382	75	1.8000	1	1	1	1	3
383	672	4.8676	1	2	3	6	9
384	105	3.5048	1	1	2	4	7
385	4	20.7500	1	1	9	10	63
386	1	10.0000	10	10	10	10	10
389	21	11.5714	2	3	11	23	27
390	26	7.0000	1	2	5	7	12
391	1	7.0000	7	7	7	7	7
392	2387	15.3850	6	8	12	21	32
393	3	36.6667	7	7	9	94	94
394	2246	10.3909	1	3	6	12	23
395	71535	6.5242	1	3	5	8	12
396	48	2.5417	1	1	2	3	5
397	10009	7.7171	2	3	6	9	15
398	11858	9.1407	3	4	7	11	17
399	2650	5.9581	1	2	4	7	11
400	7692	15.0538	3	6	11	18	32
401	6161	15.3624	3	6	11	20	32
402	3581	6.1307	1	2	4	8	13
403	23593	12.3231	2	5	9	16	26
404	7182	6.6750	1	3	5	8	14
405	3782	15.0814	4	7	12	21	32
407	1708	8.2927	2	4	7	10	15
408	10553	5.7028	1	2	4	7	15
409	8078	10.5738	2	4	6	14	23
410	131862	3.4709	1	2	3	4	6
411	512	3.5742	1	1	3	4	7
412	361	2.9474	1	1	2	3	5
413	10145	11.0910	2	4	8	14	24
414	3457	7.1776	1	2	5	9	15
415	23986	21.4332	5	9	15	25	43
416	104121	10.5672	2	5	8	13	20
417	35	7.0857	2	4	6	10	14

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 12/88 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
418	11070	8.5786	3	4	7	11	16
419	15334	7.7905	2	4	6	9	15
420	4509	5.9182	2	3	5	7	11
421	14102	5.6140	2	3	4	7	10
422	94	4.9362	2	3	4	7	9
423	6110	11.5496	3	5	8	14	23
424	3268	23.0223	3	8	15	27	46
425	15484	6.5024	2	3	4	8	13
426	9147	8.0494	2	3	6	10	17
427	2031	8.2230	2	3	6	10	16
428	1182	10.3020	1	3	6	13	22
429	29726	12.1557	3	4	7	13	22
430	58567	12.7416	3	5	9	16	26
431	393	9.0280	2	3	6	11	18
432	612	7.8971	1	2	4	9	19
433	4926	4.9941	1	2	3	5	12
434	15711	8.3911	2	3	6	10	17
435	12776	7.4209	2	3	5	8	18
436	4002	15.8873	3	7	15	25	29
437	8850	17.2060	4	9	17	25	30
439	1181	12.9289	1	3	7	15	30
440	7183	17.3774	2	6	11	22	39
441	956	4.5335	1	1	2	4	9
442	41694	9.8357	1	2	5	12	22
443	13870	6.5749	1	2	4	9	14
444	3685	7.1316	2	3	5	9	13
445	2625	5.0526	1	2	4	6	9
446	1	1.0000	1	1	1	1	1
447	2775	3.5910	1	1	3	4	7
448	1	2.0000	2	2	2	2	2
449	31343	6.3875	1	3	5	8	12
450	10549	3.9572	1	1	3	5	9
451	9	3.0000	1	1	3	4	5
452	22480	6.9077	1	3	5	8	14
453	9807	4.3387	1	2	3	5	9
454	4897	7.1807	1	2	5	8	15
455	1675	4.2018	1	2	3	5	8
456	229	13.0742	1	2	6	14	35
457	129	6.0155	1	1	1	8	17
458	1853	23.4236	5	10	18	30	47
459	985	15.5168	3	6	10	19	33
460	2252	9.4640	2	4	7	11	19
461	7964	5.2156	1	1	2	5	12
462	5980	18.7518	5	9	16	25	36
463	9413	7.1062	2	3	5	9	14
464	3525	4.5719	1	2	3	6	9
465	816	2.7868	1	1	2	3	5
466	4809	5.1909	1	1	2	5	10
467	4925	4.1086	1	1	2	4	8
468	66941	19.3718	3	8	14	24	38
471	4895	17.8409	9	11	15	21	29

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 12/88 GROUPER V6.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
472	237	33.4726	1	11	26	46	58
473	8034	16.5157	2	4	10	25	40
474	11644	47.6542	14	24	37	58	88
475	36108	14.3228	2	6	11	18	28
476	10811	18.3208	8	11	15	21	31
477	37520	10.9291	1	3	8	13	22

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
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DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
001	25387	19.2607	5	8	14	23	38
002	5240	19.8128	4	7	13	23	41
003	4	22.0000	12	12	12	32	32
004	4533	17.0951	4	7	12	21	34
005	46998	7.8691	3	4	6	9	15
006	1710	2.9029	1	1	2	3	6
007	5757	25.2850	3	6	13	26	57
008	3923	5.1269	1	2	3	6	11
009	1958	11.2319	2	4	7	13	24
010	17873	11.6501	2	4	8	15	24
011	4762	7.0939	1	3	5	9	14
012	23863	10.8081	2	4	7	12	20
013	5015	9.3488	3	4	8	11	16
014	319025	10.7886	3	5	8	13	20
015	147914	5.6251	2	3	4	7	10
016	13327	9.6404	3	4	7	11	18
017	5284	6.4090	2	3	5	8	12
018	12586	9.1216	2	4	6	11	18
019	10135	5.7360	1	2	4	7	11
020	5905	12.2955	2	5	9	15	25
021	757	10.6526	3	5	7	13	20
022	11658	5.8084	2	3	4	7	11
023	3957	6.8137	1	3	5	8	13
024	47907	7.8081	2	3	5	9	15
025	26456	4.5919	1	2	4	6	9
026	48	4.2708	1	2	3	5	8
027	2539	9.4793	1	1	5	12	22
028	6616	10.0245	1	3	6	12	21
029	4271	5.1370	1	2	3	6	11
030	1	1.0000	1	1	1	1	1
031	4150	6.7586	1	2	4	8	13
032	4232	3.8121	1	2	3	5	8
034	11859	9.4303	2	3	6	11	18
035	4715	5.5334	1	2	4	7	10
036	21025	3.0972	1	2	3	4	5
037	3098	4.7101	1	2	3	5	10
038	1243	2.9936	1	1	2	3	6
039	26694	2.0199	1	1	2	2	3
040	4988	3.1061	1	1	2	3	7
041	1	2.0000	2	2	2	2	2
042	23749	3.0352	1	1	2	3	5
043	311	4.5563	2	2	4	6	9
044	2277	6.7378	3	4	6	8	12
045	3151	4.3831	1	2	3	6	8
046	3243	5.9482	1	2	4	7	12
047	2993	3.8817	1	1	2	5	8
048	1	12.0000	12	12	12	12	12
049	7238	15.5529	3	7	12	19	30
050	5549	2.9499	1	2	2	3	5
051	718	3.1950	1	1	2	3	6
052	162	4.6111	1	2	3	4	9

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 12/88 GROUPER V7.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
053	8924	3.2543	1	1	2	3	7
055	7573	2.7152	1	1	1	2	5
056	1293	2.4695	1	1	2	3	5
057	820	6.2317	1	2	3	7	14
059	272	2.3015	1	1	1	2	4
061	447	4.2953	1	1	2	4	10
062	1	2.0000	2	2	2	2	2
063	6132	7.6440	1	2	4	8	16
064	6088	9.5386	1	2	5	11	21
065	30507	4.1896	2	2	3	5	8
066	10483	4.1992	1	2	3	5	7
067	416	5.6010	2	3	4	7	11
068	16871	6.2131	2	3	5	7	11
069	7007	4.7521	2	3	4	6	8
070	20	4.1000	2	2	3	5	7
071	144	6.2153	2	3	4	7	11
072	742	5.0930	1	2	3	6	10
073	8362	6.0490	1	2	4	7	12
074	1	3.0000	3	3	3	3	3
075	29202	14.5959	6	8	11	18	27
076	30341	14.9119	3	7	11	18	29
077	4586	7.3123	1	2	5	10	15
078	26873	10.6731	4	7	10	13	17
079	98877	12.3796	4	6	10	15	23
080	12679	9.0979	3	5	7	11	16
081	8	11.5000	2	7	9	10	16
082	76552	9.6240	2	4	7	12	20
083	7046	8.6858	3	4	7	11	16
084	2321	5.0603	2	2	4	6	9
085	14854	9.0715	2	4	7	12	17
086	2443	6.2051	2	3	5	8	12
087	58766	8.4777	2	4	7	11	16
088	90051	7.8608	3	4	6	9	14
089	323020	9.1259	3	5	7	11	16
090	61639	6.7525	3	4	6	8	11
091	33	5.7576	2	2	5	7	11
092	8214	9.1028	3	4	7	11	17
093	2126	6.4976	2	3	5	8	12
094	8390	9.9470	3	5	7	12	19
095	1659	6.0904	2	3	5	8	12
096	203286	7.3240	3	4	6	9	13
097	49403	5.5900	2	3	5	7	10
098	14	8.3571	2	4	6	9	20
099	34595	6.0302	2	3	4	7	12
100	12114	3.5112	1	2	3	4	7
101	20943	7.2818	2	3	6	9	14
102	5411	4.7682	1	2	4	6	9
103	103	36.7573	11	16	30	47	74
104	11075	22.6104	10	13	18	26	40
105	11628	16.6894	8	10	12	18	30
106	59877	16.9319	9	11	14	19	27

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 12/88 GROUPER V7.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
107	40007	12.9225	7	8	10	14	20
108	5103	15.6539	5	9	12	18	29
109	10871	12.4483	1	4	9	16	26
110	66644	16.3386	6	9	12	19	31
111	18274	9.5294	5	7	9	11	15
112	99966	7.5291	2	3	5	9	15
113	32320	19.0047	6	9	14	22	36
114	8425	13.6542	3	6	10	17	27
115	5348	15.1401	6	9	13	18	26
116	44807	7.9327	2	4	6	10	15
117	5679	7.0745	2	3	5	9	14
118	9939	6.0321	1	2	4	7	13
119	4056	6.0123	1	2	3	7	14
120	22212	17.4320	3	6	12	22	36
121	136196	10.6464	4	7	9	13	18
122	122640	7.6644	2	5	7	10	13
123	65015	5.5491	1	1	3	7	13
124	84322	6.2633	1	2	5	8	13
125	104015	3.1167	1	1	2	4	7
126	3624	22.0891	5	10	19	31	43
127	519318	8.1076	3	4	6	10	15
128	30885	8.9639	4	6	8	11	14
129	7954	5.4386	1	1	2	7	13
130	58541	8.1922	2	4	7	10	15
131	30189	5.8800	1	2	5	8	11
132	15883	5.8076	2	3	4	7	11
133	6806	4.2917	1	2	3	5	8
134	35139	5.6859	2	3	4	7	10
135	7188	7.2021	2	3	5	8	14
136	1896	4.3961	1	2	3	5	8
137	2	3.0000	2	2	4	4	4
138	169997	5.3583	2	3	5	8	12
139	78499	4.2675	1	2	3	5	8
140	363637	4.8818	2	3	4	6	9
141	71234	5.8659	2	3	4	7	11
142	40399	4.1993	1	2	3	5	7
143	94288	3.6315	1	2	3	4	6
144	42794	7.8139	2	3	6	10	15
145	7966	4.5980	1	2	4	6	9
146	7263	16.1629	8	10	13	18	27
147	2730	10.7271	6	8	10	13	16
148	121723	17.6065	8	10	14	20	31
149	28485	10.8084	7	8	10	12	16
150	17228	15.2170	6	9	12	18	27
151	6761	9.2409	4	6	8	11	15
152	7546	9.8577	3	5	8	12	17
153	3981	7.3542	3	5	7	9	11
154	46874	17.4763	5	8	13	21	34
155	8768	9.5631	4	6	8	12	17
156	2	12.5000	12	12	13	13	13
157	25156	7.4219	2	3	5	9	14

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 12/88 GROUPER V7.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
158	20621	3.7538	1	2	3	5	7
159	13270	7.2420	2	4	6	9	13
160	15447	4.0861	1	2	4	5	7
161	31998	4.9237	1	2	3	6	10
162	46490	2.6468	1	1	2	3	5
163	27	5.0741	2	2	4	6	8
164	4152	13.0039	6	8	11	15	21
165	2803	8.2790	5	6	8	10	13
166	2457	8.5128	3	5	7	10	14
167	2704	4.9993	3	3	4	6	8
168	2174	6.4094	1	2	3	7	14
169	2455	3.1637	1	1	2	3	6
170	12053	16.8085	3	7	12	21	34
171	2322	8.2735	2	4	7	10	16
172	29780	10.5859	2	4	7	13	22
173	5267	6.0230	1	2	4	7	12
174	131309	7.2679	2	4	6	9	13
175	33891	4.8606	2	3	4	6	8
176	11577	7.8672	3	4	6	9	15
177	18011	6.4597	3	4	5	8	11
178	9093	4.8344	2	3	4	6	8
179	7121	9.8476	3	5	7	12	18
180	54360	7.8974	2	4	6	9	15
181	25940	5.0642	2	3	4	6	9
182	234981	6.4321	2	3	5	8	12
183	92851	4.5494	1	2	4	6	8
184	53	4.2642	1	2	3	5	9
185	3953	6.4594	1	2	4	8	13
186	2	2.0000	2	2	2	2	2
187	1515	3.2568	1	1	2	3	7
188	34864	7.5094	2	3	5	9	15
189	11437	4.2514	1	1	3	5	9
190	155	5.8839	2	3	4	7	13
191	7418	23.0701	7	11	17	28	45
192	1297	13.6901	6	8	11	16	23
193	12859	17.5075	8	10	14	21	31
194	2666	11.9779	5	8	10	15	20
195	22154	13.5603	7	8	11	15	22
196	3934	9.7140	5	7	9	12	15
197	58407	10.5134	5	6	9	12	18
198	39429	6.5480	4	4	6	8	10
199	3231	15.3587	5	8	12	19	29
200	2006	14.4626	3	6	10	18	29
201	4749	13.4296	2	5	9	17	28
202	13948	10.0439	2	4	8	12	20
203	29163	9.8364	2	4	7	13	20
204	32936	8.1047	3	4	6	10	15
205	19077	9.5942	2	4	7	12	19
206	3520	5.4020	1	2	4	7	11
207	34584	7.4499	2	4	6	9	14
208	16781	4.4973	1	2	4	6	8

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 12/88 GROUPER V7.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
209	201405	12.6912	7	9	11	14	19
210	90506	15.4235	7	9	12	17	25
211	44319	11.4759	6	8	10	13	17
212	9	7.8889	3	4	7	9	10
213	5157	13.7008	4	6	10	16	27
214	26124	13.8446	5	7	11	16	25
215	32440	8.7446	4	5	8	10	15
216	4713	13.7619	2	4	10	18	30
217	13910	22.6346	3	8	15	29	48
218	11917	10.9339	3	5	8	13	20
219	16345	6.4431	2	4	5	8	11
220	5	22.2000	4	4	5	7	90
221	3750	10.0440	2	4	7	12	20
222	7634	5.2603	1	2	4	7	11
223	15073	5.9688	2	3	4	7	11
224	8351	3.5829	1	2	3	4	6
225	14189	4.9264	1	2	3	5	11
226	4430	10.7652	2	4	7	13	23
227	8000	4.2746	1	2	3	5	8
228	5179	4.1226	1	2	3	4	8
229	4023	2.6371	1	1	2	3	5
230	2851	7.0544	1	2	4	8	15
231	6457	6.3616	1	2	3	7	14
232	719	7.1460	1	1	3	9	18
233	5617	12.2720	3	5	9	15	25
234	5886	6.0914	2	3	5	8	12
235	6284	13.7869	2	4	8	15	33
236	38688	10.0280	2	4	7	12	19
237	1766	5.0759	2	3	5	7	11
238	5281	14.3770	4	7	11	18	29
239	57597	10.3027	3	5	8	12	20
240	10414	9.7269	3	4	7	12	18
241	5645	6.4193	2	3	5	8	12
242	2246	11.5459	3	5	8	15	24
243	127802	6.9166	1	3	5	9	13
244	11209	7.5021	2	3	5	9	14
245	7747	5.6170	1	3	4	7	10
246	2099	6.0048	2	3	5	7	11
247	9868	5.0930	1	2	4	6	10
248	6665	5.9643	2	3	5	7	11
249	5452	6.3135	1	2	4	8	13
250	3588	6.7611	2	3	5	8	13
251	4841	3.4640	1	1	2	4	7
252	2	5.0000	3	3	7	7	7
253	15487	8.9039	2	3	6	10	17
254	16374	5.1767	1	2	4	6	10
255	1	2.0000	2	2	2	2	2
256	8758	5.6367	1	2	4	7	11
257	27005	6.5516	3	4	5	8	11
258	31131	4.8885	2	3	4	6	8
259	3253	7.4427	2	3	4	8	16

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
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DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
260	4128	3.2766	1	2	3	4	6
261	4064	3.0118	1	2	2	4	5
262	3347	2.6696	1	1	2	3	5
263	28326	22.1287	6	9	15	26	44
264	6793	13.5737	3	6	10	17	28
265	5254	10.8515	2	3	7	13	23
266	6251	4.8431	1	2	3	6	10
267	546	4.6465	1	1	2	5	9
268	1733	4.1546	1	1	2	4	8
269	9432	12.8428	2	5	9	16	27
270	6483	4.8754	1	2	3	6	10
271	16715	11.6841	3	6	8	14	21
272	6498	9.6517	3	5	7	11	19
273	3192	7.6404	2	4	6	9	15
274	3948	10.0917	2	4	7	12	21
275	715	6.5706	1	2	3	6	11
276	1096	5.0584	1	2	4	7	10
277	54299	9.0214	3	5	7	11	16
278	27001	6.7232	3	4	6	8	12
279	9	4.7778	2	2	4	6	6
280	12491	6.8035	2	3	5	8	13
281	9412	4.6336	1	2	3	6	9
283	5899	7.7469	2	3	6	9	14
284	3363	4.9697	1	2	4	6	10
285	3569	22.7837	6	10	16	28	44
286	1506	13.6653	6	7	10	15	26
287	7530	20.5695	5	8	13	23	41
288	466	12.1373	3	5	7	11	27
289	3682	6.8574	2	3	4	7	14
290	8906	4.5909	2	2	3	5	8
291	187	2.2406	1	1	2	3	4
292	4946	18.2268	4	8	13	22	35
293	937	8.9520	2	4	7	11	16
294	98332	7.6390	3	4	6	9	13
295	2999	6.1304	2	3	5	7	11
296	182335	8.6891	2	4	6	10	16
297	54930	5.7014	2	3	4	7	10
298	77	6.4935	1	2	4	6	11
299	883	7.2480	1	3	5	9	15
300	10548	9.5872	3	4	7	12	18
301	2924	6.0260	2	3	5	7	11
302	5475	18.2104	8	10	15	21	32
303	15670	14.9220	7	9	12	17	26
304	14168	14.5670	4	7	11	18	28
305	5892	7.7755	2	4	7	10	14
306	11257	10.2647	3	5	8	13	19
307	5957	5.6874	2	3	5	7	10
308	8326	10.2753	2	4	7	13	21
309	4893	5.0106	1	2	4	7	10
310	32782	6.2839	2	3	4	7	12
311	27340	3.2050	1	2	3	4	6

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
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DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
312	3979	5.9306	1	2	4	7	12
313	3063	3.2550	1	1	2	4	7
314	3	5.3333	2	2	3	11	11
315	26591	14.0835	2	4	9	17	30
316	38374	9.4756	2	4	7	12	19
317	1493	3.4240	1	1	2	4	6
318	7474	9.2695	2	3	6	12	20
319	1653	4.8518	1	1	3	5	9
320	140077	8.8730	3	5	7	10	15
321	38667	6.3606	3	4	5	8	11
322	67	5.5970	2	3	5	7	12
323	24994	4.2613	1	2	3	5	9
324	15986	2.8449	1	1	2	4	5
325	10688	6.1404	2	3	5	7	12
326	5600	4.0421	1	2	3	5	7
327	9	3.2222	1	1	3	4	4
328	1951	5.6023	1	2	4	7	11
329	677	2.3483	1	1	2	4	6
330	2	4.0000	3	3	5	5	5
331	25765	7.7462	2	3	6	10	16
332	9003	4.6697	1	2	3	6	10
333	334	7.6257	1	3	5	11	16
334	10095	11.8083	6	8	10	14	19
335	8340	8.9670	6	7	8	10	13
336	98617	7.0362	3	4	5	8	12
337	105120	4.6797	3	3	4	5	7
338	10362	5.6904	1	1	3	7	14
339	5423	4.1101	1	1	2	4	9
340	5	3.4000	3	3	3	4	4
341	15943	4.8353	1	3	4	6	8
342	837	3.2820	1	1	2	3	8
344	3492	7.1924	2	4	6	8	12
345	2215	5.9269	1	2	4	7	12
346	10014	8.3523	2	3	6	10	17
347	2324	3.6923	1	1	2	4	8
348	5389	5.6474	1	2	4	7	11
349	3789	2.9881	1	1	2	3	6
350	8747	6.0043	2	4	5	7	10
351	1	1.0000	1	1	1	1	1
352	1050	4.6552	1	2	3	5	9
353	1993	13.9177	6	8	11	16	25
354	7143	9.6885	5	6	8	11	16
355	6966	6.1061	4	5	6	7	9
356	29335	5.4489	3	4	5	7	8
357	6410	13.3474	6	7	10	16	24
358	15096	8.1981	4	5	7	9	13
359	27137	5.6859	4	4	5	6	8
360	4646	6.0321	1	2	4	7	13
361	435	4.3931	1	1	2	5	11
362	29	1.6897	1	1	1	2	2
363	4096	5.5354	1	2	3	5	11

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
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DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
364	4199	3.4168	1	1	2	4	7
365	3456	12.3438	3	5	8	15	26
366	5418	10.5341	2	3	7	13	23
367	1451	4.3563	1	1	3	5	9
368	1484	7.8646	3	4	6	9	14
369	2964	4.7719	1	2	3	6	9
370	426	8.0399	4	4	6	7	14
371	630	4.8905	3	4	4	5	6
372	245	4.1102	2	2	3	4	8
373	1646	2.5395	1	2	2	3	4
374	261	2.9119	2	2	3	3	4
375	5	9.2000	2	2	7	11	24
376	85	4.2706	1	2	3	4	9
377	24	5.6667	1	2	3	7	10
378	116	4.5345	3	3	4	5	7
379	214	2.5187	1	1	2	3	5
380	74	2.3784	1	1	2	3	5
381	268	2.3022	1	1	1	3	5
382	75	1.8000	1	1	1	1	3
383	672	4.8676	1	2	3	6	9
384	105	3.5048	1	1	2	4	7
385	4	20.7500	1	1	9	10	63
386	1	10.0000	10	10	10	10	10
389	21	11.5714	2	3	11	23	27
390	26	7.0000	1	2	5	7	12
391	1	7.0000	7	7	7	7	7
392	2387	16.3850	6	8	12	21	32
393	3	36.6667	7	7	9	94	94
394	2246	10.3909	1	3	6	12	23
395	71535	6.5242	1	3	5	8	12
396	48	2.5417	1	1	2	3	5
397	10009	7.7171	2	3	6	9	15
398	11858	9.1407	3	4	7	11	17
399	2650	5.9581	1	2	4	7	11
400	7692	15.0538	3	6	11	18	32
401	6161	15.3624	3	6	11	20	32
402	3581	6.1307	1	2	4	8	13
403	23593	12.3231	2	5	9	16	26
404	7182	6.6750	1	3	5	8	14
406	3782	16.0814	4	7	12	21	32
407	1708	8.2927	2	4	7	10	15
408	10553	6.7028	1	2	4	7	15
409	8078	10.5738	2	4	6	14	23
410	131862	3.4709	1	2	3	4	6
411	512	3.5742	1	1	3	4	7
412	361	2.9474	1	1	2	3	6
413	10145	11.0910	2	4	8	14	24
414	3457	7.1776	1	2	5	9	15
415	23986	21.4332	5	9	15	26	43
416	104121	10.5672	2	5	8	13	20
417	35	7.0857	2	4	6	10	14

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
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DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
418	11070	8.5786	3	4	7	11	16
419	15334	7.7905	2	4	6	9	15
420	4509	5.9182	2	3	5	7	11
421	14102	5.6140	2	3	4	7	10
422	94	4.9362	2	3	4	7	9
423	6110	11.5496	3	5	8	14	23
424	3268	23.0223	3	8	15	27	46
425	15484	6.5024	2	3	4	8	13
426	9147	8.0494	2	3	6	10	17
427	2031	8.2230	2	3	6	10	16
428	1182	10.3020	1	3	5	13	22
429	29726	12.1557	3	4	7	13	22
430	58567	12.7416	3	5	9	16	26
431	393	9.0280	2	3	6	11	18
432	612	7.8971	1	2	4	9	19
433	4926	4.9941	1	2	3	6	12
434	15711	8.3911	2	3	6	10	17
435	12776	7.4209	2	3	5	8	18
436	4002	15.8873	3	7	15	25	29
437	8850	17.2060	4	9	17	25	30
439	1181	12.9289	1	3	7	15	30
440	7183	17.3774	2	6	11	22	39
441	956	4.5335	1	1	2	4	9
442	41690	9.8352	1	2	6	12	22
443	13841	6.5843	1	2	4	9	14
444	3685	7.1316	2	3	5	9	13
445	2625	5.0526	1	2	4	6	9
446	1	1.0000	1	1	1	1	1
447	2775	3.5910	1	1	3	4	7
448	1	2.0000	2	2	2	2	2
449	31343	6.3875	1	3	5	8	12
450	10549	3.9572	1	1	3	5	8
451	9	3.0000	1	1	3	4	5
452	22481	6.9097	1	3	5	8	14
453	9807	4.3387	1	2	3	5	9
454	4897	7.1807	1	2	5	8	15
455	1675	4.2018	1	2	3	5	8
456	229	13.0742	1	2	6	14	35
457	129	6.0155	1	1	1	8	17
458	1853	23.4236	5	10	18	30	47
459	985	15.5168	3	6	10	19	33
460	2252	9.4640	2	4	7	11	19
461	7964	5.2156	1	1	2	5	12
462	5980	18.7518	5	9	16	25	36
463	9413	7.1062	2	3	5	9	14
464	3525	4.5719	1	2	3	6	9
465	815	2.7868	1	1	2	3	5
466	4809	5.1909	1	1	2	5	10
467	4925	4.1086	1	1	2	4	8
468	66940	19.3719	3	8	14	24	38
471	4895	17.8403	9	11	15	21	29

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY88 MEDPAR UPDATE 12/88 GROUPER V7.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
472	237	33.4726	1	11	26	46	68
473	8034	16.5157	2	4	10	25	40
474	11644	47.6542	14	24	37	58	88
475	50081	13.9195	2	6	11	18	27
476	10811	18.3208	8	11	15	21	31
477	37552	10.9216	1	3	8	13	22

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TABLE 8.—STATEWIDE AVERAGE COST-TO CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS

(Case Weighted)

State	Urban	Rural
Alabama	.5349	.5805
Alaska	.6669	.8300
Arizona	.6131	.6493
Arkansas	.6345	.6179
California	.5984	.6148
Colorado	.6324	.6757
Connecticut	.7325	.8221
Delaware	.6140	.6292
District of Columbia	.6311	
Florida	.5546	.5476
Georgia	.6409	.6111
Hawaii	.6123	.7726
Idaho	.7300	.7165
Illinois	.6059	.6767
Indiana	.7178	.7375
Iowa	.6603	.7469
Kansas	.6448	.7729
Kentucky	.6395	.6070
Louisiana	.6020	.6263
Maine	.7219	.7083
Maryland	.6620	.6300
Massachusetts	.6881	.7601
Michigan	.6176	.7011
Minnesota	.7089	.7464
Mississippi	.6451	.6499
Missouri	.6068	.6494
Montana	.6790	.6965
Nebraska	.6300	.7245
Nevada	.5185	.7154
New Hampshire	.7290	.7470
New Jersey	.7238	
New Mexico	.6275	.6081
New York	.6491	.7500
North Carolina	.6884	.6255
North Dakota	.7153	.7351
Ohio	.6777	.6879
Oklahoma	.6343	.6482
Oregon	.6706	.7071
Pennsylvania	.5815	.6312
Puerto Rico	.5366	.6193
Rhode Island	.7646	
South Carolina	.5895	.5800
South Dakota	.6276	.6923
Tennessee	.5840	.6009
Texas	.6071	.6895
Utah	.7074	.6966
Vermont	.7690	.7130
Virginia	.6208	.6197
Washington	.7211	.7391
West Virginia	.6586	.5993
Wisconsin	.7775	.7710
Wyoming	.7473	.7842

Appendix A. Regulatory Impact Analysis

I. Introduction

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed rule that meets one of the E.O criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all hospitals as small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare an initial regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain rural counties adjacent to urban areas, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area or New England County Metropolitan Area, as modified for purposes of the prospective payment system in accordance with the provisions of 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21). Section 1886(d)(8)(B) of the Act, specifies that hospitals located in certain rural counties adjacent to one or more urban areas are deemed to be located in the adjacent urban area. We have identified 52 rural hospitals, some of which may be considered small, that we are classifying as urban hospitals.

It is clear that the changes proposed in this document would affect both a substantial number of small rural hospitals as well other classes of hospitals, and the effects on some would be significant. Therefore, the discussion below, in combination with the rest of this proposed rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis in accordance with E.O. 12291 and the RFA.

II. Objectives

We expect these proposed changes to further Congress original objectives in establishing the prospective payment system. The prospective payment rates create incentives similar to the incentives a hospital faces in pricing and marketing its services in a conventional market. By paying similar hospitals the same rate for similar services, we let hospitals know in advance the amount they will be paid per discharge. We give them both an opportunity to receive this payment, regardless of their specific cost experience, and a strong incentive to operate more efficiently, thus minimizing unnecessary costs. Unlike a cost limitation approach, which achieves savings largely by disallowing Medicare payment for costs that are not reasonable or that are in excess of a specific limit, the prospective payment system achieves savings by intensifying hospitals incentives to operate efficiently. Thus, our objectives include—

- Restructuring hospitals economic incentives;
- Basing payment on a system that identifies the product being purchased more accurately than cost reimbursement;
- Reinforcing the role of the Federal government as a prudent buyer of services; and
- Restraining the rate of hospital cost increases, thus moderating the outflow of expenditures from the Medicare trust fund while maintaining high quality care.

In addition, we share national goals of deficit reduction and restraints on government spending in general. We believe these proposals would further all of our goals while maintaining the financial viability of the hospital industry and ensuring access to high quality care for beneficiaries.

We also expect these proposed changes to further these objectives while avoiding or minimizing unintended adverse consequences and ensuring that the outcomes of this payment system are, in general, reasonable and equitable. Thus, the intent is to refine further the prospective payment system without undercutting our objectives.

III. Limitations of Our Analysis

From the outset of the prospective payment system, we have developed increasingly sophisticated models of how the prospective payment system works. Nevertheless, at present, we still have no adequate way to model, and therefore to quantify, many of the potential behavioral changes in response to the prospective payment system on the part of hospitals, hospital managers and employees, physicians, suppliers, or beneficiaries. Further, changes in the private sector, related to both the supply of, and demand for, health care services, interact with the behavioral incentives created by the Medicare payment system. We do not

have the capability to model such behavioral changes or interactions among the various parties participating in the market place.

We continue to study many aspects of the prospective payment system with the intent of obtaining more adequate data to better assess behavioral changes in response to the incentives of the payment system. Examples of these initiatives include various reports to Congress, as required by section 603 of Pub. L. 98–21, sections 9113 and 9114 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272), and section 9305 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509). These reports examine many issues, including the need for and the feasibility of developing severity of illness measures and the quality of postacute care. We are also required, under section 603(a)(2)(A) of Pub. L. 98–21, to study and report annually to the Congress on the impact of the prospective payment system.

In addition to these initiatives, we and others (such as the Prospective Payment Assessment Commission (ProPAC) and the Office of the Inspector General) have undertaken a variety of studies on the effects of the prospective payment system, such as examining the effects of the payment system on different classes of hospitals. In spite of these efforts, our ability to attribute causability to particular regulations is still limited. The complexity of the prospective payment system itself, along with numerous other rapidly occurring changes in the hospital environment, make it virtually impossible for us to isolate the effects of any one change in our policy, much less the effects of the entire prospective payment system on the health care industry.

Therefore, as has been the case in previously published regulatory impact analyses, the following quantitative analysis is limited to presenting the projected effects of proposed policy and rate changes on current and projected payment rates. In the analysis that follows, we examined the effects of both statutory and proposed policy changes on hospital payments by projecting estimated payments under each set of policy changes on to the current payment amounts. That is, we projected the effects of each policy change on payments while holding all other payment variables constant. Thus, we are not attempting to predict behavioral responses to our proposals, and we are not generally accounting for changes in such exogenous variables as admissions, lengths of stay, or case mix.

In view of the difficulty we have in quantifying impacts and attributing causality, we believe that the approach we are taking in the specific impact discussions below is the most feasible one. Wherever possible, we have included quantitative representations of proposed changes. As with previously published impact analyses, we are soliciting comments and information about the anticipated effects of these proposed changes on the prospective payment system.

IV. Hospitals Included In and Excluded From the Prospective Payment System

In general, hospitals began operating under the prospective payment system with the start of their cost reporting period beginning on or after October 1, 1983. Further, since September 1985, both Massachusetts and New York have terminated the waivers under which they were excluded from the Medicare prospective payment system, and hospitals in those States have entered that system. (Massachusetts hospitals came under the Medicare prospective payment system in October 1985, while New York hospitals began receiving Medicare prospective payments in January 1986.) Effective January 1, 1989, the 94 short-term, acute care hospitals located in New Jersey came under the prospective payment system. The demonstration project being conducted in the Rochester region of New York State has come to an end and the 10 hospitals in the region are now under the prospective payment system. As of March 1, 1989, about 5700 hospitals (86 percent of all Medicare-participating hospitals) were operating under the prospective payment system.

With the enactment of section 9304 of Pub. L. 99–509, which added section 1886(d)(9) to the Act, the 58 acute care hospitals located in Puerto Rico began receiving payments under the prospective payment system effective with discharges occurring on or after October 1, 1987. Also, effective with cost reporting periods that began on or after October 1, 1987, alcohol/drug hospitals and units that had been excluded from the prospective payment system under § 412.22(c) of the regulations began receiving Medicare prospective payments. Thus, only 59 short-term, acute care hospitals remain excluded from the prospective payment system under section 1814(b)(3) of the Act (in Maryland) or demonstration projects (in the Finger Lakes regions of New York State).

As of March 1, 1989, almost 900 Medicare hospitals were excluded from the prospective payment system and continue to be paid on the basis of reasonable cost reimbursement, subject to limits on the rate of their cost increases. These hospitals include psychiatric, rehabilitation, long-term care, and children's hospitals. Another 1,637 psychiatric and rehabilitation units in hospitals subject to the prospective payment system are excluded from the prospective payment system as of the same date. These units, too, are paid on the basis of reasonable cost reimbursement subject to limits on the rate of their cost increases.

More than 580 hospitals are being paid on various special bases under the prospective payment system, as required by statute. They include sole community hospitals, rural referral centers and cancer treatment and research hospitals that meet certain conditions. In addition, there are some 1500 hospitals that are receiving additional payments on the basis of being classified as disproportionate share hospitals and about 1130 hospitals receiving additional payments for the indirect cost of medical education. There are about 570 hospitals that qualify for additional payments under both categories.

V. Impact on Excluded Hospitals and Units

As noted in the previous section, almost 900 Medicare hospitals and 1,640 units in hospitals included in the prospective payment system currently are paid on a reasonable cost basis subject to the rate-of-increase ceiling requirement of § 413.40. For cost reporting periods beginning in FY 1990, these hospitals would have their individual target amounts increased by the hospital market basket percentage increase. We are projecting an increase in the hospital market basket of 5.8 percent.

The effect this would have on affected hospitals and units would vary depending on each hospital's or unit's existing relationship of costs per discharge to its target amount, and the relative gains in productivity (efficiency) the hospital or unit is able to achieve. For hospitals and units that incur per discharge costs lower than their target amounts, the primary impact would be on the level of incentive payments made under § 413.40(d). A hospital may receive incentive payments for incurring costs that are lower than its target amount, but may not receive payments for costs that exceed the target amount. We expect the increased ceiling on payments would maintain existing incentives for economy and efficiency experienced by excluded hospitals and units.

VI. Impact of the Proposed Changes on Sole Community Hospitals and Rural Referral Centers

A. Changes in the Qualifying Criteria for Sole Community Hospitals

In section IV.B. of the preamble to this proposed rule, we explained that under current regulations, a hospital may qualify as a sole community hospital (SCH) if it had been designated as an SCH prior to the beginning of the prospective payment system, or it meets one of the following criteria:

- It is located more than 50 miles from other like hospitals.
- It is located between 25 and 50 miles from other hospitals, and it—

—Serves at least 75 percent of inpatients in its market area;

—Is isolated by local topography or extreme weather conditions for one month of each year; or

—Has fewer than 50 beds and would qualify on the basis of market share except that some patients seek specialized care unavailable at the hospital.

- It is located between 15 and 25 miles from other hospitals and isolated by local topography or extreme weather for one month of each year.

As discussed in the preamble to this proposed rule, we are concerned about those rural hospitals that do not meet the present criteria for SCH designation, but are located in relatively isolated localities and provide a major portion of the health care services to the Medicare beneficiaries in the surrounding community (hospitals that are between 25 miles and 50 miles from the nearest similar hospital). By eliminating the market share criterion for hospitals located more than 35 miles from a similar hospital, we would help ensure that Medicare beneficiaries continue to have access to necessary health care services. As a result of the proposed change in qualifying criteria for SCHs, we estimate that approximately 110 more rural hospitals would qualify for SCH status. Whether or not the hospitals actually apply for SCH status will depend, in large part, on whether they will be advantaged by the special payment provisions for SCHs. In addition to the newly eligible SCHs, we would expect the proposed change to allow a hospital that gives up SCH status to reapply after 1 year to have an impact on the number of SCHs. We estimate that at least 25 hospitals have given up their SCH status. We anticipate that some of these hospitals would reapply for SCH status if the proposed rule becomes final. In addition, we expect some existing SCHs whose payment rates are less than the Federal rate may give up their SCH status in order to obtain the Federal rate since it would be easier under the proposed change for them to regain SCH status if their circumstances change. The following table shows the distributions by census division of the additional hospitals that would meet the new SCH qualifying criteria.

TABLE I—DISTRIBUTION OF NEWLY DESIGNATED SCHS BY CENSUS DIVISION UNDER PROPOSED CRITERIA

Census division	Number of new SCHs
New England	2
Middle Atlantic	0
South Atlantic	12
East North Central	5
East South Central	4
West North Central	26
West South Central	11
Mountain	38
Pacific	11

B. Retention of Rural Referral Center Status

As discussed in section IV.D.3. of the preamble to this proposed rule, we are proposing to reinstitute our policy on periodic review of the status of hospitals designated as rural referral centers. Under this policy, the HCFA Regional Offices would review every 3 years each referral center's data on medical staff, number of discharges, case-mix index and number of beds to determine whether a hospital that has been designated as a referral center for at least three full cost reporting periods has met the qualifying criteria in § 412.96 (b) or (c) for 2 out of the last 3 years or meets the criteria for designation in the current year. For those hospitals that qualified for rural referral center status using the revised bed criterion that was effective on April 1, 1988, the review of these hospitals would not begin until the completion of their third full cost reporting period that began on or after April 1, 1988. Based on the cost report information available to us, we estimate that about 75 percent of those hospitals now meeting the requirements for rural referral center status would retain their referral center status on the basis of the retention criteria. Some additional hospitals may retain their status as a result of qualifying for referral center status on the basis of their most recent cost reports.

To properly interpret and understand the significance of our estimate, two points should be noted. First, our judgment as to how many hospitals may lose their status as referral centers is based on the latest case-mix and cost report data available to us. Although the number of discharges and bed size do not usually change dramatically from one year to the next, some hospitals that may not meet the referral center retention criteria based on the data in our possession may meet the criteria based on later case-mix or cost report data. Hence, our estimate of the number of RRCs failing to meet the present qualifying criteria is predictive rather than determinative. Secondly, any hospital that does not retain its referral years center status as a result of the proposed review policy may reapply in subsequent years for referral center status if it believes that it again meets the qualifying criteria.

In total, we estimate the payments to those hospitals that no longer retain rural referral center status would have their payments reduced by $20 million during FY 1990. For an individual hospital, payments would be reduced by 11 percent effective with discharges occurring on or after the beginning of its FY 1990 cost reporting period over what its payment would have been if the hospital had retained rural referral center status. This reduction represents the difference between the proposed FY 1990 rate for rural hospitals and for other urban hospitals. (The payment difference would be reduced if Congress provides for a higher update for rural hospitals, as recommended by the Secretary (See Appendix C to this proposed rule).)

VII. Analysis of the Quantifiable Impact of Proposed Changes Affecting Rates and Payment Amounts

A. Basis and Methodology of Estimates

The data used in developing the following quantitative estimates of changes in payments presented in Table II, below, are taken from FY 1988 billing data and hospital-specific data for FY 1986 and FY 1987. As in previous analyses, we propose to compare the effects of changes being proposed in this document for FY 1990 to our estimate of the payment amounts in effect for FY 1989.

In addition, we have treated all hospitals in our data base as if they had the same cost reporting period; that is, a cost reporting period coinciding with the Federal fiscal year. Furthermore, our model does not take into account any prospective behavioral changes in response to these proposals.

The tables and the discussion that follow reflect our best effort to identify and quantify the effects of the changes being proposed in this document. It

should be noted, however, that as a result of gaps in our data, we are unable to quantify some of the effects of the proposed rule. Also, we could not utilize all the hospitals in the recalibration or outlier data sets for modeling the impact analysis because in some cases the hospital-specific data necessary for constructing our impact model were missing. Data on hospital bed size and type of control were the data elements most frequently missing. The absent data prevented us from properly classifying and displaying these hospitals in the impact analysis. The missing data, however, did not prevent us from using the discharges from these hospitals in recalibrating the DRG weights or calculating the proposed outlier payments that are included in the final column of Table II showing the combined effects of all proposed changes.

The following analysis examines the proposed changes to the DRG weights and wage index separately. That is, all variables except those associated with the provision under examination were held constant so as to display the effects of each provision compared to the baseline (FY 1989) provisions. In the last column (column 3), we present the combined effect of all changes being proposed in this rule. That is, column 3 displays the combined effects of the previous four columns as well as the FY 1990 update factor and the updating of the outlier payment thresholds. As such, this last column is the only one in which the effects of all the quantifiable payment policy changes on simulated FY 1990 payments are reflected.

Consistent with the display of the impact presented in Table II, the following discussion is divided into two parts. The first part (columns 1 and 2) describes the effects of two major changes being proposed in this document: the annual changes to the DRG classification system and recalibration of the DRG weights required under section 1886(d)(4)(C) of the Act (including the adjustment for increased case mix); and replacement of the current wage index based on an equal blend of 1982 and 1984 wage data with a wage index based on 1984 wage data. The final section discusses the combined effect of all provisions being proposed in this rule.

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TABLE II--IMPACT OF THE PROPOSED CHANGES IN THE PROSPECTIVE PAYMENT SYSTEM FOR FY 1990

	Number of Hospitals[1]	Reclassification and Recalibration[2] (1)	Wage Index Change[3] (2)	All Changes[4] (3)
All Hospitals	5,606	-1.3	-0.1	4.0
Urban by Region				
New England	182	-1.3	0.5	4.3
Middle Atlantic	376	-1.1	0.1	3.9
South Atlantic	444	-1.2	0.0	4.2
East North Central	540	-1.2	-0.7	3.5
East South Central	179	-1.2	0.0	4.2
West North Central	201	-1.1	0.1	4.5
West South Central	376	-1.2	-0.1	4.1
Mountain	123	-1.2	0.0	4.3
Pacific	515	-1.2	0.1	4.4
Puerto Rico	50	-1.6	0.0	3.9
Rural by Region				
New England	61	-1.6	0.5	4.5
Middle Atlantic	96	-1.5	-0.4	3.0
South Atlantic	344	-1.7	0.6	4.8
East North Central	332	-1.8	0.0	4.0
East South Central	311	-1.8	0.4	3.8
West North Central	588	-2.0	-0.1	3.7
West South Central	438	-2.0	-0.7	3.7
Mountain	270	-1.9	-0.7	3.4
Pacific	172	-1.8	-0.5	3.4
Puerto Rico	8	-1.9	-0.1	3.7
Large Urban Areas (population over 1 million)	1,480	-1.2	-0.2	3.9
Other Urban Areas (population of 1 million or fewer)	1,506	-1.2	0.1	4.2
Urban Hospitals	2,986	-1.2	-0.1	4.1
0-99 Beds	693	-1.8	0.0	3.6
100-199 Beds	778	-1.5	-0.1	3.8
200-299 Beds	579	-1.3	-0.1	4.0
300-399 Beds	610	-1.1	0.0	4.1
400 + Beds	271	-0.9	-0.1	4.2

Table II - continued

	Number of Hospitals[1]	Reclassification and Recalibration[2] (1)	Wage Index Change[3] (2)	All Changes[4] (3)
Rural Hospitals	2,620	-1.8	0.0	3.9
0-49 Beds	1,064	-2.2	-0.1	3.3
50-99 Beds	833	-2.0	-0.1	3.5
100-149 Beds	368	-1.8	0.0	4.0
150-199 Beds	150	-1.7	-0.2	3.6
200 + Beds	151	-1.4	0.2	4.6
Teaching Status				
Nonteaching	4,471	-1.5	0.0	4.0
Resident/Bed Ratio Less than 0.25	913	-1.1	-0.1	4.0
Resident/Bed Ratio 0.25 or Greater	221	-0.9	0.1	4.2
Disproportionate Share Hospitals (DSH)				
Non-DSH	4,111	-1.4	-0.1	4.1
Urban DSH 100 Beds or more	1,058	-1.1	-0.1	4.0
Urban DSH fewer than 100 Beds	132	-1.5	-0.3	3.5
Rural DSH	305	-1.8	-0.2	3.2
Urban Teaching and DSH				
Both Teaching and DSH	573	-1.0	0.0	4.1
Teaching only	480	-1.1	-0.1	4.1
DSH only	617	-1.4	-0.1	3.9
Nonteaching and Non-DSH	316	-1.4	0.0	4.0
Other Special Status (rural)				
Sole Community Hospitals (SCHs)	309	-1.9	-0.1	3.6
Rural Referral Centers (RRCs)	195	-1.5	0.1	5.6
Both SCH & RRC	23	-1.6	0.1	4.1

TABLE II - continued

	Number of Hospitals[1]	Reclassification and Recalibration[2] (1)	Wage Index Change[3] (2)	All Changes[4] (3)
Type of Ownership				
Voluntary	3,022	-1.2	-0.1	4.0
Proprietary	916	-1.4	0.1	4.2
Government	1,551	-1.4	0.0	4.0

1/ Because data necessary to classify some hospitals by category were missing, some hospitals were omitted from the analysis. Therefore, the total number of hospitals in each category may not equal the national total.

2/ Recalibration of the DRG weights and classification changes are based on FY 1988 MEDPAR data and are performed annually in accordance with section 1886(d)(4)(C) of the Act. This column reflects the -1.35 percent adjustment in the DRG weights for increased case mix.

3/ The proposed wage index constructed entirely from 1984 hourly wage data was compared to the current wage index which is based on a blend of 1982 and 1984 data. The proposed wage index also reflects changes required by section 1886(d)(8)(C) of the Act (which was added by section 8403(a) of Pub. L. 100-647). This provision requires the Secretary to compute a separate wage index value for an urban or rural area if the wage index value for that area was reduced as a result of deeming the hospitals in certain rural counties as urban in accordance with section 1886(d)(8)(B) of the Act.

4/ This column shows the combined effects of all the previous columns as well as the effects of updating the FY 1989 standardized payment amounts by the market basket increase as mandated by section 1886(b)(3)(B)(i) of the Act. Also, FY 1989 baseline payments reflect an estimate of outlier payments at 5.5 percent in contrast to the 5.1 percent set for the outlier pool. This estimate of payments from the outlier pool is exclusive of the approximately 1.0 percent additional outlier payments that result from the limitation of the day limitation on inpatient hospital services under Pub. L. 100-360. Because our total FY 1990 estimated payments do not perpetuate this 0.4 percent excess of outlier payments relative to the outlier pool, this column reflects the 0.4 percent reduction in total prospective payments necessary to ensure equality between projected outlier payments and the outlier offsets. In addition, this column captures certain interactive effects that we are not able to quantify.

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B. Proposed Changes to the DRG Classification System and Recalibration of the DRG Weights, and Changes to the Wage Index

In Column 1, we present the combined effects of revising the current DRG definitions and recalibrating the weights to reflect changes in practice patterns, modes of treatment, and new technologies as required each year by section 1886(d)(4)(C) of the Act. These changes are described in section II.C. of the preamble to this proposed rule. (The DRGs that have been recalibrated for this analysis also reflect, insofar as possible, the proposed changes to the DRG classification system set forth in section II.B. of the preamble of this proposed rule.) As part of recalibrating and normalizing the DRG weights, we are proposing to adjust all the DRG weights to correct for increases in the average case-mix index that have resulted from past GROUPER modifications. As explained in detail in section II.D. of the preamble to this proposed rule, we are proposing to reduce each DRG weight by 1.35 percent over what it would have been without this adjustment. Thus, in the following analysis, we compared estimated FY 1989 hospital payments using an estimate of each hospital's case-mix index based on the current DRG classifications and weighting factors to FY 1989 simulated payments using an estimate of each hospital's case-mix index based on the proposed DRG classifications and recalibrated weighting factors.

Nationally, the reduction we are proposing to make in the DRG weights to account for the 1.35 percent increase in the case-mix index is the only measurable effect on the reclassification and recalibration of the DRG weights. Since this adjustment would be made on a uniform basis to all DRG weights, it would result in the same percentage reduction across all classes of hospitals. However, within certain census divisions and among certain types of hospitals, DRG reclassification and recalibration appears to have a differential impact on hospital payments as a result of shifts in the relative weights among DRGs. In analyzing these shifts, we found that the DRGs with increased relative weights tended to be more expensive initially (higher weighted) than the DRGs with decreased relative weights. Since rural hospitals have a lower case mix, one result is that the average case weight for rural hospitals would decrease relative to the average case weight for urban hospitals. Consequently, reclassifying and recalibrating DRGs would have a disproportionate impact on rural hospitals. The average reduction in payments to rural hospitals would be about 1.8 percent compared to an average reduction of about 1.2 percent for urban hospitals when we hold other payment variables constant. Holding all other payments variables constant, rural hospitals with fewer than 50 beds would experience a reduction in payments of 2.2 percent. This is a reduction significantly greater than the 1.3 percent reduction accounted for by the proposed adjustment to the DRG weights. Holding all other payment variables constant, sole community hospitals and other rural hospitals would experience payment reductions of about 1.8 percent.

The fact that DRG reclassification and recalibration has the greatest impact on small rural hospitals and sole community hospitals may explain the larger than average reductions for rural hospitals in the West North Central, West South Central and Mountain census divisions. The majority of small hospitals and sole community hospitals are located in these areas.

Column 2 of Table II displays the estimated effects of changes to the wage index being proposed in this proposed rule. As discussed in section III of the preamble to this proposed rule, we are proposing to base the wage index required under section 1886(d)(3)(E) and 1886(d)(9)(B)(vi) of the Act entirely on 1984 gross hourly wage data rather than on an equal blend of an index based on 1982 gross hourly wage data and one based on 1984 data (as described in section III.B. of the preamble to this proposed rule). The proposed wage index values also reflect changes required by section 1886(d)(8)(C) of the Act (which was added by section 8403(a) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647). This provision requires the Secretary to compute a separate wage index value for an urban or rural area if the wage index value for that area was reduced as a result of deeming hospitals in certain rural counties as urban in accordance with section 1886(d)(8)(B) of the Act.

The proposed changes to the wage index would have no significant effect on overall payments. The effect on hospitals in different geographic areas varies from an average 0.6 increase in payments for hospitals in the rural areas of the South Atlantic census division to a 0.7 reduction in payments for hospitals located in the rural localities of the West South Central and Mountain census divisions and for the hospitals in the urban areas of the East North Central census division. Generally, the proposed wage index changes would have no effect on the overall distribution of payments to rural hospitals and cause only a slight reduction to urban hospitals. The proposed changes to the wage index would have no effect on rural hospitals with fewer than 50 beds.

C. Combined Effects

Column 3 of Table II shows the FY 1990 rates that incorporate the combined effects of all the proposed changes we are able to quantify. In addition to the changes described in columns 1 and 2, column 3 reflects the update factors mandated under section 1886(b)(3)(B)(i) of the Act.

Because Column 3 combines the proposed FY 1990 payment rates and all other proposed changes, the effects displayed also include the payment offset for outlier payments required under section 1886(d)(5)(A)(iv) of the Act. This provision requires that total outlier payments should not be less than five percent nor more than six percent of total prospective payments. In our analysis, similar to the analysis for FY 1989, we have set outlier thresholds and offset urban and rural rates for outliers so as to yield estimated outlier payments for FY 1990 equal to 5.1 percent of total DRG payments. In addition, section 1886(d)(9)(b)(iv) of the Act requires that the urban and rural rates be offset by the same percentage of total payments that are outlier payments for urban and rural hospitals, respectively. Based on the most recent discharge data available, however, we anticipate that total outlier payments for FY 1989 (exclusive of the impact of Pub. L. 100–360) will equal 5.5 percent of total prospective payments, instead of the 5.1 percent accounted for by the offsets to the current rates. Therefore, column 3 also reflects a reduction of 0.4 percent in payments compared to FY 1989 payments because the FY 1989 baseline payments are overstated by the 0.4 percent outlier payments in excess of the outlier offsets reflected in the FY 1989 standardized amounts. The 5.5 percent estimate of payments from the outlier pool is exclusive of the additional outlier payments that result from the elimination of the limitation on inpatient hospital services under section 101 of Pub. L. 100–360. Outlier payments resulting from the provisions of Pub. L. 100–360 are estimated at one percent of total DRG payments, resulting in an estimated 6.5 percent in total FY 1989 outlier payments. We estimate that the additional outlier payments resulting from the changes made by Pub. L. 100–360 would also be one percent in FY 1990 and would result in FY 1990 outlier

payments equal to 6.1 percent of total DRG payments.

Nationally, the effects of all changes we are proposing are expected to result in a 4.0 percent payment increase. Geographically, hospitals in rural areas of the South Atlantic census division would receive the largest percentage increase in prospective payments of 4.8 percent. However, hospitals in rural areas of the Middle Atlantic census division could expect only a 3.0 percent increase over FY 1989 payments.

Generally, urban hospitals would receive a payment increase averaging 4.1 percent (the national average) while the average increase for all rural hospitals would be 3.9 percent. Among rural hospitals, it appears that hospitals with over 200 beds would receive an increase in payments of 4.6 percent while hospitals with fewer than 50 beds would receive an increase of about 3.3 percent.

Among the different types of hospitals, rural referral centers would receive the largest increase in payments (5.6 percent) while disproportionate share hospitals located in rural areas would receive the smallest payment increase (3.2 percent). Sole community hospitals would receive an increase of about 3.6 percent. Type of ownership does not appear to be a factor influencing payment increases. Hospitals grouped by type of control (voluntary, proprietary and government) would receive payment increases at or near the national average percentage increase.

We must point out that there are interactions that result from the combining of the various separate provisions analyzed in the previous columns that we are unable to isolate. Thus, the values appearing in column 3 do not represent merely the additive effects of the previous columns plus the update factors.

Table III presents the projected FY 1990 average payments per case for urban and rural hospitals and for the different categories of hospitals shown in Table II, and compares them to the average estimated per case payments for FY 1989. As such, this table presents the combined effects of the proposed changes presented in Table II in terms of the average dollar amounts paid per discharge. That is, the percentage change in average payments from FY 1989 to FY 1990 equals the percentage changes shown in the last column of Table II.

TABLE III.—COMPARISON OF PAYMENT PER CASE

[FY 1990 Compared to FY 1989]

	Number of hospitals	Average FY 1989 payment per case (1)	Average FY 1990 payment per case (2)	Percentage change* (3)
All hospitals		$5,606	$4,578	$4,762	4.0
Urban by region				
New England	182	5,194	5,417	4.3
Middle Atlantic	376	5,646	5,864	3.9
South Atlantic	444	4,614	4,809	4.2
East North Central	540	4,963	5,135	3.5
East South Central	179	4,286	4,464	4.2
West North Central	201	5,077	5,305	4.5
West South Central	376	4,631	4,822	4.1
Mountain	123	4,976	5,189	4.3
Pacific	515	5,764	6,016	4.4
Puerto Rico	50	2,015	2,094	3.9
Rural by region				
New England	61	3,562	3,721	4.5
Middle Atlantic	96	3,328	3,427	3.0
South Atlantic	344	2,999	3,144	4.8
East North Central	332	3,015	3,135	4.0
East South Central	311	2,605	2,704	3.8
West North Central	588	2,814	2,917	3.7
West South Central	438	2,734	2,836	3.7
Mountain	270	3,118	3,222	3.4
Pacific	172	3,673	3,797	3.4
Puerto Rico	8	1,551	1,608	3.7
Large urban areas (populations over 1 million)	1,480	5,498	5,714	3.9
Other urban areas (populations with 1 million or fewer)	1,506	4,571	4,763	4.2
Urban hospitals	2,986	5,044	5,248	4.1
0–99 beds	693	3,868	4,008	3.6
100–199 beds	778	4,308	4,471	3.8
200–299 beds	579	4,701	4,888	4.0
300–399 beds	610	5,122	5,334	4.1
400+ beds	271	6,043	6,295	4.2
Rural hospitals	2,620	2,957	3,072	3.9
0–49 beds	1,064	2,506	2,590	3.3
50–99 beds	833	2,686	2,779	3.5
100–149 beds	368	2,905	3,021	4.0
150–199 beds	150	3,159	3,273	3.6
200+ beds	151	3,487	3,648	4.6
Teaching status				
Nonteaching	4,471	3,830	3,981	4.0
Resident/bed ratio less than 0.25	913	5,068	5,274	4.0
Resident/bed ratio .025 or greater	221	7,552	7,872	4.2
Disproportionate Share Hospitals (DSH)				
Non-DSH	4,111	4,160	4,329	4.1
Urban DSH 100 beds or more	1,058	5,560	5,784	4.0
Urban DSH fewer than 100 beds	132	4,296	4,445	3.5

TABLE III.—COMPARISON OF PAYMENT PER CASE—Continued

[FY 1990 Compared to FY 1989]

	Number of hospitals	Average FY 1989 payment per case (1)	Average FY 1990 payment per case (2)	Percentage change* (3)
Rural DSH	305	2,858	2,951	3.2
Urban teaching and DSH				
Both teaching and DSH	573	6,138	6,388	4.1
Teaching only	480	5,245	5,462	4.1
DSH only	617	4,527	4,703	3.9
Nonteaching and non-DSH	1,316	4,263	4,434	4.0
Other special status (rural)				
Sole Community Hospital (SCHs)	309	2,944	3,050	3.6
Rural Referral Center (RRCs)	195	3,563	3,761	5.6
Both SCH and RRC	23	3,614	3,764	4.1
Type of ownership				
Voluntary	3,022	4,752	4,943	4.0
Proprietary	916	4,096	4,267	4.2
Government	1,551	4,147	4,313	4.0

*Percentage changes shown in this column are taken from Table II, column 3. Because the dollar amounts shown in this table are rounded to the nearest dollar, percentage changes computed on the basis of these amounts will differ slightly from those displayed in this column.

Appendix B

February 28, 1989.

The Honorable Jim Wright, Speaker of the House of Representatives, Washington, DC 20515.

Dear Mr. Speaker: Section 1886(e)(3)(B) of the Social Security Act requires that the Secretary of Health and Human Services, not later than March 1, 1989, report to the Congress his initial estimate of the applicable percentage increase for FY 1990 that he will recommend for hospitals subject to the Medicare prospective payment system (PPS) and for excluded hospitals. This submission constitutes the required report.

President Reagan's final budget, submitted to you on January 9th, contained a proposal that all hospitals receive an update in their payments for FY 1990 of 3.2 percent, which is equal to the market basket rate of increase (projected in the budget at 4.7 percent) less 1.5 percentage points. Accordingly, this constitutes our initial estimate of the applicable percentage increase that we will eventually recommend. (We note that under the special Medicare rule of Gramm-Rudman-Hollings, the maximum sequester would imply an effective update of 2.7 percent in FY 1990.)

As President Bush indicated in his February 9 message, Medicare expenditures have more than doubled every seven years and, without further reform, expenditures will continue to soar at double-digit annual rates for the foreseeable future. Hence, it is the intent of the Administration that we act to modestly restrain the growth in Medicare payments to hospitals (and other providers).

In addition, President Bush's budget endorsed a proposal that had been included in the Reagan FY 1990 budget to reduce the indirect medical education payment adjustment. Teaching hospitals historically have had Medicare operating margins that have been appreciably higher than the national average. If the inequitable payment adjustment is not reduced, this would continue to be the case.

Our recommendation for the updates is contingent on current projections of relevant data, and comes before we have had the opportunity to evaluate fully the recommendations of the Prospective Payment Assessment Commission (ProPAC). We will make our final recommendation on the appropriate percentage increases for FY 1990 nearer the beginning of the new Federal fiscal year, based on our analysis of the latest estimates of all relevant factors, including ProPAC's recommendations.

Sincerely,

Don M. Newman,

Acting Secretary.

February 28, 1989.

The Honorable Dan Quayle,
President of the Senate,
Washington, DC 20510

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Sincerely,

Don M. Newman,

Acting Secretary.

Appendix C—Recommendation of Update Factors for Rates of Payment for Inpatient Hospital Services

I. Background

Several provisions of the Social Security Act (the Act) impose requirements concerning procedures for setting update factors for Medicare payment for inpatient hospital services furnished during FY 1990. The provisions apply to update factors for hospitals subject to the prospective payment system and for those excluded from the prospective payment system.

Section 1886(b)(3)(B)(i) of the Act, as amended by section 4002(a) of the Omnibus Reconciliation Act of 1987 (Pub. L. 100-203), sets the FY 1990 applicable percentage increases for prospective payment hospitals for FY

1990 as the market basket percentage increase for all hospitals in all areas.

Section 1886(b)(3)(B) of the Act also governs the target rate-of increase limits for hospitals excluded from the prospective payment system. Section 4002(e) of Pub. L. 100–203 amended section 1886(b)(3)(B)(ii) of the Act to provide that for FY 1990 the target rate-of-increase for hospitals excluded from the prospective payment system is the market basket percentage increase.

Therefore, in accordance with section 1886(d)(3)(A) of the Act, we are proposing to update the average standardized amounts and the target rate-of-increase limits for hospitals excluded from the prospective payment system as provided for in section 1886(b)(3)(B) of the Act, as set forth above.

Section 1886(e)(3)(A) of the Act requires that the Prospective Payment Assessment Commission (ProPAC) have recommended to the Secretary by March 1, 1989 an update factor that takes into account changes in the market basket index, hospital productivity, technological and scientific advances, the quality of health care provided in hospitals, and long-term cost effectiveness in the provision of inpatient hospital services.

In its March 1, 1989 report, ProPAC recommended that prospective payment update factors estimated to be 5.6 percent for hospitals located in rural areas, 5.0 percent for hospitals located in large urban areas, and 4.5 percent for hospitals located in other urban areas be approved. The components of these factors are described in detail in the ProPAC report, which is published as Appendix D to this document. We discuss ProPAC's recommendations concerning the update factors and our responses to those recommendations below.

Section 1886(e)(4) of the Act, as amended by section 4002(f) of Pub. L. 100–203, requires that the Secretary, taking into consideration the recommendations of ProPAC, recommend update factors for FY 1990 that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Under section 1886(e)(5) of the Act, we are required to publish the recommended FY 1990 update factors that are provided for under section 1886(e)(4) of the Act. Accordingly, the purpose of this Appendix is to provide our recommendations of appropriate update factors, our analysis of the derivation of the amount of the update factors, and our responses to the ProPAC recommendations concerning the update factors.

II. Secretary's Recommendations

Under section 1886(e)(4) of the Act, we are recommending that the prospective payment rates be increased, on average, by an amount equal to the market basket percentage increase minus 1.5 percentage points. Based on the currently forecasted hospital market basket increase of 5.8 percent, the recommended update would be 4.3 percent on average.

We believe, however, that differential updates for hospitals in rural, large urban, and other urban areas would be more appropriate than a uniform update to the payment amounts. Therefore, we strongly recommend a higher update for hospitals located in rural areas. We also recommend that hospitals located in large urban areas receive a higher update than hospitals located in other urban areas.

In addition, we recommend a higher update to the target rate-of-increase limits for hospitals excluded from the prospective payment system than the average update of the market basket increase minus 1.5 percentage points.

In recommending these increases, we have taken into account the requirement in section 1886(e)(4) of the Act that the amounts be high enough to ensure the efficient and effective delivery of medically appropriate and necessary care of high quality. In addition, as required by section 1886(e)(4) of the Act, we have taken into consideration the recommendations of ProPAC. Our responses to the ProPAC recommendations concerning the update factor are discussed below.

III. ProPAC Recommendations for Updating Prospective Payment System Payments and our Response

For FY 1990, ProPAC recommends that the standardized amounts be updated by the following factors:

- A reduction of 0.8 percent applied to urban hospitals to reflect first-year prospective payment cost information. ProPAC recommends that no reduction be applied to rural hospitals.
- The projected increase in the hospital market basket (which was estimated to be 5.7 percent at the time ProPAC's report was printed). The market basket used by ProPAC reflects changes in the use of wage and salary data recommended by ProPAC.
- A positive adjustment of 0.6 percent to correct errors in the FY 1989 market forecast.
- A discretionary adjustment factor of 0.0 percent composed of an allowance for scientific and technological advancement and productivity improvement.
- An adjustment for case-mix change that incorporates real case-mix change within and between DRGs and case-mix change resulting from coding improvements. An adjustment of −0.7 percent is recommended.

Overall, the average net increase employing the above factors is 4.9 percent. ProPAC recommends a differential update for large urban, other urban, and rural hospitals, with large urban hospitals receiving a 5.0 percent update, other urban hospitals receiving a 4.5 percent update, and rural hospitals receiving a 5.6 percent update, based on ProPAC's current market basket forecast.

For hospitals and units excluded from the prospective payment system, ProPAC recommends an update factor reflecting the increases in the market baskets for children's hospitals and units and for psychiatric, rehabilitation, and long-term hospitals and units. Based on ProPAC's market basket forecasts, ProPAC recommends a 6.3 percent update in the limits for psychiatric, rehabilitation, and long-term hospitals and units.

Response: We are recommending an update that is consistent with the Administration s budget proposal that, on average, all hospitals receive an update in their payments for FY 1990 equal to the market basket percentage increase minus 1.5 percentage points. To date, our analyses indicate that, while hospitals nationally continued to have positive Medicare operating margins on average in the fourth year of the prospective payment system, these levels have fallen from the high operating margins experienced in the first 2 years of the prospective payment system. For this reason, we believe a prospective payment system update somewhat higher than the updates in past years is generally appropriate in order to ensure the availability of high quality care to Medicare beneficiaries. However, we believe that an average update factor lower than the market basket rate of increase is needed to continue to encourage hospitals to better control their costs.

Although we are recommending an update that averages the market basket percentage increase minus 1.5 percentage points for all prospective payment system hospitals, we recommend differentiation of the update according to the geographic classification of the hospital. We strongly recommend a higher update for hospitals located in rural areas. We also recommend that hospitals located in

large urban areas (that is, those with a population exceeding 1,000,000) receive a higher update than hospitals located in other urban areas.

We are recommending differential updates based on geographic classification of hospitals as a result of our research on hospital Medicare operating margins and our analysis of the impact the proposed FY 1990 rates (based on a uniform update) will have on hospitals. While overall margins in FY 1987, the latest period for which we have complete data, were 5.3 percent, we found a disparity between urban and rural margins. Urban hospitals had FY 1987 inpatient Medicare operating margins of 6.3 percent. Rural hospital operating margins were −0.2 percent. Further, rural hospitals under 50 beds, which constitute 40 percent of rural hospitals, experienced, on average, operating margins of −2.9 percent. Because of our concerns with respect to the financial viability of rural hospitals, we believe that a higher update is appropriate. For hospitals in large urban areas, our data suggest that inpatient operating margins are declining as compared to the operating margins of hospitals in other urban areas, although such margins remain positive. For FY 1987, our data indicate that hospitals in large urban areas experienced margins of 5.8 percent as compared to 6.8 percent for hospitals in other urban areas. In view of the differences between costs per case and payments per case and the lower average Medicare operating margins in large urban areas, we agree with ProPAC that hospitals in large urban areas should receive a higher update than hospitals in other urban areas.

The proposed FY 1990 rates are based on a uniform update equal to the percentage increase in the market basket, currently estimated at 5.8 percent. However, because of changes to the DRG weights (including the uniform 1.35 percent reduction to account for case mix increases) and the wage index, as well as a reduction in outlier payments over current estimated FY 1989 levels, the proposed FY 1990 rates would have a differential impact on hospitals according to geographic location. The net effect of all changes would be to increase payments to rural hospitals by 3.9 percent, to large urban hospitals by 3.9 percent, and to other urban hospitals by 4.2 percent. The net effect of all changes in the proposed rule, including the current law update, is a differential impact that is the opposite of the impact that would be appropriate based on the analysis of Medicare operating margins. Implementation of a higher update for rural hospitals and for large urban hospitals would reverse this effect.

With respect to the ProPAC recommendation regarding the labor inputs used to construct the hospital market basket, we intend to examine the hospital market basket inputs as part of our next periodic rebasing of the hospital market basket.

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APPENDIX D

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

REPORT AND RECOMMENDATIONS TO THE SECRETARY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

MARCH 1, 1989

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Jeannette A. Younes

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION
300 7th Street, S.W. Washington, D.C. 20024 (202) 453-3986

Stuart H. Altman, Ph.D.
Chairman

Donald A. Young, M.D.
Executive Director

March 1, 1989

The Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Mr. Secretary:

I am pleased to transmit to you the annual report of the Prospective Payment Assessment Commission as required by Section 1886 (e)(4) of the Social Security Act as amended by Public Law 98-21. This report contains 17 recommendations updating the Medicare prospective payments and modifying the diagnosis-related group classification and weighting factors.

Sincerely,

Stuart H. Altman, Ph.D.
Chairman

Enclosure

TABLE OF CONTENTS

Executive Summary

In this fifth annual report, the Prospective Payment Assessment Commission (ProPAC) presents 17 recommendations to the Secretary of the Department of Health and Human Services (HHS) on ways to update and improve the Medicare prospective payment system (PPS) for fiscal year 1990. The recommendations reflect the collective judgment of ProPAC's Commissioners about issues of substantial importance to beneficiaries, hospitals, and the Medicare program.

The Commission offers these recommendations to comply with its statutory mandate and to contribute to an informed and open debate about hospital payment policy under PPS. The recommendations were produced through a process of agenda setting, information collection, analysis, and deliberation that has continued since the publication of the Commission's report to the Secretary in March 1988. The proposed changes are necessary, in the Commission's view, to maintain access to high-quality health care, to encourage hospital productivity and cost-effectiveness, and to permit the adoption of innovative and appropriate technological change. The following major areas are addressed in this year's recommendations.

Updating PPS Payments–The Commission recommends an average increase in the level of PPS prices of 4.9 percent for fiscal year 1990. This would provide an increase of 5.0 percent for hospitals in large urban areas, 4.5 percent for hospitals in other urban areas, and 5.6 percent for rural hospitals.

The update factor recommendations combine several components. The largest is the PPS market basket, which is used to estimate inflation in the prices of goods and services purchased by hospitals. At the time the Commission developed its recommendation, the market basket was forecast to increase 5.7 percent in fiscal year 1990. The Commission also recommends a positive adjustment, currently estimated at 0.6 percent, to correct for errors in the fiscal year 1989 market basket forecast. It is the Commission's opinion that any increases in hospital spending associated with scientific and technological advancement should be offset by increases in hospital productivity. Therefore, the Commission recommends a net 0.0 percent adjustment for these factors.

A net -0.7 adjustment for case-mix change is recommended. This adjustment is to offset the estimated added revenues that hospitals will receive during fiscal year 1989 because of an increase in their DRG case-mix indexes (CMI), which is not related to treating sicker patients. The Commission has noted in past reports that case-mix index change has been a more important source of PPS revenue increases over time than formal annual updates in payment rates.

The Commission's recommendation also includes a -0.8 percent reduction to the standardized amounts for urban hospitals. This is the final portion of a three-year phased lowering of rates previously recommended by the Commission. It accounts in part for the difference between actual first-year PPS costs and the payment rates for that year. No reduction is applied to the rural standardized amounts because the reduction originally recommended for rural hospitals has already been incorporated into the payment rates.

Finally, the Commission recommends a higher update for urban hospitals in Metropolitan Statistical Areas (MSAs) with more than 1 million people. Technical changes are also recommended to the structure of the market basket. These technical changes give more weight to hospital industry wages than the market basket forecast currently in effect.

Adjustments to the PPS Payment Formula–The Commission proposes an adjustment to the PPS payments for indirect medical education. The Commission recommends lowering the indirect medical education adjustment from 7.7 percent to 6.6 percent and returning the savings to the standardized amounts for all hospitals. In making this recommendation, the Commission balances two factors: a recognition that current analysis has shown that a decrease in the adjustment is warranted, and

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a serious concern for the financial impact of a major reduction on teaching hospitals. The Commission also recommends further review and study of outlier payment policy.

Data Collection and Measurement–The Commission urges that timely and accurate data form the basis for PPS payment, and recommends several changes that reflect this priority. The Commission reiterates its belief that the Medicare Cost Report (MCR) is a vital source of information, and urges the Secretary to initiate developmental work that will facilitate further use of the MCR as a source of data for decision-making purposes. ProPAC proposes continued evaluation of improvements in diagnosis-related group (DRG) case-mix measurement that the Secretary has under way. Finally, change is recommended in the DRG assignment of patients with Guillain-Barre syndrome.

Quality of Care–The Commission is concerned about the impact of PPS and the Peer Review Organization (PRO) program on quality of care. ProPAC urges the Secretary to undertake a comprehensive synthesis, analysis, and evaluation of the findings from PRO review activities. The Commission is particularly concerned about the adequacy of the PRO generic quality screens.

Rural Hospitals–The Commission continues to be concerned about the impact of PPS on rural hospitals, especially the adequacy of payments to small, isolated rural hospitals. The Commission also recognizes that the Medicare prospective payment system cannot solve all the financial problems of rural hospitals. ProPAC therefore recommends that the Secretary continue a comprehensive research and policy agenda to address broadly financing and organizational issues concerning rural health care.

Ambulatory Surgery Payment–In response to congressional mandates, ProPAC provides its views on a prospective payment system for hospital outpatient surgical procedures, previewing a full report to Congress in April 1989. The Commission recommends an entirely prospective payment for the facility component of hospital outpatient surgery. This payment should result from a blend of current costs and rates and be updated annually following the approach used under PPS. The Commission also recommends that the methodology used for calculating the Part B beneficiary coinsurance amount for hospital ambulatory surgery be restructured. This would assure that coinsurance is 20 percent of the payment amount described above.

PPS AFTER FIVE YEARS

The report summarizes the first five years of PPS. In the Commission's view, the program has met many of its goals. ProPAC has not found evidence of substantial or systematic changes in the quality of care received by Medicare hospitalized patients since the implementation of PPS. Nor has the Commission found evidence of a major reduction in the diffusion of new technology.

An increasing number of hospitals are closing. In many cases these may be hospitals that are underutilized or have longstanding financial problems. The impact of closures on access to services requires examination.

These and other vital areas need much more research. ProPAC cautions that the system requires refinement, review, monitoring, and assessment. In addition to continuing to improve the system, ProPAC suggests reexamination of original goals and policies as part of the future PPS agenda.

REPORT ORGANIZATION

Chapter 1 discusses the status and evolution of PPS during its first five years. The 1983 goals and expectations for the system are described, along with functioning and changes in the system through 1988. Current issues and future concerns are also addressed.

Chapter 2 presents ProPAC's 17 recommendations for improving PPS. These recommendations fall into six broad areas for fiscal year 1990:

- Updating PPS payments,
- Adjustments to the PPS payment formula,
- Data collection and measurement,
- Quality of care,
- Rural hospitals, and
- Ambulatory surgery payment.

The Appendixes to the report include important technical and supporting material and information about ProPAC Commissioners and operations.

RECOMMENDATIONS FOR FISCAL YEAR 1990

Updating PPS Payments

Recommendation 1: Amount of the Update Factor for PPS Hospitals

For fiscal year 1990, the standardized amounts should be updated by the following factors:

- The projected increase in the modified PPS market basket as recommended by ProPAC, currently estimated at 5.7 percent;
- A positive adjustment, currently estimated at 0.6 percent, to correct for errors in the fiscal year 1989 market basket forecast;
- A discretionary adjustment factor of 0.0 percentage points;
- A net -0.7 percent adjustment for case-mix change;
- A -0.8 percent adjustment for urban hospitals to reflect first-year PPS cost information; and
- A differential update for urban hospitals in MSAs with more than 1 million people, accomplished by a +0.2 percent adjustment for these hospitals and a -0.3 percent adjustment for other urban hospitals.

This recommendation reflects the Commission's judgment about the appropriate increase in the level of PPS prices for fiscal year 1990. It assumes that the Commission's other concerns regarding the payment formula and the DRG weighting factors are also addressed in the fiscal year 1990 payment rates.

Recommendation 2: Market Basket Structure

The Commission believes the hospital industry wage portion of the market basket should be increased to better reflect changes in hospital and other labor markets. The wage and benefit component of the market basket should be measured using 50 percent Employment Cost Index compensation series for hospital workers and 50 percent non-hospital ECI compensation series reflecting the types of employees hospitals hire. The Commission also encourages the development of an ECI compensation series specific to hospital professional and technical workers.

Recommendation 3: Discretionary Adjustment Factor

For fiscal year 1990, the net allowance for scientific and technological advancement and productivity improvement in the discretionary adjustment factor should be zero.

Recommendation 4: Adjustments for Case-Mix Change

For fiscal year 1990, the PPS standardized amounts should be reduced by 0.7 percent to account for increased payments from case-mix index change. This adjustment reflects:

- A 3.0 percent reduction for the estimated case-mix index change during fiscal year 1989,
- A positive allowance of 1.5 percent for real across-DRG case-mix index change during fiscal year 1989, and
- A positive allowance of 0.8 percent for within-DRG case-complexity change during fiscal year 1989.

The Commission urges the Secretary to continue research that will help measure the components of case-mix change in light of its importance for hospital payments.

Recommendation 5: Adjustment to the Level of the Urban Standardized Amounts

The update factor for fiscal year 1990 should include an adjustment to lower the urban standardized amounts by 0.8 percent. No reduction should be applied to the rural standardized amount. The reduction is the final portion of a three-year phased adjustment previously recommended by the Commission. It reflects the Commission's judgment of how information on average Medicare costs per

case from the first year of PPS should be incorporated into the update factor.

Recommendation 6: Additional Update for Hospitals in Large Urban Areas

For fiscal year 1990, urban hospitals in Metropolitan Statistical Areas with more than 1 million people should receive an update 0.5 percent higher than hospitals in other MSAs. This should be accomplished by a 0.2 percent increase to the standardized amount for large urban areas combined with a 0.3 percent reduction to the other urban standardized amount.

The higher costs of hospitals located in large urban areas are not fully recognized by current PPS payment policy. Because a differential update factor is an imprecise method of adjustment, more research should be undertaken to further the understanding of the sources of higher costs in these areas. Simultaneously, a broad review of PPS payment equity should be undertaken, including consideration of overlap among current payment adjustments.

Recommendation 7: Update Factor for Excluded Hospitals and Distinct-Part Units

For fiscal year 1990, the target rate of increase for excluded hospitals and distinct-part units should be determined separate from the PPS update factor. The rehabilitation, psychiatric, and long-term facilities' target rate of increase should reflect the projected increase in the hospital market basket for these hospitals corrected for fiscal year 1989 forecast error. The target rate of increase for children's hospitals should reflect the projected rate of increase in the PPS hospital market basket corrected for forecast error.

Adjustments to the PPS Payment Formula

Recommendation 8: Indirect Medical Education Adjustment

The Commission recommends that the Secretary seek legislation to reduce the indirect medical education adjustment from its current level of 7.7 percent to 6.6 percent for fiscal year 1990. This reduction should be implemented in a budget neutral fashion, with the savings returned to all hospitals through corresponding increases in the standardized amounts.

Recommendation 9: Outlier Payment Policy

The Commission believes that the modifications in the outlier payment methodology that were implemented during fiscal year 1989 represent an improvement in the payment system. The Secretary should continue to examine methods for improving the effectiveness of outlier payment in accomplishing its two major objectives: protecting hospitals from the risk of extraordinarily costly cases, and protecting types of patients who are more likely to be extraordinarily costly from a potential decrease in access to inpatient hospital services. This examination should include a review of the fundamental structure of outlier payment policy.

Data Collection and Measurement

Recommendation 10: Updating the Area Wage Index

The Commission strongly urges the Secretary to collect more current data on hospital wages and hours of employment, and to use these data to update the wage index for fiscal year 1990. The Secretary also should develop a permanent mechanism for obtaining accurate hospital wage data annually. In addition, the Commission urges the Secretary to update the wage index at least every other year.

Recommendation 11: Improving the Cost Data Used for Decision Making

The Secretary should initiate the developmental work necessary to secure the future role of the Medicare Cost Report as a vital information source for policy evaluation and decision making. Although the cost report was originally developed and continues to be used as a reimbursement tool, it is also increasingly used as a source of data. This trend will continue and should be encouraged. Efforts to improve the Medicare Cost Report should attempt to minimize the administrative burden on hospitals, fiscal intermediaries, and the Federal government.

Recommendation 12: Improvements in Case-Mix Measurement

The Commission urges the Secretary to begin immediately to thoroughly evaluate the potential consequences of adopting DRG refinements recently developed at Yale University. Preliminary results from this project appear to be positive. Much work remains to be done, however, to understand all the implications of applying these refinements to PPS. The Commission will be pleased to cooperate fully with the Secretary to further this effort.

Recommendation 13: Reassignment of Patients with Guillain-Barre Syndrome

The Secretary should reassign patients with Guillain-Barre syndrome from DRGs 18 and 19 to DRG 20, DRG 34, or a new DRG.

Quality of Care

Recommendation 14: Evaluation of PRO Review of Quality of Care

The Secretary should evaluate the impact of the Peer Review Organizations on quality of care. Intensified analysis of the PRO findings and validation of the PRO quality review process should be included in the evaluation. The validity, reliability, and efficiency of the PRO quality screens should receive special emphasis in the evaluation. In addition, the Secretary should continue to develop, test, and implement more sophisticated methods of inpatient and outpatient quality review. He should also develop additional mechanisms to identify and evaluate quality of care beyond the immediate period of hospitalization, placing more emphasis on outcomes of care.

Rural Hospitals

Recommendation 15: Rural Hospitals

The Commission is concerned about the problems affecting rural hospitals and the rural health care system, as well as the implications of these problems for access to needed health care. The Commission recognizes that these problems extend beyond PPS and Medicare. The Commission urges the Secretary to continue the Department's rural health care research and policy agenda. Meanwhile, the Commission will continue its analysis of the effects of PPS on rural hospitals.

Ambulatory Surgery Payment

Recommendation 16: Medicare Payment for Hospital Outpatient Surgery

Beginning in fiscal year 1990, Medicare payment for the facility component of hospital outpatient surgery, including capital, should be entirely prospective. Separate rates should be established for each of the six groups of surgical procedures proposed for payment of services furnished in freestanding ambulatory surgery centers (ASCs). The hospital outpatient surgery rates for fiscal year 1990 should be based on a blend of hospital-specific costs, average hospital costs, and the rate paid to ASCs.

The rates should be updated annually following the approach used under PPS. The overall level of the prospective rates should be set so that the sum of Medicare and beneficiary payments to hospitals would be the same in fiscal year 1990 as they would have been under current policy. Payments should reflect differences in area wages.

These changes in hospital outpatient surgery payment policy should apply to the list of ASC-approved procedures only; the existing Medicare payment provisions should continue for non-list procedures. The Commission is not recommending differential treatment of eye and ear specialty hospitals.

Recommendation 17: Beneficiary Liability for Hospital Outpatient Surgery

The Secretary should modify the method to determine Part B coinsurance for certain ambulatory surgery services performed in hospital outpatient departments. Currently, beneficiary coinsurance is based on hospital submitted charges. Beneficiary coinsurance should be limited to 20 percent of the payment amount allowed by Medicare. The Medicare program should bear the costs of this change.

Chapter 1

The Prospective Payment System: 1983-1989

In 1983 Congress enacted a major reform in Medicare payment policy: the prospective payment system (PPS). The system, which altered payment of inpatient hospital services for Medicare beneficiaries, offered new opportunities and challenges to the government and to providers of health care services.

Concerned about the need to continually monitor and update the new system, Congress established the Prospective Payment Assessment Commission (ProPAC) as an independent panel. ProPAC provides the executive and legislative branches of the government with analysis and advice on PPS issues. This is ProPAC's fifth annual report to the Secretary of Health and Human Services with recommendations for updating and modifying PPS. This report expresses the collective views of the Commission, although in some cases individual Commissioners hold alternative opinions.

At this point, in the sixth year of PPS, it is appropriate to review how the system evolved and its current status. This chapter looks at the original goals and design, as well as how PPS has changed and functions today. In addition, current issues and future concerns are addressed. Throughout this chapter, the Commission comments on its assessment of the program. In a June report to the Congress, *Medicare Prospective Payment and the American Health Care System*, the Commission each year reports more fully on its judgments about the impact of PPS on the entire health care system.

ProPAC hopes this review will be useful to policy makers and others interested in the ongoing evolution of PPS. The Commission believes that the program has met many of its important goals. The system that replaced more than 16 years of cost-based reimbursement–termed revolutionary only five years ago–is now an established part of the U.S. health financing structure.

1983 GOALS AND EXPECTATIONS

The post-World War II period saw high rates of growth in health care spending. After the 1965 enactment of Medicare, the nation experienced unprecedented increases in health care spending, much of it for inpatient hospital care. Thus, for many years, successive Congresses and Administrations sought ways to control the rate of increase in hospital costs. As early as 1967, the Congress encouraged experimentation with alternatives to cost-based hospital payment, including prospective pricing. In December 1982, a system of prospective payment for Medicare beneficiaries' hospital services was proposed by the Administration.

In outlining the proposal, the Administration emphasized several goals. These were that the system should:

- Maintain beneficiary access to quality care, with no additional billings to beneficiaries;
- Be easy to understand and simple to administer;
- Be capable of quick implementation;
- Help hospitals gain predictability in their Medicare revenues;
- Establish the Federal government as a prudent buyer of services;

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- Provide incentives for efficiency, flexibility, innovation, planning, and control;
- Maintain the level of expenditures that would have been incurred if the then-current system were retained; and
- Reduce cost reporting burdens on hospitals.

Within six months, Congress enacted this major reform of Medicare hospital payment. The Administration's goals were often cited during congressional debate. While both houses of Congress made changes to the original proposal, neither altered the fundamental design of the system. The essence of the proposal was maintained in the final legislation, Pub. L. 98-21, which was enacted in April 1983 for implementation on October 1, 1983. This was a system of prospectively set prices, to be updated annually, with certain adjustments to meet policy goals and for conditions beyond the control of individual hospitals.

SYSTEM DESIGN

The prospective payment system required setting predetermined payment amounts for each patient discharge through the use of diagnosis-related groups (DRGs). The original DRGs, developed and refined by Yale University and tested in New Jersey, measure the output of a hospital by categorizing patients.

In the modified DRGs used for PPS, patients are classified into 23 Major Diagnostic Categories (MDCs), which are based on the human body systems. The 23 MDCs are further divided by other factors to ensure clinical and resource homogeneity within groups. Among these factors are diagnostic or surgical procedure, other clinical information, and patient characteristics. This results in nearly 500 individual DRGs.

Each DRG was initially assigned a weight, indicating the relative amount of resources used to treat a patient assigned to the DRG. The DRG weights were constructed so that they would average to 1.0 across hospitals. The initial weights were based on 1981 costs.

The payment to a hospital is determined by multiplying the DRG weight by the standardized amount. Standardized amounts were computed originally by determining the average per-case amount Medicare would have paid for hospital care in the absence of the new system, and then adjusting this amount for a variety of factors related to other policies that were to be taken into account.

Standardized amounts have been updated through regulatory and legislative actions for each subsequent fiscal year. Several factors affect the final payment amount, but the prospective payment for each discharge can be generally described by the following formula:

Standardized Amount × DRG Weight = Payment Per Discharge

As noted, this cornerstone of the system was supplemented by a series of adjustments for conditions determined to be beyond the control of individual hospitals or requiring special consideration. The adjustments originally suggested by the Administration were modified and augmented during legislative debate. Adjustments enacted in 1983 covered wage rates, location in rural or urban area, and teaching status. An outlier adjustment was fashioned for payment of cases with unusually costly or lengthy hospitalization. Other adjustments have since been added. The most important is the additional payment to hospitals that serve a high proportion of low-income patients.

In addition, Congress provided for a transition so that national standardized amounts would be phased in over a four-year period. Subsequently the transition was extended to five years. During the first year, payments were based on a hospital's own historical costs and regional average rural and urban standardized amounts. By the end of the transition, payments for most hospitals were based entirely on national average rural and urban standardized amounts.

Pending future analysis and policy development, Congress excluded several types of hospital costs from the new payment system. For example, payments for the direct costs of medical education and for capital costs continue to be based on cost reimbursement. Specialized hospitals and units, such as psychiatric, long-term, children's, and rehabilitation, were also excluded from the new system.

Authority mandating the Prospective Payment Assessment Commission was added to the PPS law during the legislative debate. The Commission was structured as an independent agency, with 15 (now 17) members appointed by the congressional Office of Technology Assessment. Commissioners with expertise in health care delivery, financing, and research were to provide advice on the functioning of the new hospital payment system through reports and recommendations to the Secretary of Health and Human Services and to the Congress.

FUNCTIONING AND CHANGES IN THE SYSTEM

During the first five years of PPS, the Federal health policy environment has become increasingly tense, primarily due to the growing Federal deficit and evolving policies designed to reduce and eventually eliminate that deficit. Budget considerations increasingly drive decision making, and executive and legislative branch roles have changed since PPS was enacted. Whereas the role of the Congress has become more directive, the role of the Secretary has diminished, especially in the area of updating payment rates.

Originally established as an adviser to both the Secretary and the Congress, ProPAC has steadily become more involved in advising Congress through the development and presentation of analytic studies. The Commission has maintained its independence by stressing an analytic approach in its advice and decision-making roles, leaving the larger balancing decisions related to overall budget priorities to the Administration and the Congress.

Against this backdrop of ever-growing concern about reducing rates of increase in all health care spending, PPS has been implemented and continues to evolve. Although per-admission costs are still rising rapidly, total inpatient hospital spending increases have moderated due to decreased admissions. Nevertheless, pressures for savings persist. Despite the lower rate of increase, Part A inpatient hospital spending still represents the largest single component in the Medicare program, nearly 60 percent of total expenditures. The projected increases in Medicare spending and the need for savings lead budget analysts and policy makers at all levels to constantly return to review of the Medicare hospital payment system. Nearly every piece of legislation related to health financing passed since 1983 has modified the original PPS statute, often for the purpose of realizing program savings.

In this section the Commission describes the functioning of the system since 1984 and reviews the major changes that have been enacted to address evolving problems. The Commission's judgments on many of these matters are stated.

Updating PPS

The 1983 statute calls for updating payment rates each year through changes in the standardized amounts. The authority to set the update factor, the annual change in the standardized amounts, initially resided with the Secretary. However, since 1986 the Congress has legislated the amount of the update factor.

Furthermore, the original statute called for the Secretary to propose and implement an annual update factor through the regulatory process. The Secretary's decision was to reflect the recommendations of ProPAC. The ProPAC recommendation, in turn, was to account for changes in the need to maintain quality and promote efficiency in hospital services. Several factors in the statute were identified for consideration, including the costs of goods and services that hospitals purchase (the market basket), hospital productivity, technological and scientific advances, quality of health care, and cost-effectiveness of inpatient hospital care.

The Commission has continued to make its annual recommendations to the Secretary. In practice, however, the Congress uses ProPAC's analysis and advice, along with similar advice from the Secretary, and sets the update by law.

ProPAC and other decision makers have followed the statute's lead in dividing the update factor into two major components. The first is the market basket, which measures inflation in the prices of goods and services purchased by the hospital. The second considers all other factors judged relevant to updating payments. Overall consideration of factors related to quality and access to care has played a significant role in Commission decision making. ProPAC has also carefully reviewed other

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sources of per-case payment increases in making update recommendations.

Market Basket

The hospital market basket is constructed by: (1) specifying the inputs that hospitals purchase and combining inputs into components, (2) determining a weight for each component that represents its share of hospital expenses, and (3) identifying measures of price change for each component. The overall change in the price of the market basket is computed by multiplying each component's price change by its weight to arrive at a product for each. All products are then added.

In making its recommendations, the Commission sometimes modifies the market basket portion of the update to reflect errors made in forecasting the previous year's market basket increase.

ProPAC has carefully reviewed the components and computation of the market basket and made many recommendations for improvement. The recommended changes, implemented by the Secretary primarily in fiscal year 1987, have improved the validity and reliability of this measure of inflation. The Commission believes this has been an important improvement to PPS. ProPAC will continue to study and recommend changes in this technical but important portion of PPS.

Other Adjustment Factors

Although terminology varies, other elements have been added to or subtracted from the market basket to update hospital payments under PPS. Components considered by ProPAC include funds for scientific and technological advancement, achievable improvements in hospital productivity, reductions to account for the transfer of services out of the hospital, and changes in medical record-keeping not related to the severity of illness. These additional components of the update factor have not been defined statically over the five-year history of PPS. Because the Commission believes the major shift in site of care has been accomplished, for example, it is no longer taken into account when adjusting the update factor.

Hospital payments automatically increase as the mix of patients across DRGs becomes more complex, causing the case-mix index (CMI) to rise. In fact, during the first five years of PPS, rising CMIs resulted in larger payment increases than the annual update factor and all other policy adjustments combined. It was originally expected that CMI increases would moderate over time. However, recent evidence indicates that this has not happened as quickly as expected. The Commission and others have therefore devoted considerable attention to the issue of case-mix change and the factors that account for it.

The Commission believes that PPS rates should reflect real case-mix increases, but not changes in medical record documentation or coding practices. Real case-mix change is defined as changes in types of patients or changes in patient treatments that result in greater resource use. The Commission has investigated methods to differentiate CMI change caused by real case-mix change from medical record changes, or upcoding. Currently, it is impossible to do this precisely because of data limitations and an imperfect understanding of the factors affecting coding behavior. This remains an important area for continued policy research.

Case-mix index change and other factors have played an important role in decisions to recommend payment updates that amount to less than the market basket increase for a given year. Per-case payments to hospitals have greatly exceeded the level of the update factor because of case-mix increases, which will be discussed later.

Differential Standardized Amounts and Updates

The PPS statute recognized a long history of different costs in urban and rural hospitals by providing for separate urban and rural standardized amounts. In the years following enactment of PPS, differences in the experiences of these types of hospitals led to decisions to provide for separate update factors for urban and rural hospitals. In addition, Congress allowed for a slightly higher update for hospitals in large urban areas (those with more than 1 million people) than for those in smaller urban areas.

The use of different standardized amounts and update factors was part of a trend over the first five years of PPS to refine the payments to better reflect important differences among hospitals. The Commission recommended a number of similar changes later adopted by Congress. ProPAC continues analytic work designed to develop data about different types and classes of hospitals and their experience under PPS. In the Commission's opinion, these equity issues are increasingly important in a constrained budget environment and require ongoing assessment and review.

Changing Roles in Determining the Update Factor

The changing role of the Congress is seen clearly in reviewing update factor decisions during the PPS years. After designing a system that would rely on an administrative process and advice of ProPAC for updates, the Congress began almost immediately to restrict the executive branch role. First the amount of the update was limited in the Deficit Reduction Act of 1984 (Pub. L. 98-369). Congress subsequently legislated specific updates for each of the next four years.

As the responsibility initially assigned to the Secretary has shifted, so has the source of analytic and quantitative data. ProPAC developed and has followed a consistent format for considering elements that should be reviewed within the context of the update factor. The Secretary initially provided some detail for the basis of decision making, but analytic justification for proposed update factors has diminished in later annual PPS regulations. The Commission regrets that the Secretary has chosen to eliminate the development of quantitative and analytic justification for the update factor. This lack of justification results from the fact that the budget has increasingly driven decision making by both the Secretary and the Congress.

These role changes and the complexity of the necessary decisions have resulted in an increasingly contentious environment surrounding PPS. A shift in roles has occurred, with interested parties exerting strong efforts to influence decisions. The hospital industry has repeatedly complained about unmet promises that PPS would result in predictable payments. Expectations that the update factor would be the major vehicle for payment increases likewise have not proved to be the case.

Hospitals, beneficiaries, and others regard the update factor as the chief source of payment increase to hospitals under PPS. ProPAC, on the other hand, has not found this to be true. Commission analysis has shown that for the first five years of PPS, update factors and other legislative policy changes increased per-case PPS payments by about 11 percent. Case-mix index change led to payment increases almost double that rate, or about 20 percent. Consequently, while the update factor is still an important consideration in PPS policy making, it must be viewed in the context of other factors affecting payments. The update factor has been a less significant part of revenue increases than originally anticipated.

Continued review and identification of other forms of payment increase and adjustments to the update factor to account for these increases are crucial, however. ProPAC review and analysis of revenue-increasing features of PPS policy thus will continue to be a critical part of Commission agendas.

Wage Index

PPS provides that the DRG rates be adjusted by a wage index. This index reflects the average hospital wage level in an individual hospital's geographic area, compared with the national average hospital wage level. That portion of the standardized amount determined to be labor-related (roughly 75 percent) is multiplied by the appropriate wage index; hospitals in areas with relatively high wages receive a higher payment.

Although the wage index had been used before PPS, several technical problems have been corrected since the system was implemented. Others remain. Unfortunately, controversy has surrounded the wage index and the data used to calculate it. Any change in the wage index results in higher payments to some hospitals and lower payments to others. Disagreements arise each time wage index changes are considered. The Commission regrets that technical corrections that would lead to a more accurate wage index have not been implemented. ProPAC will continue to develop recommendations for technical refinements to the wage index to make it more accurate and up-to-date.

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Labor Market Areas

Since the beginning of PPS, ProPAC has been concerned that the wage index is critically flawed by its insensitivity to large variations in hospital wage levels within many labor markets. This flaw stems from the fact that the index is based on Metropolitan Statistical Area (MSA) designations. Frequently, wage levels differ for the core city, suburban areas, and sometimes even rural areas located in counties partly within an MSA. Wages also vary across rural areas within states. ProPAC has studied this situation extensively, and recommended on numerous occasions the use of labor market area information to distinguish separate labor markets within MSAs and rural areas. These ProPAC recommendations have not been implemented. As with changing the wage index, implementation of this change would modify the pattern of reimbursement to hospitals, thereby distributing Medicare payments more accurately and equitably. The Commission therefore has urged Congress and the Secretary to consider making this important change in the system.

Medical Education Adjustment

Besides continuing cost reimbursement for a hospital's direct costs of medical education, the PPS statute provided for additional payments to cover the indirect costs of medical education. The medical education adjustment was developed in the 1970s to recognize higher patient care costs in hospitals that are involved with the training of interns and residents. This adjustment is calculated using the ratio of interns and residents per bed. Among the factors commonly believed to contribute to the higher costs associated with teaching are greater use of ancillary services, more severely ill patients, location in inner cities, and a more costly mix of staffing and facilities. A formula is used to determine the amount of the adjustment.

Concerned that PPS would have a significant adverse effect on teaching hospitals, Congress enacted a statutory mandate that doubled the adjustment previously calculated. The adjustment was accomplished in a budget neutral fashion, by removing a portion of payments from all hospitals to fund the added payment to teaching hospitals. The rationale for the adjustment was that, in addition to compensating these hospitals for indirect medical education effects, it would partially correct the system's inability to account for other factors that legitimately increase costs in teaching hospitals.

It quickly became clear that the double teaching adjustment overcompensated teaching hospitals for their higher costs. Analysts began to explore alternative methods to calculate the relationship between medical education and Medicare cost per case. Based on estimates provided by the Congressional Budget Office (CBO), Congress reduced the adjustment beginning during fiscal year 1986 and again beginning in fiscal year 1989.

Concerns have continued to be raised about the appropriateness of the level of the indirect medical education adjustment. ProPAC offers recommendations to further refine the adjustment in this report. The Commission also recommends that analytic work on this subject be continued.

Adjustment for Disproportionate Share Hospitals

The original PPS statute provided authority for the Secretary to implement a special adjustment for hospitals serving a disproportionately large number of low-income and Medicare patients. The Secretary, however, declined to promulgate such an adjustment.

ProPAC believed from the beginning that the Secretary's lack of action resulted in a serious defect in PPS, and recommended implementation of the adjustment. Analysis by ProPAC, CBO, and others showed a relationship between services to the poor and increased Medicare cost per case. This analysis was used as the basis for the adjustment prescribed in Pub. L. 99-272, which was later refined and extended. The Commission continues to monitor this adjustment and to study the interactions of various phenomena, including the effect of medical education, on disproportionate share hospitals.

Case-Mix Measurement and Severity of Illness

Use of the diagnosis-related groups for defining and measuring case mix has presented a series of challenges. Given the limitations of the data, the Commission believes that this system represents the best available way to classify patients for

Medicare payment. Nevertheless, the amount of unexplained variation in resource use among patients is large, and continuing work on alternative classification systems or DRG enhancements to better measure severity of illness is necessary. There is also need for additional study to clarify, refine, and redefine the DRGs to reflect changing technology, medical practice patterns, and complexity of cases. Further work is likewise needed to ensure that the medical coding conventions, which are the underpinning of the DRGs, are up-to-date and appropriate. Similarly, the Grouper program used to assign cases to DRGs needs continual updating and refining.

All these activities have been under way during the five-year history of PPS. On balance, the Commission believes the Secretary has made important improvements to the DRG classification system. ProPAC remains committed to careful monitoring and analysis of the DRGs, as well as to reviewing any problems brought to its attention by interested groups or individuals. Several specific topics deserve further discussion.

Individual DRGs and New Technology

The Commission has not found evidence of a major reduction in the diffusion of new technology in hospitals since the beginning of PPS. In fact, recent studies seem to indicate that hospitals have added services since the advent of PPS.

The Commission believes that the system should adequately reflect new technologies and that payment rates for these technologies should be sufficient. However, the Secretary has sometimes been slow to implement change in this area. Appropriate change is increasingly important with worsening hospital financial conditions. Changes related to individual DRGs and new technology have been a major subject of disagreement between the Commission and the Secretary. ProPAC will continue to carefully monitor and analyze individual technologies, especially new ones, and their experience within the DRGs, making recommendations for change when warranted.

Recalibration

Recalibration creates an entirely new set of DRG weights that more accurately reflect the relative costliness of current medical care practice patterns. Because of the rapid changes in medical care practice patterns and technology, recalibration of the DRG weights is periodically necessary. The 1983 PPS statute called for recalibration at least every four years. The original set of DRG weights reflected 1981 practice patterns because the billing data used as the basis for establishing the weights came from that year.

The Commission advocated recalibration as soon as possible after the first year of PPS, using the most recent data available. This recommendation was adopted by the Secretary. ProPAC was similarly concerned that frequent recalibration was appropriate, and recommended annual recalibration in its 1986 report. The Secretary did not recalibrate the DRGs for fiscal year 1987. But the Congress enacted a mandate for annual recalibration, thus ensuring that the DRG system would reflect the most recent changes in technology and practice patterns. The Commission is pleased that annual recalibration is now automatic, helping to keep the system as up-to-date and accurate as possible.

Hospital-Level Variations Within DRGs

The Commission has begun studies of variations in resource use within DRGs across individual hospitals. One study reviews regionalization and specialization of services. Initial findings suggest that, although some concentration of services within certain hospitals has occured, it is neither substantial nor systematic. ProPAC believes that concentration of specialized procedures can be a positive trend for beneficiary quality of care.

ProPAC has also studied geographic variations in inpatient treatment costs. Initial analysis demonstrated considerable geographic variation in the cost of treating patients for selected case types. Further analyses of geographic variation in treatment costs are being undertaken.

These studies of variation in resource use within DRGs are critical to understanding variations in medical practices and the appropriateness of services furnished to Medicare beneficiaries. As payments are constrained and hospital financial conditions worsen, hospitals and their medical staffs should carefully examine their practices and eliminate inappropriate or ineffective services.

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ProPAC believes that variations in resource use are an important area for further research.

Hospitals and Units Providing Specialty Services

From the beginning of PPS, hospitals or centers serving special types of patients have received particular attention. Those involved extensively in cancer treatment and research can receive special consideration under the PPS statute, for example. Other types of hospitals were specifically excluded from the prospective payment system. The Commission believes that, in limited circumstances, special treatment should be considered for some hospitals and centers. Because these hospitals and centers may treat only the most resource-intensive cases in a DRG, the Commission will continue to examine whether they receive adequate PPS payments.

The Commission is concerned that the Secretary has sometimes been slow to recognize and correct problems related to specialty centers. For example, it was necessary for the Congress to enact a payment modification when the Secretary did not correct problems associated with burn DRGs and burn centers. The Commission believes it is important to continue to monitor the impact of PPS on specialty hospitals and centers.

Outlier Policy

PPS operates on an averaging principle in which payment is based on the cost of a typical case within a DRG. Some cases, however, have exceptionally long lengths of stay or are extremely costly. Under the PPS statute, these atypical cases, or outliers, receive additional payment. The law requires a target for outlier payments of between 5 and 6 percent of total PPS payments. In practice, the payment for outliers may be more or less than the targeted proportion, depending on the number of outlier cases actually treated during a given year.

Outlier payment policy has provided a critical buffer for hospitals serving atypical cases during the first five years of PPS. ProPAC continues to study outlier policy, and supports recent policy changes undertaken by the Secretary to deemphasize length of stay and frame a policy primarily based on extreme costliness or loss. ProPAC and other observers have noted that outlier cases and payments are unevenly distributed across hospital groups and DRGs. These findings require continued study and review, and will doubtless result in analysis on which to base continuing refinement of PPS. It is the judgment of the Commission that, despite the recent changes, the conceptual basis for outlier payment policy is an area of ongoing concern. Analysis will continue in this important area.

Beneficiary Liability

During debate on PPS, concern was expressed that beneficiary financial liability should not be changed by the new system. Over time, however, the precipitous drop in patients' length of hospital stay unintentionally increased the proportion of payment borne by Medicare beneficiaries. The inpatient hospital deductible and daily coinsurance rates rose substantially as a result of the declines in length of stay, which were largely attributed to PPS incentives. Moreover, the shift of some services from inpatient to outpatient settings, also partially related to PPS incentives, may have increased beneficiary out-of-pocket costs.

Pre- and post-PPS comparisons of beneficiary financial status will be difficult because of complicated changes made by enactment of the Catastrophic Health Insurance Coverage Act in 1988. ProPAC is pleased, however, that the Act has corrected another inadvertent change in liability resulting from PPS: beneficiary responsibility for cost-sharing in certain outlier cases. Coverage expansions to provide inpatient hospital care without regard to computation of spells of illness and lifetime reserve days address these concerns.

ProPAC will continue to monitor financial liability of beneficiaries under PPS as other changes occur in health care delivery and financing. ProPAC has concluded that, overall, Medicare-related beneficiary out-of-pocket costs increased during the 1980s. However, the Commission notes that total beneficiary share of spending for covered services remained nearly constant from 1980 to 1987, at approximately 23 percent. The rate of increase in Medicare-related beneficiary out-of-pocket costs is less than overall Medicare program growth. However, beneficiaries are not always protected from

the risk of some high out-of-pocket costs. Thus, the subject of beneficiary financial liability is critical and deserves continuing attention.

Rural Hospitals and Sole Community Hospitals

Under the PPS statute, separate standardized amounts are calculated for urban and rural hospitals. The rural standardized amounts are lower than the urban amounts, reflecting historical costs in rural hospitals. The first five years of PPS resulted in a series of changes in rural payment amounts, reflecting updated and better data. Rural payment amounts in the first years of PPS were substantially lower than appropriate, resulting in adjustments and policy changes recommended by ProPAC and others. In addition, changes in policy related to hospitals that are small and isolated, or are Sole Community Hospitals (SCH), have been recommended and some changes made.

In the Commission's judgment, PPS should provide adequate payment for Medicare patients in rural hospitals, but cannot be expected to pay for additional costs in those rural hospitals in serious financial condition for other reasons. Nevertheless, it may be appropriate for higher payments to be made to some hospitals to ensure adequate access to services for Medicare beneficiaries who live in rural areas. Continued analysis of health care policy toward all rural health care delivery mechanisms is necessary and should be undertaken.

Hospitals Excluded from PPS

The PPS statute created a category of hospitals and hospital units that would not be paid on the basis of DRGs. This category includes psychiatric hospitals and units, rehabilitation hospitals and units, pediatric hospitals, and long-term hospitals. Payment to these hospitals and units is based on each facility's own costs, limited by a rate of increase on per-case costs. This target rate of increase limit, established by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), must be updated each year. The update to the limits is analogous to the update factor for PPS hospitals. ProPAC recommends an update for these PPS-excluded hospitals each year.

ProPAC was convinced that the update factor for these hospitals should be separate from the update factor developed for PPS hospitals. The Secretary disagreed with this contention, suggesting the absence of legislative authority for a separate update factor. In the Omnibus Budget Reconciliation Act of 1986 (OBRA 1986), the Congress clarified this matter, allowing separate update factors for PPS and excluded hospitals as ProPAC had urged.

Policy development for updating payments to these excluded hospitals has evolved over the five years of PPS. Early on, ProPAC determined that pediatric hospitals, while not identical to PPS hospitals, were more similar in terms of their cost components than were other excluded hospitals. Therefore, the recommended update factor amount for pediatric hospitals has generally followed the PPS update factor without adjustments for case-mix change.

ProPAC recommended a separate market basket for psychiatric, rehabilitation, and long-term hospitals and units. Several key differences have been noted to support this approach, particularly the Commission's observation that the labor share of expenses in these facilities is substantially higher than in PPS and pediatric hospitals. This recommendation has been rejected by the Secretary. ProPAC has annually recommended different additions to and subtractions from the market basket than those for PPS hospitals. Congress has followed ProPAC's approach in enacting separately determined update factors for excluded hospitals.

ProPAC analysis has indicated growth in the number of excluded hospitals and units since enactment of PPS. Rehabilitation hospitals and units have experienced the largest growth, while psychiatric hospitals and units have also expanded significantly. Long-term hospitals have increased only modestly. Further analysis of growth, cost, and experience of these hospitals is being undertaken.

These hospitals and units were excluded from PPS because there was no case-mix measurement system applicable to specialized psychiatric, rehabilitation, and long-term patients. Since the enactment of PPS, studies undertaken to develop such measurement systems have failed to produce an acceptable product. ProPAC believes that additional

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research and study will be necessary before a prospective pricing system can be implemented for these hospitals.

OTHER AREAS OF COMMISSION CONCERN AND RESPONSIBILITY

In response to a mandate from the House Appropriations Committee, ProPAC annually reviews the impact of PPS on the American health care system. The report covers the consequences of PPS for beneficiaries, hospitals and their employees, and government. It also more broadly discusses the effects of major recent changes in health care, of which PPS is a part but not necessarily a cause. The report considers issues related to ambulatory care, changes in the organization and financial condition of hospitals, national health care, and Medicare expenditures. Critical policy issues like long-term care and coverage of the uninsured have also been considered in the report.

In addition, Congress has asked ProPAC to complete a variety of special studies. Most are related to specific PPS hospital payment policy, while some expand the Commission's focus to other areas. Significant Commission resources have recently been devoted, for example, to preparing a special congressional report on prospective payment for outpatient surgery. This report, *Medicare Payment for Hospital Outpatient Surgery, The Views of the Prospective Payment Assessment Commission*, will be submitted to Congress by April 1, 1989.

Finally, ProPAC is concerned about the bifurcation of Medicare policy, as reflected in the division of the program into Part A and Part B. Since its beginning, Medicare's payment policy and benefits have been defined primarily on the basis of acute care needs, focusing especially on the need for inpatient hospital care and physician services. In the intervening years, the practice of medicine has changed, new technologies have been introduced, and treatment sites have evolved. These changes suggest that it is time to reexamine the partitioning of Medicare into two parts.

PPS experience indicates that when expenditures are controlled in one setting, they increase in other, less controlled settings. Thus there is need to focus on linkages between policy governing Medicare reimbursement systems. ProPAC and the Physician Payment Review Commission therefore recently established a liaison subcommittee, with three members from each group, to facilitate the exchange of information and coordinate the work of both commissions. The subcommittee will identify areas of mutual or overlapping interest and foster staff and commissioner collaboration where appropriate.

PPS ASSESSMENT AND CURRENT ISSUES

After five years of operation, the Medicare prospective payment system has met many of its original goals. It was implemented quickly, although the transition to national payments was accomplished over five years. As its framers intended, PPS has established the Federal government as a more prudent–some hospitals might argue overzealously prudent–purchaser of health care services. The system has provided some incentives for management efficiency, flexibility, innovation, planning, and control. Some observers might argue that those incentives are not strong enough, while others might hold they are too strong and will adversely affect quality of care.

At various points throughout this five-year period, certain incentives have been altered by policy changes. Some goals have been met; others show mixed results. And some unanticipated problems have resulted that must be resolved in the future. But on balance, the Commission is generally pleased with the implementation and functioning of the system.

Indeed, the first five years have proven that PPS is flexible enough to accommodate change when necessary. Like any radical departure from the past, the system requires ongoing refinement, review, monitoring, and assessment involving the hospital industry and its employees, the Department of Health and Human Services, ProPAC, and the beneficiaries themselves. Here, then, are some observations from the Commission at the five-year mark.

On the positive side, hospitals have not charged beneficiaries for services beyond statutory requirements already in effect. Rates of increase in total expenditures in the inpatient setting have moderated, although per-case costs continue to increase

rapidly. Much more research on quality of care is necessary. Thus far, however, the Commission has not found evidence of substantial or systematic changes in the quality of care received by Medicare hospital patients since PPS implementation.

An increasing number of hospitals have closed in recent years. This is due to decreases in hospital occupancy, increasing constraints on hospital revenue, and other factors that are not well understood. The closure of hospitals that are underutilized or have longstanding financial problems is not unexpected. Additional study is necessary, however, to better understand the patterns of closures and the impact on access to services by Medicare beneficiaries.

As for increasing efficiency and productivity, the results are mixed. Although PPS has probably lowered the rate of increase in Medicare inpatient hospital expenditures, total inflation-adjusted expenditures for all Medicare services continue to rise at about the same rate seen for the past ten years. Hospital costs per case continue to increase at higher rates. In fact, the leveling-off of inpatient expenditures is due primarily to declining admissions, which cannot be attributed to PPS incentives. Nevertheless, PPS has encouraged reductions in length of stay and other efficiency improvements, particularly during its early years.

Several original goals clearly have not been met, but the Commission does not believe this should be alarming. In fact, one could argue that PPS is just now beginning to stabilize and to have its major effects. Data and analysis are now available to make more informed policy decisions than in 1983.

Policy makers intended the system to be easily understood and simple to administer. This has not been the case. Hospital reporting burdens are a persistent problem, and may have increased as the system has become more complex. Yet in order to foster equity among hospitals, complexity is required. Without cost reporting, additional adjustments, and complicated alterations, some hospitals would have been disadvantaged under the system. Had this occurred, the broader goals of beneficiary access and quality of care would clearly have suffered. So on balance, the Commission maintains that failure to meet some of the goals related to simplicity is an acceptable tradeoff.

In addition to the goals that have yet to be fulfilled, several factors that were unanticipated or not discussed in the legislative debate and the implementation of the statute remain troublesome.

First is the large increase in expenditures in areas other than inpatient hospital care. Decreased inpatient hospital use has been accompanied by substantial acceleration of expenditures in outpatient, ambulatory, and alternative sites. This is true for both the Medicare program and the entire health care system. Thus, there has been a substantial shift in the way health care dollars have been spent during the 1980s, without an apparent change in the overall spending trend. In addition, this shift has been away from hospitals, where there are longstanding quality review programs, to sites where there is little or no quality review.

Despite the efforts of the health care industry, government, and private sector payers to contain health care spending, the growth in aggregate expenditures has not changed. The consequences of an inability to moderate the growth in health care spending are difficult to untangle, but in many significant areas needs are not being met. These include paying for health services for the millions of Americans who lack financial protection against the cost of illness, as well as for long-term care services.

These more global considerations may suggest that the battle is being won but the war lost. Perhaps, having met many of the original goals of PPS, goals for cost containment need to be examined more broadly. This would require considering the system as a whole and looking beyond individual pieces of the health care delivery system like the hospital.

Another unanticipated development has been the more directive role assumed by Congress, which sometimes further complicates the decision-making process. Whether this type of involvement is regarded as positive or negative, it usually results in clear final decisions. On the other hand, it has occasionally led to such problems as a major delay in updating payment policies and amounts. This

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delay has left hospitals without the information they need to plan and budget for upcoming years, negating one of the primary goals of the system: predictability and efficient management and planning.

Finally, after five years of careful monitoring and analysis, the Commission is particularly mindful of the continuing and critical need for timely and accurate information, especially cost data. An important recommendation in this report calls for improving the cost data available from hospitals because of its usefulness in policy analysis and decision making. The Commission believes that the role of the Medicare Cost Report (MCR) is changing from that of a reimbursement tool to that of a vital information source for payment policy development and evaluation.

The Commission believes that future PPS policy agendas are important. After five years, it might appear that a smaller expenditure of resources and effort is appropriate for maintaining and updating the system. On the contrary, the Commission thinks continued effort is required.

In addition to continuing to refine the system, some basic questions should probably be included on the future PPS agenda. Among these are a reexamination of some of the original goals and policy decisions. The components of the payment formula, together with the methods used to update payments, should continue to be reviewed. Numerous changes in interrelated payment components suggest a need for studying the total payment formula and amounts at some point in the future. Questions about the equitable distribution of payments between and among hospital types could be more fully considered at this time.

In the next chapter, the Commission presents its recommendations for continued modification of the system in fiscal year 1990.

Chapter 2

Recommendations

The Commission's recommendations for fiscal year 1990 are the result of an ongoing process of agenda setting, information collection, analysis, and deliberation. ProPAC selects issues for consideration to conform with its statutory mission and to contribute to an open policy debate on matters of substantial importance to beneficiaries, hospitals, and the Medicare program.

ProPAC's analysis and decision making are guided by a set of interrelated priorities. These priorities provide the underlying basis for the Commission's recommendations on updating the payment rates and improving PPS. They include:

- Ensuring beneficiary access to high-quality health care;
- Encouraging hospital productivity and long-term cost-effectiveness;
- Promoting equity in the distribution of payments to hospitals;
- Facilitating innovation and appropriate technological change;
- Maintaining stability for providers, consumers, and other payers; and
- Making decisions based on reliable, timely data and information.

The Commission has developed a process and guidelines for identifying and analyzing issues related to its responsibilities. Once the Commission establishes its policy agenda, ProPAC staff provides analyses that enable the Commissioners to make informed decisions about appropriate changes to PPS. The resulting recommendations reflect the collective judgment of the 17 Commissioners.

Some recommendations, such as those pertaining to the annual update of payment rates, will be repeated in similar format every year. In other instances, the Commission has reconsidered and amplified or modified past recommendations on the basis of new evidence. In addition, certain issues were examined for which no recommendations were developed. Because these issues receive little or no attention elsewhere in the report, they are briefly discussed later in this chapter.

Concern for reducing the Federal deficit and attaining a balanced budget continued to dominate public policy debates while these recommendations were being developed. Although ProPAC did not explicitly take budgetary concerns into account, the recommendations were developed in recognition of a constrained fiscal environment. Furthermore, the Commission believes that budgetary pressures intensify the need to address distributional and technical payment issues that may bear on the quality of care furnished to Medicare beneficiaries.

Recommendations made previously, but not yet implemented by the Secretary, are still in effect. For example, the Commission considers it important for the Secretary to implement the recommendations concerning the definitions of labor market areas and evaluation of Sole Community Hospital policies, even though there are no additional recommendations on these topics this year.

The following discussion presents an overview of the Commission's 17 recommendations for fiscal year 1990. The full text and discussion of each recommendation follow the overview. Background information, statistical analyses, and alternative options considered are in Appendix A and in the ProPAC technical reports listed in Appendix B. The issue areas addressed by the Commission this year are:

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- Updating PPS payments,
- Adjustments to the PPS payment formula,
- Data collection and measurement,
- Quality of care,
- Rural hospitals, and
- Payment for ambulatory surgery.

OVERVIEW OF THE COMMISSION'S RECOMMENDATIONS FOR FISCAL YEAR 1990

Updating PPS Payments

In making recommendations on the update factor, the Commission is required by the PPS statute to:

> . . . take into account changes in the hospital market basket . . ., hospital productivity, technological and scientific advances, the quality of care provided in hospitals (including the quality and skill level of professional nursing required to maintain quality care), and long-term cost-effectiveness in the provision of inpatient services.

The Commission must report its recommendations on the update factor to the Secretary of Health and Human Services no later than March 1 of each year, and

> . . . taking into consideration the recommendations of the Commission, the Secretary shall recommend . . . an appropriate change factor . . . which will take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality.

Since fiscal year 1986, Congress has set the update factor through legislation. ProPAC and the Department of Health and Human Services (HHS) are thus advisers to Congress on aggregate payment increases under PPS. Nevertheless, the Secretary has an opportunity to evaluate ProPAC's recommendations before the HHS proposed update is published in regulations.

Recommendation 1 reflects the Commission's overall judgment of the appropriate change in the level of PPS prices for fiscal year 1990 based on currently available data. The Commission recommends a 5.0 percent increase for urban hospitals in large MSAs, a 4.5 percent increase for other urban hospitals, and a 5.6 percent increase for rural hospitals. The weighted average of these updates is 4.9 percent. The update factor may change as new data are received before the final rules for fiscal year 1990 are published. The Commission will publicize any revisions to its recommendation on the update factor during the rulemaking period.

In Recommendation 2, the Commission expresses its belief that the internal (hospital industry) wage portion of the market basket should be increased to better account for changes in hospital labor compensation. Measurement of the wage and benefit component of the market basket should be based 50 percent on the Employment Cost Index (ECI) compensation series for hospitals. This change would raise the internal portion of the market basket from 16 to 33 percent.

Recommendation 3 is the discretionary adjustment factor (DAF), which consists of a combined allowance for scientific and technological advancement and productivity improvement goals. The Commission decided that the net effect of these two factors on the update should be zero.

Recommendation 4 is an adjustment for case-mix change that incorporates three components. These components allow payments to rise for increases in patient resource requirements, but not for changes in medical record coding practices. Based on available data, the Commission believes that the net effect of these components on the update should be -0.7 percent.

Recommendation 5 modifies an update factor component introduced in 1987. At that time, the Commission recommended a 5.4 percent average reduction in the standardized amounts, to be phased in over a three-year period. The recommended reduction was based on an examination of first-year PPS cost data, which showed that actual costs

were substantially below the projected costs on which first-year payments were based.

The Commission recommends a 0.8 percent reduction to the urban standardized amounts for fiscal year 1990, with no reduction to the rural standardized amount. The updates hospitals received in fiscal years 1988 and 1989 suggest that most of the recommended 5.4 percent average reduction has been accomplished by congressional action. Only this adjustment to the urban standardized amounts is needed to complete the reduction.

Recommendation 6 proposes that urban hospitals in MSAs with more than 1 million people receive a 0.5 percent higher update than other urban hospitals. In its December 1988 report to Congress recommending this differential urban update, ProPAC also advises that a broad review of PPS payment equity, including the effects of geographic cost variation, should be undertaken.

Recommendation 7 satisfies the Commission's statutory obligation to recommend an update factor for hospitals and distinct-part units of hospitals excluded from PPS. These hospitals and units continue to be paid on a reasonable cost basis, subject to limits on increases in reimbursement per case. Based on current market basket forecasts, the Commission recommends a 6.3 percent update in the limits for children's hospitals and units, and a 6.2 percent update in the limits for psychiatric, rehabilitation, and long-term hospitals and units.

Adjustments to the PPS Payment Formula

In Recommendations 8 and 9, the Commission expresses its continued concern with technical improvements to the calculation of PPS payments. Such improvements will distribute payments more equitably among hospitals and lower the risk of access and quality problems for beneficiaries.

The indirect medical education adjustment was designed to compensate hospitals for costs that are not otherwise recognized in PPS payments. ProPAC has previously expressed its belief that this adjustment should regularly be assessed with current data to monitor the impact of teaching activity on Medicare costs. In Recommendation 8, therefore, the Commission advises that the Secretary seek legislation to reduce the indirect medical education adjustment from its current level of 7.7 percent to 6.6 percent for fiscal year 1990. This reduction should be implemented in budget neutral fashion. ProPAC will continue to examine the relationship between teaching effort and Medicare cost per case.

The Commission believes the modifications in the outlier payment methodology that were implemented during fiscal year 1990 represent an improvement in the payment system. In Recommendation 9, the Commission expresses its belief that the Secretary should continue to examine methods for improving the effectiveness of outlier payment. ProPAC will continue its own examination of the policy as well, based on evidence that indicates the potential for further improvements.

Data Collection and Measurement

Recommendations 10 through 13 underscore the importance the Commission places on the availability of timely and accurate data for PPS, and its commitment to improving patient classification and case-mix measurement.

The Commission believes the current hospital wage data are too old to provide an accurate measure of current relative wage levels. In Recommendation 10, ProPAC urges the Secretary to replace these data with more current information and to update the wage index for fiscal year 1990. The Secretary should also develop permanent mechanisms for collecting wage data and updating the wage index more frequently.

In Recommendation 11, the Commission reiterates its belief that the Medicare Cost Report is a vital source of information for decision making. The Secretary should initiate the developmental work necessary to facilitate the transition of the cost report from a reimbursement tool to a reliable and timely source of data.

The Commission is pleased with the progress of ongoing efforts to improve case-mix measurement, and particularly with the Yale University project to refine the DRG system. In Recommendation 12, ProPAC proposes that the Secretary make a thorough evaluation of the potential effects this positive revision might have on all aspects of PPS.

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Recommendation 13 addresses the need for reassignment of patients with Guillain-Barre Syndrome.

Quality of Care

Concern for beneficiary welfare enters into virtually all the Commission's deliberations and resultant recommendations. In addition, many of ProPAC's resources are expended on assessing the consequences of PPS for beneficiaries, such as studying the effects of the system on access, quality, and out-of-pocket expenditures.

In Recommendation 14, ProPAC stresses again the importance of evaluating the impact of the Peer Review Organizations (PROs) on quality of care. The Commission is especially concerned about the adequacy of the PRO generic quality screens. In addition, the Secretary should continue to develop improved methods of inpatient and outpatient quality review as well as mechanisms to monitor quality of care throughout the course of an episode of illness.

Rural Hospitals

The adequacy of payment under PPS to small, isolated rural hospitals continues to concern the Commission. In Recommendation 15, however, ProPAC indicates concern that the problems faced by rural hospitals cannot be solved exclusively by the Medicare program. The Commission recommends that the Secretary continue the Department-wide research and policy agenda, broadly addressing both the financing and organization of rural health care.

Ambulatory Surgery Payment

The Omnibus Budget Reconciliation Act of 1986 requires the Secretary to develop and report to Congress on a prospective payment system for hospital outpatient surgical procedures. In OBRA 1987, Congress further requires the Secretary to solicit the views of ProPAC in developing outpatient payment policy and to include these views in his reports. Consequently, the Commission provides its views on ambulatory surgery payment in Recommendations 16 and 17. A full report on this topic will be submitted by the Commission by April 1, 1989.

As presented in Recommendation 16, the Commission believes that payment for the facility component of hospital outpatient surgery should be entirely prospective and updated annually. The rate should be based on a blend of hospital-specific costs, average hospital costs, and the rate paid to freestanding ambulatory surgery centers. Budget neutrality should be maintained in setting the rates. In Recommendation 17, the Commission advises that the Part B coinsurance required of beneficiaries for hospital ambulatory surgery should be limited to 20 percent of the payment amount allowed by Medicare.

OTHER ISSUES CONSIDERED BY THE COMMISSION

The Commission addressed several issues that did not lead to recommendations. These were related to new and changing technologies and practice patterns, and to equity of payment among hospital groups.

New and Changing Technologies and Practice Patterns

In previous reports, the Commission recommended making adjustments in DRG assignment or payment for cases involving cardiac pacemakers, penile prostheses, implantable defibrillators, cochlear implants, and magnetic resonance imaging (MRI). The Secretary has made some adjustments related to implantable defibrillators, but no others.

Concerns that financial incentives are limiting access to certain new technologies continue to be brought to the attention of the Commission. ProPAC remains convinced that payment considerations should not inhibit hospitals from providing patients access to appropriate quality-enhancing technologies. The Commission will therefore continue to examine the use of these technologies and to recommend payment adjustments where appropriate.

Significant changes are occurring in the evaluation and treatment of patients with acute myocardial infarction. The Commission will continue to examine the appropriateness of the current classification of these patients, including the use of thrombolytic agents, cardiac catheterization, and other therapeutic interventions.

ProPAC's analysis of total parenteral nutrition (TPN) identified only a small number of Medicare patients receiving this therapy. It appears that TPN is underreported. This may be because the code for it is new, because the code does not influence payment, or because the number of procedures that can be reported on the hospital billing form is limited. Nevertheless, limited evidence indicates that TPN patients are very costly to care for compared with other patients in the same DRGs. ProPAC will continue to investigate this topic.

In a preliminary analysis, ProPAC found that the use of magnetic resonance imaging is widespread across DRGs. The patients receiving this diagnostic procedure have higher than average charges within the most commonly affected DRGs. The analysis of this topic, however, is also limited by deficiencies in coding. ProPAC will continue to analyze MRI usage and its impact on inpatient costs and payment equity.

An analysis of the use of low osmolality contrast media agents found that this technology has a small incremental cost impact across a number of DRGs. The Commission included this technology in the science and technology component of the discretionary adjustment factor, and will continue to monitor its diffusion.

ProPAC studied several other technologies and concluded that the current DRG assignments are adequate. Analyses of arterial reconstructive (limb salvage) surgery, chemotherapy, and inflammatory bowel disease did not identify substantial payment inequities. The Health Care Financing Administration's (HCFA) restructuring of the DRGs for upper extremity procedures (DRGs 223, 224, 228, and 229) was found to be adequate, although certain procedures of the shoulder and elbow would have been better retained in DRG 224. Finally, the small number of cases identified with malignant external otitis had higher than average resource use. However, the Commission believes that these patients are increasingly being coded with the principal diagnosis of osteomyelitis, which appropriately results in higher payment.

Further detail regarding these investigations is found in the ProPAC technical report, *Analyses of DRG Classification and Assignment*, which is being published simultaneously with this report to the Secretary.

Payment Equity Issues

Wages in Puerto Rico are relatively low. As a result, the Commission is concerned about the appropriateness of using the national portion of labor costs rather than a locally derived standard for determining PPS payment levels in this area. Puerto Rican hospitals are in their second year of participation in PPS, and the Commission will monitor the adequacy of payment to them as more information becomes available.

Concern has been raised that hospitals with high Medicare utilization may be more vulnerable than other hospitals because they have limited ability to supplement Medicare payments from other sources. The Commission thus plans to monitor the relationship between the proportion of Medicare patients and financial performance under PPS.

RECOMMENDATIONS FOR FISCAL YEAR 1990

Updating PPS Payments

Recommendation 1: Amount of the Update Factor for PPS Hospitals

For fiscal year 1990, the standardized amounts should be updated by the following factors:

- **The projected increase in the modified PPS market basket as recommended by ProPAC, currently estimated at 5.7 percent;**
- **A positive adjustment, currently estimated at 0.6 percent, to correct for errors in the fiscal year 1989 market basket forecast;**
- **A discretionary adjustment factor of 0.0 percentage points;**
- **A net -0.7 percent adjustment for case-mix change;**
- **A -0.8 percent adjustment for urban hospitals to reflect first-year PPS cost information; and**

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- **A differential update for urban hospitals in MSAs with more than 1 million people, accomplished by a +0.2 percent adjustment for these hospitals and a -0.3 percent adjustment for other urban hospitals.**

This recommendation reflects the Commission's judgment about the appropriate increase in the level of PPS prices for fiscal year 1990. It assumes that the Commission's other concerns regarding the payment formula and the DRG weighting factors are also addressed in the fiscal year 1990 payment rates.

The Commission's recommendation would result in an estimated 4.9 percent average update factor for fiscal year 1990. This is a weighted average of an estimated update of 5.0 percent for urban hospitals in large MSAs, 4.5 percent for other urban hospitals, and 5.6 percent for rural hospitals. The numerical amount of the Commission's update factor recommendation is likely to be modified as more current market basket forecasts become available. The components of the Commission's update factor recommendation are summarized in Table 1.

In the Commission's judgment, the recommended update factor reflects the amounts necessary to encourage the efficient provision of hospital care, while maintaining access to quality care by Medicare beneficiaries. ProPAC is aware that recent shortages of nurses and other specialized hospital personnel have led to wage increases for hospital workers that have not been specifically recognized in PPS payments. Hospitals also face substantial constraints on other Medicare payments. These issues were taken into account in the Commission's recommendations.

Table 1. Estimated PPS Update Factors for Fiscal Year 1990 Under ProPAC Recommendations

Total Update Factor	
Average update factor	4.9%
Large urban	5.0
Other urban	4.5
Rural	5.6
Components of the Update Factor	
Components applied to all hospitals:	
Fiscal year 1990 market basket forecast[a]	5.7%
Correction for fiscal year 1989 forecast error[b]	0.6
Components of discretionary adjustment factor	
Scientific and technological advancement[c]	--
Productivity[c]	--
Total discretionary adjustment factor	0.0
Case-mix change	
Total DRG case-mix index change	-3.0
Real DRG case-mix index change	1.5
Within-DRG patient complexity	0.8
Net adjustment for case-mix change	-0.7
Components applied to urban hospitals only:	
Third-year phased reduction to standardized amounts	
Adjustment for large urban areas	-0.8
Adjustment for other urban areas	-0.8
Urban population differential	
Adjustment for large urban areas	0.2
Adjustment for other urban areas	-0.3

[a] Forecast of ProPAC-recommended PPS market basket by Data Resources, Inc.
[b] The market basket forecast used for the fiscal year 1989 update was 5.4 percent. The most recent fiscal year 1989 forecast is 6.1 percent. The full difference is not adjusted because no correction is made for errors in forecasting hospital industry wages.
[c] In the Commission's judgment, the added costs for scientific and technological advancement should be funded by increases in hospital productivity. Therefore, these components of the update factor sum to zero.

The Commission believes it appropriate that rural hospitals receive a higher update factor than urban hospitals. In Recommendation 15, the Commission addresses broader rural hospital issues.

The 5.7 percent estimated market basket increase for fiscal year 1990 is based on the most recent forecasts available from Data Resources, Inc. (DRI). The Health Care Financing Administration has always used DRI forecasts to update the PPS standardized amounts. The Commission is aware that alternative forecasts have been used in the Federal budget estimates, but believes that DRI forecasts should be used to implement the PPS update factor. While all forecasts are subject to error, DRI produces the most detailed forecasts of changes in prices of goods and services that hospitals purchase. In Recommendation 2, the Commission proposes a modification to the treatment of wages in the PPS market basket. The 5.7 percent forecast reflects this recommendation.

The Commission's recommended average 4.9 percent update factor will lead to an increase of more than 4.9 percent in the average per-case payment during fiscal year 1990 (see Table 2). Historically, PPS per-case payments have risen faster than the update factor, primarily because of changes in the mix of patients. An increasing proportion of patients assigned to higher-weighted DRGs has led to a rise in the average DRG weight, and therefore increased payments.

It is difficult to predict the per-case payment increase for fiscal year 1990 due to uncertainties about case-mix index change. But if the overall fiscal year 1990 case-mix index increase were 2.5 percent as estimated by the Congressional Budget Office, and no other changes affecting the level of payments were made, the average increase in per-case PPS payments to hospitals under the Commission's recommendation would be 7.4 percent. ProPAC expects that a large portion of revenue increase associated with case-mix change would be offset by the additional costs of treating sicker patients. The discussion language accompanying Recommendation 4 provides further information on how case-mix change affects hospital revenue and costs.

Table 2. Estimated Fiscal Year 1990 Average Increase In Per-Case PPS Payments Under ProPAC Recommendations

PPS update factor	4.9%
Estimated case-mix index change*	2.5
Total increase in average PPS payments†	7.4

* Congressional Budget Office estimate.
† Most of the increase in payments resulting from case-mix index change would be offset by the increased costs of treating sicker patients.

In addition to the effect of the update factor, the PPS standardized amounts will increase as a result of the Commission's proposed change in the indirect medical education adjustment. In Recommendation 8, the Commission proposes reducing this adjustment from 7.7 percent to 6.6 percent in a budget neutral fashion. That is, the Commission believes part of the additional payments made to teaching hospitals is no longer appropriate and should be redistributed among all hospitals. ProPAC estimates that the urban standardized amounts will increase by 0.7 percent and the rural amount by 0.1 percent if Recommendation 8 is implemented. Total payments to hospitals would not be affected, however, since payments to teaching hospitals would be reduced. Aggregate per-case payments to major teaching hospitals would be cut by 1.9 percent and payments to other teaching hospitals by 0.1 percent.

The rationale for the components of the Commission's proposed update factor is presented in Recommendations 2 through 5 and accompanying discussions. Under current law, all hospitals would receive a fiscal year 1990 PPS update equal to the increase in the market basket. Adoption of the Commission's update recommendation would therefore require legislative action.

Recommendation 2: Market Basket Structure

The Commission believes the hospital industry wage portion of the market basket should be increased to better reflect changes in hospital and other labor markets. The wage and benefit component of the market basket should be measured using 50 percent Employment Cost Index compensation series for hospital workers and 50 percent non-hospital ECI compensation series

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reflecting the types of employees hospitals hire. The Commission also encourages the development of an ECI compensation series specific to hospital professional and technical workers.

This recommendation would change the current construction of the hospital occupational index used in the market basket to measure changes in wages. More weight would be given to wage trends unique to the hospital industry. Skill mix changes, however, would no longer affect market basket increases. Currently, the effect of inflation on hospital wages is measured by a combination of hospital industry and economy-wide wage measures. Hospital wages are about 30 percent of the wage component.

The Commission believes that the current market basket gives inadequate recognition to the unique characteristics of the hospital labor market. The Commission does not believe, however, that inflationary pressure on wages should be represented in the market basket solely by measures of hospital response to those pressures. Rather, giving equal weight to hospital and non-hospital wage measures would appropriately reflect changes in the labor markets where hospitals must establish their wage and benefit levels.

Specifically, the Commission recommends that 50 percent of the hospital occupational index should be represented by an internal (hospital industry) wage measure, the Employment Cost Index compensation series for hospital workers. The other 50 percent should be measured by a combination of external (non-hospital) ECI compensation series reflecting the types of employees hospitals hire. The current market basket uses ECIs that measure only changes in wages. Under this recommendation, ECIs that combine wages and benefits would be used.

This recommendation would increase the internal wage share of the hospital occupational index to 50 percent. Because employee compensation is about 67 percent of the overall market basket, internal proxies would make up about 33 percent of the overall market basket weights. The fiscal year 1990 market basket increase under this recommendation is now estimated at 5.7 percent.

Currently, changes in professional and technical workers' wages are measured by a 50/50 blend of internal and external wage proxies. The blend is 50 percent Average Hourly Earnings (AHE) for nonsupervisory hospital workers and 50 percent ECI for professional and technical workers. All other employee categories are measured using only external wage proxies. About 30 percent of the total market basket wage component is measured using an internal wage proxy. The overall internal proxy share is about 16 percent.

The current 50/50 blend of internal and external wage proxies for professional and technical workers wages is technically imprecise. The AHE includes changes in wages for other types of hospital employees, such as secretaries and service workers. The contribution of wage changes for professional and technical workers used in the market basket is thus understated. To be a true 50/50 blend, either a hospital professional and technical worker wage proxy would need to be developed or the internal wage proxy would have to be applied to the appropriate categories of workers. In the case of the AHE, this would be all nonsupervisory hospital workers. In the case of the ECI for hospitals, this would be all hospital employees.

The Commission believes it is inconsistent to treat benefits differently from wages in the market basket since they are both part of an employee's total compensation. Some hospitals, for example, are allowing employees to trade their benefits for a higher salary. In this example, total compensation would not increase, but the current construction of the market basket would recognize this as a wage increase.

ProPAC therefore recommends combining the wage and benefit categories into a single compensation category. The ECI compensation series should be used to measure changes in this new category. The ECI effectively covers all employee compensation expenses: wages, benefits, and bonuses. The wage and benefit coverage is more complete than the wage and benefit price proxies currently used in the market basket. The new category should be assigned a new weight reflecting this expanded coverage of hospital inputs.

An ECI for hospitals has recently been developed, as ProPAC suggested in 1985. In many

respects the ECI for hospitals is preferable to the AHE. First, unlike the AHE, it holds skill mix constant. This is consistent with the construction of the rest of the market basket, which has fixed weights for each non-wage component.

Second, the ECI for hospitals is more inclusive; it covers all types of hospital personnel, as well as both public and private hospitals. The AHE, on the other hand, includes only nonsupervisory employees in private hospitals. While these exclusions from the AHE may not significantly affect changes in the market basket, the broader coverage of the ECI for hospitals is technically preferable.

The Commission also recommends that an ECI component for professional and technical hospital workers be developed. Reliable data of this nature will permit more detailed analysis of wages and benefits for nurses and other employees unique to the health care setting.

A number of potential technical improvements in the PPS market basket should be investigated. They are related to certain types of hospital expenses that the market basket does not appear to measure effectively.

In particular, the use and per unit cost of contract labor by hospitals has grown significantly over the past few years. Because contract labor expenses are included in the "Other Fees" component of the market basket, virtually none of this growth was captured. Most of the expenses in the "Other Fees" component are for contract labor, particularly contract nurses. The price proxy used for the "Other Fees" weight is the ECI for professional and technical workers, which includes very little contract labor.

It may be possible to develop a price proxy that better reflects changes in contract labor expenses. Such a proxy should be consistent with other price proxies used in the market basket. For example, average hourly contract labor expense would be one possible price proxy. Another alternative would be to reclassify contract labor into the new compensation category recommended by the Commission. The weight for the category could be increased as appropriate.

By suggesting consideration of technical issues, the Commission does not mean to propose any departure from the market basket as an input price index. Rather, it is suggested only that certain input prices, and the proportions of goods and services that they represent in the market basket, might be measured better than the current market basket permits. Further, certain inputs might be grouped in expense categories where they more appropriately belong. As always, the Commission would be glad to work with the Secretary in accomplishing these technical improvements.

Recommendation 3: Discretionary Adjustment Factor

> **For fiscal year 1990, the net allowance for scientific and technological advancement and productivity improvement in the discretionary adjustment factor should be zero.**

The discretionary adjustment factor incorporates particular considerations outlined in the statute establishing PPS that relate to scientific and technological advancement and hospital productivity improvement. For fiscal year 1990, ProPAC did not attempt to quantify these components. The data led the Commission to conclude that reasonable ranges of the positive scientific and technological advancement adjustment and the negative productivity improvement adjustment are roughly equal.

The individual adjustments for scientific and technological advancement and hospital productivity improvement are discussed below.

Scientific and Technological Advancement– The scientific and technological advancement allowance is a future-oriented policy target. It provides additional funds for hospitals to improve services by adopting quality-enhancing, cost-increasing health care advances.

As stated in previous reports, the Commission believes that advances resulting in greater hospital efficiency do not require a special allowance since they should lower hospital costs. The effects of cost-decreasing technologies are considered implicitly in the productivity target.

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The policy target must ultimately be based on judgment since it is impossible to enumerate all the technologies that meet the Commission's criteria for inclusion and to define their costs precisely. In order to develop a more informed judgment, however, the Commission examines a set of the most important new technologies and scientific developments. Rough estimates of the systemwide cost of the adoption of these new technologies assist the Commission in its assessment of the increment appropriately added to the payment base for hospital care.

Based on this examination, ProPAC estimates that the standardized amounts would need to be increased by 0.3 percent. This estimate includes the effects of substituting new for existing technologies. In the Commission's judgment, the adjustment should also be somewhat higher than this amount to account for new technologies and changes in practice patterns not considered in its analysis.

The Commission's recommendation presumes that, during fiscal year 1990, hospitals will be able to finance part of their expenditures for new technologies from productivity gains. It further presumes that Medicare capital payments will be sufficient to accommodate capital expenses associated with the implementation of cost-effective new technologies and treatments. Finally, the allowance for real case-mix change finances part of the expense associated with cost-increasing, patient-related practice pattern changes.

Hospital Productivity–The productivity allowance in the DAF is also a future-oriented target. Substantial gains in productivity were achieved by hospitals after the initiation of PPS. Since then, there have been declines in real case-mix adjusted productivity in each of the last three years. Nevertheless, ProPAC believes it is appropriate to expect hospitals to achieve modest productivity gains during the coming year. The Commission also determined that the Medicare program should not subsidize decreases in productivity.

The Commission believes that the costs of scientific and technological advancement may be financed by productivity gains. The recommended adjustment assumes productivity gains that are at least twice the range of likely cost increases for new technology. This reflects the Commission's policy that productivity gains should be shared roughly equally by the Medicare program and the hospital industry.

Recommendation 4: Adjustments for Case-Mix Change

For fiscal year 1990, the PPS standardized amounts should be reduced by 0.7 percent to account for increased payments from case-mix index change. This adjustment reflects:

- **A 3.0 percent reduction for the estimated case-mix index change during fiscal year 1989,**
- **A positive allowance of 1.5 percent for real across-DRG case-mix index change during fiscal year 1989, and**
- **A positive allowance of 0.8 percent for within-DRG case-complexity change during fiscal year 1989.**

The Commission urges the Secretary to continue research that will help measure the components of case-mix change in light of its importance for hospital payments.

The Commission believes that hospital payments should compensate hospitals for increases in patient care resource requirements. Some of this change is measured by increases in the case-mix index, which reflects the distribution of cases across DRGs. This is real across-DRG case-mix index change. The CMI also increases because of changes in medical record documentation or coding practices. Although coding changes, or upcoding, can result in more accurate and complete information on the medical record, it is not real case-mix change because it does not reflect changes in patient care requirements. It is not appropriate, therefore, for payments to increase because of upcoding.

Another component of real case-mix change, within-DRG case-complexity change, is not measured in the CMI. This component reflects increases in patient care requirements that are not captured by the DRGs. Hospitals are not

automatically paid for this portion of real case-mix change. There must be an allowance in the update for hospitals to receive added compensation.

The Commission's recommendation on the adjustment to hospital payments for case-mix change, therefore, has three components. The first component is a negative adjustment for the CMI increase from the previous year. This is removed from the payment base because it includes the effects of upcoding. Two positive allowances are then made for real case-mix change. Total real case-mix change is the sum of across-DRG case-mix index change and within-DRG case-complexity change. This recommendation allows hospitals increased payments for real changes in the resources used to treat patients, but not for changes in medical record documentation and coding practices.

The estimate for CMI change during 1989 is based on preliminary data from HCFA. The CMI in 1988 increased by about 3.6 percent, a significantly higher change than in 1987. Based on this estimate and trends in prior CMI growth, ProPAC projects that the CMI change in 1989 will be 3.0 percent.

The estimate for real across-DRG CMI change is based in part on information from a recent study of real case-mix change sponsored by HCFA and ProPAC. Using medical records collected by the SuperPRO, the contractor reabstracted the data from 1986 and 1987, applying consistent coding techniques. By comparing the reabstracted data with coded data originally submitted by the hospitals, the contractor determined that approximately three-quarters of the observed CMI change for the cases studied over this period was real. This study is discussed in more detail in Appendix A.

These findings overestimate the real case-mix change for all cases in fiscal year 1987 for two reasons. First, the data in the study are incomplete. Data that come in later in the year generally represent higher-weighted DRGs and, therefore, raise the CMI. Second, the study did not control for changes in the information on the medical record. Evidence indicates that physicians and health care providers are supplying more detailed data on the medical record, which can lead to CMI increases.

In addition, applying these results to the 1989 data yields a lower proportion of real case-mix change. The total amount of CMI change for 1989 is considerably higher than the amount observed during the study period. ProPAC believes the main reason for the higher rate of change was the substantial DRG Grouper changes in 1988. CMI change resulting from Grouper changes is not related to increased patient resource requirements. Therefore, the Commission reduced the estimate of the real portion of CMI change to 1.5 percent in 1989.

The estimate for within-DRG case-complexity change is based on another recent study. The contractor developed a range estimate of within-DRG case-complexity change for 1984 through 1987 by applying two alternative patient classification systems to Medicare discharge data, while holding the DRG constant. Over this period the contractor estimated that patient complexity increased between 4.4 and 7.1 percent. Change from 1986 to 1987 accounted for 0.8 to 1.0 percentage points of this increase. This trend was applied to the 1989 data to yield a case-complexity change estimate of 0.8 percent. This study is discussed in more detail in Appendix A.

ProPAC has determined that during the first five years of PPS, CMI change increased hospital payments more than the annual updates and all other policy changes affecting payments combined. Given the importance of case-mix change and the failure of CMI change to diminish as much as expected over time, the Commission is committed to maintaining its research efforts to understand this phenomenon. The Commission found the information from the jointly funded medical record reabstraction study to be valuable in making its recommendation and in understanding case-mix change. The Commission, therefore, urges HCFA to maintain an ongoing examination of case-mix change using the reabstraction methodology.

Recommendation 5: Adjustment to the Level of the Urban Standardized Amounts

The update factor for fiscal year 1990 should include an adjustment to lower the urban standardized amounts by 0.8 percent. No reduction should be applied to the

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rural standardized amount. The reduction is the final portion of a three-year phased adjustment previously recommended by the Commission. It reflects the Commission's judgment of how information on average Medicare costs per case from the first year of PPS should be incorporated into the update factor.

This recommendation follows Commission judgments described in earlier reports. In its April 1987 report, the Commission recommended a reduction to the standardized amounts. At that time, ProPAC also recommended phasing in the reduction over a three-year period, beginning in fiscal year 1988. In its March 1988 report, the Commission upheld its judgment, but modified the level of the remaining reduction. The Commission continues to believe that the reduction is appropriate. Due to recent congressional action, however, this year's recommendation also modifies the amount of the adjustment for the final year of the phase in.

The Commission's original recommendation stemmed from a review of data from the first year of PPS. ProPAC recalculated the standardized amounts by replacing updated 1981 costs per case with first-year PPS costs per case. The newly recalculated amounts were, on average, 12.3 percent lower: 13.0 percent for urban hospitals and 7.6 percent for rural hospitals.

In developing its original recommendation for a negative adjustment to the standardized amounts, the Commission considered several factors. First, part of the differential represents the costs of preadmission or post-discharge services that formerly were provided during the inpatient stay but are now delivered at other sites. Inasmuch as the costs of these services are covered elsewhere in the Medicare program, ProPAC thinks that this part of the differential should be removed from the payment rates rather than shared with the hospital industry. Moreover, errors in projecting costs and changes in hospital accounting practices may account for part of the differential.

The treatment of productivity gains was the second factor considered by the Commission. As with its previous update recommendations, ProPAC maintained that the portion of the differential attributed to productivity gains should be shared between the hospital industry and the Medicare program. Finally, the Commission considered the extent to which relatively low update factors in fiscal years 1986 and 1987 already accounted for part of Medicare's share of the cost differential.

After considering these factors, the Commission recommended that 5.4 percent of the 12 percent cost differential be removed from the standardized amounts over a three-year period. The annual reduction would be 1.9 percent for urban hospitals and 1.1 percent for rural hospitals.

In its March 1988 report, the Commission revised the level of the adjustment to reflect congressional action in setting fiscal year 1988 payment rates. ProPAC believes that in legislating the updates for fiscal year 1988, the Congress implicitly adjusted for more than one-third of the Commission's total recommended reduction. As a result, the Commission recommended an annual reduction for fiscal years 1988 and 1989 averaging 1.1 percent: 1.2 percent for urban hospitals and 0.8 percent for rural hospitals.

This year's recommendation upholds the previous Commission actions, but further revises the level of the adjustment for fiscal year 1990. The revision accounts for the update factor hospitals received for fiscal year 1989. ProPAC believes that in legislating an update factor that was lower than the one it recommended, the Congress implicitly accounted for more than the Commission's recommended reduction for fiscal year 1989.

After considering the fiscal year 1989 update factor, the Commission recommends that no further reduction be applied to the rural standardized amount. Last year, ProPAC anticipated that there would be a 0.4 percent reduction remaining to be incorporated in the fiscal year 1990 update for rural hospitals. But the fiscal year 1989 update factor for rural hospitals already captured this remaining adjustment. Thus, the entire 3.3 percent reduction originally recommended for rural hospitals has been incorporated into the payment rates.

For urban hospitals, however, the Commission recommends incorporating a reduction of 0.8 percent into the update factor for fiscal year 1990. Last year, ProPAC anticipated that there would be a

1.2 percent reduction remaining to be applied in the fiscal year 1990 urban hospital update. Because the fiscal year 1989 urban hospital update captured 0.4 percent of this amount, the adjustment remaining for fiscal year 1990 is 0.8 percent. Incorporating this amount would complete the entire 5.7 percent reduction the Commission originally recommended for urban hospitals.

The disparate effects that recommendations like this one have across hospitals continue to concern the Commission. An across-the-board adjustment may have a detrimental effect on some hospitals, while others could absorb a larger reduction. Distributional concerns have become even more important as hospital operating margins are falling. The Commission will continue to recommend improvements in the PPS payment formula and examine other factors that might cause financial difficulties for particular types of hospitals.

Recommendation 6: Additional Update for Hospitals in Large Urban Areas

For fiscal year 1990, urban hospitals in Metropolitan Statistical Areas with more than 1 million people should receive an update 0.5 percent higher than hospitals in other MSAs. This should be accomplished by a 0.2 percent increase to the standardized amount for large urban areas combined with a 0.3 percent reduction to the other urban standardized amount.

The higher costs of hospitals located in large urban areas are not fully recognized by current PPS payment policy. Because a differential update factor is an imprecise method of adjustment, more research should be undertaken to further the understanding of the sources of higher costs in these areas. Simultaneously, a broad review of PPS payment equity should be undertaken, including consideration of overlap among current payment adjustments.

PPS accounts for most, but not all, the difference in costs observed between hospitals in large urban areas and other urban hospitals. Adjustments are made for variations in DRG case mix, area wage differences, teaching effort, and low-income patient share.

Because the source of the remaining cost differences is not fully understood, a differential urban update factor by MSA population should be continued. The goal of separate updates is to bring the 20 percent per-case PPS payment differential between these groups closer to the 23 percent per-case cost differential.

For fiscal year 1990, ProPAC recommends an urban hospital update differential of 0.5 percent. The Commission believes that adjustments to improve the equity of PPS payments should not change total payments to hospitals. Therefore, the 0.5 percent differential update recommendation is accomplished by a positive 0.2 percent adjustment for hospitals in large urban areas, combined with a negative 0.3 percent adjustment for other urban hospitals. This combination will increase payments to hospitals in large urban areas relative to other urban hospitals without substantially affecting either total PPS payments or the relationship between average urban and rural payments. The Commission will consider the appropriateness of continuing the urban update differential on an annual basis as part of its update factor recommendation.

ProPAC recognizes that separate updates for hospitals in large and small MSAs is a crude method to address cost differences. Nevertheless, its review of the data did not suggest a better way to define MSA population categories or to otherwise adjust for the cost differences. Research must continue to attempt to identify which factors associated with MSA size account for the cost variation.

Data reviewed by the Commission suggesting that additional payments may not be justified for hospitals in the largest MSAs raise some particularly complex issues. Even after accounting for their higher costs, hospitals in MSAs with at least 5.0 million people receive PPS payments that are relatively generous compared with payments to other urban hospitals. Further analysis should examine variation within this group of hospitals, the extent to which MSA boundary definitions contribute to the findings, and whether a population of 5.0 million is the most meaningful threshold. Such analysis should also address the extent to which relatively high payments to these hospitals result from the current levels of PPS adjustments for indirect teaching, low-income patient share, and outlier cases. Any consideration of a policy to treat

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hospitals in these largest MSAs different from hospitals in other large urban areas must take into account the potential impact of such a policy on continued access to care by Medicare beneficiaries.

The distribution of PPS payments among hospitals has become more important now that the transition to national average rates is complete. Moreover, equity issues will become increasingly critical to PPS policy as constraints on Medicare spending continue. Medicare's prospective payment system includes a series of adjustments intended to ensure that payments to hospitals are equitable. The adjustments are imprecise, in part because the variation in costs is not fully understood.

Thus, ProPAC's efforts to examine the appropriateness of specific PPS payment adjustments will continue. The Commission will further investigate and comment on specific issues related to the indirect teaching and disproportionate share adjustments, the area wage index, outlier payment policy, and case-mix measurement issues. The overlap and interaction among these PPS payment adjustments will also be examined.

The equity of PPS payments should be considered more broadly as well. Many of the issues discussed in this report are not limited to distinctions based on MSA population. For example, hospital costs vary between core and ring areas within MSAs, by region, and by bed size. Research must continue to improve understanding of why certain hospital characteristics are associated with higher costs, and which characteristics are most appropriately recognized in the payment system.

A complete examination of hospital payment equity should go beyond studies of PPS payment policies. Many other factors contribute to the overall financial condition of hospitals. The Medicare program should not be expected to solve all financial problems facing the hospital industry. But other issues potentially affecting continued access to hospital care for all Americans should not be ignored.

More complete analysis and discussion of the issues addressed by this recommendation appear in ProPAC's report to the Congress, *Separate PPS Payment Rates for Hospitals in Large Urban Areas and Other Urban Areas*, December 1988.

Recommendation 7: Update Factor for Excluded Hospitals and Distinct-Part Units

For fiscal year 1990, the target rate of increase for excluded hospitals and distinct-part units should be determined separate from the PPS update factor. The rehabilitation, psychiatric, and long-term facilities' target rate of increase should reflect the projected increase in the hospital market basket for these hospitals corrected for fiscal year 1989 forecast error. The target rate of increase for children's hospitals should reflect the projected rate of increase in the PPS hospital market basket corrected for forecast error.

Based on the Commission's most current information, the recommended rate of increase for psychiatric, rehabilitation, and long-term facilities would be 6.2 percent for fiscal year 1990. The recommended increase for children's hospitals would be 6.3 percent.

The Commission's update factor recommendation for PPS-excluded hospitals and distinct-part units is determined primarily by projected increases in the market baskets for these facilities. ProPAC continues to believe that the rates of increase should include a correction for substantial errors (those that equal or exceed 0.25 percentage points) made in the previous year's forecast.

The Commission maintains that, for most excluded hospitals and distinct-part units, the market basket should be different from the PPS market basket. Although the differences between the two forecasts are now marginal, this may not always be the case. Therefore, it is important to continue to forecast separate market baskets so that future differences can be captured. In addition, ProPAC urges the Secretary to continue studying the feasibility of developing separate market baskets for excluded rehabilitation and psychiatric facilities. The Commission still believes that the PPS market basket is appropriate for children's hospitals.

ProPAC has also developed a discretionary adjustment factor for excluded facilities. This DAF includes allowances for scientific and technological advancement and productivity improvement. These allowances are both future-oriented targets. The scientific and technological advancement factor reflects ProPAC's judgment on the financial requirements for hospitals to implement quality-enhancing but cost-increasing technologies. The productivity factor reflects achievable productivity gains resulting from the cost containment incentives inherent in the target rate of increase limits.

Analyses of these factors led the Commission to conclude that cost increases due to scientific and technological advancement should be offset by productivity improvement. Therefore, the DAF is set at zero for fiscal year 1990.

The Commission's recommended update is entirely dependent on fiscal year 1990 market basket forecasts and corrections for errors in the fiscal year 1989 market basket forecasts. The market basket forecast used to set fiscal year 1989 targets was 5.4 percent. The most recent forecast for fiscal year 1989 is 5.9 percent, or 0.5 percentage points higher than the original amount.

Using the Commission's methodology of correcting for errors in forecasts of market basket components external to hospitals, the forecast error correction factor is 0.4 percent. This amount, added to the current excluded market basket forecast of 5.8 percent, results in a recommended 6.2 percent target rate of increase for rehabilitation, psychiatric, and long-term facilities. Market basket estimates are likely to be modified as more recent data and forecasts become available. In addition, the forecast for fiscal year 1990 exempt market baskets will be further modified as a result of Recommendation 2.

The forecast for the fiscal year 1990 PPS market basket increase is 5.7 percent. The forecast error correction factor for fiscal year 1989 is 0.6 percent. Therefore, the recommended target rate of increase for children's hospitals is 6.3 pe cent.

The Commission continues to believe that adjustments for case-mix change are inappropriate for excluded facilities. Since these facilities are not reimbursed on the basis of DRGs, changes in case mix do not influence their payments. However, ProPAC believes that an examination of the changes in the medical care needs of patients in these facilities is warranted.

Finally, the Commission believes a review of the impact and effectiveness of the target rate of increase limits is necessary. ProPAC will begin this evaluation by analyzing data related to changes in costs and payments for excluded facilities and distinct-part units. The Commission will report its findings in its June 1989 report to Congress, *Medicare Prospective Payment and the American Health Care System.*

Adjustments to the PPS Payment Formula

Recommendation 8: Indirect Medical Education Adjustment

The Commission recommends that the Secretary seek legislation to reduce the indirect medical education adjustment from its current level of 7.7 percent to 6.6 percent for fiscal year 1990. This reduction should be implemented in a budget neutral fashion, with the savings returned to all hospitals through corresponding increases in the standardized amounts.

Under PPS, teaching hospitals receive an adjustment to their payments based on their level of teaching effort. This adjustment recognizes the higher costs of teaching hospitals that are associated with teaching effort. Among the factors contributing to these higher costs are the greater use of ancillary services, a more severely ill patient mix, location in inner cities, and a more costly mix of staffing and facilities.

Decisions to modify the indirect medical education adjustment should be based on several important policy considerations. First, the medical education adjustment should be based on an empirically derived estimate of the relationship between teaching effort and Medicare cost per case, using the most recent cost data available. At this time, the Commission supports the use of the "payment model" as the analytic approach to estimate the effect of teaching effort on Medicare cost per case.

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A second consideration is that of equity in the distribution of payments to hospitals. The indirect medical education payment adjustment has been funded through a reduction in the standardized amounts paid to all hospitals. The adjustment represents a redistribution of payments to teaching hospitals at the expense of payments to nonteaching hospitals. A reduction in the level of the teaching estimate, therefore, suggests that teaching effort is explaining less of the difference in the costs of teaching compared with nonteaching institutions than the current level of the adjustment would suggest.

In order to ensure equitable distribution of payments to hospitals, a reduction in the indirect medical education adjustment should be accompanied by a redistribution of these dollars through corresponding increases in the basic payment to all hospitals. If this budget neutrality adjustment is not made, then the average payment to all hospitals would be inappropriately lowered.

Another factor to consider is the financial impact of lowering the adjustment for teaching hospitals. Analysis has shown that through the third year of PPS, teaching hospitals had significantly higher PPS margins than nonteaching hospitals. Examination of more recent data on overall financial status, however, shows that major teaching hospitals have considerably lower total margins when compared to other teaching and nonteaching hospitals. Lowering payments to teaching hospitals should be weighed in light of the impact such action would have on the quality of and access to care for Medicare beneficiaries.

Using the payment model and 1986 Medicare Cost Report data, the Commission obtained a teaching estimate of 4.4 percent. Further analysis revealed that reduction of the medical education adjustment from the current level of 7.7 percent to 4.4 percent would have a dramatic effect on payments to major teaching hospitals. The results of ProPAC's analysis appear in Appendix A.

Concern about the impact of precipitously lowering payments to teaching hospitals led the Commission to recommend only one-third of the total reduction implied by the current estimate of 4.4 percent this year. Further reductions in future years should be made only after carefully reevaluating the models, the analytical results, and the impact such changes would have on the financial position of these hospitals.

The Commission's decision not to recommend a full reduction this year is based on several considerations: (1) the need to phase in any substantial reduction in the medical education adjustment, (2) the need to continue to examine the relationship between teaching effort and Medicare cost per case, and (3) the need to assess the effect of the reduction in the adjustment on teaching hospitals' overall financial viability. The Commission believes that both the empirical estimate and the impact analysis should play major roles in establishing the level of the medical education adjustment.

The Commission will undertake a thorough analysis to examine the current and alternative methods for estimating the relationship between teaching effort and Medicare cost per case. It will also continue to assess the financial impact of lowering the medical education adjustment on teaching hospitals.

Recommendation 9: Outlier Payment Policy

> **The Commission believes that the modifications in the outlier payment methodology that were implemented during fiscal year 1989 represent an improvement in the payment system. The Secretary should continue to examine methods for improving the effectiveness of outlier payment in accomplishing its two major objectives: protecting hospitals from the risk of extraordinarily costly cases, and protecting types of patients who are more likely to be extraordinarily costly from a potential decrease in access to inpatient hospital services. This examination should include a review of the fundamental structure of outlier payment policy.**

The modifications in the outlier payment methodology that were implemented during fiscal year 1989 represent a significant change in how outlier payments are made under PPS. The marginal cost factor for cost outliers was increased from 60 to 75 percent (except for outliers in the burn-related

DRGs, for which the marginal cost factor is legislatively set at 90 percent). In addition, cases qualifying for payment under both the day and cost outlier criteria now receive the higher of the two payment amounts, rather than the day outlier amount. Both of these changes increase the emphasis on cost rather than length of stay in determining outlier payments. The use of a hospital-specific cost-to-charge ratio rather than a national average ratio increases the accuracy with which costs are estimated from the charge data available on each Medicare bill.

These modifications, in the context of a limited outlier pool, required that the day and cost outlier thresholds be increased substantially, focusing outlier payments on the most extreme cases and away from those that are less extreme.

As a result of these changes, the distribution of outlier payments across hospitals is expected to be substantially affected. The distribution of outlier payments is an important consideration. Nevertheless, the effectiveness of outlier payment in reducing financial risk (both that borne by hospitals and that represented by specific groups of patients) should be the primary criterion for evaluating both recent and future changes in the outlier payment policy.

While the effectiveness of outlier payment has been improved, some basic issues related to outlier policy have not yet been resolved. Research conducted by ProPAC staff indicates that the risk of incurring large losses on individual cases is neither spread evenly across hospital groups, nor equally across DRGs.

Therefore, the Commission urges the Secretary to continue to examine outlier payment policy. In addition, the Commission will continue its own study of outlier policy, focusing on several areas that are crucial in the evaluation of recent changes and the development of potential improvements.

The Commission will review the fundamental structure of outlier payment. This review will include an examination of whether the current policy is appropriate in light of the magnitude and distribution of the risk faced by hospitals under prospective payment. The Commission will also examine the appropriateness of the current policy that results in outlier cases invariably creating financial losses for hospitals.

A primary item on ProPAC's outlier payment research agenda is the development of a measure of risk that appropriately balances the different types of risk that hospitals face. Some hospitals tend to attract unusually costly cases, and thus are more likely to incur large losses on individual cases. Other hospitals are vulnerable because their volume of Medicare patients is too small to allow them to withstand the financial burden of even a few unusually costly cases.

In this context, the possibility of different outlier thresholds for urban and rural hospitals will be investigated. As suggested by the Secretary in the PPS proposed rule for fiscal year 1989 [53 F.R. 103, 19516 (1988)], ProPAC will study whether urban and rural hospitals are equally protected against risk under current policy, and whether differential thresholds would increase the equity of payment.

Given the increasing emphasis on the cost outlier thresholds in determining outlier payment, alternative specifications of these thresholds will also be examined. These alternative specifications–including those based on the loss associated with the case, rather than a fixed cost level–will be evaluated according to their effectiveness in equalizing the risk borne by different types of hospitals.

ProPAC's study of the incremental cost of inpatient care will continue, in order to help develop a better understanding of the marginal cost of care and to aid in the determination of appropriate marginal cost factors.

ProPAC will also continue to investigate the appropriate size of the outlier payment pool. The trade-off between the increased protection against risk offered by a larger outlier pool and the accompanying decrease in the basic PPS payment rates requires careful evaluation.

Another topic that merits attention is the method of financing outlier payments. Current evidence indicates a strong correlation between the incidence of outlier payments in specific DRGs and the overall discrepancy between payments and costs

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for all cases in the DRG. Although the incidence of outlier payments is much higher in some DRGs than in others, the basic PPS payment rates are reduced by an across-the-board percentage (for urban and rural hospitals separately) in order to finance outlier payments. Thus, payments for cases in "high-outlier" DRGs are, in effect, subsidized by the reduction in payments for cases in "low-outlier" DRGs.

Finally, the greater emphasis on costs derived from charges to determine outlier payment may give hospitals an incentive to raise charges or to alter their charge structures in order to increase their outlier payments. The data show that hospital charges have increased steadily and rapidly for several years, with no apparent relation to prospective payment, and before incentives related to outlier payment existed. Nevertheless, ProPAC will monitor increases in hospital charges across types of hospitals and types of services to determine whether hospital charging practices have changed due to the outlier payment policy.

As in the past, the Commission will be pleased to work with the Secretary in pursuing these and other analytic issues related to improving the outlier payment policy.

Data Collection and Measurement

Recommendation 10: Updating the Area Wage Index

The Commission strongly urges the Secretary to collect more current data on hospital wages and hours of employment, and to use these data to update the wage index for fiscal year 1990. The Secretary also should develop a permanent mechanism for obtaining accurate hospital wage data annually. In addition, the Commission urges the Secretary to update the wage index at least every other year.

Accurate and timely wage and employment data are essential to the maintenance of equitable payment rates for hospitals located in different labor market areas. The PPS annual update factor adjusts the DRG payment rates for the projected national average increase in hospital wage levels. It does not, however, address changes in local conditions that may affect wage levels differentially across labor market areas. This function is performed by the area wage index.

The area wage index is one of the most important adjustments affecting the level of DRG payments to hospitals located in different areas. Based on the expenditure weights for the components of the hospital market basket index, local wage levels are assumed to affect approximately 75 percent of a hospital's inpatient operating costs. Accordingly, the area wage index is applied to adjust approximately 75 percent of a hospital's payment rate in each DRG. Thus, a 10 percent change in the wage index would result in an increase or decrease of approximately 7.5 percent in the hospital's total DRG payments.

Because the relevant hospital wage and employment data have not been collected on an annual basis in the past, it is not clear how volatile area wage levels may be from year to year. However, for making payments during fiscal year 1988, the Secretary adopted a blend of area wage indexes on the grounds that the use of a blended wage index would cushion the impact of the change from an index based on 1982 data to one based on 1984 data. This suggests that changes in area wage levels over a two-year period can be substantial in some labor market areas.

Since PPS began, the area wage index has been updated only twice (fiscal years 1986 and 1988), and it has always been based on data that were at least three years old. In fact, the wage index data in use for fiscal year 1989 reflect, on average, the pattern of relative wage levels that prevailed six years earlier.

The Commission believes that continual use of old wage data and infrequent revision of the wage index result in two problems. First, payments to hospitals are not adjusted promptly to reflect changes in local labor market conditions. This leads to inequities in payment among hospitals; hospitals in some areas suffer losses, while hospitals in other areas receive benefits that are unrelated to their operating performance. Second, infrequent revision of the wage index often results in large changes in wage indexes for individual labor market areas. These abrupt changes in wage indexes and payment rates are regarded as especially disruptive for hospitals located in areas where the wage index is reduced.

To avoid these problems, the Congress recently enacted a provision in OBRA 1987 that requires the Secretary to conduct a new wage survey to update the area wage index for fiscal year 1991, and at least every three years thereafter. While it agrees with the intent of this provision, the Commission is concerned that acute shortages of personnel in certain hospital occupations may have led to increased volatility in wage levels, particularly in some labor market areas.

Therefore, the Commission believes that wage surveys and index updating may be needed more frequently than the statute requires. The Commission urges the Secretary to work closely with representatives of the hospital industry and related organizations (including representatives of hospital employees), to develop a permanent mechanism for collecting accurate hospital wage and employment data annually. In addition, the Secretary is urged to update the wage index at least every other year.

Recommendation 11: Improving the Cost Data Used for Decision Making

> **The Secretary should initiate the developmental work necessary to secure the future role of the Medicare Cost Report as a vital information source for policy evaluation and decision making. Although the cost report was originally developed and continues to be used as a reimbursement tool, it is also increasingly used as a source of data. This trend will continue and should be encouraged. Efforts to improve the Medicare Cost Report should attempt to minimize the administrative burden on hospitals, fiscal intermediaries, and the Federal government.**

The role of the Medicare Cost Report is changing from a reimbursement tool to a vital information source for payment policy evaluation and decision making. The original purposes of the MCR were to determine reasonable costs, as defined by Medicare, and to calculate Medicare's share of these costs. As such, the cost report is designed to collect and report costs at the hospital department level. These costs are then aggregated to determine total facility reimbursement.

Under Medicare's prospective payment system, however, the MCR serves a dual purpose. It continues to be used for reimbursement of selected costs, such as capital, direct medical education, and outpatient services. But it also provides the only information on hospital costs of treating Medicare beneficiaries, based on Medicare payment principles. There are inherent limitations in using MCR data for policy analysis and decision making, however. Most limitations arise because PPS analyses require information on hospital costs at the patient level, whereas the MCR collects costs at the departmental level.

The Commission recognizes that the cost report will be necessary for reimbursement of selected costs for at least the next three to five years. Nevertheless, ProPAC believes that, over the long term, the cost report should be modified to improve its usefulness for decision making. Adequate resources must continue to be committed to this effort or deterioration in data quality and consistency is a likely outcome.

Modifying the cost report is a major undertaking requiring significant planning and evaluation. It requires determining data needs for decision making and reconciling these needs with the desire for data consistency, accuracy, and timeliness, as well as reduced reporting burden. The Secretary should, therefore, initiate efforts now to resolve these issues and move toward improved data for policy evaluation and decision making. In doing so, the Secretary should ensure that sufficient funding is available to maintain the integrity of existing data as well as to improve these data in the future.

There may be portions of the MCR that could be eliminated now or over time. Similarly, modifications to the cost report could be phased in as changes in Medicare reimbursement methods occur. Some modifications, such as collecting data on hospital wages, are warranted immediately.

Any attempts to modify the MCR should consider several issues, including administrative burden, reporting incentives, existing hospital reporting mechanisms, and the need for consistent data. Hospitals, fiscal intermediaries, and the Federal government already face complex reporting requirements, some of which could be streamlined or

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eliminated. Changing the role of the MCR from a reimbursement tool to an information source for decision making will result in different reporting incentives for hospitals. As the MCR becomes less important for reimbursement, hospitals may compromise reporting accuracy. Education of the industry on the implications of MCR data for future Medicare payment policy, therefore, is essential. Further, revisions to the cost report should, to the extent possible, complement other hospital reporting mechanisms already in place. Finally, changes to the MCR should recognize the need for data consistency to maintain the integrity of longitudinal analyses.

Recognizing the need to improve the use of MCR data, ProPAC has undertaken efforts to identify distortions and inconsistencies in the cost data and potential improvements to these data over time. Further, as required by OBRA 1987, the Secretary is conducting a three-year demonstration project on the costs and benefits of adding to the cost report financial and utilization information pertaining to other payers. ProPAC will continue to devote resources to understanding current MCR data and improving future data. The Commission encourages the Secretary to provide adequate resources, including funding for fiscal intermediaries, to ensure the accuracy and timeliness of cost report data. For additional information, refer to ProPAC's technical report, *Review of Medicare Cost Report Data for Policy Analysis*.

Recommendation 12: Improvements in Case-Mix Measurement

> **The Commission urges the Secretary to begin immediately to thoroughly evaluate the potential consequences of adopting DRG refinements recently developed at Yale University. Preliminary results from this project appear to be positive. Much work remains to be done, however, to understand all the implications of applying these refinements to PPS. The Commission will be pleased to cooperate fully with the Secretary to further this effort.**

In recent years HCFA has funded a number of research projects aimed at improving the measurement of hospital inpatient case mix and severity of illness. One such project, recently completed at Yale University, has developed a major revision of the diagnosis-related groups patient classification system.

The revised DRG definitions are based on refinements in the treatment of secondary diagnoses indicating the presence of comorbid or complicating conditions (CCs). In the revision, patients in each medical or surgical group within a Major Diagnostic Category are assigned to one of three or four subcategories (DRGs) based on whether they had a catastrophic, major, moderate, or minor/no CC. In addition, all patients who had a temporary tracheostomy and all nonsurgical patients who died within 48 hours after admission are grouped in two separate DRGs within each MDC.

Preliminary results indicate that these refinements substantially improve the ability of the DRGs to distinguish patients who are expected to have relatively high resource needs (those with temporary tracheostomy or a major CC) or relatively low resource needs (early deaths among nonsurgical patients) from other patients (those with moderate, minor, or no CCs). Therefore, adoption of the revised DRGs could provide a substantial improvement in the accuracy and equity of payment among hospitals under PPS. However, it also could have a number of other important effects.

For example, adoption of revised DRGs may require conforming changes in other features of the payment system. To the extent that the revised DRGs improve the measurement of case mix and severity of illness, the role of other payment adjustments, such as the indirect teaching and disproportionate share adjustments, may need to be reevaluated. Similarly, if the revised DRGs are much more effective in identifying extremely high-cost cases, the outlier payment policy may need to be revised. Adoption of the revised DRGs also could affect the size of the standardized cost differentials between urban and rural hospitals under PPS.

The Commission believes that the resolution of these issues could have a substantial effect on equity of payments among hospitals. Therefore, ProPAC urges the Secretary to begin as soon as possible to evaluate all the major potential effects of adopting the revised DRGs under PPS.

Recommendation 13: Reassignment of Patients with Guillain-Barre Syndrome

The Secretary should reassign patients with Guillain-Barre syndrome from DRGs 18 and 19 to DRG 20, DRG 34, or a new DRG.

Guillain-Barre syndrome (GBS) is a post-infectious polyneuropathy in which patients may require plasmapheresis, ventilation assistance, and long intensive care stays. GBS discharges have been assigned to DRGs 18 and 19 (cranial and peripheral nerve disorders with and without CC). The Commission believes that the classification of GBS cases into DRGs 18 and 19 is inappropriate in terms of resource use.

The resource use associated with GBS cases is quite different from the resource use for average cases in DRGs 18 and 19. The payment hospitals receive under DRGs 18 and 19 is inadequate for most GBS cases. The Commission has examined DRGs 20 (nervous system infection except viral meningitis) and 34 (other disorders of nervous system, with CC) as alternatives for GBS cases. Assignment of GBS cases to these DRGs would better reflect the resource use of these cases and would be acceptable clinically. However, a new DRG would be a satisfactory classification alternative.

The Commission is also concerned about a subset of GBS cases: those with tracheostomy. The GBS tracheostomy cases are extremely resource intensive. Currently, DRG 474 (tracheostomy) applies to tracheostomy cases in MDC 4 (respiratory) only. The Commission is aware that all temporary tracheostomy cases may be reassigned in the next several years when other classification changes are made. The Commission believes that reassignment of all GBS cases will provide a short-term partial solution to the payment inadequacy of the GBS tracheostomy cases. In the long term, however, the Commission thinks it would be more appropriate to classify GBS tracheostomy cases with other tracheostomy cases.

Quality of Care

Recommendation 14: Evaluation of PRO Review of Quality of Care

The Secretary should evaluate the impact of the Peer Review Organizations on quality of care. Intensified analysis of the PRO findings and validation of the PRO quality review process should be included in the evaluation. The validity, reliability, and efficiency of the PRO quality screens should receive special emphasis in the evaluation. In addition, the Secretary should continue to develop, test, and implement more sophisticated methods of inpatient and outpatient quality review. He should also develop additional mechanisms to identify and evaluate quality of care beyond the immediate period of hospitalization, placing more emphasis on outcomes of care.

For the first five years of the prospective payment system, the Peer Review Organizations have been assigned an important role in protecting quality of care. It is therefore essential to focus attention on the PRO impact on quality of care through an independent, comprehensive evaluation. The evaluation should consider issues of access to and use of services, patterns of denials, and instances of poor quality of care. The results of the synthesis and evaluation of these topics should be made public.

The generic quality screens currently used by the PROs appear to be relatively inefficient measures of quality of care. The Commission is concerned about both the technical adequacy and the process of applying the generic quality screens. Studies by the SuperPRO and by ProPAC have identified several technical problems with the screens. First, they are relatively inefficient. That is, reviewers must examine a large percentage of case records to identify relatively few quality problems. Second, there is inconsistency among PROs in application of several of the screens. Finally, the screens may fail to identify a substantial number of quality of care problems. These issues warrant a careful evaluation of the effectiveness of the quality screens at this time.

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The Commission is pleased that HCFA is developing a possible replacement or enhancement for PRO quality review though its work on the Uniform Clinical Data Set. This extensive data set, derived from the medical record, will be applied to a set of detailed clinician-developed algorithms to identify cases for PRO review. It will also provide a rich data source for research. ProPAC applauds this development. Focus on aggregate statistics of resource use, process of care, and outcomes is appropriate and represents a major step forward. In the Commission's view, this more sophisticated method of inpatient quality review should be pursued. PROs should be adequately funded to carry out their new responsibilities and to ensure the success of these enhanced programs.

ProPAC is also concerned about the need for intensified analysis of the outpatient surgery generic quality screens and the development of uniform comprehensive guidelines for applying these screens. The Commission's suggestions concerning outpatient quality review are described in the discussion of Recommendation 16. The April 1, 1989 report, *Medicare Payment for Outpatient Hospital Surgery, The Views of the Prospective Payment Assessment Commission*, will describe ProPAC's concerns on this subject in more detail.

Rural Hospitals

Recommendation 15: Rural Hospitals

The Commission is concerned about the problems affecting rural hospitals and the rural health care system, as well as the implications of these problems for access to needed health care. The Commission recognizes that these problems extend beyond PPS and Medicare. The Commission urges the Secretary to continue the Department's rural health care research and policy agenda. Meanwhile, the Commission will continue its analysis of the effects of PPS on rural hospitals.

Of the multitude of pressures that rural hospitals face, only a portion are attributable to PPS. The demographic and economic environment of rural communities is changing. An aging population, eroding patient base, and changing rural economy are among the forces influencing the long-term viability of rural hospitals.

In a recent report by the Senate Committee on Aging, the characteristics of many rural communities were found to place special pressures on rural hospitals. For example, compared with urban areas, rural areas not only face higher rates of poverty and unemployment, but have a more elderly population. Rural areas also have a lower percentage of insured residents and more acute health personnel shortages.

As a result, small rural hospitals are often unable to operate efficiently because of insufficient patient volume, manifested in low occupancy levels. The inability of some rural hospitals to operate efficiently may result in eventual closure and the potential loss of patient access to needed care. Policies affecting rural hospitals must balance access to care in rural areas with improved hospital efficiency.

Initiatives are under way to explore strategies that will help rural hospitals meet these challenges. Both publicly and privately funded, many of these projects involve innovative plans to strengthen or adapt health care delivery to meet the changing needs of rural communities. Some of these projects also encourage cooperative efforts between communities and providers.

At the Federal level, responsibility for issues that directly and indirectly touch on rural health care is distributed throughout the Department of Health and Human Services. The relatively new Office of Rural Health Policy and the Secretary's National Advisory Committee on Rural Health will help to focus the Department's attention on rural health care conditions. The Commission encourages the Secretary to continue the Department's research and policy agenda and the coordination of rural health care activities within the Department.

The Commission remains concerned about the relatively poor financial performance of rural hospitals under PPS and intends to continue its analysis of rural hospital issues. The Commission will focus particularly on the appropriateness of PPS for small rural hospitals. Those hospitals are more vulnerable to wide fluctuations in volume and case

mix than larger hospitals. Small rural hospitals have also generally had the lowest average Medicare operating margins over the first three years of PPS. Ten percent of rural hospitals with fewer than 50 beds have had PPS margins of -45 percent or lower.

Other rural issues the Commission intends to address include further examination of the urban-rural differential in the standardized amounts, evaluation of the criteria for obtaining Sole Community Hospital status, and the adequacy of payment levels for Sole Community Hospitals.

Ambulatory Surgery Payment

Recommendation 16: Medicare Payment for Hospital Outpatient Surgery

Beginning in fiscal year 1990, Medicare payment for the facility component of hospital outpatient surgery, including capital, should be entirely prospective. Separate rates should be established for each of the six groups of surgical procedures proposed for payment of services furnished in freestanding ambulatory surgery centers (ASCs). The hospital outpatient surgery rates for fiscal year 1990 should be based on a blend of hospital-specific costs, average hospital costs, and the rate paid to ASCs.

The rates should be updated annually following the approach used under PPS. The overall level of the prospective rates should be set so that the sum of Medicare and beneficiary payments to hospitals would be the same in fiscal year 1990 as they would have been under current policy. Payments should reflect differences in area wages.

These changes in hospital outpatient surgery payment policy should apply to the list of ASC-approved procedures only; the existing Medicare payment provisions should continue for non-list procedures. The Commission is not recommending differential treatment of eye and ear specialty hospitals.

Recognizing the need for greater control of Medicare outpatient expenditures, the Congress mandated several modifications to policy related to payment of surgery performed in hospital outpatient departments (OPDs). OBRA 1986 modified nonphysician payment for some surgical procedures performed in the hospital outpatient department, referred to as the facility payment component. Hospital payments for outpatient surgery were linked to the prospective method and amounts paid to freestanding ambulatory surgery centers.

The OBRA 1986 changes took effect with hospital cost reporting periods beginning on or after October 1, 1987. Payments for surgical procedures on the list of ASC-approved procedures are based on the lesser of two amounts: reasonable costs or charges, or a blend of reasonable costs or charges and the ASC payment rate. Currently, there are four ASC payment groups and rates. HCFA proposes to expand these to six groups and to update the payment rates by 5.5 percent [53 F.R. 160, 31468 (1988)]. For the first year, hospital payments are based on a blend of 75 percent hospital-specific costs and 25 percent of the ASC payment rate. In the second year and thereafter, the blend moves to 50/50.

Congress asked ProPAC to provide its views on prospective payment for hospital outpatient surgery. The Commission will submit a complete report on hospital outpatient surgery payment policy by April 1, 1989. This recommendation and Recommendation 17 summarize those views, which will be further elaborated in the forthcoming April report. ProPAC plans further work on the issue of ambulatory surgery payment as it pursues its agenda for overall outpatient payment reform.

The Commission believes that the proposal it has set forth in this recommendation for hospital outpatient surgery payment is an improvement over current policy. It is an interim approach that embodies aspects of prospective payment, but also provides for longer-term consideration of surgery in the context of overall outpatient payment reform. Finally, ProPAC's recommendation is an outgrowth of current policy, thereby providing some continuity for hospitals that are attempting to manage under the complex and dynamic environment of outpatient payment.

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The Commission recommends that the proposed six ASC payment groups be used to classify ambulatory surgery patients for hospital payment purposes. Payments to hospitals for outpatient surgery should be entirely prospective based on an equal blend of the following: hospital-specific costs for each of the six ASC payment groups; national average hospital costs for each of the ASC groups; and the proposed ASC payment rates for each of the ASC groups. The level of the rates should be adjusted so that the sum of Medicare program payments and related beneficiary cost sharing is the same as estimated under current policy. The rates should be updated annually. Since the rate is entirely prospective, the current payment criterion to pay "the lesser of" costs, charges, or the blended rate should be eliminated.

The Commission believes that a prospective rate gives hospitals the opportunity to earn a profit or risk a loss, thereby enhancing incentives to reduce the costs of ambulatory surgery. At the same time, this approach recognizes that many factors potentially contribute to the higher costs of OPDs compared with ASCs. Among them are patient severity, efficiency, maintaining standby capacity, overhead allocation methods, uncompensated care, capacity utilization, billing and coding practices, and bundling of services. How these factors affect cost of care is not well understood.

Basing payment partly on hospital-specific cost experience recognizes cost differences across individual hospitals. The average hospital payment portion reflects differences between OPD costs and ASC payment rates. Average OPD costs are now about 38 percent higher than the ASC rates. Basing part of the payment on the ASC payment rates places continued financial pressure on hospitals to lower their costs so that they are equal to or below those of ASCs. In summary, the Commission believes that basing payment on these three amounts appropriately recognizes the lower rates paid to ASCs as well as historical cost differences between OPDs and ASCs.

As for controlling expenditures, the overall level of the payment rates should be adjusted so that total payments to hospitals do not exceed what payments would be under the current 50/50 blended rate. Furthermore, updating the prospective rate annually allows control in the growth of Medicare outpatient expenditures. While such an approach does not control volume, it does provide incentives for cost containment until a volume-based system can be developed.

Payments should be adjusted to reflect differences in area wages. ProPAC analysis indicates that this adjustment is effective in narrowing cost/payment differences across hospital groups. Further, analysis by others indicates that area wage differences explain a large share of the variation in hospital outpatient surgery costs. The Commission is not recommending additional adjustments at this time. Further study is necessary to understand factors contributing to cost variations across hospitals.

Capital costs should be included in the hospital-specific and average hospital rates specified above. Currently, hospitals are reimbursed for 50 percent of their actual capital costs related to outpatient surgery under the blended rate method. The ASC rates already include capital. Future payment updates should reflect this capital component.

The recommended changes in hospital outpatient surgery payment policy apply only to the list of ASC-approved procedures. This list captures major surgical procedures. Procedures not on the list tend to occur infrequently, are low cost, and may be better treated the same as other outpatient services. Furthermore, procedure-level data are not readily available to determine payment rates for procedures not on the ASC list.

The Commission recommends that eye and ear specialty hospitals be paid on the same basis as other hospitals. OBRA 1987 provided that payment for ambulatory surgery in certain hospitals specializing in eye and ear surgery be based on a blend of 75 percent hospital-specific costs and 25 percent of the ASC payment rate. ProPAC analysis indicates that eye and ear specialty hospitals have costs comparable to other acute care hospitals and hospitals in their peer groups.

ProPAC acknowledges that eye and ear specialty hospitals may be vulnerable to financial losses for other reasons. These include greater reliance on Medicare outpatient services revenues and more cases in higher loss payment groups. Nevertheless, the Commission believes that these differences should not be accounted for in the payment system.

First, ProPAC's recommended payment approach would not result in a major change from current policy for these hospitals. Second, because eye and ear specialty hospitals concentrate a high volume of cases in a few procedures, the Commission believes that they may attain economies of scale that other hospitals cannot.

Finally, the Commission recommends that the Secretary examine the need for improved data from freestanding ambulatory surgery centers. These data, which are extremely limited, are the foundation for establishing the ASC payment groups and rates. Currently, there is no systematic method for collecting information on costs in ASCs. The Commission believes that efforts should be undertaken now to ensure more reliable data from these facilities in the future. For additional information on this recommendation, refer to the forthcoming report, *Medicare Payment for Hospital Outpatient Surgery, The Views of the Prospective Payment Assessment Commission*, April 1989.

Recommendation 17: Beneficiary Liability for Hospital Outpatient Surgery

> **The Secretary should modify the method to determine Part B coinsurance for certain ambulatory surgery services performed in hospital outpatient departments. Currently, beneficiary coinsurance is based on hospital submitted charges. Beneficiary coinsurance should be limited to 20 percent of the payment amount allowed by Medicare. The Medicare program should bear the costs of this change.**

Under current law, beneficiary liability for ambulatory surgery differs depending on the site of care. In hospital outpatient departments, coinsurance is equal to 20 percent of the facility charge. In freestanding ambulatory surgery centers, coinsurance is equal to 20 percent of the ASC payment rate.

Prior to OBRA 1986, hospital outpatient departments were reimbursed on the basis of reasonable costs for all services, including ambulatory surgery. These costs were not determined until after the services were performed. Therefore, it was administratively infeasible to base beneficiary coinsurance on actual Medicare payment. As a result, beneficiary coinsurance was based on submitted charges, which were known when services were performed. Current policy still reimburses hospitals, in part, on a reasonable costs basis. However, the Commission recommends a prospective payment rate for ambulatory surgery in OPDs (see Recommendation 16). Under this policy, Medicare payment will be known at the time services are furnished. Therefore, it is feasible to follow the general Medicare policy that beneficiary coinsurance equals 20 percent of the payment amount and Medicare payment equals 80 percent.

Analysis conducted by the Commission indicates that, for approved ASC procedures, beneficiary coinsurance tends to be greater in an OPD than in a freestanding ASC. Beneficiary coinsurance in the OPD generally exceeds 20 percent of the payment amount allowed by Medicare. In some cases, the beneficiary is paying more than 35 percent of the amount allowed by Medicare. Therefore, Medicare is reimbursing hospitals less than 80 percent of the allowed amount. In ASCs, however, Medicare pays 80 percent and the beneficiary pays 20 percent of the allowed payment amount.

In the Commission's view this policy unfairly penalizes the beneficiary. ProPAC therefore believes legislation should be adopted to reduce the burden on beneficiaries that results from using submitted charges as the basis for determining coinsurance.

The Commission realizes this policy will increase Medicare expenditures. However, the Commission believes that the Medicare program should assume responsibility for 80 percent of the payment amount. Therefore, the costs of this change should be borne by the Medicare program. Payment to hospitals should not be reduced to compensate for the increase in expenditure.

Several other issues regarding beneficiary coinsurance warrant further examination. These issues relate to different Medicare policies for reimbursing Medicare beneficiary bad debt and waiver of coinsurance. The Commission intends to address these issues in upcoming reports, as warranted.

For additional information on this recommendation refer to the forthcoming report, *Medicare Payment for Hospital Outpatient Surgery, The Views of the Prospective Payment Assessment Commission*, April 1989.

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 661

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 90515-9115]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of 1989 fishery management measures, modification of the Klamath River fall chinook spawning escapement rate, and request for comments.

SUMMARY: NOAA issues this notice to (1) establish fishery management measures for the commercial and recreational ocean salmon fisheries off Washington, Oregon, and California for 1989 and, as specified, for 1990, and (2) modify the Klamath River fall chinook salmon spawning escapement rate. Specific fishery management measures vary by fishery and area. Together they establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the exclusive economic zone (3–200 nautical miles) off Washington, Oregon, and California. Similar regulations are being adopted for the State waters (0–3 nautical miles) by the States of Washington, Oregon, and California. The management measures and modified spawning escapement rate are intended to prevent overfishing and to apportion the ocean harvest equitably among non-treaty commercial and recreational and treaty Indian fisheries. The regulations also are calculated to allow a portion of the salmon runs to escape the ocean fisheries to provide for treaty and non-treaty Indian and non-Indian inside fisheries and spawning. These management measures and modified spawning escapement goal were established by the procedures instituted by the framework amendment to the Fishery Management Plan for Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California.

DATES: This notice will be effective from 0001 hours Pacific Daylight Time (p.d.t.), May 1, 1989, until modified, superseded, or rescinded. Comments will be accepted until May 15, 1989.

ADDRESSES: Comments should be sent to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or E. Charles Fullerton, Director, Southwest Region, NMFS, 300 S. Ferry Street, Terminal Island, CA 90731–7415.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS), 206–526–6140; Rodney R. McInnis (Southwest Region, NMFS), 213–514–6199; or Lawrence D. Six (Pacific Fishery Management Council), 503–221–6352.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries off Washington, Oregon, and California are managed under a "framework" Fishery Management Plan for Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California (framework FMP). The framework FMP was approved in 1984 and has been amended three times since then (52 FR 4146, February 10, 1987; 53 FR 30285, August 11, 1988). Implementing regulations for the latest amendment, Amendment 9, were filed with the Office of the Federal Register and effective on May 1, 1989. Regulations at 50 CFR Part 661 provide the mechanism for making preseason and inseason adjustments to the management measures and for modifying spawning escapement goals, within limits set by the FMP, by notice in the **Federal Register**.

This notice implements management measures for the 1989 and, as specified, the 1990 ocean salmon fisheries recommended by the Pacific Fishery Management Council (Council).

Schedule Used To Establish 1989 Management Measures

In accordance with the FMP, the Council's Salmon Technical Team (STT) and staff economist prepared several reports for the Council, its advisors, and the public. The first report, "Review of 1988 Ocean Salmon Fisheries," summarizes the 1988 ocean salmon fisheries and assesses how well the Council's management objectives were met in 1988. The second report, "Preseason Report I: Stock Abundance Analysis for 1989 Ocean Salmon Fisheries," provides the 1989 salmon stock abundance projections and analyzes the impacts on the stocks and Council management goals if 1988 regulations and regulatory procedures were applied to the 1989 stock abundance.

The Council met on March 7–10, 1989, in Millbrae, California, to develop proposed management options for 1989. Four commercial and three recreational fishery management options were proposed for further analysis and public comment. These options presented various combinations of management measures designed to protect weak stocks and provide for ocean harvests of more abundant stocks of salmon. After the March Council meeting, the STT and staff economist prepared a third report, "Preseason Report II: Analysis of Proposed Regulatory Options for 1989 Ocean Salmon Fisheries," which analyzes the effects of the proposed 1989 management options. This report also was distributed to the Council, its advisors, and the public.

Public hearings on the proposed options were held March 28–29, 1989, in Seattle, Washington; Astoria and Coos Bay, Oregon; and Eureka and Sacramento, California.

The Council met on April 4–7, 1989, in Portland, Oregon, to adopt its final 1989 recommendations to the Secretary of Commerce (Secretary). Following the April Council meeting, the STT and staff economist prepared a fourth report, "Preseason Report III: 1989 Ocean Salmon Fisheries, Analysis of Impacts of Council Adopted 1989 Regulations," which analyzes the environmental and socio-economic effects of the Council's final recommendations. This report also was distributed to the Council, its advisors, and the public.

Resource Status

Some salmon runs returning to Washington, Oregon, and California streams in 1989 are expected to be larger than in 1988. These include a predicted abundance of Oregon Production Index (OPI) coho salmon stocks destined for Columbia River hatcheries and the California and Oregon coasts of 2,039,300 fish compared to the 1988 post-season assessment of 2,008,100 fish, as well as modest improvements in many Washington coastal and Puget Sound coho salmon stocks.

Primary resource concerns are for Klamath River fall chinook, Columbia River spring and summer chinook, and some Washington coastal and Puget Sound natural coho salmon, particularly Skagit River and Queets River stocks. Management of these stocks is impacted by interjurisdictional agreements among tribal, state, Federal, and/or Canadian managers.

Chinook Salmon Stocks

Abundance of California Central Valley chinook stocks is expected to be lower than 1988 when record chinook landings were made in the commercial fishery south of Horse Mountain, California. Sacramento River fall-run chinook, which comprise the majority of Central Valley salmon, are healthy. Spawning escapement for Sacramento fall chinook is predicted to meet or

exceed the 122,000–180,000 goal range in 1989.

Escapements of upper Sacramento winter-run chinook have dwindled from over 100,000 fish in the late 1960s to about 2,000 adult fish in recent years. This depressed run is only slightly impacted by ocean fisheries as they currently are configured, and that impact is primarily on two-year-old fish in the recreational fishery. This run was considered by NOAA for listing as threatened or endangered under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, in 1987. At that time, NOAA determined that its propsed listing as endangered or threatened was not warranted because State and Federal resource management agencies had agreed to address the habitat problems that contributed to its decline (52 FR 6041, February 27, 1987). This determination was reaffirmed in 1988 (53 FR 49722, December 9, 1988).

Klamath River fall-run chinook are the primary management concern in the area from the Orford Reef Red Buoy off southern Oregon to Horse Mountain off northern California, the so-called "Klamath River Management Zone." The estimated total ocean population of age-3 and age-4 Klamath River fall chinook in 1989 is 397,700, above the 334,500 predicted abundance in 1988 but below the actual 1988 abundance of 530,200. Ocean escapement to the Klamath River in 1988 totaled 181,200 adult fish, well above the projected 1988 escapement of 132,000 fish.

Amendment 9 to the framework FMP replaced the long-term spawning escapement goal and interim rebuilding schedule for Klamath River fall chinook with fixed annual spawning escapement and harvest rates will allow a fixed percentage of the potential adults from each brood of natural spawners to escape the fisheries and spawn. Under this approach, the actual number of adult natural spawners will vary each year in proportion to the total abundance of adults. Spawning escapements will be higher in years of higher abundance and lower in years of lower abundance, subject to a minimum spawning escapement floor of 35,000 naturally spawning adults. Amendment 9 and its implementing regulations initially established a spawning escapement rate of 35 percent. Based on the Council's recommendation, the Secretary has modified the 35 percent spawning escapement rate to a 33–34 percent spawning escapement rate in accordance with the procedures in the framework FMP and its implementing regulations (see following section "Modification of Klamath River Fall Chinook Spawning Escapement Goal"). Based on a 33–34 percent spawning escapement rate, the 1989 projected ocean escapement to the Klamath River is 165,900 fish.

Oregon coastal chinook stocks include south-migrating and localized stocks primarily from southern Oregon streams, and north-migrating chinook stocks which generally originate in central and northern Oregon streams. Abundance of south-migrating and localized stocks is expected to be somewhat lower than 1988 levels. These stocks are important contributors to ocean fisheries off Oregon and northern California. The generalized expectation for north-migrating stocks is for a continuation of above average abundance as observed in recent years. These stocks primarily contribute to ocean fisheries off British Columbia and Alaska. It is expected that the aggregate Oregon coastal chinook spawning escapement goal of 150,000 to 200,000 naturally spawning adults will continue to be met.

Estimates of Columbia River chinook abundance vary by stock as follows.

(1) Columbia River spring and summer chinook. Numbers of upriver spring chinook predicted to return to the river are 4 percent below the 1988 run size, but 64 percent greater than the 1979–1984 average. The 1989 stock status continues to be depressed, and expected ocean escapement is substantially below the goal of 115,000 adults counted at Bonneville Dam. Upriver spring chinook escapement is affected only slightly by fisheries off the coasts of Washington and Oregon. Lower river spring (Willamette) chinook returns are projected to be 14 percent below the 1988 run, but 57 percent greater than the 1980–1984 average. Expected abundance of upriver summer chinook is the same as in 1988. The stock's status remains extremely depressed, with ocean escapement being about 63 percent below the midpoint of the goal range of 80,000 to 90,000 adults counted at Bonneville Dam. Upriver summer chinook migrate to the far north and are not a major contributing stock to Council fishery catches. Concern for increasing harvest rates on upriver spring and summer chinook stocks in Council and Washington Strait of Juan de Fuca area fisheries was a major factor in the determination of total allowable fishery impacts in Council fisheries for 1989.

(2) Columbia River fall chinook. Upriver bright fall chinook ocean escapement is expected to be about 231,800 adults, 31 percent below the 1988 return, but about 2.1 times the 1981–1985 level. Lower river natural fall chinook ocean escapement is forecast at about 30,000 adults, 24 percent below the 1988 run. Columbia River fall hatchery tules normally account for more than half the total catch north of Cape Falcon, Oregon. Ocean escapement of lower river hatchery fall chinook, the single largest stock group contributing to harvests north of Cape Falcon, Oregon, is forecast at about 97,500 adults, 68 percent less than the 1988 run size and 9 percent less than the 1981–1985 average. Spring Creek hatchery fall chinook ocean escapement is projected to be about 23,000 fish, 72 percent greater than the 1988 return; the 1981–1985 average ocean escapement was 63,300 adults.

Washington coastal and Puget Sound chinook generally migrate to the far north and are affected insignificantly by ocean harvests from Cape Falcon to the U.S.-Canada border.

Coho Salmon Stocks

The Oregon Production Index (OPI) is an annual index of coho abundance from Leadbetter Point, Washington, south through California. Oregon coastal and Columbia River coho stocks are the primary components of the OPI. The 1989 OPI is 2,039,300 coho, 14 percent below the 1988 preseason forecast and 2 percent above 1988 observed levels. The 1989 estimate includes 446,200 Oregon coastal natural (OCN) coho salmon, a decrease from the 1988 predicted abundance level of 480,300. The methodology for calculating the private and public hatchery components and the OCN components of the OPI is described in the Council's "Preseason Report I: Stock Abundance Analysis for 1989 Ocean Salmon Fisheries." The 1988 spawning escapement of the OCN stocks was 158,900, some 41,100 fish or 21 percent below the spawning escapement goal of 200,000.

In general, 1989 stock abundance for Washington coastal and Puget Sound coho salmon stocks is slightly improved over 1988. Ocean escapements expected from Council management measures in 1989 are sufficient to provide for some inside area fishery harvest while achieving spawning escapement goals or minimum acceptable levels for most Puget Sound and Washington coastal natural coho stocks. Skagit River and Queets River natural coho continue to be primary resource conservation constraints in both ocean and inside fisheries. The Skagit River natural coho stock spawning escapement expectation is 10,000 fish below the goal of 30,000 adults. Queets River natural coho spawning escapement is expected to be below the floor level of 5,800 adults.

Pink Salmon Stocks

Two major stocks comprise the pink salmon population available to the ocean fisheries during odd-numbered years. The Fraser River pink run is forecast at 17 million compared with the 1977–1987 (odd years only) average run size of 14 million. The preliminary preseason forecast for Puget Sound origin pink salmon is for above average abundance; the 1977–1987 average is less than 2 million.

The Fraser River Panel of the Pacific Salmon Commission has jurisdiction over all U.S. Pink and sockeye salmon fisheries in the ocean waters north of approximately Carroll Island, Washington, and the inside waters of the Strait of Juan de Fuca and Puget Sound. The Fraser River Panel has notified the Council that it intends to maintain jursidiction over the ocean commercial troll harvest of pink salmon during the 1989 fishing season. In recent years, the Fraser River Panel has deferred to the Council's recommendations for ocean regulations governing pink salmon harvest. Thus, regulations promulgated by the Fraser River Panel may supersede the Secretary's regulations for the ocean hearvest of pink salmon in 1989 between 48 N. lat. and the U.S.-Canada border between 3 and 200 nautical miles of shore.

Modification of Klamath River Fall Chinook Spawning Escapement Goal

Amendment 9 to the framework FMP, which was approved by the Secretary on March 14, 1989 and implemented on May 1, 1989, replaced the long-term spawning escapement goal and interim rebuilding schedule for Klamath River fall chinook contained in the framework FMP with fixed annual spawning escapement and harvest rates. Under this approach, the spawning escapement rate would be held constant over a long period of time to allow the magnitude of landings and escapement to vary in proportion to the stock abundance, subject to a minimum spawning escapement floor of 35,000 naturally spawning adults. The purpose of shifting to a spawning escapement rate approach was to allow for natural variation in the spawning escapement and to obtain information on the productivity of the Klamath River Basin to ultimately determine the optimum escapement. Analysis of this approach indicated it would result in the achievement of maximum sustainable yield (MSY) over the long term.

The initial spawning escapement rate set by Amendment 9 is 35 percent, and is based on the recommendation of the Klamath River Technical Team, an advisory body to the Klamath Fishery Management Council (KFMC). The KFMC was established under the Klamath and Trinity River Basins Restoration Act (Pub.L. 99–552) to establish, among other things, a long-term policy for managing the ocean and in-river harvest of Klamath River salmon, and to recommend ocean harvesting regulations to the Council.

The Council recognized that the fixed spawning escapement rate would require annual technical review by the Council and the STT and occasionally would need to be revised to remain current with the best scientific information available. Consequently, the Council recommended that specific procedures for STT review and subsequent modification of spawning escapement goals contained in the framework FMP would also apply to the Klamath River fall chinook spawning escapement rate. Under the procedures contained in 50 CFR 661.22 (50 FR 813, January 7, 1985), the Secretary is authorized to modify an escapement goal by publishing a notice in the **Federal Register** under § 661.23 if: "A comprehensive technical review of the best scientific information available provides conclusive evidence which, in the view of the Salmon Technical Team and the Council, justifies modification of an escapement goal."

At the March 7–10, 1989, Council meeting, the STT reviewed the basic parameters of the model used to develop the 35 percent spawning escapement rate and recommended to the Council that, based on specific changes to some of the parameters, a spawning escapement rate of between 33 and 34 percent was more appropriate. The STT's recommendation was included in "Preseason Report II: Analysis of Proposed Regulatory Options for 1989 Ocean Salmon Fisheries" which was distributed to the Council, its advisors, and the public. The Council recommended to the Secretary that the spawning escapement rate be revised accordingly. The Secretary has determined that such a change is justified and herein modifies the Klamath River fall chinook spawning escapement rate from 35 percent to between 33 and 34 percent.

Management Measures for 1989

The Council adopted allowable ocean harvest levels and management measures for 1989 which are designated to apportion the burden of protecting the weak stocks discussed above equitably among ocean fisheries and to allow maximum harvest of natural and hatchery runs surplus to inside fishery and spawning needs.

North of Cape Falcon

For the area north of Cape Falcon, Oregon, all non-treaty commercial troll and recreational ocean fisheries will be limited by either (a) an overall 95,000 chinook quota, or (b) impacts on critical Washington coastal and Puget Sound natural stocks equivalent to the preseason coho quota of 300,000. The recreational fishery will be limited by overall quotas of 47,500 chinook and 225,000 coho salmon. The commercial troll salmon fishery will be limited by overall quotas of 47,500 chinook and 75,000 coho salmon. Treaty Indian troll fisheries will be limited by overall quotas of 32,000 chinook and 77,000 coho salmon. Chinook quotas for non-treaty (95,000) and treaty (32,000) ocean fisheries in the area north of Cape Falcon are based on upper Columbia River spring chinook harvest rates in Washington's Strait of Juan de Fuca area and ocean troll and recreational fisheries. The 1989 quota levels, including restrictions to the non-treaty troll fishery in the area north of the Queets River, are expected to result in a rate of fishery impact on upriver spring chinook that is equivalent to the rate observed for each of the fisheries in the 1988 seasons. The harvest rate estimates in the non-treaty and treaty ocean fisheries assume chinook harvest levels for Strait of Juan de Fuca fisheries in 1989 will be equivalent to 32,000 (treaty troll) and 48,200 (recreational) fish.

The recreational fishery between the U.S.-Canada border and Cape Falcon will open for all species except coho salmon on May 28 and continue through June 12 or the overall recreational chinook quota of 47,500. Fishing will be allowed Sunday and Monday only, 0 to 6 nautical miles of shore, with a 2 fish daily bag limit. A harvest guideline of 5,000 chinook will apply. Harvest guidelines do not serve as quotas requiring mandatory closure of a fishery when reached, but are harvest goals which may serve as the basis for inseason management adjustments to ensure that harvest guidelines are not greatly exceeded. The all-species recreational fishery between the U.S.-Canada border and the Queets River will open July 2 through the earliest of September 28 or the overall recreational chinook quota of 47,500 or the subarea coho quota of 22,500. Fishing will be allowed Sunday through Thursday with a 2 fish daily bag limit and a harvest guideline of 3,900 chinook. In the two subareas between the Queets River and Cape Falcon, the all-species recreational

fishery will open June 26 through the earliest of September 28 or the overall recreational chinook quota or the subarea coho quotas of 91,100 for the Queets River to Leadbetter Point and 111,400 for Leadbetter Point to Cape Falcon. Fishing will be allowed Sunday through Thursday with a 2 fish daily bag limit and chinook harvest guidelines of 24,300 for Queets River to Leadbetter Point and 14,300 for Leadbetter Point to Cape Falcon.

The commercial troll salmon fishery for all species except coho salmon will open in the area between the Queets River and Cape Falcon May 1 through June 15 or a chinook quota of 39,500. An all-species troll season, designed primarily to take pink salmon, will open August 7 through the earlier of August 31 or a coho quota of 40,000. Fishing will be limited to an area which is generally beyond the 100 fathom line with gear limited to flashers with barbless, bare, blued hooks. A 4,000 chinook salmon harvest guideline will apply. A second all-species troll season between the Red Buoy Line and Cape Falcon will open for 1 day, August 21, close for 2 days, then reopen August 24 through the earliest of October 31 or a coho quota of 35,000 or the overall chinook quota. This season is confined to the southern portion of the area north of Cape Falcon in order to protect northern Washington coastal coho salmon stocks.

South of Cape Falcon

The predominant chinook salmon management concern in the area south of Cape Falcon is to provide for the harvest of healthy chinook and coho salmon stocks from many California and Oregon coastal streams and the Columbia River while, at the same time, protecting adequate numbers of Klamath River fall chinook salmon in the ocean areas to meet the modified Klamath River spawning escapement rate of 33–34 percent of the total adult ocean abundance and provide for inriver fisheries at generally the 1988 level. These management constraints resulted in the Council recommending very restrictive fishing seasons in the area between Orford Reef Red Buoy in southern Oregon and Horse Mountain in northern California (the so-called "Klamath Fishery Management Zone" or KMZ). Because the Council wanted to allow some fishing within the KMZ to offset potential socio-economic hardships that would result from total closure of the KMZ, additional dampening of the fisheries, especially the troll fishery, was required in the areas both north and south of the KMZ. The management measures recommended by the Council are projected to achieve an ocean escapement of 165,900 adult Klamath River fall chinook and an escapement of 98,300 natural adult spawners, assuming inriver fisheries harvest 67,600 adult fish.

Total fishery impacts on coho salmon in the area south of Cape Falcon are limited to levels which provide for the achievement of the OCN stock spawning escapement goal of 200,000 adults. Additionally, the level of fishery impact on Washington coastal coho stocks was constrained to the average rate of impact measured for the period from 1979 to 1981.

The overall coho salmon recreational impact (catch plus hooking mortality in all-species-except-coho fisheries) is limited to 285,000 coho salmon from Cape Falcon to the U.S.-Mexico border. Any of the coho salmon recreational impact quota not needed to complete the scheduled recreational seasons will be rolled over to the commercial troll fishery about August 1. The commercial troll salmon fishery from Cape Falcon to the U.S.-Mexico border is limited to an overall combined catch (474,000) and hooking mortality impact quota of 561,000 coho salmon. The catch quota is 474,000 coho salmon. An impact ceiling of no more than 100,000 (89,000 catch) coho salmon impact quota may be taken south of Orford Reef Red Buoy and no more than 430,000 (349,000 catch) south of Cascade Head. There is a separate 5,000 coho salmon quota for the area south of Horse Mountain that is deducted preseason from the overall quotas and ceilings and is to begin on attainment of the overall coho quota south of Cape Falcon or either coho ceiling minus the deduction.

The recreational fishery for all species from Cape Falcon to the Orford Reef Red Buoy will open May 1 through May 26 shoreward of a line generally representing the 27 fathom curve. Between May 27 and the earliest of September 15 or the coho quota the fishery is open for all species with no area restrictions. The bag limit is 2 fish per day, and not more than 6 fish in 7 consecutive days, for both seasons.

The commercial troll fishery from Cape Falcon to Cascade Head will open May 1 through July 11 for all species except coho. The all-species season will open July 12 through earliest of August 31 or the coho quota at which time the fishery will continue for all species except coho. A 3-day closure will occur when the catch has reached 75 percent of the coho ceiling for the area south of Cascade Head. Between Cape Falcon and Orford Reef Red Buoy, an all species except coho season will open from September 1 through October 31.

Between Cascade Head and Orford Reef Red Buoy, the area adjacent to and north of the KMZ, the commercial troll seasons reflect dampening measures to control the harvest of Klamath River fall chinook to the level of ocean escapement required by the FMP. The commercial troll season will open May 1 through June 23 for all species except coho. The season will be closed for 7 days during June 24–30 then reopen for all species July 1 through the earliest of August 31 or the coho quota or ceiling. At such time that the coho catch reaches 75 percent of the south of Cascade Head coho ceiling, the fishery will be closed for 3 days to assess whether inseason management measures are necessary to dampen the catch rate. If the season is closed prior to August 31 because of achievement of the coho quota or ceiling, it will reopen immediately for all species except coho. During the all-species season a daily landing limit of 50 coho plus at least 1 chinook for each 3 coho over 50 is applied. Two small subarea closures between Cape Arago and Orford Reef Red Buoy will occur during July 14–31 and August 18–31 to further reduce impacts on Klamath River fall chinook.

Between Orford Reef Red Buoy and Horse Mountain (the KMZ), the recreational fishery will open May 1 through September 30 for all species with a harvest guideline of 80,000 chinook salmon and a daily bag limit of 2 fish. If necessary to more closely meet the chinook harvest guideline, the daily bag limit will be adjusted on about August 1 to 2 fish, only 1 of which may be a chinook, if 40,000 chinook have been landed by July 15. A small area off the Klamath River mouth will be closed during August 1–31 (Conservation Zone 2).

The commercial troll fisheries in the KMZ have been severely restricted to achieve the FMP's spawning escapement rate for Klamath River fall chinook stocks and to provide for in-river harvest at the 1988 level. Two small areas between Orford Reef Red Buoy and Humbug Mountain, Oregon, and between Punta Gorda and Horse Mountain, California are all closed all year to the commercial troll fishery in order to separate the KMZ from fisheries in areas to the north and south. The area within the KMZ between Humbug Mountain and Punta Gorda will open for all species June 5 through earliest of June 16 or a chinook quota of 15,000 or the south of Cape Falcon coho quota or ceiling with a single daily landing limit of 20 chinook. The season

will be closed between June 17 and August 17 then reopen for all species August 18 through earliest of August 31 or a chinook quota of 7,500 or the coho quota or ceiling with a single daily landing limit of 20 chinook. If the coho quota or ceiling is reached before the chinook quotas in these areas, the season would remain open for all species except coho until the chinook quotas are reached. Conservation Zone 2 around the Klamath River mouth is closed all year.

Three small chinook fisheries are authorized within portions of the KMZ to allow the harvest of Rogue River and Eel River chinook salmon. Between Sisters Rocks and House Rock, Oregon, the season will open for all species except coho May 1 through earliest of May 14 or a chinook quota of 7,500 only within 0 to 6 nautical miles of shore. Between Sisters Rocks and Mack Arch a fall season will open for all species except coho September 1 through earliest of September 15 or a chinook quota of 7,500 within 0 to 6 nautical miles of shore. Finally, between Trinidad Head and Punta Gorda an all-species season will open September 15 through earliest of October 31 or a chinook quota of 15,000 within 0 to 6 nautical miles of shore.

Between Horse Mountain and the U.S.-Mexico border the recreational season is the same as during 1988. It opens the nearest Saturday to February 15 through the nearest Sunday to November 15 with a 2 fish daily bag limit.

The commercial troll fishery between Horse Mountain and Point Arena, adjacent to and just south of the KMZ, contains three block closures designed to dampen the catch of Klamath River fall chinook. The commercial troll season will open for all species except coho May 1 through May 17, close between May 18 and June 4, reopen for all species June 5 through earliest of June 17 or coho quota, close between June 18 and July 1, reopen for all species July 2 through earliest of July 14 or coho quota, close between July 15 and July 28, then reopen for all species July 29 through the earliest of the south of Cape Falcon overall coho quota or subarea ceilings plus the special subarea coho quota of 5,000 fish for the entire area south of Horse Mountain. At such time as the subarea coho quota of 5,000 fish is reached, the season will remain open only to all species except coho.

California commercial troll representatives have requested a redistribution of salmon fishing opportunity among the California ports in order to achieve a more favorable distribution of economic benefits. Public comments are invited on this issue.

The commercial troll fishery between Point Arena and the U.S.-Mexico border will open for all species except coho May 1 through May 31, then change to an all-species season June 1 through the earliest of September 30 or overall coho quota. If the overall coho quota is reached before September 30, the all-species season will continue under a special subarea quota of 5,000 coho for the area south of Horse Mountain. After the subarea quota is reached, the season reverts to all species except coho through September 30.

The timing of the March and April Council meetings makes it impracticable for the Council to recommend fishing seasons to the Secretary that begin before May 1 of the same year. Thus, any opening earlier than May 1 for 1990 fishing seasons must be provided for at this time because the regulations stemming from the Council's April 1990 meeting cannot be implemented before May 1, 1990. The Council has recommended that the commercial troll fishery off California open April 15, 1990. However, scientific information on stock abundance of critical stocks will not be available to the Council until February and March of 1990 which may make it necessary to adjust the opening date for some areas or subareas off California prior to April 15, 1990. Therefore, the Council has recommended, and the Secretary concurs, that the Council may recommend to the Secretary prior to April 15, 1990, modifications to the April 15 opening date and areas in order to avoid adverse impacts on critical stocks. The Secretary will publish a notice of any such modifications in the **Federal Register** in accordance with the procedures authorized in § 661.23.

The following tables and text are the management measures recommended by the Council for 1989 and, as specified, for 1990. Specific measures vary by fishery and area. Together they establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the exclusive economic zone (EEZ) off Washington, Oregon, and California. The Secretary concurs with these recommendations and finds them responsive to the goals of the FMP, the requirements of the resource, and the socio-economic conditions affected by ocean fisheries. The recommendations are consistent with the requirements of the Magnuson Fishery Conservation and Management Act and other applicable law including United States obligations to Indian tribes with treaty-secured fishing rights.

The following management measures are adopted for 1989 and, as specified, for 1990 under 50 CFR Part 661.

TABLE 1.—COMMERCIAL MANAGEMENT MEASURES FOR 1989 OCEAN SALMON FISHERIES

[NOTE: This table contains important restrictions in Parts A, B, C, and D which must be followed for lawful participation in the fishery]

Area and season	Salmon species	Quota or guideline(*)		Restrictions and exceptions
		Chinook	Coho	
A. Seasons, Species, and Subarea Quotas				
U.S.-Canada Border to Cape Falcon: Queets River to Cape Falcon: May 1 thru earlier of June 15 or chinook quota.	All except coho.	39,500		Conservation Zone 1 (C-3), Columbia River mouth, is closed.
U.S.-Canada Border to Carroll Island: August 7 thru earliest of August 31 or chinook or coho quota.	All	(D-1) 4,000*	40,000	Flashers with barbless, bare, blued hooks only. Closed inside 100 fathom line (C-8).
Red Buoy Line to Cape Falcon: August 21; August 24 thru earliest of October 31 or chinook or coho quota.	All	(D-1) 4,000*	35,000	A single daily landing limit per vessel of 40 coho and 4 chinook is permitted. Chinook must be delivered with the coho and all salmon must be delivered in the area from Leadbetter Point to Cape Falcon.

TABLE 1.—COMMERCIAL MANAGEMENT MEASURES FOR 1989 OCEAN SALMON FISHERIES—Continued

[NOTE: This table contains important restrictions in Parts A, B, C, and D which must be followed for lawful participation in the fishery]

Area and season	Salmon species	Quota or guideline(*)		Restrictions and exceptions
		Chinook	Coho	
Cape Falcon to Orford Reef Red Buoy:				
Cape Falcon to Cascade Head:				
May 1 thru July 11	All except coho.	None		
July 12 thru earlier of August 31 or coho quota.	All	None	(D-2)	3-day closure at 75% of coho ceiling (C-7). Mixed loads of chinook and coho or coho-only loads which have been caught in this management area cannot be landed south of Cascade Head unless the load meets the landing limits required in the area of landing.
Coho quota thru August 31	All except coho.	None		
Cascade Head to Orford Reef Red Buoy:				
May 1 thru June 23	All except coho.	None		
July 1 thru earliest of August 31 or coho quota or coho ceiling.	All	None	(D-2)	Cape Arago to Orford Reef Red Buoy is closed July 14–31 and August 18–31. 3-day closure at 75% of coho ceiling (C-7). A single daily landing limit per vessel of 50 coho is permitted. There is no limit on the number of chinook that may be landed. To land more than 50 coho, chinook must also be landed such that there is at least 1 chinook for each 3 coho landed over 50. Mixed loads of chinook and coho or coho-only loads must be delivered within this management area. All chinook in possession must be delivered with the coho. There are no restrictions on the place of delivery of chinook-only loads. Chinook and coho salmon possessed or landed in this management area may not be returned or transferred to any vessels except vessels licensed to buy salmon.
Earlier of coho quota or coho ceiling thru August 31.	All except coho.	None		
Cape Falcon to Orford Reef Red Buoy: September 1 thru October 31.	All except coho.	None		
Orford Reef Red Buoy to Horse Mountain:				
Orford Reef Red Buoy to Humbug Mountain: Closed entire season				
Sisters Rocks to House Rock: May 1 thru earlier of May 14 or chinook quota.	All except coho.	7,500		Closed 6 to 200 nautical miles of shore.
Humbug Mountain to Punta Gorda:				
June 5 thru earliest of June 16 or chinook or coho quota or coho ceiling.	All	15,000	(D-2)	Conservation Zone 2 (C-4), Klamath River mouth, is closed. 3-day closure at 75% of coho ceiling (C-7). A single daily landing limit per vessel of 20 chinook is permitted. There is no daily limit on the number of coho that may be landed. All chinook and coho caught in this management area must be delivered within the area.
Earlier of coho quota or coho ceiling thru earlier of June 16 or chinook quota.	All except coho.	(D-3)		Conservation Zone 2 (C-4), Klamath River mouth is closed. A single daily landing limit per vessel of 20 chinook is permitted. All chinook caught in this management area must be delivered within the area.
August 18 thru earliest of August 31 or chinook or coho quota or coho ceiling.	All	7,500	(D-2)	Conservation Zone 2 (C-4), Klamath River mouth, is closed. 3-day closure at 75% of coho ceiling (C-7). A single daily landing limit per vessel of 20 chinook is permitted. There is no daily limit on the number of coho that may be landed. All chinook and coho caught in this management area must be delivered within the area.
Latest of August 18 or coho quota or coho ceiling thru earlier of August 31 or chinook quota.	All except coho.	(D-3)		Conservation Zone 2 (C-4), Klamath River mouth, is closed. A single daily landing limit per vessel of 20 chinook is permitted. All chinook caught in this management area must be delivered within the area.
Sisters Rocks to Mack Arch: September 1 thru earlier of September 15 or chinook quota.	All except coho.	7,500		Closed 6 to 200 nautical miles of shore.
Trinidad Head to Punta Gorda: September 15 thru earlier of October 31 or chinook quota.	All	15,000	None	Closed 6 to 200 nautical miles of shore.
Punta Gorda to Horse Mountain: Closed entire season				
Horse Mountain to U.S.-Mexico Border:				
Horse Mountain to Point Arena:				
May 1 thru May 17	All except coho.	None		
June 5 thru earliest of June 17 or coho quota or coho ceiling.	All	None	(D-2)	

TABLE 1.—COMMERCIAL MANAGEMENT MEASURES FOR 1989 OCEAN SALMON FISHERIES—Continued

[NOTE: This table contains important restrictions in Parts A, B, C, and D which must be followed for lawful participation in the fishery]

Area and season	Salmon species	Quota or guideline(*)		Restrictions and exceptions
		Chinook	Coho	
Earlier of coho quota or coho ceiling thru earlier of September 30 or coho reserve.	All	None	(D-2)	—
July 2 thru earliest of July 14 or coho quota or coho ceiling.	All	None	(D-2)	—
Earlier of coho quota or coho ceiling thru earlier of September 30 or coho reserve.	All	None	(D-2)	—
July 29 thru earliest of September 30 or coho quota or coho ceiling.	All	None	(D-2)	—
Earlier of coho quota or coho ceiling thru earlier of September 30 or coho reserve.	All	None	(D-2)	—
Coho reserve thru September 30.	All except coho.	None		—
Point Arena to U.S.-Mexico Border:				
May 1 thru May 31	All except coho.	None		—
June 1 thru earliest of September 30 or coho quota or coho ceiling.	All	None	(D-2)	—
Earlier of coho quota or coho ceiling thru earlier of September 30 or coho reserve.	All	None	(D-2)	—
Coho reserve thru Septmeber 30.	All except coho.	None		—

	Chinook		Coho		Pink
	Total length	Head-off	Total length	Head-off	
B. Minimum Size Limits (inches)					
North of Cape Falcon	28.0	21.5	16.0	12.0	None.
Cape Falcon to Orford Reef Red Buoy	26.0	19.5	16.0	12.0	None.
South of Orford Reef Red Buoy	26.0	19.5	22.0	16.5	None.

B-1. Chinook not less than 26 inches (19.5 inches head-off) taken in open seasons south of Cape Falcon may be landed north of Cape Falcon only when the season is closed north of Cape Falcon.

C. Special Requirements, Restrictions, and Exceptions

C-1. Single point, single shank barbless hooks are required.

C-2. Off California, no more than six lines per boat are allowed.

C-3. *Conservation Zone 1,* which is the ocean area surrounding the Columbia River mouth bounded on the north by a line extending for 6 nautical miles due west from North Head along 46°18'00" N. latitude, to 124°13'18" W. longitude, then southerly along a line of 167° True to 46°11'06" N. latitude and 124°11'00" W. longitude (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the south jetty, is closed.

C-4. *Conservation Zone 2,* which is the ocean area surrounding the Klamath River mouth bounded on the north by 41°38'48" N. latitude (approximately 6 nautical miles north of the Klamath River mouth), on the west by 124°23'" W. longitude (approximately 12 nautical miles of shore), and on the south by 41°26'48" N. latitude (approximately 6 nautical miles south of the Klamath River mouth), is closed.

C-5. In those areas closed to salmon fishing for 3 days or less, it is unlawful for a vessel which has been issued an ocean salmon permit by any State to have troll gear in the water.

C-6. *Possession, landing, and delivery restrictions.* During all closures of 3 days or less, salmon may not be possessed in a closed area, except in port, more than 12 hours after the area is closed and must be landed within 4 hours of the closure.

C-7. *Closure to assess coho landings south of Cape Falcon.* When the STT estimates 75 percent of the coho catch ceiling south of Cascade Head has been reached, the season between Cape Falcon and Punta Gorda will close for 3 days to assess whether landing limits or ratio fisheries should be continued or imposed. During this closure, salmon may not be possessed in the closed area, except in port, more than 12 hours after the area is closed and must be landed within 24 hours of the closure.

C-8. *Open area in August fishery north of Carroll Island.* Open in an area of the United States exclusive economic zone north and west of the following coordinates: North of 48°00'15" N. and west of a line from 48°00'15" N., 125°19'15" W. to 48°03'40" N., 125°17'15" W. to 48°07'45" N., 125°11'15" W. to 48°05'00" N., 125°01'00" W. to 48°13'00" N., 124°57'30" W. to 48°16'30" N., 124°58'00" W. to 48°23'20" N., 125°49'30" W. to 48°26'15" N., 125°49'00" W. to 48°29'37.19" N., 124°43'33.19" W. This line generally follows the 100 fathom line except in the northernmost area.

C-9. Consistent with Council management objectives, the State of Oregon may establish some additional late season, all-except-coho fisheries in state waters.

C-10. All waters south of the Oregon-California border shall open April 15, 1990, and in subsequent years unless the Council recommends that the Secretary modify or rescind the April 15 opening date and areas for any of following reasons: (1) Sacramento or Klamath River fall chinook ocean abundance estimates are projected to be below that necessary to meet spawning escapement goals or rate and, at the same time, achieve ocean and inriver harvest needs, or (2) other salmon stocks may be adversely impacted by the April 15 opening. The Secretary will publish a notice of any such modifications in the FEDERAL REGISTER prior to April 15, 1990, in accordance with the procedures in 50 CFR § 661.23.

D. Quotas

D-1. *Chinook and coho quotas north of Cape Falcon.* All non-treaty troll and recreational ocean fisheries will be limited by either (a) an overall 95,000 chinook quota, or (b) impacts on critical Washington coastal and Puget Sound natural coho stocks equivalent to the preseason coho quota of 300,000 (not including hooking mortality associated with May-June chinook fisheries). The troll fishery will be limited by overall quotas of 47,500 chinook and 75,000 coho. The overall troll chinook quota is partitioned into one subarea quota of 39,500 and two subarea guidelines of 4,000 each. The overall troll coho quota is partitioned into two subarea quotas of 40,000 and 35,000. Impacts from quota overages or underages from one fishing period or subarea will be subtracted from or added to later fishing periods of the same user group or transferred between the recreational and commercial fisheries in accordance with framework allocation transfer criteria.

D-2. *Coho quotas south of Cape Falcon.* The troll fishery from Cape Falcon to the U.S.-Mexico border will be limited to an overall combined catch and hooking mortality of 561,000 coho. The overall preseason catch quota for this impact is 474,000 coho. Subarea catch ceilings within the overall catch quota allow impacts of no more than 430,000 coho and a catch of no more than 349,000 coho south of Cascade Head, of which impacts may be no more than 100,000 coho and the catch may be no more than 89,000 coho south of Orford Reef Red Buoy. A separate subarea catch quota of 5,000 coho will be reserved preseason for the troll fishery south of Horse Mountain by deducting it from the overall catch quota and subarea ceilings. The subarea catch quota will begin upon the attainment of the overall catch quota or subarea ceilings minus the deduction. If the overall coho quota or any subarea ceiling is exceeded before the fisheries are closed, the overage will not be subtracted from the 5,000 coho reserve. An inseason rollover to the troll fishery of any portion of the south of Cape Falcon recreational quota projected to be in excess of sport fishery needs will be made about August 1.

D-3. *Chinook quotas between Humbug Mountain and Punta Gorda.* The troll fishery in this area will be limited by an overall quota of 30,000 chinook through August 31. This quota is divided into three subquotas as follows: (1) 7,500 chinook for the May 1-14 fishery between Sisters Rocks and House Rock, (2) 15,000 chinook for the entire area in the June fishery, and (3) 7,500 chinook for the entire area in the August fishery. Any overages or underages in meeting a subquota for one time period will be subtracted from or added to the next troll fishery prior to August 31. There are two chinook quotas governing September troll fisheries of (1) 7,500 chinook between Sisters Rocks and Mack Arch, and (2) 15,000 chinook between Trinidad Head and Punta Gorda.

TABLE 2.—RECREATIONAL MANAGEMENT MEASURES FOR 1989 OCEAN SALMON FISHERIES

[NOTE: This table contains important restrictions in Parts A, B, C, and D which must be followed for lawful participation in the fishery]

Area and season	Salmon species	Quota or guideline(*)		Restrictions and exceptions
		Chinook	Coho	
A. Seasons, Species, Subarea Quotas, and Bag Limits				
U.S.-Canada Border to Cape Falcon: May 28 thru earlier of June 12 or chinook quota, Sunday thru Monday only.	All except coho.	(D-1) 5,000*		2 fish per day. Conservation Zone 3 (C-3), Columbia River mouth, is closed. Closed from 6 to 200 nautical miles of shore.
U.S.-Canada Border to Queets River: July 2 thru earliest of September 28 or chinook or coho quota, Sunday thru Thursday only.	All	(D-1) 3,900*	22,500	2 fish per day.
Queets River to Leadbetter Point: June 26 thru earliest of September 28 or chinook or coho quota, Sunday thru Thursday only.	All	(D-1) 24,300*	91,100	2 fish per day.

TABLE 2.—RECREATIONAL MANAGEMENT MEASURES FOR 1989 OCEAN SALMON FISHERIES—Continued

[NOTE: This table contains important restrictions in Parts A, B, C, and D which must be followed for lawful participation in the fishery]

Area and season	Salmon species	Quota or guideline(*)		Restrictions and exceptions
		Chinook	Coho	
Leadbetter Point to Cape Falcon: June 26 thru earliest of September 28 or chinook or coho quota, Sunday thru Thursday only.	All	(D-1) 14,300*	111,400	2 fish per day. Conservation Zone 3 (C-3), Columbia River mouth, is closed. Leadbetter Point to North Head will be closed from 0 to 6 nautical miles of shore if early fisheries indicate high chinook harvest rates.
Cape Falcon to Orford Reef Red Buoy:				
May 1 thru May 26 within the 27 fathom curve	All	None	(D-2)	2 fish per day; not more than 6 fish in 7 consecutive days. Closed outside the 27 fathom curve (C-4).
May 27 thru earlier of September 15 or coho quota.	All	None	(D-2)	2 fish per day; not more than 6 fish in 7 consecutive days.
Orford Reef Red Buoy to Horse Mountain: May 1 thru September 30.	All	80,000*	None	2 fish per day; not more than 6 fish in 7 consecutive days. Daily bag limit may be modified August 1 to 2 fish per day, but not more than 1 chinook, only if 40,000 chinook have been landed by July 15. Conservation Zone 2 (C-2), Klamath River mouth, is closed August 1-31.
Horse Mountain to U.S.-Mexico Border: Nearest Saturday to February 15 thru nearest Sunday to November 15.	All	None	None	2 fish per day.

B. Minimum Size Limits (total length in inches)	Chinook	Coho	Pink
North of Cape Falcon	24.0	16.0	None.
Cape Falcon to Orford Reef Red Buoy	20.0	16.0	None.
South of Orford Reef Red Buoy	20.0	20.0	None, except 20.0 off California.

C. SPECIAL REQUIREMENTS, RESTRICTIONS, AND EXCEPTIONS

C-1. Single point, single shank barbless hooks are required north of Point Conception.

C-2. *Conservation Zone 2*, which is the ocean area surrounding the Klamath River mouth bounded on the north by 41°38'48" N. latitude (approximately 6 nautical miles north of the Klamath River mouth), on the west by 124°23'00" W. longitude (approximately 12 nautical miles of shore), and on the south by 41°26'48" N. latitude (approximately 6 nautical miles south of the Klamath River mouth), is closed August 1 through August 31.

C-3. *Conservation Zone 3*, which is the ocean area surrounding the Columbia River mouth bounded on the north by a line extending for 200 nautical miles due west from North Head along 46°18'00" N. latitude, then southerly to 46°11'06" N. latitude, then east to 124°11'00" W. longitude (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the south jetty, is closed, except as provided herein. During all times that the ocean season is open within the area between Leadbetter Point and Cape Falcon, the States of Washington and Oregon may open the north side of the north jetty and the south side of the south jetty, respectively, to salmon angling from shore.

C-4. The 27 fathom curve is defined as follows: Within an area bounded by a line from Cape Falcon to 45°46'00" N., 124°01'20" W. (approximately 1.6 nautical miles west of Cape Falcon) to 45°04'15" N., 124°04'00" W. (approximately 2.2 nautical miles northwest of Cascade Head) to 44°40'40" N., 124°09'15" W. (approximately 3 nautical miles west of Yaquina Head) to 44°08'30" N., 124°12'00" W. (approximately 3 nautical miles west of Heceta Head) to 43°40'15" N., 124°14'30" W. (approximately 0.5 nautical miles west of the Umpqua Whistle Buoy) to 43°31'30" N., 124°17'00" W. (approximately 1.7 nautical miles west of the beach) to 43°15'15" N., 124°28'00" W. (approximately 3 nautical miles west of the beach) to 43°15'15" N., 124°28'00" W. (approximately 3 nautical miles west of the beach) to 43°01'30" N., 124°29'05" W. (approximately 2 nautical miles west of Four Mile Creek) to 42°56'00" N., 124°33'10" W. (approximately 2.4 miles west of the mouth of Floras Creek) to 42°50'20" N., 124°38'30" W. (approximately 3.4 miles west of Cape Blanco) to Cape Blanco.

C-5. Federal and State inseason management actions may be taken north of Cape Falcon to extend the fishery to the end of its scheduled season or to keep within chinook harvest guidelines for each of the subareas. Such actions might include: closure for 0 to 3, or 0 to 6, or 3 to 200, or 5 to 200 nautical miles of shore; close from a point extending due west from Tatoosh Island for 5 miles, then south to a point due west of Umatilla Reef Buoy, then due east to shore; close from North Head at the Columbia River mouth north to Leadbetter Point; and change species which may be landed.

C-6. Impacts north of Cape Falcon are based on a Buoy 10 fishery (Columbia River mouth to Astoria-Megler Bridge) with a harvest guideline of 200,000 coho and 30,000 chinook. For impact analysis, a catch of 130,000 coho is assumed for the period August 16-27 and 70,000 coho after August 27.

C-7. Consistent with Council management objectives, the State of Oregon may establish some additional late season, all-except-coho fisheries in state waters.

D. Quotas

D-1. *Chinook and coho quotas north of Cape Falcon.* All non-treaty troll and recreational ocean fisheries will be limited by either (a) an overall 95,000 chinook quota, or (b) impacts on critical Washington coastal and Puget Sound natural coho stocks equivalent to the preseason coho quota of 300,000 (not including hooking mortality associated with May-June chinook fisheries). The recreational fishery will be limited by overall quotas of 47,500 chinook and 225,000 coho. Impacts from quota (or guideline) overages or underages from each fishing period or subarea will be subtracted from or added to later fishing periods of the same user group or transferred between the recreational and commercial fisheries in accordance with the framework allocation.

D-2. *Coho quotas south of Cape Falcon.* Overall recreational impact (catch plus hooking mortality) is limited to 283,000 coho salmon from Cape Falcon to the U.S.-Mexico border. Any portion of the recreational quota not needed to complete scheduled recreational seasons will be reallocated to the commercial fishery about August 1. The fishery south of Orford Reef Red Buoy will not close if the recreational coho quota is reached.

TABLE 3.—TREATY INDIAN MANAGEMENT MEASURES FOR 1989 OCEAN SALMON FISHERIES

[NOTE: This table contains important restrictions in Parts A, B, and C which must be followed for lawful participation in the fishery]

Tribe	Boundaries	Open seasons	Salmon species	Minimum size limit (inches)		Special restrictions by area
				Chinook	Coho	
A. Seasons, Species, Minimum Size Limits, and Gear Restrictions						
Makah	That portion of the Fishery Management Area (FMA) north of 48°02'15" N. latitude (Norwegian Memorial) and east of 125°44'00" W. longitude.	May 1 to earlier of June 30 or chinook quota.	All except coho.	24		Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 fixed lines per boat, or no more than 4 hand-held lines per person.
		July 1 to earliest of September 30 or chinook or coho quota.	All	24	16	
Quileute	That portion of the FMA between 48°07'36" N. latitude (Sand Point) and 47°31'42" N. latitude (Queets River) and east of 125°44'00" W. longitude.	May 1 to earlier of June 30 or chinook quota.	All except coho.	24		Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 fixed lines per boat.
		July 1 to earliest of September 30 or chinook or coho quota.	All	24	16	
Hoh	That portion of the FMA between 47°54'18" N. latitude (Quillayute River) and 47°21'00" N. latitude (Quinault River) and east of 125°44'00" W. longitude.	May 1 to earlier of June 30 or chinook quota.	All except coho.	24		Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 fixed lines per boat.
		July 1 to earliest of September 30 or chinook or coho quota.	All	24	16	
Quinault	That portion of the FMA between 47°40'06" N. latitude (Destruction Island) and 46°53'18" N. latitude (Point Chehalis) and east of 125°44'00" W. longitude.	May 1 to earlier of June 30 or chinook quota.	All except coho.	24		Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 fixed lines per boat.

TABLE 3.—TREATY INDIAN MANAGEMENT MEASURES FOR 1989 OCEAN SALMON FISHERIES—Continued

[NOTE: This table contains important restrictions in Parts A, B, and C which must be followed for lawful participation in the fishery]

Tribe	Boundaries	Open seasons	Salmon species	Minimum size limit (inches)		Special restrictions by area
				Chinook	Coho	
		July 1 to earliest of September 30 or chinook or coho quota.	All	24	16	

B. Special Requirements, Restrictions, and Exceptions

1. All boundaries may be changed to include such areas as may hereafter be authorized for the tribe's treaty fishery by a federal court. The Quileute, Hoh, and Quinault tribes may establish an invitational fishery.
2. The areas within a 6 nautical mile radius of the mouths of the Queets River (47°31'42" N. latitude) and the Hoh River (47°45'12" N. latitude) are closed to commercial fishing. A closure within 2 nautical miles of the mouth of the Quinault River (47°21'00" N. latitude) may be enacted by the tribe and/or the State of Washington and will not adversely affect the Secretary's management regime.

C. Quotas

1. The overall ocean quotas for the Washington coastal tribes are: 32,000 chinook and 77,000 coho salmon. These quotas include troll catches by the Klallam and Makah tribes in State of Washington Area 4B from May 1 through September 30.

Gear Definitions and Restrictions

In addition to gear restrictions shown in Tables 1, 2, and 3, the following gear definitions and restrictions will be in effect.

Troll Fishing Gear

Troll fishing gear for the Fishery Management Area (FMA) is defined as one or more lines that drag hooks behind a moving fishing vessel.

In that portion of the FMA off Oregon and Washington, the line or lines must be affixed to the vessel and must not be disengaged from the vessel at any time during the fishing operation.

Recreational Fishing Gear

Recreational fishing gear for the FMA is defined as angling tackle, consisting of a line with not more than one artificial lure or natural bait attached.

In that portion of the FMA off Oregon and Washington, the line must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington.

In that portion of the FMA off California, the line must be attached to a rod and reel held by hand or closely attended. Weights directly attached to a line may not exceed four (4) pounds. There is no limit to the number of lines that a person may use while recreationally fishing off California.

Geographical Landmarks

Wherever the words "nautical miles of shore" are used in this rule, the distance is measured from the baseline from which the territorial sea is measured.

Geographical landmarks referenced in this notice are at the following locations:

Umatilla-Tatoosh Line—A straight line drawn southerly from the Cape Flattery light (48°23'50" N. latitude) to Umatilla Buoy (48°11'20" N. latitude).
Carroll Island—48°00'18" N. lat.
Queets River—47°31'42" N. lat.
Leadbaetter Point—46°18'10" N. lat.
North Head—46°18'00" N. lat.
Red Buoy Line—Seaward along the south jetty of the Columbia River to the visible tip of the jetty and then to Buoy #2SJ, then southwesterly to Buoy #4, continuing southwesterly to Buoy #2, and then to the Columbia River Buoy, then due west along 46°11'06" N. latitude.
Cape Falcon—45°46'00" N. lat.
Cascade Head—45°03'50" N. lat.
Cape Arago—43°18'20" N. lat.
Orford Reef Red Buoy—42°45'11" N. lat.
Humbug Mountain—42°40'30" N. lat.
Sister Rocks—42°35'45" N. lat.
Mack Arch—42°13'40" N. lat.
House Rock—42°06'32" N. lat.
Trinidad Head—41°03'30" N. lat.
Punta Gorda—40°15'30" N. lat.
Horse Mountain—40°05'00" N. lat.
Point Arena—38°57'30" N. lat.
Point Conception—34°27'00" N. lat.

Inseason Notice Procedures

Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, 206-526-6667, and by U.S. Coast Guard Notice to Mariner broadcasts. These broadcasts are announced on Channel 16 VHF-FM and 2182 KHZ at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Inseason actions will also be filed with the **Federal Register** as soon as practicable. Since provisions of these management measures may be altered by inseason actions, fishermen should monitor either the telephone hotline or Coast Guard broadcasts for current information for the area in which they are fishing.

Classification

The 1989 and specified 1990 management measures described above are based on the most recent data available. The aggregate data upon which the measures are based are available for public inspection at the offices of the Regional Directors (see **"ADDRESSES"**) during business hours until the end of the comment period.

These actions are taken under 50 CFR Part 661, are in compliance with Executive Order 12291, and are covered by the Regulatory Flexibility Analysis (RFA) and Final Supplemental Environmental Impact Statement (SEIS) prepared for the framework amendment

to the FMP. These actions impose no information collection requirements under the Paperwork Reduction Act.

Section 661.23 of the ocean salmon regulations states that the Secretary will publish a notice establishing management measures each year and will invite public comments prior to its effective date. If the Secretary determines, for good cause, that a notice must be issued without affording a prior opportunity for public comment, comments on the notice will be received by the Secretary for a period of 15 days after the filing of the notice with the **Federal Register.**

Because of the depressed status of some salmon stocks, and the need to reduce harvest in some areas to prevent overfishing and achieve the FMP's spawning escapement goals, the Secretary has determined that time does not permit a comment period prior to the date the management measures must be in effect. Comments will be accepted for 15 days after the effective date of this notice.

The public has had opportunity to comment on these management measures during the process of their development. The public participated in the March and April Council, STT, and Salmon Advisory Subpanel meetings, and in public hearings held in Washington, Oregon, and California in late March, which generated the management actions recommended by the Council and approved by the Secretary. Written public comments were invited by the Council between the March and April Council meetings.

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

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Dated: May 1, 1989.

Andrew J. Kemmerer,

Acting Executive Director, National Fisheries Service.

[FR Doc. 89–10793 Filed 5–2–89; 11:17 am]

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Federal Register

Monday
May 8, 1989

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 1 et al.

Federal Acquisition Regulation (FAR); Restrictions on Procurement of Products and Services From Toshiba/Kongsberg; Debarment and Suspension; and Service Contract Act; Final Rule and Interim Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 5, 9, 22, 25, 32, 33, 36, 44, and 52

[Federal Acquisition Circular 84-46]

RIN 9000-AB83; 9000-AC83

Federal Acquisition Regulation (FAR); Restrictions on Procurement of Products and Services From Toshiba/Kongsberg; Debarment and Suspension; and Service Contract Act

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; and interim rule with request for comment.

SUMMARY: Federal Acquisition Circular (FAC) 84-46 amends the Federal Acquisition Regulation (FAR) to add coverage pertaining to sanctions (Toshiba/Kongsberg) for violations of export controls; to implement changes to the debarment and suspension procedures applicable to Government contractors; and to implement the statutes and labor standards provisions applicable to contracts subject to the Service Contract Act of 1965, as amended.

DATES: *Effective Date:* June 7, 1989 except Subpart 25.10 which is effective May 8, 1989.

Comment Date: Comments on the interim rule, Subpart 25.10, should be submitted to the FAR Secretariat at the address shown below on or before July 7, 1989, to be considered in the formulation of a final rule. Please cite FAC 84-46, Item I, in all correspondence on this subject.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAC 84-46.

SUPPLEMENTARY INFORMATION:

A. Determination To Issue an Interim Regulation

FAC 84-46, Item I. A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration to issue the regulation in FAC 84-46, Item I, as an interim regulation. This action is necessary in order to implement section 2443 of the Multilateral Export Control Enhancement Amendments Act (Pub. L. 100-418), enacted August 23, 1988, and Executive Order 12661, dated December 27, 1988. However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating a final rule.

B. Background

FAC 84-46, Item I. The Federal Acquisition Regulation (FAR) has been revised by adding new Subpart 25.10, Sanctions for Violations of Export Controls, and related coverage in Part 52, Solicitation Provisions and Contract Clauses. This revision is necessary in order to implement the procurement and contracting provisions of section 2443 of the Multilateral Export Control Enhancement Amendments Act (Pub. L. 100-418), and Executive Order 12661, dated December 27, 1988.

FAC 84-46, Item II. This final rule is issued by the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration to make revisions to the debarment and suspension procedures in the FAR. Among other things, the revisions require a certification of eligibility prior to contract award, render contractors ineligible for award Governmentwide upon issuance of a notice of proposed debarment, and establish the policy that contractors must make compelling reason determinations prior to awarding subcontracts to contractors debarred, suspended, or proposed for debarment.

C. Regulatory Flexibility Act

FAC 84-46, Item I. On December 27, 1988, the President signed Executive Order 12661 imposing the sanctions referred to in section 2443 of the Multilateral Export Control Enhancement Amendments Act (Pub. L. 100-418). This interim rule implements these provisions in the Federal Acquisition Regulation. This interim rule may have a significant economic impact on a substantial number of small entities. The actual impact is not known. Current guidance requires that a regulatory flexibility analysis be prepared if the interim rule will have a significant impact on a substantial number of small entities. Accordingly, an Initial Regulatory Flexibility Analysis has been prepared in accordance with the Regulatory Flexibility Act of 1980, Pub. L. 96-354 is on file in the FAR Secretariat and will be submitted to the Chief Counsel for Advocacy, Small Business Administration. Publication as an interim rule will afford the public the opportunity to comment on its economic impact on small entities, and such comments will be considered in the formulation of the final regulatory flexibility analysis and the final rule. Comments must be submitted separately and cite 89-610 pertaining to Item I of FAC 84-46.

FAC 84-46, Item II. The proposed rule published in the **Federal Register** on July 31, 1987 (52 FR 28642) contained an Initial Regulatory Flexibility Analysis. A Final Regulatory Flexibility Analysis has been prepared and is on file in the FAR Secretariat. The Final Analysis will be submitted to the Chief Counsel for Advocacy, Small Business Administration.

FAC 84-46, Item III. A full, final regulatory impact and regulatory flexibility analysis was prepared by the Department of Labor (DOL) and a summary was published in the **Federal Register** on October 27, 1983 (48 FR 49758) when DOL published its regulation. The revision to FAR 22.10 is an implementation of the policy and the regulation published by DOL and other agencies. DOD, GSA, and NASA certify that this regulation will not have a significant economic impact on a substantial number of small entities because it merely codifies in the FAR (48 CFR), for the convenience of contractors and Government contracting personnel, regulations issued by DOL and codified in 29 CFR for which comments were requested and considered.

D. Paperwork Reduction Act

FAC 84-46, Item I. The Paperwork Reduction Act (Pub. L. 96-511) does not apply because this interim rule does not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

FAC 84-46, Item II. The information collection requirements contained in this FAR revision were approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 9000-0094. Due to the reduction in the paperwork burdens resulting from the change in the requirements with, respect to subcontracting, a revised Paperwork Reduction Act Analysis has been submitted to the Office of Management

and Budget for expedited review pursuant to 5 CFR 1320.18. The Annual Reporting Burden is estimated as follows: Prime Contracts—respondents, 414,767; responses per respondent, 3; total annual responses, 1,244,301; hours per response, 5 mins.; and total response burden hours, 103,692. Subcontracts—respondents, 500; responses per respondent, 1; total annual responses, 500; hours per response, .50; and total response burden hours, 250. Public comments concerning this request should be submitted to OMB, Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503 by May 30, 1989.

FAC 84–46, Item III. The information collection requirements contained in this regulation were approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Numbers 1215–0017 and 1215–0150.

E. Public Comments

FAC 84–46, Item II. On July 31, 1987, a proposed rule was published in the **Federal Register** (52 FR 28642). Thirty-nine responses were received. Thirteen of these respondents either concurred or recommended no change. Four other respondents indicated no comment. The comments of the remaining respondents were considered by the Councils in developing the final rule. In addition, the Councils considered the recent initiatives regarding self-governance in developing the final rule. As a result of the public comments, the rule now limits certification to prime contractors and requires prime contractors to make compelling reason determinations and so notify the contracting officer prior to entering into a subcontract with a contractor that has been debarred, suspended, or proposed for debarment. In addition, administrative changes to Subparts 9.1 and 9.4 have been made to reflect a change in the name of what was formerly designated as the Consolidated List, and to provide the public with information for obtaining a copy of the list.

FAC 84–46, Item III. On February 26, 1988, a proposed rule and notice of availability was published in the **Federal Register** (53 FR 5928). The comments that were received were considered by the Councils in the development of this final rule.

List of Subjects in 48 CFR Parts 1, 5, 9, 22, 25, 32, 33, 36, 44, and 52

Government procurement.

Dated: May 2, 1989.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84–46 is effective June 7, 1989, except Subpart 25.10 (Item I) which is effective May 8, 1989.

Eleanor Spector,

Assistant Secretary of Defense for Procurement, DOD.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy, GSA.

S.J. Evans,

Associate Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84–46 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Restrictions on Procurement of Products and Services From Toshiba/Kongsberg

FAR Subpart 25.10, Sanctions for Violations of Export Controls, and a related provision and clause are added pursuant to section 2443 of the Multilateral Export Control Enhancement Amendments Act (Pub. L. 100–418), enacted August 23, 1988, and Executive Order 12661, dated December 27, 1988.

Item II—Debarment and Suspension Procedures

FAR Parts 1 and 9 are revised and FAR 44.303(c), the provision at 52.209–5, Certification regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, and the clause at 52.209–6, Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, are added.

Item III—Service Contract Act and Price Adjustment Clause

FAR 1.105 and 5.207 are revised, and Subpart 22.10, and eight clauses at 52.222–40 through 52.222–44 and 52.222–47 through 52.222–49, are added to provide detailed instructions to contracting officers implementing the statutes and Department of Labor (DOL) regulations which prescribe labor standards requirements for contracts to furnish services in the United States through the use of service employees.

Item IV—Editorial Corrections

FAR 1.105 is amended to add OMB Control Number 9000–0100 applicable to Subpart 19.10 and corrects FAC 84–42; section 33.101 is amended to correct FAC 84–40; section title 32.909, and 36.102(b) and (c) is amended to correct FAC 84–45.

Therefore, 48 CFR Parts 1, 5, 9, 22, 25, 32, 33, 36, 44, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 5, 9, 22, 25, 32, 33, 36, 44, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.105 is amended by adding, in numerical order, FAR segments and corresponding OMB Control Numbers to read as follows:

1.105 OMB Approval under the Paperwork Reduction Act.

FAR segment	OMB Control Number
* * * * *	
19.10	9000–0100
* * * * *	
52.209–5	9000–0094
52.209–6	9000–0094
* * * * *	
52.222–41	1215–0017 and 1215–0150
* * * * *	

PART 5—PUBLICIZING CONTRACT ACTIONS

3. Section 5.207 is amended by adding paragraph (f)(4) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(f) * * *

(4) "*Place of performance unknown.* This contract is subject to the Service Contract Act and the place of performance is unknown. Wage determinations have been requested for (insert localities). The contracting officer will request wage determinations for additional localities if asked to do so in writing by (insert time and date)."

PART 9—CONTRACTOR QUALIFICATIONS

4. Subsection 9.105–1 is amended by revising paragraph (c)(1) as follows:

9.105–1 Obtaining information.

(c) * * *

(1) The list entitled Parties Excluded from Procurement Programs (list of contractors debarred, suspended, proposed for debarment, and declared

ineligible) maintained in accordance with Subpart 9.4.

* * * * *

5. Section 9.400 is amended by revising paragraph (a)(2) to read as follows:

9.400 Scope of subpart.

(a) * * *

(2) Provides for the listing of contractors debarred, suspended, proposed for debarment, and declared ineligible (see the definition of "ineligible" in 9.403); and

* * * * *

6. Section 9.401 is revised to read as follows:

9.401 Applicability.

This subpart does not apply to the exclusion of participants or principals from Federal financial or nonfinancial assistance programs and benefits pursuant to Executive Order 12549. Such exclusions are contained within the list entitled Parties Excluded from Nonprocurement Programs of the lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.

7. Section 9.402 is amended by revising paragraph (c) and by adding paragraph (d) to read as follows:

9.402 Policy.

* * * * *

(c) When more than one agency has an interest in the debarment or suspension of a contractor, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

(d) Agencies shall establish appropriate procedures to implement the policies and procedures of this subpart.

8. Section 9.403 is amended by adding alphabetically the definitions "Civil judgment" and "Parties Excluded from Procurement Programs"; by removing the definition "Consolidated List of Debarred, Suspended, and Ineligible Contractors"; and by revising the definitions "Affiliates" and "Contractor" to read as follows:

9.403 Definitions.

* * * * *

"Affiliates." Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (a) either one controls or has the power to control the other, or (b) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contract or that was debarred, suspended, or proposed for debarment.

* * * * *

"Civil judgment" means a judgment or finding of a civil offense by any court of competent jurisdiction.

"Contractor," as used in this subpart, means any individual or other legal entity that (a) submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract, including a contract for carriage under Government or commercial bills of lading, or a subcontract under a Government contract or (b) conducts business with the government as an agent or representative of another contractor.

* * * * *

"Parties Excluded from Procurement Programs", formerly referred to as the Consolidated List of Debarred, Suspended, and Ineligible Contractors means a list compiled, maintained, and distributed by the General Services Administration, in accordance with 9.404, containing the names of contractors debarred, suspended, or proposed for debarment by agencies under the procedures of this subpart, as well as contractors declared ineligible under other statutory or regulatory authority other than Executive Order 12549. The list of Parties Excluded from Procurement Programs is contained within the lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.

* * * * *

9. Section 9.404 is amended by revising the section title, paragraphs (a), (b), (c)(4) and (c)(5), and by adding paragraph (d) to read as follows:

9.404 Parties excluded from procurement programs.

(a) The General Services Administration (GSA) shall—

(1) Compile and maintain a current, consolidated list of all contractors debarred, suspended, proposed for debarment, or declared ineligible by agencies or by the General Accounting Office;

(2) Periodically revise and distribute the list and issue supplements, if necessary, to all agencies and the General Accounting Office; and

(3) Include in the list the name and telephone number of the official responsible for its maintenance and distribution.

(b) The list entitled Parties Excluded from Procurement Programs shall indicate—

(1) The names and addresses of all contractors debarred, suspended, proposed for debarment, or declared ineligible, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The name of the agency or other authority taking the action;

(3) The cause for the action (see 9.406–2 and 9.407–2 for causes authorized under this subpart) or other statutory or regulatory authority;

(4) The effect of the action;

(5) The termination date for each listing;

(6) The DUNS No.; and

(7) The name and telephone number of the point of contact for the action.

(c) * * *

(4) In accordance with internal retention procedures, maintain records relating to each debarment, suspension, or proposed debarment taken by the agency;

(5) Establish procedures to provide for the effective use of the Parties Excluded from Procurement Programs, including internal distribution thereof, to ensure that the agency does not solicit offers from, award contracts to, or consent to subcontracts with contractors on the Parties Excluded from Procurement Programs, except as otherwise provided in this subpart; and

* * * * *

(d) The public may obtain a subscription to the list from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Order and Inquiry Desk at (202) 783–3238.

10. Section 9.405 is amended by revising paragraph (a) and the first sentence of paragraph (b) to read as follows:

9.405 Effect of listing.

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the acquiring agency's head or designee determines that there is a compelling reason for such action (see 9.405–2, 9.406–1(c), and 9.407–1(d)). Contractors debarred, suspended or proposed for debarment are also excluded from conducting business with the

Government as agents or representatives of other contractors.

(b) Contractors included on the Parties Excluded from Procurement Programs as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts, and if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. * * *

11. Section 9.405–1 is revised to read as follows:

9.405–1 Continuation of current contracts.

(a) Notwithstanding the debarment, suspension, or proposed debarment of a contractor, agencies may continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment unless the acquiring agency's head or a designee directs otherwise. A decision as to the type of termination action, if any, to be taken should be made only after review by agency contracting and technical personnel and by counsel to ensure the propriety of the proposed action.

(b) Agencies shall not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment, unless the acquiring agency's head or a designee states in writing the compelling reasons for renewal or extension.

12. Section 9.405–2 is revised to read as follows:

9.405–2 Restrictions on subcontracting.

(a) When a contractor debarred, suspended, or proposed for debarment is proposed as a subcontractor for any subcontract subject to Government consent (see Subpart 44.2), contracting officers shall not consent to subcontracts with such contractors unless the acquiring agency's head or a designee states in writing the compelling reasons for this approval action. (See 9.405(b) concerning declarations of ineligibility affecting subcontracting.)

(b) The Government suspends or debars contractors to protect the Government's interests. Contractors shall not enter into any subcontract equal to or in excess of $25,000 with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. If a contractor intends to subcontract with a party that is debarred, suspended, or proposed for debarment as evidenced by the parties' inclusion on the list of Parties Excluded from Procurement Programs (see 9.404), a corporate officer or designee of the contractor is required by operation of the clause at 52.209–6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, to notify the contracting officer, in writing, before entering into such subcontract. The notice must provide the following:

(1) The name of the subcontractor;

(2) The contractor's knowledge of the reasons for the subcontractor being on the list of Parties Excluded from Procurement Programs;

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the list of Parties Excluded from Procurement Programs; and

(4) The systems and procedures the contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(c) The contractor's compliance with the requirements of 52.209–6 will be reviewed during Contractor Purchasing System Reviews (see Subpart 44.3).

13. Section 9.406–1 is amended by revising paragraph (c) and by adding paragraph (d) to read as follows:

9.406–1 General.

* * * * *

(c) A contractor's debarment, or proposed debarment, shall be effective throughout the executive branch of the Government, unless an acquiring agency's head or a designee states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

(d)(1) When the debarring official has authority to debar contractors from both acquisition contracts pursuant to this regulation and contracts for the purchase of Federal personal property pursuant to the Federal Property Management Regulations (FPMR) 101–45.6, that official shall consider simultaneously debarring the contractor from the award of acquisition contracts and from the purchase of Federal personal property.

(2) When debarring a contractor from the award of acquisition contracts and from the purchase of Federal personal property, the debarment notice shall so indicate and the appropriate FAR and FPMR citations shall be included.

14. Section 9.406–2 is amended by revising the introductory text of paragraph (a); by revising paragraph (b); and by redesignating existing paragraph (c) as (b)(2) and paragraph (d) as (c) to read as follows:

9.406–2 Causes for debarment.

(a) The debarring official may debar a contractor for a conviction of or civil judgment for—

* * * * *

(b) The debarring official may debar a contractor, based upon a preponderance of the evidence, for—

(1) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as—

(i) Willful failure to perform in accordance with the terms of one or more contracts; or

(ii) A history of failure to perform, or of unsatisfactory performance of, one or more contracts.

* * * * *

15. Section 9.406–3 is amended by revising paragraph (b)(2); by revising the introductory text of paragraph (c); and by revising paragraphs (c)(6) and (c)(7) to read as follows:

9.406–3 Procedures.

* * * * *

(b) * * *

(2) In actions not based upon a conviction or civil judgment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the proposed debarment, agencies shall also—

* * * * *

(c) *Notice of proposal to debar.* A notice of proposed debarment shall be issued by the debarring official advising the contractor and any specifically named affiliates, by certified mail, return receipt requested—

* * * * *

(6) Of the effect of the issuance of the notice of proposed debarment; and

(7) Of the potential effect of an actual debarment.

* * * * *

16. Section 9.406–4 is amended by revising the third sentence in paragraph (a) and by revising paragraph (c)(2) to read as follows:

9.406–4 Period of debarment.

(a) * * * The period of the proposed debarment, or of any prior suspension, shall be considered in determining the debarment period.

* * * * *

(c) * * *

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

* * * * *

17. Section 9.407–1 is amended by adding paragraph (e) to read as follows:

9.407-1 General.

* * * * *

(e)(1) When the suspending official has authority to suspend contractors from both acquisition contracts pursuant to this regulation and contracts for the purchase of Federal personal property pursuant to FPMR 101-45.6, that official shall consider simultaneously suspending the contractor from the award of acquisition contracts and from the purchase of Federal personal property.

(2) When suspending a contractor from the award of acquisition contracts and from the purchase of Federal personal property, the suspension notice shall so indicate and the appropriate FAR and FPMR citations shall be included.

18. Section 9.408 is added to read as follows:

9.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.

(a) When an offeror, in compliance with the provision at 52.209-5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, indicates an indictment, charge, civil judgment, conviction, suspension, debarment, proposed debarment, ineligibility, or default of a contract, the contracting officer shall—

(1) Request such additional information from the offeror as the contracting officer deems necessary in order to make a determination of the offeror's responsibility (but see 9.405); and

(2) Notify, prior to proceeding with award, in accordance with agency procedures (see 9.406-3(a) and 9.407-3(a)), the agency official responsible for initiating debarment or suspension action, where an offeror indicates the existence of an indictment, charge, conviction, or civil judgment.

(b) Offerors who do not furnish the certification or such information as may be requested by the contracting officer shall be given an opportunity to remedy the deficiency. Failure to furnish the certification or such information may render the offeror nonresponsible.

19. Section 9.409 is added to read as follows:

9.409 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.209-5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, in solicitations where the contract value is expected to exceed $25,000.

(b) The contracting officer shall insert the clause at 52.209-6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, in solicitations and contracts where the contract value exceeds $25,000.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

20. Subpart 22.10, consisting of sections 22.1000 through 22.1026, is added to read as follows:

Subpart 22.10—Service Contract Act of 1965, as Amended

Sec.

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

Subpart 22.10—Service Contract Act of 1965, as Amended

22.1000 Scope of subpart.

This subpart prescribes policies and procedures implementing the provisions of the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.), the applicable provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, et seq.), and related Secretary of Labor regulations and instructions (29 CFR Parts 4, 6, 8, and 1925).

22.1001 Definitions.

"Act" or "Service Contract Act," as used in this subpart, means the Service Contract Act of 1965, as amended.

"Agency labor advisor" means an individual responsible for advising contracting agency officials on Federal contract labor matters.

"Contractor," as used in this subpart, includes a subcontractor at any tier whose subcontract is subject to the provisions of the Act.

"Multiple year contracts," as used in this subpart, means contracts having a term of more than 1 year regardless of fiscal year funding. The term includes multi-year contracts with a term of more than 1 year (see 17.101).

"Notice," as used in this subpart, means Standard Form (SF) 98, "Notice of Intention to Make a Service Contract and Response to Notice," and SF 98a "Attachment A." The term "Notice" is always capitalized in this subpart when it means Standard Forms 98 and 98a.

"Service contract," as used in this subpart, means any Government contract, the principal purpose of which is to furnish services in the United States through the use of service employees, except as exempted under section 7 of the Act (41 U.S.C. 356; see 22.1003–3 and 22.1003–4), or any subcontract at any tier thereunder. See 22.1003–5 and 29 CFR 4.130 for a partial list of services covered by the Act.

"Service employee" means any person engaged in the performance of a service contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

"United States," as used in this subpart, includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.), American Samoa, Guam, Northern Mariana Islands, Wake Island, and Johnston Island but does not include any other territory under U.S. jurisdiction or any U.S. base or possession within a foreign country.

"Wage and Hour Division" means the unit in the Employment Standards Administration of the Department of Labor to which is assigned functions of the Secretary of Labor under the Act.

"Wage determination" means a determination of minimum wages or fringe benefits made under sections 2(a) or 4(c) of the Act (41 U.S.C. 351(a) or 353(c)) applicable to the employment in a given locality of one or more classes of service employees.

22.1002 Statutory requirements.

22.1002–1 General.

Service contracts over $2,500 shall contain mandatory provisions regarding minimum wages and fringe benefits, safe and sanitary working conditions, notification to employees of the minimum allowable compensation, and equivalent Federal employee classifications and wage rates. Under 41 U.S.C. 353(d), service contracts may not exceed 5 years.

22.1002–2 Wage determinations based on prevailing rates.

Contractors performing on service contracts in excess of $2,500 to which no predecessor contractor's collective bargaining agreement applies shall pay their employees at least the wages and fringe benefits found by the Department of Labor to prevail in the locality or, in the absence of a wage determination, the minimum wage set forth in the Fair Labor Standards Act.

22.1002–3 Wage determinations based on collective bargaining agreements.

(a) Successor contractors performing on contracts in excess of $2,500 for substantially the same services performed in the same locality must pay wages and fringe benefits (including accrued wages and benefits and prospective increases) at least equal to those contained in any bona fide collective bargaining agreement entered into under the predecessor contract. This requirement will not apply if the Secretary of Labor determines as a result of a hearing that the wages and fringe benefits are substantially at variance with those which prevail for services of a similar character in the locality or that they have not been reached as a result of arm's length negotiations.

(b) Paragraphs in this Subpart 22.10 which deal with this statutory requirement and the Department of Labor's implementing regulations are 22.1008–3, concerning applicability of this requirement and the forwarding of a collective bargaining agreement with a Notice (SF 98, 98a); 22.1010, concerning notification to contractors and bargaining representatives of procurement dates; 22.1012–3, explaining when a collective bargaining agreement will not apply due to late receipt by the contracting officer; and 22.1013 and 22.1021, explaining when the application of a collective bargaining agreement can be challenged due to a variance with prevailing rates or lack of arm's length bargaining.

22.1002–4 Application of the Fair Labor Standards Act minimum wage.

No contractor or subcontractor holding a service contract for any dollar amount shall pay any of its employees working on the contract less than the minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206).

22.1003 Applicability.

22.1003–1 General.

This Subpart 22.10 applies to all Government contracts, the principal purpose of which is to furnish services in the United States through the use of service employees, except as exempted in 22.1003–3 and 22.1003–4 of this section, or any subcontract at any tier thereunder. This subpart does not apply to individual contract requirements for services in contracts not having as their principal purpose the furnishing of services. The nomenclature, type, or particular form of contract used by contracting agencies is not determinative of coverage.

22.1003–2 Geographical coverage of the Act.

The Act applies to service contracts performed in the United States (see 22.1001). The Act does not apply to contracts performed outside the United States.

22.1003–3 Statutory exemptions.

The Act does not apply to—

(a) Any contract for construction, alteration, or repair of public buildings or public works, including painting and decorating;

(b) Any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (41 U.S.C. 35–45);

(c) Any contract for transporting freight or personnel by vessel, aircraft, bus, truck, express, railroad, or oil or gas pipeline where published tariff rates are in effect;

(d) Any contract for furnishing services by radio, telephone, telegraph, or cable companies subject to the Communications Act of 1934;

(e) Any contract for public utility services;

(f) Any employment contract providing for direct services to a Federal agency by an individual or individuals; or

(g) Any contract for operating postal contract stations for the U.S. Postal Service.

22.1003–4 Administrative limitations, variations, tolerances, and exemptions.

(a) The Secretary of Labor may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of the Act other than section 10 (41 U.S.C. 358). These will be made only in special circumstances where it

has been determined that the limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid the serious impairment of Government business, and is in accord with the remedial purpose of the Act to protect prevailing labor standards (41 U.S.C. 353(b)). See 29 CFR 4.123 for a listing of administrative exemptions, tolerances, and variations. Requests for limitations, variances, tolerances, and exemptions from the Act shall be submitted in writing through contracting channels and the agency labor advisor to the Wage and Hour Administrator.

(b) In addition to the statutory exemptions cited in 22.1003–3 of this subsection, the Secretary of Labor has exempted the following types of contracts from all provisions of the Act:

(1) Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for an insubstantial portion of the revenue therefrom.

(2) Any contract entered into by the U.S. Postal Service with an individual owner-operator for mail service if it is not contemplated at the time the contract is made that the owner-operator will hire any service employee to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or emergency situations such as illness, or accident.

(3) Contracts for the carriage of freight or personnel if such carriage is subject to rates covered by section 10721 of the Interstate Commerce Act.

(4) Contracts as follows:

(i) Contracts principally for the maintenance, calibration, or repair of the following types of equipment are exempt, subject to the restrictions in subdivisions (b)(4)(ii), (b)(4)(iii), and (b)(4)(iv) of this subsection.

(A) Automated data processing equipment and office information/word processing systems.

(B) Scientific equipment and medical apparatus or equipment if the application of micro-electronic circuitry or other technology of at least similar sophistication is an essential element (for example, Federal Supply Classification (FSC) Group 65, Class 6515, "Medical Diagnostic Equipment;" Class 6525, "X-Ray Equipment;" FSC Group 66, Class 6630, "Chemical Analysis Instruments;" and Class 6665, "Geographical and Astronomical Instruments," are largely composed of the types of equipment exempted hereunder).

(C) Office/business machines not otherwise exempt pursuant to subdivision (b)(4)(i)(A) of this subsection, if such services are performed by the manufacturer or supplier of the equipment.

(ii) The exemption set forth in this subparagraph (b)(4) of this subsection shall apply only under the following circumstances:

(A) The items of equipment are commercial items which are used regularly for other than Government purposes and are sold or traded by the contractor in substantial quantities to the general public in the course of normal business operations.

(B) The contract services are furnished at prices which are, or are based on, established catalog or market prices (see 29 CFR 4.123(e)(1)(ii)(B)) for the maintenance, calibration, or repair of such commercial items.

(C) The contractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the contractor uses for equivalent employees servicing the same equipment of commercial customers.

(D) The contractor certifies in the contract to the provisions in subdivision (b)(4)(ii) of this subsection. (See 22.1006(e).)

(iii)(A) Determinations of the applicability of this exemption shall be made in the first instance by the contracting officer before contract award. In determining that the exemption applies, the contracting officer shall consider all factors and make an affirmative determination that all of the above conditions have been met.

(B) If any potential offerors would not qualify for the exemption, the contracting officer shall incorporate in the solicitation the Service Contract Act clause (see 22.1005 and 22.1006(a)) and, if the contract will exceed $2,500, the appropriate Department of Labor wage determination (see 22.1007).

(iv) If the Department of Labor determines after contract award that any of the requirements for exemption in subparagraph (b)(4) of this subsection have not been met, the exemption will be deemed inapplicable, and the contract shall become subject to the Service Contract Act, effective as of the date of the Department of Labor determination.

22.1003–5 Some examples of contracts covered.

The following examples, while not definitive or exclusive, illustrate some of the types of services that have been found to be covered by the Act (see 29 CFR 4.130 for additional examples):

(a) Motor pool operation, parking, taxicab, and ambulance services.

(b) Packing, crating, and storage.

(c) Custodial, janitorial, housekeeping, and guard services.

(d) Food service and lodging.

(e) Laundry, dry-cleaning, linen-supply, and clothing alteration and repair services.

(f) Snow, trash, and garbage removal.

(g) Aerial spraying and aerial reconnaissance for fire detection.

(h) Some support services at installations, including grounds maintenance and landscaping.

(i) Certain specialized services requiring specific skills, such as drafting, illustrating, graphic arts, stenographic reporting, or mortuary services.

(j) Electronic equipment maintenance and operation and engineering support services.

(k) Maintenance and repair of all types of equipment, for example, aircraft, engines, electrical motors, vehicles, and electronic, telecommunication, office and related business and construction equipment. (But see 22.1003–4(b)(4).)

(l) Operation, maintenance, or logistics support of a Federal facility.

(m) Data collection, processing and analysis services.

22.1003–6 Repair distinguished from remanufacturing of equipment.

(a) Contracts principally for remanufacturing of equipment which is so extensive as to be equivalent to manufacturing are subject to the Walsh-Healey Public Contracts Act, rather than to the Service Contract Act. Remanufacturing shall be deemed to be manufacturing when the criteria in either subparagraphs (a)(1) or (a)(2) of this subsection are met.

(1) Major overhaul of an item, piece of equipment, or materiel which is degraded or inoperable, and under which all of the following conditions exist:

(i) The item or equipment is required to be completely or substantially torn down into individual component parts.

(ii) Substantially all of the parts are reworked, rehabilitated, altered and/or replaced.

(iii) The parts are reassembled so as to furnish a totally rebuilt item or piece of equipment.

(iv) Manufacturing processes similar to those which were used in the manufacturing of the item or piece of equipment are utilized.

(v) The disassembled components, if usable (except for situations where the number of items or pieces of equipment involved are too few to make it practicable) are commingled with existing inventory and, as such, lose their identification with respect to a particular piece of equipment.

(vi) The items or equipment overhauled are restored to original life expectancy, or nearly so.

(vii) Such work is performed in a facility owned or operated by the contractor.

(2) Major modification of an item, piece of equipment, or material which is wholly or partially obsolete, and under which all of the following conditions exist:

(i) The item or equipment is required to be completely or substantially torn down.

(ii) Outmoded parts are replaced.

(iii) The item or equipment is rebuilt or reassembled.

(iv) The contract work results in the furnishing of a substantially modified item in a usable and serviceable condition.

(v) The work is performed in a facility owned or operated by the contractor.

(b) Remanufacturing does not include the repair of damaged or broken equipment which does not require a complete teardown, overhaul, and rebuild as described in subparagraphs (a)(1) and (a)(2) of this subsection, or the periodic and routine maintenance, preservation, care, adjustment, upkeep, or servicing of equipment to keep it in usable, serviceable, working order. Such contracts typically are billed on an hourly rate (labor plus materials and parts) basis. Any contract principally for this type of work is subject to the Service Contract Act. Examples of such work include the following:

(1) Repair of an automobile, truck, or other vehicle, construction equipment, tractor, crane, aerospace, air conditioning and refrigeration equipment, electric motors, and ground powered industrial or vehicular equipment.

(2) Repair of typewriters and other office equipment (but see 22.1003-4(b)(4)).

(3) Repair of appliances, radios, television sets, calculators, and other electronic equipment.

(4) Inspecting, testing, calibration, painting, packaging, lubrication, tune-up, or replacement of internal parts of equipment listed in subparagraphs (b)(1), (b)(2), and (b)(3) of this subsection.

(5) Reupholstering, reconditioning, repair, and refinishing of furniture.

22.1003-7 Questions concerning applicability of the Act.

If the contracting officer questions the applicability of the Act to an acquisition, the contracting officer shall request the advice of the agency labor advisor. Unresolved questions shall be submitted in a timely manner to the Administrator, Wage and Hour Division, for determination.

22.1004 Department of Labor responsibilities and regulations.

Under the Act, the Secretary of Labor is authorized and directed to enforce the provisions of the Act, make rules and regulations, issue orders, hold hearings, make decisions, and take other appropriate action. The Department of Labor has issued implementing regulations on such matters as—

(a) Service contract labor standards provisions and procedures (29 CFR Part 4, Subpart A);

(b) Wage determination procedures (29 CFR Part 4, Subpart B);

(c) Application of the Act (rulings and interpretations) (29 CFR Part 4, Subpart C);

(d) Compensation standards (29 CFR Part 4, Subpart D);

(e) Enforcement (29 CFR Part 4, Subpart E);

(f) Safe and sanitary working conditions (29 CFR Part 1925);

(g) Rules of practice for administrative proceedings enforcing service contract labor standards (29 CFR Part 6); and

(h) Practice before the Board of Service Contract Appeals (29 CFR Part 8).

22.1005 Clause for contracts of $2,500 or less.

The contracting officer shall insert the clause at 52.222-40, Service Contract Act of 1965, as amended—Contracts of $2,500 or Less, in solicitations and contracts if the contract is subject to the Act and is (a) for $2,500 or less or (b) for an indefinite dollar amount and the contracting officer knows in advance that the contract amount will not exceed $2,500.

22.1006 Clauses for contracts over $2,500.

(a) The contracting officer shall insert the clause at 52.222-41, Service Contract Act of 1965, as amended, in solicitations and contracts if the contract is subject to the Act and is (1) for over $2,500 or (2) for an indefinite dollar amount and the contracting officer does not know in advance that the contract amount will be $2,500 or less.

(b) The contracting officer shall insert the clause at 52.222-42, Statement of Equivalent Rates for Federal Hires, in solicitations and contracts if the contract amount is expected to be over $2,500 and the Act is applicable. (See 22.1016.)

(c)(1) The contracting officer shall insert the clause at 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts), or another clause which accomplishes the same purpose, in solicitations and contracts if the contract is expected to be a fixed-price service contract containing the clause at 52.222-41, Service Contract Act of 1965, as amended, and is a multiple year contract or is a contract with options to renew which exceeds the small purchase limitation. The clause may be used in contracts that do not exceed the small purchase limitation. The clause at 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts), applies to both contracts subject to area prevailing wage determinations and contracts subject to the incumbent contractor's collective bargaining agreement in effect during this contract's preceding contract period (see 22.1002-2 and 22.1002-3). Contracting officers shall ensure that contract prices or contract unit price labor rates are adjusted only to the extent that a contractor's increases or decreases in applicable wages and fringe benefits are made to comply with the requirements set forth in the clauses at 52.222-43 (subparagraphs (c) (1), (2) and (3)], or 52.222-44 (subparagraphs (b) (1) and (2)]. (For example, the prior year wage determination required a minimum wage rate of $4.00 per hour. The contractor actually paid $4.10. The new wage determination increases the minimum rate to $4.50. The contractor increases the rate actually paid to $4.75 per hour. The allowable price adjustment is $.40 per hour.)

(2) The contracting officer shall insert the clause at 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment, in solicitations and contracts if the contract is expected to be a fixed-price service contract containing the clause at 52.222-41, Service Contract Act of 1965, as amended, exceeds the small purchase limitation, and is not a multiple year contract or is not a contract with options to renew. The clause may be used in contracts that do not exceed the small purchase limitation. The clause at 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment, applies to both contracts subject to area prevailing wage determinations and contracts subject to contractor collective bargaining

agreements (see 22.1002-2 and 22.1002-3).

(3) The clauses prescribed in paragraph 22.1006(c)(1) cover situations in which revised minimum wage rates are applied to contracts by operation of law, or by revision of a wage determination in connection with (i) exercise of a contract option or (ii) extension of a multiple year contract into a new program year. If a clause prescribed in 16.203-4(d) is used, it must not conflict with, or duplicate payment under, the clauses prescribed in this paragraph 22.1006(c).

(d) The contracting officer shall insert the clause at 52.222-47, Service Contract Act (SCA) Minimum Wages and Fringe Benefits, if—

(1) The clause at 52.222-41 applies;

(2) The contract resulting from the solicitation succeeds a contract for substantially the same services to be performed in the same locality;

(3) The incumbent contractor has negotiated or is negotiating a collective bargaining agreement with some or all of its service employees; and

(4) All applicable Department of Labor wage determinations have been requested but not received.

(e)(1) The contracting officer shall insert the clause at 52.222-48, Exemption from Application of Service Contract Act Provisions, in any solicitation and resulting contract calling for the maintenance, calibration, and/or repair of ADP, scientific and medical, and office and business equipment if the contracting officer determines that the resultant contract may be exempt from Service Contract Act coverage as described at 22.1003-4(b)(4).

(2) If the successful offeror does not certify that the exemption applies, the contracting officer shall not insert the clause at 52.222-48 and instead shall insert in the contract (i) the applicable Service Contract Act clause(s) and (ii) the appropriate Department of Labor wage determination if the contract exceeds $2,500.

(f) The contracting officer shall insert the clause at 52.222-49, Service Contract Act—Place of Performance Unknown, if using the procedures prescribed in 22.1009-4.

22.1007 Requirement to submit Notice (SF 98/98a).

The contracting officer shall submit Standard Forms 98 and 98a (see 53.301-98 and 53.301-98a), "Notice of Intention to Make a Service Contract and Response to Notice" and "Attachment A" (both forms hereinafter referred to as "Notice"), together with any required supplemental information to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210, for the following service contracts:

(a) Each new solicitation and contract in excess of $2,500.

(b) Each contract modification which brings the contract above $2,500 and—

(1) Extends the existing contract pursuant to an option clause or otherwise; or

(2) Changes the scope of the contract whereby labor requirements are affected significantly.

(c) Each multiple year contract in excess of $2,500 upon—

(1) Annual anniversary date if the contract is subject to annual appropriations; or

(2) Biennial anniversary date if the contract is not subject to annual appropriations and its proposed term exceeds 2 years—unless otherwise advised by the Wage and Hour Division (see 22.1008-5).

22.1008 Procedures for preparing and submitting Notice (SF 98/98a).

22.1008-1 Preparation of Notice (SF 98/98a).

The contracting officer shall complete and submit the Notice in accordance with the instructions on the SF 98 and shall supplement it with information required under this section. Care should be taken to ensure that all required information is provided to avert return without action by the Department of Labor. The contracting officer shall retain a copy of the completed Notice and any required supplementary information until the signed and dated response to the Notice is received from the Department of Labor and placed in the contract file.

22.1008-2 Preparation of SF 98a.

(a) The SF 98a shall contain the following information concerning the service employees expected to be employed by the contractor and any known subcontractors in performing the contract:

(1) All classes of service employees to be utilized.

(i) If a wage determination is to be based on a collective bargaining agreement (CBA) (see 22.1002-3 and 22.1008-3), use the exact title shown in the CBA.

(ii) For other than subdivision (a)(1)(i) of this subsection—

(A) Use the exact title shown in the Wage and Hour Division's *Service Contract Act Directory of Occupations* (see paragraph (b) of this subsection).

(B) Provide an appropriate job title and job description if the Directory cannot be used.

(2) The estimated number of service employees in each class; and

(3) The wage rate that would be paid each class if employed by the agency and subject to the wage provisions of 5 U.S.C. 5341 or 5332 (see 22.1016).

(b)(1) The Wage and Hour Division's *Service Contract Act Directory of Occupations* (Directory) contains standard job titles and definitions (descriptions) for many commonly utilized service employee occupations. Contracting officers shall use this Directory to the maximum extent possible in listing service employee classes on the SF 98a. This usage will enhance the timely issuance of comprehensive wage determinations.

(2) If the job title contained in the Directory differs from that contained in the statement of work but the job definition (description) in the Directory and the statement of work match sufficiently, the contracting officer shall use the Directory job title.

(3) The latest edition of the Directory is available for sale by the Superintendent of Documents and may be ordered by calling (202) 783-3238 or writing to Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Contracting agencies, in accordance with agency procedures, are responsible for notifying their own personnel of a new edition of the Directory.

22.1008-3 Section 4(c) successorship with incumbent contractor collective bargaining agreement.

(a) Early in the acquisition cycle, the contracting officer shall determine whether section 4(c) of the Act affects the new acquisition. The contracting officer shall determine whether there is a predecessor contract and, if so, whether the incumbent prime contractor or its subcontractors and any of their employees have a collective bargaining agreement.

(b) Section 4(c) of the Act provides that a successor contractor must pay wages and fringe benefits (including accrued wages and benefits and prospective increases) to service employees at least equal to those agreed upon by a predecessor contractor under the following conditions:

(1) The services to be furnished under the proposed contract will be substantially the same as services being furnished by an incumbent contractor whose contract the proposed contract will succeed.

(2) The services will be performed in the same locality.

(3) The incumbent prime contractor or subcontractor is furnishing such services

through the use of service employees whose wages and fringe benefits are the subject of one or more collective bargaining agreements.

(c) The application of section 4(c) of the Act is subject to the following limitations:

(1) Section 4(c) of the Act will not apply if the incumbent contractor enters into a collective bargaining agreement for the first time and the agreement does not become effective until after the expiration of the incumbent's contract.

(2) If the incumbent contractor enters into a new or revised collective bargaining agreement during the period of the incumbent's performance on the current contract, the terms of the new or revised agreement shall not be effective for the purposes of section 4(c) of the Act under the following conditions:

(i)(A) In sealed bidding, the contracting agency receives notice of the terms of the collective bargaining agreement less than 10 days before bid opening and finds that there is not reasonable time still available to notify bidders (see 22.1012–3(a)); or

(B) For contractual actions other than sealed bidding, the contracting agency receives notice of the terms of the collective bargaining agreement after award, provided that the start of performance is within 30 days of award (see 22.1012–3(b)); and

(ii) The contracting officer has given both the incumbent contractor and its employees' collective bargaining agent timely written notification of the applicable acquisition dates (see 22.1010).

(d) If section 4(c) of the Act applies, the contracting officer shall obtain a copy of any collective bargaining agreement between an incumbent contractor or subcontractor and its employees. Obtaining a copy of an incumbent contractor's collective bargaining agreement may involve coordination with the administrative contracting officer responsible for administering the predecessor contract. (Paragraph (m) of the clause at 52.222–41, Service Contract Act of 1965, as amended, requires the incumbent prime contractor to furnish the contracting officer a copy of each collective bargaining agreement.) The contracting officer shall submit a copy of each collective bargaining agreement together with any related documents specifying the wage rates and fringe benefits currently or prospectively payable under each agreement with the Notice.

(e) Section 4(c) of the Act will not apply if the Secretary of Labor determines after a hearing that the wages and fringe benefits in the predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a similar character in the locality or are not the result of arm's length bargaining (see 22.1013 and 22.1021).

(f) If the services are being furnished at more than one location and the collectively bargained wage rates and fringe benefits are different at different locations or do not apply to one or more locations, the contracting officer shall identify the locations to which the agreements apply.

(g) If the collective bargaining agreement does not apply to all service employees under the contract, the contracting officer shall separately list on the SF 98a the service employee classifications (1) subject to the collective bargaining agreement and (2) not subject to any collective bargaining agreement.

22.1008–4 Procedures when place of performance is unknown. See 22.1009.

22.1008–5 Multiple-year contracts.

If the proposed contract is multiple year and is not subject to annual appropriations, the contracting officer shall furnish with the Notice a statement in writing describing the type of funding and giving the length of the performance period. Unless otherwise advised by the wage and hour division that a Notice must be filed on the annual anniversary date, the contracting officer shall submit a new Notice on each biannual anniversary date of the multiple year contract if its term is for a period in excess of 2 years.

22.1008–6 Contract modifications (options, extensions, changes in scope) and anniversary dates.

If the purpose of the Notice is to obtain a wage determination for an exercise of an option, an extension to the contract term, a change in scope (see 22.1007(b)(2)), or the anniversary date of a multiple year contract, the contracting officer shall fill in Box 2 of the SF 98 as follows:

(a) In the "Estimated solicitation date" subbox, indicate, as appropriate: "Mod-Exercise of Option"; "Mod-Extension"; "Mod-Change in Scope"; "Annual Anniversary"; or "Biennial Anniversary"; and

(b) In the "month/day/year" subbox, indicate the date the wage determination is required.

22.1008–7 Required time of submission of Notice.

(a) If the contract action is for a recurring or known requirement, the contracting officer shall submit the Notice not less than 60 days (nor more than 120 days, except with the approval of the Wage and Hour Division) before the earlier of (1) issuance of any invitation for bids, (2) issuance of any request for proposals, (3) commencement of negotiations, (4) issuance of modification for exercise of option, contract extension, or change in scope, (5) annual anniversary date of a contract for more than 1 year subject to annual appropriations, or (6) each biennial anniversary date of a contract for more than 2 years not subject to annual appropriations unless otherwise advised by the Wage and Hour Division (see 22.1008–5).

(b) If the contract action is for a nonrecurring or unknown requirement for which the advance planning described in paragraph (a) of this subsection is not feasible, the contracting officer shall submit the Notice as soon as possible, but not later than 30 days before the contracting actions in paragraph (a) of this subsection. The contracting officer should indicate on the Notice that the requirement is nonrecurring or unknown and advance planning was not feasible.

(c) If exceptional circumstances prevent timely submission, as required by paragraphs (a) and (b) of this subsection, the contracting officer shall submit the Notice and the required supplemental information with a written statement of the reason for delay as soon as practicable.

(d) In an emergency situation requiring an immediate wage determination response, the contracting officer shall, in accordance with contracting agency procedures, contact the Wage and Hour Division by telephone for guidance before submitting the Notice.

22.1009 Place of performance unknown.

22.1009–1 General.

If the place of performance is unknown, the contracting officer may use the procedures in this section. The contracting officer should first attempt to identify the specific places or geographical areas where the services might be performed (see 22.1009–2) and then may follow the procedures either in 22.1009–3 or in 22.1009–4.

22.1009–2 Attempt to identify possible places of performance.

The contracting officer should attempt to identify the specific places or geographical areas where the services might be performed. The following may indicate possible places of performance:

(a) Locations of previous contractors and their competitors.

(b) The solicitation mailing list.

(c) Responses to a presolicitation notice (see 5.204).

22.1009-3 All possible places of performance identified.

(a) If the contracting officer can identify all the possible places or areas of performance (even though the actual place of performance will not be known until the successful offeror is chosen), the contracting officer, as required in 22.1008, shall submit the Notice to the Wage and Hour Division. If the number of places of performance exceeds the space available on the Notice, the contracting officer shall provide a listing by state-county-city/town in an attachment to the Notice.

(b) The Wage and Hour Division may issue a wage determination for each different geographical area of performance identified by the contracting officer, or in unusual situations it may issue a wage determination for one or more composite areas of performance. If there is a substantial number of places or areas of performance indicating the need for a wage determination for one or more composite areas of performance, the contracting officer should, before submitting the Notice, contact the Wage and Hour Division concerning the issuance of such a wage determination.

(c) If the contracting officer subsequently learns of any potential offerors in previously unidentified places before the closing date for submission of offers, the contracting officer shall follow one of the following procedures:

(1) Continue to follow the procedures in this subsection and:

(i) Submit Notices for the additional places of performance to the Wage and Hour Division, and

(ii) Amend the solicitation to include all wage determinations and, if necessary, extend the time for submission of final offers.

(2) Follow the procedures in 22.1009-4.

22.1009-4 All possible places of performance not identified.

If the contracting officer believes that there may be offerors interested in performing in unidentified places or areas, the contracting officer may use the following procedures:

(a) If the contracting officer has identified possible places or areas where services might be performed, the contracting officer shall submit the Notice to the Wage and Hour Division (see 22.1009-3 (a) and (b)).

(b) Include the following information in the Commerce Business Daily Notice (see 5.207(f)(4)):

(1) That the place of performance is unknown.

(2) The possible places or areas of performance for which the contracting officer has requested wage determinations.

(3) That the contracting officer will request wage determinations for additional possible places of performance if asked to do so in writing.

(4) The time and date by which requests for wage determinations for additional places must be received by the contracting officer.

(c) Insert the clause at 52.222-49, Service Contract Act—Place of Performance Unknown, in solicitations and contracts. Include the information required in the clause by subparagraphs (b)(2) and (b)(4) of this subsection. The closing date for receipt of offerors' requests for wage determinations for additional possible places of performance should allow reasonable time for potential offerors to review the solicitation and determine their interest in competing. Generally, 10 to 15 days from the date of issuance of the solicitation may be considered a reasonable period of time.

(d) The procedures in 14.304-1 shall apply to late receipt of offerors' requests for wage determinations for additional places of performance. However, late receipt of an offeror's request for a wage determination for additional places of performance does not preclude the offeror's competing for the proposed acquisition.

(e) If the contracting officer receives any timely requests for wage determinations for additional places of performance the contracting officer shall—

(1) Submit Notices for the additional places of performance to the Wage and Hour Division; and

(2) Amend the solicitation to include all wage determinations and, if necessary, extend the time for submission of final offers.

(f) If the successful offeror did not make a timely request for a wage determination and will perform in a place of performance for which the contracting officer therefore did not request a wage determination, the contracting officer shall—

(1) Award the contract;

(2) Request a wage determination; and

(3) Incorporate the wage determination in the contract, retroactive to the date of contract award and with no adjustment in contract price, pursuant to the clause at 52.222-49, Service Contract—Place of Performance Unknown.

22.1010 Notification to interested parties under collective bargaining agreements.

(a) The contracting officer should determine whether the incumbent prime contractor's or its subcontractors' service employees performing on the current contract are represented by a collective bargaining agent. If there is a collective bargaining agent, the contracting officer shall give both the incumbent contractor and its employees' collective bargaining agent written notification of—

(1) The forthcoming successor contract and the applicable acquisition dates (issuance of solicitation, opening of bids, commencement of negotiations, award of contract, or start of performance, as the case may be); or

(2) The forthcoming contract modification and applicable acquisition dates (exercise of option, extension of contract, change in scope, or start of performance, as the case may be); or

(3) The forthcoming multiple year contract anniversary date (annual anniversary date or biennial date, as the case may be).

(b) This written notification must be given at least 30 days in advance of the earliest applicable acquisition date or the applicable annual or biennial anniversary date in order for the time-of-receipt limitations in 22.1012-3 (a) and (b) to apply. The contracting officer shall retain a copy of the notification in the contract file.

22.1011 Response to Notice by Department of Labor.

22.1011-1 Department of Labor action.

The Wage and Hour Division will mark, date, and sign the section of the SF 98 titled "Response to Notice" and return the signed original together with appropriate additional material (wage determination, position/classification descriptions, etc.). The Wage and Hour Division will take one of the following four actions:

(a) Issue and attach applicable wage determination(s); or

(b) Indicate that no wage determination is in effect for the locality of contract performance; or

(c) Indicate that the Service Contract Act is not applicable based on information submitted; or

(d) Return the Notice for additional information (see 22.1008-1).

22.1011-2 Requests for status or expediting of response.

Checking the status or the expediting of wage determination responses shall be made in accordance with contracting agency procedures.

22.1012 Late receipt or nonreceipt of wage determination.

22.1012-1 General.

The Wage and Hour Administrator, generally, will issue a wage determination or revision to it in response to a Notice. The contracting officer shall incorporate the determination or revision in the particular solicitation and contract for which the wage determination was sought.

22.1012-2 Response to timely submission of Notice—no collective bargaining agreement.

(a) If the contracting officer has not received a response from the Department of Labor within 60 days (or 30 days if a nonrecurring or unknown requirement), the contracting agency shall contact the Wage and Hour Division to determine when the wage determination or revision can be expected.

(b) In sealed bidding, a revision of a wage determination shall not be effective if a collective bargaining agreement does not exist, the revision is received by the contracting agency less than 10 days before the opening of bids, and the contracting officer finds that there is not reasonable time to incorporate the revision in the solicitation.

(c) For contractual actions other than sealed bidding where a collective bargaining agreement does not exist, a revision of a wage determination received by the contracting agency after award of a new contract or a modification as specified in 22.1007(b) shall not be effective provided that the start of performance is within 30 days of the award or the specified modification. If the contract does not specify a start of performance date which is within 30 days of the award or the specified modification, and if contract performance does not commence within 30 days of the award or the specified modification, the Department of Labor shall be notified and any revision received by the contracting agency not less than 10 days before commencement of the work shall be effective.

(d) The limitations in paragraphs (b) and (c) of this subsection shall apply only if a timely Notice required in 22.1008–7 (a) and (b) has been submitted.

22.1012-3 Response to timely submission of Notice—with collective bargaining agreement.

(a) In sealed bidding, a wage determination or revision based on a new or changed collective bargaining agreement shall not be effective if the contracting agency has received notice of the terms of the new or changed collective bargaining agreement less than 10 days before bid opening and the contracting officer determines that there is not reasonable time to incorporate the new or changed terms of the collective bargaining agreement in the solicitation (see 52.222–47).

(b) For contractual actions other than sealed bidding, a wage determination or revision based on a new or changed collective bargaining agreement shall not be effective if notice of the terms of the new or changed collective bargaining agreement is received by the contracting agency after award of a successor contract or a modification as specified in 22.1007(b), provided that the contract start of performance is within 30 days of the award of the contract or of the specified modification. If the contract does not specify a start of performance date which is within 30 days of the award of the contract or of the specified modification, or if contract performance does not commence within 30 days of the award of the contract or of the specified modification, any notice of the terms of a new or changed collective bargaining agreement received by the agency not less than 10 days before commencement of the work shall be effective for purposes of the successor contract under section 4(c) of the Act.

(c) The limitations in paragraphs (a) and (b) of this subsection shall apply only if timely Notices and notifications required in 22.1008–7 and 22.1010 have been given.

(d) If the contracting officer has not received a response from the Department of Labor within 60 days (or 30 days if a nonrecurring or unknown requirement), the contracting agency shall contact the Wage and Hour Division to determine when the wage determination or revision can be expected. If the Department of Labor is unable to provide the wage determination or revision by the latest date needed to maintain the acquisition schedule, the solicitation/contract action should proceed according to the following instructions:

(1) If a successorship/same locality/incumbent collective bargaining agreement situation exists, the contracting officer shall incorporate in the solicitation the wage and fringe benefit terms of the collective bargaining agreement, or the collective bargaining agreement itself, and the clause at 52.222–47, Service Contract Act (SCA) Minimum Wages and Fringe Benefits.

(2) The terms of a new or changed collective bargaining agreement, negotiated by the predecessor contractor during the period of performance of the predecessor contract, will not apply to the successor contract under the conditions set forth in paragraphs (a), (b), and (c) of this subsection.

22.1012-4 Response to late submission of Notice—no collective bargaining agreement.

If the contracting officer has not filed the Notice within the time limits in 22.1008–7, and thus has not received a response from the Department of Labor, and a successorship/same locality/incumbent collective bargaining agreement situation does not exist, the contracting officer shall contact the Wage and Hour Division to determine when the wage determination or revision can be expected. If the Department of Labor is unable to provide the wage determination or revision by the latest date needed to maintain the acquisition schedule, the contracting officer shall use the latest wage determination or revision, if any, incorporated in the existing contract. If any new or revised wage determination is received later in response to the Notice, the contracting officer shall include it in the solicitation or contract within 30 calendar days of receipt. If the contract has been awarded, the contracting officer shall equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating the wage determination or revision. The Administrator, Wage and Hour Division, may require retroactive application of the wage determination for a contractual action over $2,500 using more than five service employees. These provisions are not intended to alter the contracting officer's responsibility to make timely submissions as required in 22.1008–7.

22.1012-5 Response to late submission of Notice—with collective bargaining agreement.

If the contracting officer has not filed the Notice within the time limits in 22.1008–7, has not received a response from the Department of Labor, and a successorship/same locality/incumbent collective bargaining agreement situation exists, the contracting officer shall contact the Wage and Hour Division to determine when the wage determination or revision can be expected. If the Department of Labor is unable to provide the wage determination or revision by the latest date needed to maintain the acquisition schedule, the contracting officer shall incorporate in the solicitation the wage and fringe benefit terms of the collective

bargaining agreement, or the collective bargaining agreement itself, and the clause at 52.222–47, Service Contract Act (SCA) Minimum Wages and Fringe Benefits. If the contract has been awarded, an equitable adjustment following receipt of the wage determination or revision will not be required, since the wage determination or revision will be based on the economic terms of the collective bargaining agreement.

22.1013 Review of wage determination.

(a) *Based on incumbent collective bargaining agreement.* (1) If wages, fringe benefits, or periodic increases provided for in a collective bargaining agreement vary substantially from those prevailing for similar services in the locality, the contracting officer shall immediately contact the agency labor advisor to consider instituting the procedures in 22.1021.

(2) If the contracting officer believes that an incumbent or predecessor contractor's agreement was not the result of arm's length negotiations, the contracting officer shall contact the agency labor advisor to determine appropriate action.

(b) *Based on other than incumbent collective bargaining agreement.* Upon receiving a wage determination not predicated upon a collective bargaining agreement, the contracting officer shall ascertain—

(1) If the wage determination does not conform with wages and fringe benefits prevailing for similar services in the locality; or

(2) If the wage determination contains significant errors or omissions. If either subparagraph (b)(1) or (b)(2) of this section is evident, the contracting officer shall contact the agency labor advisor to determine appropriate action.

22.1014 Delay of acquisition dates over 60 days.

If any invitation for bids, request for proposals, bid opening, or commencement of negotiation for a proposed contract for which a wage determination was provided in response to a Notice has been delayed, for whatever reason, more than 60 days from such date as indicated on the submitted Notice, the contracting officer shall, in accordance with agency procedures, contact the Wage and Hour Division for the purpose of determining whether the wage determination issued under the initial submission is still current. Any revision of a wage determination received by the contracting agency as a result of that communication, or upon discovery by the Department of Labor of a delay, shall supersede the earlier response as the wage determination applicable to the particular acquisition subject to the time frames in 22.1012–2(a) and (b).

22.1015 Discovery of errors by the Department of Labor.

If the Department of Labor discovers and determines, whether before or after a contract award, that a contracting officer made an erroneous determination that the Service Contract Act did not apply to a particular acquisition or failed to include an appropriate wage determination in a covered contract, the contracting officer, within 30 days of notification by the Department of Labor, shall include in the contract the clause at 52.222–41 and any applicable wage determination issued by the Administrator. If the contract is subject to section 10 of the Act (41 U.S.C. 358), the Administrator may require retroactive application of that wage determination. The contracting officer shall equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating a wage determination or revision.

22.1016 Statement of equivalent rates for Federal hires.

(a) The statement required under the clause at 52.222–42, Statement of Equivalent Rates for Federal Hires, (see 22.1006(b)) shall set forth those wage rates and fringe benefits that would be paid by the contracting activity to the various classes of service employees expected to be utilized under the contract if 5 U.S.C. 5332 (General Schedule—white collar) and/or 5 U.S.C. 5341 (Wage Board—blue collar) were applicable.

(b) Procedures for computation of these rates are as follows:

(1) Wages paid blue collar employees shall be the basic hourly rate for each class. The rate shall be Wage Board pay schedule step two for nonsupervisory service employees and step three for supervisory service employees.

(2) Wages paid white collar employees shall be an hourly rate for each class. The rate shall be obtained by dividing the general pay schedule step one biweekly rate by 80.

(3) Local civilian personnel offices can assist in determining and providing grade and salary data.

22.1017 Notice of award.

Whenever an agency awards a service contract subject to the Act which may be in excess of $25,000 and that agency does not report the award to the Federal Procurement Data System, it shall furnish an original and one copy of Standard Form 99, Notice of Award of Contract (see 53.301–99) to the Wage and Hour Division, Employment Standards Administration, Department of Labor, unless it makes other arrangements with the Wage and Hour Division for notifying it of contract awards.

22.1018 Notification to contractors and employees.

The contracting officer shall take the following steps to ensure that service employees are notified of minimum wages and fringe benefits.

(a) As soon as possible after contract award, inform the contractor of the labor standards requirements of the contract relating to the Act and of the contractor's responsibilities under these requirements, unless it is clear that the contractor is fully informed.

(b) At the time of award, furnish the contractor Department of Labor Publication WH–1313, Notice to Employees Working on Government Contracts, for posting at a prominent and accessible place at the worksite before contract performance begins. The publication advises employees of the compensation (wages and fringe benefits) required to be paid or furnished under the Act and satisfies the notice requirements in paragraph (g) of the clause at 52.222–41, Service Contract Act of 1965, as amended.

(c) Attach any applicable wage determination to Publication WH–1313.

22.1019 Additional classes of service employees.

(a) If the contracting officer is aware that contract performance involves classes of service employees not included in the wage determination, the contracting officer shall require the contractor to classify the unlisted classes so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between the unlisted classifications and the classifications listed in the determination (see paragraph (c) of the clause at 52.222–41, Service Contract Act of 1965, as amended). The contractor shall initiate the conforming procedure before unlisted classes of employees perform contract work. The contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate. The contracting officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' representative or the employees themselves together with the

agency recommendation) and all other pertinent information to the Wage and Hour Division. Within 30 days of receipt of the request, the Wage and Hour Division will (1) approve, modify, or disapprove the request when the parties are in agreement or (2) render a final determination in the event of disagreement among the parties. If the Wage and Hour Division will require more than 30 days to take action, it will notify the contracting officer within 30 days of receipt of the request that additional time is necessary.

(b) Some wage determinations will list a series of classes within a job classification family, for example, Computer Operators, level I, II, and III, or Electronic Technicians, level I, II, and III, or Clerk Typist, level I and II. Generally, level I is the lowest level. It is the entry level, and establishment of a lower level through conformance is not permissible. Further, trainee classifications may not be conformed. Helpers in skilled maintenance trades (for example, electricians, machinists, and automobile mechanics) whose duties constitute, in fact, separate and distinct jobs may also be used if listed on the wage determination, but may not be conformed. Conformance may not be used to artificially split or subdivide classifications listed in the wage determination. However, conforming procedures may be used if the work which an employee performs under the contract is not within the scope of any classification listed on the wage determination, regardless of job title. (See 29 CFR 4.152.)

(c) Subminimum rates for apprentices, student learners, and handicapped workers are permissible in accordance with paragraph (q) of the clause at 52.222–41, Service Contract Act of 1965, as amended.

22.1020 Seniority lists.

If a contract is performed at a Federal facility where employees may be hired/retained by a succeeding contractor, the incumbent prime contractor is required to furnish a certified list of all service employees on the contractor's or subcontractor's payroll during the last month of the contract, together with anniversary dates of employment, to the contracting officer no later than 10 days before contract completion. (See paragraph (n) of the clause at 52.222–41, Service Contract Act of 1965, as amended.) At the commencement of the succeeding contract, the contracting officer shall provide a copy of the list to the successor contractor for determining employee eligibility for vacation or other fringe benefits which are based upon length of service, including service with predecessor contractors if such benefit is required by an applicable wage determination.

22.1021 Substantial variance hearings.

(a) A contracting agency or other interested party may request a hearing on an issue presented in 22.1013(a). To obtain a hearing for the contracting agency, the contracting officer shall submit a request through appropriate channels (ordinarily the agency labor advisor) to Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington DC 20210, with sufficient data to support a prima facie showing that the rates at issue vary substantially from those prevailing for similar services in the locality. The request shall also include (1) the number of the wage determinations at issue, (2) name of contracting agency, (3) status of the acquisition and any estimated acquisition dates (e.g., bid opening, award, and commencement of performance), and (4) names and addresses, if known, of interested parties.

(b) Unless the Administrator determines that extraordinary circumstances exist, the Administrator will not consider requests for a hearing unless received as specified in subparagraphs (b)(1) and (b)(2) of this section—

(1) For sealed bid contracts, more than 10 days before the award of the contract;

(2) For negotiated contracts and for contracts with provisions extending the initial term by option, before the commencement date of the contract or the follow-up option period, as the case may be.

22.1022 Withholding of contract payments.

Any violations of the clause at 52.222–40, Service Contract Act of 1965, as amended—Contracts of $2,500 or Less, or the clause at 52.222–41, Service Contract Act of 1965, as amended, renders the responsible contractor liable for the amount of any deductions, rebates, refunds, or underpayments (which includes nonpayment) of compensation due employees performing the contract. The contracting officer may withhold—or, upon written request of the Department of Labor from a level no lower than that of Assistant Regional Administrator, Wage and Hour Division, Employment Standards Administration, Department of Labor, shall withhold—the amount needed to pay such underpaid employees from accrued payments due the contractor on the contract, or on any other prime contract (whether subject to the Service Contract Act or not) with the contractor. The agency shall place the amount withheld in a deposit fund. Such withheld funds shall be transferred to the Department of Labor for disbursement to the underpaid employees on order of the Secretary (or authorized representatives), an Administrative Law Judge, or the Board of Service Contract Appeals. In addition, the Department of Labor has given blanket approval to forward withheld funds pending completion of an investigation or other administrative proceeding when disposition of withheld funds remains the final action necessary to close out a contract.

22.1023 Termination for default.

As provided by the Act, any contractor failure to comply with the requirements of the contract clauses related to the Act may be grounds for termination for default (see paragraph (k) of the clause at 52.222–41, Service Contract Act of 1965, as amended).

22.1024 Cooperation with the Department of Labor.

The contracting officer shall cooperate with Department of Labor representatives in the examination of records, interviews with service employees, and all other aspects of investigations undertaken by the Department. When asked, agencies shall furnish the Wage and Hour Administrator or a designee, any available information on contractors, subcontractors, their contracts, and the nature of the contract services. The contracting officer shall promptly refer, in writing to the appropriate regional office of the Department, apparent violations and complaints received. Employee complaints shall not be disclosed to the employer.

22.1025 Ineligibility of violators.

A list of persons or firms found to be in violation of the Act is contained in the lists of Parties Excluded from Federal Procurement or Nonprocurement Programs (see 9.404). No Government contract may be awarded to any violator so listed because of a violation of the Act, or to any firm, corporation, partnership, or association in which the violator has a substantial interest, without the approval of the Secretary of Labor. This prohibition against award to an ineligible contractor applies to both prime and subcontracts.

22.1026 Disputes concerning labor standards.

Disputes concerning labor standards requirements of the contract are handled under paragraph (t) of the contract clause at 52.222–41, Service Contract Act of 1965, as amended, and not under the clause at 52.233–1, Disputes.

PART 25—FOREIGN ACQUISITION

21. Subpart 25.10, consisting of sections 25.1000 through 25.1005, is added to read as follows:

Subpart 25.10—Sanctions for Violations of Export Controls

Sec.
25.1000 Scope of subpart.
25.1001 Definitions.
25.1002 Policy.
25.1003 Exceptions.
25.1004 Procedures.
25.1005 Solicitation provision and contract clause.

Subpart 25.10—Sanctions for Violations of Export Controls

25.1000 Scope of subpart.

Section 2443 of the Multilateral Export Control Enhancement Amendments Act (Pub. L. 100–418), August 23, 1988, referred to herein as "the Act," directs the President to impose (a) procurement sanctions on Toshiba Corporation and its subsidiary Toshiba Machine Company, and on Kongsberg Vaapenfabrikk and its subsidiary Kongsberg Trading Company, and (b) import sanctions on all products produced by Toshiba Machine Company and Kongsberg Trading Company. Executive Order 12661, dated December 27, 1988, imposed these sanctions. This subpart implements the procurement sanctions. Import sanctions are implemented through Department of Treasury regulations (but see 25.1004(c)).

25.1001 Definitions.

As used in this subpart—

"Component part," means any article which is not usable for its intended functions without being imbedded or integrated into any other product and which, if used in production of a finished product, would be substantially transformed in that process.

"Essential to United States products or production," means, with respect to component parts, those component parts which are produced by a sanctioned person, that are necessary for manufacture or processing of United States products, and for which there is no suitable alternative.

"Finished product," means any article which is usable for its intended function without being imbedded in or integrated into any other product. It does not include an article produced by a person, other than a sanctioned person, that contains parts or components of the sanctioned person if the parts or components have been substantially transformed during production of the finished product.

"Information and technology," includes instructions, drawings, blueprints, technical data, plans, software, computer programs, and other forms of intellectual property in any form or medium. Technology also includes component parts, finished products, or other articles if purchased solely to demonstrate such technology, where the only way to gain access to required technology is to purchase a product or article produced by a sanctioned person.

"Routine servicing and maintenance," means customary servicing and maintenance, including repairs or installation of spare parts or component parts. The term also includes the temporary importation of tools and equipment necessary to perform such servicing or maintenance, as well as reimportation of products exported for routine servicing and maintenance.

"Sanctioned person," means a company or other foreign person upon whom prohibitions have been imposed.

"Spare part," means any individual piece, part, or subassembly which is intended for the logistic support or repair of a finished product and not as a finished product itself.

"Substantially transformed," when referring to a component part or finished product, means that the part or product has been subjected to a substantial manufacturing or processing operation by which the part or product is converted or combined into a new and different article of commerce having a new name, character, *and* use.

"Suitable alternative," means an article (a) that can be substituted for an article produced by a sanctioned person, (b) that will perform the same functions or is capable of the same use, and (c) is available at a competitive price.

25.1002 Policy.

(a) During the period beginning December 28, 1988, and ending December 28, 1991, all executive agencies, departments, and instrumentalities of the United States Government are prohibited from contracting with, or procuring (including rental and lease/purchase) directly or indirectly the products or services of, (1) Toshiba Corporation, (2) Kongsberg Vaapenfabrikk, (3) Toshiba Machine Company, or (4) Kongsberg Trading Company.

(b) The prohibition also applies to subsidiaries, successor entities, or joint ventures of Toshiba Machine Company or Kongsberg Trading Company. The prohibition generally does not apply to subsidiaries, successor entities, or joint ventures of Toshiba Corporation or of Kongsberg Vaapenfabrikk, except when the head of the agency or designee determines that such entities have been formed for the specific purpose of circumventing the prohibition.

(c) Contracts awarded to, or contracts involving the provision of products or services of, any sanctioned person, which were awarded on or after June 30, 1987, should be cancelled or terminated (in whole or in part) as soon as practicable, unless one of the exceptions in 25.1003 applies. For such contracts awarded prior to June 30, 1987, which contain options to increase quantities or period of performance, the options should not be exercised unless one of the exceptions in 25.1003 applies.

25.1003 Exceptions.

The prohibition in 25.1002 shall not apply when—

(a) The Secretary of Defense or designee determines that, in the case of procurement of defense articles or defense services—

(1) The exercise of options (under contracts or subcontracts, entered into prior to December 28, 1988) are for production quantities necessary to satisfy U.S. operational military requirements;

(2) The sanctioned person is a sole source supplier of essential defense articles or services and no alternative supplier can be identified; or

(3) Such articles or services are essential to the national security under defense coproduction agreements.

(b) The head of the agency or designee determines that the procurement is for—

(1) Products or services provided under contracts entered into before June 30, 1987 (but see 25.1002(c) regarding the exercise of options);

(2) Spare parts;

(3) Component parts, but not finished products, essential to U.S. products or production;

(4) Routine servicing and maintenance of products; or

(5) Information and technology.

(c) The products or services of a sanctioned person are acquired from a nonsanctioned person and the contractor agrees that—

(1) The products provided are designed to the specifications of a nonsanctioned person and marketed

under the trademark, brand or name of that person;

(2) The business relationship between the nonsanctioned person and the sanctioned person clearly existed prior to June 30, 1987; and

(3) The nonsanctioned person is not directly or indirectly owned by a sanctioned person.

(d) Components of a sanctioned person have been substantially transformed during manufacture of a finished product of a nonsanctioned person.

25.1004 Procedures.

(a) Determinations required by 25.1003 (a) or (b) shall be in a format established by agency regulations. The determination shall include a description of the article or service, the quantities of articles, and the scope and period of performance of such services.

(b) The contract file shall include the determination and supporting rationale to permit an award based on the exceptions in 25.1003.

(c) The clause prescribed in 25.1005 reminds the contractor of its responsibility for complying with applicable import regulations. To facilitate this compliance, the contracting officer shall provide the contractor a copy of any determination made under 25.1003(a) so that the contractor may provide this determination to the U.S. Customs Service pursuant to Department of Treasury Regulation 12.143. However, a separate determination by the Secretary of the Treasury or designee is required for an exception to the import sanctions imposed upon the products listed in 25.1003(b), and the contractor is responsible for obtaining this determination.

25.1005 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.225–12, Notice of Restrictions on Contracting with Sanctioned Persons, in all solicitations.

(b) The contracting officer shall insert the clause at 52.225–13, Restrictions on Contracting with Sanctioned Persons, in all solicitations and contracts.

PART 32—CONTRACT FINANCING

32.908 [Amended]

22. Section 32.908 is amended by revising the section title to read "32.908 Contract clauses".

PART 33—PROTESTS, DISPUTES, AND APPEALS

33.101 [Amended]

23. Section 33.101 is amended by removing in the definition "Interested party" the word "could" and inserting in its place "would".

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.102 [Amended]

24. Section 36.102 is amended by removing the word "and" at the end of paragraph (b); and by removing the period at the end of paragraph (c) and inserting in its place, "; and".

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

25. Section 44.303(c) is revised to read as follows:

44.303 Extent of review.

* * * * *

(c) Methods of evaluating subcontractor responsibility, including the contractor's use of the list of Parties Excluded from Procurement Programs (see 9.404) and, if the contractor has subcontracts with parties on the list, the documentation, systems, and procedures the contractor has established to protect the Government's interests (see 9.405–2).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

26. Section 52.209–5 is added to read as follows:

52.209–5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.

As prescribed in 9.409(a), insert the following provision:

Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (May 1989)

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that—

(i) The Offeror and/or any of its Principals—

(A) Are ( ) are not ( ) presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ( ) have not ( ), within a 3-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(C) Are ( ) are not ( ) presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

(ii) The Offeror has ( ) has not ( ), within a 3-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under section 1001, title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of provision)

27. Section 52.209–6 is added to read as follows:

52.209–6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.

As prescribed in 9.409(b), insert the following clause:

Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment (May 1989)

(a) The Government suspends or debars Contractors to protect the Government's interests. Contractors shall not enter into any subcontract equal to or in excess of $25,000 with a Contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. If a Contractor intends to subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the list of Parties Excluded from Procurement Programs), a corporate officer or designee of the Contractor shall notify the Contracting Officer, in writing, before entering into such subcontract. The notice must include the following:

(1) The name of the subcontractor;

(2) The Contractor's knowledge of the reasons for the subcontractor being on the list of Parties Excluded from Procurement Programs;

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the list of Parties Excluded from Procurement Programs; and

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(b) The Contractor's compliance with the requirements of 52.209-6 will be reviewed during Contractor Purchasing System Reviews (see FAR Subpart 44.3).

(End of clause)

28. Part 52 is amended by adding consecutively sections 52.222-40 through 52.222-44 and 52.222-47 through 52.222-49, and the authority citation continues to read as follows:

Sec.

52.222-40 Service Contract Act of 1965, as Amended—Contracts of $2,500 or Less.

52.222-41 Service Contract Act of 1965, as Amended.

52.222-42 Statement of Equivalent Rates for Federal Hires.

52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).

52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.

* * * * *

52.222-47 SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA).

52.222-48 Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain ADP, Scientific and Medical, and/or Office and Business Equipment—Contractor Certification.

52.222-49 Service Contract Act—Place of Performance Unknown.

* * * * *

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

52.222-40 Service Contract Act of 1965, as Amended—Contracts of $2,500 or Less.

As prescribed in 22.1005, insert the following clause:

Service Contract Act of 1965, as Amended—Contracts of $2,500 or Less (May 1989)

Except to the extent that an exemption, variation, or tolerance would apply if this contract were in excess of $2,500, the Contractor and any subcontractor shall pay all employees working on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-206). Regulations and interpretations of the Service Contract Act of 1965, as amended, are contained in 29 CFR Part 4.

(End of clause)

52.222-41 Service Contract Act of 1965, as Amended.

As prescribed in 22.1006(a), insert the following clause:

Service Contract Act of 1965, as Amended (May 1989)

(a) *Definitions.* "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.).

"Contractor," as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

"Service employee," as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) *Applicability.* This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.

(c) *Compensation.* (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the

average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) *Adjustment of Compensation.* If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) *Obligation to Furnish Fringe Benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) *Minimum Wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) *Successor Contracts.* If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) *Notification to Employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) *Safe and Sanitary Working Conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) *Records.* (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act—

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) *Pay Periods.* The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as

otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) *Withholding of Payments and Termination of Contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) *Subcontracts.* The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) *Collective Bargaining Agreements Applicable to Service Employees.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) *Seniority List.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names, of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) *Rulings and Interpretations.* Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

(p) *Contractor's Certification.* (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) *Variations, Tolerances, and Exemptions Involving Employment.* Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business.

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.

(r) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) *Tips.* An employee engaged in an occupation in which the employee customarily and regularly receives more than $30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations 29 CFR Part 531. However, the amount of credit shall not exceed $1.34 per hour beginning January 1, 1981. To use this provision—

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) *Disputes Concerning Labor Standards.* The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

52.222-42 Statement of Equivalent Rates for Federal Hires.

As prescribed in 22.1006(b), insert the following clause:

Statement of Equivalent Rates for Federal Hires (May 1989)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

This Statement is for Information Only: It Is Not a Wage Determination

Employee class	Monetary wage—Fringe benefits
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

(End of clause)

52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).

As prescribed in 22.1006(c)(1), insert the following clause:

Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple year and Option Contracts) (May 1989)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The wage determination, issued under the Service Contract Act of 1965, as amended, (41 U.S.C. 351, et seq.), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.

(d) The contract price or contract unit price labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:

(1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of $4.00 per hour. The Contractor chose to pay $4.10. The new wage determination increases the minimum rate to $4.50 per hour. Even if the Contractor voluntarily increases the rate to $4.75 per hour, the allowable price adjustment is $.40 per hour;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

(End of clause)

52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.

As prescribed in 22.1006(c)(2), insert the following clause:

Fair Labor Standards Act and Service Contract Act—Price Adjustment (May 1989)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to Contractor collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages and fringe benefits to the extent that these increases or decreases are made to comply with—

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(d) Any such adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (b) of this clause, and to the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of clause)

52.222-47 SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA).

As prescribed in 22.1006(d) and 22.1012-3(d)(1), insert the following clause:

Service Contract Act (SCA) Minimum Wages and Fringe Benefits (May 1989)

An SCA wage determination applicable to this work has been requested from the U.S. Department of Labor. If an SCA wage determination is not incorporated herein, the bidders/offerors shall consider the economic terms of the collective bargaining agreement (CBA) between the incumbent Contractor _____ and the _____ (union). If the economic terms of the collective bargaining agreement or the collective bargaining agreement itself is not attached to the solicitation, copies can be obtained from the Contracting Officer. Pursuant to Department of Labor Regulation, 29 CFR 4.1b and paragraph (g) of the clause at 52.222-41, Service Contract Act of 1965, as amended, the economic terms of that agreement will apply to the contract resulting from this solicitation.

notwithstanding the absence of a wage determination reflecting such terms, unless it is determined that the agreement was not the result of arm's length negotiations or that after a hearing pursuant to section 4(c) of the Act, the economic terms of the agreement are substantially at variance with the wages prevailing in the area.

(End of clause)

52.222-48 Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain ADP, Scientific and Medical, and/or Office and Business Equipment—Contractor Certification.

As prescribed in 22.1006(e)(1), insert the following clause:

Exemption From Application of Service Contract Act Provisions (May 1989)

(a) The following certification shall be checked:

Certification

The offeror certifies ( )/does not certify ( ) that: (i) The items of equipment to be serviced under this contract are commercial items which are used regularly for other than Government purposes, and are sold or traded by the Contractor in substantial quantities to the general public in the course of normal business operations; (ii) The contract services are furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, and/or repair of certain ADP, scientific and medical, and/or office and business equipment. An "established catalog price" is a price included in a catalog, price list schedule, or other form that is regularly maintained by the manufacturer or the Contractor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public. An "established market price" is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or Contractor; and (iii) The Contractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the Contractor uses for equivalent employees servicing the same equipment of commercial customers.

(b) If a negative certification is made and a Service Contract Act wage determination is not attached to the solicitation, the Contractor shall notify the Contracting Officer as soon as possible.

(c) Failure to execute the certification in paragraph (a) of this clause or to contact the Contracting Officer as required in paragraph (b) of this clause may render the bid or offer nonresponsive.

(End of clause)

52.222-49 Service Contract Act—Place of Performance Unknown.

As prescribed in 22.1006(f) and 22.1009-4(c), insert the following clause:

Service Contract Act—Place of Performance Unknown (May 1989)

(a) This contract is subject to the Service Contract Act, and the place of performance was unknown when the solicitation was issued. In addition to places or areas identified in wage determinations, if any, attached to the solicitation, wage determinations have also been requested for the following: _____ (insert places or areas). The Contracting Officer will request wage determinations for additional places or areas of performance if asked to do so in writing by _____ (insert time and date).

(b) Offerors who intend to perform in a place or area of performance for which a wage determination has not been attached or requested may nevertheless submit bids or proposals. However, a wage determination shall be requested and incorporated in the resultant contract retroactive to the date of contract award, and there shall be no adjustment in the contract price.

(End of clause)

29. Section 52.225-12 is added to read as follows:

52.225-12 Notice of Restrictions on Contracting With Sanctioned Persons.

As prescribed in 25.1005(a), insert the following provision:

Notice of Restrictions on Contracting With Sanctioned Persons (May 1989)

(a) Statutory prohibitions have been imposed on contracting with sanctioned persons, as specified in Federal Acquisition Regulation (FAR) 52.225-13, Restrictions on Contracting with Sanctioned Persons.

(b) By submission of this offer, the Offeror represents that no products or services, except those listed in this paragraph (b), delivered to the Government under any contract resulting from this solicitation will be products or services of a sanctioned person, as defined in the clause referenced in paragraph (a) of this provision, unless one of the exceptions in paragraph (d) of the clause at FAR 52.225-13 applies.

Product or service	Sanctioned person
.....	.....
.....	.....
.....	.....

(List as necessary)

(End of provision)

30. Section 52.225-13 is added to read as follows:

52.225-13 Restrictions on Contracting With Sanctioned Persons.

As prescribed in 25.1005(b), insert the following clause:

Restrictions on Contracting With Sanctioned Persons (May 1989)

(a) *Definitions.* (1) "Component part," means any article which is not usable for its intended functions without being imbedded or integrated into any other product and which, if used in production of a finished product, would be substantially transformed in that process.

(2) "Finished product," means any article which is usable for its intended function without being imbedded in, or integrated into, any other product. It does not include an article produced by a person, other than a sanctioned person, that contains parts or components of the sanctioned person if the parts or components have been substantially transformed during production of the finished product.

(3) "Sanctioned person," means a company or other foreign person upon whom prohibitions have been imposed.

(4) "Substantially transformed," when referring to a component part or finished product, means that the part or product has been subjected to a substantial manufacturing or processing operation by which the part or product is converted or combined into a new and different article of commerce having a new name, character, and use.

(b) *General.* Section 2443 of the Multilateral Export Control Enhancement Amendments Act (Pub. L. 100-418) and Executive Order 12661, effective December 28, 1988, impose, for a period of 3 years, with certain exceptions, a prohibition on contracting with, or procuring (including rental and lease/purchase) directly or indirectly the products or services of (1) Toshiba Machine Company, (2) Kongsberg Trading Company, (3) Toshiba Corporation, or (4) Kongsberg Vaapenfabrikk. The Act and Executive Order also prohibit, for the same 3-year period, the importation into the United States of all products produced by Toshiba Machine Company and Kongsberg Trading Company. These prohibitions also apply to subsidiaries, successor entities or joint ventures of Toshiba Machine Company or Kongsberg Trading Company.

(c) *Restriction.* Unless listed by the Contractor in its offer, in the solicitation provision at FAR 52.225-12, Notice of Restrictions on Contracting with Sanctioned Persons, or unless one of the exceptions in paragraph (d) of this clause applies, the Contractor agrees that no products or services delivered to the Government under this contract will be products or services of a sanctioned person.

(d) *Exceptions.* The restrictions apply—

(1) To finished products of nonsanctioned persons containing components of a sanctioned person if these components have been substantially transformed during the manufacture of the finished product.

(2) To products or services of a sanctioned person provided—

(i) The products are designed to the specifications of a nonsanctioned person marketed under the trademark, brand or name of the nonsanctioned person;

(ii) The business relationship between the nonsanctioned person and the sanctioned

person clearly existed prior to June 30, 1987; and

(iii) The nonsanctioned person is not directly or indirectly owned by a sanctioned person.

(3) If a determination has been made in accordance with FAR 25.1003 (a) or (b).

(e) *Award.* Award of any contract resulting from this solicitation will not affect the Contractor's obligation to comply with importation regulations of the Secretary of the Treasury.

(End of clause)

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Part V

Federal Communications Commission

47 Part 1 et al.

Policy and Rules Concerning Rates for Dominant Carriers; Final Rule and Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 61, and 65

[CC Docket No. 87-313, FCC 89-91]

RIN 3060-AE38

Policy and Rules Concerning Rates for Dominant Carriers

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rules.

SUMMARY: The Commission has adopted a Report and Order finding that incentive regulation constitutes an improvement over rate of return regulation for AT&T and local exchange carriers. The Report and Order implements a form of incentive regulation, referred to as "price caps," for AT&T. This action results in the replacement of the rate of return regulatory model with one that directly limits rates by means of price caps. The Commission has found that the price cap method of regulation will promote efficiency and innovation, and will benefit consumers more effectively than rate of return regulation.

EFFECTIVE DATE: May 17, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mary Brown, Common Carrier Bureau, (202) 632-5550.

SUPPLEMENTARY INFORMATION:

Background

Notice of Proposed Rulemaking, In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313. *Adopted:* August 4, 1987. *Released:* August 21, 1987. 52 FR 33962 (Sept. 9, 1987). By the Commission. Further Notice of Proposed Rulemaking, In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313. *Adopted:* May 12, 1988. *Released:* May 23, 1988. 53 FR 22356 (June 15, 1988). By the Commission.

Summary of Report and Order

This is a summary of the Commission's *Report and Order* in *In the Matter of Policy and Rules Concerning Rates for Dominant Carriers,* CC Docket No. 87-313, FCC 89-91, Adopted March 16, 1989, and Released April 17, 1989. By the Commission.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street N.W., Suite 140, Washington, DC 20037.

I. In General

1. This Commission has concluded that incentive regulation for AT&T local exchange carriers (LECs) constitutes an improvement over traditional rate of return regulation in terms of efficiency incentives, incentives to innovate, disincentives to engage in cost shifting, lower administrative costs, and consumer benefits. We find that rate of return regulation encourages rate base padding and excessive expense levels, that it does not encourage carrier innovation in the provision of new services and products, that it encourages cross-subsidization and other forms of inefficient pricing, and that it places unnecessary administrative burdens on carriers and this Commission. By focusing in the first instance on limiting prices rather than profits, incentive regulation should reverse the tendency of rate of return regulated firms to engage in inefficient behavior. We recognize that achievement of the benefits of incentive regulation depends upon proper implementation. We here adopt final rules implementing a form of incentive regulation, referred to as "price caps," for AT&T.

2. We conclude that price caps for AT&T will more closely replicate the incentives to efficiency that characterize a competitive market than will continued rate of return regulation. By limiting the rates AT&T may charge, rather than its rate of return, price caps will drive AT&T to avoid unnecessary costs, invest in efficiency enhancing technology, and employ innovative service approaches in order to earn the greatest levels of return within the applicable rate limitations. The system of price cap regulation that we have adopted guarantees that ratepayers obtain their share of expected productivity gains first, with carriers retaining any additional profits they may generate. Thus, both ratepayers and carriers will be better off than under rate of return regulation.

3. We find that in an environment that is in transition from monopoly to full competition, rate of return regulation has become so dysfunctional that incentive regulation represents a substantial and needed improvement over existing regulation. In addition, the presence of competition for many of AT&T's services means that regulation, in whatever form, is not the only check on AT&T's ability to set its prices. Finally, we affirm our view that competition and incentive regulation are complementary and that competition must be a factor in shaping the form of incentive regulation for AT&T.

4. We conclude that price cap regulation is unlikely to result in either a decline in service quality, or an increase in misallocation of costs between the state and interstate jurisdictions. There are a number of constraints on AT&T's ability to degrade its quality of service, including competition, Commission monitoring, and performance standards incorporated in tariffs. In areas where interexchange competition is limited, *i.e.,* non-equal access areas, we conclude that additional monitoring is required to ensure that service quality does not decline. In addition, while the possibility of cost-shifting between jurisdictions is inherent in a bifurcated regulatory system, we conclude that the combination of the separations rules, Commission monitoring associated with our automated reporting requirements (ARMIS), and state monitoring will be effective in identifying and correcting misallocation of costs to either the state or the interstate jurisdiction.

II. Operation of Price Cap Regulation for AT&T

A. In General

5. Price cap regulation is mandatory for AT&T, and AT&T will be required to file price cap tariffs on an annual basis. We require that AT&T file its first price cap tariff May 17, 1989, to be effective July 1, 1989, and thereafter to file its annual tariffs effective July 1, on not less than 45 days' notice. Price cap filings must be accompanied by price cap indexes (PCIs) (which reflect changes in costs associated with the provision of service groupings, or baskets), actual price indexes (APIs) (which reflect changes in aggregate rate levels for baskets), and service band indexes (SBIs) (which reflect changes in rates for service categories within each basket). As long as AT&T's proposed rate level changes are within applicable cap and band limitations, the tariff filings will be presumed lawful, and except for the 45-day annual filing, may take effect in 14 days.

B. AT&T Services Subject to Price Cap Regulation

6. All of AT&T's existing services will be subject to price cap regulation with the exception of Tariff 5, Tariff 11, Tariff 12, Tariff 15, and Tariff 16 services, and services subject to separate accounting requirements (Accunet Packet

Switching, Non-IMTS, and Skynet KU). Tariff 5 services are special construction services, and Tariff 11 is AT&T's access flow-through tariff. Tariff 12, Tariff 15, and Tariff 16, in their present configurations, are custom tariffs, for which price cap treatment is not appropriate.

7. Each of AT&T's capped services will be placed in one of three baskets. Each basket has its own PCI, which acts as a ceiling on the basket's aggregate rates. The API is the value of aggregate rates in a basket. Under price caps, a basket's API must never exceed its PCI, absent an extraordinary showing. Furthermore, within each basket, serevices will be assigned to service categories, the prices of which are subject to annual restrictions on upward and downward movements, as measured by SBIs.

8. The first basket will consist of residential and small business services, divided into six service categories: (1) Domestic day; (2) Domestic evening; (3) Domestic night/weekend; (4) International MTS; (5) Operator and credit card services; and (6) Reach Out America. AT&T forfeits streamlined treatment if it raises the rates of the Domestic evening or Domestic night/weekend MTS service categories by more than 4 percent annually relative to the change in the PCI, or if it raises any other service category in this basket by more than 5 percent per year relative to the PCI. AT&T also forfeits streamlined treatment if it lowers rates for any service category in the basket by more than 5 percent relative to the PCI. In addition, AT&T must calculate an average residential rate from among the services in the basket, and ensure that the average residential rate does not increase by more than 1 percent per year after adjusting for changes in the PCI.

9. The second basket consists of all 800 Services, divided into four service categories: (1) Readyline 800; (2) AT&T 800; (3) Megacom 800; and (4) all other 800. The third basket consists of all remaining capped services, divided into seven service categories: (1) Pro America I, II, and III; (2) WATS; (3) Megacom; (4) SDN; (5) other switched; (6) voice grade private line and below; and (7) other private line. Upper and lower bands of 5 percent shall apply to each of the service categories in these baskets. Thus, rate increases or decreases that exceed 5 percent per year relative to the PCI will not be afforded streamlined review.

C. Operation of the Price Cap Index

10. The price cap index, or PCI, is an index of change in the cost of factors of production (*i.e.*, inflation), AT&T productivity, and certain carrier-specific cost factors that are beyond AT&T's control. The PCI for each basket of services acts as a ceiling above which that basket's index of actual prices—the API—cannot go without an extraordinary showing. Cost changes due to the inflation and productivity components of the PCI formula are reflected in annual index adjustments. The inflation component is represented by the Gross National Product Price Index (GNP–PI), a broad-based index of price changes in all sectors of the economy, published by the U.S. Department of Commerce. The productivity factor adjusts for the fact that AT&T's productivity historically has exceeded that of the economy. We conclude that the productivity offset for AT&T should be 2.5 percent. To ensure that ratepayers benefit from price cap regulation, and share in the gains from the efficiency improvements we expect will result from price cap regulation, we adjust the productivity offset upward by 0.5 percent, known as the Consumer Productivity Dividend (CPD), to reach a total productivity factor of 3.0 percent for use in the PCI formula.

11. Price cap levels will also vary with changes in certain "exogenous" costs, that is, costs which are beyond the control of AT&T and which affect the telecommunications sector, rather than the economy as a whole. We treat as exogenous the following: changes in access charges paid by AT&T to the LECs; changes in interstate costs caused by changes in the Separations Manual and the Uniform System of Accounts (USOA); changes in costs due to the completion of the amortization of depreciation reserve deficiencies; and changes in costs caused by reallocation of investment from regulated to nonregulated activities pursuant to § 64.901 of the Commission's Rules, 47 CFR 64.901. AT&T may request exogenous treatment of changes in costs due to changes in the tax laws, or any other cost changes that are beyond AT&T's control, and that affect AT&T's costs disproportionately relative to the economy as a whole.

12. AT&T must file adjustments to its PCIs each year in connection with its annual price cap tariff filing. In addition, AT&T must update its PCIs to account for mid-year exogenous costs changes. The PCI formula provides for price cap adjustments as follows:

$$PCI_t = PCI_{t-1}[1 + w(GNP\text{–}PI - X) + \Delta Y/R + \Delta Z/R]$$

where

GNP–PI = the percentage change in the GNP–PI,

X = productivity factor of 3.0%,

ΔY = (new access rate—access rate at the time the PCI was updated to PCI_{t-1}) x base period demand,

ΔZ = the dollar effect of current regulatory changes, when compared to the regulations in effect at the time the PCI was updated to PCI_{t-1}, measured at base period level of operations,

R = base period quantities for each rate element "i," multiplied by the price for each rate element "i" at the time the PCI was updated to PCI_{t-1},

w = R—(access rates in effect at the time the PCI was updated to PCI_{t-1} x base period demand) + ΔZ, all divided by R,

PCI_t = the new PCI value, and

PCI_{t-1} = the immediately preceding PCI value.

The (GNP–PI – X) component will be the same for each basket, while the "ΔY" and "ΔZ" variables will vary by basket, depending on the impact of regulatory changes and changes in access charges on the cost of providing the particular services in each basket. The base period used in index adjustments is the 12-month period ending 6 months prior to the effective date of the annual price cap filing.

13. In light of the important role we assign to the design and composition of baskets in protecting consumers of MTS and other services over which AT&T retains significant market power, it is essential that AT&T properly allocate exogenous cost changes, including changes in access costs, among baskets. With respect to non-traffic sensitive access costs, AT&T must first calculate the net change in such costs, at base period demand, associated with all of its capped services. AT&T must then allocate this amount among its baskets according to the proportion of total base period non-traffic sensitive minutes of access (both originating and terminating) associated with each basket. Similarly, AT&T must allocate the change in its total traffic sensitive access costs (calculated at base period demand) among baskets in proportion to their share of total base period traffic sensitive minutes. We require that changes in special access costs (calculated at base period demand) be assigned directly to the baskets in which those costs are incurred. With respect to exogenous cost changes reflected in the PCI's "Z" variable, we require that such changes be allocated on a cost causative basis.

D. Comparing Rates to the PCI

14. The actual price index, or API, measures the incremental change in the aggregate price of each basket of services each time AT&T proposes rate revisions. The API formula requires the summation of the weighted ratios of

proposed prices and existing prices, as follows:

$API_t = API_{t-1}[\Sigma_i v_i(p_t/p_{t-1})_i]$

where

API_t = the proposed API value,

API_{t-1} = the existing API value,

p_t = the proposed price for rate element "i,"

p_{t-1} = the existing price for rate element "i," and

v_i = the current estimated revenue weight for rate element "i," calculated as the ratio of the base period demand for the rate element "i" priced at the existing rate, to the base period demand for the entire basket of services priced at existing rates.

15. New services will be brought under price caps at the first annual price cap tariff filing following the completion of the base period in which they become effective, and the API will be adjusted to reflect the impact of a new service on a basket's aggregate rates at that time. To make this adjustment, the demand for the new service during the base period must be included in determining the weights used in calculating the API. The proportional change between existing rates (including that of the new service) and proposed rates (including that of the new service), weighted according to base period demand and existing prices, is multiplied against the existing API value to produce the new API, which incorporates the new service. For restructured services, in its API calculation, AT&T must convert existing rates into rates of equivalent value under the proposed structure, and then compare the existing rates that have been converted to reflect restructuring to the proposed restructured rates.

16. AT&T must establish subindexes within each basket to measure the movement in the revenue-weighted aggregate prices of the groups of rate elements that comprise the banded service categories. Each such service band index, or SBI, shall be calculated by using essentially the same formula as we are adopting for the API:

$SBI_t = SBI_{t-1}[\Sigma_i v_i(p_t/p_{t-1})_i]$

where

SBI_t = the proposed SBI value,

SBI_{t-1} = the existing SBI value,

p_t = the proposed price for rate element "i,"

p_{t-1} = the existing price for rate element "i," and

v_i = the current estimated revenue weight for rate element "i," calculated as the ratio of the base period demand for the rate element "i" priced at the existing rate, to the base period demand for the entire group of rate elements comprising the service category priced at existing rates.

E. Establishing Initial Index Values

17. We conclude that reliance on AT&T's existing rates is the most reasonable option for initially determining compliance with the price cap system. As a general matter, AT&T is earning less than its authorized rate of return. In addition, we have investigated nearly all of AT&T's existing rates and concluded that they are not unlawful. Many of AT&T's existing rates were set in the context of competitive pressure from other carriers, which contributes to the reasonableness of using them as a starting point for price cap regulation. The use of existing rates as a starting point is the most expeditious means of generating the ratepayer benefits promised by incentive regulation, and is a superior alternative to conducting a pre-price cap rate case. Finally, the operation of the price cap formulas and procedural mechanisms will exert downward pressure on the aggregate prices in each basket, and will produce price cap rates that will be within the zone of reasonableness.

18. AT&T's pre-price cap APIs and PCIs will be initialized with an assigned value of 100, corresponding to the rates and costs in effect on December 31, 1988, the last day of the pre-price cap base period. To the extent that costs change during the interim between December 31, 1988, and July 1, 1989, such changes must be reflected in the PCI formula adjustments that are made in the initial price cap filing. The base period during the first price cap tariff year shall be the period from January 1, 1988, through December 31, 1988.

F. Evaluation of Price Cap Rates

1. Annual Filings

19. AT&T is required to make annual filings demonstrating compliance with the price cap rules. These filings shall be effective on 45 days' notice. Since LECs are required to file their annual access tariffs on 90 days' notice, this schedule permits AT&T to incorporate the cost effects of those filings in its own annual filing.

2. Within-Band Rate Level Changes

20. Rate level changes that produce an API less than or equal to the PCI, and rates within applicable price bands, qualify for streamlined treatment. Tariffs proposing such rate level changes shall be filed on 14 days' notice, and will be presumed lawful. In lieu of traditional cost support, streamlined filings need be supported only by the calculations necessary to demonstrate that the proposed rates are within the limits set by the PCI and the pricing limitations. Petitioners seeking suspension of a streamlined filing must meet a stringent four-part test. We require petitioners to demonstrate: (1) A high probability that the tariff would be found unlawful after investigation; (2) that suspension would not substantially harm other interested parties; (3) that irreparable injury would result if suspension did not issue; and (4) that suspension would not otherwise be contrary to the public interest.

3. Above-Band Rates

21. We conclude that above-band rates raise questions about the distribution of rate increase burdens that require the fullest possible consideration by interested parties and by this Commission. Therefore, we require that above-band rates must be filed on 90 days' notice, with a likelihood of suspension. The justness and reasonableness of above-band rates will be assessed in light of the overall price cap scheme, and AT&T will be required to make a "substantial cause" showing, which will usually involve a detailed and specific cost justification of the proposed increase.

4. Above-Cap Rates

22. Tariffs proposing above-cap rates shall be filed on 90 days' notice, will generally be suspended, and must be accompanied by cost support data demonstrating that the rates are just and reasonable. In its cost showing, AT&T must assign costs to rate elements, or to the lowest possible level, and make a detailed explanation of the reasons for the prices of all rate elements to which it does not assign costs. In addition, AT&T must explain the allocation of costs within each basket, and the allocation of costs among baskets.

5. Below-Band Rates

23. We conclude that below-band rates may raise questions of predatory activity that are not suited to streamlined review. As a result, we require that tariffs proposing below-band rates must be filed on 45 days' notice, and must be accompanied by a showing that the rates cover the cost of service and are otherwise just and reasonable. For the purpose of initial review of such tariff filings, we adopt the average variable cost standard as a benchmark for determining whether a proposed rate decrease should be investigated and/or suspended. The average variable cost of a service must, at a minimum, include all access charges and billing and collection costs attributable to that service, as well as other non-fixed costs which would not be incurred if the service were not offered.

6. New and Restructured Services

24. We conclude that new and restructured services must receive special treatment because they present possible means of avoiding price cap pricing restrictions. The general principle for distinguishing between new and restructured services is that new services add to the range of options available to customers, while restructured services simply represent rearrangements of existing services. New services will be outside the cap initially. Tariffs proposing new services should be filed on 45 days' notice, with supporting information and data to demonstrate compliance with a net revenue test. Under this test, a new service, and each unbundled element thereof, must be projected to increase AT&T's net revenues for services subject to price cap regulation within the lesser of 24 months from the incorporation of the service into an annual price cap filing, or 36 months from the effective date of the service. AT&T must include new services in the cap in the first annual price cap tariff filing after the completion of the base year in which the new service becomes effective.

25. Tariffs proposing restructured services are much more likely to raise issues of discrimination than tariffs proposing only rate level changes. We therefore conclude that tariffs proposing restructured rates must be filed on 45 days' notice. AT&T will be required to demonstrate continued compliance with both the PCI and the bands.

G. Effect of Incentive Regulation on Existing Commission Policies

26. Under price cap regulation, we will retain existing Commission policies and rules that foster competition and prevent discrimination, and other market rules and implementing regulations. Furthermore, this Commission continues to be committed to geographic rate averaging. We conclude that in implementing price cap regulation for AT&T, we have taken no action that would put geographic rate averaging at risk. We find it unnecessary at this time explicitly to prohibit rate deaveraging through the exercise of our rulemaking authority. However, given our strong commitment to geographically averaged rates as a tool to promote universal service, we pledge to subject proposals by AT&T to deaverage rates to the full 90-day notice period permitted by section 203 of the Communications Act, and to suspend such filings for the full five-month period permitted by section 204 of the Act. In the course of the resulting investigation, AT&T would bear the burden of justifying the proposal to deaverage rates.

27. We also conclude that the implementation of price cap regulation will be enhanced by the continuation of existing market rules, implementing regulations, such as Open Network Architecture (ONA) and the joint cost rules, and the USOA and separations rules. We will also retain existing complaint procedures. We conclude that the Interim Cost Allocation Manual (ICAM) should be discontinued because it requires fully distributed costing between broad service categories, and would therefore be inconsistent with the price cap system we have devised. We will continue to enforce the Part 63 rules regarding extension of lines and discontinuance of service. We retain our current Part 65 rules with certain modifications, including an exemption for AT&T from targeting its rates to a prescribed rate of return, and a requirement that AT&T file an annual rate of return report of its total interstate rate of return.

H. Monitoring and Performance Review

28. During the initial four years of price cap regulation, we will monitor AT&T's performance, with particular attention to its prices, earnings, quality of service, and technological progressiveness. AT&T will file ARMIS reports on a quarterly basis, including information on: revenues, expenses, and taxes for purposes of tracking cost allocations between regulated and non-regulated activities; revenues and expenses by state and interstate jurisdictions; and switched messages, conversation minutes, and access minutes. In addition, we continue to require AT&T to file Form 492, which contains information on revenues, investment, expenses, and the earned rate of return, but we will require that information to be filed on a total interstate basis only. We will also continue to collect semi-annual reports on quality of service, and will continue to scrutinize the information AT&T files in connection with its annual section 214 authorization application.

29. In addition to monitoring price cap regulation through the collection of data, our review of tariffs, and the complaint process, we will review AT&T's performance in a comprehensive manner beginning at the end of the third year from the inaugural date of price cap regulation. The review will be completed before the end of the fourth year of price caps. Should it become apparent to us before this review that the price cap program is not achieving its goals, we will initiate an earlier review. The performance review will consist of a comprehensive examination of the effects of price cap regulation, and will consider all available measures of market and carrier performance, including, but not limited to, actual prices, achieved rate of return, quality of service, and technological progressiveness. Underachievement or overachievement with respect to any measures of performance related to price cap regulation may result in changes to the productivity offset or other adjustments. Finally, we conclude that no retroactive payments should be exacted from AT&T for its productivity gains under price caps, as such retroactive treatment would unduly diminish AT&T's incentive to exceed an established target.

III. Legal Authority

30. We conclude that our price cap plan for AT&T is within our statutory authority, and that based on the administrative record established in this proceeding, adoption of price cap rules is in the public interest, as defined in the Communications Act and relevant judicial precedent. The Communications Act does not compel us to employ rate of return regulation, or any other particular regulatory model, in carrying out our statutory mandate, but rather provides this Commission with an array of regulatory powers and broad discretion to determine how best to use them in the public interest. Our broad discretion extends to selecting methods to make and oversee rates. Ultimately, the substantive mandate under which we operate requires only that we select a ratemaking approach that is capable of keeping rates in the zone of reasonableness, or of detecting and correcting for the failure of market forces to do so. The price cap plan for AT&T fulfills the Communications Act's substantive requirement of ensuring just, reasonable, and non-discriminatory rates, and does so in a cautious, evolutionary manner.

31. Notwithstanding that our price cap system continues to monitor and consider profit levels to ensure that they are not excessive, it is also a system designed to permit greater earnings flexibility than a strict rate of return regime. This design is based upon the fundamental premise underlying incentive regulation and the benefits it will produce for ratepayers—that it is the potential to increase earnings that drives companies to improve their efficiency. We believe this approach to rate regulation is fully consistent with our statutory mandate to ensure just and reasonable rates.

32. We are implementing price caps through the establishment of suspension and no-suspension zones, and through modifications to our current tariff filing procedures. A decision by this Commission to permit a tariff to take effect without suspension is an exercise of this Commission's discretionary authority, and constitutes a preliminary decision within our exclusive discretion. Pursuant to this discretionary suspension power, we may establish guidelines expressing a tentative opinion about the location of the line between reasonable and unreasonable rates. This Commission need not prescribe rates in order to establish no-suspension zones. Moreover, we conclude that our price cap rules do not constitutes *de facto* rate prescription without the required hearing.

IV. Paperwork Reduction Act Analysis

33. On June 14, 1988, after the release of the *Further Notice* in this proceeding, this Commission requested that the Office of Management and Budget (OMB) review the proposed information collection requirements for compliance with the Paperwork Reduction Act of 1980. On August 15, 1988, OMB commented on this Commission's proposed information collection requirements. OMB stated that the *Further Notice* failed to demonstrate the practical utility of some of the reporting requirements proposed in this Commission's request, and found that the information collections were not the minimum necessary to meet the objectives of the proposed rules. In commenting on this Commission's request, OMB listed a series of concerns that it asked this Commission to address. AT&T is currently the only carrier subject to price cap regulation. Therefore, the price cap information collection requirements contained in this Report and Order are not subject to the requirements of section 3507 of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3507). Nevertheless, OMB's concerns have been addressed in the context of this Commission's final Report and Order adopting and implementing price cap regulation for AT&T.

V. Ordering Clauses

34. Accordingly, *it is ordered* That, pursuant to sections 4(i), 4(j) 201–205, 303(r), and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 303(r), 403, and section 553 of Title 5, United States Code, that Part 1, Part 61, Part 65, and §§ 1.773(a)(1), 61.11, 61.12, 61.13, 61.14, 61.15, 61.16, 61.17, 61.18, 61.19, 61.20, 61.21, 61.22, 61.23, 61.24, 61.25, 61.26, 61.32, 61.33, 61.38, 61.58, 65.1, 65.600, 65.701, 65.703 of this Commission's Rules, 47 C.F.R. Part 1, Part 61, Part 65, §§ 1.773(a)(1), 61.11, 61.12, 61.13, 61.14, 61.15, 61.16, 61.17, 61.18, 61.19, 61.20, 61.21, 61.22, 61.23, 61.24, 61.25, 61.26, 61.32, 61.33, 61.38, 61.58, 65.1, 65.600, 65.701, 65.703, are amended as set forth in Appendix B to this Order, and that Part 1 and Part 61 of this Commission's Rules are amended by adding §§ 61.3, 61.41, 61.42, 61.43, 61.44, 61.45, 61.46, 61.47, and 61.48 as set forth in this Order.

35. *It is further ordered,* That the motion to accept late-filed comments submitted by the National Association of Regulatory Utility Commissioners is granted.

36. *It is further ordered,* That the motion to accept late-filed reply comments submitted by the United Church of Christ Office of Communications is granted.

37. *It is further ordered,* That the motion to pursue further investigation submitted by the Florida Public Counsel is granted in part and denied in part to the extent indicated herein.

38. *It is further ordered,* That the motion for further proceedings submitted by the Competitive Telecommunications Association, the Consumer Federation of America, the International Communications Association, the National Association of Regulatory Utility Commissioners, and MCI Telecommunications Corporation is granted in part and denied in part to the extent indicated herein.

39. *It is further ordered,* That pursuant to § 1.427(b) of this Commission's Rules, 47 CFR 1.427(b), the rules amendments adopted in paragraph 913, *supra,* shall be effective on May 17, 1989. Good cause exists to make these rules amendments effective less than 30 days from publication in the **Federal Register**, in that we wish to begin obtaining the public benefits of price cap regulation enumerated *supra* with tariff filings to become effective on July 1, 1989, on not less than 45 days' notice. In order to accommodate this schedule, AT&T must file its initial price cap tariffs pursuant to the rules amendments adopted herein on or before May 17, 1989. As of May 17, 1989, the public will have had 30 days' actual notice of the rules amendments adopted herein, beginning with the release of this Report and Order and Second Further Notice of Proposed Rulemaking.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 61

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Price cap tariff filing and review procedures.

47 CFR Part 65

Administrative practice and procedure, Communications common carriers, Reporting and recordkeeping requirement.

For the reasons set forth in the preamble, Title 47, Parts 1, 61, and 65 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. Section 1.773 is amended by adding a new paragraph (a)(1)(iv) to read as follows:

§ 1.773 Petitions for suspension or rejection of new tariff filings.

(a) * * *

(1) * * *

(iv) For the purposes of this section, tariff filings made pursuant to § 61.49(b) by carriers subject to price cap regulation will be considered *prima facie* lawful, and will not be suspended by the Commission unless the petition shows that the support information required in § 61.49(b) was not provided, or unless the petition requesting suspension shows each of the following:

(A) That there is a high probability the tariff would be found unlawful after investigation;

(B) That the suspension would not substantially harm other interested parties;

(C) That irreparable injury will result if the tariff filing is not suspended; and

(D) That the suspension would not otherwise be contrary to the public interest.

* * * * *

PART 61—TARIFFS

2. The authority citation for Part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended, 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

3. Section 61.3 is added to read as follows:

§ 61.3 Definitions.

(a) *Act.* The Communications Act of 1934 (48 Stat. 1004; 47 U.S.C. Chapter 5), as amended.

(b) *Actual Price Index* (API). An index of the level of aggregate rate element rates in a basket, which index is calculated pursunt to § 61.46.

(c) *Association.* This term has the meaning given it in § 69.2(d).

(d) *Band.* A zone of pricing flexibility for a service category, which zone is calculated pursuant to § 61.47.

(e) *Base period.* The 12-month period ending six months prior to the effective date of annual price cap tariffs.

(f) *Basket.* Any class or category of tariffed services:

(1) Which is established by the Commission pursuant to price cap regulation;

(2) The rates of which are reflected in an Actual Price Index; and

(3) The related costs of which are reflected in a Price Cap Index.

(g) *Change in rate structure.* A restructuring or other alternation of the rate components for an existing service.

(h) *Charges.* The price for service based on tariffed rates.

(i) *Commercial contractor.* The commercial firm to whom the Commission annually awards a contract to make copies of Commission records for sale to the public.

(j) *Commission.* The Federal Communications Commission.

(k) *Concurring carrier.* A carrier (other than a connecting carrier) subject to the Act which concurs in and assents to schedules of rates and regulations filed on its behalf an issuing carrier or carriers.

(l) *Connecting carrier.* A carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with, such carrier.

(m) *Corrections.* The remedy of errors in typing, spelling, or punctuations.

(n) *Dominant carrier.* A carrier found by the Commission to have market power (i.e., power to control prices).

(o) *GNP Price Index* (GNP–PI). The estimate of the "Fixed-Weighted Price Index for Gross National Product, 1982 Weights" published by the United States Department of Commerce, which the Commission designates by Order.

(p) *Issuing carrier.* A carrier subject to the Act that publishes and files a tariff or tariffs with the Commission.

(q) *Local Exchange Carrier.* A telephone company that provides telephone exchange service as defined in section 3(r) of the Act.

(r) *New service offering.* A tariff filing that provides for a class or sub-class of service not previously offered by the carrier involved and that enlarges the range of service options available to ratepayers.

(s) *Non-dominant carrier.* A carrier not found to be dominant.

(t) *Other participating carrier.* A carrier subject to the Act that publishes a tariff containing rates and regulations applicable to the portion or through service it furnishes in conjunction with another subject carrier.

(u) *Price Cap Index* (PCI). An index of costs facing carriers subject to price cap regulation, which index is calculated for each basket pursuant to § 61.44.

(v) *Price cap regulation.* A method of regulation of dominant carriers provided in §§ 61.41 through 61.49.

(w) *Price cap tariff.* Any tariff filing involving a service that is within a price cap basket, or that requires calculations pursuant to § 61.44, § 61.46, or § 61.47.

(x) *Productivity factor.* An adjustment factor (3.0 percent) used to make annual adjustments to the Price Cap Index to reflect the margin by which a carrier subject to price cap regulation is expected to improve its productivity relative to the economy as a whole.

(y) *Rate.* The tariffed price per unit of service.

(z) *Rate increase.* Any change in a tariff which results in an increased rate or charge to any of the filing carrier's customers.

(aa) *Rate level change.* A tariff change that only affects the actual rate associated with a rate element, and does not affect any tariff regulations or any other wording of tariff language.

(bb) *Regulations.* The body of carrier prescribed rules in a tariff governing the offering of service in that tariff, including rules, practices, classifications, and definitions.

(cc) *Restructured service.* An offering which represents the modification of a method of charging or provisioning a service; or the introduction of a new method of charging or provisioning that does not result in a net increase in options available to customers.

(dd) *Service Band Index* (SBI). An index of the level of aggregate rate element rates in a service category, which index is calculated pursuant to § 61.47.

(ee) *Service category.* Any group of rate elements subject to price cap regulation, which group is subject to a band.

(ff) *Supplement.* A publication filed as part of a tariff for the purpose of suspending or cancelling that tariff, or tariff publication and numbered independently from the tariff page series.

(gg) *Tariff.* Schedules of rates and regulations filed by common carriers.

(hh) *Tariff publication, or publication.* A tariff, supplement, revised page, additional page, concurrence, notice of revocation, adoption notice, or any other schedule of rates or regulations.

(ii) *Text change.* A change in the text of a tariff which does not result in a change in any rate or regulation.

(jj) *United States.* The several States and Territories, the District of Columbia, and the possessions of the United States.

§§ 61.11 through 61.26 [Removed and Reserved]

4. Sections 61.11, 61.12, 61.13, 61.14, 61.15, 61.16, 61.17, 61.18, 61.19, 61.20, 61.21, 61.22, 61.23, 61.24, 61.25, and 61.26 are removed and reserved.

5. The fifth sentence of § 61.32 is revised to read as follows:

§ 61.32 Method of filing publications.

* * * Simultaneously with the filing of the publications and by the same means, the issuing carrier must send a copy of the publication, supporting information specified in § 61.38, or, as appropriate, § 61.49, and transmittal letter to the commercial contractor (at its office on Commission premises) and the Chief, Tariff Review Branch. * * *

6–7. Section 61.33 is amended to redesignate paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), to add a new paragraph (c) and to revise newly redesignated paragraph (d) to read as follows:

§ 61.33 Letters of transmittal.

* * * * *

(c) In addition to the requirements set forth in paragraph (a) of this section, any carrier filing a price cap tariff must include in the letter of transmittal a statement that the filing is made pursuant to § 61.49.

(d) In addition to the requirements set forth in paragraphs (a), (b), and (c) of this section, the letter of transmittal must specifically reference by number any special permission necessary to implement the tariff publication. Special permission must be granted prior to the filing of the tariff publication, and may not be requested in the transmittal letter.

* * * * *

8. Section 61.38(a) is amended by adding a new sentence at the end to read as follows:

§ 61.38 Supporting information to be submitted with letters of transmittal.

(a) * * * This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings proposing rates for services identified in §§ 61.42 (a), (b), and (d), which filings are

submitted by carriers subject to price cap regulation.

* * * * *

9. Sections 61.41 through 61.49 are added to read as follows:

§ 61.41 Price cap requirements generally.

Sections 61.42 through 61.49 apply to dominant interexchange carriers, as specified by Commission order.

§ 61.42 Price cap baskets and service categories.

(a) Each dominant interexchange carrier subject to price cap regulation shall establish three baskets as follows:

(1) A residential and small business services basket;

(2) An 800 service basket; and

(3) A business services basket.

(b) (1) The residential and small business basket shall contain such services as the Commission shall permit or require, including the following service categories:

(i) Domestic day MTS;

(ii) Domestic evening MTS;

(iii) Domestic night/weekend MTS;

(iv) International MTS;

(v) Operator and credit card services; and

(vi) Reach Out America.

(2) The 800 service basket shall contain such services as the Commission shall permit or require, including the following service categories:

(i) Readyline 800;

(ii) AT&T 800;

(iii) Megacom 800; and

(iv) Other 800.

(3) The business services basket shall contain such services as the Commission shall permit or require, including the following service categories:

(i) ProAmerica I, II, and III;

(ii) WATS;

(iii) Megacom;

(iv) SDN;

(v) Other switched;

(vi) Voice grade private line and below; and

(vii) Other private line.

(c) Dominant interexchange carriers subject to price cap regulations shall exclude the following offerings from their price cap baskets:

(1) Special construction services;

(2) American Telephone and Telegraph Company Tariff F.C.C. No. 11 services;

(3) Such custom tariff services as the Commission may specify; and

(4) Such other services as the Commission may specify.

(d) New services, other than those within the scope of paragraph (c) of this section, must be included in the affected basket at the first annual price cap tariff filing following completion of the base period in which they are introduced. To the extent that such new services are permitted or required to be included in new or existing service categories within the assigned basket, they shall be so included at the first annual price cap tariff filing following completion of the base period in which they are introduced.

§ 61.43 Annual price cap filings required.

Carriers subject to price cap regulation shall submit annual price cap tariff filings that propose rates for the upcoming year, that make appropriate adjustments to their PCI, API, and SBI values pursuant to §§ 61.44, 61.46, and 61.47, and that incorporate the costs and rates of new services into the PCI, API, or SBI calculations pursuant to §§ 61.44(g), 61.46(b), and 61.47 (b) and (c). Carriers may propose rate or other tariff changes more often than annually, consistent with the requirements of § 61.59.

§ 61.44 Adjustments to the PCI.

(a) Carriers subject to price cap regulation shall file adjustments to the PCI for each basket as part of the annual price cap tariff filing, and shall maintain updated PCIs to reflect the effect of mid-year access and exogenous cost changes.

(b) Subject to paragraph (d) of this section, adjustments to each basket's PCI shall be made pursuant to the following formula:

$$PCI_t = PCI_{t-1}[1 + w(GNP\text{-}PI - X) + \Delta Y/R + \Delta Z/R]$$

where

GNP–PI = the percentage change in the GNP–PI between the quarter ending six months prior to the effective date of the new annual tariff and the corresponding quarter of the previous year,

X = productivity factor of 3.0%,

ΔY = (new access rate—access rate at the time the PCI was updated to PCI_{t-1}) × (base period demand),

ΔZ = the dollar effect of current regulatory changes when compared to the regulations in effect at the time the PCI was updated to PCI_{t-1}, measured at base period level of operations,

R = base period quantities for each rate element "i", multiplied by the price for each rate element "i" at the time the PCI was updated to PCI_{t-1},

w = R − (access rate in effect at the time the PCI was updated to PCI_{t-1} × base period demand) + ΔZ, all divided by R,

PCI_t = the new PCI value, and

PCI_{t-1} = the immediately preceding PCI value.

(c) The exogenous cost changes represented by the term "ΔZ" in the formula detailed in paragraph (b) of this section, shall be limited to those cost changes that the Commission shall permit or require, and include those caused by:

(1) the completion of the amortization of depreciation reserve deficiencies;

(2) Changes in the Uniform System of Accounts;

(3) Changes in the Separations Manual;

(4) The reallocation of investment from regulated to nonregulated activities pursuant to § 64.901; and

(5) Such tax law changes and other extraordinary exogenous cost changes as the Commission shall permit or require.

These exogenous cost changes shall be apportioned on a cost-causative basis between price cap services as a group, and excluded services as a group. Exogenous cost changes thus attributed to price cap services shall be further apportioned on a cost-causative basis among price cap baskets.

(d) In calculating the "ΔY" variable in the formula detailed in paragraph (b) of this section:

(1) The net change in total non-traffic sensitive access costs for all capped services (in all baskets), calculated at base period demand, shall be allocated among the baskets in proportion to each basket's share of total base period non-traffic sensitive minutes of access (both originating and terminating);

(2) The net change in total traffic sensitive access costs for all capped services (in all baskets), calculated at base period demand, shall be allocated among the baskets in proportion to each basket's share of total base period traffic sensitive minutes of access; and

(3) Changes in special access costs in each basket, calculated at base period demand, shall be assigned directly to the baskets in which such costs are incurred.

(e) In calculating the "w" variable in the formula detailed in paragraph (b) of this section, the access costs that must be subtracted from the "R" variable shall be apportioned among the baskets in a manner that is consistent with the methodology provided in paragraph (d) of this section for calculating the "ΔY" in each basket.

(f) The "w(GNP–PI − X)" component of the PCI formula shall be employed only in the adjustment made in connection with the annual price cap filing.

(g) The exogenous cost changes and changes in access costs caused by new services subject to price cap regulation must be included in the appropriate PCI calculations under paragraph (b) of this section beginning at the first annual price cap tariff filing following

completion of the base period in which they are introduced.

(h) In the event that a price cap tariff becomes effective, which tariff results in an API value (calculated pursuant to § 61.46) that exceeds the currently applicable PCI value, the PCI value shall be adjusted upward to equal the API value.

§ 61.45 [Reserved]

§ 61.46 Adjustments to the API.

(a) In connection with any price cap tariff filing proposing rate changes, the carrier must calculate an API for each affected basket pursuant to the following methodology:

$API_t = API_{t-1} [\Sigma_i v_i (P_t/P_{t-1})_i]$

where

API_t = the proposed API value,

API_{t-1} = the existing API value,

P_t = the proposed price for rate element "i,"

P_{t-1} = the existing price for rate element "i," and

v_i = the current estimated revenue weight for rate element "i," calculated as the ratio of the base period demand for the rate element "i" priced at the existing rate, to the base period demand for the entire basket of services priced at existing rates.

(b) New services subject to price cap regulation must be included in the appropriate API calculations under paragraph (a) of this section beginning at the first annual price cap tariff filing following completion of the base period in which they are introduced. This index adjustment requires that the demand for the new service during the base period must be included in determining the weights used in calculating the API.

(c) Any price cap tariff filing proposing rate restructuring shall require an adjustment to the API pursuant to the general methodology described in paragraph (a) of this section. This adjustment requires the conversion of existing rates into rates of equivalent value under the proposed structure, and then the comparison of the existing rates that have been converted to reflect restructuring to the proposed restructured rates. This calculation may require use of carrier data and estimation techniques to assign customers of the preexisting service to those services (including the new restructured service) that will remain or become available after restructuring.

§ 61.47 Adjustments to the SBI; pricing bands.

(a) In connection with any price cap tariff filing proposing changes in the rates of service categories, the carrier must calculate an SBI value for each affected service category pursuant to the following methodology:

$SBI_t = SBI_{t-1} [\Sigma_i v_i (P_t/P_{t-1})_i]$

where

SBI_t = the proposed SBI value,

SBI_{t-1} = the existing SBI value,

P_t = the proposed price for rate element "i,"

P_{t-1} = the existing price for rate element "i," and

v_i = the current estimated revenue weight for rate element "i," calculated as the ratio of the base period demand for the rate element "i" priced at the existing rate, to the base period demand for the entire group of rate elements comprising the service category priced at existing rates.

(b) New services that are added to existing service categories must be included in the appropriate SBI calculations under paragraph (a) of this section beginning at the first annual price cap tariff filing following completion of the base period in which they are introduced. This index adjustment requires that the demand for the new service during the base period must be included in determining the weights used in calculating the SBI.

(c) In the event that the introduction of a new service requires the creation of a new service category, a new SBI must be established for that service category beginning at the first annual price cap tariff filing following completion of the base period in which the new service is introduced. The new SBI should be initialized at a value of 100, corresponding to the service category rates in effect the last day of the base period, and thereafter should be adjusted as provided in paragraph (a) of this section.

(d) Any price cap tariff filing proposing rate restructuring shall require an adjustment to the affected SBI pursuant to the general methodology described in paragraph (a) of this section. This adjustment requires the conversion of existing rates in the rate element group into rates of equivalent value under the proposed structure, and then the comparison of the existing rates that have been converted to reflect restructuring to the proposed restructured rates. This calculation may require use of carrier data and estimation techniques to assign customers of the preexisting service to those services (including the new restructured service) that will remain or become available after restructuring.

(e) Pricing bands shall be established each tariff year for each service category within a basket. Except as provided in paragraph (f) of this section, each band shall limit the pricing flexibility of the service category, as reflected in its SBI, to an annual increase or decrease of five percent, relative to the percentage change in the PCI for that basket, measured from the levels in effect on the last day of the preceding tariff year.

(f) The upper pricing bands for the evening MTS and night/weekend MTS service categories shall limit the annual upward pricing flexibility for those service categories, as reflected in their SBIs, to four percent, relative to the percentage change in the PCI for the residential and small business services basket, measured from the last day of the preceding tariff year.

(g) Dominant interexchange carriers subject to price cap regulation shall calculate a composite average rate for services contained in the residential and small business services basket that are purchased by residential customers. Notwithstanding paragraphs (e) and (f) of this section, the annual upward pricing flexibility for this composite average rate shall be limited to one percent, relative to the percentage change in the PCI for the residential and small business services basket, measured from the last day of the preceding tariff year.

§ 61.48 Transition rules for price cap formula calculations.

(a) Dominant interexchange carriers subject to price cap regulation shall file initial price cap tariffs May 17, 1989, to be effective July 1, 1989.

(b) In connection with the initial price cap tariff filing described in paragraph (a) of this section, each PCI, API, and SBI shall be assigned an initial value prior to adjustment of 100, corresponding to the costs and rates in effect as of December 31, 1988.

§ 61.49 Supporting information to be submitted with letters of transmittal for tariffs of carriers subject to price cap regulation.

(a) Each price cap tariff filing must be accompanied by supporting materials sufficient to calculate required adjustments to each PCI, API, and SBI pursuant to the methodologies provided in §§ 61.44, 61.46, and 61.47.

(b) Each price cap tariff filing that proposes rates that are within applicable bands established pursuant to § 61.47, and that results in an API value that is equal to or less than the applicable PCI value, must be accompanied by supporting materials sufficient to establish compliance with the applicable bands, and to calculate the necessary adjustment to the affected APIs and SBIs pursuant to §§ 61.46 and 61.47, respectively.

(c) Each price cap tariff filing that proposes rates above the applicable band limits established in §§ 61.47 (e) and (f), or above the limit on composite average residential rates established in

§ 61.47(g), must be accompanied by supporting materials establishing substantial cause for the proposed rates.

(d) Each price cap tariff filing that proposes service category rates below applicable band limits established in § 61.47(e), must be accompanied by supporting materials establishing that the rates cover the service category's average variable cost.

(e) Each price cap tariff filing that proposes rates that will result in an API value that exceeds the applicable PCI value must be accompanied by: (1) An explanation of the manner in which all costs have been allocated among baskets; and (2) within the affected basket, a cost assignment slowing down to the lowest possible level of disaggregation, including a detailed explanation of the reasons for the prices of all rate elements to which costs are not assigned.

(f) Each price cap tariff filing that proposes restructuring of existing rates must be accompanied by supporting materials sufficient to make the adjustments to each affected API and SBI required by §§ 61.46(c) and 61.47(d), respectively.

(g) Each tariff filing that introduces a new service that will later be included in a basket must be accompanied by cost data sufficient to establish that the new service, and each unbundled element thereof, will generate a net revenue increase—measured against revenues generated from all services subject to price cap regulation, and calculated based upon present value—within the lesser of a 24-month period after an annual price cap tariff including the new service takes effect, or 36 months from the date the new service becomes effective. Each such tariff filing must also be accompanied by data sufficient to make the API and PCI calculations required by §§ 61.46(b) and 61.44(g), and, as necessary, to make the SBI calculations provided in §§ 61.47 (b) or (c).

10–11. Section 61.58 is amended to redesignate paragraph (c) as paragraph (d), to add a new paragraph (c) and to revise the introductory text of newly redesignated paragraph (d)(1) to read as follows:

§ 61.58 Notice requirements.

* * * * *

(c) *Carriers subject to price cap regulation.* This paragraph applies only to carriers subject to price cap regulation. Such carriers must file tariffs according to the following notice periods.

(1) For annual adjustments to the PCI, API, and SBI values under §§ 61.44, 61.46, and 61.47, respectively, tariff filings must be made on at least 45 days' notice.

(2) Tariff filings that alter rate levels only, and that do not cause any API to exceed any applicable PCI pursuant to calculations provided for in § 61.46; and do not cause any SBI to exceed its banding limitations established in § 61.47, must be made on at least 14 days' notice.

(3) Tariff filings that will cause any API to exceed its applicable PCI pursuant to calculations provided for in § 61.46, that will cause any SBI to exceed its upper banding limitations established in §§ 61.47 (e) and (f), or that will cause the composite average residential rate to exceed its limitation on upward pricing flexibility established in § 61.47(g), must be made on at least 90 days' notice.

(4) Tariff filings that will cause any SBI to decrease below its lower banding limit established in § 61.47(e), must be made on at least 45 days' notice.

(5) Tariff filings involving a change in rate structure of a service included in a basket listed in § 61.42(a), or the introduction of a new service within the scope of § 61.42(d), must be made on at least 45 days' notice.

(6) The required notice for tariff filings involving services included in § 61.42(c), or involving changes to tariff regulations, shall be that required in connection with such filings by dominant carriers that are not subject to price cap regulation.

(d) *Other carriers.* (1) Tariff filings in the instances specified in paragraphs (d)(1) (i), (ii), and (iii) of this section must be made on at least 15 days' notice.

* * * * *

PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

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

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 65.1 is revised to read as follows:

§ 65.1 Application of Part 65.

This part establishes procedures and methodologies for Commission prescription of interstate rates of return. This part shall apply to those interstate services and carriers as the Commission shall designate by Order. This part and the existing rate of return prescription shall not apply to dominant interexchange carriers subject to §§ 61.41 through 61.49, except as set forth in §§ 65.600(c), 65.701(c), and 65.703(g).

3. Section 65.600 is amended by revising paragraph (c) to read as follows:

§ 65.600 Rate of return reports.

* * * * *

(c) Each interexchange carrier subject to §§ 61.41 through 61.49 shall file with the Commission, within three (3) months after the end of each calendar year, the total interstate rate of return for that year for all interstate services subject to regulation by the Commission. Each such filing shall include a report of the total revenues, total expenses and taxes, operating income, and the rate base. A copy of the filing shall be retained in the principal office of the respondent and shall be filed in such manner as to be readily available for reference and inspection.

4. Section 65.701 is amended by adding a new paragraph (c) to read as follows:

§ 65.701 Period of review.

* * * * *

(c) Notwithstanding other provisions in this subpart, the final period of review for any dominant interexchange carrier subject to price cap regulation (as defined in § 61.3(v)) shall end on June 30, 1989.

5. Section 65.703 is amended by revising paragraphs (a) and (f), and by adding a new paragraph (g) to read as follows:

§ 65.703 Refunds.

(a) For carriers not subject to §§ 61.41 through 61.49, refunds shall be effected automatically if a carrier's earnings for any category of services, as set forth in § 65.702, exceed the maximum allowable rate of return. In determining whether a carrier's earnings exceed the maximum allowable rate of return, the reports filed by a carrier shall be deemed conclusively binding on the carrier.

* * * * *

(f) For interexchange carriers subject to this Part, but not subject to §§ 61.41 through 61.49, tariffs reflecting the revenue requirement reductions effectuating the refund shall be filed on 45 days' notice on later than 60 days after submission of the final report for the earnings review period.

(g) For carriers subject to §§ 61.41 through 61.49, refund obligations incurred prior to the date their tariffs filed pursuant to §§ 61.41 through 61.49 take effect for the first time, shall be effectuated by an adjustment to the applicable Actual Price Index, Service Band Index, and Price Cap Index (as

defined in § 61.3). Carriers making an adjustment to effectuate any outstanding refund requirements from the final enforcement period shall make such adjustments no later than during the next scheduled annual price cap adjustment tariff filing following the submission of the final enforcement report. The adjustment shall be designed to complete the required refund within 12 months, following which the Actual Price Index, the Service Band Index, or the Price Cap Index shall be adjusted to remove the effect of the adjustment.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-10524 Filed 5-5-89; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61, 65, and 69

[CC Docket 87-313, FCC 89-91]

RIN 3060-AE38

Policy and Rules Concerning Rates for Dominant Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: The Commission has issued specific proposed changes in its Rules which would replace its current rate of return regulatory model with one that directly limits local exchange carriers' rates by means of price caps. The majority of the proposed rule amendments relate to the Commission's tariff review process. The Commission seeks comment on the details of the plan it proposes and on the implementation issues that the plan raises.

DATES: Comments must be submitted on or before June 19, 1989, and reply comments on or before July 19, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mary Brown, Common Carrier Bureau, (202) 632-5550.

SUPPLEMENTARY INFORMATION: The following collections of information contained in these proposed rules have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

OMB Number: None

Title: Price Cap Tariffs for Local Exchange Carriers (Second Further Notice of Proposed Rulemaking in CC Docket No. 87-313, Policy and Rules Concerning Rates for Dominant Carriers)

Respondents: Businesses

Estimated Annual Burden and Frequency of Response:

1. Tariff Process
   1,015 respondents
   610,202 total hours/total industry (after price cap regulation)
   286.3 hours per response
   Frequency: annually and on occasion (average 2.1 responses per respondent per year)
2. Service Quality Monitoring
   133 respondents
   4,256 total hours/price cap carriers only Tiers 1 & 2)
   32 hours per price cap carrier
   Frequency: quarterly
3. Rate of Return Report
   126 respondents
   3,612 total hours/total industry (after price cap regulation); hours per respondent vary from 2 hours per year for price cap carriers to 32 hours per year for rate of return carriers, with an average of 28.7 hours per carrier per year

Frequency: Annually for price cap carriers.

Needs and Uses: The information collected through carriers' tariffs, service quality monitoring reports, and rate of returns reports will be used by the Commission to determine whether rates are just, reasonable, and nondiscriminatory, as required by the Communications Act of 1934, as amended, and whether the quality of telephone service provided by price cap carriers is adequate.

Number of Copies. In addition to the number of copies required by 47 CFR 1.419, interested parties are requested to file an additional ten copies of their pleadings, addressed to the Price Cap Task Force, Federal Communications Commission, 1919 M Street, Room 518, Washington, DC 20554.

Background

Notice of Proposed Rulemaking, In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313. *Adopted:* August 4, 1987. *Released:* August 21, 1987. 52 FR 33962 (Sept. 9, 1987). By the Commission. Further Notice of Proposed Rulemaking, In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313. *Adopted:* May 12, 1988. *Released:* May 23, 1988. 53 FR 22356 (June 15, 1988). By the Commission.

Summary of Second Further Notice of Proposed Rulemaking

This is a summary of the Commission's *Second Further Notice of Proposed Rulemaking* in *In the Matter of Policy and Rules Concerning Rates for Dominant Carriers,* CC Docket No. 87-313, FCC 89-91, Adopted March 16, 1989, and Released April 17, 1989. By the Commission.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, Suite 140, Washington, DC 20037.

I. In General

1. The price cap plan we propose for regulating local exchange carriers (LECs) builds upon our proposal set out in a Further Notice of Proposed Rulemaking release May 23, 1988 (*Further Notice*). The plan is designated to replicate better than traditional rate of return regulation the incentives to efficiency that characterize a competitive market. The essential premise underlying the proposal is that by limiting the rates carriers may charge, rather than their rates of return, price caps will drive carriers to avoid unnecessary costs, invest in efficiency enhancing technology, and employ innovative service approach in order to earn the greatest levels of return within the applicable rate limitations. At the same time, the plan guarantees that rate-payers obtrain their share of expected productivity gains first, with carriers retaining any additional profits they may generate. Thus, the plan promises that both ratepayers and carriers will be better off than under rate of return regulation.

2. We find that the plan we have adopted for AT&T provide a sound foundation on which to erect our price cap plan for the LECs. However, we propse to craft that methodology into a plan for the LECs that accommodates the characteristics of the LECs' services and the market in which they are offered. These proposed modifications are designed to ensure that implementation of price cap regulation for the LECs furthers the goal of the Communications Act and, in particular, results in just and reasonable rates for their interstate basic services.

II. Application of Incentive Regulation to LECs

A. Competition

3. We tentatively conclude that there is little competition for LEC access service, but that the limited nature of competition for LEC services does not make a price cap system unworkable or undesirable. While competition serves as a "backstop" in the event price caps for AT&T have unintended

consequences, we tentatively conclude that alternative mechanisms, such as an "automatic stabilizer" adjustment, or early review, can serve such a purpose with respect to the LECs.

B. Service Quality

4. We tentatively conclude that price cap regulation will not adversely affect the quality of the LECs' interstate services. First, the LECs' primary customers for interstate access are interexchange carriers that can function effectively as large, sophisticated, expert surrogates for small individual users. Second, because revenue for interstate access is largely usage sensitive, LECs have significant incentives to prevent declines in service quality that might lead to call blockage. Third, the facilities used to provide interstate access are the same facilities LECs use to provide intrastate services. Since many states have specific service quality standards and monitoring programs complementing our programs, it is unlikely that a LEC could degrade service quality without detection.

5. We therefore tentatively conclude that there is no need for the Commission to adopt specific service quality standards. However, to allay the concerns expressed by state commissions and users, and to provide ourselves with data to assist our evaluation of price caps, we propose to monitor the quality of service provided by LECs subject to price cap regulation. We propose a service quality monitoring program that requires LECs to submit reports that include information on the installation interval (percent of time service installations are completed within the interval quoted to customer), the repair interval (total number of hours necessary to complete a customer's request for repairs), the network blockage percentage, and the number of formal FCC complaints per 1,000 access lines. We seek comment on whether we should require additional reporting categories, including post-dial delay, transmission quality, and switch downtime.

C. Jurisdictional Allocations

6. We tentatively conclude that price cap regulation will not adversely affect intrastate rates, services, or jurisdictional allocations. The possibility of cost shifting between jurisdictions is inherent in a bifurcated regulatory system. However, we tentatively conclude that the combination of separations rules, the Commission's automated reporting requirements (ARMIS), and state monitoring will be effective in identifying and correcting the misallocation of costs to either the state or the interstate jurisdiction. We propose no changes to existing separations rules.

D. Eligibility for the LEC Price Cap Plan

7. We propose LEC price cap eligibility requirements in the form of two general rules and one limitation on those rules. First, we propose that price caps be mandatory for all Tier 1 LECs that withdraw from the carrier common line (CCL) pool administered by the National Exchange Carrier Association (NECA), and for all affiliates of such carriers. Second, we propose that other non-pooling LECs may elect price caps, on an all-or-nothing basis, if none of their affiliated carriers remains in either the CCL or traffic sensitive (TS) pools. Finally, in defining the scope of both mandatory and elective price caps, we propose to exempt average schedule companies from the "all-or-nothing" rule so that such carriers may continue to be reimbursed for their costs on the basis of average schedules after their affiliates convert to price cap regulation.

8. We believe price cap regulation will increase carriers' incentives to achieve heightened efficiency, which in turn should lead to lower service rates. Our proposal excludes pooling carriers from price caps, because pooling, by its nature, entails risk-sharing and a concomitant diminution of incentives to operate efficiently. The pool, however, serves another important policy—universal service—which we value more highly than efficiency.

E. Timing of Implementation

9. We propose that price caps for LECs be implemented with the filing of annual access tariffs, to be effective July 1, 1990, on 90 days' notice. Unlike the *Further Notice*, we propose that the CCL charge be subject to price caps from the outset. Carriers that have not already made the election to withdraw from the TS and/or CCL pools may establish eligibility for price caps by notifying NECA on or before December 31, 1989, of their intention to withdraw from those pools effective July 1, 1990.

III. The Mechanics of the Proposed LEC Price Cap Plan

A. In General

10. We propose that LECs subject to price cap regulation file inaugural price cap tariffs March 30, 1990, to be effective July 1, 1990, and thereafter to file annual price cap tariffs effective July 1, on not less than 90 days' notice. We propose that price cap filings must be accompanied by price cap indexes (PCIs) (which reflect changes in costs associated with the provision of service groupings, or baskets), actual price indexes (APIs) (which reflect changes in aggregate rate levels for baskets), and service band indexes (SBIs) (which reflect changes in rates for service categories within baskets). We propose that as long as the carrier's proposed rate level changes are within applicable cap and band limitations, the tariff filings will be presumed lawful, and except for the 90-day annual filing, may take effect in 14 days.

B. LEC Services Subject to Price Cap Regulation

11. We tentatively conclude that although capping all existing LEC services would yield the greatest benefits as a general, theoretical matter, some services are structured and priced in such a way that applying a price cap structure to them would be excessively difficult. Therefore, we tentatively conclude that special construction and individual case basis services should be excluded from price cap regulation. In addition, we tentatively decide that these services should be subject to conventional tariff review.

12. We tentatively decide that LEC services should be placed in three baskets: (1) A common line basket; (2) a traffic sensitive switched basket; and (3) a basket containing all other capped services. Each basket would be subject to a separate cap in the form of that basket's PCI. The API is the value of aggregate rates in a basket. Under the proposed plan, a basket's API must never exceed its PCI, absent an extraordinary showing. Furthermore, we propose that within baskets, services would be assigned to service categories, the prices of which would be subject to annual restrictions on upward and downward movements, as measured by SBIs.

13. We tentatively decide that a separate common line basket would ease administration of price cap regulation, and aid NECA in calculating a theoretical nationwide average CCL rate to be used in determining Long Term Support for LECs remaining in the NECA common line pool. Therefore, we tentatively decide that common line should be in a separate basket. Because this basket contains only the common line element, we tentatively conclude that separate banding restrictions within the common line basket are unnecessary.

14. Our proposal to separate traffic sensitive switched and special access into two baskets appears to us to provide LECs with sufficient flexibility to develop service innovations and achieve efficiencies, while ensuring that

ratepayers are protected. The TS switched basket we propose would contain traffic sensitive switched services, with upper and lower bands of 5 percent on the established Part 69 elements: local switching, transport, and information. We tentatively propose that those carriers that employ the optional equal access element place that element in the TS switched basket. We also seek comment on whether banding limitations should apply to any Basic Service Element subelements that may be required under our Open Network Architecture policies or other subelements, such as 800 data base access or the equal access element, that LECs are required or permitted to offer on an unbundled basis.

15. The final basket, consisting of all other capped services, will be dominated by special access services, but will also contain corridor interstate services. We tentatively conclude that 5 percent upper and lower bands at the service category level are suitable for that basket. Service categories would track existing special access services, *e.g.*, (1) metallic; (2) telegraph; (3) program audio; (4) voice grade; (5) video; (6) wideband audio; (7) wideband data; (8) digital data; and (9) high capacity. We tentatively conclude that new services, or services not on this list, should be classified at the same level of generality. While we tentatively propose to place GTOC's International Message Telephone Service (IMTS) from Hawaii in this third basket, we seek comment on whether that service should be placed in a separate basket.

C. The Price Cap Index

16. The proposed price cap index, or PCI, is an index of change in the cost of factors of production, including inflation, LEC productivity, and certain carrier-specific cost factors that are beyond the carrier's control. The PCI for each basket of services acts as a ceiling above which that basket's index of actual prices—the API—cannot go without an extraordinary showing. We propose that cost changes due to the inflation and productivity components of the PCI formula be reflected in annual index adjustments. We propose that the inflation component be represented by the Gross National Product Price Index (GNP–PI), a broad-based index of price changes in all sectors of the economy, published by the Department of Commerce. We tentatively conclude that LECs should be permitted to use the 45-day estimate of the GNP–PI, in order to provide them time to incorporate this data into their annual filings. We propose a 2.5 percent annual productivity factor, plus a 0.5 percent consumer productivity dividend (CPD) to ensure that ratepayers benefit from productivity gains in excess of historical levels.

17. Price cap levels will also vary with changes in certain "exogenous" costs, that is, costs that are beyond the control of the carrier, and affect the telecommunications sector, rather than the economy as a whole. We propose to treat as exogenous the following: changes in access charges for LEC interstate interexchange services; changes in interstate costs caused by changes in the Separations Manual and the Uniform System of Accounts (USOA); changes in costs due to the completion of the amortization of depreciation reserve deficiencies; and changes in costs caused by reallocation of investment from regulated to nonregulated activities pursuant to Section 64.901 of this Commission's Rules. We also propose to treat changes in pooling support obligations as exogenous costs, and solicit comment on this tentative conclusion. We seek additional information on the nature, extent, origin, and scope of AT&T Point of Presence migration. We tentatively conclude that LECs which have not begun equal access conversion at the time they become subject to price cap regulation may request permission to treat equal access conversion costs as exogenous when they do begin the conversion process. Finally, we propose that LECs may request exogenous treatment of changes in costs due to tax law changes, or other cost changes that are beyond a carrier's control, and that affect its costs disproportionately relative to the economy as a whole.

18. We tentatively conclude that the LECs should be required to file adjustments to their PCIs each year in connection with the annual price cap tariff filing. In addition, we propose that LECs update their PCIs to account for mid-year exogenous cost changes. Except for the common line basket, for which we propose a modified formula, the PCI formula we propose for the LECs is:

$$PCI_t = PCI_{t-1}[1 + w(GNP\text{–}PI - X) + \Delta Y/R + \Delta Z/R]$$

where

GNP–PI = the percentage change in the GNP–PI,

X = productivity factor of 3.0%,

ΔY = (new access rate − access rate at the time the PCI was updated to PCI_{t-1}) × base period demand,

ΔZ = the dollar effect of current regulatory changes, when compared to the regulations in effect at the time the PCI was updated to PCI_{t-1}, measured at base period level of operations,

R = base period quantities for each rate element "i", multiplied by the price for each rate element "i" at the time the PCI was updated to PCI_{t-1},

w = R—(access rates in effect at the time the PCI was updated to PCI_{t-1} × base period demand) + ΔZ, all divided by R,

PCI_t = the new PCI value, and

PCI_{t-1} = the immediately preceding PCI value.

19. We propose to calculate exogenous adjustments by comparing a carrier's historical cost experience with the costs it would have experienced during the same period if the input cost levels and regulatory environment anticipated in the upcoming year had been in effect during the base period. To aid us in our analysis, we plan to build a computerized database to verify the accuracy of certain exogenous changes. In addition, we propose to continue our practice of establishing tariff review plans that specify the type and format of data that must accompany annual tariff filings.

20. The productivity factor in the PCI is designed to adjust for the fact that, historically, carrier productivity has exceeded that of the economy as a whole. We tentatively conclude that long term evidence in the record concerning productivity is the best evidence of historical productivity, and that the best estimate of future LEC productivity is 2.5 percent. We tentatively conclude that attempts to corroborate the 2.5 percent figure by analyzing changes in LEC rates during the 1984–88 period, although well-founded in principle, do not appear capable of being used to calculate a precise measure of LEC productivity during this period because of complications resulting from the number of exogenous cost adjustments that must be made and the lack of quality data. Although the productivity studies based on post-divestiture data provide some corroborative evidence, the record to date leaves open the possibility that some LECs may experience sustained levels of productivity gain above or below the 2.5 percent industry average.

21. To remedy our concerns about individual carrier productivity, we tentatively propose two modifications of the generic price cap formula. The first modification we propose is an additional profitability constraint: the "automatic stabilizer." The second modification addresses the method of recovering common line costs.

22. Although we believe that 2.5 percent per year represents a reasonable estimate of potential LEC industry productivity, we recognize that the experience of individual LECs may show some statistical variability around

the mean performance of all LECs especially over relatively short periods of time. We therefore believe it may be appropriate to include in the price cap formula for all three LEC baskets an automatic adjustment factor, or to adopt some other approach, in order to reflect the possibility of well-above-average or well-below-average productivity performance by individual LECs. The purpose of such an adjustment factor would be to keep prices in a zone of reasonableness relative to costs while maintaining incentives for LECs to lower costs and develop new and better services.

23. We propose that within a range between two points below and two points above the target rate of return, carriers keep, for tariff review purposes, all the gains from above-average performance and bear all the risks of below-average performance during the initial four years of the plan. We also tentatively conclude that consumers should share in the benefits of above-average performance outside this range and, in return, should bear some of the risk of below-average performance outside this range. Accordingly, we propose to adjust each LEC's price cap index based on deviations of the rate of return actually realized by each LEC from the range described above. We propose to make such an adjustment at the time of the annual revision of LEC access tariffs. As an alternative to this automatic stabilizer approach, we propose to conduct a review of price caps for LECs in late 1991.

24. We seek comment on our proposal to establish an automatic stabilizer, our alternative proposal of shortening the review period, and our tentative conclusion that inclusion of one of these alternatives would lead to just the reasonable rates.

25. Common line costs are by nature non-traffic sensitive, that is, they do not vary at all in relation to a change in demand (*i.e.*, a change in minutes of use per line). A portion of the common line revenue requirement is recovered by LECs directly from end users. LECs recover the residual portion of the common line revenue requirement from interexchange carriers, through the carrier common line charge. The CCL charge is particularly sensitive to the level of demand because it is determined by dividing a LEC's total minutes of demand for switched access services into a revenue requirement that does not fluctuate directly in accordance with demand. We recognize that the unique properties of common line might have an effect on calculations of LEC productivity.

26. Our objective is to establish a cap for the common line basket that is consistent with both the productivity factor we have derived from long term Bell System studies and with our policy that rates be adjusted to relect exogenous demand stimulation. Neither the per line nor the per minute approach properly relates the special characteristic of common line—*i.e.*, the insensitivity of common line costs to changes in demand—to the historical productivity studies. Therefore, we propose a combination of the two measures in an attempt to adapt the historical measures to the prediction of common line productivity, consistent with our policy concerning exogenous demand stimulation. The common line PCI formula we propose is:

$$PCI_t = PCI_{t-1}[1 + w[(GNP\text{–}PI\text{–}X) + \{g/2\}(GNP\text{–}PI\text{–}X\text{–}1)]/\{1 + g\} + \Delta Z/R]$$

where

GNP–PI = the percentage change in the GNP–PI,

X = productivity factor of 3.0%,

g = the ratio of minutes of use per access line during the base period, to minutes of use per access line during the previous base period,

ΔZ = the dollar effect of current regulatory changes, when compared to the regulations in effect at the time the PCI was updated to PCI_{t-1}, measured at base period level of operations,

R = base period quantities for each rate element "i" multiplied by the price for each rate element "i" at the time the PCI was updated to PCI_{t-1},

w = R + ΔZ, all divided by R,

PCI_t = the new PCI value, and

PCI_{t-1} = the immediately preceding PCI value.

27. We seek comment on our tentative decision to resolve uncertainty concerning potential LEC productivity arising from the relationship between demand growth and common line NTS costs through the application of this adjustment to the PCI formula applied to the commoin line basket. We also seek comment on our tentative conclusion that application of this adjustment makes it unnecessary to make the separate adjustment for exogenous demand stimultation described in the *Further Notice*.

D. Comparing LEC Rates to the PCI and Banding Limitations

28. The proposed actual price index, or API, measures the incremental change in the aggregate price of each basket of services each time a LEC proposes rate revisions. We propose an API formula which requires the summation of the weighted ratios of proposed prices and existing prices, as follows:

$$API_t = API_{t-1}[\Sigma_i\, v_i\, \{p_t/p_{t-1}\}i]$$

where

API_t = the proposed API value,

AP_{t-1} = the existing API value,

p_t = the proposed price for rate element "i,"

p_{t-1} = the existing price for rate element "i," and

v_i = the current estimated revenue weight for rate element "i," calculated as the ratio of the base period demand for the rate element "i" priced at the existing rate, to the base period demand for the entire basket of services priced at existing rates.

We propose that new LEC services be incorporated into the proper APIs at the first annual price cap filing following completion of the base period in which they are introduced, using weights established during the base period. We also propose that LECs immediately adjust their APIs to reflect service restructuring or abandonment, using estimation techniques to assign customers of the abandoned or restructured services to those remaining or becoming available following the change.

29. We tentatively conclude that LECs subject to price cap regulation must establish subindexes within their TS switched and "all other" baskets to measure the revenue-weighted aggregate prices of the groups of rate elements that comprise the banded service categories. We propose that each such service band index, or SBI, should be calculated according to the following formula:

$$SBI_t = SBI_{t-1}[\Sigma\, (v_i\{p_t/p_{t-1}\}_i]$$

where

SBI_t = the proposed SBI value,

SBI_{t-1} = the existing SBI value,

p_t = the proposed price for rate element "i,"

p_{t-1} = the existing price for rate element "i," and

v_i = the current estimate revenue weight for rate element "i," calculated as the ratio of base period demand for rate element "i" priced at the existing rate, to the base period demand for the entire group of rate elements comprising the service category priced at existing rates.

We propose that in order to receive streamlined filing and review treatment for a tariff revision, the value of each affected SBI may not increase or decrease annually by more than 5 percent, relative to the change in the PCI.

E. Establishing Initial Index Values

30. We tentatively decide that reliance upon existing rates, developed under established rate of return procedures, is the most reasonable option for initally determining compliance with a price cap system for the LECs. We do not believe a comprehensive rate case prior to initiating a LEC price cap plan would serve the public interest. In addition,

however, we seek further comment, legal analysis, and data on issues associated with imposing an across-the-board cut in LEC rates to account for embedded inefficiencies at the outset of price cap regulation. On the current record, we tentatively conclude that the consumer productivity dividend we have proposed is better targeted to reflect anticipated productivity gains than an initial rate cut would be.

31. We recognize that the present earnings of certain LECs require adjustment prior to implementation of price caps. The Common Carrier Bureau is moving to reduce the earnings of such LECs to authorized levels, and we would expect that carrier rates at the time price caps are implemented would be carefully targeted to achieve the authorized rate of return. However, since overearnings by LECs are not uniform, or consistent across service categories, we tentatively find that the record on carrier earnings does not support a uniform across-the-board cut. In addition, while we plan to move expeditiously to conclude existing investigations of LEC rates, we tentatively conclude that resolution of all such investigations is not a prerequisite to the implementation of price caps, since we can make any necessary adjustments resulting from such investigations after price cap regulation has been established.

32. We propose that in connection with the initial LEC price cap filings effective July 1, 1990, LECs shall use calendar year 1989 data to establish initial base period weights and that they set initial index values at 100, corresponding to the rates and costs in effect on December 31, 1989. We propose that any changes in rates or exogenous costs between that date and July 1, 1990, should be reflected in adjustments to the APIs and PCIs at the time of the inaugural filing.

F. Evaluation of Price Cap Rates

1. Annual Filings

33. We propose that the first annual price cap tariff filing, in which LECs calculate price cap indexes and actual price indexes for each of the service baskets covered by the plan under standard price cap procedures, should be effective on July 1, 1990. The LECs would make their annual filings on March 30, 1990, with an effective date of July 1.

2. Within-Band Rate Level Changes

34. We propose that rate level changes that produce an actual price index less than or equal to the price cap index, and rates within the applicable price bands qualify for streamlined treatment. Tariffs proposing such rate level changes would be filed on 14 days' notice, and would be presumed lawful. In lieu of traditional cost support, streamlined filings need be supported only by the calculations necessary to demonstrate that the proposed rates are within the limits set by the PCI and the price bands. We tentatively conclude that petitioners seeking suspension of a streamlined filing must demonstrate: (1) A high probability that the tariff would be found unlawful after investigation; (2) that suspension would not substantially harm other interested parties; (3) that irreparable injury would result if suspension did not issue; and (4) that suspension would not otherwise be contrary to the public interest.

3. Above-Band Rates

35. We tentatively conclude that above-band rates raise questions about the distribution of rate increase burdens that require the fullest possible consideration by interested parties and by this Commission. Therefore we tentatively require that above-band rates be filed on 90 days' notice, with a likelihood of suspension. The justness and reasonableness of above-band rates will be assessed in light of the overall price caps scheme, and LECs will be required to make a "substantial cause" showing, which will usually involve a detailed and specific cost justification of the proposed increase.

4. Above-Cap Rates

36. We tentatively conclude that tariffs proposing above-cap rates will be filed on 90 days' notice, will generally be suspended, and must be accompanied by cost support data demonstrating that the rates are just and reasonable. In their cost showings, LECs would be required to assign costs to rate elements, or to the lowest possible level, and to explain the allocation of costs within each basket, and among baskets. We seek comment on whether, if we adopt the automatic stabilizer mechanism, we should require that LEC filings proposing above cap rates satisfy an even more stringent standard. We also seek comment on whether there should be circumstances in which the burden to be met by small telephone companies should be different from that imposed on large companies.

5. Below-Band Rate Level Changes

37. We propose that tariff filings proposing below-band rates be made on 45 days' notice and be accompanied by a showing that the rates cover the cost of service and are otherwise just and reasonable. For the purpose of initial review of such filings, we propose to employ the average variable cost standard as a benchmark for determining whether a proposed rate decrease should be investigated and/or suspended.

6. New and Restructured Services

38. We tentatively conclude that new and restructured services must receive special tariff review treatment because they present a potental means of avoiding pricing restrictions. A touchstone for distinguishing between new and restructured services is the continued availability of a previously-tariffed alternative that characterizes new services. That is, new services add to the range of options available to customers, while restructured services simply represent rearrangements of existing services. we tentatively concude that tariffs proposing new services should be filed on 45 days' notice with data that demonstrate compliance with modified version of the net revenue test. Under this test, a new service, and each unbundled element thereof, must be projected to increase the carrier's net revenues for services subject to price cap regulation within the lesser of 24 months from the incorporation of the service into an annual price cap tiling, or 36 months from the effective date of the service. We tentatively conclude that the data submitted in satisfaction of the net revenue test will be sufficient to allow this Commission and interested partes to determine whether proposed rates for a new service are outside the zone of reasonableness.

39. We propose to require that when a LEC submits a tariff filing that would restructure an existing capped service, it be required to show compliance with the price cap limits of the basket, and where applicable, the banding limits of the service category to which the service to be restructured belongs. In addition, the filing would be made on 45 days' notice and subject to conventional tariff review to ensure that the restructuring did not produce unreasonable discrimination among service users or did not have any other anticompetitive effects. Finally, we tentatively find that price cap carriers should continue to adhere to the rate structure requirements of Part 69.

IV. Small Company Issues

A. Continuation of Programs Promoting Universal Service

40. We believe that price cap regulation should not disturb our longstanding practice of employing a unitary rate of return for the local

exchange industry, thereby ensuring that access rate determinations for those remaining under rate of return and the support mechanisms associated with access charge revenue requirements are unaffected by the implementation of a price cap system. We tentatively decide to exempt price cap carriers from interstate earnings limitations imposed as part of the rate of return process. However, we propose to require that price cap carriers employ the existing rate of return in calculating their obligations under the various universal service programs we have adopted whenever a rate of return is necessary as part of the calculation. We also proposed amendments to Part 65 that would specify the last rate of return reporting period for carriers switching to price cap regulation, as well as amendments that would govern refund obligations for price cap carriers that stem from a pre-price cap period.

41. With respect to Part 69, we tentatively conclude that any amendments that we make to our access charge rules to accommodate price cap regulation must not interfere with the support mechanisms of the depooling process. The calculation for Long Term Support payments from those exiting the NECA common line pool to those carriers remaining in the pool requires a common line revenue requirement for the industry. We tentatively find that it is therefore necessary to allocate access investment and expense between common line and other interstate services.

B. Geographic Rate Averaging

42. This Commission has repeatedly demonstrated its dedication to geographic rate averaging of toll calls on the public switched network through our various decisions affecting recovery of common line costs. We have done so because we believe that geographic rate averaging is an important policy that contributes to the achievement and maintenance of universal service, as well as to the simplicity and clarity of AT&T's long distance rates. We believe that the proposals set forth herein for the LECs will not create the kind of LEC pricing flexibility that commenters argue would force AT&T to deaverage its rates. We tentatively conclude that the common line cost recovery methods we have previously enacted, together with the price cap system we are proposing, will not lead to the kind of disparities in CCL charges that would prompt interexchange carriers to deaverage their rates.

The price cap plan we have adopted for AT&T already provides for a 90-day notice period, a five-month suspension, and an investigation in connection with any future proposals to deaverage rates. We do not believe that further action, such as a prohibition on deaveraging, is warranted at this time.

V. Other Issues

A. Monitoring and Performance Review

43. During the initial years of price cap regulation we propose to monitor the LECs' performance, with particular attention to prices, earnings, quality of service, and technological progressiveness. ARMIS reports will include information on revenues, expenses, investment, taxes, and earnings, as well as demand data, and will permit this Commission to monitor a variety of LEC activities, including cost allocations between regulated and nonregulated activities and allocations between the state and interstate jurisdictions. In addition to monitoring price cap regulation through the collection of data, our review of tariffs, and the complaint process, we propose to review LECs' performance in a comprehensive manner after an initial period of experience with price cap regulation. The performance review will consider all available measures of market and carrier performance, including, but not limited to, actual prices, achieved rate of return, quality of service and technological progressiveness. Decisions about certain aspects of the timing and nature of the comprehensive review must await the resolution of outstanding issues relating to uncertainties associated with LEC productivity. Parties commenting on the nature of the performance review for the LECs should do so in the context of this Commission's proposals to address productivity issues.

B. Effect of Incentive Regulation on Existing Commission Policies

44. We tentatively conclude that there are no theoretical or practical barriers to implementing both price cap regulation and our Open Network Architecture (ONA) policies. We contemplate that federally tariffed Basic Service Elements and Basic Servicing Arrangements will be available to all users, and that these services will consist of unbundled access elements that will be purchased by enhanced service providers as well as by other users of exchange access. We tentatively conclude that such ONA services do not differ from other interstate basic services offered by the BOCs in any way that is relevant for purposes of this proceeding. Accordingly, we do not propose to require further special treatment for ONA services as part of price cap regulation.

45. We tentatively conclude that the implementation of price cap regulation for the LECs will be enhanced by the continuation of existing rules, the USOA, the separations manual, and the joint cost rules. In addition, we propose to retain existing complaint procedures. Finally, we tentatively decide that we should continue to enforce the Part 63 rules concerning extension of lines and discontinuance of service under price cap regulation.

VI. Paperwork Reduction Analysis

46. On June 14, 1988, after the release of the *Further Notice* in this proceeding, this Commission requested that the Office of Management and Budget (OMB) review the proposed information collection requirements for compliance with the Paperwork Reduction Act of 1980. On August 15, 1988, OMB commented on this Commission's proposed information collection requirements. OMB stated that the *Further Notice* failed to demonstrate the practical utility of some of the reporting requirements proposed in the Commission's request, and found that the information collections are not the minimum necessary to meet the objectives of the proposed rules. In commenting on this Commission's request, OMB listed a series of concerns that it asked this Commission to address. Those concerns have been addressed in the context of this Commission's Final Order adopting and implementing price cap regulation for AT&T, and in the context of this Commission's Second Further Notice of Proposed Rulemaking proposing to implement price cap regulation for the LECs.

47. Although this Order adopts incentive regulation for the LECs, we are not at this time promulgating final rules to implement incentive regulation for the LECs. This Order does, however, propose a set of regulations for implementing incentive regulation for the LECs. In connection with this Second Further Notice of Proposed Rulemaking with respect to the LECs, we renew our request for review of Paperwork Reduction Act requirements in light of the proposals made in this Further Notice. The proposed rules for LECs contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980, and found to decrease the information collection burden on the public. This proposed reduction in the information collection burden is subject to approval by OMB

as prescribed by the Paperwork Reduction Act.

VII. Regulatory Flexibility Act Analysis

48. We certify that the Regulatory Flexibility Act is not appicable to the rule changes we are proposing for the LECs in this proceeding. In accordance with the provisions of section 605 of that Act, a copy of this certification has been sent to the Chief Counsel for Advocacy of the Small Business Administration.

49. As part of our analysis of the proposal described in this Further Notice, however, this Commission has considered the impact of the proposal on small telephone companies, *i.e.*, those serving 50,000 or fewer access lines. As a result of our decision to make price cap regulation elective for depooled cost companies below the Tier 1 level, no small carrier will be forced to change the method by which it is regulated. Small companies that currently file their own cost-based access tariffs are free to remain under rate of return if they decide that rate of return is better suited to their circumstances than is price caps. Small carriers participating in the NECA pools, and for whom NECA files access tariffs, will not be forced to leave the pools as a result of the price cap rules we are proposing in this Notice. In addition, nothing in the price cap proposal would discontinue or impair the variety of programs we have established to provide support to small carriers. These programs, such as our High Cost Fund and long term support mechanisms, continue intact. Furthermore, average schedule companies that are or become affiliated with cost companies that are regulated under price caps would not need to relinquish average schedule, rate of return regulation. We have also proposed that, for companies that have not yet begun conversion to equal access, conversion costs be treated as exogenous costs under the price cap formula. This proposal ensures that small carriers, who are the least likely to have begun equal access conversion, can flow through these costs to their rates should they elect price caps. These proposals, when viewed in their totality, permit small, depooled cost companies to take advantage of the benefits of price cap regulation at their option, while ensuring that the status quo is maintained for small carriers that do not participate in price cap regulation.

VIII. Ex Parte Requirements

50. For purposes of this non-restricted notice and comment rulemaking proceeding concerning LECs, members of the public are advised that *ex parte* presentations are permitted except during the "Sunshine Agenda" period. *See generally* § 1.1206(a) of this Commission's Rules. The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when this Commission (1) releases the text of a decision or Order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. *See* § 1.202(f) of this Commission's Rules. During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by this Commission or Commission staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. *See* § 1.1203 of this Commission's Rules.

51. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding; or (2) if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. *See* § 1.1202(b) of this Commission's Rules. Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of that presentation to this Commission's Secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in the person's previously-filed written comments, memoranda, or filings in this proceeding must provide on the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and states on its face that the Secretary has been served, and also states by docket number the proceeding to which it relates. *See* § 1.1206 of this Commission's rules.

52. All relevant and timely comments and reply comments will be considered by this Commission. In reaching our decision, this Commission may take into account information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the fact of this Commission's reliance on such information is noted in the Order.

IX. Ordering Clauses

53. Accordingly, *It is ordered*, That, pursuant to sections 4(i), 4(j), 201–205, 303(r), and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 303(r), 403, and section 553 of Title 5, United States Code, *notice is hereby given* of proposed amendments to Part 61, Part 65, and Part 69, and sections 61.3, 61.38, 61.39, 61.41, 61.42, 61.43, 61.44, 61.45, 61.48, 61.49, 61.58, 65.1, 65.600, 65.701, 65.703, 69.1, 69.3, 69.101, 69.105, 69.111, 69.113, 69.114, 69.205, 69.301, 69.302, 69.303, 69.304, 69.305, 69.306, 69.307, 69.308, 69.309, 69.310, 69.401, 69.402, 69.403, 69.404, 69.405, 69.406, 69.407, 69.408, 69.409, 69.410, and 69.411 of this Commission's Rules, 47 CFR Part 61, Part 65, and Part 69 §§ 61.3, 61.38, 61.39, 61.41, 61.42, 61.43, 61.44, 61.45, 61.48, 61.49, 61.58, 65.1, 65.600, 65.701, 65.703, 69.1, 69.3, 69.101, 69.105, 69.111, 69.113, 69.114, 69.205, 69.301, 69.302, 69.303, 69.304, 69.305, 69.306, 69.307, 69.308, 69.309, 69.310, 69.401, 69.402, 69.403, 69.404, 69.405, 69.406, 69.407, 69.408, 69.409, 69.410, 69.411, in accordance with the proposals, discussion, and statement of issues in this Second Further Notice of Proposed Rulemaking, and that *comment is sought* regarding such proposals, discussion, and statement of issues.

54. *It is further ordered*, That the motion to accept late-filed comments submitted by the National Association of Regulatory Utility Commissioners is granted.

55. *It is further ordered*, That the motion to accept late-filed reply comments submitted by the United Church of Christ Office of Communication is granted.

56. *It is further ordered*, That the motion to pursue further investigation submitted by the Florida Public Counsel is granted in part and denied in part to the extent indicated herein.

57. *It is further ordered*, That the motion for further proceedings submitted by the Competitive Telecommunications Association, the Consumer Federation of America, the International Communications Association, the National Association of Regulatory Utility Commissioners, and MCI Telecommunications Corporation is granted in part and denied in part to the extent indicated herein.

58. *It is further ordered*, That, in accordance with the provisions of § 1.419(b) of this Commission's Rules, 47 CFR 1.419(b), an original and five copies of all comments, replies, pleadings, briefs, and other documents filed in the proceeding shall be furnished to this Commission. In addition, parties should

file ten copies of any such pleadings with the Price Cap Task Force, Common Carrier Bureau, Room 518, 1919 M Street NW., Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with this Commission's copy contractor, International Transcription Services, Inc., Suite 140, 2100 M Street NW., Washington, DC 20037. Members of the public who wish to express their views by participating informally may do so by submitting one or more copies of their comments without regard to form (so long as the docket number is clearly stated at the heading). Copies of all filings will be available for public inspection during regular business hours in this Commission's Docket Reference Room (Room 239) at our headquarters at 1919 M Street NW., Washington, DC.

59. *It is further ordered,* That comments on this Second Further Notice of Proposed Rulemaking shall be due not later than June 19, 1989, and that reply comments shall be due not later than July 19, 1989.

List of Subjects

47 CFR Part 61

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Price cap tariff filing and review procedures.

47 CFR Part 65

Administrative practice and procedure, Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

For the reasons set forth in the preamble, Title 47, Parts 61, 65, and 69 of the Code of Federal Regulations are proposed to be amended as follows.

PART 61—TARIFFS

2. The authority citation for Part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

3. Section 61.3 is amended by revising paragraphs (u) and (w) to read as follows:

§ 61.3 Definitions.

* * * * *

(u) *Price Cap Index* (PCI). An index of costs facing carriers subject to price cap regulation, which index is calculated for each basket pursuant to §§ 61.44 or 61.45.

* * * * *

(w) *Price cap tariff.* Any tariff filing involving a service that is within a price cap basket, or that requires calculations pursuant to §§ 61.44, 61.45, 61.46, or 61.47.

* * * * *

4. Section 61.38(a) is amended by revising the last sentence to read as follows:

§ 61.38 Supporting information to be submitted with letters of transmittal.

(a) * * * This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings proposing rates for services identified in §§ 61.42 (a), (b), (d), (e), and (g), which filings are submitted by carriers subject to price cap regulation.

* * * * *

5. Section 61.39 is amended by adding a new sentence at the end of paragraph (a) to read as follows:

§ 61.39 Optional supporting information to be submitted with letters of transmittal for Access Tariff filings effective on or after April 1, 1989, by local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602.

(a) * * * This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings proposing rates for services identified in §§ 61.42 (d), (e), and (g), which filings are submitted by carriers subject to price cap regulation.

* * * * *

6. Section 61.41 is revised to read as follows:

§ 61.41 Price cap requirements generally.

(a) Sections 61.42 through 61.49 shall apply as follows:

(1) To dominant interchange carriers, as specified by Commission order;

(2) To Tier 1 local exchange carriers, as defined by Commission order, which are not participants in any Association tariff effective July 1, 1990, and to all local exchange carriers, other than average schedule companies, that are affiliated with such carriers; and

(3) On an elective basis, to local exchange carriers, other than those specified in paragraph (a)(2) of this section, that are neither participants in any Association tariff effective July 1, 1990, nor affiliated with any such participants, except that affiliation with average schedule companies shall not bar a carrier from electing price cap regulation provided the carrier is otherwise eligible.

(b) If a telephone company, or any one of a group of affiliated telephone companies, files a price cap tariff in one study area, that telephone company and its affiliates, except its average schedule affiliates, must file price cap tariffs in all their study areas. No telephone company that files a price cap tariff may participate in an Association tariff.

7. Section 61.42 is amended by redesignating paragraph (d) as paragraph (g) and revising the first sentence of newly redesignated paragraph (g), and by adding new paragraphs (d), (e), and (f) as follows:

§ 61.42 Price cap baskets and service categories.

* * * * *

(d) Each local exchange carrier subject to price cap regulation shall establish three baskets as follows:

(1) A basket for the carrier common line charge as described in § 69.105;

(2) A basket for traffic sensitive switched interstate access elements; and

(3) A basket for interstate services other than services described in paragraphs (d)(1) or (d)(2) of this section.

(e)(1) The traffic sensitive switched access basket shall contain such services as the Commission shall permit or require, including the following service categories:

(i) Local switching as described in § 69.106;

(ii) Information, as described in § 69.109; and

(iii) Transport, as described in § 69.111.

(2) The basket for interstate services other than interstate switched access services shall contain such services as the Commission shall permit or require, including special access, as described in § 69.113, and non-access services.

(f) Each local exchange carrier subject to price cap regulation shall exclude the following offerings from their price cap baskets:

(1) Special construction services;

(2) Services offered on an individual case basis (ICB).

(g) New services, other than those within the scope of paragraphs (c) and (f) of this section, must be included in the affected basket at the first annual price cap tariff filing following completion of the base period in which they are introduced.

8. Section 61.43 is amended by revising the first sentence to read as follows:

§ 61.43 Annual price cap filings required.

Carriers subject to price cap regulation shall submit annual price cap tariff filings that propose rates for the upcoming year, that make appropriate adjustments to their PCI, API, and SBI values pursuant to §§ 61.44 through 61.47, and that incorporate the costs and rates of new services into the PCI, API, or SBI calculations pursuant to §§ 61.44(g), 61.45(g), 61.46(b), and 61.47 (b) and (c). * * *

9. Section 61.44 is amended by revising paragraph (a) and the introductory text of paragraph (b) and the section heading to read as follows:

§ 61.44 Adjustments to the PCI for Dominant Interexchange Carriers.

(a) Dominant interexchange carriers subject to price cap regulation shall file adjustments to the PCI for each basket as part of the annual price cap tariff filing, and shall maintain updated PCIs to reflect the effect of mid-year access and exogenous cost changes.

(b) Subject to paragraph (d) of this section, adjustments to each PCI of dominant interexchange carriers subject to price cap regulation shall be made pursuant to the following formula: * * *

* * * * *

10. New § 61.45 is added as follows:

§ 61.45 Adjustments to the PCI for Local Exchange Carriers.

(a) Local exchange carriers subject to price cap regulation shall file adjustments to the PCI for each basket as part of the annual price cap tariff filing, and shall maintain updated PCIs to reflect the effect of mid-year exogenous cost changes.

(b) Subject to paragraphs (e) and (f) of this section, adjustments to local exchange carrier PCIs for the baskets designated in § 61.42(d) (2) and (3) shall be made pursuant to the following formula:

$PCI_t = PCI_{t-1}[1 + w(GNP\text{-}PI - X) + \Delta Y/R + \Delta Z/R]$

where

GNP–PI = the percentage change in the GNP–PI between the quarter ending six months prior to the effective date of the new annual tariff and the corresponding quarter of the previous year,

X = productivity factor of 3.0%,

ΔY = (new access rate—access rate at the time the PCI was updated to PCI_{t-1}) × (base period demand),

ΔZ = the dollar effect of current regulatory changes when compared to the regulations in effect at the time the PCI was updated to PCI_{t-1}, measured at base period level of operations,

R = base period quantities for each rate element "i", multiplied by the price for each rate element "i" at the time the PCI was updated to PCI_{t-1},

$w = R - \Delta Z$, all divided by R,

PCI_t = the new PCI value, and

PCI_{t-1} = the immediately preceding PCI value.

(c) Subject to paragraphs (e) and (f) of this section, adjustments to local exchange carrier PCIs for the basket designated in § 61.42(d)(1) shall be made pursuant to the following formula:

$PCI_t = PCI_{t-1}[1 + w[(GNP\text{-}PI - X) + (g/2)(GNP\text{-}PI - X - 1)]/(1 + g) + \Delta Z/R]$

where

GNP–PI = the percentage change in the GNP–PI between the quarter ending six months prior to the effective date of the new annual tariff and the corresponding quarter of the previous year,

X = productivity factor of 3.9%,

g = the ratio of minutes of use per access line during the base period, to minutes of use per access line during the previous base period,

ΔZ = the dollar effect of current regulatory changes when compared to the regulations in effect at the time the PCI was updated to PCI_{t-1}, measured at base period level of operations,

R = base period quantities for each rate element "i", multiplied by the price for each rate element "i" at the time the PCI was updated to PCI_{t-1},

$w = R + \Delta Z$, all divided by R,

PCI_t = the new PCI value, and

PCI_{t-1} = the immediately preceding PCI value.

(d) The exogenous cost changes represented by the term "Z" in the formulas detailed in paragraphs (b) and (c) of this section, shall be limited to those cost changes that the Commission shall permit or require, and include those caused by:

(1) The completion of the amortization of depreciation reserve deficiencies;

(2) Changes in the Uniform System of Accounts;

(3) Changes in the Separations Manual;

(4) Changes to the level of obligation associated with the Long Term Support Fund and the Transitional Support Fund described in § 69.612;

(5) The reallocation of investment from regulated to nonregulated activities pursuant to § 64.901; and

(6) Such tax law changes and other extraordinary exogenous cost changes as the Commission shall permit or require. These exogenous cost changes shall be apportioned on a cost-causative basis between price cap services as a group, and excluded services as a group. Exogenous cost changes thus attributed to price cap services shall be further apportioned on a cost-causative basis among the price cap baskets.

(e) The "w(GNP–PI – X)" component of the PCI formula contained in paragraph (b), and the "w[(GNP–PI – X) + (g/2)(GNP–PI – X – 1)]/(1 + g)" component of the PCI formula contained in paragraph (c) of this section shall be employed only in the adjustment made in connection with the annual price cap filing.

(f)(1) In the event that a LEC subject to price cap regulation experiences a rate of return during any base period representing a return more than 2 percent above the rate of return prescribed for non-price cap LECs, the values assigned to the "PCI_{t-1}" component of that LEC's PCIs shall be adjusted downward to the levels that would have yielded a base period rate of return 2 percent above the prescribed rate of return; and (2) in the event that a LEC subject to price cap regulation experiences a rate of return during any base period representing a return more than 2 percent below the rate of return prescribed for non-price cap LECs, the values assigned to the "PCI_{t-1}" component of that LEC's PCIs shall be adjusted upward to the levels that would have yielded a base period rate of return 2 percent below the prescribed rate of return. The adjustment shall occur as part of the annual price cap filing immediately following the base period in which the LEC's return was outside the prevailing rate of return plus or minus 2 percent.

(g) The exogenous costs caused by new services subject to price cap regulation must be included in the appropriate PCI calculations under paragraph (b) or (c) of this section beginning at the first annual price cap tariff filing following completion of the base period in which they are introduced.

(h) In the event that a price cap tariff becomes effective, which tariff results in an API value (calculated pursuant to § 61.46) that exceeds the currently applicable PCI value, the PCI value shall be adjusted upward to equal the API value.

11. Section 61.48 is amended by adding paragraphs (c) and (d) as follows:

§ 61.48 Transition rules for price cap formula calculations.

* * * * *

(c) Local exchange carriers subject to price cap regulation shall file initial price cap tariffs April 2, 1990, to be effective July 1, 1990.

(d) In connection with the initial price cap filing described in paragraph (c) of this section, each PCI, API, and SBI shall be assigned an initial value prior to adjustment of 100, corresponding to the costs and rates in effect as of December 31, 1989.

12. Section 61.49 is amended by revising paragraph (a) and the last sentence of paragraph (g) to read as follows:

§ 61.49 Supporting information to be submitted with letters of transmittal for tariffs of carriers subject to price cap regulation.

(a) Each price cap tariff filing must be accompanied by supporting materials sufficient to calculate required adjustments to each PCI, API, and SBI pursuant to the methodologies provided in §§ 61.44, 61.45, 61.46, and 61.47.

* * * * *

(g) * * * Each such tariff filing must also be accompanied by data sufficient to make the API and PCI calculations required by §§ 61.46(b), 61.44(g), and 61.45(g), and, as necessary, to make the SBI calculations provided in §§ 61.47 (b) and (c).

13. Section 61.58 is amended by revising paragraphs (c)(1), (c)(5), and (c)(6) to read as follows:

§ 61.58 Notice Requirements.

* * * * *

(c) * * *

(1) For annual adjustments to the PCI, API, and SBI values under §§ 61.44, 61.46, and 61.47, respectively, dominant interexchange carrier tariff filings must be made on at least 45 days' notice. For annual adjustments to the PCI, API, and SBI values under §§ 61.45, 61.46, and 61.47, respectively, local exchange carrier tariff filing must be made on not less than 90 days' notice.

* * * * *

(5) Tariff filings involving a change in rate structure of a service included in a basket listed in § 61.42(a) or §61.42(d), or the introduction of a new service within the scope of § 61.42(g), must be made on at least 45 days' notice.

(6) The required notice for tariff filings involving services included in § 61.42(c) or § 61.42(f), or involving changes to tariff regulations, shall be that required in connection with such filing by dominant carriers that are not subject to price cap regulation.

* * * * *

PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

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

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 65.1 is revised to read as follows:

§ 65.1 Application of Part 65.

This part establishes procedures and methodologies for Commission prescription of interstate rates of return. This part shall apply to those interstate services and carriers as the Commission shall designate by order. This part shall not apply to dominant interexchange carriers subject to §§ 61.41 through 61.49, except as set forth in §§ 65.600(c), 65.701(c) and 65.703(g). Local exchange carriers subject to §§ 61.41 through 61.49 are exempt from the requirements of this part, with the following exceptions:

(a) Carriers that meet the requirements of § 65.200(b) shall be subject to the filing requirements of Subpart C of this part;

(b) Carriers subject to §§ 61.41 through 61.49 shall employ the rate of return value calculated for the LEC industry in complying with any applicable rules under Parts 36 and 69 that require a return component; and

(c) carriers subject to §§ 61.41 through 61.49 shall be subject to §§ 65.600(d), 65.701(c), and 65.703(g).

3. Section 65.600 is amended by revising paragraph (b) and adding new paragraph (d), to read as follows:

§ 65.600 Rate of return reports.

* * * * *

(b) Each local exchange carrier or group of affiliated carriers which is not subject to §§ 61.41 through 61.49 and which has filed individual access tariffs during the preceding enforcement period shall file with the Commission within three (3) months after the end of each calendar quarter, a quarterly rate of return monitoring report. Each report shall contain two parts. The first part shall contain rate of return information on a cumulative basis from the start of the enforcement period through the end of the quarter being reported. The second part shall contain similar information for the most recent quarter. The final quarterly monitoring report for the entire enforcement period shall be considered the enforcement period report. Reports shall be filed on the appropriate report form prescribed by the Commission (see § 1.795 of this chapter) and shall provide full and specific answers to all questions propounded and information requested in the currently effective report form. The number of copies to be filed shall be specified in the applicable report form. At least one copy of the report shall be signed on the signature page by the responsible officer. A copy of each report shall be retained in the principal office of the respondent and shall be filed in such manner as to be readily available for reference and inspection. Final adjustments to the enforcement period report shall be made by September 30 of the year following the enforcement period to ensure that any refunds can be properly reflected in an annual access filing. For local exchange carriers subject to §§ 61.41 through 61.49, final adjustments to the final enforcement period report covering the period ending June 30, 1990, shall be made no later than April 1, 1991.

* * * * *

(d) Each local exchange carrier or group of affiliated carriers subject to §§ 61.41 through 61.49 shall file with the Commission within three (3) months after the end of each calendar year a report of its total interstate access rate of return for that year. Such filings shall include a report of the total revenues, total expenses and taxes, operating income, and the rate base. A copy of each report shall be retained in the principal office of the respondent and shall be filed in such manner as to be readily available for reference and inspection.

4. Section 65.701 is amended by adding paragraph (d) as follows:

§ 65.701 Period of review.

* * * * *

(d) Notwithstanding other provisions in this subpart, the final period of review for any local exchange carrier subject to §§ 61.41 through 61.49 shall end on June 30, 1990.

5. Section 65.703 is amended by revising the first sentence of paragraph (g) and by adding new paragraph (h) to read as follows:

§ 65.703 Refunds

* * * * *

(g) For interexchange carriers subject to §§ 61.41 through 61.49, refund obligations incurred prior to the date their tariffs filed pursuant to §§ 61.41 through 61.49 take effect for the first time, shall be effectuated by an adjustment to the applicable Actual Price Index, Service Price Index, and Price Cap Index (as defined in § 61.3).

* * *

(h) For each local exchange carrier subject to §§ 61.41 through 61.49, refund obligations incurred prior to the end of its final period of review shall be effectuated by an adjustment to the applicable Actual Price Index, Service Band Index, and Price Cap Index (as defined in § 61.3). Carriers making an adjustment to effectuate any outstanding refund requirements from their final enforcement period shall make such adjustments no later than during the next scheduled annual price cap adjustment tariff filing following the submission of the final enforcement report. The adjustment shall be designed to complete the required refund within 12 months, following which the Actual Price Index, the Service Bank Index, or

the Price Cap Index shall be adjusted to remove the effect of the adjustment.

PART 69—ACCESS CHARGES

1. The authority citation for Part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403, unless otherwise noted.

2. Section 69.1 is amended by adding paragraph (c), as follows:

§ 69.1 Application of access charges.

* * * * *

(c) The following provisions of this part shall apply to telephone companies subject to price cap regulation only to the extent that they are necessary to develop the nationwide average carrier common line charge: §§ 69.3(f), 69.103(b), 69.105(b)(4), 69.105(b)(5), 69.106(b), 69.107(b), 69.107(c), 69.109(b), 69.111(c), 69.112(a), 69.112(b)(2), 69.112(b)(3), 69.112(d)(2), 69.112(d)(3), 69.114(b), 69.114(d), 69.205(e), 69.301 through 69.310, and 69.401 through 69.412.

3. Section 69.3 is amended by revising paragraphs (a) and (e)(4), and by adding a new paragraph (g) as follows:

§ 69.3 Filing of access service tariffs.

(a) Except as provided in paragraphs (f) and (g), a tariff for access service shall be filed with this Commission for an annual period. Such tariffs shall be filed on a minimum of 90 days' notice with a scheduled effective date of July 1. Such tariff filings shall be limited to rate level changes.

* * * * *

(e) * * *

(4) Except for charges subject to price cap regulation as that term is defined in § 61.3(v) of this chapter, any charge in such a tariff that is not an association charge must be computed to reflect the combined investment and expenses of all companies that participate in such a charge;

* * * * *

(g) Local exchange carriers subject to price cap regulation as that term is defined in § 61.3(v) of this chapter, shall file with this Commission a price cap tariff for access service for an annual period. Such tariffs shall be filed to provide a minimum of 90 days' notice with a scheduled effective date of July 1. Such tariff filings shall be limited to changes in the Price Cap Indexes, rate level changes (with corresponding adjustments to the affected Actual Price Indexes and Service Band Indexes), and the incorporation of new services into the affected indexes as required by § 61.49.

4. Section 69.101 is revised to read as follows:

§ 69.101 General.

Except as provided in § 69.1 and Subpart C of this part, charges for each access element shall be computed and assessed as provided in this subpart.

5. Section 69.105 is amended by adding paragraphs (b)(7) and (b)(8), as follows:

§ 69.105 Carrier Common Line.

* * * * *

(b) * * *

(7) The Carrier Common Line charges of telephone companies that are subject to price cap regulation as that term is defined in § 61.3(v) of this chapter, shall be computed at the level of Carrier Common Line access element aggregation selected by such telephone companies pursuant to § 69.3(e)(7). For each such Carrier Common Line access element tariff, the premium originating Carrier Common Line charge shall be one cent per minute. The premium terminating Carrier Common Line charge shall be set at a level that, when aggregated with the one cent originating charge, shall not cause the Actual Price Index for the common line basket to exceed the Price Cap Index for that basket.

(8) If the calculations described in paragraph (b)(7) of this section result in a per minute charge on premium terminating minutes that is less than one cent, the originating and terminating charges shall be equal, and set at a level that does not cause the API for the common line basket to exceed the PCI.

* * * * *

6. Section 69.111(a) is revised to read as follows:

§ 69.111 Common transport.

(a) A charge that is expressed in dollars and cents per access minute shall be assessed upon all interexchange carriers that use switching or transmission facilities that are apportioned to the Common Transport element for purposes of apportioning investment, or that are equivalent to those facilities for companies subject to price cap regulation as that term is defined in § 6.13(v) of this chapter.

* * * * *

7. Section 69.113(c) is revised to read as follows:

§ 69.113 Non-Premium Charges for MTS-WATS Equivalent Services.

* * * * *

(c) For telephone companies that are not price cap carriers, the non-premium charge for the Local Switching element shall be computed by multiplying a hypothetical premium charge for such element by .45. The hypothetical premium charge for such element shall be computed by dividing the annual revenue requirement for each element by the sum of the projected access minutes for such element for such period and a number that is computed by multiplying the projected non-premium minutes for such element for such period by .45. For telephone companies that are price cap carriers, the non-premium charge for the Local Switching element shall be computed by multiplying the premium charge for such element by .45. Through December 31, 1992, the non-premium charge shall be computed by multiplying the LS1 charge for such element by .45.

8. Section 69.114(a) is revised to read as follows:

§ 69.114 Special access.

(a) Appropriate subelements shall be established for the use of equipment or facilities that are assigned to the special Access element for purposes of apportioning net investment, or that are equivalent to such equipment or facilities for companies subject to price cap regulation as that term is defined in § 61.3(v) of this chapter.

* * * * *

9. Section 69.205(c) is revised to read as follows:

§ 69.205 Transitional premium charges.

* * * * *

(c) Except for telephone companies subject to price cap regulation, as that term is defined in § 61.3(v) of this chapter, the charge for an LS2 premium access minute shall be computed by dividing the premium local Switching revenue requirement by the sum of the projected LS2 premium access minutes and a number that is computed by multiplying the projected LS1 premium access minutes by the applicable LS1 transition factor. For all telephone companies, the charge for an LS1 premium access minute shall be computed by multiplying the charge for an LS2 premium minute by the applicable LS1 transition factor. For telephone companies that are not price cap carriers, the premium Local Switching revenue requirement shall be computed by subtracting the projected revenues from non-premium charges attributable to the Local Switching element from the revenue requirement for each element.

* * * * *

10. Section 69.301(a) is revised to read as follows:

§ 69.301 General.

(a) For telephone companies that are not subject to price cap regulation as that term is defined in § 61.3(v) of this chapter, for purposes of computing annual revenue requirements for access elements, net investment as defined in § 69.2(z) shall be apportioned among the interexchange category, the billing and collection category, and access elements as provided in this subpart. Expenses shall be apportioned as provided in Subpart E of this part. For telephone companies that are price cap carriers, for purposes of calculating annual revenue requirements for access elements, net investment shall be apportioned between common line and all other interstate services. Expenses shall also be apportioned between common line and all other interstate services.

* * * * *

11. Section 69.302(b) is amended by revising the first sentence to read as follows:

§ 69.302 Net investment.

* * * * *

(b) Except as provided in § 69.301(a), investment in Accounts 2002, 2003, and, to the extent inclusions are allowed by this Commission, Account 2005, shall be apportioned on the basis of total investment in Account 2001, Telecommunications Plant in Service. * * *

12. Section 69.303 is amended by revising paragraph (a) and the first sentence of paragraph (b) to read as follows:

§ 69.303 Information Origination/ Termination Equipment (IOT).

(a) Except as provided in § 69.301(a), investment in public telephones and appurtenances shall be assigned to the Common Line element, if capable of use with the services of more than interexchange carrier, or the Limited Pay Telephone element, if capable of use with the services of only one interexchange carrier.

(b) Except as provided in § 69.301(a), investment in all other IOT shall be apportioned between the Special Access and Common Line elements on the basis of the relative number of equivalent lines in use, as provided herein. * * *

13. Section 69.304 is amended by revising paragraph (b) and the first sentence of paragraph (c) to read as follows:

§ 69.304 Subscriber line cable and wire facilities.

* * * * *

(b) Except as provided in § 69.301(a), investment in interstate and foreign private lines and interstate WATS access lines shall be assigned to the Special Access element.

(c) Except as provided in § 69.301(a), investment in lines terminating in public telephones which may only access the services of one interexchange carrier (or partnership) shall be assigned to the Limited Pay Telephone element. * * *

14. Section 69.305 is amended by revising paragraphs (a) and (c), and the first sentence of paragraph (b) to read as follows:

§ 69.305 Carrier cable and wire facilities (C&WF).

(a) Except as provided in § 69.301(a), Carrier, C&WF that is not used for "origination" or "termination" as defined in § 69.2(bb) and § 69.2(cc) shall be assigned to the interexchange category.

(b) Except as provided in § 69.301(a), Carrier C&WF, other than WATS access lines, not assigned pursuant to paragraph (a) of this section that is used for interexchange services that use switching facilities for origination and termination that are also used for local exchange telephone service shall be apportioned between the Dedicated Transport and Common Transport elements. * * *

(c) Except as provided in § 69.301(a), all Carrier C&WF that is not apportioned pursuant to paragraphs (a) and (b) of this section shall be assigned to the Special Access element.

15. Section 69.306 is amended by revising paragraph (a), and the first sentences of paragraphs (b), (c), and (d) to read as follows:

§ 69.306 Central office equipment (COE).

(a) Except as provided in § 69.301(a), the Separations Manual categories shall be used for purposes of apportioning investment in such equipment except that any Central office equipment attributable to a Dedicated Transport subelement shall be assigned to the Dedicated Transport element.

(b) Except as provided in § 69.301(a), COE Category 1 (Operator Systems Equipment) shall be apportioned among the interexchange category and the access elements as follows: Category 1 that is used for intercept services shall be assigned to the Local Switching element. * * *

(c) Except as provided in § 69.301(a), COE Category 2 (Tandem Switching equipment) that is deemed to be exchange equipment for purposes of the Modification of Final Judgment in United States v. Western Electric Co. shall be assigned to the Common Tranport element. * * *

(d) Except as provided in § 69.301(a), COE Category 4 (Circuit Equipment) shall be apportioned among the interexchange category and the Common Line, Limited Pay Telephone, Dedicated Transport, Common Transport, and Special Access elements. * * *

* * * * *

16. Section 69.307 is revised to read as follows:

§ 69.307 General support facilities.

Except as provided in § 69.301(a), General Support Facilities investments shall be apportioned among the interexchange category, the billing and collection category, and Common Line, Limited Pay Telephone, Local Switching, Information, Dedicated Transport, Common Transport, and Special Access elements on the basis of Central Office Equipment, Information Origination/ Termination Equipment, and Cable and Wire Facilities excluding Category 1.3, combined.

17. Section 69.308 is revised to read as follows:

§ 69.308 Equal access equipment.

Except as provided in § 69.301(a), Equal Access Investment shall be assigned to the Local Switching element unless the telephone company chooses to implement a separate Equal Access element as provided in paragraph 69.4(d), in which case Equal Access Investment shall be assigned to the Equal Access element.

18. Section 69.309 is revised to read as follows:

§ 69.309 Other investment.

Except as provided in § 69.301(a), investment that is not apportioned pursuant to §§ 69.302 through 69.308 shall be apportioned among the interexchange category, the billing and collection category, and access elements in the same proportions as the combined investment that is apportioned pursuant to §§ 69.303 through 69.308.

19. Section 69.310 is revised to read as follows:

§ 69.310 Capital leases.

Except as provided in § 69.301(a), Capital Leases in Account 2680 shall be directly assigned to the appropriate interexchange category or access elements consistent with the treatment prescribed for similar plant costs or shall be apportioned in the same manner as Account 2001.

20. Section 69.401 is amended by revising paragraphs (b) through (g), and the introductory text of paragraph (a) to read as follows:

§ 69.401 Direct expenses.

(a) Except as provided in § 69.301(a), Plant Specific Operations Expenses in Accounts 6110 and 6120 shall be apportioned among the interexchange category, the billing and collection category and appropriate access elements on the following basis:

* * * * *

(b) Except as provided in § 69.301(a), Plant Specific Operations Expenses in accounts 6210, 6220, and 6230 shall be apportioned among the interexchange category and access elements on the basis of the apportionment of the total COE investment.

(c) Except as provided in § 69.301(a), Plant Specific Operations Expenses in Accounts 6310 and 6410 shall be assigned to the appropriate investment category and shall be apportioned among the interexchange category and access elements in the same proportions as the total associated investment.

(d) Except as provided in § 69.301(a), Plant Non Specific Operations Expenses in Accounts 6510 and 6530 shall be apportioned among the interexchange category, the billing and collection category, and access elements in the same proportions as the combined investment in COE, IOT, and C&WF apportioned to each element and category.

(e) Except as provided in § 69.301(a), Plant Non Specific Operations Expenses in Account 6540 shall be be assigned to the interexchange category.

(f) Except as provided in § 69.301(a), Plant Non Specific Operations Expenses in Account 6560 shall be apportioned among the interexchange category, the billing and collection category, and access elements in the same proportion as the associated investment.

(g) Except as provided in § 69.301(a), amortization of embedded customer premises wiring investment shall be deemed to be associated with § 69.303(b) IOT investment for purposes of the apportionment described in paragraph (c) of this section.

21. Section 69.402 is revised to read as follows:

§ 69.402 Operating taxes (Account 7200).

(a) Except as provided in § 69.301(a), federal income taxes, state and local income taxes, state and local gross receipts or gross earnings taxes that are collected in lieu of a corporate income tax shall be apportioned among the interexchange category, the billing and collection category and all access elements based on the approximate net taxable income on which the tax is levied (positive or negative) applicable to each element and category.

(b) Except as provided in § 69.301(a), all other operating taxes shall be apportioned among the interexchange category, the billing and collection category and all access elements in the same manner as the investment apportioned to each element and category pursuant to § 69.309 Other Investment.

22. Section 69.403 is revised to read as follows:

§ 69.403 Marketing expense (Account 6610).

Except as provided in § 69.301(a), Marketing expense shall be apportioned among the interexchange category and all access elements in the same proportions as the combined investment that is apportioned pursuant to § 69.309.

23. Section 69.404 is amended by revising the first sentence to read as follows:

§ 69.404 Telephone operator services expenses in Account 6620.

Except as provided in § 69.301(a), telephone operator services expenses shall be apportioned among the interexchange category, and the Local Switching and Information elements based on the relative number of weighted standard work seconds. * * *

24. Section 69.405 is revised to read as follows:

§ 69.405 Published directory expenses in Account 6620.

Except as provided in § 69.301(a), Published Directory expenses shall be assigned to the Information element.

25. Section 69.406 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 69.406 Local business office expenses in Account 6620.

(a) Except as provided in § 69.301(a), Local business office expenses shall be assigned as follows: * * *

26. Section 69.407 is amended by revising paragraph (c) and the first sentence of paragraph (b) to read as follows:

§ 69.407 Revenue Accounting expenses in Account 6620.

* * * * *

(b) Except as provided in § 69.301(a), Revenue Accounting Expenses that are attributable to carrier's carrier access billing and collection expense shall be apportioned among all carrier's carrier access elements except the Common Line element. * * *

(c) Except as provided in § 69.301(a), all other Revenue Accounting Expenses shall be assigned to the billing and collection category.

27. Section 69.408 is revised to read as follows:

§ 69.408 All other customer services expense in Account 6620.

Except as provided in § 69.301(a), all other customer services expenses shall be apportioned among the interexchange category, the billing and collection catgegory, and all access elements based on the combined expenses in §§ 69.403 and 69.407.

28. Section 69.409 is revised to read as follows:

§ 69.409 Corporate operations expenses (Accounts 6710 and 6720).

Except as provided in § 69.301(a), all corporate operations expenses shall be apportioned among the interexchange category, the billing and collection category and all access elements in accordance with the Big 3 Expense Factor as defined in § 69.2(f).

29. Section 69.410 is revised to read as follows:

§ 69.410 Equal access expenses.

Except as provided in § 69.301(a), Equal Access expenses shall be assigned to the Local Switching element unless the telephone company chooses to implement a separate Equal Access element as provided in paragraph 69.4(d), in which case Equal Access expenses shall be assigned to the Equal Access element.

30. Section 69.411 is revised to read as follows:

§ 69.411 Other expenses.

Except as provided in §§ 69.301(a), 69.412, 69.413, and 69.414, expenses that are not apportioned pursuant to §§ 69.401 through 69.410 shall be apportioned among the interexchange category and all access elements in the same manner as § 69.309 Other investment.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-10523 Filed 5-5-89; 8:45 am]

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Monday
May 8, 1989

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of the Charlotte Terminal Control Area and Revocation of the Charlotte/Douglas International Airport Airport Radar Service Area; North Carolina; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AWA-1]

RIN 2120-AD08

Proposed Establishment of the Charlotte Terminal Control Area and Revocation of the Charlotte/Douglas International Airport Airport Radar Service Area; North Carolina

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Terminal Control Area (TCA) at the Charlotte/Douglas International Airport, NC. The TCA would consist of airspace from the surface or higher within a 30-mile radius of Charlotte/Douglas International Airport to and including 10,000 feet above mean sea level (MSL). Establishment of this TCA would impose certain operating rules and pilot/equipment requirements, including requirements for an operable two-way radio, a 4096 transponder with automatic altitude-reporting equipment, and an operable very high frequency omni-directional radio range (VOR) or tactical air navigational aid (TACAN) receiver; and restrictions on student pilot operations. This action is intended to increase the capability of the air traffic control (ATC) system to separate all aircraft in the terminal airspace around the Charlotte/Douglas International Airport and to substantially increase safety while accommodating the legitimate concerns of airspace users. Charlotte/Douglas International Airport is currently served by an Airport Radar Service Area (ARSA), which would be rescinded concurrent with the establishment of this TCA.

DATES: Comments must be received on or before July 7, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-10], Airspace Docket No. 89-AWA-1, 800 Independence Avenue, SW., Washington, DC 20591.

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

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

FOR FURTHER INFORMATION CONTACT: Alton Scott, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AWA-1." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published Federal Aviation Regulation (FAR) Amendment 91-78 (35 FR 7782) which enabled the establishment of TCA's. On October 14, 1988, the FAA published a final rule which revised the classification and pilot/equipment requirements for conducting operations in a TCA (53 FR 40318). Specifically, the rule: (a) Establishes a single-class TCA; (b) requires the pilot-in-command of a civil aircraft operating within a TCA to hold at least a private pilot certificate, except for a student pilot who has received certain documented training; and (c) eliminates the helicopter exception from the minimum navigational equipment requirement.

The FAA published a final rule on June 21, 1988, effective in part on July 1, 1989, which requires Mode C equipment when operating within 30 miles of any designated TCA primary airport from the surface to 10,000 feet MSL, except for operations by certain aircraft types specifically excluded (53 FR 23356).

On February 3, 1987, the FAA published a final rule which established requirements pertaining to the use, installation, inspection, and testing of Air Traffic Control Radar Beacon System (ATCRBS) and Mode S transponders in U.S.-registered civil aircraft (53 FR 3380). The rule requires a transponder for operation in each TCA.

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding an airport with high density air traffic by providing an area in which all aircraft will be subject to certain operation rules and equipment requirements.

The density of traffic and the type of operation being conducted in the airspace surrounding major terminals increase the probability of midair collisions. An extensive study in 1970 found that the majority of midair collisions occurred between a general aviation (GA) aircraft and either an air carrier, military or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under visual flight rules (VFR) and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC

with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

To date, the FAA has established a total of 23 TCA's. The FAA is proposing to take action to modify or implement the application of these proven control techniques to more airports to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

On August 22, 1987, the Secretary of Transportation announced nine locations for which the FAA would issue notices of proposed rulemaking (NPRM's) proposing establishment of TCA's. The nine candidates cited qualify for TCA status by meeting the criteria published in FAA Handbook 7400.2, "Procedures for Handling Airspace Matters." The criteria for establishing a TCA are based on factors which include the number of aircraft and people using that airspace, the traffic density, and the type or nature of operations being conducted. Accordingly, guidelines have been established to identify TCA locations based on two basic elements—the number of enplaned passengers and the number of aircraft operations.

Pre-NPRM Public Input

Airspace Meetings

Pre-NPRM airspace meetings were held on July 12 and 13, 1988, to allow local aviation interests and airspace users an opportunity to present input on the design of the proposed Charlotte TCA. During the course of these meetings there were presentations from Aircraft Owners and Pilots Association (AOPA), three local user groups (Bradford Airport and Aerobatic Pilots, Bermuda High Soaring School, and Lenoir Aviation Club), private pilots, and concerned citizens. The FAA also accepted written comments as well.

At the meetings, AOPA supported the idea of forming a TCA Ad Hoc Committee to help in the development of a TCA design for Charlotte, which, they stressed, would help ensure the use of VFR landmarks in its development. (The committee was formed; their input will be discussed later.) AOPA further discussed the advantages of a TCA and the VFR corridor concept. Additionally, considerable discussion was centered on the Mode C rule (Notice No. 88–2).

Bradford Airport and Aerobatic Pilots' representative expressed a desire for a low altitude waiver for aerobatic activity around Bradford Field.

Bermuda High Soaring School requested a cutout within a 5-mile radius of the Chester Airport. The Soaring School also requested the floor of the TCA in that area be raised from 6,000 feet MSL to 8,000 feet MSL for soaring activities.

The TCA Ad Hoc Committee comprises a cross section of the aviation community with technical assistance and support supplied by Charlotte Tower personnel. The committee presented its design of the proposed Charlotte TCA to Charlotte Tower. Data supplied by Piedmont Airlines simulators determined an additional 5 miles, from 20 to 25 miles, would be needed to protect B–727's during climbout in hot weather. The committee stated that the pre-NPRM design of the TCA would expose VFR pilots operating below the 3,000 foot shelf to antennas on both sides of the shelf, and would need to be modified to raise the floor of the 20–25 mile shelf from 6,000 feet MSL to 8,000 feet MSL to allow more operating airspace for glider operation at Chester, SC.

The majority of private pilots' comments supported the TCA concept but were opposed to the Mode C rule (Notice No. 88–2).

The FAA evaluated all the comments and designs received on this proposal. A common recommendation was to raise the floor of the TCA in the 20–25 mile shelf from 6,000 feet MSL to 8,000 feet MSL for soaring and glider activity. The 20–25 mile shelf east and west of Charlotte was raised to 8,000 feet MSL. The floor remained 6,000 feet MSL south and north of Charlotte due to the need to contain aircraft executing simultaneous approaches.

Another issue mentioned was raising the floor between the 11–20 mile shelf northeast of the airport. The floor was raised from 3,000 feet MSL to 3,600 feet MSL to allow additional space for obstacle clearance.

A cutout was requested for Chester Airport by user groups. A cutout was provided for the Chester Airport in the 20–25 mile shelf due to its extensive glider activity.

A low altitude waiver was requested around Bradford Field by aerobatic pilots. This concern will be satisfied with a local Letter of Agreement.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a TCA at Charlotte/Douglas International Airport, NC. Annual enplaned passengers at Charlotte/Douglas International Airport almost double the 3.5 million necessary for consideration as a TCA candidate. The total airport operation count at Charlotte/Douglas International Airport is 363,334 of which 65 percent is air carrier. This exceeds the criteria necessary for establishment of a TCA. Additionally, within the proposed boundaries, more than 700,000 flight operations are conducted annually. Consequently, the FAA has determined that establishment of a TCA at Charlotte/Douglas International Airport is in the interest of flight safety and will result in a greater degree of protection for the greatest number of people during flight in that terminal area. Charlotte/Douglas International Airport is currently served by an ARSA, which would be rescinded concurrent with the establishment of this TCA. The proposed location is depicted on the attached chart.

Section 91.90 of Part 91 of the Federal Aviation Regulations (14 CFR Part 91) defines TCA's and prescribes operating rules for aircraft in airspace designated as a TCA. The TCA rule provides, in part, that prior to entering the TCA, any aircraft arriving at any airport within the TCA or flying through a TCA must: (1) Obtain appropriate authorization from ATC; (2) unless otherwise authorized by ATC, all large turbine engine-powered aircraft operating to or from a primary airport shall operate above the designated floors of the TCA; (3) comply with any procedures established by ATC for such operations as pilot training at an airport within a TCA; (4) hold at least a private pilot certificate; (5) meet the requirements of § 61.95 if the aircraft is operated by a student pilot; (6) have an operable VOR or TACAN receiver; (7) have an operable two-way radio capable of communications with ATC on appropriate frequencies for that TCA; and (8) be equipped with the applicable operating transponder and automatic altitude reporting equipment specified in paragraph (a) of § 91.24, except as provided in paragraph (d) of that section. Any aircraft departing from an airport located inside the TCA is required to receive a clearance from ATC prior to takeoff.

All aircraft operating within a TCA are required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize deviations from any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in a TCA may only be conducted under the terms of an ATC authorization.

Definitions, operating requirements, and specific airspace designations applicable to TCA's may be found in §§ 72.12, 71.401, and 71.403 of Part 71 (14 CFR Part 71) and §§ 91.1 and 91.90 of Part 91 (14 CFR Part 91).

The standard configuration of a TCA consists of 3 concentric circles centered on the primary airport extending to 10, 20, and 30 miles respectively. The vertical limits of the TCA are 12,500 feet above MSL, with the floor established at the surface in the inner area and at levels appropriate to containment of operations in the outer areas. Variations of these criteria may be authorized contingent upon terrain, adjacent regulatory airspace, and factors unique to the terminal area. The airspace configuration contained herein is the result of an extensive staff study conducted by the local FAA authority after obtaining public input from informal airspace meetings and coodinating with the FAA regional office. The FAA has determined the following proposed TCA airspace configuration is consistent with TCA objectives and allows consideration of terminal area flight operations and terrain:

1. That airspace extending upward from the surface to and including 10,000 feet MSL within a 11-mile radius of the primary airport, excluding that airspace within a 2-mile radius of the Gastonia Airport. This airspace is necessary to contain large turbine-powered aircraft within the confines of the TCA while operating to and from the primary airport and allow for ingress/egress to Gastonia Airport without affecting the primary airport.

2. That airspace extending upward from 3,600 feet MSL to and including 10,000 feet MSL between the 11-mile radius and the 20-mile radius of the primary airport and that airspace within a 2-mile radius of the Gastonia Airport within the 11-mile radius of the primary airport. This airspace is needed to provide sufficient room for vectoring aircraft arriving and departing Charlotte/Douglas International Airport.

3. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL between the 20- and 25-mile radius of the primary airport, excluding that airspace from the Charlotte/Douglas VOR 053° radial clockwise to the Charlotte/Douglas VOR 120° radial, and excluding that airspace from the Charlotte/Douglas VOR 242° radial clockwise to the Charlotte/Douglas VOR 293° radial. This airspace is needed to allow sufficient airspace for departures and inbound mixing of aircraft.

4. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL between the 20- and 25-mile radius of the Charlotte/Douglas VOR, excluding that airspace within Paragraph 3. This airspace configuration would provide an area to contain aircraft during climb and descent profiles to transition between the terminal and en route structure.

5. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL between the 25- and 30-mile radius of the primary airport, excluding that airspace from the Charlotte/Douglas VOR 053° radial clockwise to the Charlotte/Douglas VOR 120° radial, excluding that airspace from the Charlotte/Douglas VOR 147° radial clockwise to the Charlotte/Douglas VOR 218° radial, excluding that airspace from the Charlotte/Douglas VOR 242° radial clockwise to the Charlotte/Douglas VOR 293° radial, excluding that airspace northwest of a line from the Charlotte/Douglas 313° radial to the Charlotte/Douglas 320° radial 28-mile fix, and excluding that airspace from the Charlotte/Douglas VOR 320° radial clockwise to the Charlotte/Douglas VOR 025° radial. This configuration would provide an area to contain aircraft during descent profile while allowing sufficient room for VFR operations.

The preceding general summary of the proposed TCA airspace configuration identifies that airspace which is necessary to contain large turbojet aircraft operations at Charlotte/Douglas International Airport. ATC will provide control and separation of all flights within the proposed airspace boundaries. Furthermore, ATC authorization is requisite to aircraft operations within that airspace. Establishing of this TCA will greatly enhance the safety of flight within the congested airspace overlying the Charlotte metropolitan area by facilitating the separation of controlled and uncontrolled flight operations. Section 71.403 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

Regulatory Evaluation Summary

The FAA is required to assess the benefits and costs of each proposed rulemaking action to assure that the public is not burdened with rules having costs which outweigh their benefits. This section contains an analysis which quantifies, to the maximum possible extent, the costs and benefits of establishing a TCA at Charlotte, NC. This regulatory evaluation summary should be read in conjunction with the NPRM since it provides additional background information.

This proposal is intended to lower the likelihood of midair collisions by increasing the capability of the ATC system to separate all aircraft in terminal airspace around the Charlotte/Douglas International Airport. This action was prompted by data indicating that a high percentage of near midair collisions reported to the FAA in terminal areas involve VOR aircraft that are not required to be under the control of ATC. Thus, the overall objective of this proposal is to substantially increase safety while accommodating the legitimate concerns of airspace users.

Costs-Benefits Analysis

a. Costs

The FAA estimates the total cost expected to accrue from implementation of the proposed rule to be $6.1 million ($3.4 millon, discounted) in 1987 dollars. Approximately $2.7 million (discounted) or 80 percent of the total estimated costs would be incurred by the FAA primarily for training and additional personnel. The remaining costs would be incurred by small GA aircraft operators who would be required under this proposal to equip their aircraft with Mode C transponders sooner than they would have for the ARSA under the previous FAA rule: "Transponder With Automatic Altitude Reporting Capability Requirement (Mode C)" (53 FR 23356, June 21, 1988). This rule became effective June 21, 1988, and will be implemented in two phases. Phase I, to begin in July 1989, will require a transponder with Mode C at and above 10,000 feet MSL and in the vicinity (30 nautical miles) of TCA primary airports. There are currently 23 TCA's.

Phase II will implement a transponder with Mode C requirement in the airspace in the vicinity (10 nautical miles) of ARSA primary airports. Phase II becomes effective on December 30, 1990, and will affect over 135 ARSA's. Also in Phase II, a transponder with Mode C will be required at other designated airports for which either a TCA or ARSA has not been adopted. Consequently, most aircraft without Mode C transponders would need ATC authorization to fly within 30 nautical miles of a primary TCA airport, within 10 nautical miles of a primary ARSA airport, or within controlled airspace of other designated airports that would also require Mode C transponders.

Thus, this evaluation, as well as the Mode C rule, assumes that all aircraft without Mode C would acquire such equipment rather than circumnavigate

the subject airport. The only aircraft without this equipment would be nonelectrical and antique types. Costs to these types of aircraft operators have already been accounted for by the Mode C rule. As a result, aircraft operators impacted by this proposal would only incur the opportunity cost of capital by requiring them to acquire, install, and maintain Mode C transponders one and a half years earlier than they would be required to do so in accordance with Phase II of the Mode C rule.

b. Benefits

This proposed rule is expected to generate potential benefits primarily in the form of enhanced safety to the aviation community and the flying public. Such safety, for instance, would take the form of reduced casualty losses (namely, aviation fatalities and property damage) resulting from a lowered likelihood of midair collisions because of increased positive control in airspace to be established by the TCA. In addition, potential benefits are expected to accrue in the form of improved operational efficiency on the part of FAA air traffic controllers.

Ordinarily, the potential benefits of this proposal would be the reduction in the probability of midair collisions resulting from converting the existing ARSA to a TCA. However, because of the recent Mode C rule (and to some extent, the rule for Traffic Alert and Collision Avoidance (TCAS), 54 FR 940, January 10, 1989), the number of potential midair collisions avoided by this proposal is expected to be significantly lower. Nevertheless, this proposal is still expected to accrue benefits in terms of enhanced safety, though on a much smaller scale.

This point can be illustrated with the use of statistical models based on actual and projected critical near midair collision (NMAC) incidents in lieu of actual midair collisions. (A critical NMAC is an event involving two aircraft coming within 100 feet of each other; the fact that they do not collide is not due to an action on the part of either pilot; but, rather, it is due purely to chance.) Since midair collisions involving Part 135 aircraft and especially Part 121 aircraft are rare, the use of critical NMAC's will serve to illustrate, to some degree, the potential improvements in aviation safety of implementing this proposal.

Simple regression analyses were prepared for this evaluation which focused on critical NMAC's and aircraft operations in the 23 existing TCA's and in a random sample of 23 of the existing 79 ARSA's (as of 1986 and 1987). The results of these analyses indicated that TCA's have approximately 68 percent fewer critical NMAC's annually, on average, than ARSA's. While there is no demonstrated relationship between NMAC's and actual midair collisions, the lower NMAC rate does indicate a more efficient separation of aircraft in congested airspace.

As the result of these findings, if the existing Charlotte ARSA were to remain unchanged (and the recent Mode C and TCAS rules were not in effect), the Charlotte Terminal Area would be expected to experience approximately 2.4 critical NMAC's annually (or 37 critical NMAC's over the next 15 years). If, however, the ARSA were to become a TCA, this figure would reduce to approximately 0.7 critical NMAC's annually (or 12 critical NMAC's over the next 15 years). Thus, over the next 15 years, this proposal could result in the reduction of approximately 25 critical NMAC's. However, it is important to note that many, if not most, of these potential critical NMAC's would never materialize as predicted primarily because of the "Mode C" rule as it is applied to the Charlotte ARSA and, to some extent, the "TCAS" rule.

According to Phase II of the Mode C rule, all aircraft operating within 10 nautical miles (except for flights under the outer 5-mile "shelf") of an ARSA primary airport must be equipped with a Mode C Transponder. Phase I of the Mode C rule requires, as of July 1989, aircraft operating within 30 nautical miles of a TCA to be equipped with a Mode C transponder. These requirements are expected to significantly reduce the risk of midair collisions in ARSA's and TCA's. For this reason, the primary safety benefit of this proposal to create a TCA in 1989 at Charlotte is that the safety enhancements of the Mode C and TCAS requirements will occur one and a half years earlier than they otherwise would be expected without this proposal. A second safety benefit would be in terms of the lowered likelihood of midair collisions as the result of expanding the lateral boundaries of positive ATC by 20 nautical miles through replacing the Charlotte ARSA with a TCA.

Thus, the safety benefits of the establishment of a new TCA, while positive, would be less than would otherwise accrue in the absence of the Mode C and TCAS rules. Since this proposal essentially extends the effects of the Mode C rule, virtually all of its potential safety benefits are assumed to be part of that rule. Such benefits cannot be estimated separately and, therefore, are considered to be inextricably linked primarily to the Mode C rule. Over a 15-year period, the Mode C rule is expected to generate total potential safety benefits of $344 million (discounted, in 1987 dollars). (The Mode C rule benefits estimate of $310 million for 10 years has been adjusted to a 15 year period for the purpose of comparability with the TCAS rule and other FAA rulemaking actions.) It is important to note that part of these safety benefits would be attributed to the TCAS rule. Thus, the potential safety benefits of this proposal, and the Mode C and TCAS rules are considered to be inextricably linked.

Another potential benefit of the proposed rule would be improved operational efficiency on the part of FAA air traffic controllers. Under the proposed rule, Mode C transponder requirements would ease controller workload per aircraft being controlled because of the reduction in radio communications. The proposed rule would also make potential traffic conflicts more readily apparent to the controller. As the result of improved operational efficiency, the impact of the controller workload increased by separation requirements in the proposed TCA would be somewhat offset because of the controller's ability to adjust the volume of VFR traffic in any given portion of the TCA.

Improved operational efficiency should generate other types of benefits in the form of significant reductions in the number of VFR aircraft requests denied and VFR aircraft delayed during busy periods. As the result of converting the existing Charlotte ARSA to a TCA, the improved operational efficiency would accrue because of the availability of additional air traffic controllers. If the Charlotte ARSA were to remain intact, such air traffic personnel would not be required. Therefore, potential benefits of improved operational efficiency, which are not considered to be quantifiable in monetary terms in this evaluation, would be attributed to this proposal rather than either the Mode C rule or TCAS rule.

c. Comparison of Benefits and Costs

The total cost that would accrue from implementation of the proposed rule is estimated to be $3.4 million (discounted, in 1987 dollars). Approximately, 20 percent of this total cost estimate would fall on those GA aircraft operators without Mode C transponders in the form of opportunity costs by requiring them to acquire such avionics equipment, including maintenance, one and a half years sooner than they otherwise would under the status quo. The typical individual GA aircraft operator impacted would incur an estimated one-time cost ranging from $126 to $280 (discounted) under the proposed rule. (As the result of the

opportunity cost concept, the derivation of these cost estimates are too complex to discuss briefly. Therefore, the reader should refer to the detailed regulatory evaluation, which is contained in the docket, for a full explanation of the method by which these costs estimates were made.)

The potential benefits of the proposed rule would be the lowered likelihood of midair collisions from the conversion of the existing ARSA to a TCA. The number of midair collisions avoided and their respective monetary values annot be estimated for this proposal independent of the Mode C and TCAS rules, but the FAA believes the risk would be substantially reduced. An FAA analysis prepared for this evaluation, however, has shown that critical near midair collisions occur approximately two-thirds less frequently in a TCA than within an ARSA. The FAA believes that even after the aviation community complies with the Mode C and TCAS rules, locations converting from ARSA's to TCA's would continue to experience reduced critical NMAC's. In addition, the proposed rule would generate improved operational efficiency benefits on the part of FAA air traffic controllers, though they are not considered to be quantifiable in monetary terms.

Clearly, in view of the cost of compliance relative to the significant reduction in the likelihood of midair collisions as well as improved operational efficiency in the Charlotte Terminal Area, the FAA firmly believes the proposed rule is cost-beneficial.

The Regulatory Evaluation that has been placed in the docket contains additional detailed information related to the costs and benefits that are expected to accrue from the implementation of this NPRM.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities which could be potentially affected by the implementation of this proposed rule are unscheduled operators of aircraft for hire who own nine or fewer aircraft.

Virtually all of the aircraft operators impacted by this proposed rule would be those who acquire Mode C transponder capability. The FAA believes that all unscheduled aircraft operators (namely, air taxi operators) potentially impacted by this proposed rule already have Mode C transponders due to the fact that such operators fly regularly in or near airports where radar approach control service has been established. Even if some of these operators were to acquire, install, and maintain Mode C transponders, the cost would not have a significant economic impact on a substantial number of them. The annual FAA threshold for significant economic impact is $3,700 (1987 dollars) for a small entity. According to FAA Order 2100.14A (Regulatory Flexibility Criteria and Guidance), the definition of a small entity, in terms of an air taxi operator, is one with nine aircraft owned, but not necessarily operated.

If we were to assume that a particular aircraft operator had nine aircraft without transponders, then the one-time cost per aircraft could be approximately $243. This figure represents the annualized cost for each impacted aircraft. The total cost per small entity would amount to an estimated $2,187. Thus, the annual worst case cost for a small entity would fall far below the FAA's annual threshold of $3,700. Therefore, the FAA believes this proposed rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The proposed rule would neither have an effect on the sale of foreign aviation products or services in the United States, nor would it have an effect on the sale of U.S. products or services in foreign countries. This is because the proposed rule would only potentially impact small GA aircraft operators without Mode C, and not aircraft manufacturers. The average cost of acquiring Mode C capability is estimated to range from $900 (to upgrade from a Mode A transponder) to $2,000 (to acquire a Mode C transponder without having a Mode A transponder). The cost of acquiring Mode C capability is not considered to be high enough to discourage potential buyers of small GA airplanes.

Federalism Implications

This regulation would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation is not a "major rule" under Executive Order 12291. This rulemaking is considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas and Airport radar service areas.

The Proposed Amendment

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

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

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

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

§ 71.403 [Amended]

2. Section 71.403 is amended as follows:

Charlotte, NC [New]

Primary Airport

Charolotte/Douglas International Air (lat. 35°12'52"N., long. 80°56'37" W. Charlotte/Douglas VOR (lat. 35°11'25" N., long. 80°57'07" W.)

Boundaries.

Area A. That airspace extending upward from the surface to an including 10,000 feet MSL within an 11-mile radius of the Charlotte/Douglas VOR, excluding that airspace within a 2-mile radius of the Gastonia Municipal Airport (lat. 35°12'01" N., long. 81°09'04" W.).

Area B. That airspace extending upward from 3,600 feet MSL to and including 10,000 feet MSL between the 11- and 20-mile radius of the Charlotte/Douglas VOR, and that airspace within a 2-mile radius of the Gastonia Municipal Airport within the 11-mile radius of the Charlotte/Douglas VOR.

Area C. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL between the 20- and 25-mile radius of the Charlotte/Douglas VOR, excluding that airspace from the Charlotte/Douglas VOR 053° radial clockwise to the Charlotte/Douglas VOR 120° radial, and excluding that airspace from the Charlotte/Douglas VOR

242° radial clockwise to the Charlotte/Douglas VOR 293° radial.

Area D. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL between the 20- and 25-mile radius of the Charlotte/Douglas VOR, excluding that airspace contained in Area C.

Area E. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL between the 25- and 30-mile radius of the Charlotte/Douglas VOR, excluding that airspace from the Charlotte/Douglas VOR 053° radial clockwise to the Charlotte/Douglas VOR 120° radial, excluding that airspace from the Charlotte/Douglas VOR 147° radial clockwise to the Charlotte/Douglas VOR 218° radial, excluding that airspace from the Charlotte/Douglas VOR 242° radial clockwise to the Charlotte/Douglas VOR 293° radial, excluding that airspace northwest of a line from the Charlotte/Douglas 313° radial 30-mile fix to the Charlotte/Douglas 320° radial 28-mile fix, and excluding that airspace from the Charlotte/Douglas VOR 320° radial clockwise to the Charlotte/Douglas VOR 025° radial.

§ 71.501 [Amended]

3. Section 71.501 is amended as follows:

Charlotte/Douglas International Airport, NC [Removed]

Issued in Washington, DC., on May 3, 1989

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

PROPOSED CHARLOTTE TCA

[FR Doc. 89-11018 Filed 5-3-89; 4:54 pm]

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H.J. Res. 124/Pub. L. 101–24

To recognize the seventy-fifth anniversary of Smith-Lever Act of May 8, 1914, and its role in establishing our Nation's system of State Cooperative Extension Services. (May 3, 1989; 103 Stat. 52; 1 page) Price: $1.00

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[2] No amendments to this volume were promulgated during the period Jan.1, 1988 to Dec.31, 1988. The CFR volume issued January 1, 1988, should be retained.

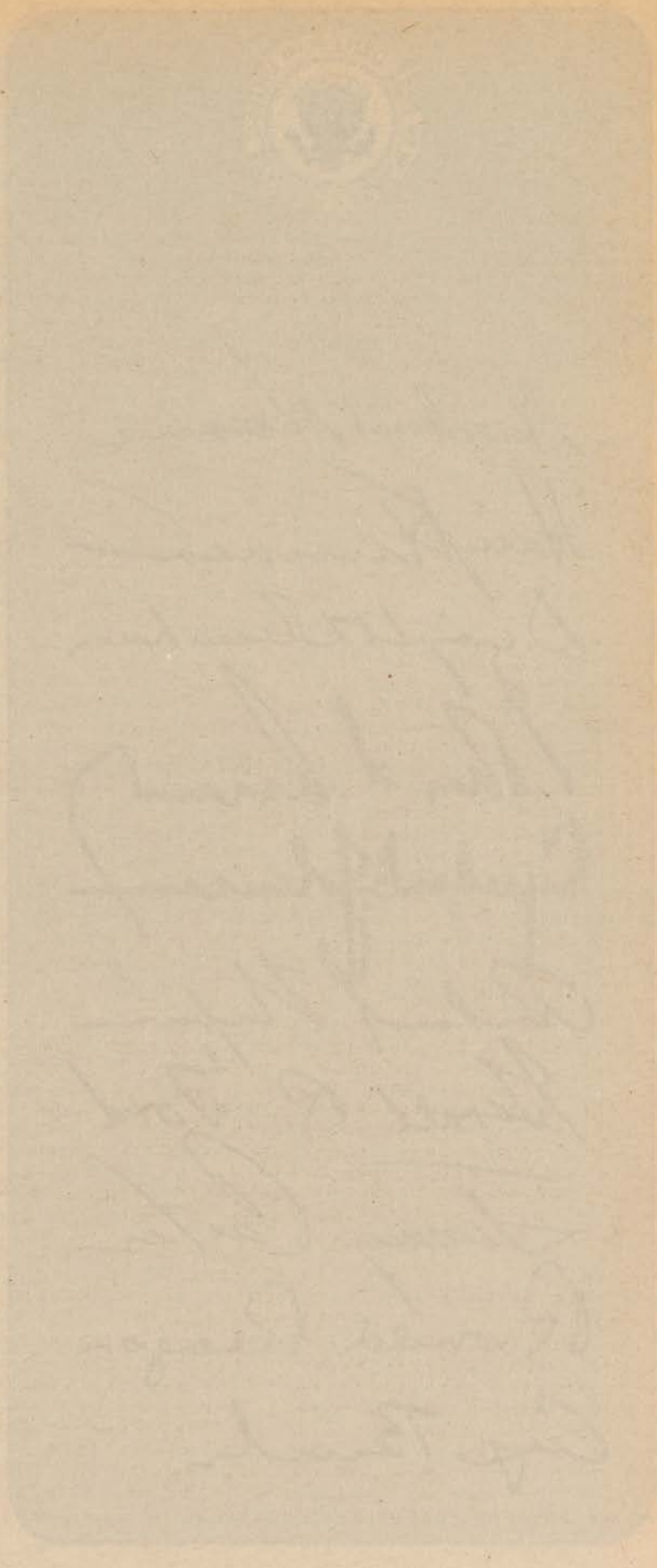
[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

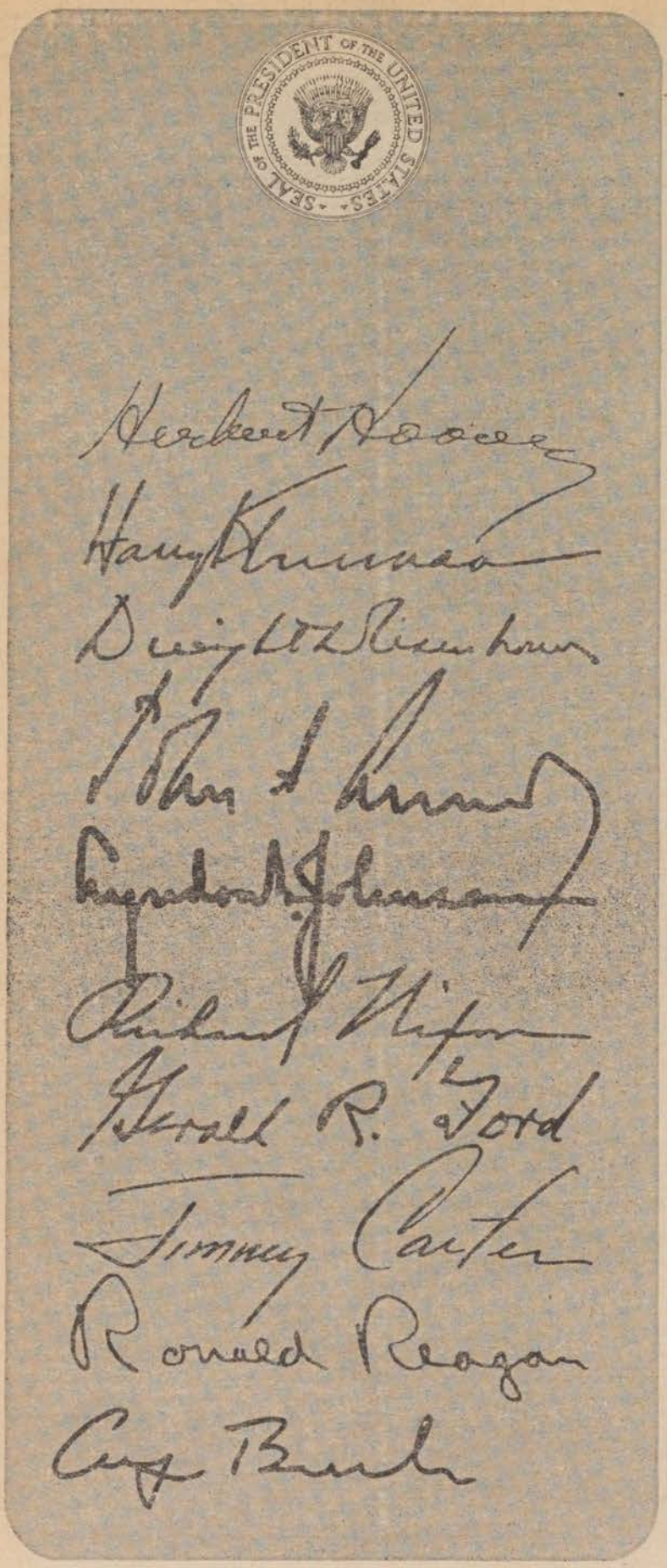
[4] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.





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