Federal Register

5–9–02 Thursday
Vol. 67 No. 90 May 9, 2002

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

Federal Register

5–9–02 Thursday
Vol. 67 No. 90 May 9, 2002
Pages 31105–31710

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 67 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–523–5243**
Assistance with Federal agency subscriptions	**202–523–5243**

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register

Vol. 67, No. 90

Thursday, May 9, 2002

Agency for International Development
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 31177

Agency for Toxic Substances and Disease Registry
NOTICES
Hazardous substances releases and facilities:
Public health assessments and effects; list, 31308

Agriculture Department
See Commodity Credit Corporation
See Food Safety and Inspection Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
See Rural Housing Service

Antitrust Division
NOTICES
Antitrust Procedures and Penalty Act (Tunney Act):
United States v. Microsoft Corp.—
Revised proposed final judgment; public comments; addendum, 31373–31380

Army Department
See Engineers Corps

Census Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 31179–31180

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Asthma addressed from public health perspective; State asthma plans; implementation, 31309–31312
Attenuated measles vaccine administered as single intranasal dose to healthy adults; safety, tolerability, immunogenicity, and shedding, 31312–31315
Human immunodeficiency virus (HIV)—
Cote d'Ivoire; HIV/AIDS care services expansion, 31315–31317
Effective HIV prevention behavioral interventions; technology translation and transfer, 31319–31323
Zimbabwe; municipal health departments for innovative programmatic models development for HIV/AIDS prevention and care services, 31317–31319
Multifaceted fall prevention intervention strategies among community-dwelling older adults; research study to assess, 31327–31331
Multi-Level Parent Training Effectiveness Trial Program, 31323–31326
National Centers for Injury Prevention and Control—
Targeted Injury Intervention Programs, 31331–31334
Parenting Program Attrition and Compliance Efficacy Trial, 31334–31337
Thalassemia; complications prevention, 31337–31339
Unintentional and violence-related injury prevention, and injury-related acute care, disability, and rehabilitation-related prevention research, 31340–31344
Violence-Related Injury Prevention Research Program, 31344–31348
Meetings:
Antimicrobial Resistance Interagency Task Force; public health action plan **[Editorial Note:** This document printed in the May 8, 2002, **Federal Register** on pages 30931-30932, but was erroneously carried under the heading **"Health and Human Services Department" in the Table of Contents.]**

Centers for Medicare & Medicaid Services
PROPOSED RULES
Medicare:
Hospital inpatient prospective payment systems and 2003 FY rates, 31403–31689

Coast Guard
RULES
Ports and waterways safety:
Portsmouth Harbor, NH; safety and security zones **[Editorial Note:** This document printed in the May 8, 2002, Federal Register on pages 30809-30811, but was erroneously carried under the heading " **Federal Aviation Administration"** in the Table of Contents.]
St Croix, U.S. Virgin Islands; security zones, 31128–31129

Commerce Department
See Census Bureau
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Credit Corporation
PROPOSED RULES
Loan and purchase programs:
Non-recourse cotton loan and loan deficiency payment programs, upland cotton first handler marketing certificate program, and seed cotton loan program, 31151–31157

Consumer Product Safety Commission
PROPOSED RULES
Federal Hazardous Substances Act:
Baby walkers; rulemaking terminated, 31165–31166

Defense Department
See Engineers Corps
RULES
Freedom of Information Act; implementation, 31127–31128
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 31281
Meetings:
Electron Devices Advisory Group, 31281–31282
Science Board, 31282–31283 31283
Threat Reduction Advisory Committee, 31283

Privacy Act:
Systems of records
National Reconnaissance Office, 31283–31285

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Special education and rehabilitative services—
Capacity Building for Traditionally Underserved Populations Program, 31699–31703

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Heat treating, forging, welding, powder metals, and advanced ceramics; energy consumption and environmental impacts reduction, etc., 31286

Energy Efficiency and Renewable Energy Office
NOTICES
Meetings:
State Energy Advisory Board, 31286–31287

Engineers Corps
RULES
Permits for discharges of dredged or fill material into U.S. waters:
Fill material and discharge of fill material; definitions, 31129–31143
NOTICES
Environmental statements; notice of intent:
Narragansett Bay, North Kingstown, RI; Quonset/Davisville Port and Commerce Park, 31285
Meetings:
Estuary Habitat Restoration Council, 31285–31286

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Montana, 31143–31150
Permits for discharges of dredged or fill material into U.S. waters:
Fill material and discharge of fill material; definitions, 31129–31143
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Montana, 31168–31169
NOTICES
Agency information collection activities:
Proposed collection; comment request, 31300–31301
Submission for OMB review; comment request, 31301–31302
Meetings:
Watershed Initiative, 31302–31303
Reports and guidance documents; availability, etc.:
Air pollution control—
Particulate matter; air quality criteria, 31303–31304
Operator training grants; 2002 FY allocations, 31304
Water supply:
Public water supply supervision program—
Oregon, 31304–31305

Equal Employment Opportunity Commission
NOTICES
Reports and guidance documents; availability, etc.:
Information disseminated by Federal agencies; quality, objectivity, utility, and integrity guidelines, 31305

Executive Office of the President
See Presidential Documents
See Science and Technology Policy Office

Federal Aviation Administration
RULES
Airworthiness directives:
Cessna, 31117–31119
Hartzell Propeller, Inc., 31113–31115
Honeywell, 31111–31113
Raytheon, 31115–31117
Procedural rules:
Flight Operational Quality Assurance programs; enforcement protection; correction, 31401

Federal Communications Commission
PROPOSED RULES
Digital television stations; table of assignments:
Michigan, 31170
New York, 31169
Texas, 31170–31172
NOTICES
Rulemaking proceedings; petitions filed, granted, denied, etc. [**Editorial Note:** This document printed in the May 8, 2002, **Federal Register** on pages 30926-30927, but was erroneously carried under the heading "**Federal Election Commission**"in the Table of Contents.]

Federal Election Commission
PROPOSED RULES
Contribution and expenditure limitations and prohibitions:
Candidate debates, 31164
NOTICES
Meetings; Sunshine Act, 31305

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Triton Power Michigan LLC et al., 31294–31295
Environmental statements; availability, etc.:
Northwest Pipeline Corp., 31295–31296
South Carolina Electric & Gas Co., 31296
Hydroelectric applications, 31296–31299
Practice and procedure:
Off-the-record communications, 31299–31300
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co. et al., 31287–31288
American Electric Power Service Corp., 31288
CMS Trunkline LNG Co., LLC, 31289
Destin Pipeline Co., L.L.C., 31289
Discovery Gas Transmission LLC, 31289
Kern River Gas Transmission Co., 31289–31290
Oncor Electric Delivery Co. et al., 31290
PacifiCorp, 31290–31292
San Diego Gas & Electric Co., 31292
Southern Natural Gas Co., 31292–31293
Sunoco, Inc. (R&M), 31293
Williams Gas Pipelines Central, Inc., 31293–31294

Federal Highway Administration
NOTICES
Reports and guidance documents; availability, etc.:
Ballard, Marshall, and McCracken Counties, KY, and Cape Girardeau and Mississippi Counties, MO; planning study, 31399

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 31306

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early terminations, 31306–31307

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Baldwin County, AL; Alabama beach mouse and sea turtles, 31356–31365
Meetings:
Battle of Midway National Memorial Advisory Committee, 31365

Food and Drug Administration
RULES
Human drugs:
Laxative products (OTC)—
Ingredients (aloe extract, etc.) not generally recognized as safe and effective or are misbranded, 31125–31127
Vaginal contraceptive products (OTC)—
Ingredient octoxynol 9 not generally recognized as safe and effective or is misbranded, 31123–31125
NOTICES
Biological product licenses:
Bavarian Red Cross, 31348–31349
Meetings:
Antimicrobial Resistance Interagency Task Force; public health action plan [**Editorial Note:** This document printed in the May 8, 2002, **Federal Register** on pages 30931-30932, but was erroneously carried under the heading "**Health and Human Services Department**" in the Table of Contents.]

Food Safety and Inspection Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Microbiological Criteria for Foods National Advisory Committee, 31177–31178

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Texas
Siemens Westinghouse Power Corp.; industrial power generating equipment, 31180

Forest Service
NOTICES
Land and resource management plans, etc.:
Fishlake National Forest, UT, 31178

General Services Administration
NOTICES
Travel and transportation; Standard Tender of Service Insurance related surcharge, 31307–31308

Grain Inspection, Packers and Stockyards Administration
NOTICES
Meetings:
Grain Inspection Advisory Committee, 31178–31179

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Transplantation Division program; extramural support for projects to increase organ procurement, 31349–31351

Housing and Urban Development Department
NOTICES
Environmental statements; availability, etc.:
Yonkers, NY; affordable housing project, 31355–31356

Industry and Security Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 31180–31181

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service

International Trade Administration
NOTICES
Antidumping:
Cold-rolled carbon steel flat products from—
Argentina, 31181–31192
Australia, 31192–31195
Belgium, 31195–31199
Brazil, 31200–31204
China, 31235–31241
France, 31204–31212
Germany, 31212–31218
India, 31218–31222
Japan, 31222–31225
Korea, 31225–31231
Netherlands, 31268–31273
New Zealand, 31231–31235
Russian Federation, 31241–31243
South Africa, 31243–31248
Spain, 31248–31251
Sweden, 31251–31254
Taiwan, 31255–31260
Thailand, 31261–31264
Turkey, 31264–31268
Venezuela, 31273–31278

International Trade Commission
NOTICES
Import investigations:
Semiconductor memory devices and products containing same, 31369–31370

Justice Department
See Antitrust Division

See Justice Programs Office
PROPOSED RULES
Immigration:
Aliens—
Aliens ordered removed from U.S. to surrender to INS, 31157–31164
Privacy Act; implementation, 31166–31167
NOTICES
Pollution control; consent judgments:
J.H. Mitchell & Sons Distributors, Inc., et al., 31370
Waste Management of Massachusetts, Inc., 31370–31371
Privacy Act:
Systems of records, 31371–31373

Justice Programs Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 31380

Labor Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 31380–31381
Organization, functions, and authority delegations:
Assistant Secretary for Employment and Training, 31381

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Imperial County, CA; Newmont Gold Co. Mesquite Mine expansion, 31365–31366
Jurisdictional transfers:
Crow Indian Reservation, MT, 31366–31367
Public land orders:
California, 31367
Colorado, 31367
Oregon, 31367–31368
South Dakota, 31368

Minerals Management Service
NOTICES
Environmental statements; availability, etc.:
Alaska OCS—
Oil and gas exploration activities, 31368–31369

National Aeronautics and Space Administration
RULES
Inventions and contributions, 31119–31123
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Makel Engineering, Inc., 31381–31382
Tietronix Software, Inc., 31382

National Archives and Records Administration
RULES
Records management:
Micrographic records management, 31691–31697

National Institutes of Health
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 31351
Meetings:
Antimicrobial Resistance Interagency Task Force; public health action plan [**Editorial Note:** This document printed in the May 8, 2002, **Federal Register** on pages 30931-30932, but was erroneously carried under the heading "**Health and Human Services Department**" **in the Table of Contents.**]
Fogarty International Center Advisory Board, 31352
National Eye Institute, 31352
National Heart, Lung, and Blood Institute, 31352–31353
National Institute of Allergy and Infectious Diseases, 31353
National Institute on Drug Abuse, 31353
Recombinant DNA Advisory Committee, 31353

National Mediation Board
NOTICES
Agency information collection activities:
Proposed collection; comment request, 31382–31383

National Oceanic and Atmospheric Administration
PROPOSED RULES
Endangered and threatened species:
Sea turtle conservation—
Hawaii State waters; sea turtle interactions with fishing activities; environmental impact statement, 31172
Fishery conservation and management:
Caribbean, Gulf of Mexico, and South Atlantic fisheries—
Gulf of Mexico shrimp, 31173–31176
NOTICES
Agency information collection activities:
Proposed collection; comment request, 31278–31279
Committees; establishment, renewal, termination, etc.:
International Dolphin Conservation Program; expert panels, 31279–31280
Meetings:
New England Fishery Management Council, 31280–31281

National Science Foundation
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 31383–31384

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
FirstEnergy Nuclear Operating Co., 31384–31385
Reports and guidance documents; availability, etc.:
Generic letters—
Control room envelope habitability, 31385–31389

Personnel Management Office
NOTICES
Retirement:
Civil Service Retirement System—
Present value factors, 31707–31709
Federal Employees Retirement System—
Normal cost percentages, 31706–31708
Present value factors, 31705–31707

Postal Service
PROPOSED RULES
Postage meters:
License holders; information release procedures, 31167–31168
Manufacturing and distribution authorization, 31168

Presidential Documents
PROCLAMATIONS
Special observances:
National Tourism Week (Proc. 7556), 31107–31108
Small Business Week (Proc. 7555), 31105–31106
ADMINISTRATIVE ORDERS
Government agencies and employees:
Environmental Protection Agency; designation of Administrator to classify information as secret (Order of May 6, 2002), 31109

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Research and Special Programs Administration
NOTICES
Meetings:
Pipeline safety—
Pipeline integrity management in high consequence areas; workshop, 31399–31400

Rural Housing Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Rural Community Development Initiative; correction, 31179

Science and Technology Policy Office
NOTICES
Reports and guidance documents; availability, etc.:
Information disseminated by Federal agencies; quality, objectivity, utility, and integrity guidelines, 31305

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Exemption applications—
Independence One Mutual Funds et al., 31391–31393
Mexico Fund, Inc., et al., 31389–31391
New York State College Choice Tuition Savings Program Trust Fund et al., 31393–31394
Self-regulatory organizations; proposed rule changes:
Depository Trust Co. et al., 31394–31398
New York Stock Exchange, Inc., 31398–31399

Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Substance Abuse Prevention Center—
Ecstasy, other club drugs, methamphetamine and inhalant prevention infrastructure development, 31353–31355

Surface Transportation Board
NOTICES
Railroad services abandonment:
Burlington Northern & Santa Fe Railway Co., 31400

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Research and Special Programs Administration
See Surface Transportation Board

Separate Parts In This Issue

Part II
Health and Human Services Department, Centers for Medicare & Medicaid Services, 31403–31689

Part III
National Archives and Records Administration, 31691–31697

Part IV
Education Department, 31699–31703

Part V
Personnel Management Office, 31705–31709

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

7555.....31105
7556.....31107

Executive orders:

12958 (See Order of May 6, 2002).....31109

Administrative orders:

Orders
May 6, 2002.....31109

7 CFR

Proposed Rules:

1427.....31151

8 CFR

Proposed Rules:

3.....31157
236.....31157
240.....31157
241.....31157

11 CFR

Proposed Rules:

110.....31164

14 CFR

13.....31402
39 (4 documents).....31111, 31113, 31115, 31117
1240.....31119

16 CFR

Proposed Rules:

1500.....31165

21 CFR

310 (2 documents).....31123, 31125

28 CFR

Proposed Rules:

16.....31166

32 CFR

286.....31127

33 CFR

165.....31128
323.....31129

36 CFR

1230.....31692

39 CFR

Proposed Rules:

265.....31167
501.....31168

40 CFR

52.....31143
81.....31143
232.....31129

Proposed Rules:

52.....31168
81.....31168

42 CFR

Proposed Rules:

405.....31404
412.....31404
413.....31404
482.....31404
485.....31404
489.....31404

47 CFR

Proposed Rules:

73 (4 documents).....31169, 31170, 31171

50 CFR

Proposed Rules:

222.....31172
223.....31172
622.....31173

Federal Register
Vol. 67, No. 90
Thursday, May 9, 2002

Presidential Documents

Title 3—

The President

Proclamation 7555 of May 3, 2002

Small Business Week, 2002

By the President of the United States of America

A Proclamation

The strength of our economy is built on the creativity and entrepreneurship of our people. Those who own and operate our Nation's 25 million small businesses make a vital contribution to our prosperity through their ongoing work to create new technologies, products, and services. These hardworking men and women and their employees define the American spirit through their innovation, dedication, and determination.

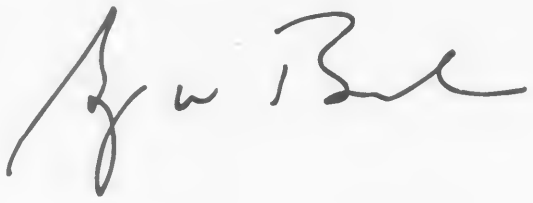
The tragedy of September 11, 2001, greatly affected our Nation and our economy; but our economy is recovering and remains fundamentally sound. In the aftermath of the terrorist attacks, the business community rose to this challenge by volunteering their time and services to help with the relief and rebuilding efforts in New York City and Washington, D.C. This compassionate spirit demonstrated America's true character.

To help businesses recover from September 11, my Administration has made more than $520 million in disaster loans available to business owners nationwide. I also remain committed to a domestic policy that stimulates economic growth, boosts consumer purchasing power, and creates a level playing field. Our efforts to lower taxes, enact reasonable regulations, and reduce tariffs and other barriers to free trade will increase the competitive position of our small businesses. To further encourage economic growth, I recently signed into law the Job Creation and Worker Assistance Act of 2002. The Act helps to create more jobs across our country by providing tax incentives for companies to expand and create jobs by investing in facilities and equipment. This action will lead to more opportunities in manufacturing, high-tech sectors, and our small businesses. I am also committed to achieve a permanent repeal of the death tax and the permanent extension of tax relief to help ensure the strength and survival of small businesses.

America's small business owners represent more than 99 percent of all employers and their businesses employ more than half of the private work force. These entrepreneurs who create more than 66 percent of the new jobs nationwide and generate more than 50 percent of the Nation's gross domestic product growth are critical to our country's prosperity and the well-being of our communities. We salute these employers by celebrating Small Business Week and recognizing their contributions to all Americans.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 5 through May 11, 2002, as Small Business Week. I call on all Americans to observe this week with appropriate ceremonies, activities, and programs that celebrate the achievements of small business owners and encourage and foster the development of new enterprises.

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



[FR Doc. 02–11780
Filed 5–8–02; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7556 of May 6, 2002

National Tourism Week, 2002

By the President of the United States of America

A Proclamation

For hundreds of years, people across our Nation and around the world have enjoyed traveling across America to visit our magnificent cities, parks, museums, and countless other natural, historic, and cultural sites. Our land provides endless opportunities to learn as well as to enjoy our Nation's immense variety of attractions.

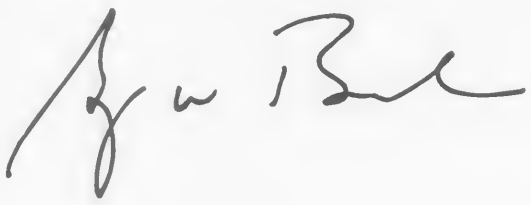
The travel and tourism industry represents a vital part of the American economy. The Department of Commerce estimates that in 2001 the travel and tourism industry generated more than $90 billion in export revenue and provided a $7.7 billion balance of trade surplus. Preliminary numbers show that last year, the industry created approximately $545 billion in total travel expenditures and provided $94 billion in tax revenue to local, State, and Federal governments. As one of our Nation's largest employers, travel and tourism supports more than 7 million jobs.

During National Tourism Week 2002, we recognize the significance of this important industry to our economy and for the lives of all Americans. In the aftermath of the tragic attacks of September 11, 2001, the travel and tourism industry contributed to our country's efforts to persevere through this challenging time. As we have encouraged people to resume the regular course of their lives, Americans and visitors from around the world have responded by traveling to and enjoying the beauty of our Nation.

During this observance, I urge all Americans and people around the globe to travel to and within our country to experience the hospitality and quality of our Nation's great destinations.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 5–11, 2002, as National Tourism Week. In recognition of the significance of the travel and tourism industry in the lives of citizens of our Nation and to visitors from abroad, I call upon all Americans to mark this observance with activities that highlight this important industry.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of May, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 02–11781
Filed 5–8–02; 8:45 am]
Billing code 3195–01–P

Presidential Documents

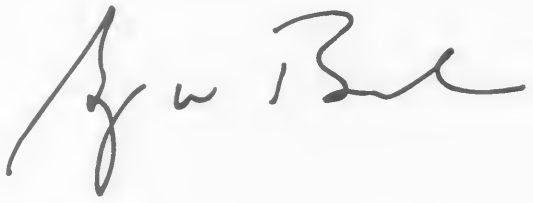
Order of May 6, 2002

Designation Under Executive Order 12958

In accordance with the provisions of section 1.4 of Executive Order 12958 of April 17, 1995, entitled "Classified National Security Information," I hereby designate the Administrator of the Environmental Protection Agency to classify information originally as "Secret."

Any delegation of this authority shall be in accordance with section 1.4(c) of Executive Order 12958.

This order shall be published in the **Federal Register**.



THE WHITE HOUSE,
May 6, 2002.

[FR Doc. 02–11782
Filed 5–8–02; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 67, No. 90
Thursday, May 9, 2002

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–50–AD; Amendment 39–12742; AD 2002–09–09]

RIN 2120–AA64

Airworthiness Directives; Honeywell International, Inc., (Formerly AlliedSignal, Inc., Textron Lycoming, Avco Lycoming, and Lycoming) Former Military T53 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Honeywell International, Inc., (formerly AlliedSignal, Inc., Textron Lycoming, Avco Lycoming, and Lycoming) former military T53 series turboshaft engines. This amendment requires conducting a revised operating cycle count (prorate) and initial and repetitive inspections for cracks of centrifugal compressor impellers. This amendment is prompted by a report of a military surplus helicopter that experienced low-cycle fatigue failure of the centrifugal compressor impeller, resulting in an uncontained engine failure. The actions specified by this AD are intended to prevent centrifugal compressor impeller failure, which can result in an uncontained engine failure, in-flight engine shutdown, or damage to the helicopter.

DATES: Effective date June 13, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 13, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Honeywell International, Inc., Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone: (602) 365–2493; fax: (602) 365–5577. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone: (562) 627–5245, fax: (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Honeywell International, Inc., (formerly AlliedSignal, Inc., Textron Lycoming, Avco Lycoming, and Lycoming) former military T53 series turboshaft engines was published in the **Federal Register** on August 16, 2001(66 FR 42970). That action proposed to require conducting a revised operating cycle count (prorate) and initial and repetitive inspections for cracks of centrifugal compressor impellers in accordance with AlliedSignal, Inc. SB's T53–L–13B–0108, Revision 1, dated November 22, 1999; T53–L–13B/D–0108, Revision 1, dated November 22, 1999; T53–L–703–0108, Revision 1, dated November 22, 1999 and Honeywell International Inc. SB's T53–L–13B–0020, Revision 2, dated April 25, 2001; T53–L–13B/D–0020, Revision 1, dated April 25, 2001; and T53–L–703–0020, Revision 1, dated April 25, 2001.

Comments

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

One commenter believes that the AD is unnecessary. The FAA does not agree. The AD was prompted by a report of a military surplus helicopter that experienced low-cycle fatigue of the centrifugal compressor impeller, resulting in an uncontained engine failure.

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

Economic Analysis

The FAA estimates that there are approximately 300 Lycoming former military T53 series turboshaft engines installed on helicopters of U.S. registry, that would be affected by this AD. The FAA also estimates that it would take approximately 8 work hours per engine to accomplish an initial or repetitive inspection of the centrifugal compressor impeller, and that the average labor rate is $60 per work hour. No additional work hour cost would be incurred if the centrifugal compressor impeller is replaced during normal engine disassembly. Based on these figures, the total labor cost impact of the AD on U.S. operators for an inspection is estimated to be $144,000. The FAA estimates that operators will perform two inspections annually, and that the total annual labor cost for inspections is estimated to be $288,000. The cost of a replacement centrifugal compressor impeller is estimated to be $22,037. Assuming a loss of 50% of the life of each disk by the prorate, the total annual cost of the proposed AD on U.S. operators is estimated to be $3,593,550.

Regulatory Analysis

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

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

Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–09–09 Honeywell International, Inc.: Amendment 39–12742. Docket No. 2000–NE–50–AD.

Applicability

This airworthiness directive (AD) is applicable to Honeywell International, Inc. (formerly AlliedSignal, Inc., Textron Lycoming, Avco Lycoming, and Lycoming) former military T53 series turboshaft engines with centrifugal compressor impellers part numbers (P/N's) 1–100–078–07 or 1–100–078–08 installed. These engines are installed on, but not limited to, Bell Helicopter Textron manufactured AH–1, UH–1, and SW–204/205 (UH–1) series surplus military helicopters that have been certified in accordance with §§ 21.25 or 21.27 of the Federal Aviation regulations (14 CFR 21.25 or 21.27).

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

Compliance

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

To prevent centrifugal compressor impeller failure, which can result in an uncontained engine failure, in-flight engine shutdown, or damage to the helicopter, do the following:

Centrifugal Compressor Impeller Revised Operating Cycle Count

(a) Within 25 operating cycles or 7 calendar days, whichever occurs first, after the effective date of this AD, do a revised centrifugal compressor impeller operating cycle count (prorate) in accordance with the accomplishment instructions of Honeywell International, Inc. Service Bulletin (SB) No. T53–L–13B–0020, Revision 3, dated October 25, 2001, for T53–L–13B Lycoming engines, SB No. T53–L–13B/D–0020, Revision 1, dated April 25, 2001 for T53–L–13B/D Lycoming engines, and SB No. T53–L–703–0020, Revision 1, dated April 25, 2001 for T53–L–703 Lycoming engines.

(b) Following the revised operating cycle count required by paragraph (a) of this AD, remove from service installed centrifugal compressor impellers that exceed their life limit or whose life cannot be determined, within 50 hours time-in-service (TIS), or 25 operating cycles, whichever occurs first and replace with a serviceable part that does not exceed the life limit.

(c) Installation of uninstalled centrifugal compressor impellers that exceed their life limit, which is revised in accordance with paragraph (a) of this AD is prohibited.

Centrifugal Compressor Impeller Inspections

(d) Following the revised operating cycle count required by paragraph (a) of this AD, inspect centrifugal compressor impellers, part numbers (P/N's) 1–100–078–07 and 1–100–078–08, in accordance with the accomplishment instructions of AlliedSignal, Inc. SB No. T53–L–13B–0108, Revision 1, dated November 22, 1999, for T53–L–13B Lycoming engines; SB No. T53–L–13B/D–0108, Revision 1, dated November 22, 1999 for T53–L–13B/D Lycoming engines; or SB No. T53–L–703–0108, Revision 1, dated November 22, 1999 for T53–L–703 Lycoming engines, as follows:

(1) For centrifugal compressor impellers with equal to or greater than 4,600 cycles-in-service (CIS), initially inspect within 200 CIS after the effective date of this AD.

(2) For those centrifugal compressor impellers with less than 4,600 CIS, initially inspect no later than 4,800 CIS.

(3) Centrifugal compressor impellers found cracked must be removed from service prior to further flight and replaced with a serviceable part.

(4) If no cracks are detected, perform repetitive inspections of the centrifugal compressor impellers at intervals not to exceed 500 CIS since last inspection.

Alternative Methods of Compliance

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

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

Documents That Have Been Incorporated By Reference

(g) The inspection must be done in accordance with the following Honeywell International Inc. (HII) and AlliedSignal, Inc. (ASI) service bulletins:

Document No.	Pages	Revision	Date
HII, SB No. T53–L–13B–0020	All	3	Oct. 25, 2001.
Total pages 13			
HII, SB No. T53–L–13B/D–0020	All	1	April 25, 2001.
Total pages 12			
HII, SB No. T53–L–703–0020	All	1	April 25, 2001.
Total pages 12			
ASI	1	Original	July 22, 1999.
SB No. T53–L–13B–0108	2	1	Nov. 22, 1999.
	3–12	Original	July 22, 1999.
Total pages 12			
ASI	1	Original	July 22, 1999.
SB No. T53–L–13B/D–0108	2	1	Nov. 22, 1999.
	3–12	Original	July 22, 1999.
Total pages 12			
ASI	1	Original	July 22, 1999.
SB No. T53–L–703–0108	2	1	Nov. 22, 1999.

Document No.	Pages	Revision	Date
Total pages 12	3–12	Original	July 22, 1999.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Honeywell International, Inc., Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone: (602) 365–2493; fax: (602) 365–5577. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Effective Date.

(h) This amendment becomes effective on June 13, 2002.

Issued in Burlington, Massachusetts, on April 29, 2002.

Diane S. Romanosky,

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

[FR Doc. 02–11216 Filed 5–8–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–08–AD; Amendment 39–12741; AD 2002–09–08]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller, Inc. Compact Series Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), that is applicable to Hartzell models ( )HC-( )( )Y( )-( )( )( ) compact series, constant speed or feathering propellers with Hartzell manufactured "Y" shank blades. That AD currently requires initial and repetitive blade inspections; rework of all "Y" shank blades including cold rolling of the blade shank retention radius; blade replacement and modification of pitch change mechanisms for certain propeller models; and changing the airplane operating limitations with specific models of propellers installed. This amendment requires initial blade inspections, with no repetitive inspections; rework of all "Y" shank blades including cold rolling of the blade shank retention radius, blade replacement and modification of pitch change mechanisms for certain propeller models; and changing the airplane operating limitations with specific models of propellers installed. This amendment is prompted by FAA reviews of propeller service histories since the issuance of AD 77–12–06R2. The actions specified by this AD are intended to prevent failure of the propeller blade from fatigue cracks in the blade shank radius, which can result in damage to the airplane and loss of airplane control.

DATES: Effective date June 13, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 13, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, Ohio 45356–2634, telephone (937) 778–4200; fax (937) 778–4391. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 E. Devon Ave., Des Plaines, IL 60018; telephone (847) 294–7031; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 77–12–06R2, Amendment 39–3097 (42 FR 63165, December 15, 1977), which is applicable to Hartzell models ( )HC-( )( )Y( )-( )( )( ) compact series, constant speed or feathering propellers with Hartzell manufactured "Y" shank blades was published in the **Federal Register** on November 20, 2001 (66 FR 58077). That action proposed to require initial blade inspections, with no repetitive inspections; rework of all "Y" shank blades including cold rolling of the blade shank retention radius, blade replacement and modification of pitch change mechanisms for certain propeller models; and changing the airplane operating limitations with specific models of propellers installed.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

At the time the existing AD was issued, there were about 55,000 propellers of the affected design in the worldwide fleet. The FAA estimated that there were 35,750 propellers installed on airplanes of U.S. registry. The FAA expects that all of the affected propellers should have already been inspected to comply with the existing AD's requirements to inspect, and rework or replace the blades. If these actions have not already been done, then the total cost to comply with this AD is estimated to be $700 per propeller.

Regulatory Analysis

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–2922 (42 FR 31152, June 20, 1977), Amendment 39–3018 (42 FR 42191, August 22, 1977), and Amendment 39–3097 (42 FR 63165, December 15, 1977) and by adding a new airworthiness directive, Amendment 39–12741, to read as follows:

2002–09–08 Hartzell Propellers, Inc.: Amendment 39–12741. Docket No. 2000–NE–08–AD. Supersedes AD 77–12–06R2, Amendment 39–3097.

Applicability

This airworthiness directive (AD) is applicable to Hartzell Propellers, Inc. Models ( )HC-( )( )Y( )-( )( )( ) compact series constant speed or feathering propellers with Hartzell manufactured "Y" shank blades. These propellers are used on but not limited to the following airplanes:

Aermacchi S.pA. (formerly Siai-Marchetti) S–208
Aero Commander 200B and 200D
Aerostar 600
Beech 24, 35, 36, 45, 55, 56TC, 58, 60, and 95
Bellanca 14 and 17 series
Cessna 182 and 188
Embraer EMB–200A
Maule M5
Mooney M20 and M22
Pilatus Britten Norman, or Britten Norman BN–2, BN–2A, and BN–2A–6
Piper PA–23, PA–24, PA–28, PA–30, PA–31, PA–32, PA–34, PA–36, and PA–39
Pitts S–1T and S–2A
Rockwell 112, 114, 200, 500, and 685 series

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

Compliance

Compliance with this AD is required as indicated, unless already done. Propeller maintenance records showing compliance with AD 77–12–06R2 is an indication that compliance was previously done.

To prevent failure of the propeller blade from fatigue cracks in the blade shank radius, which can result in damage to the airplane and loss of airplane control, do the following:

(a) Propellers are considered in compliance with the one-time inspection and rework requirements only, of this AD if:

(1) All blades are serial number D47534 and above, or

(2) All blades are identified with the letters "PR" or "R" or "SP–P" ink-stamped on the camber side, or the letters "SP", "RD" or "SP–P" metal-stamped on the blade butt.

Models ( )HC-( )( )Y( ) Compact Series "Y" Shank Propellers

(b) If propellers models ( )HC-( )( )Y( ) have not been inspected and reworked in accordance with AD 77–12–06R2, then before further flight, do a one-time action to remove, inspect, rework or replace blades if necessary in accordance with Hartzell Service Bulletin (SB) No.118A, dated February 15, 1977.

Note 2: One requirement in SB No. 118A is the cold rolling of the propeller blade shank. This is a critical requirement in the prevention of cracks in the blade. Propeller repair shops must obtain and maintain proper certification to perform the cold rolling procedure. For a current list of propeller overhaul facilities approved to perform the blade shank cold rolling procedure, contact Hartzell Product Support, telephone: (937) 778–4200. Not all propeller repair facilities have the equipment to properly perform a cold roll of the blade shanks. In addition, any rework in the blade shank area will also necessitate the cold rolling of the blade shank area, apart from the one-time cold rolling requirement of this AD.

Instrument Panel Modifications

(c) If airplanes with propeller models ( )HC–C2YK-( )( )( ) / ( )( )7666A-( ), installed on (undampered) 200 horsepower Lycoming IO–360 series engines, have not been modified in accordance with AD 77–12–06R2, then modify the airplane instrument panel according to the following subparagraphs before further flight. Airplanes include, but are not limited to, Mooney M20E and M20F (normal category), Piper PA–28R–200 (normal category), and Pitts S–1T and S–2A (acrobatic category).

(1) For normal category airplanes, before further flight, remove the present vibration placard and affix a new placard near the engine tachometer that states:

"Avoid continuous operation:
Between 2000 and 2350 rpm."

(2) For utility and acrobatic category airplanes, before further flight, remove the present vibration placard and affix a new placard near the engine tachometer that states:

"Avoid continuous operation:
Between 2000 and 2350 rpm.
Above 2600 rpm in acrobatic flight."

(3) For normal category airplanes, re-mark the engine tachometer face or bezel with a red arc for the restricted engine speed range, between 2000 and 2350 rpm.

(4) For acrobatic and utility airplanes, re-mark the engine tachometer face or bezel with a red arc for each restricted engine speed range, i.e., between 2000 and 2350 rpm and between 2600 and 2700 rpm (red line).

Models ( )HC–C2YK-( )( )( ) / ( )( )8475( )-( ) or ( )( )8477( )-( ) Propellers

(d) If propeller models ( )HC–C2YK-( )( )( ) / ( )( )8475( )-( ) or ( )( )8477( )-( ) have not been inspected and reworked in accordance with AD 74–15–02, then do the following maintenance before further flight.

(1) Remove propeller from airplane.

(2) Modify pitch change mechanism, and replace blades with equivalent model blades prefixed with letter "F" in accordance with Hartzell Service Letter No. 69, dated November 30, 1971 and Hartzell SB No. 101D, dated December 19, 1974.

(3) Inspect and repair or replace, if necessary, in accordance with Hartzell SB No. 118A, dated February 15, 1977.

Alternative Methods of Compliance

(e) Alternative methods of compliance to Hartzell Service Bulletin No. 118A are Hartzell Service Bulletin No.'s 118B, 118C, 118D, and Hartzell Manual 133C. Alternative method of compliance to Hartzell SB No. 101D is Hartzell Manual 133C. No adjustment in the compliance time is allowed. Any requests for an alternative method of compliance that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office (ACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Manager, Chicago ACO.

Special Flight Permits

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

Documents That Have Been Incorporated By Reference

(g) The inspections must be done in accordance with the following Hartzell Propeller, Inc. service bulletins (SB's) and service letter (SL):

Document No.	Pages	Revision	Date
SB No. 101D Total pages: 2.	All	D	December 19, 1974.
SB No. 118A Total pages: 16	All	A	February 15, 1977.
SL No. 69 Total pages: 2	All	1	November 30, 1971.

These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hartzell Propeller, Inc., One Propeller Place, Piqua, Ohio 45356–2634; telephone (937) 778–4200; fax (937) 778–4391. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on June 13, 2002.

Issued in Burlington, Massachusetts, on April 24, 2002.

Marc J. Bouthillier,

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

[FR Doc. 02–11251 Filed 5–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–13–AD; Amendment 39–12745; AD 2002–09–12]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Model C90 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Beech Model C90 airplanes. This AD requires you to inspect the left-hand (LH) and right-hand (RH) nacelle and spar assembly for the existence of rivets, and requires you to install rivets if they do not exist or are the wrong size or type. This AD is the result of Raytheon identifying several instances where rivets were either missing or were the wrong size or type on these airplanes. The actions specified by this AD are intended to correct the installation of rivets in the LH and RH nacelle and spar assembly. These rivets must be present and have the correct dimension in order to prevent reduced structural integrity, which could result in structural failure and possible loss of control of the airplane.

DATES: This AD becomes effective on June 21, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of June 21, 2002.

ADDRESSES: You may get the service information referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–13–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the **Federal Register,** 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steve Potter, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

Raytheon has identified several instances of rivets not being installed and/or the wrong size or type installed during the manufacturing process on the nacelles and spar assembly of the Model C90A airplanes. This conclusion is the result of a quality control problem.

At least 20 airplanes have been found with this condition. The number and location of the missing rivets and incorrectly installed rivets may vary from airplane to airplane.

What Is the Potential Impact if FAA Took No Action?

This condition, if not detected and corrected, could result in reduced structural integrity. This could lead to critical structural failure with consequent loss of airplane control.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Beech Model C90 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 26, 2001 (66 FR 58983). The NPRM proposed to require you to inspect the left-hand (LH) and right-hand (RH) nacelle and spar assembly for the existence of rivets and would require you to install rivets if they do not exist or are the wrong size or type.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 381 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
35 workhours × $60 per hour = $2,100	No parts required for the inspection	$2,100	$2,100 × 381 = $800,100

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacements:

Labor cost	Parts cost	Total cost per airplane
40 workhours × $60 per hour = $2,400	$50	$2,400 + $50 = $2,450

The manufacturer will provide warranty credit for labor and parts to the extent noted under MANPOWER and MATERIAL in Raytheon Mandatory Service Bulletin SB 54–3308, Issued: October, 2000.

Compliance Time of This AD

Why Is the Compliance Time of This AD Presented in Both Hours Time-in-Service (TIS) and Calendar Time?

The unsafe condition on these airplanes is not a result of the number of times the airplane is operated. Airplane operation varies among operators. For example, one operator may operate the airplane 50 hours TIS in 3 months while it may take another 12 months or more to accumulate 50 hours TIS. For this reason, the FAA has determined that the compliance time of this AD should be specified in both hours time-in-service (TIS) and calendar time in order to assure this condition is not allowed to go undetected over time.

Regulatory Impact

Does This AD Impact Various Entities?

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

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–09–12 Raytheon Aircraft Company: Amendment 39–12745; Docket No. 2001–CE–13–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following Beech Model C90A airplanes that are certificated in any category:

Serial Numbers

LJ–1157 through LJ–1276, LJ–1278 through LJ–1537, and LJ–1540.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct the installation of rivets in the left-hand and right-hand nacelle and spar assembly. These rivets must be present and have correct dimensions in order to prevent reduced structural integrity, which could result in structural failure and possible loss of control of the airplane.

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

Actions	Compliance	Procedures
(1) Insert Raytheon Temporary Changes TC3 (Log of Temporary Changes) into the Limitations Section of the Pilot's Operating Handbook (POH).	Within the next 10 hours time-in-service (TIS) after June 21, 2002 (the effective date of this AD) until compliance with paragraphs (d)(2) and (d)(3) of this AD, unless already accomplished.	Anyone who holds at least a private pilot certificate, as authorized by Section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the pilot's operating handbook (POH) revision required by this AD. You must make an entry into the compliance with the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(2) Inspect the left-hand (LH) and right-hand (RH) nacelle and spar assembly for the existence of rivets and installed rivets that are the wrong size and/or type.	Within the next 400 hours time-in-service (TIS) or within 12 calendar months after June 21, 2002 (the effective date of this AD), whichever occurs first, unless already accomplished.	In accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB 54–3308, Issued: October, 2000, and the applicable maintenance manual.

Actions	Compliance	Procedures
(3) Install rivets where rivets are missing and replace rivets that are the wrong size and/or type with the correct rivet.	Prior to further flight after the inspection required in paragraph (d)(2) of this AD, unless already accomplished.	In accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB 54–3308, Issued: October, 2000, and the applicable maintenance manual.

Note 1: Although not required by this AD, Raytheon Mandatory Service Bulletin SB 54–3308, Issued: October, 2000, recommends inspecting the airplane in accordance with the Hard Landing Inspection procedure, Chapter 5–50–00, Beech King Air 90 Maintenance Manual, if the airplane should experience a hard landing prior to the repair required by this AD. If serious structural damage occurred, contact Raytheon Technical Support for assistance.

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

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

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Steve Potter, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

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

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Mandatory Service Bulletin SB 54–3308, Issued: October, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on June 21, 2002.

Issued in Kansas City, Missouri, on April 30, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–11333 Filed 5–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–17–AD; Amendment 39–12746; AD 2002–09–13]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Model CESSNA 441 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Cessna Aircraft Company (Cessna) Model CESSNA 441 airplanes. This AD requires you to do a one-time inspection of the fuel boost pump wiring inside and outside the boost pump reservoir, and repair or replace the wiring as necessary. This AD is the result of several reports of chafing and/or arcing of the fuel boost pump wiring inside and outside the fuel pump reservoir. The actions specified by this AD are intended to detect and correct chafing and/or arcing boost pump wiring, which could result in arcing within the wing fuel storage system. Such failure could lead to ignition of explosive vapor within the fuel storage system.

DATES: This AD becomes effective on May 31, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of May 31, 2002.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before July 8, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–17–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–17–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get the service information referenced in this AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–17–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Adamson, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4145; facsimile: 316–946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received evidence of chafing and/or arcing of the electrical wiring leading to the fuel boost pump reservoir. Further investigation revealed confirmed reports of chafing and/or arcing of the fuel boost pump wiring inside the fuel pump reservoir that supplies fuel to each engine.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not corrected, could result in ignition of explosive vapor within the fuel storage system.

Is There Service Information That Applies to This Subject?

Cessna has issued Conquest Service Bulletin No. CQB02–1R1, Revision 1, dated April 22, 2002.

The service bulletin includes procedures for:

—Inspecting the 5718106–1 wire harness and fuel boost pump lead wires for chafing or damage; and

—Repairing or replacing the chafed or damaged wiring as necessary.

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

What Has FAA Decided?

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

—The unsafe condition referenced in this document exists or could develop on other Cessna Model CESSNA 441 airplanes of the same type design;

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

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

What Does This AD Require?

This AD requires you to: (1) Do a one-time inspection of the electrical wiring going to the fuel boost pump reservoir and the boost pump wiring inside the reservoir, and (2) repair or replace the wiring as necessary.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included, in the rulemaking docket, a discussion of any information that may have influenced this action.

The FAA is not including a repetitive inspection requirement in this AD. The Administrative Procedure Act does not permit the FAA to "bootstrap" a long-term requirement into an urgent safety of flight action where the rule becomes effective at the same time the public has the opportunity to comment. The short-term action and the long-term action are analyzed separately for justification to bypass prior public notice.

After issuing this AD, the FAA may initiate further AD action (notice of proposed rulemaking followed by a final rule) to require these inspections to be repetitive. Credit will be given in any subsequent action for the initial inspection done under this AD.

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

Because the unsafe condition described in this document could result in ignition of explosive vapor within the fuel storage system, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How Do I Comment on This AD?

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

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

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

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–17–AD." We will date stamp and mail the postcard back to you.

Compliance Time of This AD

What Is the Compliance Time of This AD?

The compliance time of this proposed AD is within the next 25 hours time-in-service (TIS) or 60 calendar days, whichever occurs first, after the effective date of this AD.

Why Is the Compliance Time of This AD Presented in Both Hours TIS and Calendar Time?

The affected airplanes are used in general aviation operations. Those operators may accumulate 25 hours TIS on the airplane in less than 60 calendar days and many owners have numerous affected airplanes. We have determined that the dual compliance time:

—Gives all owners/operators of the affected airplanes adequate time to schedule and do the actions in this AD; and

—Ensures that the unsafe condition referenced in this AD will be corrected within a reasonable time period without inadvertently grounding any of the affected airplanes.

Regulatory Impact

Does This AD Impact Various Entities?

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

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–09–13 Cessna Aircraft Company: Amendment 39–12746; Docket No. 2002–CE–17–AD.

(a) *What airplanes are affected by this AD?* This AD applies to the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
CESSNA 441	0001 through 0362; and 698.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct chafing and/or arcing boost pump wiring, which could result in arcing within the wing fuel system. Such failure could lead to ignition of explosive vapor within the fuel storage system.

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

Actions	Compliance	Procedures
(1) Inspect the 5718106–1 wire harness and fuel boost pump lead wires for chafing or damage.	Within the next 25 hours time-in-service (TIS) after May 31, 2002 (the effective date of this AD) or 60 days after May 31, 2002 (the effective date of this AD), whichever occurs first.	In accordance with Cessna Conquest Service Bulletin No.: CQB02–1R1, Revision 1, dated April 22, 2002.
(2) If any wire harness or fuel boost pump lead wires are found chafed or damaged during the inspection required in paragraph (d)(1) of this AD, repair or replace the harness or lead wires.	Before further flight, after the inspection required in paragraph (d)(1) of this AD.	In accordance with Cessna Conquest Service Bulletin No.: CQB02–1R1, Revision 1, dated April 22, 2002.

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

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

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

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Robert Adamson, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4145; facsimile: 316–946–4407.

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

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Cessna Conquest Service Bulletin No. CQB02–1R1, Revision 1, dated April 22, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view this information at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on May 31, 2002.

Issued in Kansas City, Missouri, on May 1, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–11523 Filed 5–8–02; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1240

[Notice (02–054)]

RIN 2700–AC47

Inventions and Contributions

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending its regulation to provide definitions, to add a new category of initial awards for release of software, to provide initial awards for the issuance of patents based upon continuation-in-part and divisional patent applications, to increase the amount of certain awards, and to change delegations of authority from the NASA Administrator.

EFFECTIVE DATE: May 9, 2002.

ADDRESSES: Inventions and Contributions Board, Code RI, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Walter D. Hussey Director of Staff; Inventions and Contributions Board, 202–358–2468.

SUPPLEMENTARY INFORMATION: To aid the NASA Inventions and Contributions Board in processing applications for awards, all applications must now be submitted using electronic media.

NASA now provides initial awards for the filing of a non-provisional U.S. patent application, or upon the issuance of a patent for a continuation-in-part or a divisional patent application, for an invention made and reported by an employee of NASA or an employee of a NASA contractor. The amounts of these awards are at least $1,000 for a sole inventor and at least $500 for each joint inventor. Also, no additional award is authorized for a continuation of a patent application where an initial award was authorized for the parent application and the parent application will be or has been abandoned. Furthermore, initial awards are not authorized for provisional applications under 35 U.S.C

111(b) or reissue applications under 35 U.S.C. 251.

Initial awards are authorized for the approved release to a qualified user of a software package based on an innovation made and reported by an employee of NASA or a NASA contractor. The amounts of these initial awards are at least $1,000 for a sole innovator and at least $500 for joint innovators. The Board is authorized to recommend a supplemental monetary award in an amount that will be based on an evaluation of the technical and commercial merits of the innovation. No contribution may receive an award unless NASA has an ownership interest in the software, the software is of commercial quality, the software has been verified, and the software has been distributed to qualified users. Lastly, awards for software release are not eligible to receive a Selected Tech Brief award based upon the publication of an announcement of availability in "NASA Tech Briefs."

Initial awards for the publication of a selected innovation in "NASA Tech Briefs" has been increased to at least $350 from the previous amount of at least $150.

The Board will now recommend an award for a contribution to NASA, where upon evaluation of its scientific and technical merits, it is determined to warrant an award of at least $500. Previously, the threshold was set at $250.

The maximum amount that may be paid for any innovation within any single category of initial award may not exceed $5,000.

The Associate Administrator for Aerospace Technology, and the Chairperson, Inventions and Contributions Board, are both delegated authority to execute grants of awards for scientific and technical contributions to NASA not to exceed $2,000 per contributor. Also, the Chairperson, Inventions and Contributions Board, is delegated the authority to make initial awards.

Lastly, a definitions section has been added to this subpart.

List of Subjects in 14 CFR Part 1240

Decorations, Medals, Awards, Government contracts, Government employees, Inventions and patents.

For reasons set out in the Preamble, 14 CFR part 1240 is revised to read as follows:

PART 1240—INVENTIONS AND CONTRIBUTIONS

Subpart 1—Awards for Scientific and Technical Contributions

Sec.

1240.100 Purpose.
1240.101 Scope.
1240.102 Definitions
1240.103 Criteria.
1240.104 Applications for awards.
1240.105 Special procedures—NASA and NASA contractor employees.
1240.106 Review and evaluation of contribution.
1240.107 Notification by the Board.
1240.108 Reconsideration.
1240.109 Hearing procedure.
1240.110 Recommendation to the Administrator.
1240.111 Release.
1240.112 Presentation of awards.
1240.113 Financial accounting.
1240.114 Delegation of authority.

Authority: Section 306 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2458), and the Federal Technology Transfer Act of 1986, sec. 12, 15 U.S.C. 3710b(1).

Subpart 1—Awards for Scientific and Technical Contributions

§ 1240.100 Purpose.

This subpart prescribes procedures for submitting applications for monetary awards to the Administrator of NASA for scientific and technical contributions which have significant value in the conduct of aeronautical and space activities pursuant to 42 U.S.C. 2458, and establishes the awards program consistent with the Federal Technology Transfer Act of 1986, section 12, 15 U.S.C. 3710b(1).

§ 1240.101 Scope.

This subpart applies to any scientific or technical contribution, whether or not patentable, which is determined by the Administrator after referral to the Inventions and Contributions Board to have significant value in the conduct of aeronautical and space activities for which an application for award has been submitted to NASA under 42 U.S.C. 2458.

§ 1240.102 Definitions.

As used in this subpart:

(a) *Administrator* means the Administrator of the National Aeronautics and Space Administration.

(b) *Board* means the NASA Inventions and Contributions Board.

(c) *Chairperson* means the Chairperson of the NASA Inventions and Contributions Board.

(d) *Commercial quality* refers to computer software that is not in an experimental or beta phase of development, that performs in accordance with its specifications, and includes documentation describing the software's form and function.

(e) *Contract* means any contract, agreement, understanding, or other arrangement with NASA or another Government Agency on NASA's behalf, including any assignment, substitution of parties, or subcontract executed or entered into thereunder.

(f) *Contractor* means the party who has undertaken to perform work under a contract or subcontract.

(g) *Innovation* means a mathematical, engineering or scientific concept, idea, design, process, or product, reported as new technology on NASA Form 1679.

(h) *Innovator* means any person listed as a contributor, inventor, or author of an innovation.

(i) *Invention* includes any act, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the patent laws of the United States or any foreign country.

(j) *Qualified User* means any person that has legally acquired computer software and has the right to use it for a legal purpose.

(k) *Verified* means passing rigorous testing to ascertain whether the functionality claimed in the innovation's documentation is realized.

§ 1240.103 Criteria.

(a) Only those contributions to NASA which have been:

(1) Used in a NASA program or adopted or sponsored or supported by NASA, and

(2) Found to have significant value in the conduct of aeronautical and space activities, will be recommended for award under this subpart.

(b) In determining the amount, terms, and conditions of any award, the following criteria will be considered:

(1) The value of the contribution to the United States;

(2) The aggregate amount of any sums which have been expended by the applicant for the development of such contribution;

(3) The amount of any compensation (other than salary received for services rendered as an officer or employee of the Government) previously received by the applicant for or on account of the use of such contributions by the United States; and

(4) Such other factors as the Administrator shall determine to be material.

§ 1240.104 Applications for awards.

(a) *Eligibility.* Applications for award may be submitted by any person

including any individual, partnership, corporation, association, institution, or other entity.

(b) *Information required.* Applications for award should be addressed to the Inventions and Contributions Board (herein referred to as the Board), National Aeronautics and Space Administration, Washington, DC 20546–0001, and will contain:

(1) The name and address of the applicant, the person's relationship to the contributor if the contribution is made by one other than the applicant, and the names and addresses of any others having information as to the value or usage of the contribution;

(2) A complete written description of the contribution, in the English language, using electronic media, accompanied by drawings, sketches, diagrams, or photographs illustrating the nature of the contribution and the technical and scientific principles upon which it is based, any available test or performance data or observations of pertinent scientific phenomena, and the aeronautics or space application of the contribution;

(3) The date and manner of any previous submittal of the contribution to any other United States Government agency, and the name of such agency;

(4) The aggregate amount of any sums which have been expended by the applicant for the development of the contribution;

(5) The nature and extent of any known use of the contribution by the United States and by any agency of the United States Government;

(6) The amount of any compensation (other than salary received for services rendered as an officer or employee of the Government) previously received by the applicant for or on account of the use of such contribution by the United States;

(7) Identification of any United States and foreign patents applied for or issued relating to the contribution; and

(8) An agreement to surrender all claims which such applicant may have for the use of such contribution by the Government.

(c) *General.* (1) Each contribution will be made the subject of a separate application in order that each contribution may be evaluated individually.

(2) Material constituting a possible hazard to safety or requiring unusual storage facilities should not be submitted, and will not be accepted. Models or intricate exhibits demonstrating the contribution will not be accepted unless specifically requested by the Board. In those few cases where such models or exhibits have been submitted pursuant to a request made by the Board, the same will be returned to the applicant upon written request from the applicant.

(3) It is the policy of the Board to use or disclose information contained in applications for awards for evaluation purposes only. Applications for awards submitted with restrictive legends or statements differing from this policy will be treated in accordance with the Board's policy.

§ 1240.105 Special procedures—NASA and NASA contractor employees.

(a) A NASA Headquarters office, a NASA field installation, or a NASA contractor may submit to the Board an application for an award identifying the originator(s) of any scientific or technical contribution conceived or developed during the performance of a NASA program or contract, and which is considered to be of value in advancing the state of knowledge in space or aeronautical activities, whether or not the contribution is the subject of a NASA Tech Brief, software approved for public release, or of a U.S. patent application.

(b) The Board will recommend to the Administrator or a designee that an initial award of at least $1,000 be granted to a sole inventor, or $500 each to joint inventors, upon submittal of NASA Form 1688 by either the Associate General Counsel for Intellectual Property, for an invention made and reported by a NASA Headquarters employee or an employee of a NASA Headquarters contractor, or a patent counsel at a NASA field installation for an invention made and reported by an employee of that installation or by an employee of an installation contractor, has filed a nonprovisional U.S. patent application or that a continuation-in-part or divisional patent has been issued. The Board is authorized to recommend a supplemental monetary award in an amount that will be based on the evaluation of the technical and commercial merits of the invention. No additional award will be given for a continuation patent application where an initial award was authorized for the parent application and this parent application will be or has been abandoned. In addition, initial awards will not be granted for provisional applications under 35 U.S.C. 111(b) or reissue applications under 35 U.S.C. 251.

(c) When the Board receives written notice (NASA Form 1688) that a NASA Center has approved for release to qualified users a software package based on an innovation made and reported by an employee of NASA or a NASA contractor on NASA Form 1679, the Board will recommend to the Administrator or designee that an initial award of at least $1,000 be granted to a sole innovator, and an award of at least $500 will be granted to each originator of the innovation if there is more than one. The Board is authorized to recommend a supplemental monetary award in an amount that will be based on the evaluation of the technical and commercial merits of the innovation. No contribution may receive this award unless:

(1) NASA has an ownership interest in the software; i.e., NASA has the unrestricted use of the software in perpetuity at no charge from any other entity;

(2) The software is of commercial quality; i.e., is not in experimental or beta phases of development and includes documentation, either in paper or electronic formats, describing the software's form and function;

(3) The software has been verified to perform the functions claimed in its documentation on the platform for which it was designed without harm to the systems or data contained within; and,

(4) The software has been distributed to qualified users upon the written approval for release by Center management.

(d) Software dissemination awards are not eligible to receive selected Tech Brief awards based upon the publication of an announcement of availability in "NASA Tech Briefs."

(e) When the Board receives written notice (NASA Form 1688) that a NASA Center has approved for publication a selected NASA Tech Brief based on an innovation made and reported by an employee of NASA or a NASA contractor on NASA Form 1679, the Board will recommend to the Administrator or designee that an initial award of at least $350 be granted, and an award of at least that amount will be granted to each originator of the innovation. The Board is authorized to recommend a supplemental monetary award in an amount that will be based on the evaluation of the technical and commercial merits of the innovation.

(f) When a selected NASA Tech Brief has been approved for publication, and/or a NASA Center has approved the release of a software package, and/or the filing of a U.S. patent application has been authorized for the same contribution, the initial awards authorized in paragraphs (b), (c), and (e) of this section will be cumulative.

(g) Initial awards authorized in paragraphs (b), (c), and (e) of this

section may not exceed a total of $5,000 per category. Such cases, wherein a large number of multiple innovators are contributors, must be submitted for formal evaluation by the Board on a NASA Form 1329 or 1329A.

(h) Awards authorized in paragraphs (a), (b), (c), and (e) of this section will not be granted to a contributor who has previously received full compensation for, or on account of, the use of such a contribution by the United States.

(i) If a contribution, as first reported and evaluated, is judged not to merit a supplemental award, as provided for in paragraphs (a), (b), (c), or (e) of this section, or the contribution is later proved to be of more significant value, it may be submitted for reevaluation on NASA Form 1329A. Responsible NASA and NASA contractor officials are encouraged to periodically review such reported contributions, and to resubmit them for reconsideration through the same channels as originally reported.

§ 1240.106 Review and evaluation of contribution.

(a) A contribution will be initially reviewed by the Board on the basis of the material submitted by the applicant under § 1240.104(b).

(b) If it is determined that the contribution has been used in a NASA program, or adopted or sponsored or supported by NASA, the contribution will be evaluated for its significant value in the conduct of aeronautical or space activity.

(c) The Board will recommend an award for such contribution when, upon evaluation of its scientific and technical merits, it is determined to warrant an award of at least $500.

§ 1240.107 Notification by the Board.

(a) With respect to each completed application where the Board has recommended to the Administrator the granting of an award, and the Administrator has approved such award, the Board will notify the applicant of the amount and terms of the award. In the case of NASA employees or employees of NASA contractors, such notification will normally be made through the appropriate NASA field installation representative.

(b) Except for applications from NASA employees or employees of NASA contractors, where the Board does not propose to recommend to the Administrator the granting of an award, a notification will be provided which includes a brief statement of the reasons for such decision.

§ 1240.108 Reconsideration.

(a) In those cases where the Board does not recommend an award, the applicant may, within such period as the Board may set but in no event less than 30 days from notification, request reconsideration of the Board's decision.

(b) If reconsideration has been requested within the prescribed time, the applicant will, within 30 days from the date of the request for reconsideration, or within any other time as the Board may set, file its statement setting forth the issues, points, authorities, arguments, and any additional material on which it relies.

(c) Upon filing of the reconsideration statement by the applicant, the case will be assigned for reconsideration by the Board upon the contents of the application, the record, and the reconsideration statement submitted by the applicant.

(d) If after reconsideration, the Board again does not propose to recommend the granting of an award, the applicant, after such notification by the Board, may request an oral hearing within the time set by the Board.

(e) An oral hearing without reconsideration may be granted upon determination of the Chairperson that good cause exists to do so.

§ 1240.109 Hearing procedure.

(a) An Oral hearing held by the Board will be in accordance with the following procedures:

(1) If the applicant requests a hearing within the time set in accordance with § 1240.108(d) or (e), the Board will set a place and date for such hearing and notify the applicant.

(2) The applicant may be represented by an attorney or any other appropriately designated person.

(3) Hearings will be open to the public unless the applicant requests that a closed hearing be held.

(4) Hearings may be held before the full membership of the Board or before any panel of Board members designated by the Chairperson.

(5) Hearings will be conducted in an informal manner with the objective of providing the applicant with a full opportunity to present evidence and arguments in support of the application. Evidence may be presented through means of such witnesses, exhibits, and visual aids as are arranged for by the applicant. While proceedings will be ex parte, members of the Board and its counsel may address questions to witnesses called by the applicant, and the Board may, at its option, utilize the assistance and testimony of technical advisors or other experts.

(6) Subject to the provisions of § 1240.104(c)(2), the applicant will submit a copy of any exhibit or visual aid utilized unless otherwise directed by the Board. The Board may, at its discretion, arrange for a written transcript of the proceedings and a copy of such transcript will be made available by the recorder for purchase by the applicant.

(7) No funds are available to defray traveling expenses or any other cost incurred by the applicant.

§ 1240.110 Recommendation to the Administrator.

Upon a determination by the Board that a contribution merits an award, the Board will recommend to the Administrator or a designee the terms and conditions of the proposed award, including a specific amount and distribution thereof for any multiple contributors. The recommendation of the Board to the Administrator or designee will reflect the views of the majority of the Board members. Dissenting views may be transmitted with the majority opinion.

§ 1240.111 Release.

Under subsection 306(b)(1) of the National Aeronautics and Space Act of 1958, as amended, no award will be made to an applicant unless the applicant submits a duly executed release, in a form specified by the Administrator, of all claims the applicant may have to receive any compensation (other than the award recommended) from the United States Government for use of the contribution or any element thereof at any time by or on behalf of the United States, or by or on behalf of any foreign government pursuant to any existing or future treaty or agreement with the United States, within the United States, or at any other place.

§ 1240.112 Presentation of awards.

(a) Monetary awards and accompanying written acknowledgments to employees of NASA will be presented in a formal ceremony by the appropriate Official-in-Charge at the Headquarters Office, or by the Director of the cognizant field installation or designee.

(b) Monetary awards and accompanying written acknowledgments to employees of NASA contractors will be forwarded to contractor officials for suitable presentation.

§ 1240.113 Financial accounting.

(a) An Award Check Receipt (NHQ DIV Form 622), which accompanies the transmittal of each group of award

checks from the Board will be dated and signed by the responsible NASA Center representative and returned to the Board without delay.

(b) Not later than December 10 of each year, the responsible field installation official will submit a report certifying that all award checks, which were issued and received by the field installation during the year, have been delivered to the proper employees of NASA and employees of NASA contractors. In the case of those checks that have not been delivered by December 10, the certification report will be accompanied by all undelivered checks and a brief explanation of the reasons for the failure to make delivery. This annual certification report is essential in order to ensure that income and withholding tax totals for all awardees are correct and complete at the close of each calendar year.

§ 1240.114 Delegation of authority.

(a) The Associate Administrator for Aerospace Technology and the Chairperson, Inventions and Contributions Board, are delegated authority to execute grants of awards for significant scientific or technical contributions not exceeding $2,000 per contributor, when in accordance with the recommendation of the Board and in conformity with applicable law and regulations.

(b) The Chairperson, Inventions and Contributions Board, is delegated authority to execute grants of initial awards upon the decision to file for a U.S. patent application, release software to qualified users, and/or upon approval to publish a selected NASA Tech Brief.

(c) No redelegation is authorized except by virtue of succession.

(d) The Chairperson, Inventions and Contributions Board, will ensure that feedback is provided so that the Administrator, through official channels, is immediately informed of significant actions, problems, or other matters of substance related to the exercise of the authority delegated in this section.

Dated: May 2, 2002.

Sean O'Keefe,

Administrator.

[FR Doc. 02–11513 Filed 5–8–02; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 80N–0280]

RIN 0910–AA01

Status of Certain Additional Over-the-Counter Drug Category II and III Active Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule stating that a certain ingredient in over-the-counter (OTC) drug products is not generally recognized as safe and effective or is misbranded. FDA is issuing this final rule after considering the reports and recommendations of various OTC drug advisory review panels and public comments on proposed agency regulations. This final rule addresses the ingredient octoxynol 9, considered in the rulemaking for OTC vaginal contraceptive drug products. Based on the failure of interested parties to submit new data or information to FDA under the proposed regulation, the agency has determined that the presence of this active ingredient in an OTC drug product would result in that drug product not being generally recognized as safe and effective for its intended use or would result in misbranding. This final rule is part of FDA's ongoing OTC drug product review.

DATES: This regulation is effective November 5, 2002.

FOR FURTHER INFORMATION CONTACT: Helen Cothran, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 7, 1990 (55 FR 46914), FDA published under § 330.10(a)(7)(ii) (21 CFR 330.10(a)(7)(ii)) a final rule on the status of certain OTC drug Category II and III active ingredients. That final rule declared as not generally recognized as safe and effective certain active ingredients that had been proposed as nonmonograph (Category II or III) under the agency's OTC drug review. The periods for submission of comments and new data following the publication of a notice of proposed rulemaking had closed and no significant comments or new data had been submitted to upgrade the status of these ingredients. In each instance, a final rule for the class of ingredients involved had not been published to date.

In the **Federal Register** of May 10, 1993 (58 FR 27636), FDA published a final rule establishing that certain additional active ingredients in OTC drug products are not generally recognized as safe and effective or are misbranded. That final rule included active ingredients from a number of OTC drug rulemakings that were not covered by the November 7, 1990, final rule (see table I of the May 10, 1993, final rule (58 FR 27636 at 27639 to 27641) for a list of OTC drug rulemakings and active ingredients covered by that final rule).

In the proposed rulemaking for OTC vaginal contraceptive drug products (45 FR 82014, December 12, 1980), the Advisory Review Panel on OTC Contraceptives and Other Vaginal Drug Products (the Panel) placed nonoxynol 9 and octoxynol 9 in Category I (safe and effective), placed phenylmercuric acetate, phenylmercuric nitrate, and other compounds containing mercury in Category II for safety, and placed dodecaethylene glycol monolaurate (polyethylene glycol 600 monolaurate), laureth 10S, and methoxypolyoxyethylene glycol 550 laurate in Category III for efficacy. In the preamble to the Panel's report (45 FR 82014), the agency stated that clinical trials of each product or final formulation may be the only certain predictor of its effectiveness in humans. The agency further stated that if clinical trials are necessary, manufacturers may be required to submit a new drug application (NDA) or supplement an existing NDA. The agency stated that it would announce its decision in a separate **Federal Register** document or in the tentative final order.

In the proposed rule for OTC vaginal contraceptive drug products (60 FR 6892, February 3, 1995), the agency proposed that manufacturers of OTC vaginal contraceptive drug products obtain approved applications for marketing of their products. The agency took this action because the evidence currently available shows that effectiveness of these products is dependent upon the final formulation and clinical studies in humans are needed to establish the effectiveness of the active ingredients in OTC vaginal contraceptive drug products. Therefore, each product must be tested in appropriate clinical trials under actual conditions of use. FDA encouraged manufacturers to consult with the agency regarding testing and the

submission of applications as soon as possible. In the proposed rule, all of the ingredients evaluated by the Panel were considered nonmonograph for reasons of safety and/or effectiveness.

In response to this proposed rule, the agency received no comments or data relating to the safety and effectiveness of any of the Panel's Category II or III ingredients. Therefore, in the **Federal Register** of April 22, 1998 (63 FR 19799), the agency issued a final rule regarding the nonmonograph status of these Category II and III ingredients. Based on the absence of substantive comments in opposition to the agency's proposed nonmonograph status for these ingredients, as well as the failure of interested parties to submit new data or information to FDA under the regulation, the agency determined that the presence of these ingredients in an OTC drug product would result in the drug product not being generally recognized as safe and effective or would result in misbranding.

In response to the proposed rule, the agency was informed of ongoing clinical trials involving nonoxynol 9 (Refs. 1, 2, and 3). However, the agency is not aware of any clinical trials, nor have any comments or data on octoxynol 9 been submitted to the agency since the proposed rule. Accordingly, FDA concludes that octoxynol 9 has not been shown to be generally recognized as safe and effective for its intended use as a vaginal contraceptive and should be eliminated from OTC drug products 6 months after the publication of this final rule in the **Federal Register**, regardless of whether further testing is undertaken to justify future use. Publication of this final rule does not preclude a manufacturer's testing an ingredient. New, relevant data can be submitted to the agency at a later date as the subject of a NDA that may provide for prescription or OTC marketing status (see part 314 (21 CFR part 314)).

The monograph or new drug status of nonoxynol 9 will be addressed after completion and analysis of the ongoing clinical trials. This final rule for octoxynol 9 does not affect the current marketing status of nonoxynol 9 as an OTC vaginal contraceptive.

II. The Agency's Final Conclusions on Certain OTC Drug Category II and III Ingredients

For the reasons discussed in section I of this document, the agency has determined that octoxynol 9 should be deemed not generally recognized as safe and effective for OTC use before a final rule is established for OTC vaginal contraceptive drug products. Accordingly, any drug product containing octoxynol 9 and labeled for OTC use as a vaginal contraceptive or spermicide will be considered nonmonograph and misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) and a new drug under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application under section 505 of the act (21 U.S.C. 355) and part 314 of the regulations is required for marketing. This applies to any OTC drug product containing octoxynol 9 and labeled for use as a vaginal contraceptive or vaginal spermicide that is initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule. Further, any OTC drug product that was previously initially introduced or initially delivered for introduction into interstate commerce cannot be repackaged or relabeled after the effective date of the rule. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency concludes that this final rule is consistent with the principles set out in the Executive order and in these two statutes. Further, since this final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation, FDA need not prepare additional analyses under the Unfunded Mandates Reform Act.

The purpose of this final rule is to finalize the proposed nonmonograph status of octoxynol 9 in order to expedite completion of the OTC drug review. There are a limited number of products currently marketed that will be affected by this rule. The agency's Drug Listing System identifies two manufacturers of OTC vaginal contraceptive drug products containing octoxynol 9, although there may be some additional products that are not currently included in the agency's system. One manufacturer markets four products and the other manufacturer markets one product, for a total of five products. At least one of the manufacturers is considered a small entity, using the U.S. Small Business Administration designation for this industry (750 employees).

Manufacturers of these products will no longer be able to market products containing octoxynol 9 after the effective date of this final rule. One of the manufacturers of octoxynol 9 also produces products that contain nonoxynol 9, which is currently being tested in clinical trials. Other manufacturers will be able to reformulate vaginal contraceptive drug products that contain octoxynol 9 and continue to market them with nonoxynol 9, pending completion of the final rule for these products. The agency estimates the cost of reformulation and relabeling to range from $100,000 to $500,000 per product. Using the midpoint of the cost estimate implies total costs up to $1.5 million. However, the agency believes the total costs will be smaller because all currently marketed products may not be reformulated. The manufacturers have known since the publication of the proposed rule in the **Federal Register** of February 3, 1995, that if adequate data from clinical trials were not submitted to support safety and effectiveness, cessation of marketing of the current products would be required when the final rule is published. Generally, when safety is not a concern, manufacturers will continue to market products that they know will become nonmonograph for as long as legally possible to maximize their profits for that product line.

The agency considered but rejected not acting on this ingredient in advance of the completion of the final rule on OTC vaginal contraceptive drug products. The ongoing clinical trials involving nonoxynol 9 are not expected to be completed for a period of time. However, safety and effectiveness have not been established for octoxynol 9 and

no testing is currently being done. Therefore, the agency concludes that consumers will benefit from the early removal from the marketplace of products containing octoxynol 9.

Because so few small firms will be affected, the agency certifies that there will not be a significant economic impact on a substantial number of small firms.

IV. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. References

The following references are on display in the Dockets Management Branch (address above) under Docket No. 80N–0280 and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. FDA, Transcript of Joint Meeting of the Nonprescription Drugs, Reproductive Health Drugs, Anti-Infective Drugs and Antiviral Drugs Advisory Committees, November 22, 1996, pp. 86–99, in OTC Vol. 11ATFM2.

2. Letter from D. L. Bowen, FDA, to R. W. Soller, Nonprescription Drug Manufacturers Association, coded LET 6.

3. Letter from D. L. Bowen, FDA, to R. W. Soller, Nonprescription Drug Manufacturers Association, coded LET 7.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

2. Section 310.545 is amended by adding a paragraph heading (a)(28)(i) after the existing paragraph heading, by adding paragraphs (a)(28)(ii) and (d)(36), by revising paragraph (d)(28), and by adding and reserving paragraphs (d)(34) and (d)(35) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(28) *Vaginal contraceptive drug products*—(i) *Approved as of October 22, 1998.* * * *

(ii) *Approved as of* November 5, 2002. Octoxynol 9

* * * * *

(d) * * *

(28) October 22, 1998, for products subject to paragraphs (a)(27) and (a)(28)(i) of this section.

* * * * *

(34) [Reserved]

(35) [Reserved]

(36) November 5, 2002, for products subject to paragraph (a)(28)(ii) of this section.

Dated: April 29, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–11511 Filed 5–8–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 78N–036L]

RIN 0910–AA01

Status of Certain Additional Over-the-Counter Drug Category II and III Active Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule stating that the stimulant laxative ingredients aloe (including aloe extract and aloe flower extract) and cascara sagrada (including casanthranol, cascara fluidextract aromatic. cascara sagrada bark, cascara sagrada extract, and cascara sagrada fluidextract) in over-the-counter (OTC) drug products are not generally recognized as safe and effective or are misbranded. This final rule is part of FDA's ongoing OTC drug product review.

DATES: This rule is effective November 5, 2002.

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2307.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 7, 1990 (55 FR 46914), FDA published under 21 CFR 330.10(a)(7)(ii) a final rule on the status of certain OTC drug category II and III active ingredients. That final rule declared as not generally recognized as safe and effective certain active ingredients that had been proposed as nonmonograph (category II or III) under the agency's OTC drug review. The periods for submission of comments and new data following the publication of a notice of proposed rulemaking had closed and no significant comments or new data had been submitted to upgrade the status of these ingredients. In each instance, a final rule for the class of ingredients involved had not been published to date.

In the **Federal Register** of June 19, 1998 (63 FR 33592), FDA reopened the administrative record and reclassified the stimulant laxative ingredients aloe, bisacodyl, cascara sagrada (including casanthranol, cascara fluidextract aromatic, cascara sagrada bark, cascara sagrada extract, and cascara sagrada fluidextract), and senna (including sennosides A and B) from category I (monograph) to category III (more data needed). The agency requested mutagenicity, genotoxicity, and carcinogenicity data on aloe and cascara sagrada ingredients and carcinogenicity data on bisacodyl and senna. The agency recommended that persons interested in testing these drugs consult the agency before initiating any studies and stated that these ingredients would be placed in category II (nonmonograph) in a final rule if data were not provided. The agency has received data on bisacodyl and senna, which will be discussed in future issues of the **Federal**

Register. However, no comments or data were submitted for aloe or cascara sagrada ingredients.

Accordingly, aloe and cascara sagrada ingredients will not be included in the final monograph for OTC laxative drug products because they have not been shown to be generally recognized as safe and effective for their intended use. These ingredients should be eliminated from OTC laxative drug products 180 days after the date of publication of this final rule, regardless of whether further testing is undertaken to justify future use.

The agency points out that publication of this final rule does not preclude a manufacturer's testing an ingredient. New, relevant data can be submitted to the agency at a later date as the subject of a new drug application that may provide for prescription or OTC marketing status. (See part 314 (21 CFR part 314).) As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in an appropriate citizen petition to amend a monograph. (See § 10.30 (21 CFR 10.30).)

II. The Agency's Final Conclusions

Based on the lack of data and information and the failure of interested persons to submit any new data from carcinogenicity studies, the agency has determined that the stimulant laxative ingredients aloe (including aloe extract and aloe flower extract) and cascara sagrada (including casanthranol, cascara fluidextract aromatic, cascara sagrada bark, cascara sagrada extract, and cascara sagrada fluidextract) should be deemed not generally recognized as safe and effective for OTC use before a final monograph is established for OTC laxative drug products. The agency is reclassifying these ingredients to category II (nonmonograph) and is adding them to the list of stimulant laxative ingredients for which the data are inadequate to establish general recognition of safety and effectiveness for such use in § 310.545(a)(12)(iv) (21 CFR 310.545(a)(12)(iv)) at new § 310.545(a)(12)(iv)(C).

Accordingly, any drug product containing any of these aloe or cascara sagrada ingredients and labeled for OTC laxative use will be considered nonmonograph and misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) and a new drug under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application under section 505 of the act (21 U.S.C. 355) and part 314 of the regulations is required for marketing. This applies to any OTC drug product containing any of these aloe or cascara sagrada ingredients and labeled for laxative use that is initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule. Further, any OTC drug product that was previously initially introduced or initially delivered for introduction into interstate commerce cannot be repackaged or relabeled after the effective date of the rule. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

III. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency concludes that this final rule is consistent with the principles set out in the Executive order and in these two statutes. In accordance with Executive Order 12866, FDA previously analyzed the potential economic effects of this final rule. As stated in the proposal (63 FR 33592 at 33594), the agency believed then that the rule would not be a significant regulatory action as defined by the Executive order. The agency has not received any new information or comments altering its previous expectations. Further, since this final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation, FDA need not prepare additional analyses under the Unfunded Mandates Reform Act.

The purpose of this final rule is to act on the nonmonograph status of certain stimulant laxative ingredients in advance of finalization of other monograph conditions in order to expedite completion of the OTC drug review. Products containing these ingredients will need to be reformulated to delete and/or replace the ingredient(s) with another laxative active ingredient. There are a number of acceptable laxative active ingredients in proposed part 334 (50 FR 2124 at 2152, January 15, 1985) that could be used. The reformulated products will also require relabeling.

The agency's Drug Listing System (DLS) identifies approximately 15 OTC laxative drug products that contain aloe (including aloe extract and aloe flower extract) and 160 OTC laxative drug products that contain cascara sagrada ingredients. Six products contain both aloe and cascara or casanthranol and appear on both lists. Approximately 125 products contain casanthranol and docusate sodium, a proposed monograph laxative ingredient. These combination products could be reformulated to eliminate the casanthranol, replace the casanthranol with sennosides A and B or sodium carboxymethylcellulose (proposed monograph combinations with docusate sodium in § 334.30(i)(3) and (j) (58 FR 46589 at 46595, September 2, 1993)), or possibly increase the quantity of docusate sodium in the product, in conformance with the proposed monograph.

The cost to reformulate a product will vary greatly, based on: The nature of the change in formulation, the product, the process, and the size of the firm. Based on the reformulation options discussed previously in this document, most firms should not need to change their dosage form. However, they will have to redo the validation (product, process, new supplier), conduct stability tests, and change master production records in order to ensure compliance with current good manufacturing practice. (See section 501(a)(1)(B) of the act (21 U.S.C. 351(a)(1)(B)) and parts 210 and 211) (21 CFR parts 210 and 211).)

The DLS indicates that approximately 35 manufacturers and 70 distributors/repackers/relabelers market these 170 products. Most firms have only one or two products and should not incur substantial economic expense should they choose to reformulate or discontinue their product(s). The 35 manufacturers will incur the majority of the costs to reformulate and relabel products.

The agency estimates the range of reformulation costs is from $100,000 to $500,000 per product. As most affected firms have only one or two products containing these ingredients, the midpoint of the cost estimate for reformulation implies total costs of $300,000 to $600,000 per firm. If all manufacturers decide to reformulate, about 56 products would be affected. Using the midpoint of the estimated cost to reformulate ($300,000) implies total costs of $16.8 million. However, the agency believes the total costs will be lower because not all firms will choose to reformulate. Some firms may choose to discontinue a product line if sales are too low to justify the added cost of reformulation and/or they may place their market emphasis on other OTC laxative drug products. The lost sales from the products containing nonmonograph ingredients may be offset by sales of the substitute products containing monograph ingredients. In addition, firms have been aware of the proposed nonmonograph status of these products since 1998 and have not submitted data to the agency. While this final rule may cause firms to discontinue marketing or to reformulate some products prior to issuance of the final monograph, these firms have known for some time that if adequate data were not submitted to support safety, cessation of marketing of the current products would be required, in any event, when the final monograph is published.

The agency estimates that the average cost to relabel OTC drug products is about $3,600. The agency is unsure of how many products will require new labeling. If all of the 170 products are reformulated and are still marketed, then the one-time costs to relabel would be $612,000. The estimated total one-time reformulation and relabeling cost would be $17.8 million.

The agency considered but rejected not acting on these ingredients in advance of the finalization of other monograph conditions. As firms have not submitted the requested safety data, these ingredients will not be included in the final monograph when completed. The agency has determined that there is no reason to allow continued marketing of OTC laxative drug products containing any of these ingredients. Consumers will benefit from the early removal from the marketplace of products containing ingredients for which safety has not been established. Consumers can then purchase products containing only ingredients proposed for monograph status. Manufacturers who choose to reformulate or replace affected products will be able to use alternate ingredients, as discussed previously in this document, that are proposed as monograph conditions without incurring any additional expense of clinical testing for those ingredients.

Because these products must be manufactured in compliance with the pharmaceutical current good manufacturing practices (parts 210 and 211), all firms have the necessary skills and personnel to perform the tasks of reformulation, validation, and relabeling either in-house or by contractual arrangement. No additional professional skills are needed. No other Federal rules duplicate, overlap, or conflict with this rule.

The agency has considered the burden to small entities and identified reformulation options available to them. Nevertheless, some entities may incur significant impacts, especially private label manufacturers that provide labeling for a number of the affected products. This economic analysis, together with other relevant sections of this document, serves as the agency's final regulatory flexibility analysis, as required under the Regulatory Flexibility Act.

IV. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

2. Section 310.545 is amended by adding paragraphs (a)(12)(iv)(C) and (d)(30) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(12) * * *

(iv)(C) *Stimulant laxatives—Approved as of* November 5, 2002.

Aloe ingredients (aloe, aloe extract, aloe flower extract)

Cascara sagrada ingredients (casanthranol, cascara fluidextract aromatic, cascara sagrada bark, cascara sagrada extract, cascara sagrada fluidextract).

* * * * *

(d) * * *

(30) November 5, 2002, for products subject to paragraph (a)(12)(iv)(C) of this section.

* * * * *

Dated: April 29, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–11510 Filed 5–8–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286

DoD Freedom of Information Act (FOIA) Program

AGENCY: Department of Defense.

ACTION: Final rule; amendment.

SUMMARY: The search and review rates for processing Freedom of Information Act (FOIA) requests within the Department of Defense are being increased at the recommendation of the General Accounting Office (GAO). FOIA

requesters will incur more direct costs for search and review, if applicable.

DATES: This rule is effective July 1, 2002.

FOR FURTHER INFORMATION CONTACT: D. Maier, (703) 697–1160.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 286

Freedom of Information.

Accordingly, 32 CFR part 286 is amended as follows:

PART 286—DOD FREEDOM OF INFORMATION ACT PROGRAM REGULATION

1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 552.

2. In § 286.29, the tables in paragraphs (b)(1) and (d) are revised to read as follows:

§ 286.29 Collection of fees and fee rates.

* * * * *

(b) * * *

(1) * * *

Type	Grade	Hourly Rate
Clerical	E1–E9/GS1–GS8.	$20.00
Professional ...	O1–O6/GS9–GS15.	44.00
Executive	ES1–ES6/O7–O10.	75.00
Contractor	.....	44.00

* * * * * *

(d) * * *

Type	Grade	Hourly Rate
Clerical	E1–E9/GS1–GS8.	$20.00
Professional ...	O1–O6/GS9–GS15.	44.00
Executive	ES1–ES6/O7–O10.	75.00
Contractor	.....	44.00

* * * * *

Dated: May 1, 2002.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–11381 Filed 5–8–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–01–048]

RIN 2115–AA97

Security Zone; St. Croix, U.S. Virgin Islands

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the security zones around commercial tank and freight vessels moored at the HOVENSA facility in St. Croix, U.S. Virgin Islands. The zones were created for national security reasons and to protect the public and port of Limetree Bay (HOVENSA) from subversive acts. The zone is no longer needed because the HOVENSA facility has upgraded security measures, installed controlled access points and implemented internal security procedures for permitting crewmembers to leave vessels moored at their facility.

DATES: Temporary § 165.T07–002 is removed effective May 9, 2002.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket [CGD07–01–048] and are available for inspection or copying at Marine Safety Office San Juan, San Martin Street #90, RODVAl Building, Suite 400, Guaynabo, PR 00968 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert Lefevers, U.S. Coast Guard Marine Safety Office, San Juan, Puerto Rico, (787) 706–2444.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that publishing an NPRM is unnecessary because this rule removes temporary security zones that are no longer needed because the HOVENSA facility has implemented internal security procedures for deciding which crewmembers are permitted to leave their vessels and enter the facility's property. For the same burden-lifting reason, under 5 U.S.C. 553(d)(3), we find good cause exists to make this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

On September 28, 2001, the first in a series of temporary rules creating security zones around commercial tank and freight vessels moored at the HOVENSA facility in St. Croix, U.S. Virgin Islands was published in the **Federal Register** (66 FR 49534). The zones created by that first rule were scheduled to terminate October 15, 2001, but they were revived twice—by a temporary rule issued in October 2001 (that was sent to Washington, D.C. for publication in the **Federal Register** but that was delayed in the mail [CGD07–01–125; 67 FR 9194, 9197, February 28, 2002]), and another issued in January 2002 (67 FR 4911, February 1, 2002).

When it was issued, the current temporary rule that created temporary section 165.T07–002 of Title 33 of the Code of Federal Regulations, was scheduled to expire on June 15, 2002. Temporary section 165.T07–002 requires all persons aboard commercial tank and freight vessels to remain onboard when moored at the HOVENSA facility in St. Croix, U.S. Virgin Islands unless they have permission from the Captain of the Port to transit the security zone around the vessel.

These security zones were needed to prevent subversive acts and to protect the public and the port of HOVENSA. The security zones are no longer needed because HOVENSA has implemented internal security procedures for deciding which persons can depart the vessels moored at their facility. Therefore, the Coast Guard is removing this security zone regulation effective May 9, 2002.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because this rule removes an obsolete safety zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small business may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

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

Energy Effects

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

Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

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

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

PART 165— REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

§ 165.T07–002 [Removed]

2. Section 165.T07–002 is removed.

Dated: April 18, 2002.

J.A. Servidio,

Commander, U.S. Coast Guard, Captain of the Port.

[FR Doc. 02–11619 Filed 5–8–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 323

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 232

[FRL 7209–2]

Final Revisions to the Clean Water Act Regulatory Definitions of "Fill Material" and "Discharge of Fill Material"

AGENCIES: U.S. Army Corps of Engineers, Department of the Army, DoD; and Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA) are promulgating a final rule to reconcile our Clean Water Act (CWA) section 404 regulations defining the term "fill material" and to amend our definitions of "discharge of fill material." Today's final rule completes the rulemaking process initiated by the April 20, 2000, proposal in which we jointly proposed to amend our respective regulations so that both agencies would have identical definitions of these key terms. The proposal was intended to clarify the Section 404 regulatory framework and

generally to be consistent with existing regulatory practice. Today's final rule satisfies those goals.

Today's final rule defines "fill material" in both the Corps' and EPA's regulations as material placed in waters of the U.S. where the material has the effect of either replacing any portion of a water of the United States with dry land or changing the bottom elevation of any portion of a water. The examples of "fill material" identified in today's rule include rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in waters of the U.S. This rule retains the effects-based approach of the April 2000 proposal and reflects the approach in EPA's longstanding regulations. Today's final rule, however, includes an explicit exclusion from the definition of "fill material" for trash or garbage.

Today's final rule also includes several clarifying changes to the term "discharge of fill material." Specifically, the term "infrastructure" has been added in several places following the term "structure" to further define the situations where the placement of fill material is considered a "discharge of fill material." In addition, the phrases "placement of fill material for construction or maintenance of any liner, berm, or other infrastructure associated with solid waste landfills" and "placement of overburden, slurry, or tailings or similar mining-related materials" have been added to the definition of "discharge of fill material" to provide further clarification of the types of activities regulated under section 404.

As indicated in the proposal, as a general matter, this final rule will not modify existing regulatory practice. Today's final rule, which establishes uniform language for the Corps' and EPA's definitions of "fill material" and "discharge of fill material," will enhance the agencies' ability to protect aquatic resources by ensuring more consistent and effective implementation of CWA requirements.

EFFECTIVE DATE: June 10, 2002.

FOR FURTHER INFORMATION CONTACT: For information on today's rule, contact either Mr. Thaddeus J. Rugiel, U.S. Army Corps of Engineers, ATTN CECW–OR, 441 "G" Street, NW., Washington, DC 20314–1000, phone: (202) 761–4595, e-mail address: *thaddeus.j.rugiel@hq02.usace.army.mil,* or Ms. Brenda Mallory, U.S. Environmental Protection Agency, EPA West, Office of Wetlands, Oceans and Watersheds (4502T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, phone: (202) 566–1368, e-mail address: *mallory.brenda@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Potentially Regulated Entities

Persons or entities that discharge material to waters of the U.S. that has the effect of replacing any portion of a water of the U.S. with dry land or changing the bottom elevation of any portion of a water of the U.S. could be regulated by today's rule. The CWA generally prohibits the discharge of pollutants into waters of the U.S. without a permit issued by EPA, or a State or Tribe approved by EPA under section 402 of the Act, or, in the case of dredged or fill material, by the Corps or an approved State or Tribe under section 404 of the Act. Today's final rule addresses the CWA section 404 program's definitions of "fill material" and "discharge of fill material," which are important for determining whether a particular discharge is subject to regulation under CWA section 404. Today's final rule reconciles EPA's and the Corps' differing definitions of "fill material" and provides further clarification for the regulated public on what constitutes a "discharge of fill material." Examples of entities potentially regulated include:

Category	Examples of potentially regulated entities
State/Tribal governments or instrumentalities.	State/Tribal agencies or instrumentalities that discharge material that has the effect of replacing any portion of a water of the U.S. with dry land or changing the bottom elevation of a water of the U.S.
Local governments or instrumentalities.	Local governments or instrumentalities that discharge material that has the effect of replacing any portion of a water of the U.S. with dry land or changing the bottom elevation of a water of the U.S.
Federal government agencies or instrumentalities.	Federal government agencies or instrumentalities that discharge material that has the effect of replacing any portion of a water of the U.S. with dry land or changing the bottom elevation of a water of the U.S.
Industrial, commercial, or agricultural entities.	Industrial, commercial, or agricultural entities that discharge material that has the effect of replacing any portion of a water of the U.S. with dry land or changing the bottom elevation of a water of the U.S.
Land developers and landowners.	Land developers and landowners that discharge material that has the effect of replacing any portion of a water of the U.S. with dry land or changing the bottom elevation of a water of the U.S.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that are likely to be regulated by this action. This table lists the types of entities that we are now aware of that could potentially be regulated by this action. Other types of entities not listed in the table also could be regulated. To determine whether your organization or its activities are regulated by this action, you should carefully examine the applicability criteria in sections 230.2 of Title 40 and 323.2 of Title 33 of the Code of Federal Regulations, as well as the preamble discussion in Section II of today's final rule. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

B. Summary of Regulatory History Leading to Final Rule and Related Litigation

The CWA governs the "discharge" of "pollutants" into "navigable waters," which are defined as "waters of the United States." Specifically, Section 301 of the CWA generally prohibits the discharge of pollutants into waters of the U.S., except in accordance with the requirements of one of the two permitting programs established under the CWA: Section 404, which regulates the discharge of dredged or fill material, or sction 402, which regulates all other pollutants under the National Pollutant Discharge Elimination System (NPDES) program. Section 404 is primarily administered by the Corps, or States/Tribes that have assumed the program pursuant to section 404(g), with input and oversight by EPA. In contrast, Section 402 and the remainder of the CWA are administered by EPA or approved States or Tribes. The CWA defines the term "pollutant" to include

materials such as rock, sand, and cellar dirt that often serve as "fill material." The CWA, however, does not define the terms "fill material" and "discharge of fill material," leaving it to the agencies to adopt definitions consistent with the statutory framework of the CWA.

Prior to 1977, both the Corps and EPA had defined "fill material" as "any pollutant used to create fill in the traditional sense of replacing an aquatic area with dry land or of changing the bottom elevation of a water body for any purpose. * * *" 40 FR 31325 (July 25, 1975); 40 FR 41291 (September 5, 1975).

In 1977, the Corps amended its definition of "fill material" to add a "primary purpose test," and specifically excluded from that definition material that was discharged primarily to dispose of waste. 42 FR 37130 (July 19, 1977). This change was adopted by the Corps because it recognized that some discharges of solid waste materials technically fit the definition of fill material; however, the Corps believed that such waste materials should not be subject to regulation under the CWA section 404 program. Specifically, the Corps' definition of "fill material" adopted in 1977 reads as follows:

> (e) The term "fill material" means any material used *for the primary purpose* of replacing an aquatic area with dry land or of changing the bottom elevation of an [sic] water body. The term does not include any pollutant discharged into the water primarily to dispose of waste, *as that activity is regulated under section 402 of the Clean Water Act.*" 33 CFR 323.2(e) (2001)(emphasis added).

EPA did not amend its regulations to adopt a "primary purpose test" similar to that used by the Corps. Instead, the EPA regulations at 40 CFR 232.2 defined "fill material" as "any 'pollutant' which replaces portions of the 'waters of the United States' with dry land or which changes the bottom elevation of a water body *for any purpose*" (emphasis added). EPA's definition focused on the effect of the material (an effects-based test), rather than the purpose of the discharge in determining whether it would be regulated by section 404 or section 402.

C. April 2000 Proposal

These differing definitions of "fill material" have resulted in some confusion for some members of the regulated community which has not promoted effective implementation of the CWA. *See* 65 FR at 21294. As a result, in April 2000, the agencies proposed revisions to their respective definitions of "fill material" and "discharge of fill material," adopting a single effects-based definition similar to that in EPA's regulations. The April 2000 proposed rule defined "fill material" as material that has the effect of replacing any portion of a water of the U.S. with dry land, or changing the bottom elevation of any portion of a water of the U.S. The agencies believe that an effects-based definition is, as a general matter, the most effective approach for identifying discharges that are regulated as "fill material" under section 404. Thus, the proposal removed from the Corps" definition the "primary purpose" test and the provision excluding pollutants discharged into water primarily to dispose of waste.

The April 2000 proposal also would have excluded from the definition discharges subject to an EPA proposed or promulgated effluent limitation guideline or standard under CWA sections 301, 304, 306, or discharges covered under a NPDES permit under CWA section 402. Finally, the April 2000 proposal solicited comments on the idea of the agencies creating an "unsuitable fill" category in the regulations that would identify materials that the Corps District Engineer could determine were not appropriate as fill material and, consequently, refuse to process an application seeking authorization to discharge such material.

In the preamble for the April 2000 proposal, the agencies discussed the need to address the confusion created by the agencies' differing definitions. While in practice some Corps Districts and EPA Regions have developed consistent approaches for determining whether proposed activities would result in a discharge of fill material, national uniformity will ensure better environmental results. Moreover, two judicial decisions discussed in the April 2000 proposal, *Resource Investments Incorporated* v. *U.S. Army Corps of Engineers*, 151 F. 3d 1162 (9th Cir. 1998) ("*RII*") and *Bragg* v. *Robertson*, (Civil Action No. 2:98–636, S.D. W. Va.), *vacated on other grounds*, 248 F. 3d 275 (4th Cir. 2001) ("*Bragg*"), indicate that the differing EPA and Corps definitions can result in judicial decisions that further confuse the regulatory context. *See* 65 FR at 21294–95. The clarification in the April 2000 proposal was intended to promote clearer understanding and application of our regulatory programs.

With respect to the term "discharge of fill material," the April 2000 proposal also included several clarifying changes. Unlike the definition of "fill material," EPA's and the Corps" then-existing regulations defining the term "discharge of fill material" were substantively identical. The proposed changes to the term were intended to provide further clarification of the issue. Specifically, the proposal provided for adding two phrases to the definition: (1) "Placement of fill material for construction or maintenance of liners, berms, and other infrastructure associated with solid waste landfills; and (2) "placement of coal mining overburden."

As summarized in more detail in the U.S. Army Corps of Engineers' and Environmental Protection Agency's Response to Comments on the April 20, 2000, Proposed Rule Revising the Clean Water Act Regulatory Definitions of "Fill Material" and "Discharge of Fill Material," dated May 3, 2002 ("Response to Comments"), we received a number of comments addressing these proposed changes. The comments and the above-referenced document are part of the administrative record for this rule and are available from either agency. *See* the section entitled **FOR FURTHER INFORMATION CONTACT**.

II. Discussion of Final Rule

A. Overall Summary of Comments

We received over 17,200 comments on the proposed rule, including several hundred late comments, most of which consisted of identical or substantially identical e-mails, letters, and postcards opposing the rule. (In April 2002, an additional several thousand letters and e-mails were sent opposing the adoption of a rule similar to the proposal.) Approximately 500 of the original comments consisted of more individualized letters, with a mixture of those comments supporting and opposing the rule. The comments of environmental groups and the various form letters were strongly opposed to the proposal, in particular, the elimination of the waste exclusion and the discussion in the preamble regarding treatment of unsuitable fill material. Except for several landfill representatives, comments from the regulated community generally supported the proposal, in particular, the fact that the rule would create uniform definitions of "fill material" for the Corps" and EPA's rules and maintain regulation of certain discharges under section 404 as opposed to section 402 of the CWA. A detailed discussion of the issues raised in the comments and the agencies' responses can be found in the Response to Comments document.

The April 2000 proposal would have achieved four major outcomes and these were the focus of many of the comments. These outcomes were (1) Conforming the EPA and Corps definitions of "fill material" to one another; (2) adopting an effects-based

test, as opposed to the Corps' primary purpose test, for defining "fill material;" (3) eliminating the waste exclusion from the Corps" regulation; and (4) soliciting comments on whether to develop a definition for "unsuitable fill material." A summary of comments relating to these four issues and our responses are discussed in section II.B of this preamble, which describes today's final rule.

In addition, comments asserted the need for the agencies to prepare an environmental impact statement (EIS) in order to comply with the National Environmental Policy Act; and questioned the consistency of the April 2000 proposal with the CWA, existing judicial decisions, and agency guidance documents. These comments are addressed in this section of the preamble.

With respect to the need for an EIS, many of the comments opposing the adoption of the rule argued that an EIS should have been prepared, particularly to address the impacts of eliminating the waste exclusion. Supporters of an EIS rejected the notion that the issues will be addressed in the individual permit situations. First, they pointed out that many of the mining activities have historically been permitted under the nationwide permit program where truncated environmental review occurs and no individual NEPA analysis is undertaken. Second, they argued that the cumulative impacts often are not appropriately addressed in this context. As described in section III. J of this final preamble and in the Response to Comments document, the agencies have concluded that preparation of an EIS is not required for this rule pursuant to NEPA. While supporters of an EIS suggest that finalizing this rule will result in significant new discharges that previously would not have occurred, that is not the case. Although the rule will clarify the appropriate regulatory framework, we do not expect there to be any significant change in the nature and scope of discharges that will occur.

Finally, a number of comments asserted that the proposal should not be finalized because it violated the then-existing law (*e.g.*, CWA, *Bragg*, and *RII*). Other comments argued that the proposal was consistent with the CWA and current regulatory practice. We do not agree that the proposal or today's final rule violate the CWA or any other law. Moreover, we believe that agencies have an obligation to take whatever steps may be necessary, including making revisions to their regulations, to ensure that their programs are appropriately implementing statutory mandates. As indicated, the Corps and EPA believe that the current inconsistency between their respective definitions of "fill material" is impeding the effective implementation of the section 404 program. Under those circumstances, we believe that a change in the regulatory language is justified and that by adopting the substance of EPA's longstanding definition, we are minimizing potential confusion and disruption to the program, while remaining consistent with the CWA. We agree with those comments that recognize the consistency of our action with the CWA and current practice. As described in more detail in the Response to Comments document and sections II. B and D of this preamble, today's final rule clarifies the governing regulatory framework in a manner consistent with the CWA and existing practice.

B. Discussion of the Final Rule

1. Definition of "Fill Material"

Today's final rule modifies both the EPA's and Corps' existing definitions of "fill material" and has retained the effects-based approach set forth in the proposal. The final rule defines "fill material" as material placed in waters of the U.S. where the material has the effect of either replacing any portion of a water of the United States with dry land or changing the bottom elevation of any portion of a water. The examples of "fill material" identified in today's rule include rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in waters of the U.S. The proposed rule only specifically identified rock, earth and sand as examples, but the preamble made it clear that these were merely illustrative. In addition, in the preamble to the proposal, we indicated that wood chips, coal mining overburden, and similar materials would also constitute "fill material" if they had the effect of fill. As a result of questions raised in the comments about the scope of the term "fill material," we have included additional examples in the final rule, several of which were discussed in the proposed preamble. We believe that these additional examples will further clarify the rule.

Although today's final rule adopts a general effects-based approach for defining "fill material," it specifically excludes trash or garbage. Today's final rule does not modify any other Section 404 jurisdictional terms or alter any procedures governing the individual or general permit processes for Section 404 authorizations, requirements under Section 402, or the governing permit programs. Following is a summary of the actions that the agencies have taken in response to public comments.

a. Reconciling Agencies' Definitions

The majority of the comments from both the environmental and industry perspectives addressing the issue of whether the agencies should have identical definitions expressed the general view that the agencies should have the same definitions for the key jurisdictional terms "fill material" and "discharge of fill material." Many of the comments also noted that the differences between the Corps' and EPA's rules have historically caused confusion for the regulated community. Several asserted that despite differences in the regulatory language, some Corps Districts have been applying an effects-based test for some time. As described in the Response to Comments document, the agencies agree with those comments supporting the promulgation in both the Corps' and EPA's regulations of a uniform definition for the terms "fill material" and "discharge of fill material." Today's final rule achieves this result.

b. Effects-Based Test

Most of the comments supported the proposed rule's use of an effects-based test similar to EPA's longstanding definition for defining "fill material" and the elimination of the "primary purpose" test from the Corps regulations. Those disagreeing with such an approach gave a variety of reasons including, the lack of any demonstrated justification that eliminating the primary purpose test from the Corps' regulation was necessary; the existence of similar purpose tests in other statutes involving waste materials as well as in the Section 404(b)(1) Guidelines as demonstrating that such tests need not be unwieldy; the existence of alternative ways of addressing the issues of concern without resorting to this rule change; and concerns about the inappropriate expansion of section 404 jurisdiction. As will be explained, the agencies are not persuaded by these arguments.

First, we believe that the objective standard created by the effects-based test will yield more consistent results in determining what is "fill material" and will provide greater certainty in the implementation of the program. We believe that these benefits provide sufficient justification for today's rule change. In addition, although similar "purpose" tests may be used under other statutes and even under the section 404 program, this does not

negate the difficulties we have faced in applying the primary purpose test, as well as some confusion that has resulted from the use of the subjective primary purpose test in the section 404 jurisdictional context. An objective, effects-based standard also helps ensure that discharges with similar environmental effects will be treated in a similar manner under the regulatory program. The subjective, purpose-based standard led in some cases to inconsistent treatment of similar discharges, a result which hampers effective implementation of the statute.

Moreover, we believe there is an important distinction between the use of a purpose test here, where it determines the basic jurisdiction of the section 404 versus the section 402 program, and its use in the other contexts, such as in the evaluation of whether alternatives to a discharge of dredged material are "practicable" within the meaning of the section 404(b)(1) Guidelines. See 40 CFR 230.10(a)(2). The use of project purpose in the latter case is appropriate because it would make no sense to consider an alternative "practicable" if it did not satisfy the basic or overall purpose of the project proposed by the applicant. The definition of fill material, on the other hand, determines which legal requirements must be met for a discharge to be authorized under the statute. In that circumstance, we believe it is important to use an objective, effects-based test that ensures consistent treatment of like discharges, and prevents uncertainty for the regulated community as to what regulatory program applies to particular discharges. Moreover, we disagree that alternatives other than a rulemaking could have adequately addressed the agencies' concerns since the facial differences in our regulations could only be completely reconciled by revising the rules. In addition, the agencies previously had attempted to clarify their interpretation of the rules in a 1986 Memorandum of Agreement (MOA). Nevertheless, issues persisted.

Finally, we disagree that the rule causes an inappropriate expansion of section 404 jurisdiction. The CWA does not limit section 404 jurisdiction over fill material to materials meeting the primary purpose test. The "primary purpose test" is a regulatory definition and within the agencies province to modify as long as the modification is consistent with the CWA. In sum, as described in the Response to Comments document, the final rule, just as the proposal, adopts an effects-based approach to defining fill material. We believe the clarity and consistency created by the agencies relying on a more objective test for defining these key jurisdictional terms will result in more effective regulation under the CWA.

c. Elimination of Waste Exclusion

Many comments opposed the proposal to eliminate the waste exclusion from the Corps' regulation. Some of these comments recommended that, in addition to the effects-based test, the agencies should include a general exclusion from the definition of "fill material" for any discharge of "waste." These comments asserted that such an approach provides the advantages of EPA's effects-based approach while more effectively implementing the Corps' exclusion of waste material from regulation under section 404. Some of the comments argued that the proposed rule's deletion of the waste exclusion language from the Corps' regulations violates the CWA. According to these comments, while waste material can permissibly be covered by section 404 when it is placed in waters for a beneficial purpose, the CWA categorically prohibits authorizing such discharges under section 404 when their purpose is waste disposal. These comments pointed to the decisions in *RII* and *Bragg* to argue that all waste material is outside the scope of section 404.

These comments do not object to, nor claim that the CWA prohibits, issuance of a section 404 permit for waste material discharged into waters of the U.S. under all circumstances. Where waste is discharged for a purpose other than waste disposal (e.g., to create fast land for development), these comments acknowledged that the Corps' issuance of a section 404 permit in accordance with the section 404(b)(1) Guidelines adequately protects the environment and is consistent with the CWA. On this point, we agree. However, where the identical material—with identical environmental effects—is discharged into waters for purposes of waste disposal, the comments contend that issuance of a section 404 permit in accordance with the Guidelines would neither protect the environment nor be allowed by the CWA. Here, we disagree.

Simply because a material is disposed of for purposes of waste disposal does not, in our view, justify excluding it categorically from the definition of fill. Some waste (e.g., mine overburden) consists of material such as soil, rock and earth, that is similar to "traditional" fill material used for purposes of creating fast land for development. In addition, other kinds of waste having the effect of fill (e.g., certain other mining wastes) can, unlike trash or garbage, be indistinguishable either upon discharge or over time from structures created for purposes of creating fast land. Given the similarities of some discharges of waste to "traditional" fill, we believe that a categorical exclusion for waste would be over-broad. Instead, where a waste has the effect of fill, we believe that regulation under the section 404 program is appropriate.

This does not mean, however, that today's rule opens up waters of the U.S. to be filled for any waste disposal purposes. As explained previously, today's rule is generally consistent with current agency practice and so it does not expand the types of discharges that will be covered under section 404. The section 404(b)(1) Guidelines provide for a demonstration that there are no less damaging alternatives to the discharge, and that all appropriate and practicable steps have been taken to avoid, minimize and compensate for any effects on the waters. We recognize that, some fill material may exhibit characteristics, such as chemical contamination, which may be of environmental concern in certain circumstances. This is true under either a primary purpose or effects based definition of fill material. The section 404 permitting process, however, is expressly designed to address the entire range of environmental concerns arising from discharges of dredged or fill material. See 40 CFR Part 230, subparts C-G (containing comprehensive provisions for addressing physical, chemical and biological impacts of discharges).

The 404(b)(1) guidelines provide a comprehensive means of evaluating whether any discharge of fill material, regardless of its purpose, is environmentally acceptable and therefore may be discharged in accordance with the CWA. Where the practicable alternatives test has been satisfied and all practicable steps have been taken both to minimize effects on the aquatic environment and to compensate for the loss of aquatic functions and values, we believe the section 404 permitting process is adequate to ensure protection of the aquatic ecosystem for any pollutant that fills waters. There is no environmental basis for contending that the sufficiency of the permitting process to protect waters of the U.S. depends on the purpose of the discharge.

The position reflected in some of the comments appears to be based on the contention that Congress did not intend for waste disposal to be a permissible purpose of discharging pollutants into waters of the U.S. While we agree that

Congress wanted to prevent utilization of waters as unlicensed dumping grounds for waste material, the Act as a whole is focused primarily on discharges of waste material, as shown by the Act's definition of pollutant, which includes solid waste, sewage, garbage, discarded equipment, industrial, municipal and agricultural waste. *See* CWA section 502(6). While the elimination of all discharges is an important goal of the Act (*see* CWA section 101(a)(1)), the Act seeks to meet that goal not by banning discharges of waste outright, but by imposing carefully tailored restrictions on discharges of pollutants based on factors such as the impact of the discharge on the receiving water, availability of treatment technologies, cost, and the availability of alternatives to the discharge. *See, e.g.*, CWA sections 301(b), 304(b) (requiring discharges to meet technology-based effluent limitations guidelines and standards); section 306(a)(1) (defining new source performance standard to include no discharge of pollutants "where practicable"); section 301(b)(1)(C) (requiring dischargers to comply with any more stringent limitations necessary to meet water quality standards); sections 404(b)(1) and 403(c)(1)(F) (requiring that 404(b)(1) Guidelines be based on section 403(c) criteria, which include consideration of "other possible locations" of disposal).

Nor do we think that there is any indication that Congress intended to exclude discharges for purposes of waste disposal entirely from coverage under section 404. For example, section 404 applies to "dredged material" (referred to as dredged "spoil" in the definition of pollutant in section 502(6)), which is typically discharged not for any beneficial purpose, but as a waste product from a dredging operation. Moreover, section 404(a) authorizes the Corps to issue permits for discharges of dredged or fill material at specified "disposal" sites. Congress' use of the word "disposal" supports the reasonableness of our view that regulating waste material having the effect of fill under section 404 is consistent with the Act.

We also disagree with the interpretation of some of the comments on the *RII* and *Bragg* decisions as mandating that the Corps retain the current exclusion of waste disposal in the definition of fill material. We note first that the decision of the district court in *Bragg* has been vacated by the Fourth Circuit on 11th amendment grounds. *Bragg* v. *Robertson*, 72 F. Supp. 2d 642 (S.D. W. Va. 1999), *rev'd*, 248 F. 3d 275 (4th Cir. 2001). In any event, both *Bragg* and *RII* applied the Corps' then-existing definition of fill material to conclude that certain discharges were not covered by section 404. Nothing in those decisions suggests that the Act itself precluded the regulation of waste materials with the effect of fill under section 404. See section II. D. of this preamble for further discussion of the *RII* decision. While we agree that trash or garbage generally should be excluded from the definition of fill material (for the reasons explained in section II.B.1d of this preamble), we do not agree that an exclusion for all waste is appropriate and have not included such a provision in today's rule. These issues are discussed in section II.B.1d of the preamble and are addressed more fully in the Response to Comments document.

d. Trash or Garbage

The agencies have added an exclusion for trash or garbage to the definition of "fill material" for several reasons. First, the preamble to the proposed rule and many of the comments recognized that trash or garbage, such as debris, junk cars, used tires, discarded kitchen appliances, and similar materials, are not appropriately used, as a general matter, for fill material in waters of the U.S. In particular, we agree that the discharge of trash or garbage often results in adverse environmental impacts to waters of the U.S. by creating physical obstructions that alter the natural hydrology of waters and may cause physical hazards as well as other environmental effects. We also agree that these impacts are generally avoidable because there are alternative clean and safe forms of fill material that can be used to accomplish project objectives and because there are widely available landfills and other approved facilities for disposal of trash or garbage.

Accordingly, a party may not obtain a section 404 permit to dispose of trash or garbage in regulated waters. Because the discharge of any pollutant into jurisdictional waters is prohibited under CWA section 301 except in accordance with a permit issued under sections 404 or 402, section 402 would govern such discharges. For many of the reasons identified in this preamble, such as the physical obstruction and hazards that such materials would create in waters of the U.S., we would emphasize that trash or garbage are unlikely to be eligible to receive a permit under the section 402 regulatory program. We also note that where such materials are placed in waters of the U.S. without a permit, EPA or an approved State/Tribal agency with permitting authority, remains the lead enforcement agency. Today's rule does not affect the application of section 402 of the CWA to discharges of pollutants other than fill material that may be associated with such things as solid waste landfill structures and mine impoundments. Where such structures release pollutants into waters of the U.S., a permit under section 402 of the CWA is required that will ensure protection of any downstream waters, including compliance with State water quality standards.

While the agencies have generally excluded materials characterized as trash or garbage from the definition of "fill material," we agree that there are very specific circumstances where certain types of material that might otherwise be considered trash or garbage may be appropriate for use in a particular project to create a structure or infrastructure in waters of the U.S. In such situations, this material would be regulated as fill material. Such material would have to be suitably cleaned up and not include constituents that would cause significant environmental degradation. An example would be where recycled porcelain fixtures are cleaned and placed in waters of the U.S. to create environmentally beneficial artificial reefs. Such material would not be considered trash or garbage and thus would not be subject to the exclusion. The agencies believe that this is appropriate, and even environmentally beneficial, in situations where (1) the otherwise excluded materials are being placed in waters of the U.S. in a manner consistent with traditional uses of fill material to create a structure or infrastructure, (2) the material's characteristics are suitable to the project purpose, and (3) the review under section 404 can effectively ensure that the material will not cause or contribute to significant environmental degradation.

We also note that as stated in the preamble to the proposal, it is important to draw a clear distinction between solid waste discharged directly into waters of the U.S. and sanitary solid waste landfills. With respect to solid waste landfills, the liners, berms, and other infrastructure that are constructed of fill materials in waters of the U.S. are regulated under section 404 of the CWA. In the case of a landfill that has received a section 404 permit for the placement of berms, dikes, liners and similar activities needed to construct the facility, the subsequent disposal of solid waste into the landfill, while subject to regulation under the RCRA, would not be subject to regulation under the CWA because the constructed facility is not waters of the U.S. As with current

practice, discharges of leachate from landfills into waters of the U.S. would remain subject to CWA section 402. Today's final rule does not change this general regulatory framework for landfills. *See* section II D of this preamble for further discussion.

e. Unsuitable Fill Material

With respect to developing a potential definition of "unsuitable fill material," there was almost unanimous opposition to the unsuitable fill concept as discussed in the preamble. Some comments viewed it as an inadequate substitute for the elimination of the waste exclusion. Others argued that having an unsuitable fill provision would be a good idea but that it would need to be much broader and to specifically include mining-related wastes. These commenters also objected to leaving the question of whether something was "unsuitable fill material" to the discretion of the District Engineer. Some comments expressed concern that the definition of unsuitable fill material focused on materials that have a potential to leach or that have toxic constituents in toxic amounts. They argued that the definition could result in prohibiting activities that with appropriate permit terms and conditions potentially are allowable under section 404. They also argued that such issues should be addressed in the context of the permitting process and should not result in the permit application being rejected. As described in the Response to Comments document, the agencies have not included an unsuitable fill category in the final rule but, as discussed, the final rule does narrow the scope of "fill material" by excluding trash or garbage.

f. Effluent Guideline Limitations and 402 Permits

In addition to the changes already discussed in this preamble, today's final rule also deletes the exclusion contained in the proposal for discharges covered by effluent limitation guidelines or standards or NPDES permits. Several of the comments raised concerns that the exclusion included in the proposed definition for discharges covered by proposed or existing effluent limitation guidelines or standards or NPDES permits was vague and would result in uncertainty with respect to the regulation of certain discharges. Other comments stated that it was inappropriate for rule language to allow reliance on proposed effluent limitation guidelines or standards before they are promulgated as a final rule. In addition, including the language in the actual rule could raise questions as to whether the reference to effluent guidelines was meant to refer only to those in existence at the time today's rule was promulgated or whether the reference was prospective.

In light of the concerns and confusion associated with the proposed provision, we have decided to delete it from the rule. However, although we have removed the language in question from the rule itself, we emphasize that today's rule generally is intended to maintain our existing approach to regulating pollutants under either section 402 or 404 of the CWA. Effluent limitation guidelines and new source performance standards ("effluent guidelines") promulgated under section 304 and 306 of the CWA establish limitations and standards for specified wastestreams from industrial categories, and those limitations and standards are incorporated into permits issued under section 402 of the Act. EPA has never sought to regulate fill material under effluent guidelines. Rather, effluent guidelines restrict discharges of pollutants from identified wastestreams based upon the pollutant reduction capabilities of available treatment technologies. Recognizing that some discharges (such as suspended or settleable solids) can have the associated effect, over time, of raising the bottom elevation of a water due to settling of waterborne pollutants, we do not consider such pollutants to be "fill material," and nothing in today's rule changes that view. Nor does today's rule change any determination we have made regarding discharges that are subject to an effluent limitation guideline and standards, which will continue to be regulated under section 402 of the CWA. Similarly, this rule does not alter the manner in which water quality standards currently apply under the section 402 or the section 404 programs.

2. Definition of "Discharge of Fill Material"

Most of the comments addressing "discharge of fill material" supported the inclusion of items related to solid waste landfills, although several asserted that the regulation of discharges associated with solid waste landfills was inconsistent with the court's decision in *Resource Investments Inc.* v. *U.S. Army Corps of Engineers,* 151 F.3d 1162 (9th Cir. 1998). See detailed discussion in section II. D of this final preamble. With respect to the placement of coal mining overburden, two diametrically opposed views were reflected in the comments. Many of the comments argued that coal overburden was "waste" material and that allowing such discharges was a violation of the CWA. In contrast, other comments argued that focusing on "coal mining overburden" was confusing, because it created the impression that the overburden or similar materials from other mining processes may not be regulated as "discharges of fill material."

Today's final rule responds to the comments in the following ways. First, the agencies continue to agree with those comments that supported including the placement of material associated with construction and maintenance of solid waste landfills and related facilities in the discharge of fill material. For the reasons discussed in section II. D of this final preamble and in the Response to Comments document, we do not agree that we are precluded by the *RII* decision from issuing a rule that defines "fill material" or the "discharge of fill material" as encompassing discharges associated with the construction of solid waste landfill infrastructures. Second, the agencies have modified the "placement of coal mining overburden" to read "placement of overburden, slurry, or tailings or similar mining-related materials." The language in today's final rule will clarify that any mining-related material that has the effect of fill when discharged will be regulated as "fill material." We made this clarification because it was clear from the comments that some were reading the examples we identified as an exclusive list. The general intent of this rule is to cover materials that have the effect of fill, not simply to focus on any one industrial activity. We believe that the additional mining related examples will address the confusion reflected in the comments. Finally, as discussed in section II.B.1.c of this preamble, we do not agree that the CWA contains a blanket prohibition precluding discharges of "waste" materials in to waters of the U.S. Instead, the Act establishes the framework for regulating discharges into waters and we believe the section 404 program is the most appropriate vehicle for regulating overburden and other mining-related materials. Several other minor changes, editorial in nature, have also been made in today's final rule.

C. Appropriate Reliance on the Environmental Reviews Conducted by Other Federal or State Programs

As indicated, today's rule is designed to improve the effective implementation of the section 404 program by having the Corps and EPA adopt a single, uniform definition for these key jurisdictional terms. We also believe

that we can improve the effective implementation of the program by placing greater emphasis on coordination among the Federal agencies and with relevant State and Tribal programs. There are numerous examples of where the agencies can effectively work together and with other State, Tribal and Federal programs in the review of proposed projects that involve a section 404 discharge to jointly develop information that is relevant and reliable. Projects involving discharges to waters of the U.S. are often subject to review under other Federal and State permit programs, including the RCRA, the Surface Mining Control and Reclamation Act (SMCRA), the Coastal Zone Management Act (CZMA), CWA Section 402 NPDES, and others. Examples where closer coordination may be beneficial include the review of proposed solid waste landfills under the CWA and RCRA, proposed highway projects under the CWA and NEPA, proposed mining projects under the CWA and SMCRA, and proposed coastal restoration projects under the CWA and CZMA.

As EPA and the Corps implement today's rule, we will be placing even greater emphasis on effective coordination with other relevant State, Tribal and Federal programs and, consistent with our legal responsibilities, on reliance, as appropriate, on the information developed and conclusions reached by other agencies to support the decisions required under these programs and ours. We are confident that this coordination will serve to make the implementation of today's rule and, more broadly, the CWA section 404 program, more effective, consistent and environmentally protective.

Some comments expressed concern that an effects-based approach to the definition of "fill material" would result in a duplication of effort among Federal programs and an increased workload for the Corps. We believe that more effective coordination among the State, Tribal and Federal agencies and appropriate reliance on the analyses of other agencies will help significantly to address these concerns.

First, it is important to note that EPA and Corps regulations encourage coordination and allow for appropriate reliance on relevant information and analyses developed under other programs to help satisfy section 404 program requirements. In the most effective circumstances, the Corps is able to coordinate with other relevant State, Tribal and Federal agencies before and during project review to identify the most efficient and effective role for each agency and ensure mutual reliance on information and analyses, particularly where that reliance is consistent with individual agency expertise and experience. For example, for many years, subject to advice from EPA, the Corps has relied on State determinations regarding water quality matters, as those State determinations are reflected in State CWA section 401 water quality certifications (see 33 CFR 320.4(d)). Such Corps reliance on State water quality determinations will continue for discharges associated with activities such as mining and solid waste landfills. In regulating discharges associated with mining, close coordination with the State, Tribal and Federal entities responsible for implementation of SMCRA, CWA section 401 and section 402 will enable the Corps to take advantage of the specialized expertise of the agencies as the Corps completes the section 404 review. Such coordination also helps to reduce the costs associated with project reviews, promotes consistent and predictable decision-making, and ultimately ensures the most effective protection for human health and the environment. EPA and the Corps anticipate that Corps District offices will rely on State/Federal site selection under SMCRA regarding the siting of coal mining related discharges to the extent allowed under current law and regulations. Similarly, the Corps will make full use of State RCRA information regarding the siting, design and construction of solid waste landfills, and will defer to those State decisions to the extent allowed by current law and regulation.

Both agencies recognize, however, that the Corps is ultimately responsible under the CWA for making the required determinations that support each permit decision based on the Corps' independent evaluation of the record. The Corps itself determines the extent of deference to information generated from other programs including, for example, site selection under SMCRA and RCRA, that is appropriate on a case-by-case basis. Ultimately the Corps is relying on, rather than relinquishing to, these other sources of information as a record is developed and the Corps makes the determinations required by the Section 404 regulatory program. For example, the Corps will make full use of State site selection decisions under SMCRA (*e.g.*, coal slurry impoundments) and RCRA (*e.g.*, solid waste landfills), but the Corps will independently review those decisions and the State processes that generated them, to ensure that any Corps permit decision for a discharge site will fully comply with NEPA, the section 404(b)(1) Guidelines, and other relevant legal requirements. The Corps and EPA believe that effective coordination with other State and Federal agencies and the information they develop will help the Corps continue to make more timely, consistent and environmentally protective permit decisions.

D. The Final Rule and the Resource Investments Decision

In *Resource Investments Inc* v. *Corps*, 151 F.3d 1162 (9th Cir. 1998), the Ninth Circuit held that the Corps lacked the authority to regulate a solid waste landfill in waters of the U.S. The court found that: (1) Neither the solid waste itself nor the liner consisting of layers of gravel and low-permeability soil constituted "fill material" under Corps regulations; and (2) because of the potential for inconsistent results if landfills were regulated under both section 404 of the CWA and Subtitle D of RCRA, requiring these facilities to be subject solely to RCRA would "harmonize" the statutes.

We discussed this decision in the preamble to the proposed rule as an example of some of the confusion engendered by the "primary purpose" test. The court found in *RII* that the liner was not fill material because its primary purpose was not to replace an aquatic area with dry land or change the bottom elevation of a waterbody, "but rather to serve as a leak detection and collection system." 151 F.3d at 1168. We explained in the proposal that fills typically serve some other purpose than just creating dry land or raising a water's bottom elevation and that, if the court's reasoning were taken to its logical conclusion, many traditional fills in waters of the U.S. would not be subject to section 404.

Some commenters objected to our proposal not to follow the decision in *RII* in this rulemaking. They criticized the proposal as an improper attempt to "override" or "overrule" the Ninth Circuit's decision, particularly within the Ninth Circuit where the decision is binding. They also argued that the proposed rule failed to address the potential for duplication and inconsistency in decision-making by State and Federal agencies identified in *RII*.

In our view, these comments raise two distinct issues. The first is whether we should follow the *RII* decision outside the Ninth Circuit and cease regulating discharges associated with the construction of solid waste landfills under section 404. The second issue is whether *RII* precludes us from

regulating discharges associated with construction of solid waste landfill structures within the Ninth Circuit, even after today's rule. We address each of these issues in turn.

Regarding the first question, we note first that, after *RII* was decided, we chose not to acquiesce in the decision outside the Ninth Circuit. While we agreed that the solid waste disposal placed in a landfill is not fill material (and such waste continues to be excluded under today's rule), we believed that the court misapplied the primary purpose test in the Corps' regulations, and that the court's conclusion that RCRA supplanted CWA regulation was contrary to Congressional intent. See *Resource Investments Inc. et al.* v. *Corps,* No. 97–35934 (Government's Petition for Rehearing and Suggestion for Rehearing En Banc, September 30, 1998). Thus, after the court decided *RII*, the Corps has continued to issue section 404 permits for the construction of solid waste landfill infrastructures outside the Ninth Circuit.

After considering public comments, we continue to decline to follow *RII* outside the Ninth Circuit and have, therefore, maintained the approach in the proposed rule to the regulation of solid waste landfills. The revisions to the Corps' definition of fill material in today's rule address the basis for the court's holding that the landfill did not involve the discharge of fill material under section 404. For the reasons explained elsewhere in today's notice, we believe that an effects-based test is the appropriate means of evaluating whether a pollutant is "fill material" and should be regulated under section 404 as opposed to section 402 of the CWA. The placement of berms, liners and other infrastructure (such as roads) associated with construction of a solid waste landfill in waters of the U.S. has the effect of replacing water with dry land or raising the bottom elevation of a water. Therefore, under today's rule, they constitute fill material. Such discharges are indistinguishable from similar discharges associated with other construction activity, which the Corps has always regulated as fill under section 404. *See* 40 CFR 232.2; 33 CFR 323.2 (defining "discharge of fill material," to include "fill that is necessary for the construction of any structure in a water of the U.S.; the building of any structure or impoundment requiring rock, sand, dirt or other material for its construction; site-development fills for recreational, industrial, commercial, residential and other uses; causeways or road fills; * * *"). We have amended our definition of this term to include the "placement of fill material for construction or maintenance of any liner, berm, or other infrastructure associated with solid waste landfills." That amendment does not change substantively the prior definition, but merely adds solid waste landfills as an example to make clear that it constitutes a "discharge of fill material." Thus, under our new regulations, discharges associated with the creation of solid waste landfill structures clearly constitute "fill material."

To the extent some commenters asserted that revising our regulation was an improper attempt to "overrule" or "override" this holding in *RII*, we disagree. The court's analysis of the "fill material" in *RII* was based entirely on the Corps regulations as they existed at that time, and not upon the interpretation of the CWA itself. Moreover, the CWA does not define "fill material." Therefore, both the statute and the Ninth Circuit's decision leave us the discretion to adopt a reasonable definition consistent with the statutory scheme. We have explained elsewhere why we believe today's definition of fill is reasonable and appropriate under the CWA. To the extent today's rule has the practical effect of "overriding" this aspect of the court's decision in *RII*, that is neither remarkable nor inappropriate, since it is entirely proper for agencies to consider and, if appropriate, revise their regulations in light of judicial interpretation of them.

For purposes of deciding whether to apply the *RII* decision outside the Ninth Circuit, we have also evaluated the second basis for the court's decision—that regulation solely under Subtitle D of RCRA instead of section 404 would "harmonize" the statutes and avoid necessary duplication. We decline to follow that holding both on legal and policy grounds. First, we believe, notwithstanding *RII*, that eliminating the CWA permitting requirement on the grounds that an activity is regulated under RCRA is contrary to Congressional intent in both statutes. Second, we do not agree with the court that regulation under Subtitle D and section 404 would constitute unnecessary duplication, in light of the distinct purposes served by these authorities, the differing Federal roles under the two statutes, and our clarification in today's rulemaking of our intent to give all appropriate deference to State RCRA decision-making in the section 404 permitting process.

We first do not agree with the court's legal reasons for concluding that regulation under Subtitle D of RCRA supplants CWA regulation. The CWA prohibits the discharge of any pollutant into waters of the U.S. without a permit under the Act. *See* CWA section 301(a). Even though an activity associated with a discharge may be regulated under other Federal or State authorities, we believe there is not any basis to conclude that such regulation by itself makes section 301(a) of the Act inapplicable to a discharge of a pollutant into waters of the U.S. In effect, the court concluded that enactment of a regulatory scheme under Subtitle D of RCRA impliedly repealed the statutory permit requirement under the CWA. But "the intention of the legislature to repeal must be clear and manifest." *Radzanower* v. *Touche Ross & Co.,* 426 U.S. 148, 154 (1976), and the court must conclude that the two acts are in irreconcilable conflict or that the later act covers the whole subject of the earlier one and is clearly intended as a substitute. *Id.* The court in *RII* did not, and could not, make these findings.

In fact, Congress itself made precisely the opposite findings when it enacted RCRA. Section 1006(a) states:

> Nothing in this chapter shall be construed to apply to (or to authorize any State, interstate, or local authority to regulate) any activity or substance which is subject to the [CWA] except to the extent such application (or regulation) is not inconsistent with the requirements of (the CWA).

This provision precludes regulation of solid waste landfills under Subtitle D in a manner inconsistent with the requirements of the CWA. In our view, it is plainly "inconsistent" with the requirements of the CWA to hold that regulation under RCRA eliminates CWA permitting requirement altogether.

Instead, the court relied upon certain Corps regulations, statements by Corps officials and a 1986 interagency MOA. The court first stated that applying section 404 to solid waste landfills was "unreasonable" because there would be "potentially inconsistent results" where both the State and the Corps were applying the same criteria in regulating solid waste landfills. 151 F.3d at 1169. The court held that this "regulatory overlap is inconsistent with Corps regulations stating that "the Corps believes that State and Federal regulatory programs should complement rather than duplicate one another.'" 33 CFR 320.1(a)(5). In addition, the court cited statements by the Corps in a 1984 letter to EPA stating that EPA was in a better position than the Corps to regulate solid waste landfills. Finally, the court cited the 1986 MOA between the Corps and EPA.

However, none of these "authorities" purport to modify the statutory

permitting requirements of the CWA, nor could they. The Corps' regulation cited by the court is simply a statement of the Corps' policy objective of working in concert with State regulatory programs, an important and continuing Corps objective that was discussed previously. The Corps' letter and the MOA reflected our efforts to manage our programs in light of our differing definitions of fill material, but did not speak to the CWA statutory permitting requirement. The court also misconstrued the 1986 MOA entered into by EPA and the Corps as indicating we intended to make the regulation of solid waste facilities within "the sole purview of the EPA and affected states" after EPA promulgated certain Subtitle D regulations. 151 F.3d at 1169. In fact, we stated,

> EPA and Army agree that consideration given to the control of discharges of solid waste both in waters of the United States and upland should take into account the results of studies being implemented under the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), signed into law on November 8, 1984. . . .
>
> Unless extended by mutual agreement, the agreement will expire at such time as EPA has accomplished specified steps in its implementation of RCRA, at which time the results of the study of the adequacy of the existing Subtitle D criteria and proposed revisions to the Subtitle D criteria for solid waste disposal facilities, including those that may receive hazardous household wastes and small quantity generator waste, will be known. In addition, data resulting from actions under the interim agreement can be considered at that time.

It should be noted that this MOA is about the regulation of solid waste disposal, not about the construction of infrastructure, including solid waste landfill infrastructure, that involves discharges of fill material to waters of the U.S. We did not address in the MOA how solid waste landfills would be regulated after EPA completed its study and certain RCRA regulations, but said only that these developments would "be taken into account" as we decided how to address these discharges in the future. Thus, in addition to the inability of the agencies as a legal matter to modify the CWA statutory permitting requirement through an MOA, we expressly reserved any judgment about the appropriate regulatory approach to be taken after certain actions were taken under RCRA. The court appears to have assumed that the MOA expired after we completed the specified steps under RCRA, and that regulatory authority over solid waste landfills thereafter became the sole purview of RCRA. In fact, the MOA did not expire, and it has continued to provide the framework for regulation of solid waste landfills under section 404 of the CWA. See Memorandum of John F. Studt, U.S. Army Corps of Engineers, May 17, 1993 (stating "the subject MOA remains effective in its entirety until further notice" and noting that this position was coordinated with EPA).

We conclude, therefore, that it would be contrary to the language and intent of both the CWA and RCRA to conclude that RCRA subtitle D supplants the CWA permitting requirement for discharges into waters of the U.S. associated with the construction of solid waste landfills. The different Federal roles in the permitting schemes in these statutes supports this conclusion. Subtitle D provides that each State will "adopt and implement a permit program or other system of prior approval and conditions" to assure that each solid waste management facility within the State "will comply" with criteria established by EPA for the siting, design, construction, operation and closure of solid waste landfills. RCRA section 4005(c)(1)(B). States are required to submit permit programs for EPA to review and EPA is required to "determine whether each State has developed an adequate program" to ensure compliance with EPA's Subtitle D regulations. RCRA section 4005(c)(1)(B) and (C). However, RCRA does not grant to EPA authority to issue permits for solid waste landfills, review State permitting decisions or enforce Subtitle D requirements in States with approved programs. The court in *RII* appeared to misunderstand EPA's authorities under Subtitle D of RCRA when it stated that EPA would be the permitting authority in the absence of an approved State program. *See* 151 F.3d 1169 ("we hold that when a proposed project affecting a wetlands area is a solid waste landfill, the *EPA* (or the approved State program) . . . will have the permit authority under RCRA.") (Emphasis added); 151 F.3d at 1167 ("RCRA gives the EPA authority to issue permits for the disposal of solid waste, but allows states to substitute their own permit programs for the Federal program if the State program is approved by EPA."). While this authority exists with regard to disposal of hazardous waste under Subtitle C of RCRA, EPA does not have this authority with regard to disposal of non-hazardous solid waste under Subtitle D.

In contrast, the CWA requires either a Federal permit for discharges of pollutants into waters of the U.S., or issuance of a permit by a State/Tribe with an approved program, subject to EPA's authority to object to a permit where EPA finds it fails to meet the guidelines and requirements of the CWA. CWA sections 402(d); 404(j). EPA also has authority under the CWA to enforce conditions in Federal or State permits under the Act. CWA section 309.

These contrasting statutory schemes support the conclusion that eliminating CWA authority over discharges of fill material associated with construction of solid waste landfills would mean a significant departure from the statutory structure created by Congress in the CWA, a scheme which Congress expressly sought to preserve when it adopted RCRA. *See* RCRA section 1006(a). This does not mean that we view the Federal role as one of second-guessing every decision made by State regulatory authorities under RCRA. To the contrary, both RCRA and the CWA reflect a strong presumption in favor of State-administered regulatory programs. As discussed elsewhere, we intend to rely on State decision-making under RCRA to the extent allowed under current law and regulations. However, we believe that eliminating a Federal role entirely on these matters is neither appropriate nor consistent with Congressional intent under RCRA or the CWA.

Thus, we decline to follow the decision in *RII* outside the Ninth Circuit because we conclude there is not an adequate legal basis on which to conclude that discharges of pollutants associated with solid waste landfills no longer need to be authorized by a CWA permit solely because the project receives a permit under Subtitle D of RCRA.

We nonetheless share the basic policy perspective expressed by the court in *RII* about the need to avoid unnecessary duplication and potential inconsistent application of regulatory programs under the CWA and RCRA. In fact, RCRA expressly vests EPA with the responsibility to "integrate all provisions of (RCRA) for purposes of administration and enforcement and (to) avoid duplication, to the maximum extent practicable, with the appropriate provisions of the * * * (CWA). * * * Such integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies of this chapter and the CWA. * * *" RCRA section 1006(b). EPA has sought such integration first by promulgating location restrictions for landfills that are consistent with the criteria for issuance of section 404 permits. See 40 CFR 258.12; 230.10. Among other requirements, a landfill may not be located in wetlands unless it is demonstrated to the State that there

are not less environmentally damaging practicable alternatives, the facility will not cause significant degradation of wetlands, and that appropriate and practicable steps have been taken to mitigate the loss of wetlands from the facility. However, EPA never purported to substitute Subtitle D regulation for the CWA permitting requirement, a result that would violate both section 1006(a) and (b). Instead, the Subtitle D RCRA regulations make clear that owners or operators of municipal solid waste landfills "must comply with any other applicable Federal rules, laws, regulations, or other requirements." 40 CFR 258.3. At the time EPA promulgated this regulation, the agency expressly noted that such requirements include those arising under the CWA. *See* 56 FR 51042 (October 9, 1991).

We do not believe, however, that the Subtitle D and section 404 programs are redundant. Rather, each program has a distinct focus. The State RCRA permitting process addresses a much broader range of issues, including technical operating and design criteria, ground water monitoring, corrective action, closure and post-closure care and financial assurances. In contrast, the section 404 process is focused exclusively on the impacts of discharges of dredged or fill material on the aquatic ecosystem, and ways of ensuring that those impacts are avoided, minimized and compensated. Because of the Corps' expertise in protecting aquatic ecosystems, we have found that State RCRA permitting agencies often incorporate by reference the requirements of section 404 permits. (For example, the State RCRA permit for the *RII* landfill required the applicant to implement the wetlands and mitigation plan to be approved by the Corps through the 404 permit process.) We believe that, in these and other ways, State and Federal permitting authorities can create efficiencies by relying on each other's expertise in making regulatory decisions.

We intend to make additional efforts to avoid unnecessary duplication in the Federal and State permitting process. As explained in section II. C of this final preamble, we intend that the Corps will rely on decisions by the State RCRA authority about the siting, design and construction of solid waste landfills in waters of the U.S. to the extent allowed by law and regulations. Appropriate deference to State decision-making will help avoid duplication, while still ensuring that the Corps fulfills its responsibilities to authorize discharges of fill material associated with solid waste landfills in accordance with CWA requirements.

This does not mean that, in every single case, State and Federal decision-makers will agree on whether a particular project or configuration is environmentally acceptable. Nevertheless, instances of disagreement have been rare. We intend to further enhance our efforts to ensure effective coordination between State and Federal officials. However, we do not agree with the court in *RII* that the only way to avoid unnecessary duplication is to eliminate the CWA permitting requirement altogether.

We next address commenters' assertions that the decision in *RII* continues to preclude us from regulating solid waste landfills under section 404 within the Ninth Circuit. These comments also argue that, given the "statutory" basis for the court's decision, we cannot change the result in the Ninth Circuit through this rulemaking.

As noted in this preamble, the court construed administrative materials of the Corps and EPA as supporting the conclusion that the agencies did not intend to regulate solid waste landfills under section 404 of the CWA. In light of this agency intent, the court concluded that subjecting landfills to regulation solely under RCRA would "harmonize" the statutes and "give effect to each [statute] while preserving their sense and purpose." 151 F.3d at 1169. The court found that this harmonization "is consistent with the sense of the CWA that discharges of solid waste materials are beyond the scope of section 404 . . . and avoids unnecessary duplication of Federal and State efforts in the area of wetlands protection." *Id.*

We again emphasize the distinction between "discharges of solid waste material," as referenced by the court and discharges of fill material associated with the construction of infrastructure. In this rulemaking, we have clarified that discharges having the effect of raising the bottom elevation of a water or replacing water with dry land, including fill used to create landfills such as liners, berms and other infrastructure associated with solid waste landfills are discharges of fill material subject to the section 404 program. Therefore, we have altered the landscape as understood by the court in *RII* (i.e., that these facilities were entirely outside the intended purview of section 404). We do not agree with commenters who argued that there was a "statutory" basis to the court's decision in the sense that the holding of the decision turned on an interpretation of Congressional intent in the CWA or RCRA. The court did not cite any provision of the CWA or RCRA to support its conclusions. Rather, the court derived the "sense and purpose" of the CWA based on agency regulations, guidance and correspondence. By clarifying the scope of section 404 authorities in this rulemaking, we have altered the "sense and purpose" of the CWA underlying the court's conclusion that regulation solely under RCRA would "harmonize" the statutes. Because the premises before the court have changed, we do not view the court's decision as continuing to bar the regulation under section 404 of discharges associated with solid waste landfills within the Ninth Circuit. At a minimum, today's rule calls into question the continuing vitality of the court's reasoning and conclusions and, should a case be brought within the Ninth Circuit challenging our authority to regulate solid waste landfills, we would ask the court to address the question anew in light of the clarification of our authorities in today's rule.

III. Administrative Requirements

A. Plain Language

In compliance with the principle in Executive Order 12866 regarding plain language, this preamble is written using plain language. Thus, the use of "we" in this notice refers to EPA and the Corps, and the use of "you" refers to the reader. We have also used active voice, short sentences, and common every day terms except for necessary technical terms.

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Production Act, 44 U.S.C. 3501 *et seq.* This rule merely reconciles EPA and Corps CWA section 404 regulations defining the term "fill material" and amends our definitions of "discharge of fill material." Thus, this action is not subject to the Paperwork Reduction Act.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of

information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9 and 48 CFR chapter 15. For the CWA section regulatory 404 program, the current OMB approval number for information requirements is maintained by the Corps of Engineers (OMB approval number 0710–0003, expires December 31, 2004).

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA and the Corps must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" in light of the provisions of paragraph (4) above. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

D. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA and the Corps to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Currently, under the CWA, any discharge of pollutants into waters of the U.S. requires a permit under either section 402 or 404 of the CWA. Today's rule conforms our two regulatory definitions of "fill material" and thereby clarifies whether a particular discharge is subject to regulation under section 402 or Section 404. It is generally consistent with current agency practice and does not impose new substantive requirements. Within California, Oregon, Washington, Idaho, Wyoming, Nevada, Arizona, Hawaii, Guam, and the Northern Mariana Islands, after today's rule, the Corps will again be issuing Section 404 permits for the construction of solid waste landfills in waters of the U.S., which the Corps had ceased doing after the decision in *RII* (the decision did not affect the permitting requirement outside these states). *See* section II. D. of this preamble. However, resuming the issuance of section 404 permits for construction of solid waste landfills in waters of the U.S. in these areas does not have Federalism implications. None of the States within the Ninth Circuit will incur administrative costs as a result of today's rule, because none currently administer the section 404 program and, in any event, the administrative costs of permitting solid waste landfills are minimal in the context of the overall section 404 permitting program. In addition, this change does not impose any additional substantive obligations on State or local governments seeking to construct solid waste landfills in waters of the U.S. since Subtitle D of RCRA currently requires such facilities to meet comparable conditions for receiving a section 404 permit. *See* section II. D of this preamble. Finally, we do not believe that requiring any State or local governments seeking to construct solid waste landfills in waters of the U.S. to undergo the Section 404 permitting process itself will 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. Thus, Executive Order 13132 does not apply to this rule.

E. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as : (1) A small business based on SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. Currently, under the CWA, any discharge of pollutants into waters of the U.S. requires a permit under either section 402 or 404 of the CWA. Today's rule conforms our two regulatory definitions of "fill material" and thereby clarifies whether a particular discharge is subject to regulation under section 402 or section 404. Today's rule is generally consistent with current agency practice, does not impose new substantive requirements and therefore would not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, the agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local,

and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA or Corps rule for which a written statement is needed, section 205 of the UMRA generally requires the agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA and the Corps to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator and Secretary of the Army publish with the final rule an explanation why that alternative was not adopted. Before EPA or the Corps establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, they must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA or Corps regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Currently, under the CWA, any discharge of pollutants into waters of the U.S. requires a permit under either section 402 or 404 of the CWA. Today's rule conforms our two regulatory definitions of "fill material" and thereby clarifies whether a particular discharge is subject to regulation under section 402 or section 404. Today's rule is generally consistent with current agency practice, does not impose new substantive requirements and therefore does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reasons, we have determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus today's rule is not subject to the requirements of section 203 of UMRA.

G. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, we did not consider the use of any voluntary consensus standards.

H. Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. In addition, it does not concern an environmental or safety risk that we have reason to believe may have a disproportionate effect on children.

I. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires the agencies to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Today's rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Currently, under the CWA, any discharge of pollutants into waters of the U.S. requires a permit under either section 402 or 404 of the CWA. Today's rule conforms our two regulatory definitions of "fill material" and thereby clarifies whether a particular discharge is subject to regulation under section 402 or section 404. It is generally consistent with current agency practice and does not impose new substantive requirements. Within California, Oregon, Washington, Idaho, Wyoming, Nevada, Arizona, Hawaii, Guam, and the Northern Mariana Islands, after today's rule, the Corps will again be issuing Section 404 permits for the construction of solid waste landfills in waters of the U.S., which the Corps had ceased doing after the decision in *RII* (the decision did not affect the permitting requirement outside these states). *See* section II. D. of this preamble. However, resuming the issuance of section 404 permits for construction of solid waste landfills in waters of the U.S. in these areas does not have tribal implications. No tribes within the Ninth Circuit will incur administrative costs as a result of today's rule, because none currently administer the section 404 program and, in any event, the administrative costs of permitting solid waste landfills are minimal in the context of the overall section 404 permitting program. In addition, this change does not impose any additional substantive obligations on any Tribe seeking to construct solid waste landfills in waters of the U.S. since Subtitle D of RCRA currently requires such facilities to meet comparable conditions for receiving a section 404 permit. *See* section II.D. of this preamble. Finally, we do not believe that requiring any tribal government seeking to construct solid waste landfills in waters of the U.S. to undergo the Section 404 permitting process itself will have substantial direct effects on one or more Indian

tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

J. Environmental Documentation

As required by the NEPA, the Corps prepares appropriate environmental documentation for its activities affecting the quality of the human environment. The Corps has prepared an environmental assessment (EA) of the final rule. The Corps' EA ultimately concludes that, since the adoption of this rule will not significantly affect the quality of the human environment, the preparation and coordination of an EIS is not required. The EA, included in the administrative record for today's rule, explains the rationale for the Corps' conclusion.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective June 10, 2002.

L. Executive Order 12898

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

Today's rule is not expected to negatively impact any community, and therefore is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities. Today's rule relates solely to whether a particular discharge is appropriately authorized under section 402 or section 404 of the Clean Water Act. Moreover, the proposed allocation of authority between these programs is generally consistent with existing agency practice.

M. Executive Order 13211

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Today's rule conforms our two regulatory definitions of "fill material" and thereby clarifies whether a particular discharge is subject to regulation under section 402 or section 404. Today's rule is generally consistent with current agency practice, does not impose new substantive requirements and therefore will not have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

33 CFR Part 323

Water pollution control, Waterways.

40 CFR Part 232

Environmental protection, Intergovernmental relations, Water pollution control.

Corps of Engineers

33 CFR Chapter II

Accordingly, as set forth in the preamble 33 CFR part 323 is amended as set forth below:

PART 323—[AMENDED]

1. The authority citation for part 323 continues to read as follows:

Authority: 33 U.S.C. 1344.

2. Amend § 323.2 as follows:

a. Paragraph (e) is revised.

b. In paragraph (f), in the second sentence: add the words "or infrastructure" after the words "for the construction of any structure"; add the word ", infrastructure," after the words "building of any structure"; remove the words "residential, and" and add in their place the words "residential, or"; and add the words "placement of fill material for construction or maintenance of any liner, berm, or other infrastructure associated with solid waste landfills; placement of overburden, slurry, or tailings or similar mining-related materials;" after the words "utility lines;".

The revision reads as follows:

§ 323.2 Definitions.

* * * * *

(e)(1) Except as specified in paragraph (e)(3) of this section, the term fill material means material placed in waters of the United States where the material has the effect of:

(i) Replacing any portion of a water of the United States with dry land; or

(ii) Changing the bottom elevation of any portion of a water of the United States.

(2) Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in the waters of the United States.

(3) The term fill material does not include trash or garbage.

* * * * *

Dated: May 3, 2002.

Dominic Izzo,

Principal Deputy Assistant Secretary of the Army (Civil Works), Department of the Army.

Environmental Protection Agency

40 CFR Chapter I

Accordingly, as set forth in the preamble 40 CFR part 232 is amended as set forth below:

PART 232—[AMENDED]

1. The authority citation for part 232 continues to read as follows:

Authority: 33 U.S.C. 1344.

2. Amend § 232.2 as follows:

a. The definition of "Fill material" is revised.

b. In the definition of "Discharge of fill material", in paragraph (1): add the words "or infrastructure" after the words "for the construction of any structure"; add the word ", infrastructure," after the words "building of any structure"; remove the words "residential, and" and add in their place the words "residential, or"; and add the words "placement of fill material for construction or maintenance of any liner, berm, or other infrastructure associated with solid waste landfills; placement of overburden, slurry, or tailings or similar mining-related materials;" after the words "utility lines;".

The revision reads as follows:

§ 232.2 Definitions.

* * * * *

Fill material. (1) Except as specified in paragraph (3) of this definition, the term fill material means material placed in waters of the United States where the material has the effect of:

(i) Replacing any portion of a water of the United States with dry land; or

(ii) Changing the bottom elevation of any portion of a water of the United States.

(2) Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in the waters of the United States.

(3) The term fill material does not include trash or garbage.

* * * * *

Dated: May 3, 2002.

Christine Todd Whitman,

Administrator, Environmental Protection Agency.

[FR Doc. 02–11547 Filed 5–8–02; 8:45 am]

BILLING CODE 3710–92–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MT–001–0037a; FRL–7208–8]

Approval and Promulgation of Air Quality Implementation Plans; State of Montana; Great Falls Carbon Monoxide Redesignation to Attainment and Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On February 9, 2001, the Governor of Montana submitted a request to redesignate the Great Falls "not classified" carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS). The Governor also submitted a CO maintenance plan. In this action, EPA is approving the Great Falls CO redesignation request and the maintenance plan.

DATES: This direct final rule is effective on July 8, 2002, without further notice, unless EPA receives adverse comments by June 10, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to:

Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following offices:

United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 300, Denver, Colorado 80202–2466; and, United States Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460.

Copies of the State documents relevant to this action are available for public inspection at: Montana Air and Waste Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620–0901.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, Telephone number: (303) 312–6479.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" are used we mean the Environmental Protection Agency.

I. What Is the Purpose of This Action?

In this action, we are approving a change in the legal designation of the Great Falls area from nonattainment for CO to attainment and we're approving the maintenance plan that is designed to keep the area in attainment for CO for the next 10 years.

We originally designated the Great Falls area as nonattainment for CO under the provisions of the 1977 Clean Air Act (CAA) Amendments (see 43 FR 8962, March 3, 1978). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1)(C) of the CAA, we designated the Great Falls area as nonattainment for CO because the area had been previously designated as nonattainment before November 15, 1990. The Great Falls area was classified as a "not classified" CO nonattainment area as the area had not violated the CO NAAQS in 1988 and 1989.[1]

Under the CAA, designations can be changed if sufficient data are available to warrant such changes and if certain other requirements are met. See CAA section 107(d)(3)(D). Section 107(d)(3)(E) of the CAA provides that the Administrator may not promulgate a redesignation of a nonattainment area to attainment unless:

(i) the Administrator determines that the area has attained the national ambient air quality standard;

(ii) the Administrator has fully approved the applicable implementation plan for the area under CAA section 110(k);

(iii) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and,

(v) the State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

Before we can approve the redesignation request, we must decide that all applicable State Implementation Plan (SIP) elements have been fully approved. Approval of the applicable SIP elements may occur prior to final approval of the redesignation request or simultaneously with final approval of the redesignation request. We note there are no outstanding SIP elements necessary for the Great Falls redesignation.

II. What Is the State's Process To Submit These Materials to EPA?

Section 110(k) of the CAA sets out provisions governing our actions on submissions of revisions to a SIP. The CAA also requires States to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a State to us.

The Montana Department of Environmental Quality (DEQ) held a public hearing on December 19, 2000,

[1] The EPA describes areas as "not classified" if they were designated nonattainment both prior to enactment and (pursuant to CAA section 107(d)(1)(C)) at enactment, and if the area did not violate the primary CO NAAQS in either year for the 2-year of 1988 through 1989. Refer to the "General Preamble for the Implementation of Title of the Clean Air Act Amendments of 1990", 57 FR 13498, April 16, 1992. See specifically 57 FR 13535, April 16, 1992.

for the Great Falls CO redesignation request and maintenance plan. The redesignation request and maintenance plan were adopted by the Montana DEQ directly after the hearing and became State effective December 19, 2000. These SIP materials were submitted by the Governor to us on February 9, 2001. We have evaluated the Governor's submittal and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

As required by under section 110(k)(1)(B) of the CAA, we reviewed these SIP materials for conformance with the completeness criteria in 40 CFR part 51, appendix V and determined that the Governor's February 9, 2001, submittal was administratively and technically complete. Our completeness determination was sent on March 16, 2001, through a letter from Jack W. McGraw, Acting Regional Administrator, to Governor Judy Martz.

III. EPA's Evaluation of the Redesignation Request and Maintenance Plan

EPA has reviewed the State's redesignation request and maintenance plan and believes that approval of the request is warranted, consistent with the requirements of CAA section 107(d)(3)(E). The following are descriptions of how the section 107(d)(3)(E) requirements are being addressed.

(a) *Redesignation Criterion:* The Area Must Have Attained The Carbon Monoxide (CO) NAAQS.

Section 107(d)(3)(E)(i) of the CAA states that for an area to be redesignated to attainment, the Administrator must determine that the area has attained the applicable NAAQS. As described in 40 CFR 50.8, the national primary ambient air quality standard for carbon monoxide is 9 parts per million (10 milligrams per cubic meter) for an 8-hour average concentration not to be exceeded more than once per year. 40 CFR 50.8 continues by stating that the levels of CO in the ambient air shall be measured by a reference method based on 40 CFR part 50, Appendix C and designated in accordance with 40 CFR part 53 or an equivalent method designated in accordance with 40 CFR part 53. Attainment of the CO standard is not a momentary phenomenon based on short-term data. Instead, we consider an area to be in attainment if each of the CO ambient air quality monitors in the area are doesn't have more than one exceedance of the CO standard over a one-year period. 40 CFR 50.8 and 40 CFR part 50, appendix C. If any monitor in the area's CO monitoring network records more than one exceedance of the CO standard during a one-year calendar period, then the area is in violation of the CO NAAQS. In addition, our interpretation of the CAA and our national policy, as presented in the September 4, 1992, John Calcagni policy memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" (hereafter referred to as the "Calcagni Memorandum"), has been that an area seeking redesignation to attainment must show attainment of the CO NAAQS for at least a continuous two-year calendar period. In addition, the area must continue to show attainment through the date that we promulgate the redesignation to attainment in the **Federal Register**.

Montana's CO redesignation request for the Great Falls area is based on an analysis of quality assured ambient air quality monitoring data that are relevant to the redesignation request. Ambient air quality monitoring data for consecutive calendar years 1988 through 2000, and preliminary data from 2001, show a measured exceedance rate of the CO NAAQS of 1.0 or less per year, per monitor, in the Great Falls s nonattainment area. These data were collected and analyzed as required by EPA (see 40 CFR 50.8 and 40 CFR part 50, appendix C) and have been archived by the State in EPA's Aerometric Information and Retrieval System (AIRS) national database. Further information on CO monitoring is presented in Section 7.10.2 of the State's maintenance plan. We have evaluated the ambient air quality data and has determined that the Great Falls area has not violated the CO standard and continues to demonstrate attainment.

Because the Great Falls nonattainment area has quality-assured data showing no violations of the CO NAAQS for 1997, 1998, and 1999, the years the State used to support the redesignation request, the Great Falls area has met the first component for redesignation. demonstration of attainment of the CO NAAQS. We note that the State of Montana has also committed in Section 7.10.6.3 of the maintenance plan to the necessary continued operation of the CO monitors in compliance with all applicable federal regulations and guidelines.

(b) *Redesignation Criterion:* The Area Must Have Met All Applicable Requirements Under Section 110 And Part D Of The CAA.

To be redesignated to attainment, section 107(d)(3)(E)(v) requires that an area must meet all applicable requirements under section 110 and part D of the CAA. We interpret section 107(d)(3)(E)(v) to mean that for a redesignation to be approved by us, the State must meet all requirements that applied to the subject area prior to or at the time of the submission of a complete redesignation request. In our evaluation of a redesignation request, we don't need to consider other requirements of the CAA that became due after the date of the submission of a complete redesignation request.

1. CAA Section 110 Requirements

On January 10, 1980, we approved revisions to Montana's SIP as meeting the requirements of section 110(a)(2) of the CAA (see 45 FR 2034). Although section 110 of the CAA was amended in 1990, most of the changes were not substantial. Thus, we have determined that the SIP revisions approved in 1980 continue to satisfy the requirements of section 110(a)(2). For further detail, please see 45 FR 2034. In addition, we have analyzed the SIP elements that we are approving as part of this action and we have determined they comply with the relevant requirements of section 110(a)(2).

2. Part D Requirements

The Great Falls area was originally designated as nonattainment for CO on September 9, 1980 (see 45 FR 59315). Montana's CAA Part D plan for attainment of the CO standards in the Great Falls area was submitted to EPA on March 28, 1986. On January 26, 1987, EPA proposed approval of Montana's revision to the State Implementation Plan (see 52 FR 2732). However, in 1987, Great Falls recorded a violation of the CO standard. On May 26, 1988, EPA sent a letter to the Governor, in accordance with section 110(k)(5) of the CAA, that required the State to submit a SIP revision for the Great Falls area. On September 7, 1990, EPA proposed disapproval of the Montana CO SIP, for the Great Falls area, for failure to demonstrate attainment. No final action was taken on this proposed rule. Also on September 7, 1990, EPA approved a CO control measure for the Great Falls area, that strengthened the State's SIP, by approving a permit that was issued by the State to the Montana Refining Company (see 55 FR 36812).

EPA had begun development of its forthcoming post-1987 policy for carbon monoxide; however, we did not finalize our post-1987 policy for CO because the Clean Air Act (CAA) was amended on November 15, 1990. Under section 107(d)(1)(C) of the CAA, we designated the Great Falls area as nonattainment for CO because the area had been

previously designated nonattainment before November 15, 1990. As stated previously, the Great Falls area was classified as a "not classified" CO nonattainment area as the area had not violated the CO NAAQS in 1988 and 1989.

Before the Great Falls not classified CO nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, whether classified or nonclassifiable.

The relevant Subpart 1 requirements are contained in sections 172(c) and 176. The April 16, 1992, General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (see 57 FR 13498; hereafter referred to as the "General Preamble of April 16, 1992") provides our interpretations of the CAA requirements for not classified CO areas (see specifically 57 FR 13535):

> "Although it seems clear that the CO-specific requirements of subpart 3 of part D do not apply to CO "not classified" areas, the 1990 CAAA are silent as to how the requirements of subpart 1 of part D, which contains general SIP planning requirements for all designated nonattainment areas, should be interpreted for such CO areas. Nevertheless, because these areas are designated nonattainment, some aspects of subpart 1 necessarily apply."

Under section 172(b), the applicable section 172(c) requirements, as determined by the Administrator, were due no later than three years after an area was designated as nonattainment under section 107(d) of the amended CAA (see 56 FR 56694, November 6, 1991). In the case of the Great Falls area, the due date was November 15, 1993. As the Great Falls CO redesignation request and maintenance plan were not submitted by the Governor until February 9, 2001, the General Preamble of April 16, 1992, provides that the applicable requirements of CAA section 172 are 172(c)(3) (emissions inventory), 172(c)(5)(new source review permitting program), and 172(c)(7)(the section 110(a)(2) air quality monitoring requirements)). See 57 FR 13535, April 16, 1992. We have determined that Part D requirements for Reasonably Available Control Measures (RACM), an attainment demonstration, reasonable further progress (RFP), and contingency measures (CAA section 172(c)(9)) are not applicable to not classified CO areas. See 57 FR 13535, April 16, 1992. It is also worth noting that we have interpreted the requirements of sections 172(c)(1) (reasonable available control measures—RACM), 172(c)(2) (reasonable further progress—RFP), 172(c)(6)(other measures), and 172(c)(9)(contingency measures) as being irrelevant to a redesignation request because they only have meaning for an area that is not attaining the standard. See the General Preamble of April 16, 1992, and the Calcagni Memorandum. Finally, the State has not sought to exercise the options that would trigger sections 172(c)(4)(identification of certain emissions increases) and 172(c)(8)(equivalent techniques). Thus, these provisions are also not relevant to this redesignation request.

Section 176 of the CAA contains requirements related to conformity. Although our regulations (see 40 CFR 51.396) require that states adopt transportation conformity provisions in their SIPs for areas designated nonattainment or subject to an EPA-approved maintenance plan, we have decided that a transportation conformity SIP is not an applicable requirement for purposes of evaluating a redesignation request under section 107(d) of the CAA. This decision is reflected in our 1996 approval of the Boston carbon monoxide redesignation. (See 61 FR 2918, January 30, 1996.)

The applicable requirements of CAA section 172 are discussed below.

A. Section 172(c)(3)—Emissions Inventory

Section 172(c)(3) of the CAA requires a comprehensive, accurate, current inventory of all actual emissions from all sources in the Great Falls nonattainment area. Our interpretation of the emission inventory requirement for "not classified" CO nonattainment areas is detailed in the General Preamble of April 16, 1992. We determined that an emissions inventory is specifically required under CAA section 172(c)(3) and is not tied to an area's proximity to attainment. We concluded that an emissions inventory must be included as a revision to the SIP and was due 3 years from the time of the area's designation. For "not classified" CO areas, this date became November 15, 1993. To address the section 172(c)(3) requirement for a "current" inventory, EPA interpreted "current" to mean calendar year 1990 (see 57 FR 13502, April 16, 1992).

On July 18, 1995, the Governor submitted to us the 1990 base year inventory for the Great Falls CO nonattainment area. We approved this 1990 base year CO emissions inventory on December 15, 1997 (see 62 FR 65613.)

B. Section 172(c)(5)—New Source Review (NSR)

The CAA requires all nonattainment areas to meet several requirements regarding NSR, including provisions to ensure that increased emissions will not result from any new or modified stationary major sources and a general offset rule. The State of Montana has a fully-approved NSR program (60 FR 36715, July 18, 1995) that meets the requirements of CAA section 172(c)(5). The State also has a fully approved Prevention of Significant Deterioration (PSD) program (60 FR 36715, July 18, 1995) that will apply after the redesignation to attainment is approved by EPA.

C. Section 172(c)(7)—Compliance With CAA section 110(a)(2): Air Quality Monitoring Requirements

According to our interpretations presented in the General Preamble of April 16, 1992, "not classified" CO nonattainment areas should meet the "applicable" air quality monitoring requirements of section 110(a)(2) of the CAA as explicitly referenced by sections 172(b) and (c) of the CAA. With respect to this requirement, the State indicates in Section 7.10.2 ("Ambient Air Quality Data") of the maintenance plan, that relevant ambient CO monitoring data have been properly collected and uploaded to EPA's Aerometric Information and Retrieval System (AIRS) for the Great Falls area. Air quality data for 1998 and 1999 are included in Section 7.10.2A of the maintenance plan. We have more recently polled the AIRS database and has verified that the State has also uploaded additional quality-assured ambient CO data through 2000. Additional, preliminary data also include CO values through 2001. The data in AIRS indicate that the Great Falls area has shown, and continues to show, attainment of the CO NAAQS.

Information concerning CO monitoring in Montana is included in the Monitoring Network Review (MNR) prepared by the State and submitted to EPA. EPA personnel have concurred with Montana's annual network reviews and have agreed that the network remains adequate. Finally, in Section 7.10.6.3 of the maintenance plan, the State commits to the continued operation of the existing Great Falls CO monitoring network, according to all applicable Federal regulations and guidelines, even after the Great Falls area is redesignated to attainment for CO.

(c) *Redesignation Criterion:* The Area Must Have A Fully Approved SIP Under Section 110(k) Of The CAA.

Section 107(d)(3)(E)(ii) of the CAA states that for an area to be redesignated to attainment, it must be determined that the Administrator has fully approved the applicable implementation plan for the area under section 110(k).

Based on the approval into the SIP of provisions under the pre-1990 CAA, our prior approval of a SIP revision required under the 1990 amendments to the CAA, and our approval of the State's commitment to maintain an adequate monitoring network (contained in the maintenance plan), we have determined that, as of the date of this **Federal Register** action, Montana has a fully approved CO SIP under section 110(k) for the Great Falls CO nonattainment area.

(d) *Redesignation Criterion:* The Area Must Show That The Improvement In Air Quality Is Due To Permanent And Enforceable Emissions Reductions.

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan (Great Falls CO revision as approved on September 7, 1990, see 55 FR 36812), implementation of applicable Federal air pollutant control regulations, and any other permanent and enforceable reductions.

The necessary CO emissions reductions for the Great Falls area were primarily achieved through the Federal Motor Vehicle Control Program (FMVCP).

In general, the FMVCP provisions require vehicle manufacturers to meet more stringent vehicle emission limitations for new vehicles in future years. These emission limitations are phased in (as a percentage of new vehicles manufactured) over a period of years. As new, lower emitting vehicles replace older, higher emitting vehicles ("fleet turnover"), emission reductions are realized for a particular area such as Great Falls. For example, EPA promulgated lower hydrocarbon (HC) and CO exhaust emission standards in 1991, known as Tier I standards for new motor vehicles (light-duty vehicles and light-duty trucks) in response to the 1990 CAA amendments. These Tier I emissions standards were phased in with 40% of the 1994 model year fleet, 80% of the 1995 model year fleet, and 100% of the 1996 model year fleet. The benefits to the Great Falls CO area of the FMVCP are further presented in section 7.10.4. of the maintenance plan.

We have evaluated the identified control measure, the 1990 base year emission inventory, and the 1996 attainment year emission inventory, and have concluded that the improvement in air quality in the Great Falls nonattainment area has resulted primarily from emission reductions from the FMVCP Federal control measure.

(e) *Redesignation Criterion:* The Area Must Have A Fully Approved Maintenance Plan Under CAA Section 175A.

Section 107(d)(3)(E)(iv) of the CAA provides that for an area to be redesignated to attainment, the Administrator must have fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA.

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. For areas such as Great Falls that are utilizing EPA's limited maintenance plan approach, as detailed in the EPA guidance memorandum entitled "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" from Joseph Paisie, Group Leader, Integrated Policy and Strategies Group, Office of Air Quality and Planning Standards, dated October 6, 1995 (hereafter referred to as "Paisie Memorandum"), the maintenance plan demonstration requirement is considered to be satisfied for nonclassifiable areas if the monitoring data show that the area is meeting the air quality criteria for limited maintenance areas (i.e., a design value at or below 7.65 ppm, or 85% of the CO NAAQS, based on the 8 consecutive quarters—2 years of data—used to determine attainment). There is no requirement to project emissions over the maintenance period. EPA believes if the area begins the maintenance period at or below 85 percent of CO NAAQS, the continued applicability of PSD requirements, any control measures already in the SIP, and Federal measures, should provide adequate assurance of maintenance over the initial 10-year maintenance period. In addition, the design value for the area must continue to be at or below 7.65 ppm until the time of final EPA action on the redesignation. The method for calculating the design value is presented in the June 18, 1990, EPA guidance memorandum entitled "Ozone and Carbon Monoxide Design Value Calculations", from William G. Laxton, Director of the OAQPS Technical Support Division, to Regional Air Directors (hereafter referred to as the "Laxton Memorandum".)

In the case of a nonclassifiable area applying for a limited maintenance plan, all the monitors must have a separate design value calculated and the highest design value must be at or below 7.65 ppm. Should the design value for the area exceed 7.65 ppm prior to final EPA action on the redesignation, then the area no longer qualifies for the limited maintenance plan and must instead submit a full maintenance plan as described in the Calcagni Memorandum.

Eight years after our approval of this redesignation, the State must submit a revised maintenance plan that demonstrates continued maintenance of the CO NAAQS for 10 years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for adoption and implementation, that are adequate to assure prompt correction of a violation. In addition, EPA issued further maintenance plan interpretations in the General Preamble of April 16, 1992, the Calcagni Memorandum, and the Paisie Memorandum.

In this direct final rulemaking action, we are approving the State of Montana's limited maintenance plan for the Great Falls nonattainment area because EPA has determined, as detailed below, that the State's maintenance plan submittal meets the requirements of section 175A of the CAA and is consistent with the documents referenced above. Our analysis of the pertinent maintenance plan requirements, with reference to the Governor's February 9, 2001, submittal, is provided as follows:

1. Emissions Inventory—Attainment Year

Our interpretations of the CAA section 175A maintenance plan requirements for a limited maintenance plan are described in the Calcagni Memorandum and Paisie Memorandum as referenced above. The State is to develop an attainment year emissions inventory to identify a level of emissions in the area which is sufficient to attain the CO NAAQS. This inventory is to be consistent with EPA's most recent guidance on emissions inventories for nonattainment areas available at the time [2] and should

[2] The October 6, 1995, limited maintenance plan guidance memorandum states that current guidance on the preparation of emissions inventories for CO areas is contained in the following documents:

represent emissions during the time period associated with the monitoring data showing attainment.

The maintenance plan that the Governor submitted on February 9, 2001, included a comprehensive inventory of CO emissions for the Great Falls area for a typical CO season day in 1996. This inventory includes emissions from stationary point sources, area sources, non-road mobile sources, and on-road mobile sources. The State selected 1996 as the year from which to develop the attainment year inventory as it correlated with other inventory work that the State was proceeding with. The use of a 1996 inventory is acceptable to us as it represents a recent year for which the Great Falls area was showing attainment for the CO NAAQS. We note, and as archived in our Aerometric Information Retrieval System (AIRS) national database, that the Great Falls area has actually continuously demonstrated attainment of the CO NAAQS since 1988. Further, use of the 1996 attainment year conforms with the requirements in both the Calcagni Memorandum and Paisie Memorandum.

A more detailed description of the 1996 attainment year inventory is documented in the maintenance plan, section 7.10.6.1, and in the State's Technical Support Document (TSD). The State's submittal contains detailed emission inventory information for the Great Falls area that was prepared in accordance with EPA guidance.

We note in the maintenance plan, section 7.10.6.1, and the State's TSD that the State elected to perform a more comprehensive gridded emission inventory that not only contained emissions from the Great Falls nonattainment area, but also emissions from the nearby communities of Black Eagle and Laurel Rainbow which may impact the Great Falls area. This was denoted as the "Great Falls CO Emission Inventory Study Area." The total CO emissions for all three communities, as provided in the maintenance plan and in Table 5.1.b of the State's TSD, were 53,945.52 kilograms per day or 59.47 tons per day. We note, however, for the purposes of the redesignation to attainment, only CO emissions from the actual Great Falls nonattainment area (the 10th Avenue corridor) are necessary. As it would have been very difficult to only isolate the emissions from the specific and small Great Falls nonattainment boundary, we will accept the State's emissions from the Great Falls Study Area as addressing the attainment inventory requirement.

Therefore, we are archiving the Great Falls Study Area's summary CO emission figures from the 1996 attainment year, that includes the specific Great Falls nonattainment area, in Table II.–2 below.

TABLE II.–2—SUMMARY OF 1996 CO EMISSIONS

[Tons Per Day] for the Great Falls Study Area*

Point sources	Area sources	On-road mobile	Non-road mobile	Total
0.20	6.57	46.73	5.98	59.48

* **Note:** The Great Falls 1996 attainment year inventory figures were presented in the maintenance plan and the State's TSD in kilograms per day (kg/day). For the reader's convenience, we have converted kg/day to tons per day (TPD) by multiplying kg/day by 0.0011025 tons per kg.

2. Demonstration of Maintenance

As described in our October 6, 1995, limited maintenance plan guidance memorandum (Paisie Memorandum), the maintenance plan demonstration requirement is considered to be satisfied for nonclassifiable CO areas (such as Great Falls) if the monitoring data show that the area is meeting the air quality criteria for limited maintenance areas (i.e., equal to or less than a 7.65 ppm design value). There is no requirement to project emissions over the maintenance period. EPA believes that if an area begins the maintenance period at or below 85 percent of the CO NAAQS (7.65 ppm), the continued application of control measures already in the SIP, PSD requirements, and Federal measures provides adequate assurance of maintenance over the initial 10-year maintenance period.

As presented in section 7.10.6.2 and in Table 7.10.6.2.A of maintenance plan, the CO design value for the Great Falls area is 4.5 ppm which is below the limited maintenance plan requirement of 7.65 ppm. Therefore, the Great Falls area has adequately demonstrated maintenance.

3. Monitoring Network and Verification of Continued Attainment

The October 6, 1995, Paisie Memorandum for limited maintenance plan areas states that to verify the attainment status of an area, such as Great Falls, over the maintenance period, the maintenance plan should contain provisions for the continued operation of an appropriate, EPA-approved air quality monitoring network in accordance with 40 CFR part 58.

This requirement is met in section 7.10.6.3 of the Great Falls maintenance plan. This section states that the Montana Department of Environmental Quality (MDEQ) has operated and will continue to operate the Great Falls monitoring network in full accordance with the provisions of 40 CFR part 58 and the EPA-approved Montana Quality Assurance Project Plan. The MDEQ will also analyze the monitoring data to verify continued attainment of the CO NAAQS for the Great Falls area. The above air quality monitoring commitment by the State, which will be enforceable by EPA after this final approval of the Great Falls maintenance plan SIP revision, is deemed adequate by EPA.

4. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. To meet this requirement, the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures. As stated in section 7.10.6.4 of the maintenance plan, the State will use an exceedance of the CO NAAQS as the trigger for adopting specific contingency measures for the Great Falls area. The State indicates that notification to EPA, and other affected governments, of the exceedance will occur within 60 days. Upon notification of a CO NAAQS exceedance, the MDEQ and Cascade City-County Health Department (CCCHD) will convene to recommend an appropriate contingency measure or measures that would be necessary to

"Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone: Volume I" (EPA–450/4–91–016), and "Procedures for Emission Inventory Preparation: Volume IV, Mobile Sources" (EPA–450/4–81–026d revised).

avoid a violation of the CO NAAQS standard. The necessary contingency measure(s) will then be proposed for local adoption. The local adoption process will be completed within three months of the exceedance notification. Full implementation of the locally adopted contingency measure(s) will be achieved within one year after the recording of a CO NAAQS violation.

The potential contingency measures, identified in section 7.10.6.4.C of the Great Falls maintenance plan, include implementation of an oxygenated fuels program with local regulations in Great Falls or Cascade County area for the winter months of November, December, and January and establishing a high pollution day episodic woodburning curtailment program. A more complete description of the triggering mechanism and these contingency measures can be found in section 7.10.6.4 of the maintenance plan.

Based on the above, we find that the contingency measures and procedures provided in the State's maintenance plan for Great Falls are sufficient and meet the requirements of section 175A(d) of the CAA and the Paisie Memorandum for CO limited maintenance plans.

5. Subsequent Maintenance Plan Revisions

The State of Montana has committed to submit a future, revised maintenance plan for the Great Falls area. This commitment is contained in section 7.10.6.4.D of the Great Falls maintenance plan and meets the requirements of the CAA and EPA. Section 7.10.6.4.D states that eight years after EPA redesignates the Great Falls area to attainment, the State commits to submit to EPA a revised maintenance plan that will provide maintenance of the CO NAAQS for an additional 10 years after the expiration of the initial maintenance period.

IV. Conformity

Because the Great Falls area qualified for and utilized EPA's limited maintenance plan national policy (Paisie Memorandum), special conformity provisions apply as indicated below in an excerpt from such policy:

"e. Conformity Determinations Under Limited Maintenance Plans.

The transportation conformity rule (58 FR 62188; November 24, 1993) and the general conformity rule (58 FR 63214; November 30, 1993) apply to nonattainment areas and maintenance areas operating under maintenance plans. Under either rule, one means of demonstrating conformity of Federal actions is to indicate that expected emissions from planned actions are consistent with the emissions budget for the area. Emissions budgets in limited maintenance plan areas may be treated as essentially not constraining for the length of the initial maintenance period because it is unreasonable to expect that such an area will experience so much growth in that period that a violation of the CO NAAQS would result. In other words, EPA would be concluding that emissions need not be capped for the maintenance period. Therefore, in areas with approved limited maintenance plans, Federal actions requiring conformity determinations under the transportation conformity rule could be considered to satisfy the "budget test" required in sections 93.118, 93.119, and 93.120 of the rule. Similarly, in these areas, Federal actions subject to the general conformity rule could be considered to satisfy the "budget test" specified in section 93.158(a)(5)(i)(A) of the rule."

In addition, for Great Falls, Federal actions are also considered to satisfy the transportation conformity rule's requirements for expeditious implementation of transportation control measures (TCM) because there are no TCMs in the Great Falls CO SIP element. Transportation plans, transportation improvement programs, and Federal projects still require conformity determinations in order to proceed and Federal projects are still subject to the hotspot modeling requirements of the transportation conformity rule.

V. Consideration of CAA Section 110(l)

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirements of the CAA. As stated above, the Great Falls area has shown continuous attainment of the CO NAAQS since 1988 and has met the applicable Federal requirements for redesignation to attainment. We note that redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements. Redesignation to attainment is an action that affects the legal designation of a geographical area. In view of the Great Falls area's continuous attainment of the CO NAAQS and because the final approval of the redesignation and maintenance plan do not create any new requirements, we have concluded that our approval of the Great Falls redesignation to attainment and the area's maintenance plan meet the intent of section 110(l) of the CAA.

VI. Final Action

In this action, EPA is approving the Great Falls carbon monoxide redesignation request to attainment and the maintenance plan.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective July 8, 2002, without further notice unless the Agency receives adverse comments by June 10, 2002.

If EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 8, 2002, and no further action will be taken on the proposed rule.

Administrative Requirements

(a) Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

(b) Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

(c) Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves state rules implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. In addition, redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

(d) Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

This direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

(e) Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211 "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

(f) Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final approval will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the SIP final approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2). Redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements. Redesignation to attainment is an action that affects the legal designation of a geographical area and does not impose any regulatory requirements. Therefore, because the final approval of the redesignation does not create any new requirements, I certify that the final approval of the redesignation request will not have a significant economic impact on a substantial number of small entities.

(g) Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this final approval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

(h) Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective July 8, 2002.

(i) National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

(j) Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 8, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Clean Air Act.)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: April 29, 2002.

Robert E. Roberts,

Regional Administrator, Region VIII.

Chapter I, title 40, parts 52 and 81 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

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

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

Subpart BB—Montana

2. Section 52.1373 is amended by adding paragraph (c) to read as follows:

§ 52.1373 Control strategy: Carbon monoxide.

* * * * *

(c) Revisions to the Montana State Implementation Plan, Carbon Monoxide Redesignation Request and Maintenance Plan for Great Falls, as adopted by the Montana Department of Environmental Quality on December 19, 2000, State effective December 19, 2000, and submitted by the Governor on February 9, 2001.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

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

2. In § 81.327, the table entitled "Montana—Carbon Monoxide" is amended by revising the entry for "Great Falls Area" to read as follows:

§ 81.327 Montana.

* * * * *

MONTANA—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * * * * * *				
Great Falls Area Cascade County (part). Great Falls designated area: North boundary—9th Avenue South or its straight line extension; East boundary—54th Street South or its straight line extension; South boundary—11th Avenue South or its straight line extension; West boundary—2nd Street South or its straight line extension.	July 8, 2002	Attainment		
* * * * * * *				

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 02–11448 Filed 5–8–02; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 67, No. 90
Thursday, May 9, 2002

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560–AG47

Non-Recourse Cotton Loan and Loan Deficiency Payment Programs; Upland Cotton First Handler Marketing Certificate Program; Seed Cotton Loan Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: Changes are proposed to regulations for the upland cotton non-recourse loan and loan deficiency payment programs and the seed cotton loan program. Specifically, the proposed changes would: require that lists of cotton bales provided to the Commodity Credit Corporation (CCC) as the basis for loan deficiency payments be submitted in an electronic format provided by CCC; require that cotton classification information be provided to CCC as a condition of eligibility for a marketing assistance loan or loan deficiency payment for such cotton; change the effective time of the announced world market price for upland cotton from 5 p.m. eastern time each Thursday to 12:01 a.m. eastern time each Friday; provide for CCC to use Electronic Agent Designations when authorized by a producer as the basis for loan redemptions and release of loan collateral; establish that any quantity of cotton for which a seed cotton loan is requested cannot be subject at the same time to a request for a loan deficiency payment or lock-in of the adjusted world price; establish that for a bale of cotton to be eligible for a loan or loan deficiency payment it shall not be compressed to a density defined as a flat or modified flat bale by the Joint Cotton Industry Bale Packaging Committee; and, remove and reserve all regulations that provide for the Upland Cotton First Handler Marketing Certificate Program. Additionally, a number of editorial changes are incorporated to improve the precision of the regulations.

DATES: Submit comments on this regulation on or before July 8, 2002 to be assured of consideration. Comments on the information collection must be received on or before July 8, 2002 to be assured of consideration.

ADDRESSES: Address all comments concerning this proposed rule to Gene S. Rosera, USDA/Farm Service Agency, 1400 Independence Avenue, SW, STOP 0512; Washington, DC 20250–0512. Comments may be submitted by e-mail to: *gene_rosera@wdc.fsa.usda.gov*. All comments received in connection with this rule will be available for public inspection 7:30 a.m.–4:00 p.m., eastern time, except holidays, at 1400 Independence Avenue, SW., Room 4089, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Gene S. Rosera at (202) 720–8481 or e-mail at *gene_rosera@wdc.fsa.usda.gov*.

SUPPLEMENTARY INFORMATION

Executive Order 12866

This rule is issued in conformance with Executive Order 12866 and has been determined to be significant and has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this program, as a whole, will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement for the program is needed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any legal action may be brought regarding determinations of this rule, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

The Unfunded Mandates Reform Act of 1995

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

Executive Order 12612

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

Paperwork Reduction Act

This proposed rule would require that cotton bale identity and classification information currently provided in support of applications for loans and loan deficiency payments be provided by electronic media (diskette or electronic submission) in the format established by CCC. Currently, this required information is submitted electronically by virtually all cotton ginners or providers of warehouse receipts. However, a few submissions of this information still occur by paper copy. CCC proposes, starting with the 2002 crop, that all such bale identity and classification information be submitted electronically. This rule further proposes establishment and use of an industry-maintained electronic record as an alternative to the use of the CCC–605, Designation of Agent-Cotton. Therefore, the Farm Service Agency is proposing to revise the information collections currently approved in support of the cotton loan and loan deficiency payment programs under the

Office of Management and Budget (OMB) control numbers 0560–0074 and 0560–0129.

Title: Loan Deficiency Payments.

OMB Control Number: 0560–0129.

Expiration Date of Approval: March 31, 2004.

Type of Request: Revision of Currently Approved Information Collection.

Abstract: The information collection under OMB Control Number 0560–0129 includes requirements for processing applications for cotton loan deficiency payments. Some of this information identifies the cotton by ginner or warehouse receipt numbers, location, and weight and classification information. This proposal does not add to any current information collection requirements but would establish a requirement that, starting with the 2002 crop, the identifying and classification information be provided solely by electronic media (diskette or electronic submission) in a format prescribed by CCC. For the 2000 crop, about 99 percent of all 970 cotton ginners used CCC's prescribed electronic format to submit this required bale information (commonly referred to as gin-tag lists) on behalf of producers. The adoption of electronic media by the few remaining ginners is occurring due to industry demands for improved records management and recent developments of electronic trading of cotton. This proposal for CCC to accept only electronic bale information complements this industry trend and will greatly increase the speed and accuracy of CCC's benefits delivery. For the 1998 through 2000 crops, the average number of loan deficiency payment requests was about 74,100 per year, but those applications required the entry of bale-specific information for an average 5.7 million bales each year. Depending on the marketing position of their cotton, producers submit applications using either CCC-Cotton AA, Upland Cotton Producer's Loan Deficiency Payment Application and Certification, or CCC–709, Direct Loan Deficiency Payment Agreement.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: Cotton producers and designated agents of cotton producers.

Estimated Number of Respondents: 2,035,000.

Estimated Number of Responses: 6,105,000.

Estimated Total Annual Burden on Respondents: 4,198,750 hours.

Title: Regulations Governing CCC Nonrecourse Cotton Loan Program for 1996 and Subsequent Crops.

OMB Control Number: 0560–0074.

Expiration Date of Approval: January 31, 2005.

Type of Request: Revision of Currently Approved Information Collection.

Abstract: The information collection under OMB Control Number 0560–0074 addresses a number of application and other forms related to loans for seed and lint cotton. This proposed revision would establish an electronic alternative to the use of CCC–605, Designation of Agent—Cotton. Producers use the CCC–605 to authorize and designate an entity to redeem all or a portion of the collateral of a specified loan on behalf of the producer. This CCC–605 is subsequently presented by the agent to CCC in order to redeem and receive any loan collateral. Starting with the 2002 crop, CCC expects to accept requests to exchange commodity certificates for cotton loan collateral through the Cotton Online Processing System (COPS). This process will be nearly paperless except that the producer's agent must still present the CCC–605 to the appropriate county FSA office for verification. To eliminate the delay created by the delivery of the paper CCC–605, FSA proposes to establish use of an Electronic Agent Designation (EAD). An EAD is an electronic record that: (1) Designates the entity authorized by a producer to redeem all of the cotton pledged as collateral for a specified loan, (2) is maintained by providers of electronic warehouse receipts, and (3) a producer may authorize CCC to use as the basis for the redemption and release of loan collateral. Use of the EAD by any producer will be optional but it is proposed that CCC must have the producer's written request and authorization to use this electronic record as the basis for accepting repayment from an agent and releasing the loan collateral. The designated agents of producers who provide CCC with such authorizations will not need to present paper CCC–605's for verification. The agent-designation in the EAD will be established or revised according to provisions established by each provider of cotton warehouse receipts. Because use of the EAD eliminates use of the CCC–605 by the producers' agents, CCC estimates substantial reductions to the information collection estimate of OMB Control Number 0560–0074.

Estimate of Burden: The Public reporting burden for this collection of information is estimated to average 0.036 hours per response.

Respondents: Cotton producers and designated agents of cotton producers.

Estimated Number of Respondents: 85,000.

Estimated Number of Responses: 306,282.

Estimated Total Annual Burden on Respondents: 11,002 hours.

Comments are sought on these revisions to currently approved information collections including: (a) The accuracy of the agency's estimate of burden including the validity of the assumptions used; (b) whether requiring electronic submission of bale information will generate improvements in the speed and accuracy of delivering loans and loan deficiency payments to cotton producers; (c) whether this proposal generates any additional or unreasonable burden on the respondents compared with the existing option of submitting the required information by a paper record; and (d) any comments regarding the appropriateness and use of the EAD.

These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Gene S. Rosera, USDA/Farm Service Agency, 1400 Independence Avenue, SW., STOP 0512; Washington, DC 20250–0512. Comments may be submitted by e-mail to: *gene_rosera@wdc.fsa.usda.gov*. Comments regarding paperwork burden will be summarized and included in the request for OMB approval of the information collection.

Background

In this notice, a number of changes are proposed to 7 CFR part 1427, which provides for the administration of the upland cotton non-recourse loan and loan deficiency payment programs. Many of the proposed changes are of an editorial nature to improve the precision of the regulations and, as such, do not affect information collection, producer eligibility or benefit levels, or program outlays.

There are three proposals to amend regulations in Subpart A that would affect the benefit application process. These changes are being proposed to improve the accuracy and timeliness of producer transactions, to reduce delays associated with loan collateral release, and to reduce costs associated with loan redemptions borne by the Commodity Credit Corporation (CCC) and the cotton industry.

The first of these proposals would provide that all lists of cotton bales delivered to CCC must be presented in the CCC-designated electronic format.

CCC proposes to implement this requirement starting with the 2002 crop.

Bale lists are usually provided to CCC by ginners on behalf of the producer and are the production evidence upon which loan deficiency payments are calculated. Virtually all ginners currently provide such lists on a diskette or by e-mail in a format defined by CCC. However, out of an estimated 970 ginners for the 2000 crop, about 30 submitted lists that were not in the CCC electronic format. Such non-formatted lists must be manually entered into the CCC computer system before benefits can be computed. This manual entry process is prone to error compared with use of electronic lists, and the time needed to enter such lists delays payments to the producer of that cotton as well as others.

CCC calculated loan and repayment rates, or loan deficiency payments, for about 17.3 million individual bales of 2000-crop cotton. During the post-harvest period, the administrative burden associated with loan and loan deficiency payments ordinarily delays benefits delivery, in some counties for weeks, even when bale lists are received electronically. The manual entry of a bale list during this period further delays payments to many producers. CCC proposes to require all gins to submit bale lists using the CCC electronic format to reducing these delays. To comply with this requirement, the few ginners that are not using the electronic format may need additional software, or have electronic bale lists transmitted by other entities. Comments are specifically requested as to the reasonableness of this proposal to require bale lists in electronic format.

The second proposal would amend 7 CFR 1427.5, general eligibility requirements, to require cotton to be represented by classification information provided by the producer, in a format provided by CCC, for the cotton to be eligible for either a loan or loan deficiency payment. The requirement for classification information for loan deficiency payments is already included in 7 CFR 1427.23(b)(5), but is not explicitly stated as an eligibility requirement for loans. CCC proposes to implement this change starting with the 2002 crop.

Classification information is generated in an electronic format by the Agricultural Marketing Service (AMS) and is available to producers by several means, including a printed record or diskette. Most commonly, the data are obtained by the producer's ginner or warehouse as an electronic file from the central AMS database and then entered onto either the warehouse receipt or bale list presented to CCC for a loan or loan deficiency payment. Although this information is commonly transferred electronically, it is available to producers in printed form from either AMS, the ginner, or from CCC. When such information is omitted from a warehouse receipt or a bale list, CCC's process for providing the requested benefit is significantly delayed by the time required to obtain the information from AMS and to make manual entries. The manual process increases data entry errors and erroneous payments. To speed the delivery of benefits to all producers and to reduce errors, CCC proposes that all loan and loan deficiency payment applications be supported by bale identification and classing information in an electronic format. Because the use and transfer of electronic records is a common cotton industry practice, the use of electronic records for CCC benefits applications seems appropriate and not burdensome to producers or ginners. Extending this requirement for classification information to all cotton is also consistent with CCC's policy of requiring grading information for warehouse-stored wheat, feed grains, rice, and oilseeds. Comments are requested as to any particular burdens for cotton producers or ginners that may result from establishing this requirement for electronic identity and classification information for all cotton presented to CCC for either a loan or loan deficiency payment.

The third proposal would change the effective time of the adjusted world price (AWP) from 5 p.m. eastern time each Thursday to 12:01 a.m. eastern time each Friday. The announcement time of the AWP would remain unchanged at 5 p.m. each Thursday but a single cotton AWP would be effective from start of business each Friday through the close of business each Thursday. CCC proposes to implement this proposal upon publication of a final rule change, meaning that this proposal would be implemented during the 2002-crop marketing year.

This change in effective time is being proposed due to the benefits to CCC and the cotton industry of having only one price effective each day of the week. Under existing rules for upland cotton, two different world prices are effective each Thursday, one for business hours up to 3:59 p.m. eastern time and the second price beginning at 5 p.m. eastern time for the remainder of the day. Current rules further provide that loan repayments or requests for loan deficiency payments are not accepted by CCC during the hour preceding the AWP announcement. This practice was originally established in 1992 as an effort to reduce administrative pressures that occurred at county Farm Service Agency offices after the AWP increases. Over time, as cotton producers have become informed of daily changes to the world price level, those pressures have largely been eliminated, but the inefficiencies that result from having two prices effective on a single day remain.

Under the current rules, merchants must arrange for all Thursday loan repayments to be delivered by the midday deadline that varies by time zone. Pacific-time transactions are subject to a 1 p.m. deadline and bankers' hours may further restrict transactions. Cooperatives unable to transfer payments during morning hours are now required to separately submit notifications of pending loan redemptions to FSA. These submissions should be reduced if not eliminated under this proposal and merchants repaying loans in multiple counties should benefit from having a full work day for such transactions. The current policy of having identical announcement and effective times for the AWP was partly based on the concern that unfair advantages might result for businesses in western time zones if the announcement and effective times were different or if the AWP were based on the discretionary "Step 1" adjustment that could not be anticipated. These concerns should be resolved with the advent of centralized certificate redemptions through the Cotton Online Processing System(COPS) that will become available before this proposal to change the effective AWP time would be implemented. COPS will be available during uniform hours regardless of time zones. This proposed change in the effective time of the AWP is not estimated to change program outlays. Comments are requested as to whether this proposal should be implemented and as to an appropriate period of time for advance notification of such change.

This proposed rule would also define and establish regulations for use of an Electronic Agent Designation (EAD). An EAD is an electronic record established and maintained by providers of electronic warehouse receipts that identifies the agent designated by a producer to have authority to redeem specific loan collateral on behalf of the producer. This proposed regulation would provide the basis for a producer to authorize CCC to use this electronic record as the basis for accepting loan repayments from their agents. It is proposed that CCC would implement

use of the EAD for the 2002 crop of cotton pending finalization of needed software and training.

It is common practice for agents authorized by producers to repay cotton loans on behalf of those producers. Current regulations allow producers to voluntarily designate agents using CCC–605, Designation of Agent-Cotton. This form must be presented to the County FSA Service Center for the designated agent to repay the loan. For the EAD to be used, cotton producers would authorize CCC to use the EAD as the basis for accepting loan repayments from the producer's agent. Producers would be able to cancel this authorization by providing written notice to CCC.

FSA has developed a web-based process within COPS that will greatly streamline loan repayments starting with the 2002 crop. Under this system, and with the use of EAD's, agents will be able to redeem loan collateral without having to physically deliver funds and copies of the CCC–605 to multiple FSA offices. The authorization to use EAD's will allow CCC to speed loan redemptions and collateral release. The speed of fund transfers and release of loan collateral will be greatly increased, and county FSA offices will have fewer loan repayment transactions to manually process. The value of cotton marketed under this procedure may be enhanced due to the speed of collateral release by CCC compared to current procedures. Over time, the loan redemption process within COPS by agents is expected to become the preferred process for loan redemptions because of its reduced administrative costs to merchants and the quicker release of loan collateral compared to current repayment procedures.

The designation of agents and the use of the EAD will be entirely voluntary. Producers who elect to designate agents but who do not want to authorize use of the EAD will continue to have the option of using the CCC–605 for that purpose. In such cases, as under current procedures, the CCC–605 will have to be returned to CCC before the loan can be repaid by an agent.

Implementing the EAD will not affect the level of loans or net loan outlays. FSA will benefit due to the reduced county-office workload associated with loan redemptions. Comments are requested on the implementation of the EAD. Specifically, comments are requested as to any problems that may arise if its use becomes available after the start of the 2002 cotton marketing year.

This proposed rule would delete regulations at 7 CFR part 1427, subpart B, because regulations of this subpart no longer apply to the cotton program. When the cotton marketing loan program started, the minimum loan repayment rate was initially established at no less than 70 percent of the loan level. If the world price fell below that minimum level, then the difference between the world price and the minimum loan repayment level was payable by the first handler marketing certificates provided by regulations at subpart B. There is no longer any statutory minimum to the loan repayment rate and, accordingly, the regulations at 7 CFR part 1427, subpart B can be removed. Comments are requested regarding the removal of these regulations.

This proposed rule would establish in subpart D an additional requirement for eligibility for the seed cotton loan program. The proposed rule would establish that cotton for which a loan deficiency payment has been requested would be ineligible for a seed cotton loan. This proposal is consistent with the eligibility requirements of other cotton and commodity programs to assure that duplicate benefits are not provided for an eligible commodity. CCC proposes to make this change effective upon publication of a final regulation during the 2002 cotton marketing year. Comments are requested regarding this additional eligibility requirement for the seed cotton loan.

This proposed rule would establish as a condition of eligibility for a loan or loan deficiency payment that cotton not be compressed to a density defined as a "flat" or "modified flat" bale by the Joint Cotton Industry Bale Packaging Committee. Such bales are generally not acceptable to most cotton buyers and ordinarily must be re-compressed to standard dimensions and densities to be marketable. As a result, CCC bears the expense of moving, re-compressing, and re-identifying such cotton to make it merchantable if it is delivered to CCC in satisfaction of a loan obligation. Because such bales are not commonly merchantable "as is", it is appropriate that any such bales are not provided loan eligibility. Comments are requested regarding discontinuing loan eligibility for flat and modified flat bales.

List of Subjects in 7 CFR Part 1427

Cotton, Loan program-agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements.

Accordingly, FSA proposes to amend 7 CFR part 1427 as follows.

PART 1427—COTTON

1. The authority citation for part 1427 continues to read as follows:

Authority: 7 U.S.C. 7231–7237; and 15 U.S.C. 714b and 714c.

2. Revise § 1427.3 to read as follows:

§ 1427.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration regarding the cotton loan and loan deficiency payment programs. The terms defined in parts 718 of this title and 1412 of this chapter shall also be applicable.

Approved cooperative marketing association (CMA) means a cooperative marketing association approved in accordance with part 1425 of this chapter and which has executed Form CCC-Cotton G, Cotton Cooperative Loan Agreement.

Charges means all fees, costs, and expenses incurred by CCC in insuring, carrying, handling, storing, conditioning, and marketing the cotton tendered to CCC for loan. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such cotton.

Cotton means upland cotton and extra loan staple cotton meeting the definition set forth in the definitions of "upland cotton" and "extra long staple (ELS) cotton" in this section, respectively, and excludes cotton not meeting such definitions.

Cotton clerk means a person approved by CCC to assist producers in preparing loan and loan deficiency documents.

Cotton commercial bank means the bank designated as the financial institution for a CMA or loan servicing agent.

Electronic Agent Designation is an electronic record that: (1) Designates the entity authorized by a producer to redeem all of the cotton pledged as collateral for a specified loan, (2) Is maintained by providers of electronic warehouse receipts, and (3) A producer may authorize CCC to use as the basis for the redemption and release of loan collateral.

Extra long staple cotton (ELS) means any of the following varieties of cotton which is produced in the United States and is ginned on a roller gin:

(1) American-Pima;

(2) All other varieties of the Barbadense species of cotton, and any hybrid thereof; and

(3) Any other variety of cotton in which one or more of these varieties predominates.

False Packed Cotton means cotton in a bale: Containing substances entirely

foreign to cotton; containing damaged cotton in the interior with or without any indication of the damage on the exterior; composed of good cotton on the exterior and decidedly inferior cotton in the interior, but not detectable by customary examination; or, containing pickings or linters worked into the bale.

Financial institution means:

(1) A bank in the United States which accepts demand deposits; and

(2) An association organized pursuant to Federal or State law and supervised by Federal or State banking authorities.

Form A loan means a non-recourse loan executed on Form CCC—Cotton A, Cotton Producer's Note and Security Agreement.

Form G loan means a non-recourse loan to a CMA on eligible cotton delivered to the CMA by eligible members of the CMA.

Lint cotton means cotton that has passed through the ginning process.

Loan servicing agent means a legal entity that enters into a written agreement with CCC to act as a loan servicing agent for CCC in making and servicing Form A cotton loans. The loan servicing agent may perform, on behalf of CCC, only those services which are specifically prescribed by CCC including, but not limited to, the following:

(1) Preparing and executing loan and loan deficiency payment documents;

(2) Disbursing loan and loan deficiency payment proceeds;

(3) Handling re-concentration of cotton in accordance with § 1427.16;

(4) Accepting loan repayments;

(5) Handling documents involved with forfeiture of loan collateral to CCC; and

(6) Providing loan, loan deficiency payment, and accounting data to CCC for statistical purposes.

Seed cotton means cotton which has not passed through the ginning process.

Upland cotton means planted and stub cotton which is produced in the United States from other than pure strain varieties of the Barbadense species, any hybrid thereof, or any other variety of cotton in which one or more of these varieties predominates.

Warehouse receipt means a receipt issued with respect to a bale of cotton by a warehouse with an existing cotton storage agreement, approved by CCC, in accordance with §§ 1427.1081 through 1427.1089, which is:

(1) A negotiable, machine card type warehouse receipt that is pre-numbered and pre-punched;

(2) An electronic warehouse receipt record issued by such warehouse recorded in a central filing system or systems maintained in one or more locations which are approved by FSA or CCC to operate such system; or

(3) Other such acceptable evidence of title, as determined by CCC.

3. Amend § 1427.5 by revising paragraphs (a)(1), (b)(5), (b)(6), (b)(9), (b)(10)(i), (b)(11)(ii), (b)(12), (c), (d), (e)(2)(iii)(E), (e)(2)(iii)(F), and adding paragraph (b)(13) to read as follows:

§ 1427.5 General eligibility requirements.

(a) * * *

(1) Form A loan documents or loan deficiency payment applications must be signed by the producer and delivered with acceptable production evidence to applicable county office or loan servicing agent. Such delivery, in the case of submissions by cotton clerks, must occur within 15 calendar days after the producer signs such documents and within the period of loan availability. A producer must request loans and loan deficiency payments:

* * * * *

(b) * * *

(5) Not be compressed to a density defined as a "flat" or "modified flat" bale by the Joint Cotton Industry Bale Packaging Committee;

* * * * *

(9) Weigh at least 325 pounds net weight; bales of more than 600 pounds may be pledged for loan at 600 pounds;

* * * * *

(10) * * *

(i) Copies of the applicable crop year specifications for cotton bale packaging materials published by the Joint Cotton Industry Bale Packaging Committee are available upon request at the county office and at the following address: Joint Cotton Industry Bale Packaging Committee, National Cotton Council of America, P.O. Box 12285, Memphis, Tennessee 38112. Copies may be inspected at the South Agriculture Building, Room 4089 A, 1400 Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, and at an internet website announced by CCC.

* * * * *

(11) * * *

(ii) Who has entered into CCC–809, Cooperating Ginners' Bagging and Bale Ties Certification and Agreement, or certified that the bale is wrapped with bagging and bale ties meeting the requirements of paragraph (b)(10) of this section;

(12) Be production from acreage that has been reported timely in accordance with part 718 of this title; and

(13) Be represented by identity and classification information provided by the producer by electronic media, in a format provided by CCC, at the time a loan or loan deficiency payment is requested.

(c) In addition to the requirements of paragraph (b) of this section, for ELS cotton the bale must:

(1) Be a color grade, staple length, and leaf specified in the schedule of loan rates for ELS cotton and of a staple length of not less than 44/32 inch, and

(2) Not have a micronaire reading of 2.6 or less.

(d) In addition to the requirements of paragraph (b) of this section, for upland cotton the bale must:

(1) Have been produced on a farm with a production flexibility contract in accordance with part 1412 of this chapter;

(2) Have been graded by using a High Volume Instrument;

(3) Be a grade, staple length, strength, micronaire and leaf specified in the schedules of premiums and discounts for grade, staple length, strength, micronaire and leaf for upland cotton; and

(4) Have a level of extraneous matter specified in the schedule of discounts for extraneous matter for upland cotton.

* * * * *

(e) * * *

(2) * * *

(iii) * * *

(E) Must be presented with any request to redeem loan collateral at the county office or loan servicing agent where the loan originated, if the agent or subsequent agent exercises any authority granted by the producer, unless the producer provides authorization to CCC to use, in place of the original CCC–605, an electronic agent designation as the basis for accepting redemption of some or all bales of the specified loan; and

(F) May be canceled by the producer by providing the custodial office a written request signed and dated by the producer showing the name of the agent, the loan number, and the bales applicable to the Form CCC–605. The effective date of the cancellation shall be the date the request is received by the custodial office. If CCC has been authorized by a producer to use an electronic agent designation, the producer's cancellation of his authorization for CCC to use such electronic designation of agent shall be effective when CCC receives verification from the provider of the warehouse receipts maintaining the electronic agent designation record that such record has been voided.

* * * * *

4. Amend § 1427.6 by revising paragraph (b) to read as follows:

§ 1427.6 Disbursement of loans.

* * * * *

(b) Loan proceeds may be disbursed by CCC or a cotton commercial bank.

* * * * *

5. Amend § 1427.9 by revising paragraph (a) to read as follows:

§ 1427.9 Classification of cotton.

(a) References made to "classification" in this subpart shall include color grade, staple length, leaf, extraneous matter, and micronaire, and for upland cotton, strength readings. All cotton tendered for loan must be classed by an Agricultural Marketing Service (AMS) Cotton Classing Office or other entity approved by CCC and tendered on the basis of such classification.

* * * * *

6. Amend § 1427.11 as follows:

a. By adding paragraph (a)(4);

b. Revising paragraphs (c)(1);

c. Removing paragraph (c)(2);

d. Redesignating paragraph (c)(3) as paragraph (c)(2); and

e. Revising paragraph (f).

The addition and revisions read as follows:

§ 1427.11 Warehouse receipts.

(a) * * *

(4) Contain classification information for the bale.

* * * * *

(c)(1) Each receipt in its written or printed terms may contain the tare weight and must contain the net weight of the bale represented thereby. The net weight shown on the warehouse receipt shall be the difference between the gross weight as determined by the warehouse at the warehouse site and the tare weight. The warehouse receipt may show the net weight established at a gin if:

(i) The gin is in the immediate vicinity of the warehouse and is operated under common ownership with such warehouse, or in any other case in which the showing of gin weights on the warehouse receipts is approved by CCC; and

(ii) Gin weights are permitted by the licensing authority for the warehouse.

* * * * *

(f) In any case where loan collateral is forfeited, any unpaid storage or receiving charges, not to exceed the amount that accrued from the date that all necessary documents were received by CCC to the maturity date, will be paid to the warehouse by CCC after loan maturity or as soon as practicable after the cotton is ordered shipped by CCC.

* * * * *

7. Amend § 1427.13 by revising paragraph (e)(1) to read as follows:

§ 1427.13 Charges and interest.

* * * * *

(e) * * *

(1) All warehouse storage charges associated with the forfeited cotton that accrued before the date that all required documents are provided to CCC; and

(2) Any accrued warehouse receiving charges associated with the forfeited cotton, including, if applicable, charges for new ties as specified in § 1427.11.

* * * * *

8. Section 1427.19 is revised to read as follows:

§ 1427.19 Repayment of loans and certificate exchanges.

(a) Warehouse receipts will not be released except as provided in this section.

(b) A producer or agent or subsequent agent authorized on Form CCC–605 or otherwise may redeem one or more bales of cotton pledged as collateral for a loan by payment to CCC of an amount applicable to the bales of cotton being redeemed determined in accordance with this section. CCC, upon proper payment for the amount due, shall release the warehouse receipts applicable to such cotton.

(c) An agent or subsequent agent whose authorization by a producer to redeem loan collateral is recorded in an Electronic Agent Designation may redeem all bales of cotton pledged as collateral for a loan by payment to CCC of an amount applicable to the bales of cotton being redeemed determined in accordance with this section.

(d) A producer or agent or subsequent agent authorized on Form CCC–605 or whose authorization is recorded in an Electronic Agent Designation, may repay the loan amount for one or more bales of cotton pledged as collateral for a loan:

(1) For upland cotton, at a level that is the lesser of:

(i) The loan level and charges, plus interest determined for such bales; or

(ii) The adjusted world price, as determined by CCC in accordance with § 1427.25, in effect on the day the repayment is received by the county office, loan servicing agent, or servicing agent bank that disbursed the loan.

(2) For ELS cotton, by repaying the loan amount and charges, plus interest determined for such bales.

(e) CCC shall determine and publicly announce the adjusted world price for each crop of upland cotton on a weekly basis.

(f) The difference between the loan level, excluding charges and interest, and the loan repayment level is the market gain. The total amount of any market gain realized by a person is subject to the payment limitation provided in part 1400 of this chapter.

(g) Repayment of loans will not be accepted after CCC acquires title to the cotton in accordance with § 1427.7.

(h) If the upland cotton pledged as collateral is eligible to be repaid at a rate less than the loan level and charges, plus interest, and the adjusted world price determined in accordance with § 1427.25 is:

(1) Below the national average loan rate for upland cotton, CCC will pay at the time of loan repayment to the producer or agent or subsequent agent authorized on Form CCC–605 the warehouse storage charges which have accrued, with respect to the cotton pledged as collateral for such loan, during the period the cotton was pledged for loan;

(2) Above the national average loan rate by less than the sum of the accrued interest and warehouse storage charges, that accrued during the period the cotton was pledged for loan, CCC will pay at the time of loan repayment to the producer or agent or subsequent agent authorized on Form CCC–605, that portion of the warehouse storage charges, that accrued during the period the cotton was pledged for loan, that are determined to be necessary to permit the loan to be repaid at the adjusted world price without regard to any warehouse charges that accrued before the cotton was pledged for loan; or

(3) Above the national average loan rate by as much as or more than the sum of the accrued interest and warehouse storage charges that accrued during the period the cotton was pledged for loan, CCC shall not pay any of the accrued warehouse storage charges.

9. Section 1427.23 is amended by revising paragraphs (b)(2), (b)(4), (b)(5), (c), and (f) and by removing paragraph (g), to read as follows:

§ 1427.23 Cotton loan deficiency payments.

* * * * *

(b) * * *

(2) Agree to forgo obtaining such loans unless denied a loan deficiency payment due to payment limitation;

* * * * *

(4) Provide warehouse receipts or, as determined by CCC, a list in an electronic format prescribed by CCC of gin bale numbers for such cotton showing, for each bale, the net weight established at the gin and classing information for such quantity in accordance with § 1427.9;

(5) For loan deficiency payment requests and requests for locking-in the adjusted world price for seed cotton prior to ginning, provide identifying

numbers for cotton modules or other storage units that will correspond to the gin-assigned bale numbers for which the loan deficiency payments are requested; and

* * * * *

(c) Subject to the availability of funds and limitations on payments set out elsewhere, the loan deficiency payment applicable to a crop of cotton shall be computed by multiplying the applicable loan deficiency payment rate, as determined in accordance with paragraph (d) of this section, by the quantity of the crop the producer is otherwise eligible to pledge as collateral for a loan in accordance with § 1427.8(b).

* * * * *

(f) If the producer enters into an agreement with CCC on or before the date of ginning a quantity of eligible upland cotton, and the producer has the beneficial interest in such quantity as determined in accordance with § 1427.5(c), on the date the cotton was ginned, the loan deficiency payment rate applicable to such cotton will be the loan deficiency payment rate:

(1) Based on the date the cotton was ginned if payment application is made using CCC–709;

(2) Based on the date a complete payment request including production evidence is submitted, if the request is made after ginning using CCC-Cotton AA;

(3) Based on the date of request for lock-in of the adjusted world price if the request is made before ginning of the cotton that is identified by gin-supplied module or other storage unit number using CCC-Cotton AA. In such cases, the producer must meet all the other requirements in paragraph (b) on or before the final date to apply for a loan deficiency payment in accordance with § 1427.5.

10. Amend § 1427.25 by revising paragraph (e) to read as follows:

§ 1427.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.

* * * * *

(e) The adjusted world price for upland cotton as determined in accordance with paragraph (c) of this section, and the amount of the additional adjustment as determined in accordance with paragraph (f) of this section, shall be announced, to the extent practicable, at 5 p.m. eastern time each Thursday continuing through the last Thursday of July 2003. The adjusted world price and the amount of the additional adjustment will be effective at 12:01 a.m. eastern time each Friday and will remain in effect for a period as announced by CCC. In the event that Thursday is a non-workday, the determination will be announced and will be effective, to the extent practicable, at 8 a.m. eastern time the next workday.

§§ 1427.50–1427.58 [Removed and reserved]

11. Remove and reserve subpart B consisting of § 1427.50 through § 1427.58.

12. Amend § 1427.165 by adding new paragraph (a)(8) to read as follows:

§ 1427.165 Eligible seed cotton.

(a) * * *

(8) Not be cotton for which a loan deficiency payment or a lock-in of the adjusted world price has been requested.

* * * * *

Signed at Washington, DC, on April 30, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–11352 Filed 5–8–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 236, 240, and 241

[INS No. 1847–97; AG Order No. 2579–2002]

RIN 1115–AE82

Requiring Aliens Ordered Removed from the United States To Surrender To the Immigration and Naturalization Service for Removal

AGENCY: Immigration and Naturalization Service, Justice, and Executive Office for Immigration Review, Justice.

ACTION: Proposed rule.

SUMMARY: This supplementary proposed rule would amend the regulations of the Immigration and Naturalization Service (Service) and the Executive Office for Immigration Review (EOIR) by requiring aliens subject to a final order of removal to surrender themselves to the Service. This rule also establishes procedures for surrender and provides that aliens violating those procedures will be denied certain discretionary immigration benefits.

DATES: Written comments must be submitted on or before June 10, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division (HQRFS), Immigration and Naturalization Service, 425 I Street, NW, Room 4034, Washington, DC 20536. To ensure proper handling please reference INS No. 1847–97 on your correspondence. You may also submit comments electronically to the Service at *insregs@usdoj.gov*. When submitting comments electronically please include INS No. 1847–97 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Lisa Batey, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street NW, Room 6100, Washington, DC 20536, telephone (503) 231–4049, or Cristina Hamilton, Office of the General Counsel, at (202) 514–2895. For matters relating to the Executive Office for Immigration Review: Chuck Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION:

I. Background

On September 4, 1998, the Department of Justice (Department) published a proposed rule in the **Federal Register** at 63 FR 47205, providing procedures that must be followed by an alien subject to a final order of removal. After a careful review, the Department is publishing a supplementary proposed rule on these issues. This rule is substantially the same as that proposed by former Attorney General Janet Reno, with some changes discussed herein. One principal change is that the requirements of this rule will not be limited only to aliens who are served with a Notice to Appear after the effective date of this rule; such a limitation, as stated in the 1998 proposed rule, would unnecessarily impair the effectiveness of this rule. Instead, this rule provides that the requirements of this rule shall also be applied to aliens who are currently in immigration proceedings, as long as they receive the requisite notice. Moreover, this supplementary proposed rule reflects a renumbering of the new regulatory provisions in light of other new sections that the Service has added to 8 CFR part 241 after the proposed rule was published.

What Is the Purpose of This Supplementary Proposed Rule?

The purpose of this supplementary proposed rule is to establish procedures requiring aliens who have received a final order of removal to surrender to the Service for removal from the United

States. The rule establishes procedures for surrender and provides that persons violating these procedures will be denied certain discretionary immigration benefits. Section 241(a) of the Immigration and Nationality Act (Act), as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), generally requires the detention and removal of aliens subject to a final order of removal within 90 days. Many aliens, however, are not in Service custody at the time the order of removal becomes administratively final. In the past, fully "89 percent of non-detained aliens with final orders of [removal] failed to surrender for deportation when ordered to do so." 62 FR 48183 (Sept. 15, 1997) (background information relating to detention under the Transition Period Custody Rules, citing to Report #I–96–03 issued in March 1996 by the Department's Office of the Inspector General).

This rule would provide that an alien not detained at the time an order of removal becomes final has an affirmative legal obligation to surrender thereafter for removal, and would provide an incentive for compliance by denying future discretionary relief for absconding aliens who fail to comply.

Who Will Be Affected by This Rule When It Is Finalized?

This rule would apply to those aliens who receive notice at any point in immigration proceedings of their duty to surrender following any final order of exclusion, deportation, or removal, and of the consequences of failing to surrender. Aliens placed in removal proceedings after the effective date of any final rule based on this regulation will be served written notice of the duty to surrender in the Notice to Appear. Aliens who are already in proceedings on the effective date of this rule when it is published as a final rule will receive notice of the duty to surrender, and the consequences of failure to surrender, by one of several methods, such as (1) from the immigration judge, (2) from the Board of Immigration Appeals at the time the Board issues a written order of removal, (3) from the district director prior to any release from custody, or (4) in any other manner whereby such written notice may be effectuated. In order to ensure that aliens receive proper notice, this rule provides that such notice will be provided at several points in the immigration enforcement process. However, once notice is provided by any means, no other notice shall be legally required.

How Would This Rule Affect Aliens With Final Removal Orders?

This supplementary proposed rule would apply to all aliens who received the requisite notice under this rule, at any stage of the immigration enforcement process, regarding the obligation to surrender to the Service, and the consequences of failing to surrender when required. Such aliens, if they are not within the custody of the Service at the time, must surrender to the Service within 30 days of the issuance of an administratively final order of removal by either an immigration judge or the Board of Immigration Appeals. An alien who has been granted voluntary departure is given an order of removal that automatically becomes administratively final if the alien does not depart under the grant of voluntary departure. If an alien does not voluntarily depart he or she is also required to surrender to the Service. Aliens granted voluntary departure must surrender for removal on the first business day following the date the alternate order of removal becomes effective. It is important to note that nothing in this rule restricts the Service's authority to arrest and remove an alien with a final order of removal at any time, unless a federal court has stayed that final order.

The Service also notes that aliens subject to a final order of removal are already obligated under section 241(a)(1)(C) of the Act and 8 CFR 241.4(g) to make application in good faith for travel documents, and that any failure to undertake this and other affirmative obligations tolls the removal period during which detention is mandated. See 66 FR 56967 (Nov. 14, 2001).

Where Must the Alien Go To Surrender?

This supplementary proposed rule would require the alien to surrender to the Detention and Removal Program of the Service district office with jurisdiction over the place where the immigration judge completed the removal proceeding. The Service may designate an alternate location for surrender upon providing notice to the alien.

What Are the Consequences for an Alien Who Fails To Surrender as Required?

This supplementary proposed rule provides that an alien who fails to surrender, as required, will be denied discretionary relief from removal by the Attorney General under sections 208(b) (asylum), 212(h) (waiver of inadmissibility for criminal convictions), 212(i) (waiver of inadmissibility for fraud), 240A (cancellation of removal), 240B (voluntary departure), 245 (adjustment to status of a lawful permanent resident), 248 (change of nonimmigrant status) and 249 (registry) of the Act at any time while he or she remains in the United States, and for a period of ten years after the alien's departure from the United States. These consequences will apply to all aliens who fail to surrender, when required, after having received the requisite notice under this rule at any stage of the immigration enforcement process.

Entirely apart from the provisions of this rule, the Service notes that any alien who fails to surrender when required may also be subject to other sanctions under the existing laws, including criminal prosecution under section 243 of the Act or civil penalties under section 274D of the Act.

Can the Denial of Discretionary Relief Be Waived?

This supplementary proposed rule would provide the district director with discretion to waive the denial of discretionary relief, as provided under § 241.17(c), if the alien demonstrates that the failure to surrender was due to exceptional circumstances and that he or she appeared as soon as possible thereafter as circumstances allowed. This rule incorporates the statutory definition of exceptional circumstances at section 240(e)(1) of the Act, which is narrow and does not include ignorance of the law or reliance on advice of counsel or of any other individual.

What Effect Would an Alien's Failure To Surrender Have on Motions To Reopen or Reconsider Removal Proceedings?

Pursuant to the changes proposed by the Department, removal proceedings would not be reopened in the case of an alien who failed to surrender for removal unless the alien can demonstrate by clear and convincing evidence both that the failure to surrender was due to exceptional circumstances as defined in section 240(e)(1) of the Act, and that he or she actually surrendered for removal as soon as possible after the circumstances that prevented timely surrender had passed. Any alien seeking to file a motion to reopen or reconsider must also satisfy the legal and time requirements of § 3.2, for cases before the Board of Immigration Appeals, or § 3.23, for cases before the Immigration Court, as applicable.

Are There Any Other Requirements Under This Rule?

The amendments contained in this supplementary proposed rule would prohibit an alien's release from Service custody unless the alien agrees in writing or otherwise on the record to surrender for removal in accordance with the rule. All aliens seeking voluntary departure are also required to agree to surrender for removal as a condition to being granted that form of relief if they fail to voluntarily depart.

Did the Department Receive Comments on the Proposed Rule?

The Department set a 60-day public comment period that ended on November 3, 1998. The Department received four public comments on the proposed rule. The following is a discussion of those comments and the Department's response.

Discussion of Comments and Changes From the Proposed Rule

Length of Surrender Period

Two commenters raised concerns with the length of the proposed 10-day surrender period. One commenter suggested that 10 days is an insufficient period of time for an alien who has moved away to report to the Service district office with jurisdiction over the location where the removal proceedings were completed. The other commenter pointed out that decisions from the Board of Immigration Appeals do not always arrive within 10 days of the date of the order, thus making it impossible for an alien to report within the proposed 10-day surrender period as required by the regulation. The commenter suggested that a 30-day period to ensure sufficient mailing time would be more appropriate.

The Department has carefully considered these concerns, and has amended this supplementary proposed rule to provide for a 30-day surrender period.

Location for Surrender

One commenter indicated a concern with the requirement under § 241.13 of the proposed rule (now renumbered as § 241.16) that the alien must surrender to the Service district office with jurisdiction over the location where removal proceedings were completed. The commenter proposed that aliens be allowed to surrender to any Service district office. In contrast, another comment, signed by seven surety companies, objected to the suggestion that the Service could change the location for surrender, as this could impose additional compliance costs on the surety provider.

The recommendation to allow aliens to surrender to any Service district office has some merit, but is not easily reconciled with logistical considerations, the obligation to make most efficient use of Service resources, and the expectations of surety providers. The designated district office will have the alien's file and the necessary documentation for his or her removal. The designated office will also be prepared to house the alien pending removal, or make arrangements as needed. For these reasons, the Department has retained in these rules the requirement to surrender at the designated district office, but has made allowance in the rule under appropriate circumstances for the district director, in his or her discretion, to agree to an alternate site.

Tolling of the Surrender Period for Federal Court Review

One commenter questioned why the surrender period is tolled pending an appeal to the Board of Immigration Appeals, but not pending a petition for review in federal court. The answer has to do with the administrative finality of the order. An order of removal on appeal to the Board of Immigration Appeals is not a final administrative order. Execution of the order is automatically stayed pending disposition of the appeal.

The filing of a petition for review in federal court, on the other hand, does not result in an automatic stay of the removal order. The alien must specifically request a stay of removal. *See* Fed. R. App. P. 18. The alien must also notify the Service that such a stay is being sought. Should a stay be granted, the order cannot be executed and the duty to surrender is suspended. Likewise, if a stay is ordered pending a motion to reopen, the order cannot be executed and the duty to surrender is suspended. The alien's duty to surrender to the Service within 30 days begins anew on the day the stay is lifted.

Denial of Discretionary Relief

One commenter opposed the inclusion of sections 208, 212(h), and 212(i) of the Act as forms of relief from removal that the Attorney General will deny, as a matter of discretion, to aliens who fail to surrender as required. Sections 240(b)(7) and 240B(d) of the Act bar an alien who fails to appear for proceedings or who fails to depart pursuant to a voluntary departure order from any further relief under sections 240A, 240B, 245, 248, and 249 of the Act for a period of 10 years. The commenter argues that including discretionary denials of relief under the three additional provisions is not permitted by the statute, nor is the discretionary denial of asylum consistent with treaty obligations and Congressional intent.

The Department reiterates its position that denying discretionary forms of relief to those aliens who disobey the law by failing to surrender is a rational exercise of the Attorney General's discretion, and a regulatory provision reflecting that result is a proper means for the Attorney General to exercise that discretion. The Supreme Court has recognized that an agency head "has the authority to rely on rulemaking to resolve certain issues of general applicability unless Congress clearly expresses an intent to withhold that authority." *Lopez* v. *Davis*, 531 U.S. 230, 244 (2001), quoting *American Hospital Assn.* v. *NLRB*, 499 U.S. 606, 612 (1991); *see also, Yang* v. *INS*, 79 F.3d 932, 936 (9th Cir. 1996). Moreover, sections 212(h) and 212(i) of the Act are waiver provisions, not independent forms of relief, and as such would be unavailable to any alien who was denied the other forms of relief.

Even prior to this supplementary proposed rule, case law has established that an alien who fails to report to the Service following notification that his or her deportation has been scheduled does not merit the favorable exercise of discretion required for reopening deportation proceedings. *See, e.g., Matter of Barocio*, 19 I.&N. Dec. 255, 258 (BIA 1985); *see also Sequeira-Solano* v. *INS*, 104 F.3d 278, 279 (9th Cir. 1997) ("The BIA correctly found that Sequeira-Solano [by failing to surrender] had put himself in defiance of our immigration laws and therefore concluded that his [motion] for reopening [to apply for suspension of deportation] did not merit favorable consideration."); *Zapon* v. *Dep't of Justice*, 53 F.3d 283, 285 (9th Cir. 1995) (United States was "substantially justified" in opposing fugitives' efforts to obtain a stay of deportation, supporting the denial of their application for award of attorneys fees under Equal Access to Justice Act); *Bar-Levy* v. *Dep't of Justice*, 990 F.2d 33, 35 (2d Cir. 1993) ("An alien who is a fugitive from a deportation order should thus not be permitted to pursue an appeal of the deportation order or a denial of his application for a waiver of deportation."), *following Arana* v. *INS*, 673 F.2d 75, 77 (3d Cir. 1982) (per curiam).

The obligation to surrender for removal is not a new one, and failure to comply with this obligation is a

significant flaunting of U.S. law for which the denial of all discretionary relief—including asylum—is an appropriate response. Nothing in this rule affects an alien's eligibility for withholding of deportation, when required by law.

District Director's Discretion

Two commenters raised questions regarding § 241.15(c) (now renumbered as § 241.18(c)) of the proposed rule. One commenter suggested that it was unclear exactly as to the scope of the consequences of failing to surrender in this section. The section has been amended to clarify that the consequences of failing to surrender, after having received notice of the duty to surrender, can be found in § 241.18(c). The other commenter appeared to be concerned with the fact that this section provides that the decision to waive the denial of relief is left to the sole discretion of the district director. The commenter argued that "a regulation cannot dictate what is the adjudicator's 'sole and unreviewable discretion.'"

The Supreme Court has upheld an agency's ability to utilize regulations as an exercise of discretionary authority. *See, e.g., Lopez* v. *Davis*, 531 U.S. 230, 244 (2001). In this case, however, proposed § 241.18(c) does not dictate precisely how the district director must exercise his or her discretion. It simply provides that the discretionary decision to waive the consequences under § 241.18(c) of the alien's failure to surrender is to be made by the district director, if the alien demonstrates that his or her failure to surrender was a result of exceptional circumstances as defined in section 240(e)(1) of the Act and that the alien surrendered himself or herself to the Service as soon as those exceptional circumstances ceased to exist.

Retroactive Effect

One commenter remarked that the prospective nature of the rule was not stated in the proposed rule. Rulemaking is presumed to be prospective in nature, and a clear statement is required only if the rule is intended to have retroactive application. Nonetheless, in the interest of clarity, the notice provisions of § 241.17 specify that the denial of discretionary relief for failure to surrender, as provided in § 241.18(c), will be invoked only where the alien had received written notice of the surrender obligation and the consequences under § 241.18(c) of failure to surrender.

Bonds

Three of the four comments were submitted by surety companies who post immigration bonds, or their representatives. These commenters strongly criticized the proposed rule, contending that the proposals violate the spirit, intent, and express wording of the June 22, 1995 settlement agreement in the case of *Amwest Surety Insurance Co.* v. *Reno*, Civil No. 93–2356 JSL (Shx) (C.D. Cal.). In that agreement, the Service agreed to send notice of the date and time to report for deportation to the bond obligor at least 3 days prior to sending such notice to the alien. While the settlement agreement applied only to bonds underwritten by the plaintiffs, the Service as a matter of policy decided to apply the terms of the settlement agreement to all other companies underwriting immigration bonds.

The Department has carefully considered the effects of that policy and has determined that the policy should be modified for all bonds posted after the effective date of this rule.

The commenters assert that, by equating the final order of removal to the notice to surrender and mailing it directly to the alien, the proposed rule would deprive the obligor of its contractual right to advance notice. The commenters further argue that the proposed rule would deprive the obligor of its ability to surrender the alien for removal as the obligor would only be notified to surrender the alien for removal only after he or she has failed to surrender as required. By that time, the administrative penalties, civil fines, and criminal consequences have all attached. No alien, according to the commenters, will be willing to surrender at that point.

The commenters assert that the proposed rule is an improper attempt by the Department to extend the 90-day removal period by labeling an alien who fails to surrender as a "fugitive from justice," thus subject to continued detention. The commenters also argue that § 241.13(h) of the proposed rule (now renumbered as § 241.16(j)), which allows the Service to unilaterally alter the surrender terms, e.g., designate an alternate surrender location, could unlawfully increase the risks or duties of the obligor under the contract it executes with the alien.

The Department is cognizant of its contractual duties and has carefully considered the points raised in these comments. The Department will abide by the settlement agreement with regard to all bond contracts entered into prior to the effective date of the final rule. The Service will continue to send form I–340, Notice to Obligor to Produce Alien, as agreed in the settlement agreement, to sureties of any bond posted prior to the effective date of this rule when it is published as a final rule.

However, the settlement agreement was based upon the Act as it existed prior to the passage of the IIRIRA, which mandated detention of certain aliens during the post-order removal period. The settlement agreement has been affected by IIRIRA, and more recently by judicial decisions such as *Zadvydas* v. *Davis*, 533 U.S. 678 (2001), and the resulting changes in regulations published at 66 FR 56967 (Nov. 14, 2001) (codified at §§ 241.4, 241.13 and 241.14). These changes in the legal landscape necessitate revision to the way the Service handles bonds.

Revisiting the bond contract and procedures is also necessary to ensure the efficient use of Service resources, particularly with the growing removal caseload and competing government priorities after the events of September 11, 2001. Moreover, technological advances, such as the availability of information on the status of cases from EOIR's automated information line, 1–800–898–7180, make it reasonable to expect that surety companies monitor the surrender obligations of their clients in new cases.

In response to the concerns of the surety companies, this supplementary proposed rule would extend the surrender period to 30 days. The Department is in the process of revising form I–352, Immigration Bond, to more accurately reflect the current legal and procedural requirements and this supplementary proposed rule.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because it affects the legal obligations of individual aliens ordered removed from the United States, not small entities. Although this rule will have an impact on surety companies by altering the terms of future bond contracts, the impact and number of surety companies affected will not be substantial.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small

governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 804(2)). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Paperwork Reduction Act

This rule requires a revision to an existing information collection (Form I–352). This revision will be submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Aliens, Immigration, Organization and functions (Government agencies).

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 240

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 241

Administrative practice and procedure, Aliens, Immigration.

Accordingly chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1231, 1252 note, 1252b, 1253, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

2. Section 3.1 is amended by adding one sentence at the end of paragraph (f) to read as follows:

§ 3.1 General authorities.

* * * * *

(f) * * * The decision shall include notice of the duty to surrender and the consequences of failure to surrender when required, in accordance with §§ 241.16 through 241.19 of this chapter.

* * * * *

3. Section 3.2 is amended by adding paragraph (c)(5) to read as follows:

§ 3.2 Reopening or reconsideration before the Board of Immigration Appeals.

* * * * *

(c) * * *

(5) (i) Notwithstanding the limitations of paragraph (c)(1) of this section, a motion to reopen removal proceedings will not be granted in the case of an alien who failed to surrender for removal in accordance with § 241.16 of this chapter, unless:

(A) The district director waived the consequences under § 241.18(c) for failing to surrender for removal in accordance with § 241.18(c)(2) of this chapter; or

(B) The alien presents documentary evidence that demonstrates, by clear and convincing evidence, that:

(*1*) The failure to surrender for removal was due to exceptional circumstances as defined in section 240(e)(1) of the Act; and

(*2*) The alien surrendered for removal as soon as possible after the circumstances that prevented a timely surrender had passed.

(ii) Nothing in paragraph (c)(5)(i)(B) of this section may be construed as providing the right to reopen a proceeding solely to consider whether an alien complied with the duty to surrender for removal, or whether exceptional circumstances excuse the alien's failure to do so.

* * * * *

4. Section 3.23 is amended by adding paragraph (b)(5) to read as follows:

§ 3.23 Reopening or reconsideration before the Immigration Court.

* * * * *

(b) * * *

(5) *Failure to surrender for removal.* (i) Notwithstanding the requirements of paragraph (b)(1) of this section, a motion to reopen or reconsider will not be granted in the case of an alien who failed to surrender for removal in accordance with § 241.16 of this chapter, unless:

(A) The district director waived the consequences under § 241.18(c) for failing to surrender for removal, in accordance with § 241.18(c)(2) of this chapter; or

(B) The alien presents documentary evidence that demonstrates, by clear and convincing evidence, that:

(*1*) The failure to surrender for removal was due to exceptional circumstances as defined in section 240(e)(1) of the Act; and

(*2*) The alien surrendered for removal as soon as possible after the circumstances that prevented a timely surrender had passed.

(ii) Nothing in paragraph (b)(5)(i)(B) of this section may be construed as providing the right to reopen a proceeding solely to consider whether an alien complied with the duty to surrender for removal, or whether exceptional circumstances excuse the alien's failure to do so.

5. Section 3.37 is amended by adding a new paragraph (c) to read as follows:

§ 3.37 Decisions.

* * * * *

(c) All oral and written decisions of the Immigration Judge will include notice of the duty to surrender and the consequences of failure to surrender, when required, in accordance with §§ 241.16 through 241.19 of this chapter.

PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

6. The authority citation for part 236 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1231, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

7. Section 236.1 is amended by adding one sentence at the end of paragraph (c)(1)(i) to read as follows:

§ 236.1 Apprehension, custody, and detention.

* * * * *

(c) * * *

(1) * * *

(i) * * * No alien may be released from custody unless the alien agrees in writing or otherwise on the record to surrender for removal in accordance with § 241.16 of this chapter should the alien become subject to a final order of removal, and the alien has been advised of the consequences under § 241.18(c) of failure to surrender when required, in accordance with §§ 241.16 through 241.19 of this chapter.

* * * * *

PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

8. The authority citation for part 240 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1231, 1251, 1252 note, 1252a, 1252b, 1253, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681); 8 CFR part 2.

9. Section 240.26 is amended by adding one sentence at the end of paragraph (a), to read as follows:

§ 240.26 Voluntary departure—authority of the Executive Office for Immigration Review.

(a) * * * In addition, no alien may be granted voluntary departure unless the alien agrees in writing or otherwise on the record to surrender for removal in accordance with § 241.16 of this chapter if the alien fails to depart voluntarily within the time allowed, and the alien has been advised of the consequences under § 241.18(c) of failure to surrender when required, in accordance with §§ 241.16 through 241.19 of this chapter.

* * * * *

PART 241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

10. The authority citation for part 241 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103. 1182, 1223, 1224, 1225, 1226, 1227, 1231, 1253, 1255, 1330, 1362; 18 U.S.C. 4002, 4013(c)(4); sec. 303(b) of Div. C of Pub. L. 102–208; 8 CFR part 2.

11. In part 241, subpart A, add § 241.16 to read as follows:

§ 241.16 Duty to surrender.

(a) *In general.* An alien subject to a final order of removal shall be taken into custody by the Service and removed. If not in the custody of the Service, however, an alien subject to a final order of removal issued in proceedings and who has received notice of the duty to surrender as set forth in § 241.17 must surrender for removal as provided in this section. Such surrender must be made during regular business hours to the Detention and Removal Program of the Service district office with jurisdiction over the place where the immigration judge completed the removal proceeding. Nothing in this part shall be construed as limiting the Service's authority to enforce a final order of removal at any time.

(b) *Final order by an immigration judge*—(1) *Aliens waiving appeal and aliens ordered removed in absentia.* Any alien who, upon issuance of the order of removal by an immigration judge, waives appeal of the order, and any alien who is ordered removed *in absentia*, must surrender for removal within 30 calendar days of the date of the order.

(2) *Aliens reserving appeal.* Any alien who, upon issuance of the order of removal by an immigration judge, reserves appeal, must surrender for removal within 30 calendar days of the date when the appeal period expires, unless he or she files a timely appeal, or within 30 calendar days of the date of any subsequent waiver or withdrawal of the appeal.

(c) *Final order by the Board of Immigration Appeals.* Any alien who becomes subject to an order of removal, or an order dismissing an appeal from an order of removal, issued by the Board of Immigration Appeals must surrender for removal within 30 calendar days of the date of the Board's order.

(d) *Voluntary departure.* Notwithstanding paragraphs (b) and (c) of this section, any alien granted voluntary departure who becomes subject to an alternate order of removal due to failure to depart as directed, failure to pay a bond in connection with voluntary departure, or failure to comply with any other required condition or term in connection with voluntary departure, must surrender for removal on the next business day following such a failure.

(e) *Aliens in custody.* (1) Any alien who becomes subject to a final order of removal while in Service custody is thereby relieved of the duty to surrender for removal under this section.

(2) Any alien who becomes subject to a final order of removal while incarcerated in a local, State, or Federal facility must surrender for removal within 30 calendar days of the alien's release from that facility, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense, unless the alien is detained by the Service at the time he or she is released. If the Service detains the alien at the time of release from a local, State, or Federal facility, the alien is thereby relieved of the duty to surrender for removal pursuant to this section.

(f) *Other orders of removal.* Any alien who is ordered removed, other than by an immigration judge or the Board of Immigration Appeals, must surrender for removal to the Service district office with jurisdiction over the place where the alien was ordered removed within 30 calendar days of the date that the order becomes final.

(g) *Requests for relief subsequent to final order of removal.* An application for discretionary or other relief, including a motion to reopen, submitted to the Service, an immigration judge, or the Board of Immigration Appeals, by an alien who is the subject of a final order of removal, will have no effect on an alien's duty to surrender, unless the alien presents, prior to the expiration of the period to surrender, a written decision granting the requested relief. A request for modification of the surrender terms submitted by an alien to the Service will have no effect on an alien's duty to surrender, unless the alien presents, prior to the expiration of the period to surrender, a written response granting the requested relief.

(h) *Stay pending federal court review.* Filing of a petition for federal court review or a writ of habeas corpus with respect to an administratively final removal order will have no effect on an alien's duty to surrender for removal. If the federal court issues a stay of the removal order pending review, the alien's duty to surrender will also be suspended for the duration of the stay. The 30-day period for surrender will begin again on the day that the federal court stay is lifted.

(i) *Weekends and holidays.* If the last permissible day to surrender for removal falls on a Saturday, Sunday, Federal holiday, or other day when the Service office designated for surrender is closed, the alien must surrender for removal on the first business day thereafter.

(j) *Alternative surrender terms.* Nothing in this part may be construed as limiting the Service's authority, in its sole and unreviewable discretion, to impose surrender requirements in addition to or varying from those generally applicable under this section. Changes to the surrender requirements may be made by mutual consent of the parties or, if without the alien's consent, the Service shall notify the alien in person or by regular mail at the last address given to the Service by the alien. This notice requirement shall not affect the Service's ability to arrest and remove an alien described in section 241(a) of the Act at any time.

12. In part 241, subpart A, add § 241.17 to read as follows:

§ 241.17 Notice of duty to surrender.

(a) *Notice to Appear.* As of the effective date when this rule is published as a final rule, the Notice to Appear, Form I–862, will contain written notice of the duty to surrender after the issuance of a final order of removal and the consequences of failure to surrender when required.

(a) *Immigration judge.* (1) The immigration judge will inform the alien orally or in writing that, if the alien fails to appear for a hearing, and thereby becomes subject to a final order of removal, the alien will be required to surrender for removal and the consequences of failure to surrender when required.

(2) In any case in which an immigration judge renders a decision, whether or not adverse to the alien, the immigration judge will inform the alien orally or in writing of the duty to surrender for removal and the location to which the alien must surrender in the event that the alien becomes subject to a final order of removal, and the consequences of failure to surrender when required.

(c) *Board of Immigration Appeals.* Orders of removal and orders dismissing an appeal from an order of removal issued by the Board of Immigration Appeals will be accompanied by written notice of the duty to surrender for removal, and the consequences of failure to surrender when required.

(d) *Upon release from custody.* As a condition of release from custody, whether under terms directed by the Service or subsequent to redetermination by an immigration judge or the Board of Immigration Appeals, the alien released must agree in writing or otherwise on the record to surrender for removal if the alien becomes subject to a final order of removal. No alien will be released from custody without agreeing to surrender for removal as required by this part.

(e) *Upon grant of voluntary departure.* No alien may be granted voluntary departure, whether by an immigration judge or the Board of Immigration Appeals, unless the alien agrees in writing or otherwise on the record to surrender for removal as provided under § 241.16(c), should the alien become subject to an alternate order of removal due to failure to depart as directed, failure to pay a bond in connection with voluntary departure, or failure to comply with any other required condition or term in connection with voluntary departure.

(f) *Effectuating notice of duty to surrender.* An alien will be on notice of the provisions of this section, including penalties for failure to surrender, upon service of any written notice that the alien has a duty to surrender. Aliens placed in proceedings after the effective date when this rule is published as a final rule will be served written notice of the duty to surrender in the Notice to Appear pursuant to section 239(a)(1) of the Act. Aliens who have been served with a Notice to Appear prior to the effective date when this rule is published as a final rule will be served with written notice in one of the ways described in paragraphs (b) through (e) of this section or in any other manner whereby such written notice may be effectuated. Service of the written notice will be accomplished either by hand-delivery or by mailing to the alien's last-known address as reported by the alien to the Service or EOIR. Once notice is served as described in this section, no other notice is required, even though the alien may receive more than one notice from the Service and EOIR. If the address of the Service district office to which the alien is required to surrender changes subsequent to issuance of notice under this section, it is the alien's duty to determine the new address and surrender to that location.

13. In part 241, subpart A, add § 241.18 to read as follows:

§ 241.18 Consequences of failure to surrender for removal; exception; waiver.

(a) *Liability.* An alien who fails to surrender for removal as required by this part, and remains in the United States in violation of law:

(1) Is subject to criminal prosecution under section 243 of the Act; and

(2) Is subject to civil penalties under section 274D of the Act.

(b) *Consent to reapply.* The fact that the alien failed to surrender for removal as required by this part shall be a serious adverse factor when considering a subsequent application for consent to reapply for admission to the United States.

(c) *Denial of discretionary relief.* An alien who fails to surrender for removal as required by this part, and remains in the United States in violation of law, after having received notice of the duty to surrender as provided in § 241.17, will be denied discretionary relief under sections 208(b), 212(h), 212(i), 240A, 240B, 245, 248, and 249 of the Act while the alien remains in the United States, and for a period of 10 years after the alien's departure or removal.

(1) *Exception.* An alien who fails to surrender for removal as required by this part may be granted the relief specified in this paragraph (c) for which the alien is otherwise eligible, if the underlying proceeding was reopened by the Board of Immigration Appeals in accordance with § 3.2(c)(5) of this chapter or an immigration judge in accordance with § 3.23(b)(5) of this chapter, provided that the alien does not again fail to surrender for removal subsequent to reopening of the underlying proceeding.

(2) *Waiver.* The consequences of failing to surrender specified in this paragraph (c) may be waived in the sole and unreviewable discretion of the district director, if the alien surrenders for removal as soon as possible thereafter, and at that time presents documentary evidence that demonstrates, by clear and convincing evidence, that the failure to surrender was due to exceptional circumstances as defined in section 240(e)(1) of the Act. Exceptional circumstances do not include reliance on advice of counsel or any other individual, and no waiver is available based on such reliance.

14. In part 241, subpart A, add § 241.19 to read as follows:

§ 241.19 Construction.

(a) *Order of removal.* For purposes of § 241.16, § 241.17, and § 241.18, the term "order of removal" shall apply to orders issued pursuant to the Act as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, including, but not limited to, section 309 therein.

(b) *Detainers.* Nothing in this part may be construed to relieve local, State, or Federal authorities from complying with the terms of a lawfully issued Service detainer.

(c) *Service.* For purposes of § 241.16, § 241.17, and § 241.18, in the case of an alien who is not personally served with an order of removal, service by first class mail to the last address provided by the alien in accordance with section

239(a)(1)(F) of the Act, or part 3 or part 265 of this chapter shall be sufficient.

(d) *Effect on existing bonds.* For all immigration bonds posted prior to the effective date of this rule when it is published as a final rule, the Service will make demand on the obligor on Form I–340 by mail to the address furnished on Form I–352 (unless the obligor is present and the demand can be served on the obligor in person), requiring the obligor to produce the alien at a time, date and place certain not later than the final date of the surrender period. The I–340 shall be mailed (or delivered in person) as soon as practicable after receipt of the final order from the immigration judge or the Board of Immigration Appeals.

(e) *Change in handling of new bonds.* For all immigration bonds posted after the effective date of this rule when it is published as a final rule, the bond will be deemed to have been breached when the alien fails to surrender within the 30-day surrender period. It is the duty of the obligor(s) to monitor the status of proceedings against the alien and ensure that the alien surrenders within the 30-day surrender period.

(f) *Construction in relation to post-order custody rules.* An alien's duty to surrender, as set forth in § 241.16, § 241.17, and § 241.18, is an affirmative obligation. The failure to comply with this obligation shall be considered a failure to comply for purposes of custody determinations pursuant to § 241.4.

Dated: April 30, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–11141 Filed 5–8–02; 8:45 am]

BILLING CODE 4410–10–P

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 2002–6]

Candidate Debates

AGENCY: Federal Election Commission.

ACTION: Petition for Rulemaking; Notice of Availability.

SUMMARY: On April 10, 2002, the Commission received a Petition for Rulemaking from several major news organizations that are listed below. The petitioners urge the Commission to amend its rules to explicitly state that the sponsorship by a news organization (or a related trade association) of a debate between political candidates does not constitute an illegal corporate campaign contribution or expenditure in violation of the Federal Election Campaign Act of 1971, as amended ("the Act") and that the Commission would have no jurisdiction over such sponsorship. This petition is available for inspection in the Commission's Public Records Office through its Faxline service, and on the Commission's Web site at *www.fec.gov.*

DATES: Statements in support of or in opposition to the petition must be filed on or before June 10, 2002.

ADDRESSES: All comments should be addressed to Ms. Rosemary C. Smith, Assistant General Counsel, and must be submitted in either written or electronic form. Electronic mail comments should be sent to *debate02noa@fec.gov.* Written comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to insure legibility. Commenters sending comments by electronic mail must include their full name, electronic mail address and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. The Commission will make every effort to have public comments posted on its Web site within ten business days of the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Assistant General Counsel, or Mr. Michael Marinelli, Staff Attorney, 999 E Street, NW., Washington, D.C. 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On April 10, 2002, the Commission received a Petition for Rulemaking from CBS Broadcasting Inc.; American Broadcasting Companies Inc.; Belo Corp.; Cox Enterprises, Inc.; Gannett Co., Inc.; the National Association of Broadcasters; National Broadcasting Co., Inc.; News America Incorporated; The New York Times Company; Post-Newsweek Stations, Inc.; the Radio and Television News Directors Association; the Society of Professional Journalists; and Tribune Company regarding the Commission's candidate debate regulations at 11 CFR 110.13. Paragraph (c) of section 110.13 states, *inter alia,* that "[f]or all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate." *Id.* The petition asserts that this regulation should be repealed. It argues that any regulation of the sponsorship by news organization (or a related trade association) is contrary to the clear intent of the U.S. Congress, irreconcilable with other FEC decisions, in conflict with the regulatory decisions of the Federal Communications Commission and unconstitutional. The petition urges the Commission to draft new regulations that explicitly declare such sponsorship is legal under the Act and to refrain from any further regulatory jurisdiction over the sponsorship of a candidate debate by a news organization or trade association of members of the press.

Copies of the petitions are available for public inspection in the Commission's Public Records Office, 999 E Street, NW., Washington, DC 20463, Monday through Friday between the hours of 9 a.m. and 5 p.m. Copies of the petitions can also be obtained at any time of the day and week from the Commission's home page at *www.fec.gov,* or from the Commission's Faxline. To obtain copies of the petitions from Faxline, dial (202) 501–3413 and follow the Faxline service instructions. Request document # to receive the petition.

All statements in support of or in opposition to the petition should be addressed to Ms. Rosemary C. Smith, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Commission's postal service address: Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923. Commenters submitting faxed comments should also submit a printed copy to the Commission's postal service address to ensure legibility. Comments may also be sent by electronic mail to *debates02noa@fec.gov.* Commenters sending comments by electronic mail must include their full name, electronic mail address and postal service address within the text of their comments. All comments, regardless of form, must be submitted by June 10, 2002. Commenters are strongly encouraged to send comments electronically to ensure timely receipt and consideration.

Consideration of the merits of the petition will be deferred until the close of the comment period. If the Commission decides that the petition has merit, it may begin a rulemaking proceeding. Any subsequent action taken by the Commission will be announced in the **Federal Register.**

Dated: May 6, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–11628 Filed 5–8–02; 8:45 am]

BILLING CODE 6715–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Baby Walkers; Termination of Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Termination of rulemaking.

SUMMARY: In August of 1994 the U.S. Consumer Product Safety Commission (CPSC or Commission) published an advance notice of proposed rulemaking under authority of the Federal Hazardous Substances Act (FHSA) stating that it had reason to believe that baby walkers might present an unreasonable risk of injury or death due to stair falls. 59 FR 39306.

The Commission now has information that demonstrates that currently available baby walkers do not present "an unreasonable risk of personal injury" due to stair falls. A finding of unreasonable risk of personal injury is a necessary prerequisite under the FHSA for the Commission to declare an article intended for use by children to be a hazardous substance due to a mechanical hazard.

The FHSA also prohibits the Commission from declaring that an article intended for use by children presents a mechanical hazard if there is an adopted and implemented voluntary standard that addresses the risk unless it can make, inter alia, one or more of the following findings. One is that compliance with the standard will not adequately reduce or eliminate the risk. Another is that it is unlikely that there will be substantial compliance with the standard.

The Commission finds that currently available information demonstrates that the existing voluntary standard adequately reduces the risk of injury associated with the use of baby walkers. Testing has demonstrated that walkers complying with the voluntary standard are unlikely to fall down stairs. Baby walker-related stair fall injuries have declined substantially as walkers that comply with the voluntary standard have become more widespread in the marketplace. The Commission finds further that there is presently substantial compliance with the voluntary standard (99% according to surveys). The Commission finds further that, because the industry is dominated by five large manufacturers, all of which are presently producing walkers that comply with the voluntary standard, there likely will be substantial compliance with the voluntary standard in the future.

Accordingly, the Commission has terminated the baby walker regulatory proceeding.

Termination of the baby walker stair fall proceeding has no effect on the FHSA baby walker mechanical injury prevention and labeling requirements at 16 CFR 1500.18(a)(6) and 1500.86(a)(4). These requirements remain in full force and effect.

FOR FURTHER INFORMATION CONTACT: Barbara J. Jacobson, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0477, ext. 1206; e-mail: *bjacobson@cpsc.gov*

SUPPLEMENTARY INFORMATION:

A. The Product

A baby walker is a device that supports a child so that the child can use its feet to move around before, or while, learning to walk. A baby walker generally consists of a fabric seat with leg openings mounted to a rigid plastic deck. The deck is attached to a base that usually has wheels to make it mobile. A walker generally can be folded for storage, and may have a feeding tray, adjustable seat height and a bouncing mechanism. Activity toys may be attached to the tray, and some walkers have wheel lock mechanisms.

B. Background of the Rulemaking

The Commission initiated the proceeding to address baby walker stair falls with an advance notice of proposed rulemaking (ANPR) in August 1994. 59 FR 39306. This proceeding had no effect on the existing baby walker mechanical injury prevention and labeling requirements at 16 CFR 1500.18(a)(6) and 1500.86(a)(4) previously promulgated under authority of the FHSA. These requirements remain in full force and effect.

At the time the ANPR was issued, baby walkers were associated with a higher number of injuries than any other type of nursery product. The majority of the injuries occurred as a result of children falling down stairs while in baby walkers.

Thirteen comments were received in response to the ANPR. Seven commenters supported a mandatory rulemaking. Six commenters were opposed to a mandatory rulemaking. Five of the commenters who opposed the mandatory rulemaking requested that any new baby walker requirements be developed through the ASTM voluntary standards setting process.

After publication of the ANPR, Commission staff worked with the ASTM Walker Subcommittee to add new performance requirements to the voluntary walker standard to address the stair fall hazard. A revised ASTM F977 standard incorporating these improvements received final ASTM approval on October 10, 1996 and was published in early 1997.[1]

C. Relevant Statutory Provisions

The CPSC baby walker proceeding was conducted pursuant to the FHSA. 15 U.S.C. 1261 *et seq.* Section 2(f)(1)(D) of the FHSA defines "hazardous substance" to include any toy or other article intended for use by children that the Commission determines, by regulation, presents an electrical, mechanical, or thermal hazard. 15 U.S.C. 1261(f)(1)(D). An article may present a mechanical hazard if its design or manufacture presents an unreasonable risk of personal injury or illness during normal use or when subjected to reasonably foreseeable damage or abuse. Among other things, a mechanical hazard could include a risk of injury "(5) from lack or insufficiency of controls to reduce or stop motion, * * * or (9) because of any other aspect of the article's design or manufacture." 15 U.S.C. 1261(s). Thus, in this proceeding, for the Commission to declare baby walkers to be hazardous substances due to a mechanical hazard, it would find that currently available baby walkers pose an unreasonable risk of personal injury as a result of "lack or insufficiency of controls to reduce or stop motion."[2]

Section 3(i)(2) of the FHSA prohibits the Commission from making a determination that an article intended for use by children presents a mechanical hazard, and therefore is a banned hazardous substance by operation of law, if there is an adopted and implemented voluntary standard that addresses the risk in question unless it can make, inter alia, one or more of the following findings.[3] 15

[1] Copies of ASTM F977–00 Standard Consumer Safety Specification for Infant Walkers are available from ASTM. The URL for the ASTM world wide web site is: *www.astm.org*

[2] Under section 2(q)(1)(A) of the FHSA, a toy, or other article intended for use by children which is a hazardous substance is also a "banned hazardous substance." 15 U.S.C. 1261(q)(1)(A).

[3] The FHSA contains two other pertinent constraints on Commission action in the face of voluntary standards activities, neither of which is apropos here. The first directs the Commission to consider publishing as a proposed CPSC regulation an adequate existing standard submitted to it during the period specified in an advance notice of proposed rulemaking (ANPR). 15 U.S.C. 1262(g)(1). No such standard was submitted in response to the August 1994 ANPR. The second requires the Commission to terminate the rulemaking proceeding and rely on an adequate existing voluntary standard developed in response to a commitment and schedule for development thereof

Continued

U.S.C. 1262(i)(2). One is that compliance with the standard is not likely to eliminate or adequately reduce the risk. 15 U.S.C. 1262(i)(2)(A)(i). Another is that it is unlikely that there will be substantial compliance with the voluntary standard. 15 U.S.C. 1262(i)(2)(A)(ii).

D. There Has Been a Significant Reduction in the Risk of Injury From Baby Walkers Since 1995

Based on data from the Commission's National Electronic Injury Surveillance System (NEISS), baby walker-related injuries have dropped 63 percent since 1995, from 20,100 emergency room treated injuries to 7,400.[4] The number of U.S. live births has increased slightly, approximately 4%, since 1995. Comparing the estimated number of injuries over the same time period, the rate of injury per 1,000 live births has dropped 65% from 1995 to 2000.

CPSC received two reports of baby walker-related deaths in 2001, the first reports of baby walker deaths since 1997. The deaths were from head injuries incurred from falls down stairs. Investigations showed that both walkers were older-style walkers manufactured before the stair-fall improvements were incorporated into ASTM voluntary standard F977, Standard Consumer Safety Specification for Infant Walkers.

The Commission concludes that the consistent decrease in injuries would preclude a finding that currently available walkers present "an unreasonable risk of personal injury." 15 U.S.C. 1261(s).

E. ASTM Voluntary Standard F977–00

Beginning in 1994, after publication of the ANPR, CPSC staff worked with the ASTM Walker Subcommittee to add new performance requirements to the voluntary walker standard to address the stair fall hazard. The new performance requirements passed final ASTM balloting in August 1996, received final approval on October 10, 1996, and the revised F977 standard was published by ASTM in early 1997.

The revised standard incorporates a performance test methodology that simulates a child in a walker moving across the floor, through a doorway, and to a stairway. A dummy represents a child in the walker. The walker is tested facing forward, backward, and sideways. If the walker passes through the 36-inch wide opening at the end of a test table and falls off the table, the walker fails to meet the performance requirements. If the walker stops at the edge of the test table and any part of the walker extends over the edge of the table, a tip-over test is performed. The walker fails to meet the requirements of the ASTM standard if it then falls off the table during the tip-over test.

The performance test parameters were selected to be representative of stringent conditions, including use of test dummy weights that reflect both ends of the weight range of children 6–15 months old expected to use walkers and maximum expected walker speeds, child strength capabilities, and tip-over conditions.

The CPSC staff conducted two 6-month special studies of walker-related incidents from November 1, 1999 through April 30, 2000 and November 1, 2000 through April 30, 2001 to identify the types of walkers involved in recent stair fall incidents. The results of those studies indicate that most of the recent stair fall incidents involve older walkers not meeting the revised F977 standard. In light of the results of this study, a Commission finding that compliance with ASTM standard F977 is not likely to eliminate or adequately reduce the risk could not be justified. 15 U.S.C. 1262(i)(2)(A)(i).

F. Compliance With ASTM Standard F977

According to information provided to CPSC staff by the Juvenile Products Manufacturers Association (JPMA), all five domestic walker manufacturers comply with the revised ASTM standard. CPSC staff estimates that more than 99 percent of all baby walkers sold in the U.S. between 1997 and 2001 were in compliance with the revised ASTM standard. The JPMA also indicates that 98 percent of the baby walkers currently available for sale in the U.S. comply with revised ASTM standard F977. Apparently, the remaining small percentage of non-complying walkers is imported by small firms. Thus the Commission could not at this time support a finding that it is unlikely that there will be substantial compliance with ASTM F977.

G. Conclusion

As a result of the foregoing analysis, the Commission has made a decision to terminate the baby walker stair fall rulemaking.

To avoid any potential misunderstanding, it is again reiterated that the Commission decision to terminate the baby walker stair fall proceeding has no effect on the FHSA baby walker mechanical injury prevention and labeling requirements at 16 CFR 1500.18(a)(6) and 1500.86(a)(4). These requirements remain in full force and effect.

Dated: May 2, 2002.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–11327 Filed 5–8–02; 8:45 am]

BILLING CODE 6355–01–P

submitted to it during the period specified in an ANPR. 15 U.S.C. 1262(g)(2). No such commitment and schedule were received in response to the 1994 ANPR.

[4] Memorandum from Debra Sweet, Division of Hazard Analysis, Directorate for Epidemiology, to Barbara Jacobson, Project Manager for Baby Walkers, Directorate for Health Sciences, Baby Walker-Related Deaths and Injuries, March 13, 2002. This and other materials relevant to this proceeding are available on the CPSC website at *www.cpsc.gov*

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 266–2002]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice, Bureau of Prisons, proposes to exempt a Privacy Act system of records from the following subsections of the Privacy Act: (e)(1) and (e)(5). This system of records is the "Inmate Central Records System, (JUSTICE/BOP–005)", as modified and described in today's notice section of the **Federal Register**. This system continues to be exempted from the subsections of the Privacy Act enumerated in 28 CFR 16.97(a) and (b), as previously promulgated.

The additional exemptions are necessary to preclude the compromise of institution security, to better ensure the safety of inmates, Bureau personnel and the public, to better protect third party privacy, to protect law enforcement and investigatory information, and/or to otherwise ensure the effective performance of the Bureau's law enforcement functions.

DATES: Submit any comments by July 8, 2002.

ADDRESSES: Address all comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in Part 16

Administrative practices and procedure, Freedom of Information Act, Government in the Sunshine Act, and Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR part 16 as follows:

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g) and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717 and 9701.

2. It is proposed to amend § 16.97 by adding paragraphs (j) and (k) to read as follows:

§ 16.97 Exemption of Federal Bureau of Prisons Systems—limited access.

* * * * *

(j) The following system of records is exempted pursuant to 5 U.S.C. 552a(j) from subsections (e)(1) and (e)(5): Bureau of Prisons Inmate Central Records System, (JUSTICE/BOP–005).

(k) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j). Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, e.g. public source materials, or those supplied by third parties, the applicable exemption may be waived, either partially or totally, by the Bureau. Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (e)(1) to the extent that the Bureau may collect information that may be relevant to the law enforcement operations of other agencies. In the interests of overall, effective law enforcement, such information should be retained and made available to those agencies with relevant responsibilities.

(2) From subsection (e)(5) because in the collection and maintenance of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely and complete. Data which may seem unrelated, irrelevant or incomplete when collected may take on added meaning or significance during the course of an investigation or with the passage of time, and could be relevant to future law enforcement decisions. In addition, because many of these records come from the courts and other state and local criminal justice agencies, it is administratively impossible for them and the Bureau to ensure compliance with this provision. The restrictions of subsection (e)(5) would restrict and delay trained correctional managers from timely exercising their judgment in managing the inmate population and providing for the safety and security of the prisons and the public.

* * * * *

Dated: April 26, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

[FR Doc. 02–11579 Filed 5–8–02; 8:45 am]

BILLING CODE 4410–05–P

POSTAL SERVICE

39 CFR Part 265

Release of Information

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule changes the procedures for the release of information about holders of postage meter licenses. The procedures are necessary to ensure individual privacy while providing for the release of information needed for customer protection.

DATES: The Postal Service must receive your comments on or before June 10, 2002.

ADDRESSES: Mail or deliver written comments to the manager, Postage Technology Management, 1735 N Lynn Street, Room 5011, Arlington, Virginia 22209–6050. You can view and copy all written comments at the same address between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Wayne Wilkerson, 703–292–3782, or by fax, 703–292–4050.

SUPPLEMENTARY INFORMATION: The current regulation that provides for the release of the name and address of a holder of a postage meter permit or license was adopted for consumer protection reasons at a time when postage meters were used almost exclusively by businesses or firms. Circumstances have changed, however, and individuals now hold meter licenses as well. The new procedures for releasing the name and address of a particular holder of a postage meter license will ensure that legitimate expectations of individual privacy are met, while providing for the release of information needed for consumer protection. The new procedures remove the processing of requests for information about meter license holders from field locations and enables Postage Technology Management at Postal Service Headquarters to ensure that information is released appropriately. The current regulation refers to information on a postage meter "permit." There is no "permit" to use a postage meter issued by the Postal Service. The Postal Service issues postage meter licenses to postage meter users. The amendment revises the terminology to reflect correct usage. Since the possession of leased postage meters can change over time, the Postal Service is requesting that the original or a photocopy of the envelope or wrapper bearing the relevant postage meter indicium be submitted with the request for information to validate the accuracy of the request and to ensure that the correct meter license holder is identified. The Postal Service is requesting that a copy or description of the contents of the mailpiece also be submitted to support that the sender is a business or firm and not an individual.

List of Subjects in 39 CFR Part 265

Administrative practice and procedure, Postal Service.

The Amendment

For the reasons set out in this document, the Postal Service is amending 39 CFR part 265 as follows:

PART 265—RELEASE OF INFORMATION

1. The authority citation for 39 CFR part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3, 39 U.S.C. 401, 403, 410, 1001, 2601.

2. Amend § 265.6 by revising paragraphs (d) introductory text and (d)(2); by redesignating paragraphs (d)(3) through (d)(8) as paragraphs (d)(4) through (d)(9), respectively; and by adding a new paragraph (d)(3) to read as follows:

§ 265.6 Availability of Records.

* * * * *

(d) *Disclosure of names and addresses of customers.* Upon request, the names and addresses of specifically identified postal customers will be made available only as follows:

* * * * *

(2) *Name and address of permit holder.* The name and address of the holder of a particular bulk mail permit, permit imprint or similar permit (but not including postage meter licenses), and the name of any person applying for a permit in behalf of a holder, will be

furnished to any person upon the payment of any fees authorized by paragraph (b) of § 265.9. For the name and address of a postage meter license holder, see paragraph (d)(3) of this section. (Lists of permit holders may not be disclosed to members of the public. See paragraph (e)(1) of this section.)

(3) *Name and address of postage meter license holder.* The name and address of the holder of a postage meter license authorizing use of a postage meter printing a specified indicium, will be furnished to any person upon the payment of any fees authorized by paragraph (b) of § 265.9, provided the holder is using the license for a business or firm. The request for this information must be sent to the manager of Postage Technology Management, Postal Service Headquarters. The request must include the original or a photocopy of the envelope or wrapper on which the meter indicium in question is printed, and a copy or description of the contents to support that the sender is a business or firm and not an individual. (Lists of postage meter license holders may not be disclosed to members of the public. See paragraph (e)(1) of this section.)

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–11507 Filed 5–8–02; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 501

Authorization To Manufacture and Distribute Postage Meters

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the regulations for inspecting postage meter production facilities that are located outside the continental United States. This proposed rule intends to require the manufacturer to reimburse the Postal Service for costs incurred by required inspections of production facilities located outside the continental United States.

DATES: The Postal Service must receive your comments on or before June 10, 2002.

ADDRESSES: Mail or deliver written comments to the manager, Postage Technology Management, 1735 N Lynn Street, Room 5011, Arlington, Virginia 22209–6050. You can view and copy all written comments at the same address between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Wayne Wilkerson, 703–292–3782, or by fax 703–292–4050.

SUPPLEMENTARY INFORMATION: Title 39, Code of Federal Regulations (CFR) part 501, Authorization to Manufacture and Distribute Postage Meters, requires the Postal Service to inspect meter production facilities to determine if the facilities satisfy Postal Service requirements for meter and component security and production quality. A manufacturer may have valid business reasons for selecting a particular location for its production facilities. However, when a manufacturer chooses to locate these facilities outside the continental United States, conducting the required inspections of such facilities places an undue cost burden on the Postal Service. The Postal Service is requiring the manufacturer to reimburse such costs.

Notice and Comment

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments to the Code of Federal Regulations (CFR).

List of Subjects in 39 CFR Part 501

Administrative practice and procedure, Postal Service.

For the reasons set out in this document, the Postal Service is proposing to amend 39 CFR part 501 as follows:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE METERS

1. The authority citation for part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended), 5 U.S.C. App. 3.

2. Amend § 501.2 by revising the introductory paragraph and paragraphs (c) and (d) to read as follows:

§ 501.2 Manufacturer qualification.

Any concern wanting authorization to manufacture and/or lease postage meters for use by licensees under *Domestic Mail Manual* P030 must:

* * * * *

(c) Have, or establish, and keep under its supervision and control adequate production facilities suitable to carry out the provisions of §§ 501.15 through 501.21 to the satisfaction of the Postal Service. The production facilities must be subject to unannounced inspection by representatives of the Postal Service. If the provider's production facilities are located outside the continental United States, the provider shall be responsible for all reasonable and necessary costs incurred by the Postal Service to conduct the inspections.

(d) Have, or establish, and keep under its active supervision and control adequate facilities for the control, distribution, and maintenance of meters and their replacement or secure disposal or destruction when necessary.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–11506 Filed 5–8–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MT–001–0037b; FRL–7208–9]

Approval and Promulgation of Air Quality Implementation Plans; State of Montana; Great Falls Carbon Monoxide Redesignation to Attainment and Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On February 9, 2001, the Governor of Montana submitted a request to redesignate the Great Falls "not classified" carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS). The Governor also submitted a CO maintenance plan. In this action, EPA is proposing approval of the Great Falls CO redesignation request and the maintenance plan. In the Final Rules Section of this **Federal Register**, EPA is approving the State's redesignation request and State Implementation Plan (SIP) revision, involving the maintenance plan, as a direct final rule without prior proposal because the Agency views the redesignation and SIP revision as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in

a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by June 10, 2002.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at the following office:

United States Environmental Protection Agency, Region VIII, Air Program, 999 18th Street, Suite 300, Denver, Colorado 80202–2466

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, Telephone number (303) 312–6479.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule, of the same title, published in the rules section of this **Federal Register**.

Dated: April 29, 2002.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 02–11449 Filed 5–8–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–979, MB Docket No. 02–92, RM–10363]

Digital Television Broadcast Service; Albany, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Clear Channel Broadcasting Licenses, Inc., licensee of station WXXA–TV, NTSC channel 23, Albany, New York, requesting the substitution of DTV channel 7 for DTV channel 4. DTV Channel 7 can be allotted to Albany, New York, in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates (42–37–31 N. and 74–00–38 W.). However, since the community of Albany is located within 400 kilometers from the U.S.-Canadian border, concurrence from the Canadian government must be obtained for this allotment. As requested, we propose to allot DTV Channel 7 to Albany with a power of 10 and a height above average terrain (HAAT) of 434 meters.

DATES: Comments must be filed on or before June 24, 2002, and reply comments on or before July 10, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John M Burgett, Wiley, Rein & Fielding LLP, 1776 K Street, NW., Washington, DC 20006 (Counsel for Clear Channel Broadcasting Licenses, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–92, adopted April 26, 2002, and released May 3, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under New York is amended by removing DTV Channel 4 and adding DTV Channel 7 at Albany.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–11607 Filed 5–8–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–978, MB Docket No. 02–91, RM–10411]

Digital Television Broadcast Service; Cheboygan, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by WPBN/WTOM License Subsidiary, Inc., licensee of station WTOM–TV, proposing the substitution of DTV channel 35 for station WTOM–TV's assigned DTV channel 14. DTV Channel 35 can be allotted to at reference coordinates (45–39–01 N. and 84–20–37 W.) with a power of 80, a height above average terrain HAAT of 168 meters. However, since the community of Cheboygan is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government must be obtained for this allotment.

DATES: Comments must be filed on or before June 24, 2002, and reply comments on or before July 10, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jonathan D. Blake, Covington & Burling, 1201 Pennsylvania Avenue, NW, Washington, DC 20004 (Counsel for WPBN/WTOM License Subsidiary, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–91, adopted April 26, 2002, and released May 3, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Michigan is amended by removing DTV channel 14 and adding DTV channel 35 at Cheboygan.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–11606 Filed 5–8–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–977, MB Docket No. 02–90, RM–10409]

Digital Television Broadcast Service; Odessa, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Midessa Television Company, licensee of station KWES–TV, NTSC channel 9, Odessa, Texas, proposing the substitution of DTV channel 13 for station KWES-TV's assigned DTV channel 15. DTV Channel 13 can be allotted to Odessa at reference coordinates 31–59–17 N. and 102–52–41 W. with a power of 25.1, a height above average terrain HAAT of 397 meters. Since the community of Odessa is located within 275 kilometers of the U.S.-Mexican border, concurrence from the Mexican government must be obtained for this allotment.

DATES: Comments must be filed on or before June 24, 2002, and reply comments on or before July 10, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal

Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David D. Oxenford, Shaw Pittman LLP, 2300 N. Street, NW., Washington, DC 20037–1128 (Counsel for Midessa Television Company).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–90, adopted April 26, 2002, and released May 3, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Texas is amended by removing DTV channel 15 and adding DTV channel 13 at Odessa.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–11608 Filed 5–8–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–982, MB Docket No. 02–95, RM–10421]

Digital Television Broadcast Service; Odessa, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by the Odessa Junior College District, proposing the substitution of DTV channel *38 for DTV channel *22 for station KOCV–TV at Odessa. DTV Channel *38 can be allotted to at reference coordinates 31–51–58 N. and 102–22–48 W. with a power of 500, a height above average terrain HAAT of 82 meters. Since the community of Odessa is located within 275 kilometers of the U.S.-Mexican border, concurrence from the Mexican government must be obtained for this allotment.

DATES: Comments must be filed on or before June 24, 2002, and reply comments on or before July 10, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Wayne Coy, Jr., Cohn and Marks, 1920 N Street, NW., Suite 300, Washington, DC 20036–3860 (Counsel for Odessa Junior College District).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–95, adopted April 26, 2002, and released May 3, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Texas is amended by removing DTV channel *22 and adding DTV channel *38 at Odessa.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–11609 Filed 5–8–02; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[I.D. 042402B]

Sea Turtle Conservation; Activities Related to Fishing

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

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS); request for written comments; extension of comment period on application for Incidental Take Permit (ITP).

SUMMARY: The National Marine Fisheries Service (NMFS) announces its intent to prepare an EIS to assess the potential impacts on the human environment of sea turtle interactions with fishing activities in Hawaii State waters associated with an application for an individual ITP submitted by the State of Hawaii Department of Land and Natural Resources. NMFS is responsible for analyzing these permit applications and authorizing those which meet legal requirements. NMFS also announces the extension of the comment period on the ITP application.

DATES: Written comments on fisheries/sea turtle interactions or other information that NMFS should consider in preparing the EIS, as well as written comments from interested parties on the permit application and conservation plan are requested and must be received no later than 5 p.m. Eastern daylight time on or before June 10, 2002.

ADDRESSES: Comments on the proposal to prepare an EIS, comments on the application for an individual ITP, and requests for copies of the application for the individual ITP should be sent to: Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376. Comments will not be accepted if submitted via e-mail or the Internet. Notice of public meetings will be announced at a later date through notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Margaret Akamine Dupree (ph. 808–973–2935, fax 808–973–2941, e-mail *Margaret.Dupree@noaa.gov*) or Therese Conant (ph. 301–713–1401, fax 301–713–0376, e-mail *Therese.Conant@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act (ESA). The leatherback (*Dermochelys coriacea*) and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered. Olive ridley (*Lepidochelys olivacea*) turtles are listed as threatened, except for populations of olive ridley turtles on the Pacific coast of Mexico, which are listed as endangered.

Under the ESA and its implementing regulations, taking sea turtles—even incidentally—is prohibited, with exceptions identified in 50 CFR 223.206. Reduction of the incidental capture of sea turtles as a result of fishery operations and amelioration of the impacts of this interaction is an important aspect of sea turtle recovery efforts.

Pursuant to the ESA, the State of Hawaii has submitted an application to NMFS for an individual ITP for listed sea turtles in inshore marine fisheries in the Hawaiian islands managed by the State of Hawaii. The application for an ITP was made available to the public through an earlier **Federal Register** notice of availability (67 FR 16367, April 5, 2002), which established a comment period on the application of April 5, 2002 to May 6, 2002. Sea turtle interactions with fishing gear associated with the Hawaii-managed fisheries are known to occur, resulting in the take of threatened and endangered sea turtles. The extent and impact that will likely result from this incidental take must be analyzed and, if appropriate, authorized through section 10 of the ESA. An ITP cannot be authorized unless the applicant submits a conservation plan, and unless it can be determined that with respect to the permit application and the related conservation plan that (1) the taking will be incidental, (2) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking, (3) the applicant will ensure that adequate funding for the plan will be provided, (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild, and (5) any other measures or assurances required by NMFS as being necessary or appropriate for purposes of the conservation plan will be met.

NMFS has determined that an environmental impact analysis of the incidental take of sea turtles which would be authorized by the issuance of an ITP for the marine inshore fisheries managed by the State of Hawaii is necessary under the National Environmental Policy Act (NEPA). Based on comments received through this notification, NMFS intends to schedule scoping meetings at a later date that would support preparation of an EIS.

NMFS is seeking input from fishermen, sea turtle experts, non-governmental organizations (NGOs), academia, state representatives, and the public on the Hawaii fisheries and is requesting information on fisheries interactions with sea turtles as well as the identification of missing data. The purpose of this notice is to: (1) inform the interested public of the intent to prepare this EIS, (2) request public participation and comments, and (3) extend the comment period on the application for the ITP to allow more time for comment on it. If authorization of an ITP is appropriate, it will proceed in accordance with the provisions specified in the ESA.

Dated: May 6, 2002.

Wanda Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–11636 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 020325070–2102-02; I.D. 031202B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Suspension of the 2002 Texas Closure

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

ACTION: Notice of agency action; withdrawal of proposed rule.

SUMMARY: In light of NMFS economic analysis and public comments received about the proposed rule, NMFS is withdrawing the proposed rule that, if implemented, would have suspended, for the 2002 season, regulations that close the exclusive economic zone (EEZ) off Texas to shrimp trawling from 30 minutes after official sunset on May 15 to 30 minutes after official sunset on July 15, each year (i.e., the Texas closure). The withdrawal is discussed further below. In withdrawing the proposed rule, NMFS hereby notifies the public that the Texas closure regulations will remain in effect for the 2002 fishing year.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, telephone: 727–570–5305, fax: 727–570–5583, e-mail: steve.branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for shrimp in the Gulf of Mexico EEZ is managed under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council), approved by NMFS, and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Amendment 5 to the FMP provides the NMFS Southeast Regional Administrator (RA) with the opportunity, after determining that benefits may be increased or adverse impacts be decreased, to either: (1) modify the geographical scope of the extent of the Texas closure, or (2) eliminate the Texas closure for one season.

Based on public testimony at its January 21–24, 2002, meeting, the Council voted to recommend that NMFS suspend regulations at 50 CFR 622.34(h) implementing the Texas closure for one season. A proposed rule describing the action was published in the **Federal Register** on April 5, 2002 (67 FR 16359), with comments accepted from the public through April 22, 2002.

An environmental assessment (EA), including an informal section 7 Consultation under the Endangered Species Act, concluded that total shrimp fishing effort does not change substantially because of the Texas closure. During the closure, vessels shift their effort to adjacent Federal waters off Louisiana, and when Texas waters (both territorial and Federal) re-open, those vessels move back to Texas waters. Given that the catch and bycatch species in this fishery have wide-ranging distributions, those species continue to be impacted at a relatively constant rate. Therefore, NMFS concluded that the proposed action to suspend the Texas closure would not alter the impacts on the stocks of target and non-target species, and would not have a significant impact on the human environment.

Using data through 2001, and assuming similar conditions would persist during 2002, NMFS' Regulatory Impact Review (RIR) of the proposed action forecasted that a suspension of the Texas closure for the 2002 fishing season would increase total producer surplus (total revenue–total variable cost, i.e., a proxy for profit) by approximately $15–$19 million. Nevertheless, total harvest and revenues were forecasted to decline if the closure were suspended.

Substantial public comment was received during the comment period on the proposed rule, and given that the Council's intent behind the regulations is based on the economic conditions facing the industry, the position of the industry itself regarding the value of the Texas closure weighed heavily in the final determination. Substantial numbers of industry comments opposing the suspension were received, which indicated to NMFS that there is no uniform industry position regarding the proposed action. Therefore, given that the RIR indicated that the average producer surplus for large vessels (those most likely to fish in the EEZ) was projected to decline by 30 percent or more, NMFS determined that, over the entire year, it is unlikely that there is any substantial economic benefit or decrease in adverse economic impacts to the fishery as a whole associated with the suspension of the Texas closure. NMFS also considered several problems identified by the U.S. Coast Guard during the Council's deliberations on the proposed action. It would be difficult for the state of Texas to enforce its 9-nautical mile (nm) closure if NMFS were to suspend the closure of Federal waters. Vessels would be able to enter the closed area and fish and quickly return to open Federal waters.

Withdrawal of Notice of Proposed Rulemaking

For reasons stated in the preamble, the notice of proposed rulemaking that was published in the **Federal Register** on April 5, 2002 (67 FR 16359), is withdrawn. Regulations implementing the Texas closure will remain in effect.

Comments and Responses

A wide range of opinions were expressed by the public regarding the proposed rule. Two Texas-based shrimp associations, and 29 individuals associated with the Texas shrimp industry, submitted either individual letters or multiple-signature petitions indicating their preference to suspend the Texas closure. By contrast, a total of 158 Texas-based members of the shrimp industry submitted individual letters or multiple-signature petitions opposing the proposed rule. Individuals submitted 232 individual letters and one petition containing 39 signatures opposing the proposed rule. Additionally, three environmental organizations and the Fish and Wildlife Service of the Department of Interior commented in opposition to the proposed rule. The Texas Parks and Wildlife Department commented regarding the content of the preamble of the proposed rule. Several hundred form letters stating opposition to the proposed rule were also received following the closure of the comment period.

Comment 1: Industry comments received in support of the proposed rule noted that recent economic downturns, stemming from additional closures of Texas territorial waters, an over-abundance of a variety of sizes of imported shrimp, and a general downward trend in the U.S. economy following the events of September 11, 2001, have resulted in economic hardship for several shrimp vessel owners, vessel crews, shoreside processing facilities and shoreside support facilities such as dry docks and supply houses. Comments in support of the suspension specifically focused on the recent actions by Texas Parks and Wildlife Department to extend, from February 15 to May 15, the closed season in Texas territorial waters of the Southern Shrimp Zone (from Corpus Christi Pass (27°40′34″ N. lat.) south to the Mexican border and within 5 nm of

the coastline). Commenters indicated that this extension of the state closed period had severely impacted the economics of vessels homeported in southern Texas areas. The commenters indicated that suspension of the Texas closure would enable shrimp fishermen to continue harvesting marketable-sized shrimp, thus providing income and employment during a period when Texas ports are normally void of activity. They stated that suspension of the closure would also reduce the pulse fishing and concentration of Texas and out-of-state vessels that occurs on the re-opening of Texas waters and that these reductions of concentrated effort would be less damaging to habitat and have a lesser impact on bycatch species.

In contrast, over 150 comments from shrimp vessel owners, crews, and support personnel, who are based in southern Texas ports, opposed the suspension of the closure. These industry participants stated that prices for small shrimp are at their lowest in recent history because of an over-abundance of small-sized imported and farm-raised shrimp in cold storage. Additionally, fuel prices are rising. Maintaining the Texas closure would allow the shrimp a chance to grow and provide better revenues to the shrimp industry for the 2002 season.

Response: The Texas closure, as established by the Council, is intended to increase yield to the fishery by deferring the harvest of shrimp until they reach a larger, more valuable size. NMFS has determined that the Texas closure does not have a direct biological effect on the stocks; its impacts and its intended effect are to produce economic benefits to the shrimp industry. In accordance with the FMP, the RA may, after determining that benefits may be increased or adverse impacts be decreased, adjust the timing or extent of the Texas closure.

The RIR projected that, if the closure were suspended, the average per-vessel producer surplus for the small vessel fleet would have increased by 86 percent, while that of large vessels would have declined by 30 percent. Even with a redistribution of benefits, total harvest and revenues were forecast to decline if the closure were suspended.

Public comment from shrimp industry participants was strongly divided as to the potential benefits and impacts of suspending the Texas closure for the 2002 season. Because large vessels are more likely to fish in the EEZ, and are forecast to have a decline of producer surplus of as much as 30 percent (or more), NMFS has determined that it is unlikely that there are substantial economic benefits, or a decrease in adverse economic impacts, associated with the suspension of the Texas closure. Given that fact, along with issues of enforceability of a 9-nm closure of Texas territorial waters (see Comment 3), NMFS has decided to withdraw the proposed rule.

Comment 2: There is no concrete information that suspending the closure would increase revenues to the shrimping industry. The model was not capable of allowing shrimp prices to change with harvest quantities so the forecasts were based on an unrealistic restriction compared to the real world.

Response: All models require assumptions to accommodate data gaps or logistic issues associated with matching the model to the data. The economic model used to forecast the predicted responses cannot guarantee that the predictions will be met. Nevertheless, the model and the RIR were based on the best scientific information available to NMFS at the time.

Comment 3: With only a 9–nm closure, enforcement will be difficult and poaching (fishing inside the closed territorial waters) will increase. The 15-nm closures of the late 1980's led to numerous violations where vessels would enter the closed area from the EEZ to fish illegally with the opportunity to quickly return to open Federal waters. Enforcement of the limited closure was difficult. Under a full 200–nm closure, any vessel found fishing off Texas would be in violation of the closure. Under a limited closure such as the proposed suspension of the EEZ closure, it would be difficult to determine if a vessel had been fishing inside the 9–nm closure limit.

Response: NMFS agrees, and this was a contributing factor in making a determination to withdraw the proposed rule. NMFS recognizes that maintaining the status quo of a 200-nm closure will ease enforcement issues.

Comment 4: There was limited public notice regarding the Council's intent to consider suspending the Texas closure at its January 2002 meeting. The Council's decision to seek suspension of the Texas closure was made with no proposal document and no review and analysis by the scientific and socio-economic committees charged to advise the Council on its management decisions. A total of 172 comments were received stating that there had not been sufficient time to allow adequate public input to the process. One environmental group that testified before the Council in January 2002, commented that the proposed rule may not have adequately met the requirements of the Magnuson-Stevens Act regarding adequate public notice.

Response: The Magnuson-Stevens Act, in section 302(i), requires that Councils provide timely public notice of each regular meeting, including the time, place and agenda of the meeting. The Council annually reviews the results of the previous year's Texas closure at its January meeting and then votes on whether or not to continue the closure for the upcoming year. The Council publicly announced a tentative agenda, including consideration of this action, for its upcoming January 2002 meeting in its September-December 2001 newsletter. A final meeting announcement, including an agenda, was distributed to the general public in a news bulletin dated December 26, 2001. A meeting notice, including an agenda, was additionally published in the **Federal Register** (67 FR 717, January 7, 2002).

Based on the framework established in the FMP and its amendments, the Council may use its Scientific and Statistical Committee and Advisory Panel (AP) to review and advise on the findings of the NMFS assessment. For the proposed action, the Council considered the review and position of the AP in its deliberations, along with public testimony. The framework establishes that the RA shall have the authority, after consultation with the Council, to implement action to revise the existing management measure through the regulatory amendment process.

The Magnuson-Stevens Act requires (section 304(b)(1)(A)) that NMFS announce the availability of all proposed actions with a comment period of 15 days to 60 days. NMFS believes that the substantial number of comments received, from a diverse cross-section of interests, indicates that adequate time was allowed for public input regarding the proposed action. All totaled, 462 comments were received during the 15-day comment period on the proposed rule, and several hundred form letters were received during the few days immediately following the closure of the comment period.

Comment 5: The State of Texas and two environmental groups noted that in contrast to statements in the preamble of the proposed rule, the regulations limiting shrimping in Texas territorial waters are not recent actions. Territorial closures have been in effect since 1959. The only recent change in the regulations was an extension of the night-time closure in the Southern Shrimp Zone from December 15 February 15 to December 15 to May 15 each year.

Response: NMFS is aware of the long-standing regulations regarding shrimp fishing in the territorial waters of Texas. The preamble of the proposed rule attempted to reflect the positions put forth by public testimony at the January 2002 Council meeting that provided the impetus for the Council's action. The rationale for the proposed rule was prefaced with this background material: "However, over time, several other regulations have been implemented that, according to the shrimp industry, have reduced the benefits (and need for) the Texas closure." (67 FR 16359, April 5, 2002). The preamble later stated in the introduction to the Analysis and Justification section (67 FR 16359–60, April 5, 2002) "Participants in the shrimp fishery indicated that the economic impacts imposed by other state-mandated closures off Texas would be exacerbated by an additional closure of the EEZ off Texas, which would result in the capture of even more large shrimp. Therefore, the industry would prefer to suspend the Texas closure for 2002 and have the opportunity to harvest smaller shrimp."

Nevertheless, public comment on the proposed rule from shrimp industry participants was strongly divided as to the potential benefits and impacts of suspending the Texas closure for the 2002 season. The conclusions of the RIR also suggested that rather than alleviating adverse economic conditions in the fishery, suspending the closure would perpetuate and probably exacerbate them.

Comment 6: The proposed rule states the suspension is necessary to mitigate adverse impacts of the closures in the territorial waters off Texas, as proposed by the shrimp industry. In proposing to suspend the Texas closure, based on the request of some regulated parties, NMFS has abdicated its responsibilities under the Magnuson-Stevens Act to manage the shrimp fishery for conservation purposes. The proposal appears to violate national standard (NS) 1, to achieve optimum yield, NS 2, that actions be based on the best available scientific information, NS 5, prohibiting measures that have economic allocation as their sole purpose, and NS 9, which requires minimization of bycatch and bycatch mortality to the extent practicable.

Two comments suggested that the proposed rule and supporting EA and RIR did not provide required analysis needed under the Endangered Species Act (ESA), the Magnuson-Stevens Act, and the National Environmental Policy Act. The informal section 7 of the ESA consultation is inadequate and inconsistent with NMFS' previous findings that indicate the need for a formal Section 7 consultation regarding adjustments to the Texas closure.

Finally, one commenter noted that the existing March 24, 1998, Biological Opinion concluded that strandings of sea turtle species in Texas continue to drop during the period that offshore waters are closed to shrimping and therefore mortalities in nearshore waters remain closely associated with the shrimp fishery.

Response: The impacts identified by the public at its January 2002 meeting were the impetus for the Council's decision to request that NMFS suspend the Texas closure regulations. In reviewing the Council's request, NMFS carefully analyzed the request and associated impacts and determined that the proposed rule was sufficiently in conformance with the FMP, the FMP amendments, the Magnuson-Stevens Act, and other applicable laws to be published for public comment.

The previous ESA section 7 consultations considered the effect of shrimp fishing in the EEZ off Texas in a time period before turtle excluder devices (TEDs) were mandated for use. Reasonable and prudent alternatives were proposed in the 1986 Biological Opinion to mitigate the impacts of the limited closed area. Those findings have since been updated for the current fishery, in which TEDs are mandated for use.

The 1998 Biological Opinion is not inconsistent with NMFS current findings on the proposed action. For most of the Texas coast, the 10-fathom (18.3-meter) contour roughly approximates the 9-nm territorial sea; thus, the statement of the relationship of turtle mortalities and nearshore waters is consistent with NMFS current determination that continued protection of sea turtles would be afforded from the closure of Texas territorial waters.

The informal section 7 consultation is based on adequate consideration of relevant information. That review, completed on March 8, 2002, concluded the following points:

Although the Texas closure provides a documented reduction in turtle strandings, the pulse fishing that occurs with the re-opening in July subjects turtles to an even greater fishing pressure and potential for fishing related mortalities.

NMFS data indicate that the Texas closure does not reduce overall fishing effort, but displaces that effort to other areas, most notably to Louisiana offshore waters. Stranding data imply that turtle mortalities do transfer to the Louisiana coast after the normal May 15 closure.

Previous studies on sea turtle catch per unit effort is essentially the same between the western Gulf (Texas) and north-central Gulf (Louisiana through the Florida Panhandle). Therefore, the level of trawler-turtle interactions that occur should be a function of total shrimping effort and would not be affected by a shift in that effort away from the Texas coast to other parts of the northern Gulf.

Comment 7: The proposed rule states that the majority of turtle interactions occur in state waters off Texas. The TPWD letter suggested that loggerhead turtles, a species which occurs more frequently further offshore, are the most common turtle recorded in the Strandings Network. The U.S. Fish and Wildlife Service noted that turtles are found in offshore waters during May through July and that a suspension of the closure would increase the probability of a turtle-trawler interaction in the offshore waters off Texas.

Response: NMFS recognizes that turtles are widely distributed, but two studies, one by NMFS in 1987 and one by the Gulf and South Atlantic Fisheries Foundation, Inc. in 1998, using shrimp trawls without turtle excluder devices, indicated that the majority of turtle interactions occurred in waters less than 10 fathoms (18.3 m) deep. For much of the Texas coast, the 10-fathom (18.3 m) contour approximates the 9– nm closure of Texas territorial waters. In combination, those two studies captured 45 turtles in waters less than 10 fathoms (18.3 m) deep, and 22 of those were loggerhead turtles. Therefore, the occurrence of loggerhead turtles in the strandings data does not necessarily indicate an offshore interaction.

Comment 8: NMFS failed to adequately assess the impact of the proposed action on essential fish habitat. Common sense would suggest that allowing trawling to occur where it had not occurred before would result in some adverse habitat effects and increase bycatch.

Response: NMFS presented information in the EA summarizing the results of previous studies regarding shrimp effort and the effect of seasonal and area closures on that effort. Those studies concluded that the seasonal or area closures do not reduce overall fishing effort, but displace that effort to other areas. The EA (see Section 2.2) noted that during the Texas closure, shrimp effort noticeably shifts to Louisiana offshore waters. That effort then shifts back to the Texas EEZ with the re-opening of Texas waters. This is not habitat that is normally closed. Shrimping occurs throughout the EEZ off Texas except for the time of the

Texas closure. Thus, no additional impacts to essential fish habitat were expected to occur had NMFS suspended the regulations to close the EEZ.

Comment 9: Allowing the harvest of smaller shrimp could lead to growth overfishing of penaeid shrimp stocks. One comment included detailed discussions regarding data limitations that impact NMFS' assessments on the status of the penaeid shrimp stocks that would restrict NMFS in its ability to determine whether the shrimp stocks are currently overfished or undergoing overfishing. Ignoring evidence that growth overfishing was occurring could lead to recruitment overfishing. The commenter provided several suggestions, and an alternative methodology, to estimate shrimp mortality, fishing effort, and reduce errors in future assessments.

Response: NMFS agrees that there are uncertainties surrounding any fishery-dependent data, and has made efforts to reduce any potential bias in the data. For any analysis, there are alternative methodologies that may have equal scientific validity. NMFS analyses are tailored to match the existing, and admittedly sometimes limited, database. All assessments of the status of the various penaeid shrimp stocks have produced results that indicate the stocks to be above the established recruitment overfishing index levels (i.e., no recruitment overfishing has occurred). The Council recently submitted Amendment 11 to the FMP, which included a proposed action to permit shrimp vessels that intend to fish in the EEZ of the Gulf of Mexico. If this proposed action is approved by NMFS, it will provide a mechanism by which to achieve a more accurate and precise estimate of shrimp effort, shrimp fishing mortality, and the status of the stocks.

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

Dated: May 3, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–11508 Filed 5–3–02; 3:51 pm]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 90
Thursday, May 9, 2002

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

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104– Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington DC 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0552.
Form Number: N/A.
Title: Financial Status Report.
Type of Submission: Renewal of Information Collection.

Purpose: In its appropriations act, Congress always requests country level financial expenditure data in order to determine whether funds appropriated to the Agency are being used for their intended purpose and are not used to support activities that are not in the US National Interest. Generally, this has been fairly straightfoward for assistance recipients who work specifically in one country, but harder to capture in the cases where recipients operate at a regional scale. Therefore, for each country where USAID spends money, careful review is necessary in order to be able to certify that funds expended do not go into programs where funding is prohibited, restricted or limited. Financial expenditure data by country is used by the agency to meet several reporting requirements for Congress. Country specific financial expenditure data is also used to determine whether the agency is meeting Congressional ceilings and earmarks. In addition, Congressional notification is required for activities in certain countries (Burma, Cambodia, Colombia, Democratic Republic of Congo, etc), as well as activities covering certain subject matter such as activities promoting country participation in the Kyoto Protocol, use of notwithstanding authority for supporting energy programs aimed at reducing greenhouse gas emissions. In each case, Congress request to know the amount of taxpayer dollars that is expended by the program or in the specific country.

USAID currently requires grant and cooperative agreement recipients who work in multiple countries to provide expenditure reports by country. The purpose of this notice is to extend the class deviation to the statute from the Office of Management and Budget in accordance with 22 CFR 226.4. The information is being collected so that USAID can ensure programs do not fund activities in countries where the United States Congress has prohibited or fund programs where Congress has limited the types of activities that my be funded.

Annual Reporting Burden:
Respondents: 80.
Total annual responses: 320.
Total annual hours requested: 800 hours.

Dated: May 3, 2002.

Cynthia Staples,

Acting Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–11612 Filed 5–8–02; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Food Safety Inspection Service

[Docket No. 02–011N]

Nominations for Membership on the National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture (USDA) is soliciting nominations for membership on the National Advisory Committee on Microbiological Criteria for Foods (NACMCF). Nominations for membership are being sought from individuals with scientific expertise in the fields of epidemiology, food technology, microbiology (food, clinical, and predictive), risk assessment, infectious disease, biostatistics, and other related sciences. Persons from State and Federal governments, industry, consumer groups, and academia, as well as all other interested persons, are invited to submit nominations.

DATES: The nominee's typed resume or curriculum vitae may be received for 30 days from the date of publication in the **Federal Register.**

ADDRESSES: Nominations should be sent to Ms. Karen Thomas, Advisory Committee Specialist, USDA, FSIS, Room 333 Aerospace Center, 1400 Independence Avenue, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Thomas, Advisory Committee Specialist, at the above address or by telephone 202–690–6620 or FAX 202–690–6634.

SUPPLEMENTARY INFORMATION:

Background

The NACMCF was established in March 1988, in response to a recommendation in a 1985 report of the National Academy of Sciences Committee on Food Protection, Subcommittee on Microbiological Criteria, "An Evaluation of the Role of Microbiological Criteria for Foods." The current Charter for the NACMCF and other information about the Committee are available for viewing on the NACMCF homepage at *www.fsis.usda.gov/ophs/nacmcf/.*

The Committee provides scientific advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed. For example, the Committee assists in the development of criteria for microorganisms that indicate whether food has been processed under sanitary conditions.

Appointments to the Committee will be made by the Secretary of Agriculture after consultation with the Secretary of Health and Human Services to ensure that recommendations made by the

Committee take into account the needs of the diverse groups served by the Department. Membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. Nominees who are selected will be required to submit a Financial Disclosure form AD–755, available on-line at:
www.fsis.usda.gov/ophs/nacmcf/.

Given the complexity of issues, the full Committee expects to meet at least once yearly and the meetings will be announced in the **Federal Register**. The subcommittees will meet as frequently as deemed necessary by the chairperson and will be held as working group meetings in an open public forum. The subcommittee meetings will not be announced in the **Federal Register**. FSIS will announce the agenda and subcommittee working group meetings through the Constituent Update available on-line at *www.fsis.usda.gov.* NACMCF holds subcommittee working groups in order to accomplish the work of NACMCF; all work accomplished by the subcommittees is reviewed and approved by the full Committee during a **Federal Register** announced public meeting of the full Committee. The subcommittee may invite technical experts to present information for consideration by the subcommittee. All data and records available to the subcommittee are expected to be available to the public at the time the full Committee reviews and approves the work of the subcommittee.

Appointment to the Advisory Committee is a two-year term; renewable for three consecutive terms. Members must be prepared to work outside of scheduled Committee and subcommittee meetings, and may require document preparation. Committee members serve on a voluntary basis; however, travel reimbursement and per diem is available.

Additional Public Notification

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

Done at Washington, DC on: May 6, 2002.

William J. Hudnall,

Acting Administrator.

[FR Doc. 02–11626 Filed 5–8–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Fishlake National Forest, Intermountain Region, Utah

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to revise the Land and Resource Management Plan (Forest Plan) for the Fishlake National Forest.

SUMMARY: This notice announces the intent of the Fishlake National Forest to revise their Land and Resource Management Plan (Forest Plan) under the 1982 planning regulations (36 CFR part 219). Initial steps of the revision process will focus on information needs, organizing the revision team, resource inventory reviews, and establishing a Forest Plan revision mailing list. Public involvement is critical and will be requested throughout the revision effort.

ADDRESSES: Send written comments concerning this notice and requests to be added to the Forest Plan revision mailing list to Mary Erickson, Forest Supervisor, Fishlake National Forest, 115 East 900 North, Richfield, UT 84701.

FOR FURTHER INFORMATION CONTACT: Frank Fay, Land Management Planner, Fishlake National Forest, 115 East 900 North, Richfield, UT 84701.

SUPPLEMENTARY INFORMATION: The Forest Plan for the Fishlake National forest was completed in June, 1986 and will remain in effect and continue to be implemented until the Plan is revised. In the past, a "Notice of Intent to Prepare an Environmental Impact Statement" was issued at the beginning of the forest planning process. This Notice addresses initiation of revision with a focus on information needs, resource inventory reviews, organizing the revision team, and working with the public. Once the scope of the revision is better understood the Forest will issue another Notice to prepare the Environmental Impact Statement.

This Notice initiates revision under the 1982 planning regulations (36 CFR 219). The Forest Service is preparing new draft planning regulations expected to be issued in the Spring of 2002. Since these new regulations will reflect the latest national thinking on land and resource management planning, the Forest will seriously consider switching to, and completing the forest plan revision under, the new regulations when they are finalized. An additional Notice will be issued if the Forest decides to switch.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: April 26, 2002.

Mary C. Erickson,

Forest Supervisor.

[FR Doc. 02–11112 Filed 5–8–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following committee meeting:

Name: Grain Inspection Advisory Committee.

Date: May 15–16, 2002.

Place: Radisson Hotel Memphis Downtown, 185 Union, Memphis, Tennessee 38103.

Time: 7:30 a.m.–5 p.m. on May 15, and 7:30 a.m.–12 (Noon) on May 16, 2002.

Purpose: To provide advice to the Administrator of the Grain Inspection, Packers and Stockyards Administration (GIPSA) with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*).

The agenda will include a review and discussion of GIPSA's financial status and of the December 2001 Advisory Committee Resolutions. GIPSA will provide updates on the financial performance of its field offices; on various grain inspection topics such as

wheat dockage, factor determinations, electronic certification, and soybean test weight; on working toward international uniformity in definition and in measurement technology; on promoting the accuracy of biotechnology testing, and on evaluating the feasibility of using contractors to provide inspection services under the Agricultural Marketing Act. Discussions and updates also will be provided on the recommendations made in the quality assurance/quality control and oversight study; and on any other related issues concerning the delivery of grain inspection and weighing services to American agriculture.

Public participation will be limited to written statements, unless permission is received from the Committee chairman to orally address the Committee. Persons, other than members, who wish to address the Committee or who wish to submit written statements before or after the meeting should contact the Donna Reifschneider, Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 3601, Washington, DC 20250–3601, telephone (202) 720–0219 or FAX (202) 205–9237.

The meeting will be open to the public. Persons with disabilities who require alternative means of communication of program information or related accommodations should contact Joanne Peterson, telephone (202) 720–8087 or FAX (202) 690–2755.

Dated: April 29, 2002.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 02–11543 Filed 5–8–02; 8:45 am]

BILLING CODE 3410–EN–U

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative (RCDI); Correction

AGENCY: Rural Housing Service, USDA.

ACTION: Correction.

SUMMARY: The Rural Housing Service (RHS) is correcting a notice published April 3, 2002 (67 FR 15777–15786). This action is taken to correct the omission of a comma in the definition of an intermediary. This omission limited the groups eligible to be an intermediary. This correction will carry out the intent of the statutory language. This action is also taken to correct the documentation required for a nonprofit organization to prove their nonprofit status. The original notice required a 501(c)(3) letter from the Internal Revenue Service (IRS) designating their nonprofit status. This correction will allow nonprofit organizations to provide a letter from IRS, a Certificate of Good Standing from the Secretary of State where the entity is located, or other valid documentation of their nonprofit status.

Accordingly, the notice published April 3, 2002 (67 FR 15777–15786) is corrected as follows:

On page 15778, in the first column, in the seventh paragraph under the heading "Definitions for RCDI Purposes," the definition for "Intermediary" should read "*Intermediary*—a qualified private, nonprofit or public (including tribal) organization that provides financial and technical assistance to multiple recipients. The applicant entity must have been organized for a minimum of three years."

On page 15778, in the second column, in the second paragraph, the definition for "Nonprofit organization" should read "*Nonprofit organization*—a private, community-based housing or community development entity with evidence of their nonprofit status. Examples of valid documentation of nonprofit status include, but are not limited to, a letter from the Internal Revenue Service (IRS) or a Certificate of Good Standing from the Secretary of State where the entity is located."

On page 15778, in the second column, under the heading "Eligibility Requirements," number "4" should read "4. Documentation must be submitted to verify recipient eligibility. Acceptable documentation varies depending on the type of recipient: a letter from the IRS, Certificate of Good Standing from the Secretary of State, or other valid documentation of nonprofit status is required for nonprofit recipients; for low-income community recipients, the Agency needs (a) evidence that the entity is a public body and (b) census data verifying that the median household income of the community, where the office receiving the financial and technical assistance is located, is at, or below, 80 percent of the state or national median household income; for federally recognized tribes, the Agency needs the page listing their name from the current **Federal Register** list of tribal entities recognized and eligible for funding services (see the definition of federally recognized tribes for details on this list).

On page 15778, in the third column, number "14" should read "14. A nonprofit recipient must provide evidence that they are a valid nonprofit when the intermediary applies for the RCDI grant. Organizations with pending requests for nonprofit designations are not eligible."

On page 15779, in the third column, under the heading "Application Selection Process," number "2" should read "2. Applicants failed to provide evidence of recipient's status (*e.g.*, documentation supporting nonprofit designation)."

On page 15782, in the third column, number "7.a." should read "a. Nonprofits—provide a valid letter from the IRS, Certificate of Good Standing from the Secretary of State, or other valid documentation of nonprofit status."

Dated: May 3, 2002.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 02–11637 Filed 5–8–02; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Census Bureau

Business and Professional Classification Report

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 8, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Carol S. King, U.S. Census Bureau, Room 2651–3, Washington, DC 20233, (301) 457–2675.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau sponsors the SQ–CLASS, "Business and Professional Classification Report", to collect information needed to keep the retail,

wholesale, and service samples current with the business universe. Because of rapid changes in the marketplace caused by the emergence of new businesses, the deaths of others, transfer of ownership, mergers, and so forth, on a quarterly basis the Census Bureau canvasses a sample of new Employer Identification Numbers (EINs) obtained from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Each selected firm is canvassed once for kind of business classification, measure of size, and company affiliation on the establishments associated with the new EIN. In essence, from the perspective of the business firm, this is a one time collection of data. A different sample of EINs is canvassed four times a year.

We are revising the SQ–CLASS to improve the flow of the questions as well as to provide information needed to assign kind-of-business codes based on the North American Industry Classification System (NAICS).

II. Method of Collection

We collect this information by mail, fax, and telephone follow-up.

III. Data

OMB Number: 0607–0189.
Form Number: SQ–CLASS.
Type of Review: Regular Submission.
Affected Public: Retail, Wholesale and Service firms in the United States.
Estimated Number of Respondents: Annually, approximately 42,000.
Estimated Time Per Response: 13 minutes.
Estimated Total Annual Burden Hours: 9,101.
Estimated Total Annual Cost: The cost to the respondent for fiscal year 2003 is estimated to be $190,302.
Respondent's Obligation: This collection of information is voluntary.
Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They also will become a matter of public record.

Dated: May 6, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–11614 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 21–2002]

Foreign-Trade Zone 113—Midlothian, TX; Request for Processing Authority, Siemens Westinghouse Power Corporation (Industrial Power Generating Equipment)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Trade Zone Operations, Inc., operator of FTZ 113, pursuant to section 400.28(a)(2) of the Board's regulations (15 CFR part 400), requesting authority on behalf of Siemens Westinghouse Power Corporation (SWPC) to process foreign-origin and domestic industrial power generating equipment under FTZ procedures within FTZ 113. It was formally filed on April 29, 2002.

SWPC is a producer of large industrial power generating turbines and generators that are installed in combined-cycle power plants operated by electric generation utilities. In the proposed processing activity (as defined in § 400.2(l)), foreign-origin steam turbines with a capacity of greater than 40 megawatts (HTSUS 8406.81.1070) would be admitted to the zone under nonprivileged foreign status (19 CFR 146.42) and U.S.-produced electric generators would be admitted under domestic status on a nonconcurrent basis. The turbines and generators would then be transferred from the zone in a combined Customs entry under the classification of electric generating sets (HTSUS 8502.39.0000), as provided by specific Customs rulings. The company indicates that this activity would occur on a recurring regular basis.

FTZ procedures would exempt SWPC from Customs duty payments on the foreign power generation turbines processed for export as electric generating sets. On withdrawals from the zone for Customs entry, SWPC would be able to elect the duty rate that applies to electric generator sets (2.5%) for the foreign turbines (6.7%). The application indicates that the savings from FTZ procedures would help improve the SWPC's international competitiveness.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is June 24, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 8, 2002).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No. 1 listed above.

Dated: April 29, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–11642 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Firearms Convention; Proposed Collection Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 8, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marna Hayes, BIS ICB

Liaison, (202) 482–5211, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The OAS Model Regulations and the Firearms Convention require the government of importing States to issue an Import Certificate to the importer of firearms and the government of exporting States to issue licenses for the firearms.

This rule imposes two information collection requirements. The first requirement is the import certificate as support documentation for exports destined to Convention Signatories. The second requirement is the imposition of a licensing requirement for Firearms Convention items destined to Canada, a Convention Signatory. Previously, such items were exported to Canada without a license.

II. Method of Collection

Written notification and recordkeeping.

III. Data

OMB Number: 0694–0114.

Form Number: BXA–748P. Although the name of the agency has changed to the Bureau of Industry and Security (BIS), we will continue to use previous forms until the stock is depleted.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 833.

Estimated Time Per Response: 5 to 90 minutes per response.

Estimated Total Annual Burden Hours: 176.

Estimated Total Annual Cost: No capital expenditures are required.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: May 6, 2002.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 02–11613 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–816]

Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Negative Determination of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value and preliminary negative determination of critical circumstances.

SUMMARY: We preliminarily determine that certain cold-rolled carbon steel flat products from Argentina are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended. In addition, we preliminarily determine that critical circumstances do not exist for imports of cold-rolled carbon steel flat products from Argentina.

Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4033.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department's") regulations are to the regulations at 19 CFR part 351 (April 2001).

Background

Since the initiation of this investigation (*Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela*, 66 FR 54198 (October 26, 2001) ("*Initiation Notice*")), the following events have occurred.

On November 13, 2001, the United States International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that imports of certain cold-rolled steel products from Argentina are materially injuring the United States industry (*see Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela*, 66 FR 57985 (November 19, 2001)).

On November 29, 2001, we selected the largest producer/exporter of cold-rolled steel from Argentina as a mandatory respondent in this proceeding. (See Memorandum to Laurie Parkhill, Director Office 3, from The Team regarding Selection of Respondents dated November 29, 2001, for further details.) We issued the antidumping questionnaire to Siderar S.A.I.C. ("Siderar") on November 29, 2001.

On December 7, 2001, the petitioners[1] alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigations of cold-rolled carbon steel flat products from Argentina, Australia, China, India, the Netherlands, Russia, South Africa, South Korea, and Taiwan. On December 14, 2001, the petitioners supplemented

[1] The petitioners in the concurrent antidumping duty investigations are Bethlehem Steel Corporation, LTV Steel Company, National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel LLC, WCI Steel, Inc., and Weirton Steel Corporation. Weirton Steel Corporation is not a petitioner in the Netherlands case. Effective January 1, 2002, the party previously known as "United States Steel LLC" changed its name to "United States Steel Corporation."

their December 7, 2001, submission with additional information.

During the period January through April 2002, the Department received responses to sections A, B, and C, of the Department's original and supplemental questionnaires from Siderar.

On February 7, 2002, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request on February 14, 2002, and postponed the preliminary determination until no later than April 26, 2002. (*See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela*, 67 FR 8227 (February 22, 2002)).

On February 15, 2002, we received an allegation from the petitioners that Siderar sold cold-rolled products in Argentina at prices below the cost of production during the period of investigation. Based on our analysis of the allegation we determined that there are reasonable grounds to believe or suspect that Siderar had made home-market sales below its cost of production and on March 15, 2002, we initiated a sales-below-cost investigation of Siderar's home-market sales.

In accordance with 19 CFR 351.206(c)(2)(i), because the petitioners submitted the critical circumstances allegation more than twenty days before the scheduled date of the preliminary determination, the Department must issue the preliminary critical circumstances determination not later than the date of the preliminary determination. A full discussion of our analysis may be found below and in the critical circumstances memorandum from Richard W. Moreland to Faryar Shirzad, dated April 26, 2002 (*Preliminary Negative Determination of Critical Circumstances—Argentina*). A public version of this memorandum is on file at the Import Administration Central Records Unit, in Room B–099 of the Department of Commerce Building.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on April 18, 2002, Siderar requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b)(2)(ii) and (e), because (1) our preliminary determination is affirmative, (2) Siderar accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, please see the Scope Appendix attached to this notice.

Period of Investigation

The period of investigation ("POI") is July 1, 2000, through June 30, 2001.

Fair Value Comparisons

To determine whether sales of cold-rolled steel from Argentina to the United States were made at less than fair value ("LTFV"), we compared the export price ("EP") or constructed export price ("CEP") to the normal value ("NV"), as described in the "Export Price," "Constructed Export Price," and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs or CEPs to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent in the home market during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales of identical merchandise made in the home market. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: hardening and tempering, painting, carbon level, quality, yield strength, minimum thickness, thickness tolerance, edge finish, form, leveling, annealing, and surface finish.

Export Price

In accordance with section 772(a) of the Act, we calculated EP for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation or to an unaffiliated purchaser for exportation to the United States. We based EP on the packed delivered price to unaffiliated purchasers in the United States. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, ocean freight, marine insurance, U.S. brokerage and handling, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), and U.S. inland freight expenses (freight from port to the customer).

Constructed Export Price

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was sold (or agreed to be sold) in the United States, before or after the date of importation, by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser.

We based CEP on packed FOB prices to unaffiliated purchasers in the United States. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included, where appropriate, domestic inland freight (i.e., inland freight expense from plant/warehouse to port of exit), ocean freight, marine insurance, U.S. brokerage and handling, U.S. customs duties, U.S. stevedoring and wharfage charges, and U.S. inland freight expenses (*i.e.*, freight from port to customer). In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*e.g.*, imputed credit costs) and indirect selling expenses (*e.g.*, inventory carrying costs).

Pursuant to section 772(d)(3) of the Act, we reduced the starting price further by an amount for profit to arrive at the CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Siderar on its sales of the subject merchandise in the United States and the foreign like product in the home

market and the profit associated with those sales. *See* Antidumping Duty Investigation on Cold-Rolled Carbon Steel Flat Products from Argentina—Preliminary Determination Analysis Memorandum for Siderar S.A.I.C. ("Siderar") from J. David Dirstine to File, dated April 26, 2002 ("Preliminary Analysis Memorandum").

Normal Value

A. Home-Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home-market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home-market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because the respondent's aggregate volume of home-market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market is viable for the respondent.

B. Cost-of-Production Analysis

Based on our analysis of a sales-below-cost allegation submitted by the petitioners on February 15, 2002, we found that there were reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below their cost of production (COP) in accordance with section 773(b)(2)(A)(i) of the Act. Accordingly, pursuant to section 773(b) of the Act, we initiated an investigation of sales-below-cost for Siderar to determine whether sales were made at prices below their respective COP (*see* letter to Siderar from Laurie Parkhill, Office Director, AD/CVD Enforcement, dated March 15, 2002).

2. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses ("G&A") and interest expenses (*see* "Test of Home-Market Sales Prices" section below for treatment of home-market selling expenses). We relied on the COP data submitted by Siderar except as noted below.

A. We adjusted the reported transfer price for certain raw material inputs purchased from an affiliated company to reflect the market price for such inputs which, in turn, increased the total cost of manufacturing of each model.

B. We have adjusted the total cost of manufacture upward to reflect the difference between product-specific and product grouping or product "family" costs at the two plants where Siderar produced the subject merchandise. Siderar did not provide product-specific costs for the products produced at one of its plants, as we had requested, and we found that, for products where we had both product-specific and product-"family" costs, the "family'-specific costs were understated in comparison to the product-specific costs.

C. We revised Siderar's G&A rate calculation to include other ordinary income, certain expense amounts, and termination of employee costs.

D. We recalculated Siderar's financial-expense ratio. We divided the net interest expense reported on the financial statements (financial and holding results generated by liabilities less those generated by assets) by the cost of sales.

See Memorandum from Laurens van Houten to Neal Halper, Director, Office of Accounting, dated April 26, 2002, Re: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination ("Cost Calculation Memorandum").

2. Test of Home Market-Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home-market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable billing adjustments, movement charges, rebates, discounts, direct and indirect selling expenses, and packing expenses. In determining whether to disregard home-market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product during the POI are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI are at prices less than the COP, we determine that the below-cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of Siderar's home-market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of subject merchandise for which there were no comparable home-market sales in the ordinary course of trade (*e.g.*, at above-cost prices), we compared those sales to constructed value ("CV"), in accordance with section 773(a)(4) of the Act.

4. Calculation of Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Accordingly, for Siderar, when sales of comparison products could not be found, either because there were no sales of a comparable product or all sales of the comparable products failed the COP test, we based NV on CV.

In accordance with section 773(e)(1) and (e)(2)(A) of the Act, we calculated CV based on the sum of the cost of materials and fabrication for the subject merchandise, plus amounts for selling expenses, G&A, interest, profit, and U.S. packing costs. We calculated the cost of materials and fabrication based on the methodology described in the "Calculation of COP" section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based selling expenses, G&A, and profit on the amounts incurred and realized by the company in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign market.

C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their

equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"),[2] including selling functions,[3] class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison-market sales (i.e., NV based on either home-market or third-country prices), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron Technology, Inc.* v. *United States,* 243 F.3d 1301, 1314–1315 (Fed. Cir. March 7, 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a NV level of trade is more remote from the factory than the CEP level of trade and there is no basis for determining whether the difference in LOTs between NV and CEP affected price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

We obtained information from Siderar regarding the marketing stages involved in making the reported home-market and U.S. sales, including a description of the selling activities performed by the respondent for each channel of distribution. Siderar's LOT findings are summarized below.

Siderar reported two channels of distribution in the home market—steel service centers (*i.e.*, distributors) and end-users. The selling activities associated with all sales were similar (*e.g.*, freight and delivery arrangements, inventory maintenance, market research, sales forecasting and after-sales service) and, based on our analysis of the selling activities, we considered the two channels of distribution to constitute one LOT.

In the U.S. market, Siderar reported two channels of distribution (*i.e.*, CEP sales to its U.S. affiliate, Siderca Corporation, who sells "back-to-back" to unaffiliated U.S. customers and maintains no inventory), and EP sales to unaffiliated customers in the United States. After making deductions pursuant to section 772(d) of the Act, we found that Siderar performed basically the same sales functions for both channels of distribution in the U.S. market (*e.g.*, inventory maintenance, sales forecasting and after-sales service, market research, and freight and delivery arrangements) and we considered both of these channels to be the same LOT.

Because the selling activities associated with the home-market LOT were not substantially different from than those associated with the U.S. LOT, we considered the home-market LOT to be the same as the U.S. LOT. Therefore, no LOT adjustment was necessary and we made no CEP-offset adjustment to NV.

D. Calculation of Normal Value Based on Comparison-Market Prices

We calculated NV based on delivered prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for rebates. We also made deductions for movement expenses (*i.e.*, inland freight expense from plant/warehouse to customer) under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses and we adjusted for differences in merchandise where we were unable to match identical products. We also deducted home-market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act. Finally, in accordance with section 773(a)(6)(B)(iii) of the Act, we made a reduction to NV for the amount of the indirect tax ("reintegro") not collected on exports of subject merchandise to the United States.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Critical Circumstances

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine the following information: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that, "In general, unless the imports during the "relatively short period" have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive."

Section 351.206(i) of the Department's regulations defines "relatively short period" as generally the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. This section provides further that, if the

[2] The marketing process in the United States and comparison markets begin with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale appears to occur.

[3] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of this preliminary determination, we have organized the common cold-rolled steel product functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

Department "finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely," then the Department may consider a period of not less than three months from that earlier time.

In determining whether the above statutory criteria have been satisfied, we examined the following information: (1) The evidence presented in the petitioners' submissions of December 7, 2001, and January 14, 2002; (2) new evidence obtained since the initiation of the less-than-fair-value ("LTFV") investigations (*i.e.*, additional import statistics released by the Census Bureau); and (3) the ITC's affirmative preliminary injury determination (*see Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, International Trade Commission Investigations Nos. 701–TA–422–425 and 731–TA–964–983 Preliminary Determination, 66 FR 57985 (November 19, 2001)).

History of Dumping

In determining whether a history of dumping and material injury exists, the Department generally considers current or recent antidumping duty orders on the subject merchandise from the country in question in the United States and current orders in any other country. *See Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Notice of Preliminary Determination of Critical Circumstances*, 67 FR 6224 (February 11, 2002) (*Carbon and Alloy Steel Wire Rod*). Because we are not aware of any existing antidumping order in any country on cold-rolled carbon steel flat products from Argentina, we do not find a history of dumping from Argentina, pursuant to section 733(e)(1)(A)(i) of the Act. However, the Department may look to the second criterion for determining whether importers knew or should have known that exporters were selling subject merchandise from Argentina at LTFV prices.

Importer Knowledge of Injurious Dumping

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known the exporter was selling cold-rolled steel at less than fair value, the Department normally considers margins of 25 percent or more for export price (EP) sales and 15 percent or more for CEP sales sufficient to impute importer knowledge of sales at LTFV. *See Carbon and Alloy Steel Wire Rod*, 67 FR 6224, 6225.

The Department normally bases its decision with respect to knowledge on the margins determined in the preliminary determination. Therefore, for purposes of this preliminary determination of critical circumstances, we are relying on the margin calculated for Siderar for this preliminary determination. Because this margin is greater than 25 percent (see "Suspension of Liquidation" section below) in the case of Argentina, which has both EP and CEP sales, we find that there is a reasonable basis to impute knowledge of dumping with respect to imports from Argentina.

Material Injury

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of dumped imports. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61964 (November 20, 1997). In this case, the ITC preliminarily found that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of subject merchandise from South Africa. *See Determinations and Views of the Commission*, Investigations Nos. 701–TA–422–425 and 731–TA–964–983, Publication 3471 (November 2001) (*ITC Determination*). Due to the ITC's finding of material injury, we preliminarily determine that there is a reasonable basis to believe or suspect that importers knew or should have known that imports of cold-rolled steel from Argentina were likely to cause material injury.

Massive Imports

In determining whether there are "massive imports" over a "relatively short period," pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (i.e., the "base period") to a comparable period of at least three months following the filing of the petition (i.e., the "comparison period"). However, as stated in 19 CFR 351.206(i), "if the Secretary finds importers, or exporters or producers, had reason to beljeve, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time." Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period. We used company-specific shipment data and determined that there were no massive imports. We also found no massive imports for companies in the all other category. For a detailed analysis, see the memorandum from Richard Moreland to Faryar Shirzad, dated April 26, 2002 (*Preliminary Negative Determination of Critical Circumstances—Argentina*).

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Siderar	70.56
All Others	**70.56

**As Siderar was the only respondent that we investigated, we used Siderar's margin as the all-others rate.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, pursuant to 735(b)(2) the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held three days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination by no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

Scope of the Investigations

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the HTSUS, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium (also called columbium), or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- *SAE grades* (formerly also called AISI grades) above 2300;
- *Ball bearing steels*, as defined in the HTSUS;
- *Tool steels*, as defined in the HTSUS; Silico-manganese steel, as defined in the HTSUS;
- *Silicon-electrical steels*, as defined in the HTSUS, that are grain-oriented;
- *Silicon-electrical steels*, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- *All products (proprietary or otherwise) based on an alloy ASTM specification* (sample specifications: ASTM A506, A507);
- *Non-rectangular shapes*, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS;
- *Silicon-electrical steels*, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and (a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (0.001 inch), or (b) semi-processed, with core loss of less than 0.085 watts/pound per mil (0.001 inch);
- *Certain shadow mask steel*, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:

Thickness: 0.001 to 0.010 inch
Width: 15 to 32 inches

Chemical Composition:

Element	C
Weight %	<0.002%

- *Certain flapper valve steel*, which is hardened and tempered, surface polished, and which meets the following characteristics:

Thickness: ≤1.0 mm
Width: ≤152.4 mm
Chemical Composition:

Element	C	Si	Mn	P	S
Weight%	0.90–1.05	0.15–0.35	0.30–0.50	≤0.03	≤0.006

Mechanical Properties:

Tensile Strength	≥162 Kgf/mm^2

Hardness	≥475 Vickers hardness number

Physical Properties:

Flatness	<0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.
Non-metallic Iclusion:

	Area percentage
Sulfide Inclusion	≤0.04 %
Oxide Inclusion	≤0.05%

Compressive Stress: 10 to 40 Kgf/mm^2
Surface Roughness:

Thickness (mm)	Roughness (μm)
t ≤0.209	Rz ≤0.5
0.209< t ≤0.310	Rz ≤0.6
0.310< t ≤0.440	Rz ≤0.7
0.440< t ≤0.560	Rz ≤0.8
0.560< t	Rz ≤1.0

• *Certain ultra thin guage steel strip,* which meets the following characteristics:
Thickness: ≤0.100 mm ± 7%
Width: 100 to 600 mm
Chemical Composition:

Element	C	Mn	P	S	A1	Fe
Weight %	≤0.07	0.2–0.5	≤0.05	≤0.05	≤0.07	Balance

Mechanical Properties:

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	<3%
Tensile Strength	600 to 850 N/mm

Physical Properties:

Surface Finish	≤0.3 micron
Camber (in 2.0 m)	<3.0 mm
Flatness (in 2.0 m)	≤0.5 mm
Edge Burr	<0.01 mm greater than thickness
Coil Set (in 1.0 m)	<75.0 mm

• *Certain silicon steel,* which meets the following characteristics:
Thickness: 0.024 inch ± .0015 inch
Width: 33 to 45.5 inches
Chemical Composition:

Element	C	Mn	P	S	Si	Al
Min. Weight %					0.65	
Max. Weight %	0.004	0.4	0.09	0.009		0.4

Mechanical Properties:

Hardness	B 60–75 (AIM 65)

Physical Properties:

Finish	Smooth (30–60 microinches)
Gamma Crown (in 5 inches)	0.0005 inch, start measuring one-quarter inch from slit edge
Flatness	20 I–UNIT max
Coating	C3A–.08A max. (A2 coating acceptable)
Camber (in any 10 feet)	1/16 inch
Coil Size I.D.	20 inches

Magnetic Properties:

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical 1500 minimum

• *Certain aperture mask steel,* which has an ultra-flat surface flatness and which meets the following characteristics:
Thickness: 0.025 to 0.245 mm
Width: 381–1000 mm
Chemical Composition:

Element	C	N	Al
Weight %	<0.01	0.004 to 0.007	<0.007

• *Certain annealed and temper-rolled cold-rolled continuously cast steel,* which meets the following characteristics:
Chemical Composition:

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.
Surface Treatment as follows: The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.
Surface Finish:

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Extra Bright	5 (0.1)	0 (0)	7 (0.2)

• *Certain annealed and temper-rolled cold-rolled continuously cast steel,* in coils, with a certificate of analysis per Cable System International ("CSI") Specification 96012, with the following characteristics:
Chemical Composition:

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

Physical and Mechanical Properties:

Base Weight	55 pounds
Theoretical Thickness	0.0061 inch (±10 percent of theoretical thickness)
Width	31 inches
Tensile Strength	45,000–55,000 psi
Elongation	minimum of 15 percent in 2 inches

• *Concast cold-rolled drawing quality sheet steel,* ASTM a-620–97, Type B, or single reduced black plate, ASTM A–625–92, Type D, T–1, ASTM A–625–76 and ASTM A–366–96, T1–T2–T3 Commercial bright/luster 7a both sides, RMS 12 maximum. Thickness range of 0.0088 to 0.038 inches, width of 23.0 inches to 36.875 inches.

• *Certain single reduced black plate,* meeting ASTM A–625–98 specifications, 53 pound base weight (0.0058 inch thick) with a Temper classification of T–2 (49–57 hardness using the Rockwell 30 T scale).

• *Certain single reduced black plate,* meeting ASTM A–625–76 specifications, 55 pound base weight, MR type matte finish, TH basic tolerance as per A263 trimmed.

• *Certain single reduced black plate,* meeting ASTM A–625–98 specifications, 65 pound base weight (0.0072 inch thick) with a Temper classification of T–3 (53–61 hardness using the Rockwell 30 T scale).

• *Certain cold-rolled black plate bare steel strip,* meeting ASTM A–625 specifications, which meet the following characteristics:

Chemical Composition:

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

Physical and Mechanical Properties:

Thickness	0.0058 inch ±0.0003 inch
Hardness	T2/HR 30T 50–60 aiming

Elongation	≥15%
Tensile Strength	51,000.0 psi ±4.0 aiming

• *Certain cold-rolled black plate bare steel strip,* in coils, meeting ASTM A–623, Table II, Type MR specifications, which meet the following characteristics:

Chemical Composition:

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.04	0.05

Physical and Mechanical Properties:

Thickness	0.0060 inch (±0.0005 inch)
Width	10 inches (+ 1/4 to 3/8 inch/– 0)
Tensile Strength	55,000 psi max.
Elongation	Minimum of 15 percent in 2 inches

• *Certain "blued steel" coil* (also known as "steamed blue steel" or "blue oxide"), with a thickness of 0.30 mm to 0.42 mm and width of 609 mm to 1219 mm, in coil form;

• *Certain cold-rolled steel sheet,* coated with porcelain enameling prior to importation, which meets the following characteristics:

Thickness (nominal): ≤0.019 inch
Width: 35 to 60 inches
Chemical Composition:

Element	C	O	B
Max. Weight %	0.004		
Min. Weight %		0.010	0.012

• *Certain cold-rolled steel,* which meets the following characteristics:

Width: >66 inches
Chemical Composition:

Element	C	Mn	P	Si
Max. Weight %	0.07	0.67	0.14	0.03

Physical and Mechanical Properties:

Thickness Range (mm)	0.800–2.000
Min. Yield Point (MPa)	265
Max Yield Point (MPa)	365
Min. Tensile Strength (MPa)	440
Min. Elongation %	26

• *Certain band saw steel,* which meets the following characteristics:

Thickness: ≤ 1.31 mm
Width: ≤ 80 mm
Chemical Composition:

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤0.03	≤0.007	0.3 to 0.5	≤0.25

Other properties:

Carbide: Fully spheroidized having >80% of carbides, which are ≤ 0.003 mm and uniformly dispersed

Surface finish: Bright finish free from pits, scratches, rust, cracks, or seams Smooth edges.

Edge camber (in each 300 mm of length): ≤ 7 mm arc height

Cross bow (per inch of width): 0.015 mm max.

• *Certain transformation-induced plasticity (TRIP) steel,* which meets the following characteristics:

Variety 1

Chemical Composition:

Element	C	Si	Mn
Min. Weight %	0.09	1.0	0.90

Max. Weight %	0.13	2.1	1.7

Physical and Mechanical Properties:

Thickness Range (mm)	1.000–2.300 (inclusive)
Min. Yield Point (MPa)	320
Max Yield Point (MPa)	480
Min. Tensile Strength (MPa)	590
Min. Elongation %	24 (if 1.000–1.199 thickness range)
	25 (if 1.200–1.599 thickness range)
	26 (if 1.600–1.999 thickness range)
	27 (if 2.000–2.300 thickness range)

Variety 2

Chemical Composition:

Element	C	Si	Mn
Min. Weight %	0.12	1.5	1.1
Max. Weight %	0.16	2.1	1.9

Physical and Mechanical Properties:

Thickness Range (mm)	1.000–2.300 (inclusive)
Min. Yield Point (MPa).	340
Max Yield Point (MPa)	520
Min. Tensile Strength (MPa)	690
Min. Elongation %	21 (if 1.000–1.199 thickness range) 22 (if 1.200–1.599 thickness range)
	23 (if 1.600–1.999 thickness range)
	24 (if 2.000–2.300 thickness range)

Variety 3

Chemical Composition:

Element	C	Si	Mn
Min. Weight %	0.13	1.3	1.5
Max. Weight %	0.21	2.0	2.0

Physical and Mechanical Properties:

Thickness Range (mm)	1.200–2.300 (inclusive)
Min. Yield Point (MPa)	370
Max Yield Point (MPa)	570
Min. Tensile Strength (MPa)	780

Min. Elongation %	18 (if 1.200–1.599 thickness range)
	19 (if 1.600–1.999 thickness range)
	20 (if 2.000–2.300 thickness range)

• *Certain cold-rolled steel,* which meets the following characteristics:

Variety 1

Chemical Composition:

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.10	0.40	0.10	0.35

Physical and Mechanical Properties:

Thickness Range (mm)	0.600–0.800
Min. Yield Point (MPa)	185
>Max Yield Point (MPa)	285
Min. Tensile Strength (MPa)	340
Min. Elongation	31 (ASTM standard 31% = JIS standard 35%)

Variety 2

Chemical Composition:

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.05	0.40	0.08	0.35

Physical and Mechanical Properties:

Thickness Range (mm)	0.800–1.000
Min. Yield Point (MPa)	145
Max Yield Point (MPa)	245
Min. Tensile Strength (MPa)	295
Min. Elongation %	31 (ASTM standard 31% = JIS standard 35%)

Variety 3

Chemical Composition:

Element	C	Si	Mn	P	S	Cu	Ni	Al	Nb, V, Ti, B	Mo
Max. Weight %	0.01	0.05	0.40	0.10	0.023	0.15–.35	0.35	0.10	0.10	0.30

Physical and Mechanical Properties:

Thickness (mm)	0.7
Elongation %	≥35

• *Porcelain enameling sheet,* drawing quality, in coils, 0.014 inch in thickness, +0.002, -0.000, meeting ASTM A–424–96 Type 1 specifications, and suitable for two coats.

• *Porcelain enameling sheet* whether or not coated prior to importation with the following additional characteristics:

Cold-rolled steel for porcelain enameling, the foregoing being continuous annealed cold-reduced steel with a nominal thickness of not more than 0.48 mm and widths from 762 mm to 1,524 mm, having a chemical composition, by weight, of not more than 0.004 percent carbon, nor more than 0.010 percent aluminum, 0.006 percent or more of nitrogen, 0.012 percent or more of boron, and more than 0.005 percent silicon, and 0.010 percent or more of oxygen; having no intentional addition of and less than 0.002 percent by weight of titanium, no intentional addition of and less than 0.002 percent by weight of vanadium, no intentional addition of and less than 0.002 percent by weight of niobium, and no intentional addition of and less than 0.002 percent of antimony; having a yield strength of from 179.3 MPa to 344.7 MPa, a tensile strength of from 303.7 MPa to 413.7 MPa, a percent of elongation of from 28 percent to 46 percent on a standard ASTM sample with a 5.08 mm gauge length; for Fishscale resistance; hydrogen traps provided; with a product shape of flat after

annealing, with flat defined as less than or equal to 1 I unit with no coil set.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000. 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Issues

In the *Initiation Notice*, we invited all interested parties to raise issues and comment regarding the product coverage under the scope of these investigations. We received numerous comments, including scope clarification and scope exclusion requests. The requests covered approximately 80 cold-rolled steel products.

In our review of the comments, we found that, in the overwhelming majority of the cases, parties disagreed on whether or not the exclusion should be granted. Both requesters and petitioners provided factual information and argument in support of their position. We are currently analyzing the information provided.

All parties, however, have agreed to the exclusion from the scope of these investigations of porcelain enameling sheet. This exclusion covers the following product:

Porcelain enameling sheet whether or not coated prior to importation with the following additional characteristics:

Porcelain enameling cold-rolled sheet, the foregoing being continuous annealed cold-reduced steel with a nominal thickness of not more than 0.48 mm and widths from 762 mm to 1,524 mm, having a chemical composition, by weight, of not more than 0.004 percent carbon, nor more than 0.010 percent aluminum, 0.006 percent or more of nitrogen, 0.012 percent or more of boron, and more than 0.005 percent silicon, and 0.010 percent or more of oxygen; having no intentional addition of and less than 0.002 percent by weight of titanium, no intentional addition of and less than 0.002 percent by weight of vanadium, no intentional addition of and less than 0.002 percent by weight of niobium, and no intentional addition of and less than 0.002 percent of antimony; having a yield strength of from 179.3 MPa to 344.7 MPa, a tensile strength of from 303.7 MPa to 413.7 MPa, a percent of elongation of from 28 percent to 46 percent on a standard ASTM sample with a 5.08 mm gauge length; for Fishscale resistance; hydrogen traps provided; with a product shape of flat after annealing, with flat defined as less than or equal to 1 I unit with no coil set.

Therefore, with regard to porcelain enameling cold-rolled sheet, we have amended the scope of these investigations to exclude this product as described above (see preceding *Scope of the Investigations* section). We will instruct Customs accordingly.

With regard to all other products for which an exclusion was requested, we have determined that it is not practicable for the Department to complete the analysis of each request by the issuance of the notice of preliminary determination. This is due to a number of factors, including the large number of requests and the complexity of the issues involved. We will issue a decision memorandum containing the Department's preliminary determination on all product exclusion requests submitted in the course of these investigations at the earliest possible date but not later than May 24, 2002.

We invite parties to comment on our preliminary determination on this issue. Parties will have three weeks to comment from the date of issuance of the memorandum.

[FR Doc. 02–11182 Filed 5–8–02; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–602–804]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Australia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Paige Rivas at (202) 482–0651 or Mark Manning at (202) 482–5253, AD/CVD Enforcement Office IV, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2001).

Preliminary Determination

We preliminarily determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from Australia are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the **Suspension of Liquidation** section of this notice.

Case History

This investigation was initiated on October 18, 2001.[1] *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred.

On October 31, 2002, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes, and we received comments on our proposed matching criteria on November 8, 2001. On November 8, 2001, we received model match comments from petitioners and respondents. On November 26, 3001, we informed respondents of our revised model match criteria.

On November 13, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela of cold-rolled steel products. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 57985 (November 19, 2001).

On November 19, 2001, the Department issued a complete antidumping questionnaire to Broken Hill Propriety Limited Steel (BHP JLA), and BHP Steel Americas (BHPSA)

[1] The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel Inc., and Weirton Steel Corporation (collectively, the petitioners).

(collectively known as BHP).[2] We issued a corrected version of appendix V with revised product characteristic variables on November 26, 2001. BHP submitted its Section A response on December 10, 2001. On December 21, 2001, the Department issued a Section A supplemental questionnaire. On January 14, 2002, BHP submitted its responses to the Department's Sections B and C questionnaire, as well as the Section A supplemental questionnaire. On February 21, 2002, the Department issued a Sections A, B, and C supplemental questionnaire. BHP submitted its response to the Department's Sections A, B, and C supplemental questionnaire on March 18, 2002. On March 28, 2002, BHP submitted its supplemental B and C narrative responses for sales of strapping steel and tin mill black plate.

Based on our analysis of a sales below cost allegation submitted on February 4, 2002 (and revised on February 20, 2002), we found that there were reasonable grounds to believe or suspect that the respondent's sales of the subject merchandise in its comparison market were made at prices below its cost of production (COP). Accordingly, pursuant to section 773(b) of the Act, we initiated a sales-below-cost investigation. *See* Memorandum to Holly A. Kuga, "Bethlehem Steel Corporation, National Steel Corporation, and United States Steel Corporation (petitioners) Allegation of Home Market Sales Below the Cost of Production (Sales-Below-Cost) for Broken Hill Proprietary Steel (JLA) Pty Ltd. (BHP)," *(Cost Memorandum)* (March 8, 2002), on file in the Central Records Unit (CRU), Room B–099 of the main Department of Commerce building. On March 11, 2002, we notified BHP of our decision to initiate a sales-below-cost investigation and instructed BHP to respond to Section D of the questionnaire, which was provided to BHP in the original questionnaire on November 19, 2001. BHP submitted its Section D response on March 29, 2002.

On February 7, 2002, the petitioners requested a postponement of the preliminary determination in this investigation. On February 22, 2002, the Department published a **Federal Register** notice postponing the deadline for the preliminary determination until April 26, 2002. *See Postponement of Preliminary Determinations of Antidumping Duty Investigations. Certain Cold-Rolled Carbon Steel Flat Products from Argentina (A–357–816), Australia (A–602–804), Belgium (A–423–811), Brazil (A–351–834), the People's Republic of China (A–570–872), France (A–427–822), Germany (A–428–834), India (A–533–826), Japan (A–588–859), Korea (A–580–848), the Netherlands (A–421–810), New Zealand (A–614–803), Russia (A–821–815), South Africa (A–791–814), Spain (A–469–812), Sweden (A–401–807), Taiwan (A–583–839), Thailand (A–549–819), Turkey (A–489–810) and Venezuela (A–307–822)*, 67 FR 36 (February 22, 2002).

In two letters dated April 23, 2002, BHP notified the Department of its intent to not participate further in the investigation and requested to withdraw its data from the record of the investigation. The Department is sending a letter to BHP certifying the removal and destruction of all proprietary copies of BHP's questionnaire responses.

Critical Circumstances

In a letter dated December 7, 2001, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of cold-rolled steel from Australia. On April 10, 2002, the Department preliminarily determined that critical circumstances exist with respect to imports of cold-rolled steel from Australia. *See Memorandum From Bernard Carreau to Faryar Shirzad Re: Preliminary Affirmative Determinations of Critical Circumstances; see also Notice of Preliminary Determination of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products From Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation*, 67 FR 19157 (April 18, 2002) (*Critical Circumstances Notice*).

Period of Investigation

The period of investigation (POI) is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2001).

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, please see the Scope Appendix attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Facts Available (FA)

1. Application of FA

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On April 23, 2002, BHP notified the Department that it did not intend to participate further in the Department's investigation and requested the return of all of its data. BHP was notified by the Department in all of our correspondence concerning the due dates for submitting data that failure to submit the requested information by the date specified may result in use of the FA, as required by section 776(c) of the Act and section 351.308 of the Department's regulations. *See* letters from the Department to BHP dated December 7, 2001; December 21, 2001; December 28, 2001; January 4, 2002; February 21, 2002; March 7, 2002; March 22, 2002; and April 17, 2002.

As described above, BHP withdrew its response to the Department's questionnaire. Because BHP withheld information requested by the Department essential to the calculation of dumping margins, pursuant to section 776(a)(2) of the Act, we have applied FA to calculate the dumping margin.

2. Selection of Adverse FA (AFA)

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997). As a general matter, it is reasonable for the Department to assume that BHP possessed the records necessary for the Department to complete its investigation since it provided a nearly complete response before withdrawing it from the record. Therefore, by withdrawing the information the Department requested, BHP failed to cooperate to the best of its ability. As BHP failed to cooperate to the best of its ability, we are applying an adverse inference pursuant to section 776(b) of the Act. As AFA, we have used 24.06 percent, the rate derived from the petition. *See Initiation Notice.*

3. Corroboration of Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see* SAA at 870).

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculations in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose *see Australia Initiation Checklist* (*Initiation Checklist*) on file in the CRU for a discussion of the margin calculation in the petition). In addition, in order to determine the probative value of the margin in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculation in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margin in the petition was based.

Export Price

With respect to the margin in the petition, EP was based on average per-unit customs import value (AUV) data for one HTSUS category that accounted for a large portion of imports of subject merchandise from Australia during the period. The petitioners made no adjustments to EP because using an unadjusted AUV as the export price is a conservative methodology. Our review of the EP calculation indicated that the information in the petition has probative value, as certain information (*e.g.*, import statistics) included in the margin calculation in the petition is from public sources and concurrent, for the most part, with the POI. Consequently we consider EPs which are based on U.S. customs data corroborated. *See Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 76, 84 (January 4, 1999) (Comment 13).

Normal Value

The petitioners calculated NV from price information obtained from foreign market research for grades and sizes of cold-rolled steel comparable to the products exported to the United States which serve as the basis for EP. The petitioners made no adjustment to NV. With regard to the NV contained in the petition, the Department has no useful information from the respondent or other interested parties and is aware of no other independent sources of information that would enable us to further corroborate the margin calculations in the petition. *See Initiation Checklist.*

It is worth noting that the implementing regulation for section 776 of the Act states, "(t)he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using secondary information in question." *See* 19 CFR 351.308(c). Additionally, the SAA at 870 specifically states that where "corroboration may not be practicable in a given circumstance, the Department need not prove that the facts available are the best alternative information." Therefore, based on our efforts, described above, to corroborate information contained in the petition, and in accordance with section 776(c) of the Act, we consider the margins in the petition to be corroborated to the extent practicable for purposes of this preliminary determination.

Accordingly, in selecting AFA with respect to BHP, the Department applied the petition rate of 24.06 percent.

All Others

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis*, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all others" rate for exporters and producers not individually investigated. This provision contemplates that the Department may weight-average margins other than zero, *de minimis*, and FA margins to establish the "all others" rate. Where the data do not permit weight-averaging such rates, the SAA, at 873, provides that we may use other reasonable methods. Because the petition contained only an estimated price-to-price dumping margin, there are no additional estimated margins available with which to create the "all others" rate. Therefore, we applied the petition margin of 24.06 percent as the "all others" rate. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Indonesia*, 66 FR 22163 (May 3, 2001).

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for Australia when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 75 days after this preliminary determination.

Suspension of Liquidation

Because of our preliminary affirmative critical circumstances finding in this case, and in accordance with section 733(e) of the Act, we are directing the U.S. Customs Service (U.S. Customs) to suspend liquidation of all entries of cold-rolled steel from Australia that are entered, or withdrawn

from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**. We are also instructing U.S. Customs to require a cash deposit or the posting of a bond equal to the dumping margin, as indicated in the chart below.

These instructions suspending liquidation will remain in effect until further notice.

Manufacturer/exporter	Margin (percent)
BHP	24.06
All Others	24.06

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in this investigation in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

For the investigation of cold-rolled steel from Australia, case briefs must be submitted no later than 50 days after the publication of this notice in the **Federal Register**. Rebuttal briefs must be filed within five calender days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette. Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination in the investigation of cold-rolled steel from Australia no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11183 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–811]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Carbon Steel Flat Products From Belgium

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of Sales at Less Than Fair Value.

SUMMARY: We preliminarily determine that certain cold-rolled carbon steel flat products ("cold-rolled steel") from Belgium are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. Since we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Lyman Armstrong or Cindy Lai Robinson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230: telephone: (202) 482–3601 or (202) 482–3797, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department's") regulations are to 19 CFR part 351 (April 2001).

SUPPLEMENTARY INFORMATION:

Case History

This investigation was initiated on October 18, 2001.[1] *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela,* 66 FR 54198 (October 26, 2001) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred.

On October 31, 2001, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes, and we received comments on our proposed matching criteria on November 8, 2001. On November 8, 2001, we received model match comments from petitioners and respondents. On November 26, 2001, we informed respondents of our revised model match criteria.

On November 13, 2001, the United States International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela of cold-rolled steel products. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium,*

[1] The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation (collectively, the petitioners).

Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, 66 FR 57985 (November 19, 2001).

On November 16, 2001, the Department issued an antidumping questionnaire to Sidmar, N.V.[2] The petitioners made an allegation of sales below cost of production ("COP") in the petition. Based on the factual information contained in the petition, we found "reasonable grounds to believe or suspect" that sales below cost occurred. *See Initiation Notice* 66 FR at 54212–13. Accordingly, the Department initiated the requested country-wide cost investigation.

On November 29, 2001, we confirmed our selection of Sidmar, the largest producer/exporter of cold-rolled steel from Belgium, as the sole mandatory respondent in this proceeding. *See* Memorandum from Mark Young to Melissa Skinner, "Antidumping Duty Investigation of Cold-Rolled Carbon Steel Flat Products from Belgium—Selection of Respondents," dated November 29, 2001, on file in the Central Records Unit, room B–099, of the Department's main building (the "CRU").

During the period December 2001 through January 2002, the Department received questionnaire responses from Sidmar and its affiliated U.S. importer, TradeARBED, Inc. ("TANY") (collectively "Sidmar"). The Department issued supplemental questionnaires on February 20 and 28, 2002, and the responses were received on March 20 and 29, 2002.

On January 23, 2002, Sidmar requested that the Department permit it to exclude sales of full-hard coils which were further annealed and skinpassed by its affiliated mill, Laminoir de Dudelange ("LDD"), and then imported by its affiliated U.S. processor, J&F Steel Corp. ("J&F"). Petitioners Bethlehem Steel Corporation, National Steel Corp., Nucor Corp., and United States Steel Corporation submitted their comments to oppose the exclusion of sales on February 1, 2002. Petitioners provided additional pre-preliminary comments on April 5, 2002. For further discussion, *see* the Calculation Memorandum from Lyman Armstrong to the File for the Preliminary Determination of Certain Cold-Rolled Carbon Steel Flat Products from Belgium, dated April 26, 2002 ("Sales Calculation Memorandum").

On February 7, 2002, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request on February 22, 2002, and postponed the preliminary determination until no later than April 26, 2002. (*See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (A–357–816), Australia (A–602–804), Belgium (A–423–811), Brazil (A–351–834), the People's Republic of China (A–570–872), France (A–427–822), Germany (A–428–834), India (A–533–826), Japan (A–588–859), Korea (A–580–848), the Netherlands (A–421–810), New Zealand (A–614–803), Russia (A–821–815), South Africa (A–791–814), Spain (A–469–812), Sweden (A–401–807), Taiwan (A–583–839), Thailand (A–549–819), Turkey (A–489–810) and Venezuela (A–307–822)*, 66 FR at 8227 (February 22, 2002)).

On April 16, 2002, the Department issued supplemental Sections D and E questionnaires. The responses were received on April 22, 2002.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. Section 351.210(e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months. We received a request to postpone the final determination from the respondent, Sidmar, on April 25, 2002. In its request, Sidmar consented to the extension of provisional measures to no longer than six months.

Since this preliminary determination is affirmative, the request for postponement is made by an exporter than accounts for a significant proportion of exports of the subject merchandise, and there is no compelling reason to deny the respondent's request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register** and have extended provisional measures to no longer than six months.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Period of Investigation

The period of investigation ("POI") is July 1, 2000, through June 30, 2001.

Fair Value Comparisons

To determine whether sales of cold-rolled steel from Belgium to the United States were made at LTFV, we compared the constructed export price ("CEP") to the normal value ("NV"), as described in the "Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average CEPs to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent in the home market during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information about the cost of production of merchandise sold in the foreign market and the constructed value of merchandise sold in or to the United States. Section E requests information about further manufacturing or assembly in the United States prior to delivery to unaffiliated United States customers.

characteristics reported by the respondents in the following order of importance: hardening and tempering; painted; carbon level; quality; yield strength; minimum thickness; thickness tolerance; width; edge finish; form; temper rolling; leveling; annealing; and surface finish.

Constructed Export Price

For the price to the United States, we used CEP in accordance with section 772(b) of the Act because all sales to the first unaffiliated purchaser took place in the United States. Specifically, all of Sidmar's sales to the United States during the POI were made by its U.S. affiliates, TANY and J&F. Furthermore, some of Sidmar's CEP sales were further manufactured by J&F in the United States. For these sales we used the price to the first unaffiliated customer and deducted the costs of further manufacturing, in accordance with section 772(d)(2) of the Act. To calculate further manufacturing costs, we used the information in Sidmar's Sections C and E responses, except in the following instances where the data were not properly quantified or valued: (1) we increased the reported further manufacturing costs to include freight from the port to the processor when determining profit and cost to be deducted from CEP. *See* Memorandum from Peter Scholl to Neal Halper, Director, Office of Accounting, dated April 26, 2002, "Cost of Production and Constructed Value (CV) Calculation Adjustments for the Preliminary Determination" ("Cost Calculation Memorandum").

We based CEP on the packed CIF or delivered prices to the first unaffiliated customer in the United States. Where appropriate, we reduced these prices to reflect discounts and rebates, and made billing adjustments.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. brokerage and handling, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), and U.S. inland freight expenses (freight from warehouse to the customer and freight from port to warehouse).

In accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (cost of credit, warranties, and commissions paid to unaffiliated sales agents). In addition, we deducted indirect selling expenses that related to economic activity in the United States such as inventory carrying costs and other indirect selling expenses, incurred by affiliated U.S. distributors. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act. For further discussion, *see* the *Sales Calculation Memorandum.*

We have excluded Sidmar sales of full-hard coils which were further annealed and skinpassed by its affiliated mill, LDD, in Luxembourg and then imported by its affiliated U.S. processor, J&F. Sidmar stated that it and J&F were unable to determine the appropriate product matching characteristics for sales of material processed by LDD because LDD does not have the same order management system used by Sidmar. With the plant order number, Sidmar determined the appropriate product matching characteristics for the imported coil based on mill production records. Because LDD does not have the same order management system, it is unable to link its production records to J&F invoices. Moreover, LDD does not have a reliable method for linking its own sales of further manufactured products to specific coils purchased from SIDMAR. Therefore, because these sales accounted for such a small portion of U.S. sales we excused Sidmar from reporting them. For further discussion, *see* the *Sales Calculation Memorandum.*

For those U.S. sales for which Sidmar did not report a date of payment, we have used the signature date of the preliminary determination (*i.e.*, April 26, 2002) in the calculation of imputed credit expenses. In addition, for the sales for which Sidmar did not report a date of shipment, we have used the invoice date for purposes of calculating credit expenses. For further discussion, *see* the *Sales Calculation Memorandum.*

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for the respondent.

B. Arm's Length Test

Sales to affiliated customers for consumption in the home market which were determined not to be at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, where the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's length. *See e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan*, 62 FR at 60472, 60478 (November 10, 1997), and *Antidumping Duties; Countervailing Duties: Final Rule* ("Antidumping Duties"), 62 FR at 27295, 27355–56 (May 19, 1997). We included in our NV calculations those sales to affiliated customers that passed the arm's length test in our analysis. *See* 19 CFR 351.403; *Antidumping Duties*, 62 FR at 27355–56.

C. Cost of Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether sales were made at prices below their respective COPs (*see Initiation Notice*, 66 FR at 54198).

2. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses ("G&A"), including interest expenses, and home market packing costs (*see* "Test of Home Market Sales Prices" section below for treatment of home market selling expenses). We relied on the COP information submitted by Sidmar with the exception of certain production inputs which were obtained from affiliated parties at less than market value. For these inputs, we adjusted the

reported cost to reflect market value. *See* the *Cost Calculation Memorandum.*

2. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable movement charges, rebates, discounts, and direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI are at prices less than the COP, we determine that in such instances the below-cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of Sidmar's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's length. We made deductions, where appropriate, from the starting price for early payment discounts, billing adjustments, and rebates. We also made deductions for movement expenses, including inland freight (plant to distribution warehouse, plant/warehouse to customer, and affiliated reseller to customer), inland insurance, and warehousing under section 773(a)(6)(B)(ii) of the Act. We made circumstance of sale ("COS") adjustments, in accordance with section 773(a)(6)(C)(iii) of the Act, for direct selling expenses, including warranty expenses, credit expenses, and other direct selling expenses. *See* the *Sales Calculation Memorandum.*

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act. Finally, for comparisons to CEP sales, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). *See Level of Trade* section below. We calculated the CEP offset as the lesser of the indirect selling expenses on the comparison-market sales or the indirect selling expenses deducted from the starting price in calculating CEP. *See* the *Sales Calculation Memorandum.*

We have excluded Sidmar's sales of non-prime merchandise in the home market for which Sidmar was unable to identify their product characteristics. These sales represented a small portion of Sidmar's home market sales. For further discussion, *see* the *Sales Calculation Memorandum.*

E. Normal Value Based on CV

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Accordingly, for those models of cold-rolled steel products for which we could not determine the NV based on comparison market sales, either because there were no sales of a comparable product or all sales of the comparable product failed the COP test, we based NV on CV. Section 773(e)(1) of the Act provides that the CV shall be based on the sum of the cost of material and fabrication for the imported merchandise, plus amounts for selling, general and administrative ("SG&A") expenses, profit and U.S. packing costs. We calculated the cost of material and fabrication based on the methodology described in calculation of *Cost of Production* section, above. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred by Sidmar in connection with the production and sale of the foreign like product in the comparison market. We used U.S. packing costs as described in the Constructed Export Price section above.

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. Where we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses and added U.S. selling expenses. Where appropriate we applied the CEP offset for price-to-CV comparisons, *see* the *Level of Trade* section below.

F. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. With respect to U.S. price and CEP transactions, the LOT is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level, and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR at 61731 (November 19, 1997).

Sidmar reported two customer categories (*i.e.*, distributors and original equipment manufacturers) and five channels of distribution in the home market: (1) Sales made by Sidmar, through its affiliated sales agent Sidstahl Belgium, N.V. ("Sidstahl"), directly to unaffiliated distributors or end users (Channel 1); (2) sales made by Sidmar's affiliated producer Europese Staal Prefabricate, N.V. ("ESP") directly to its

affiliated and unaffiliated distributors and unaffiliated end-users (Channel 2); (3) sales made by Sidmar, through its affiliated sales agent Sidstahl, as consignment sales, to unaffiliated end-users (Channel 3); (4) sales made by Sidmar to unaffiliated and affiliated end-users (Channel 4); (5) and sales made by Sidmar's affiliated producer ESP, as consignment sales, to unaffiliated end-users (Channel 5).

We determined that Sidmar sold merchandise at one LOT in the home market during the POI. The Department found minimal distinctions in the selling activities and associated expenses between Channels 1 through 5. Based on these differences, we concluded that one LOT existed in the home market. Because the large number of channels of distribution and selling expenses involved in this analysis presents difficulty in providing an adequate summary in this notice, please *see* the *Sales Calculation Memorandum* for a detailed explanation of this issue.

Sidmar reported two customer categories (*i.e.*, original equipment manufacturers and service centers/distributors) and two channels of distribution in the United States: (1) CEP sales made by Sidmar, through its affiliated U.S. importer TANY, to unaffiliated service centers (Channel 6), and (2) CEP sales made by Sidmar, through its affiliated U.S. importer and further processor, J&F, to unaffiliated end users (Channel 7). We examined the selling functions performed by Sidmar on behalf of J&F and TANY and found only one level of trade.

In order to determine whether separate LOTs actually existed between the U.S. and home market, we reviewed the selling activities associated with each channel of distribution. We determined that fewer and different selling functions were performed for Sidmar's CEP sales than for sales in the home market and these differences are substantial. We therefore determined that Sidmar's CEP sales and home market sales were made at different marketing stages and thus at different LOTs. Accordingly, we examined whether a LOT adjustment was appropriate. The Department makes this adjustment when it is demonstrated that a difference in LOTs affects price comparability. *See* section 773(a)(1) of the Act; 19 CFR 351.412(b). However, where the available data does not provide an appropriate basis upon which to determine a LOT adjustment, and where the NV is established at a LOT that is at a more advanced stage of distribution than the LOT of the CEP transactions, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). Because the LOT of the U.S. sales is different than the home market LOT and there is no home market LOT comparable to that of the CEP sales, there is no reliable basis for quantifying a LOT adjustment in accordance with section 773(a)(7)(A) of the Act. Further, we found that the home market sales were at a more advanced stage of distribution compared to sales to the U.S. LOT. Therefore, a CEP offset was applied to NV for the NV–CEP comparisons. Because the large number of channels of distribution and selling expenses involved in this analysis presents difficulty in providing an adequate summary in this notice, *see* the *Sales Calculation Memorandum* for a detailed explanation of our analysis.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price or constructed export price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margin is as follows:

Exporter/Manufacturer	Weighted-average margin percentage
Sidmar, N.V.	11.66
All Others	11.66

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is issued and published pursuant to sections 733(f) and 777(i) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11184 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–834]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Carbon Steel Flat Products From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value.

SUMMARY: We preliminarily determine that certain cold-rolled carbon steel flat products from Brazil are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. Since we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0656 or (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (Department's) regulations are to 19 CFR part 351 (April 2001).

Preliminary Determination

We preliminarily determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from Brazil are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margin of sales at LTFV is shown in the *Suspension of Liquidation* section of this notice.

Background

This investigation was initiated on October 18, 2001.[1] *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (Oct. 26, 2001) (*Initiation Notice*). The following events have occurred since the initiation.

On November 13, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of certain cold-rolled carbon steel flat products from Brazil are materially injuring the United States industry (*see* ITC Investigation Nos. 701–TA–422–425 and 731–TA–964–983 (Publication No. 3471)).

On November 16, 2001, we selected Usinas Siderurgicas de Minas Gerais (USIMINAS) and Companhia Siderurgica Paulista (COSIPA) (collectively "USIMINAS/COSIPA") as the mandatory respondents in this proceeding.[2] For further discussion, see the November 16, 2001, memorandum from the Team to Louis Apple entitled, "Antidumping Duty Investigation of Cold-Rolled Carbon Steel Flat Products from Brazil—Selection of Respondents" (the respondent selection memorandum). We subsequently issued antidumping questionnaires to USIMINAS/COSIPA on November 16, 2001. We issued a corrected version of the questionnaire appendix V with revised product characteristic variables on November 26, 2001.

During the period December 2001 through April 2002, we received responses from USIMINAS/COSIPA to the Department's original and supplemental questionnaires.[3]

On February 7, 2002, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request on February 22, 2002, and postponed the preliminary determination until no later than April 26, 2002. *See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (A–357–816), Australia (A–602–804), Belgium (A–423–811), Brazil (A–351–834), the People's Republic of China (A–570–872), France (A–427–822), Germany (A–428–834), India (A–533–826), Japan (A–588–859), Korea (A–580–848), the Netherlands (A–421–810), New Zealand (A–614–803), Russia (A–821–815), South Africa (A–791–814), Spain (A–469–812), Sweden (A–401–807), Taiwan (A–583–839), Thailand (A–549–819), Turkey (A–489–810) and Venezuela (A–307–822)*, 67 FR 8227 (Feb. 22, 2002).

Postponement of Final Determination

Pursuant to section 735(a)(2) of the Act, on April 5, 2002, the respondent requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**. In a request on April 19, 2002, the respondent consented to the extension of provisional measures to no longer than six months. In accordance with 19 CFR 351.210(b), because our preliminary determination is affirmative, because no compelling reasons for denial exist, and because the exporter accounts for a significant proportion of exports of subject merchandise, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Furthermore, any provisional measures imposed by this investigation have been extended from a four-month period to not more than six months.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

[1] The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company, National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation (collectively, "the petitioners").

[2] For purposes of this proceeding, we are treating these companies as the same entity. *See* the "Affiliated Respondents" section of this notice.

[3] The last of these responses was submitted on April 24, 2002, and consequently was received too late to use in the preliminary determination. We intend to verify this information, however, and consider it for purposes of the final determination.

Period of Investigation

The period of investigation (POI) is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2001).

Fair Value Comparisons

To determine whether sales of certain cold-rolled carbon steel flat products from Brazil to the United States were made at LTFV, we compared the export price (EP) to the normal value (NV), as described in the "Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs to POI weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by USIMINAS/COSIPA in the home market during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent in the following order of importance: hardening and tempering, painted, carbon level, quality, yield strength, minimum thickness, thickness tolerance, width, edge finish, form, temper rolling, leveling, annealing, and surface finish.

In certain instances, however, USIMINAS/COSIPA did not provide sufficient information to calculate a margin for the reported U.S. products. Specifically, USIMINAS/COSIPA did not report cost data for certain home market products, and it reported incomplete cost data for other products. Section 776(a)(2) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title.[4] Section 776(b) of the Act further provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

In this case, we find that USIMINAS/COSIPA withheld cost data requested by the Department for certain products and failed to provide complete and usable cost data for others. Because: (1) We informed USIMINAS/COSIPA of the deficiencies in its data and provided it an opportunity to remedy them in a supplemental questionnaire (pursuant to section 782(d) of the Act); and (2) USIMINAS/COSIPA did not provide the information requested or provided information that was so incomplete that it could not be used (within the meaning of section 782(e) of the Act), we are resorting to facts otherwise available pursuant to section 776(a)(2)(A) of the Act. Further, the cost data that USIMINAS/COSIPA did not provide for these products was provided for numerous other products. USIMINAS/COSIPA did not indicate or explain why it was not possible to provide this information for the products in question. Therefore, we conclude that USIMINAS/COSIPA could have provided the necessary data but chose not to, thereby failing to cooperate to the best of its ability within the meaning of section 776(b) of the Act. Accordingly, we have based the margin for U.S. products which match to the products in question on adverse facts available. As adverse facts available, we have assigned the highest non-aberrational margin calculated for any other U.S. product, in accordance with our practice. *See, e.g., Static Random Access Memory Semiconductors From Taiwan; Final Results of Antidumping Duty New Shipper Review,* 65 FR 12214 (Mar. 8, 2000) and accompanying decision memorandum at *Comment 1; Final Determination of Sales at Less than Fair Value: Stainless Steel Sheet and Strip in Coils from Germany,* 64 FR 30710, 30732 (June 8, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan,* 64 FR 24329, 24361–24362 (May 6, 1999); *Notice of Final Determination of Sales at Less Than Far Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61747 (Nov. 19, 1997); and *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China,* 58 FR 48833, 48839 (Sept. 20, 1993). In selecting a facts available margin, we sought a margin that is sufficiently adverse so as to effectuate the purposes of the adverse facts available rule, which is to induce respondents to provide the Department with complete and accurate information in a timely manner. We also sought a margin that is indicative of USIMINAS/COSIPA's customary selling practices and is rationally related to the transactions to which the adverse facts available are being applied. To that end, we selected the highest margin for an individual product in a commercial quality that fell within the mainstream of USIMINAS/COSIPA's transactions (i.e., transactions that reflect sales of products that are representative of the broader range of models used to determine normal value).

For further discussion, see the memorandum entitled "Concurrence Memorandum for the Preliminary Determination in the Investigation of Certain Cold-Rolled Carbon Steel Flat Products from Brazil," dated April 26, 2002 (the concurrence memorandum).

Affiliated Respondents

In the last cold-rolled investigation for Brazil, the Department treated USIMINAS and COSIPA as affiliated parties and collapsed these entities. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil,* 65 FR 5554, 5562 (Feb. 4, 2000). In the respondent selection memorandum, the Department stated that it intended to treat these companies as affiliated producers. Neither USIMINAS nor COSIPA

[4] Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is timely, can be verified, and is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information, if it can do so without undue difficulties.

commented on our intention to treat them as affiliated producers. Therefore, we have continued to treat USIMINAS and COSIPA as a single entity and to calculate a single margin for them.

Export Price

In accordance with section 772(a) of the Act, we based our calculations on EP because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation. In cases where the date of shipment preceded the date of invoice reported by USIMINAS/COSIPA, we used the date of shipment as the date of sale because the terms of sale were established on that date.

We based EP on the packed delivered prices to unaffiliated purchasers in the United States. We increased U.S. price by the amount of the export subsidy found in the companion countervailing duty investigation on certain cold-rolled carbon steel flat products from Brazil. *See Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determinations: Certain Cold-Rolled Carbon Steel Flat Products from Brazil,* 67 FR 9652 (Mar. 4, 2002). Where appropriate, we made adjustments for discounts. We also made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. brokerage and handling, and U.S. customs duties.

For those movement expenses provided by affiliated parties, we assigned the highest amount reported for each mill because USIMINAS/COSIPA did not demonstrate that these expenses were incurred at arm's length, despite a request that it do so. In addition, for USIMINAS, we used the highest international freight amounts reported for each vessel because USIMINAS indicated in its supplemental response that these expenses do not vary by vessel. *See* the April 26, 2002, memorandum from Irina Itkin to the file entitled "Calculations Performed for Usinas Siderurgicas de Minas Gerais (USIMINAS) and Companhia Siderurgica Paulista (COSIPA) in the Preliminary Determination of the Antidumping Duty Investigation on Certain Cold-Rolled Carbon Steel Flat Products from Brazil" (the sales calculation memorandum).

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for the respondent.

B. Cost of Production Analysis

Based on the cost allegation submitted by the petitioners on January 22, 2002, the Department found reasonable grounds to believe or suspect that the respondent had made sales in the home market at prices below their cost of production (COP), in accordance with section 773(b)(2)(A)(i) of the Act. As a result, on February 12, 2002, the Department initiated an investigation to determine whether the respondent made home market sales during the POI at prices below their respective COPs within the meaning of section 773(b) of the Act. *See* Memorandum from LaVonne Jackson to Neal Halper, Director, Office of Accounting, entitled "Petitioners' Allegation of Sales Below the Cost of Production for Usinas Siderurgicas de Minas Gerais, SA ("USIMINAS") and Companhia Siderurgica Paulista ("COSIPA")," dated February 12, 2002.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses (G&A), including interest expenses (see the "Test of Home Market Sales Prices" section below for the treatment of home market selling expenses). We relied on the COP data submitted by USIMINAS/COSIPA except as noted below.

1. As discussed above, we applied adverse facts available to USIMINAS's reported costs because USIMINAS disregarded the Department's instructions to report its costs based on the POI. As adverse facts available, we increased the cost of manufacture (COM) of all products produced by USIMINAS. We based this increase on the highest percentage difference between USIMINAS's product-specific COMs and COSIPA's product-specific COMs (where COSIPA's COM exceeded USIMINAS's and where the products were produced by both USIMINAS and COSIPA).

2. We adjusted USMINAS/COSIPA's reported COP to exclude PIS and COFINS taxes. *See* the "Calculation of Normal Value Based on Comparison Market Prices" section of this notice, below, for further discussion.

3. We adjusted USMINAS/COSIPA's GNA expense ratio to include goodwill amortization expenses, as well as the depreciation expenses of an idled asset.

4. We adjusted USIMINAS and COSIPA's reported financial expense ratio to exclude the portion of the reported financial income offset related to long-term interest bearing assets. We based the excluded amount on the ratio of long-term interest bearing assets to total interest bearing assets.

See the April 26, 2002, memorandum from LaVonne Jackson to Neal Halper entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results" referencing the Antidumping Duty Investigation of Certain Cold-Rolled Carbon-Quality Steel Products from Brazil (the cost calculation memorandum) for further discussion.

2. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable movement charges, rebates, discounts, selling expenses, and packing expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of a respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a

respondent's sales of a given product during the POI are at prices less than the COP, we determine that in such instances the below-cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of USIMINAS/COSIPA's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP LOT. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61732 (Nov. 19, 1997).

In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.,* the "chain of distribution"),[5] including selling functions,[6] class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.,* NV based on either home market or third country prices[7]), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States,* 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP LOT, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affected price comparability (*i.e.,* no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.

USIMINAS/COSIPA claimed that it made home market sales at two levels of trade. We analyzed the information on the record and found that USIMINAS/COSIPA performed different marketing functions in selling to its home market customers (*i.e.,* the affiliated resellers provided many services to their customers, while the mills only provided minimal services). Therefore, we determined that USIMINAS/COSIPA made home market sales at two levels of trade.

In the United States, USIMINAS/COSIPA reported that it made EP sales at one level of trade. Our analysis showed that USIMINAS/COSIPA's EP sales were made at one level of trade and we find that these sales were made at the same level of trade as the mill direct sales in the home market. Accordingly, where possible, we matched EP sales to home market mill direct sales and made no LOT adjustment because the sales were made at the same LOT. Where we matched EP sales to affiliated reseller home market sales, we made a LOT adjustment in accordance with section 773(a)(7)(A) of the Act because we found that there was a pattern of consistent price differences between the two home market LOTs.

For a detailed explanation of this analysis, see the concurrence memorandum.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length, adjusted for billing errors and discounts. We made deductions from the starting price for taxes in accordance with section 773(a)(6)(B)(iii) of the Act. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil,* 67 FR 18165 (April 15, 2002). We recalculated certain taxes because USIMINAS/COSIPA did not consistently report them. In addition, we disallowed an adjustment for certain discounts for USIMINAS and Rio Negro because they were not reported on a customer-specific basis as requested in our supplemental questionnaire. For further discussion, see the sales calculation memorandum.

We also made deductions for movement expenses, including inland freight (plant to distribution warehouse and plant/warehouse to customer), warehousing and inland insurance under section 773(a)(6)(B)(ii) of the Act. For those freight expenses provided by an affiliated freight supplier, we assigned the lowest reported freight expense amount because USIMINAS/COSIPA did not provide evidence that these expenses were incurred at arm's length, despite a request that it do so. *See* the sales calculation memorandum.

In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses (offset by interest revenue), certain warranty expenses, and commissions. We adjusted the reported credit expenses as follows: 1) for COSIPA, we assigned the negative weighted-average of the credit expenses reported in the home market sales listings for those sales which were paid in advance of shipment because COSIPA provided insufficient information to calculate the actual credit amounts; 2) for USIMINAS, Rio Negro, Fasal, and Dufer, we recalculated credit expenses using the short-term borrowing rate of COSIPA because these companies did not have short-term borrowings during the POI; and 3) for USIMINAS, we also recalculated the

[5] The marketing process in the United States (for EP) and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale appears to occur.

[6] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of this preliminary determination, we have organized the common cold-rolled carbon steel flat products selling functions into six major categories: freight and delivery, advertising and sales promotion, sales and marketing support, inventory maintenance, warranty service, and technical service.

[7] Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

reported U.S. credit expenses using the date that the merchandise left the factory, rather than the date of the bill of lading, as the date of shipment. Regarding home market warranty expenses, USIMINAS/COSIPA based the amount of these expenses on the sales value of returned merchandise. We disallowed these expenses because USIMINAS/COSIPA also reported the resales of the returned merchandise in its home market sales listing. *See* the sales calculation memorandum. Regarding commissions, USIMINAS/COSIPA incurred commissions only in the home market. Therefore, we offset home market commissions by the lesser of the commission amount or U.S. indirect selling expenses.

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act. We disallowed certain packing expenses for USIMINAS/COSIPA's home market resellers because these expenses were aberrationally high in comparison to other packing expenses and were not explained by the respondent. *See* the sales calculation memorandum.

E. Arm's-Length Sales

USIMINAS/COSIPA reported sales of the foreign like product to affiliated customers. To test whether these sales to affiliated customers were made at arm's length, where possible, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Where the price to the affiliated party was, on average, 99.5 percent or more of the price to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. Consistent with section 351.403(c) of the Department's regulations, we excluded from our analysis those sales where the price to the affiliated parties was less than 99.5 percent of the price to the unaffiliated parties.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
USIMINAS/COSIPA	43.34
All Others	43.34

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to the proceeding in this investigation in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11185 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–822]

Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at not less than fair value.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza, John Drury or Abdelali Elouaradia at (202) 482–3019, (202) 482–0195 and (202) 482–1374, respectively; AD/CVD Enforcement, Office 8, Group III, Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (Department's) regulations are to the regulations at 19 CFR part 351 (April 2001).

Preliminary Determination

We preliminarily determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from France are not being sold, or are not likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

On October 18, 2001, the Department initiated antidumping duty investigations of cold-rolled steel from a number of countries, including France. See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, 66 FR 54198, (October 26, 2001) (Initiation Notice). Also on October 18, 2001, based on information provided in the petition, we found "reasonable grounds to believe or suspect" that sales of the foreign like product in the markets of Belgium, France, Germany, India, Japan, Korea, the Netherlands, Thailand, and Turkey were made at prices below their respective costs of production (COP) within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department initiated country-wide cost investigations on sales of the foreign like product in these markets. The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company, National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., WCI Steel, Inc., Weirton Steel Corporation, and United States Steel Corporation. Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. See Initiation Notice at 54198. From October 30, 2001, through November 8, 2001, petitioners filed comments proposing clarifications to the scope of these investigations. Also, from November to December 2001, the Department received numerous responses from interested parties aimed at clarifying the scope of the investigations.

On October 30, 2001, the Department issued a letter to interested parties in all of the concurrent cold-rolled steel antidumping investigations, providing an opportunity for comment on the Department's proposed model matching characteristics and hierarchy. On November 8, 2001, petitioners and the Usinor Group (Usinor) submitted comments on the Department's request for information. For purposes of the antidumping duty questionnaires subsequently issued by the Department to the respondents, no changes were made to the product characteristics or the hierarchy of those characteristics from those originally proposed by the Department in its October 18, 2001, letter.

On November 13, 2001, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela. On November 20, 2001, the ITC published its preliminary determination determining that there is a reasonable indication that the United States industry producing cold-rolled steel is materially injured or threatened with material injury by reason of imports of the subject merchandise from cold-rolled steel from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela. See Certain Cold-Rolled Steel Products from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, 66 FR 57985 (November 19, 2001).

On December 3, 2001, we selected the largest producer/exporter of cold-rolled steel, Usinor, from France as the mandatory respondent in this proceeding. For further discussion, see Memorandum from Nancy Decker and Angelica Mendoza to Richard O. Weible, Selection of Respondent(s), dated December 3, 2001.

The Department subsequently issued its antidumping duty questionnaire to Usinor on November 16, 2001. The questionnaire was divided into five parts, in which we requested that Usinor respond to Section A (general information, corporate structure, sales practices, and merchandise produced), Section B (home market or third-country sales), Section C (U.S. sales), Section D (cost of production/constructed value), and Section E (further manufacturing) where appropriate. The Department also issued corrected pages of the model matching criteria on November 26, 2001.

On December 26, 2001, the Department received Usinor's response to Section A of the questionnaire. On January 14, 2002, we received Usinor's response to Sections B through D of the Department's questionnaire.

On January 7, 2002, petitioners filed comments on Usinor's Section A response, and also requested that the Department require Usinor to report the resales of cold-rolled steel made by its affiliated steel service centers (SSCs). On January 17, 2002, Usinor submitted rebuttal comments. On January 31, 2002, we issued a letter requesting Usinor to report in its Section B response the sales made by five of its affiliated SSCs (Cisatol, Service Acier Rhenan (SAR), Société Lorraine de Produits Metallurgiques (SLPM), Sotracier, and Produits d'Usines Metallurgiques (PUM)) to the first unaffiliated end-customer. On January 28, 2002, and January 29, 2002, petitioners filed comments on Usinor's Section B through D response.

On January 18, 2002, we issued a supplemental questionnaire for deficiencies in Usinor's Section A response. On February 12, 2002, we issued a supplemental questionnaire for deficiencies in Usinor's Section B and C responses. On February 28, 2002, we issued a supplemental questionnaire for deficiencies found in Usinor's supplemental Section D response.

On January 31, 2002 and February 8, 2002, petitioners requested that the Department collapse Usinor's affiliated producers and SSCs of cold-rolled steel for this proceeding. On February 26, 2002, the Department determined to collapse eight of Usinor's affiliated producers (Sollac Atlantique S.A.

(Atlantique), Sollac Lorraine S.A. (Lorraine), Sollac Méditerranée (Méditerranée), PUM, Usinor Packaging S.A. (Packaging), Etilam, Beautor S.A., and Haironville) into a single entity for purposes of this investigation. For further discussion, see Memorandum on Collapsing from John Drury and Angelica Mendoza through Richard O. Weible to Joseph A. Spetrini, dated February 26, 2002 (Collapsing Memo).

On February 11, 2002, we received Usinor's response to our supplemental Section A questionnaire. On February 14, 2002, we issued a letter requesting that Usinor report the order date associated with all invoiced sales of subject merchandise made during the POI. We received Usinor's responses to the Department's January 31, 2002, February 12, 2002, and February 14, 2002, requests for information on March 5, 2002.

On February 25, 2002, we issued a second supplemental questionnaire for deficiencies found in Usinor's supplemental Section A response. We received Usinor's response on March 13, 2002.

On March 28, 2002, we received Usinor's response to our supplemental questionnaire on Section D. Usinor also submitted new home market and U.S. sales databases to (1) incorporate a small quantity of home-market sales of second-quality merchandise sold by Haironville (affiliated cold-rolled steel producer) to affiliated home-market customers, and (2) to remove a small quantity of sales made by Etilam (affiliated cold-rolled steel producer) of "shadow mask steel" (*i.e.*, non-subject merchandise) that were incorrectly included in the home market and U.S. sales databases. On April 15, 2002, we issued a second supplemental questionnaire for deficiencies found in Usinor's supplemental Section D response. We received Usinor's response on April 17, 2002.

On April 23, 2002, the Department issued Usinor a second supplemental questionnaire for deficiencies found in its March 5, 2002 and March 28, 2002 (with respect to its revised sales databases) questionnaire responses. The response to this request for information is due after our preliminary determination.

On February 7, 2002, petitioners made a timely request for a fifty-day postponement of the preliminary determination pursuant to section 733(c)(1)(A) of the Act. On February 14, 2002, we postponed the preliminary determination until no later than April 26, 2002. See Certain Cold Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations, 67 FR 8227 (February 22, 2002).

Period of Investigation

The period of investigation (POI) is July 1, 2000 through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the filing of the petition (*i.e.*, September 28, 2001), and is in accordance with section 351.204(b)(1) of the Department's regulations.

Scope of Investigations

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* published concurrently with this preliminary determination.

Facts Available (FA)

Section 776(a)(2)(A) of the Act provides that "if any interested party or any other person—(A) withholds information that has been requested by the administering authority * * *, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title." The statute requires that certain conditions be met before the Department may resort to the facts otherwise available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to 782(e), disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

Usinor's Downstream Sales

On November 16, 2001, the Department issued Usinor its standard antidumping questionnaire. That questionnaire explicitly instructed Usinor to report sales from affiliated SSCs to the unaffiliated customers. We also directed Usinor to contact the agency official in charge in writing immediately if sales to all affiliated customers constituted less than five percent of total sales, or if Usinor was unable to collect the necessary information.

On December 26, 2001, Usinor stated, in its original Section A response, that it would not report the sales of subject merchandise made by its affiliated SSCs for three reasons: (1) the merchandise sold by these entities is not comparable to merchandise sold in the U.S. market; (2) the records for these sales transactions are not accessible by Usinor, as the affiliated SSCs use incompatible computer systems, distinct software, and different file structures, and therefore, it would be inordinately difficult to report these transactions; and (3) lastly, Usinor believed that the prices for the sales to the affiliated service centers were comparable to the prices for the sales to unaffiliated customers.

On January 7, 2002, petitioners requested that the Department require Usinor to report Section B responses for all sales transactions of cold-rolled steel made by its affiliated SSCs to the first unaffiliated customer. On January 16, 2002, the Department met with counsel for Usinor to discuss issues relating to the reporting of its downstream sales to unaffiliated customers (*see* Letter from Abdelali Elouaradia to Jeffrey Winton dated January 18, 2002 (Reporting Letter)). On January 17, 2002, Usinor reiterated that it did not believe that any of its affiliated service centers should be

required to report their resales. Usinor also requested that the Department limit its reporting requirements on this matter to avoid a disproportionate and unreasonable burden. Usinor proposed that it be required to report sales of cold-rolled steel made by only four of its affiliated service centers because these sales accounted for most of the purchases of subject merchandise from Usinor mills by affiliated service centers. Usinor further noted that the sales made by the remaining affiliated service centers accounted for less than five percent of total home-market sales. On January 31, 2002, the Department issued a letter requesting Usinor to resubmit its Section B response to the questionnaire and include sales made by five of its affiliated SSCs to the first unaffiliated customer. For further details, see the Department's letter dated January 31, 2002. On February 28, 2002, the Department requested that Usinor report cost information associated with the sales transactions made by the five affiliated SSCs.

On March 5, 2002, Usinor submitted Section B responses for sales made by five of its affiliated SSCs to unaffiliated customers. On March 18, 2002, petitioners filed comments on the responses made by Usinor's affiliated SSCs, noting that these sales of cold-rolled steel included sales made to affiliated customers. Petitioners further noted that sales made by Usinor to affiliated SSCs that are exempted from reporting their resales failed the arm's-length test and, therefore, the Department should apply facts available for these sales. As noted in the Department's January 31, 2002, letter, we determined that because these entities accounted for less than five percent of home market sales, Usinor did not have to report these resales. For the purposes of our preliminary determination, we are excluding from our margin analysis the sales made to these entities by Usinor that fail our arm's length or cost tests.

On March 28, 2002, Usinor submitted the requested cost information associated with sales of cold-rolled steel made by affiliated SSCs. On April 2, 2002, petitioners contended that Usinor submitted an incomplete and unusable response with regard to its downstream sales by SSCs and that the Department should apply adverse facts available in for these sales. On April 4, 2002, Usinor explained that in some instances, because one of the reporting affiliated service centers purchased merchandise from another reporting affiliated reseller, both the initial sale from the supplying reseller to the other, and any subsequent sale from the purchasing reseller to its customer, have been reported. Usinor further explained that as a result of such transactions its home market database includes the SSCs' sales of subject merchandise that had been purchased from affiliated mills and sales of subject merchandise that had been purchased from other affiliated SSCs. For purposes of our preliminary margin analysis, we have excluded all sales made by the five affiliated SSCs to each other and to affiliated mills (see Memorandum to the File regarding Antidumping Duty Investigation on Certain Cold-Rolled Carbon Steel Flat Products from France; Preliminary Determination Analysis for the Usinor Group, dated April 26, 2002, (Sales Analysis Memo)). Usinor also indicated in its April 4, 2002, letter that it had included resales of cold-rolled steel made by the five affiliated SSCs to other affiliated entities that appear to have resold some or all of such merchandise in the home market. Usinor therefore failed to report certain downstream resales of cold-rolled steel (those resales made by the SSCs' affiliated customers) to the first unaffiliated customer.

Because Usinor failed to fully provide all downstream sales to unaffiliated customers pursuant to the Department's request for this information, we preliminarily find, in accordance with section 776(a) of the Act, that the use of partial adverse facts available is appropriate for Usinor. Further, Usinor's failure to provide adequate explanations for its inability to provide the requested information indicates that Usinor has not acted to the best of its ability in responding to the Department's request for information. Therefore, the Department has also determined that Usinor has not acted to the best of its ability, and thus, application of an adverse inference is warranted, pursuant to section 776(b) of the Act. Accordingly, we have applied the highest gross unit price of subject merchandise sold to unaffiliated customers by model to those sales of cold-rolled steel made by the five affiliated resellers to affiliated customers by model that fail the arm's-length test. For those sales that did not have a model match, we applied the weighted-average gross unit price for those models with a match. (See Sales Analysis Memo.)

Credit Expense

During this proceeding, the Department gathered information from Usinor regarding the date of payment used to calculate its per unit credit expense. On January 14, 2002, Usinor reported as the date of payment for U.S. sales the date on which it actually received payment, according to its accounts receivables ledger, from its unaffiliated customer. Usinor also reported that, for its U.S. sales of cold-rolled steel made during the POI through its affiliated "super distributor" (Usinor Steel Corporation, Inc. (USC)), it sold its accounts receivables to an affiliated financing company. After subsequent supplemental questionnaires, we learned that not only did USC sell its accounts receivables to an affiliated financing company, but in turn its affiliated financing company sold these accounts receivables to an unaffiliated funding company. On March 5, 2002, as requested by the Department, Usinor reported the date on which USC sold its accounts receivables to its affiliated financing company.

However, Usinor has failed to provide the Department the information necessary to allow us to understand the relationship between USC's affiliated financing company and the unaffiliated funding company, and the terms at which its affiliated financing company transfers title to the accounts receivable to this unaffiliated funding company. We preliminarily find, in accordance with section 776(a) of the Act, that the use of neutral facts available is appropriate for Usinor where Usinor has failed to provide us with the appropriate date of payment for its CEP sales made by USC in the United States. Therefore, based on the facts otherwise available, we are preliminarily calculating the credit period as the payment term applicable to each U.S. sale of cold-rolled steel made through USC where the difference between the reported payment date and the shipment date (i.e., sale date) is less than the indicated payment term. Accordingly, for such instances, we have recalculated Usinor's imputed credit expense using this calculated credit period (*see* Sales Analysis Memo).

Movement Expenses

In some instances, Usinor did not report an expense associated with the movement of subject merchandise for sale in the home market and the United States and/or Usinor provided an estimated cost adjusted for a variance between its estimated and actual total expenses. Usinor stated that it was unable to systematically link the movement expenses in question to transaction-specific invoices. It is the Department's practice and preference to use actual expenses for its margin calculations. We preliminarily find, in accordance with section 776(a) of the Act, that the use of facts otherwise available is appropriate for Usinor where Usinor has failed to provide us

with the actual expenses associated with the movement of its sales of cold-rolled steel during the POI in the home market and United States. Accordingly, for purposes of our preliminary determination, we applied a weighted-average movement expense using actual expenses provided by Usinor for those instances in which Usinor failed to report an expense or reported an adjusted estimated expense.

Product Comparisons

Pursuant to section 771(16) of the Act, all products produced by the respondent that are within the scope of the investigation and were sold in the comparison market during the POI, are considered to be foreign like products. We have relied on fourteen criteria, in descending order of importance, to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: whether hardened or not; whether painted with poly vinylidene fluoride, other paint, or not; carbon content level; quality; yield strength; thickness; thickness tolerance; width; whether mill, slit, deburred edged, or other edge; whether coiled or cut sheet; whether temper-rolled or not temper-rolled; whether stretch or tension leveled or not; whether annealed open coil, other annealed, or not annealed; and whether finished with bright, embossed/texturized, or matte surface. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product, based on the characteristics and characteristic subcategories indicated in the Department's November 16, 2001 questionnaire.

Fair Value Comparisons

To determine whether sales of cold-rolled steel from France to the United States were made at less than fair value, we compared constructed export price (CEP) and export price (EP), where appropriate, to the normal value (NV), as described in the "Constructed Export Price," "Export Price," and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average CEPs and EPs, where appropriate, for comparison to weighted-average NVs.

Date of Sale

For its home market and U.S. sales, Usinor reported the date of invoice as the date of sale, in keeping with the Department's stated preference for using the invoice date as the date of sale. Usinor stated that the invoice date best reflects the date on which the material terms of sale are established and that it is possible for the quantity, price or other terms of sale to be modified between order date and invoice date.

On January 7, 2002, petitioners requested that the Department require Usinor to report the frequency of changes made to a particular order between the order date and sale date. On February 14, 2002, the Department requested that Usinor submit the order date for all sales made during the POI. On March 5, 2002, Usinor reported the order date for all sales made during the POI in its home market and U.S. databases. Usinor indicated that for the most part when an order is modified, the original information recorded in the company's normal computer systems is written over with the new information, and the original record is not maintained. Usinor explained that for some of its reported sales transactions it is possible to determine that the record has been modified. However, Usinor further explained that it is not possible to determine which fields within the order have changed. Usinor concluded that the frequency of changes in price, quantity, or specifications between the initial order date and the final invoice date cannot be separately measured.

The Department is preliminarily using the invoice date as the date of sale for both home market and U.S. sales. We intend to examine this issue at verification, and will incorporate our findings in our analysis for the final determination.

In both the home and U.S. markets, Usinor had consignment sales in which subject merchandise was shipped to a storage facility at the customer's location. On February 12, 2002, the Department requested that Usinor report the date of sale as the date of shipment if the date of invoice is after the date of shipment for consignment sales transactions. For home market consignment sales, Usinor failed to comply with the Department's request, although for consignment sales made in the United States, Usinor reported, as requested, the date of shipment as the date of sale. For consignment sales made in the home market, we preliminarily determine that the date of shipment is the date of sale. For further details, see Sales Analysis Memo.

Export Price

We used EP methodology in accordance with section 772(a) of the Act for sales where Usinor sold the merchandise under investigation before the date of importation directly to an unaffiliated purchaser in the United States. We based EP on packed prices to the first unaffiliated customer. In accordance with section 772(c)(2), we made deductions from the starting price for movement expenses, including foreign inland freight, inland insurance, foreign brokerage and handling, international freight, marine insurance, and U.S. customs duty.

Constructed Export Price

Usinor reported as CEP transactions all sales of subject merchandise to its affiliated trading company, USC. USC then resold the subject merchandise to unaffiliated customers in the United States.

We calculated CEP, in accordance with subsection 772(b) of the Act, for those sales made by USC to unaffiliated purchasers in the United States. We based CEP on the packed, delivered, duty paid prices to unaffiliated purchasers in the United States. We made adjustments for discounts and rebates, where applicable. We also made deductions for freight charged to the customer and other movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, U.S. inland insurance, other U.S. transportation fees, and U.S. customs duty. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including commissions, direct selling expenses (warranty expenses and credit expenses), U.S. inventory carrying costs, and U.S. indirect selling expenses. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. For sales of cold-rolled steel that were coded as non-prime, we re-coded these sales as prime as Usinor did not provide sufficient evidence showing that these sales are actually of non-prime merchandise (*see* Sales Analysis Memo). We also removed all canceled sales from our analysis (*see* Sales Analysis Memo). For further information on adjustments made to our margin calculation please *see* Sales Analysis Memo.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market

sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. As Usinor's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade. For those instances in which Usinor did not report a payment date with respect to its home market sales which have not been paid, we assigned the date of this preliminary determination (April 26, 2002) as the date of payment (*see* Sales Analysis Memo). For warranty expenses that were reported for Usinor's sales of cold-rolled steel produced by Atlantique, Lorraine, and Etilam, we multiplied the gross unit price by the calculated product family and customer-specific warranty expenses (reported by Usinor in its Appendix SB–12 and Appendix SB–14, respectively, dated March 5, 2002). For further information on adjustments made to our margin calculation *see* Sales Analysis Memo.

Affiliated-Party Transactions and Arm's-Length Test

To test whether sales to affiliated service centers and end-users are made at arm's-length prices, we compare, on a model-specific basis, the prices of sales to affiliated customers with sales to unaffiliated customers net of all movement charges, billing adjustments, discounts, direct selling expenses, and packing. Where, for the tested models of foreign like product, prices to the affiliated party are on average 99.5 percent or more of the price to unaffiliated parties, we determine that such sales are made at arm's length prices. *See* 19 CFR 351.403(c); *see* also Antidumping Duties; Countervailing Duties Final Rule, 62 FR 27355 (May 19, 1997).

If these affiliated party sales satisfied the arm's-length test, we used them in our analysis. Merchandise sold to affiliated customers in the home market made at non-arm's-length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102. Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Cost of Production Analysis

Based on our analysis of the cost allegations submitted by petitioners in the original petition, the Department found reasonable grounds to believe or suspect that French producers had made sales of cold-rolled steel in the home market at prices below the cost of producing the merchandise, in accordance with section 773(b)(2)(A)(i) of the Act. As a result, the Department initiated an investigation to determine whether respondents made home market sales during the POI at prices below their cost of production (COP) within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

In accordance with section 773(b)(3) of the Act, we calculated a weighted average COP based on the sum of Usinor's cost of materials and fabrication for the foreign like product, plus an amount for home market selling, general and administrative expenses (SG&A) including, interest expenses, and packing costs.

We relied on information from Usinor's section D questionnaire responses to calculate COP, except for the following changes: (1) Revised the total cost of manufacturing to include a cost classification variance between the financial and cost accounting systems for three of the collapsed companies (Atlantique, Lorraine, and Packaging); (2) included inland freight, inventory carrying cost, indirect selling and packing expenses between Usinor and its affiliates in the COP of the affiliated resellers, for the merchandise under consideration that was further manufactured by affiliates prior to sale to an unaffiliated party; (3) adjusted the reported value of slab and coil inputs obtained from affiliated parties to reflect the higher of transfer or market price; (4) revised the per-unit SG&A expenses to include application of the SG&A rate to the yield loss variable for the affiliated resellers; (5) revised the SG&A rate calculations to include certain expenses classified as extraordinary in the numerators, for Atlantique, Lorraine, Packaging, and Beautor. For Atlantique, Lorraine, and Packaging, we also revised the SG&A rate calculations to include foreign exchange losses and miscellaneous SG&A related accruals and provisions; (6) revised Etilam's SG&A rate calculation to exclude net exchange gains on accounts receivables from the numerator; (7) revised the unabsorbed SG&A costs rate calculation to exclude transportation costs from the denominator; (8) revised the financial expense rate calculation to exclude research and development costs from the denominator (the COP and CV files submitted by respondent did not reflect the submitted financial expense rate); and (9) based the difference in merchandise adjustment on the total cost of manufacturing rather than variable cost of manufacturing since certain fixed costs were included in variable costs in the affiliated resellers' COP and CV files, for the merchandise under consideration that was further manufactured by affiliates prior to sale to an unaffiliated party. For further details, *see* Memorandum from Heidi Schriefer to Neal Halper, dated April 26, 2002, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination (Cost Calculation Memo). We compared the weighted-average COP for Usinor to home market sales prices of the foreign like product, as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made (1) in substantial quantities within an extended period of time, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, billing adjustments, and discounts and rebates.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than twenty percent of Usinor's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where twenty percent or more of Usinor's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities, in accordance with section 773(b)(2)(C)(i) of the Act, within an extended period of time. In such cases, because we compared prices to weighted-average COPs for the POI, we also determined that such sales were not made at prices that would not permit recovery of all costs within a reasonable period of time, in accordance with section773(b)(2)(D) of the Act. Therefore, we disregarded those below-cost sales.

Constructed Value

In accordance with section 773(e)(1) of the Tariff Act, we calculated CV, where applicable, based on the sum of respondent's cost of materials, fabrication, SG&A including, interest expenses, and profit. We made the same

adjustments to the submitted CV data as noted above in the "Cost of Production" section. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A and profit on the amounts incurred and realized by Usinor in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country.

Price-to-Price Comparisons

We calculated NV for Usinor on prices of home market sales that passed the COP test. We made adjustments for billing adjustments and discounts. We made deductions, where appropriate, for warehousing, foreign inland freight, freight adjustments, and inland insurance, pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses and warranties. Finally, we deducted home market packing costs in accordance with section 773(a)(6)(A) and (B) of the Act. We have removed sales transactions that were identified as sample or testing/evaluation sales from our margin calculation (see Sales Analysis Memo). Usinor reported that, during the POI, it paid affiliated sales agents commissions for their handling of some cold-rolled steel sales in home market and United States. During the course of this proceeding, the Department requested that Usinor provide evidence for the record showing that these transactions were made at arm's length. With respect to commissions paid for sales of cold-rolled steel made in the home market, Usinor reported commissions paid to its affiliated selling agents. However, Usinor reported actual selling expenses incurred by its affiliated selling agents with respect to sales of cold-rolled steel made in the United States. We preliminarily find that Usinor has not sufficiently demonstrated that the reported commissions it paid to affiliated selling agents were made at arm's length. Therefore, we did not make adjustments for commissions in the home market. There was one more instance in which the Department preliminarily denied Usinor an adjustment to its NV. Due to the proprietary nature of this adjustment, we have explained this calculation in our preliminary analysis memo (see Sales Analysis Memo). We also excluded all intra-company transactions made between collapsed entities and all sales by the affiliated SSC's to other affiliated producers or SSCs that have already reported the resales to the first unaffiliated customer.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the costs of materials and fabrication employed in producing the subject merchandise, SG&A, and profit. In accordance with section 773(a)(2)(A) of the Act, we based SG&A expense, interest, and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in France. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. When we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, is that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than U.S. sales, we examine whether the respondent's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories, and selling functions (or services offered) to each customer or customer category, in both markets. If the comparison market sales are made at different LOTs and the difference affects price comparability, as manifested in a pattern of consistent price differences between LOTs, and if the comparison market sale is at a different LOT from the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV is determined at a LOT at a more advanced stage of marketing than the CEP LOT, and despite the fact that the respondent has cooperated to the best of its ability, the data available do not provide an appropriate basis to determine whether the difference in LOT affects price comparability, the Department will grant a CEP offset. See section 351.412(f)(1) of the Department's regulations.

In the home market, Usinor made sales to unaffiliated and affiliated end-users, unaffiliated distributors, and affiliated and unaffiliated SSCs. Usinor claims five channels of distribution with respect to these sales: (1) Sales shipped from the mill directly to unaffiliated end-users, distributors or service centers; (2) consignment sales, in which the merchandise is shipped to a storage location at the customer's site; (3) sales from the mills to affiliated producers of downstream products that processed the products into non-subject products prior to sale to the first unaffiliated customer; (4) sales from the mills to affiliated service centers, which generally processed the merchandise into slit strip or cut-to-length sheets, and then sold the processed strips and sheets to affiliated or unaffiliated customers; and (5) sales by affiliated service centers to unaffiliated customers. Usinor claimed two LOTs in the home market: LOT 1 includes direct and consignment sales to unaffiliated end-users, unaffiliated distributors, affiliated and unaffiliated steel service centers, and affiliated customers that used cold-rolled steel as an input for the production of downstream products by Usinor's producing mills; and LOT 2 includes direct sales to affiliated and unaffiliated end-users, and affiliated steel service centers by Usinor's affiliated SSCs.

In the U.S. market, Usinor made sales to unaffiliated end-users and affiliated steel service centers. Usinor claims two channels of distribution with respect to these sales: (1) direct shipment sales; and (2) consignment sales. Usinor claims two LOTs in the U.S.: LOT 1 includes direct and consignment sales made by USC; and LOT 2 includes direct sales made by Usinor.

On February 26, 2002, the Department determined to collapse the eight Usinor affiliated producers (Atlantique, Lorraine, Méditerranée, Packaging, Etilam, Beautor, Haironville and PUM) into a single entity for purposes of this investigation. (*See* Collapsing Memo.) Therefore, for our preliminary LOT analysis we have considered there to be only four channels of distribution in the home market: (1) Direct sales to unaffiliated customers (*i.e.*, end-users, distributors, and SSCs); (2) consignment sales to unaffiliated customers; (3) sales to affiliated SSCs (that were excluded from reporting their resales—*see* Reporting Letter); and (4) sales made by the five affiliated SSCs to unaffiliated

customers (*i.e.*, end-users, distributors, and service centers).

Usinor claims that CEP sales (those sales made through its affiliated trading company, USC) were made at a LOT more removed than the LOT of the home market sales made by its affiliated SSCs to unaffiliated customers. Usinor requests that the Department grant a CEP offset on all CEP sales, as Usinor's CEP sales cannot be compared to home market sales at the same LOT.

In determining whether a separate LOT actually existed in the home market, we first examined if sales involved different marketing stages (or their equivalent) and selling functions along the chain of distribution by Usinor and its unaffiliated customers and the affiliated service centers to their unaffiliated customers. Normally, stages of marketing focus on whether sales are to SSCs or end-users, in some instances taking into account whether or not sales are made through intermediate parties. On this basis, it appears that Usinor's sales shipped from the mill directly, or on consignment basis to its unaffiliated customers (all customer categories), are made at the same stage of marketing as sales made by its affiliated service centers to their unaffiliated customers.

In further analyzing Usinor's LOT claims in the home market, we reviewed available information on the record about the company's selling functions performed in the home market. Usinor identified 20 different selling functions (*see* Exhibit SSA–4 of Usinor's March 13, 2002, second supplemental Section A response) associated with its sales to unaffiliated customers.

Next, we examined whether these selling functions are provided consistently to Usinor's four categories of customers in the home market, finding that all selling functions were provided to the same degree (*i.e.*, high level of activity) to all customer categories (*i.e.*, end-users, distributors, and SSCs), except for post-sale warehousing for consignment sales, visiting customers and promoting products for sales to affiliated service centers. In this case, we do not consider the difference in selling functions to be a significant difference considering that the majority of sales made in the home market were non-consignment sales and post-sale warehousing is only one selling function out of a total of twenty offered selling functions. Therefore, we preliminarily determine that only one LOT existed for Usinor in the home market.

In determining whether separate LOTs actually existed in the U.S. market, we first examined whether Usinor's sales involved different marketing stages (or their equivalent) and selling functions along the chain of distribution between Usinor and its unaffiliated customers. As noted above, generally the stages of marketing focus on whether sales are to SSCs or end-users, in some instances taking into account whether or not sales are made through intermediate parties. On this basis, it appears that Usinor's cold-rolled steel sales shipped directly from the mill to unaffiliated customers may be at a different stage of marketing than its sales made through USC. This would indicate that Usinor has two U.S. LOTs.

In determining whether the LOT in the home market is at a more removed LOT than LOT 1 that exists in the United States, as Usinor claims, we examined the selling functions performed by Usinor for CEP sales. According to Usinor, the selling functions that were provided for its CEP sales were the same as those provided in the home market, except for administrative support. We noted that the level at which the selling functions were performed by Usinor were not common to its CEP and home market sales (*e.g.*, customer sales contact, production planning and order evaluation, warranty claims, technical service, and freight and delivery services were provided to home market sales, but not to CEP sales). Consequently, we preliminarily determine that Usinor provided significantly different selling functions in the home market than those in the U.S. market for CEP sales.

With respect to its sales made at LOT 2, based on EP, in the United States, we noted insignificant differences in the level at which certain selling functions were performed (*i.e.*, product brochures, general inventory maintenance) and thus, found these selling functions to be comparable to the home market LOT, and therefore no LOT adjustment was needed.

We next examined whether a LOT adjustment was appropriate when Usinor's CEP sales are compared to the home market LOTs. The Department makes this adjustment when it is demonstrated that a difference in LOTs affects price comparability. However, where the available data do not provide an appropriate basis upon which to determine a LOT adjustment, and where the NV is established at a LOT that is at a more advanced stage of distribution than the LOT of the CEP transactions, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). In the instant case, we were unable to quantify the LOT adjustment in accordance with section 773(a)(7)(A) of the Act, as we found only one LOT in the home market. Instead, because we determined that all of Usinor's home market sales were made at levels of trade more advanced than the LOT of Usinor's U.S. sales, we granted a CEP offset and applied this to comparisons between Usinor's CEP sales and all home market sales.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Tariff Act.

Verification

As provided in section 782(i) of the Act, we intend to verify all information to be used in making our final determination.

Suspension of Liquidation

In accordance with section 733(b)(3) of the Act, the Department will disregard any weighted-average dumping margin that is zero or de minimis, *i.e.* less than 2 percent ad valorem. Based on our preliminary margin calculation, we will not direct the U.S. Customs Service to suspend liquidation of any entries of cold-rolled steel from France as described in the "Scope of Investigation" section, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Department does not require any cash deposit or posting of a bond for this preliminary determination. The weighted-average dumping margin in the preliminary determination is as follows:

Exporter/manufacturer	Weighted average margin (percentage)
Usinor Group	1.97*

* De minimis.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine, within 75 days after the date of our final determination, whether these imports are materially injuring, or threatening material injury to, the U.S. industry.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for

submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several cold-rolled steel cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of this preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11186 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–834]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Cold-Rolled Carbon Steel Flat Products From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Charles Rast at (202) 482–1324, Anya Naschak at (202) 482–6375, Shireen Pasha at (202) 482–0193, or Abdelali Elouaradia at (202) 482–1374, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (Department) regulations are to the regulations codified at 19 CFR part 351 (April 2001).

Preliminary Determination

We preliminarily determine that cold-rolled carbon steel flat products (cold-rolled steel) from Germany are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

On October 18, 2001, the Department initiated antidumping duty investigations of imports of cold-rolled steel from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela. *See Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela,* 66 FR 54198, (October 26, 2001) (Initiation). Also on October 18, 2001, based on information provided in the petition, we found "reasonable grounds to believe or suspect" that sales of the foreign like products in the markets of Belgium, France, Germany, India, Japan, Korea, the Netherlands, Thailand, and Turkey were made at prices below their respective costs of production (COP) within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department initiated country-wide cost investigations on sales of the foreign like products in these markets. Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. From October 30, 2001 through November 8, 2001, National Steel Corporation, Bethlehem Steel Corporation, LTV Steel Company, Inc., United States Steel Corporation, Nucor Corporation (collectively petitioners), and Kern Liebers USA, Inc., filed comments proposing clarifications to the scope of these investigations. Also, from November to December 2001, the Department received numerous responses from interested parties aimed at clarifying the scope of the investigations.

On November 13, 2001 the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination in this case.

The Department subsequently issued sections A through E of its antidumping questionnaire to Thyssen Krupp Stahl AG (TKS) on November 16, 2001. The Department also issued corrected pages of the model matching criteria on November 26, 2001.

On December 5, 2001, December 14, 2001, and February 8, 2002, TKS provided some information regarding certain home market downstream sales and home market sales of subject merchandise by two affiliated producers, and requested that the Department exempt it from reporting further information on these sales. On December 12, 2001 and December 27, 2001 in response to TKS' requests, and on February 15, 2002 (in the Department's supplemental sections B and C questionnaire), the Department indicated in writing that TKS should fully report these home market sales.

TKS and its affiliated companies Thyssen Krupp Stahl North America (TKSNA) and Thyssen Inc. (TINC) (collectively Thyssen) submitted their response to section A of the questionnaire on December 21, 2001. On January 14, 2002, we received responses to sections B through E of the questionnaire from Thyssen.

Petitioners filed comments on Thyssen's section A questionnaire response on January 7, 2002. They filed comments on sections B through E of the questionnaire on January 28, 2002.

The Department issued a supplemental questionnaire for section A to Thyssen on January 18, 2002. On

February 15, 2002, we issued supplemental questionnaires for sections B through E to Thyssen.

Thyssen submitted its response to the supplemental section A questionnaire on February 8, 2002. We received Thyssen's response to the supplemental sections B through E questionnaires on March 19, 2002.

Petitioners filed comments on Thyssen's supplemental section A questionnaire response on February 15, 2002, and February 22, 2002. Petitioners filed additional comments on Thyssen's questionnaire responses on March 28, 2002, April 1, 2002, April 5, 2002, and April 12, 2002.

The Department issued a second supplemental questionnaire to Thyssen for section A on February 28, 2002. Thyssen submitted its response on March 19, 2002. Thyssen filed additional comments on April 10, 2002.

On February 7, 2002, petitioners made a timely request for a fifty-day postponement of the preliminary determination pursuant to Section 733(c)(1)(A) of the Act. On February 14, 2002, we postponed the preliminary determination until no later than April 26, 2002. *See Certain Cold Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations,* 67 FR 8227 (February 22, 2002).

Period of Investigation

The period of investigation (POI) is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the filing of the petition (*i.e.*, September 28, 2001), and is in accordance with Section 351.204(b)(1) of the Department's regulations.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to Section 735(a)(2) of the Act, on April 19, 2002, Thyssen requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by sixty (60) days, and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because: (1) Our preliminary determination is affirmative, (2) Thyssen accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* published concurrently with this preliminary determination.

Facts Available (FA)

In accordance with Section 776(a) of the Act, we preliminarily determine that the use of partial "facts available" is warranted for purposes of calculating Thyssen's dumping margins. Section 776(a)(2)(A) of the Act provides that "if any interested party or any other person—(A) withholds information that has been requested by the administering authority * * *, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of Section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in Section 782(i), the administering authority * * * shall, subject to Section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

In addition, Section 776(b) of the Act provides that adverse inferences may be used in selecting the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. See also Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103–316, vol. 1, at 870 (1994) (SAA).

Where the Department determines that a response to a request for information does not comply with the request, Section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to 782(e), disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

Thyssen has refused after repeated requests (in the original questionnaire, two subsequent letters, a supplemental questionnaire, and meetings with Department personnel) by the Department to report its downstream sales by affiliated resellers in the home market, even though Thyssen's sales to its affiliates fail the arm's-length test and the data supplied by Thyssen does not demonstrate that these downstream sales will not match to U.S. sales (see Sales Analysis Memorandum dated April 26, 2002 (Sales Analysis Memo)). For downstream sales by three of Thyssen's affiliated service centers, Thyssen only provided an abbreviated sales listing limited to customer code, consignee, order number, invoice number, material number, material code, width, quantity, value, and plant. The partial downstream sales information provided by Thyssen is not sufficient for the Department's model match or margin calculation purposes. Specifically, Thyssen has failed to provide any model match characteristics for any of its reported downstream sales, other than the "width" criterion, which is eighth in importance in the model match hierarchy out of fourteen total characteristics. The information provided by Thyssen regarding these sales indicates that the resales fall within certain width ranges as defined by the Department's model matching criteria. Because Thyssen also made sales in the United States within these same width ranges, the Department is unable to determine with certainty whether a substantial portion of Thyssen's downstream sales potentially match to U.S. sales sold in those widths. Further, Thyssen has provided no selling expense information whatsoever for its reported downstream sales. Therefore, the Department is unable to

determine with certainty the potential distortive effect of these unreported downstream sales on the normal values of home market sales.

Similarly, for U.S. sales, Thyssen has reported only partial information for certain "further processed" U.S. sales made through one affiliate. Thyssen maintained that the Department should apply the special rule in Section 772(e) of the Act, thereby excusing Thyssen from reporting complete sales information for these further processed sales by a single affiliate. However, the information provided to the Department to date by Thyssen does not demonstrate that the value added in the United States is likely to "exceed substantially the value of the subject merchandise," which the Department has determined to be a value added of "at least 65 percent of the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States" (*see* 19 CFR 351.402(c)(2)). Therefore, Thyssen does not qualify for the special rule in Section 772(e) of the Act.

Accordingly, the Department requested that Thyssen report all complete sales and further manufacturing information for all further manufactured sales made through this one affiliate. Thyssen provided purchase orders, production costs, shipment records, a narrative methodology for calculating the adjustments and expenses requested by the Department in its section C questionnaire for these further manufactured sales, but these sales were not included in their revised sales database. Thyssen also supplied a cross-reference to the numerous invoices needed for the Department to calculate these expenses for margin calculation purposes. However, Thyssen did not provide information on the further manufacturing process, financial statements, or balance sheets necessary for properly analyzing the information that was provided.

Therefore, for purposes of the preliminary determination, the Department has determined that Thyssen has not provided all information necessary to this investigation. Consequently, the application of partial facts available is appropriate with respect to downstream sales by Thyssen's affiliated resellers in the home market, and to sales by one affiliated further processor in the U.S. market. Moreover, the pervasive level of deficiencies in Thyssen's questionnaire responses, as well as Thyssen's failure to provide adequate explanations for its claimed inability to provide requested information or in proffering reasonable alternative methodologies for reporting data it deemed too "burdensome" to provide indicates that Thyssen has not acted to the best of its ability in responding to the Department's questionnaires. Therefore, the Department is applying an adverse inference, pursuant to Section 776(b).

As facts available for the missing downstream sales, we have segregated the home market sales into width ranges and calculated the highest gross unit price (GRSUPRH) reported by control number (CONNUM) for sales in specific width ranges separately, where there are potential matches to Thyssen's U.S. sales. These width ranges correspond to a portion of the widths sold by Thyssen's affiliated service centers (*see* Thyssen's March 19, 2002 supplemental section B response). In addition, we have determined to apply the lowest or highest adjustments—whichever is adverse—for the CONNUMs defined above. The highest GRSUPRH and the adverse adjustments were applied to all sales within those width ranges and the revised amounts were used to calculate normal value (NV).

For sales by one of Thyssen's affiliated U.S. resellers that Thyssen failed to report as discussed above, we have identified the highest non-aberrational margin for prime sales in the U.S. market and applied the resulting margin to all sales to the one U.S. affiliated reseller as a surrogate for the unreported further processed sales.

Product Comparisons

Pursuant to Section 771(16) of the Act, all products produced by the respondent that are within the scope of the investigation, as specified in the scope section, and were sold in the comparison market during the POI, are considered to be foreign like products. We have relied on fourteen criteria, in descending order of importance, to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: whether hardened or not; whether painted with poly vinylidene floride, other paint, or not; carbon content level; quality; yield strength; thickness; thickness tolerance; width; whether mill, slit, deburred edged, or other edge; whether coiled or cut sheet; whether temper rolled or not temper rolled; whether stretch or tension leveled or not; whether annealed open coil, other annealed, or not annealed; and whether finished with bright, embossed/texturized, or matte surface. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product, based on the characteristics and characteristic subcategories indicated in the Department's November 16, 2001, questionnaire.

Fair Value Comparisons

To determine whether sales of cold-rolled steel from Germany to the United States were made at less than fair value, we compared constructed export price (CEP) to the normal value (NV), as described in the "Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with Section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average CEPs for comparison to weighted-average NVs.

Date of Sale

For its home market and U.S. sales, Thyssen reported the date of invoice as the date of sale, in keeping with the Department's stated preference for using the invoice date as the date of sale. Thyssen stated that the invoice date best reflects the date on which the material terms of sale are established and that price and/or quantity can and do change between order date and invoice date. However, petitioners have alleged that the sales documentation indicates that the order date appears to be the date when the material terms of sale are set for the majority of Thyssen's sales of cold-rolled steel. Consequently, on January 18, 2002, and February 15, 2002, the Department requested that Thyssen provide additional information concerning the nature and frequency of price and quantity changes occurring between the date of order and date of invoice. We also asked Thyssen to report order date for all home market and U.S. sales and to ensure that all sales with order or invoice dates within the POI are reported.

On March 19, 2002, Thyssen reiterated that invoice date is the appropriate date of sale and stated that it is unable to gather the data within a reasonable period of time and that Thyssen did not maintain the appropriate order date information in the normal course of business in its computer system. Thyssen did not report order date for home market sales or U.S. sales. For purposes of the preliminary determination, the Department has decided to use Thyssen's reported invoice date as the date of sale for both home market and U.S. sales. We intend to fully examine this issue at verification, and we will incorporate our findings, as appropriate, in our analysis for the final determination. If we determine that order confirmation, or another date other than invoice date, is the appropriate date of sale, we may resort

to facts available for the final determination to the extent that this information has not been reported.

Constructed Export Price

Thyssen reported as CEP transactions all sales of subject merchandise to TKSNA and TINC. TKSNA and TINC then resold the subject merchandise to affiliated and unaffiliated customers in the United States.

We calculated CEP, in accordance with subsection 772(b) of the Act, for those sales made by TKSNA and TINC to unaffiliated purchasers in the United States. We based CEP on the packed, delivered, duty paid prices to unaffiliated purchasers in the United States. We made adjustments for discounts and rebates, where applicable. We also made deductions for freight charged to the customer and other movement expenses in accordance with Section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, international freight, marine insurance, U.S. inland freight, U.S. warehousing, other U.S. transportation expenses, and U.S. duty. In accordance with Section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit and warranty expenses), inventory carrying costs, and indirect selling expenses. In accordance with Section 772(d)(2) of the Act, we deducted the cost of further manufacturing. For CEP sales, we also made an adjustment for profit in accordance with Section 772(d)(3) of the Act. As noted above, the Department has applied partial facts available for one U.S. processor that further processes material. For sales other than for the single affiliated further processor for which we applied partial facts available and adjusted the amounts reported, we made an adjustment for those sales in which material was sent to U.S. processors to be further processed based on the transaction-specific further-processing amounts reported by Thyssen. In addition, the entities TKSNA and TINC performed some further manufacturing of some of Thyssen's U.S. sales. For these sales, we deducted the cost of further processing in accordance with Section 772(d)(2) of the Act. In calculating the cost of further manufacturing for TKSNA and TINC, we relied upon the further manufacturing information provided by Thyssen.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with Section 773(a)(1)(C) of the Act. As Thyssen's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. We have also made adjustments to NV for certain discounts and adjustments. For one home market discount, a trader discount, which Thyssen states is granted only to trading company/service centers for sales through such companies, we have revised the application of this discount and applied it only to home market sales to trading companies/service centers (*see* Thyssen's March 19, 2002 supplemental B–C response. at page 58; and *see* Sales Analysis Memo). For the interest rate used in calculating U.S. credit and U.S. inventory carrying cost expenses, we have revised this rate to represent the actual short-term borrowing rate incurred by Thyssen during the POI, without making an adjustment for interest income. In addition, we have reclassified Thyssen's claimed home market sales adjustment for inland freight, mill to company border, as a cost of production (*see* Sales Analysis Memo). Therefore, except as noted above, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Affiliated-Party Transactions and Arm's-Length Test

To test whether sales to affiliated end-user customers are made at arm's length prices, we compare, on a model-specific basis, the prices of sales to affiliated customers with sales to unaffiliated customers net of all movement charges, billing adjustments, discounts, direct selling expenses, and packing. Where, for the tested models of foreign like product, prices to the affiliated party are on average 99.5 percent or more of the price to unaffiliated parties, we determine that such sales are made at arm's-length prices. *See* 19 CFR 351.403(c); *see* also *Antidumping Duties; Countervailing Duties Final Rule*, 62 FR 27355 (May 19, 1997).

If these affiliated party sales satisfied the arm's-length test, we used them in our analysis. Merchandise sold to affiliated customers in the home market made at non-arm's-length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102. Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Cost of Production Analysis

Based on our analysis of the cost allegations submitted by petitioners in the original petition, the Department found reasonable grounds to believe or suspect that German producers had made sales of cold-rolled steel in the home market at prices below the cost of producing the merchandise, in accordance with Section 773(b)(2)(A)(i) of the Act. As a result, the Department initiated an investigation to determine whether respondents made home market sales during the POI at prices below their cost of production (COP) within the meaning of Section 773(b) of the Act. We conducted the COP analysis described below.

In accordance with Section 773(b)(3) of the Act, we calculated a weighted average COP based on the sum of Thyssen's cost of materials and fabrication for the foreign like product, plus an amount for home market selling, general and administrative expenses (SG&A), including interest expenses, and packing costs.

In accordance with Sections 773(f) (2) and (3) of the Act, the major input rule, we have adjusted the reported value of slab inputs obtained from affiliated parties to reflect the higher of the affiliates cost of production, the transfer or the market price (*see* Section 351.407(b) of the Department's regulations). We have also revised the general and administrative (G&A) numerator to include the net loss on the sale of assets, wages and salaries, allocations for reserves and other miscellaneous expenses. We revised the financial expense rate calculation to include miscellaneous financial expenses, foreign exchange losses, and we have excluded other interest income and income from other securities from the numerator of the calculation. We revised Thyssen's total cost of manufacturing to include certain costs claimed as freight expense by Thyssen. Based on the Department's normal practice, we have calculated a G&A expense rate for Thyssen's U.S. further manufacturers as a percentage of the manufacturers conversion cost from their fiscal year end financial statements (see Sales Analysis Memo; and see Cost

Analysis Memorandum, dated April 26, 2002).

We used the information except as noted above from Thyssen's section D questionnaire responses to calculate COP. We compared the weighted-average COP for Thyssen to home market sales prices of the foreign like product, as required under Section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in accordance with Sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, billing adjustments, and discounts and rebates.

Pursuant to Section 773(b)(2)(C)(i) of the Act, where less than twenty percent of Thyssen's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where twenty percent or more of Thyssen's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities, in accordance with Section 773(b)(2)(C)(i) of the Act, within an extended period of time. In such cases, because we compared prices to weighed average COPs for the POI, we also determined that such sales were not made at prices that would not permit recovery of all costs within a reasonable period of time, in accordance with Section 773(b)(2)(D) of the Act. Therefore, we disregarded those below-cost sales.

Constructed Value

In accordance with Section 773(e)(1) of the Tariff Act, we calculated CV, where applicable, based on the sum of respondent's cost of materials, fabrication, SG&A, including interest expenses, and profit. In accordance with Section 773(e)(2)(A) of the Tariff Act, we based SG&A and profit on the amounts incurred and realized by Thyssen in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. We used the CV data Thyssen supplied in its section D questionnaire responses, adjusted as noted in the COP Analysis section above.

Price-to-Price Comparisons

We calculated NV for Thyssen based on prices of home market sales that passed the COP test and after applying partial facts available to GRSUPRH and sales adjustments as described above in the Facts Available section. We made adjustments for billing adjustments and discounts. We made deductions, where appropriate, for warehousing, foreign inland freight, freight adjustments, and inland insurance, pursuant to Section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in physical characteristics of the merchandise pursuant to Section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with Section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses and warranties. Finally, we deducted home market packing costs in accordance with Section 773(a)(6)(A) and (B) of the Act. For additional adjustments made to NV, please see the Normal Value section above.

Price-to-CV Comparisons

In accordance with Section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the costs of materials and fabrication employed in producing the subject merchandise, SG&A, and profit. In accordance with Section 773(a)(2)(A) of the Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Germany. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with Section 773(a)(8) of the Act. When we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses.

Level of Trade

In accordance with Section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, is that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under Section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affect price comparability, we adjust NV under Section 773(A)(7)(B) of the Act (the CEP offset provision) (*see, e.g., Certain Carbon Steel Plate from South Africa, Final Determination of Sales at Less Than Fair Value*, 62 FR 61731 (November 19, 1997).

In the home market, Thyssen made sales to distributors and end-users. The company claims three channels of distribution with respect to these sales: sales shipped from the mill to the customer (*e.g.*, sales to automotive, other end-users, service centers); sales shipped from the mill to the warehouse for just in time delivery (*e.g.*, sales to automotive customers only); sales made via e-commerce (*e.g.*, sales to other end-users, sales to service centers). Thyssen claims four LOTs in the home market: (1) Sales to Thyssen's affiliated trading company/service centers (*i.e.*, the producing mills sell to service centers, which resell the merchandise in original form or following further processing); (2) sales to automotive customers (*i.e.*, sales sold directly to automotive customers held in consignment warehouses until firm release); (3) sales to other end-user customers (*i.e.*, sales shipped directly from the mill); (4) sales from affiliated service centers to their customers (*i.e.*, sales of Thyssen merchandise through its affiliated service centers to unaffiliated customers).

In the U.S. market, Thyssen reported sales made to its affiliated companies TKSNA and TINC, claiming three channels of distribution for these sales: (1) Sales from warehouse stock (*i.e.*, sales shipped from inventory maintained in a district warehouse to unaffiliated U.S. distributor and end-user customers); (2) further manufactured sales from warehouse stock; and (3) produced to order sales from warehouse stock. Thyssen claims one LOT in the U.S.: CEP sales by TINC

and TKSNA to U.S. customers. Thyssen claims that CEP sales were made at a LOT more removed than the LOT of all home market sales. Thyssen requests that the Department grant a CEP offset on all CEP sales, as Thyssen's CEP sales cannot be compared to home market sales at the same LOT.

In determining whether separate LOT actually existed in the home market, we first examined if Thyssen's sales involved different marketing stages (or their equivalent) and selling functions along the chain of distribution between Thyssen and its unaffiliated customers. Normally, stages of marketing focus on whether sales are to service centers or end-users, in some instances taking into account whether or not sales are made through intermediate parties. On this basis, it appears that Thyssen's sales shipped from the mill to automotive and other end-users as well as sales shipped from the mill to the warehouse for just-in-time delivery (to automotive customers) may be at a different stage of marketing than its sales shipped from the mill to affiliated customers for resale because the latter sales are made to an affiliated intermediary before being sold to the end consumer of the product. Sales made via e-commerce would also not be considered a different stage of marketing, as these sales are made to both end users and intermediary companies (both affiliated and unaffiliated). This would indicate that Thyssen has, at most, two home market LOTs.

In further analyzing Thyssen's LOT claims in the home market, we reviewed available information on the record about the company's selling functions performed in the home market. Thyssen identified 27 different selling functions (see Exhibit A–67 of Thyssen's December 21, 2002, section A response) associated with its sales to affiliated and unaffiliated customers. We closely examined these functions and concluded that further processing does not appear to be a selling function relevant to the Department's LOT analysis. We also decided to combine several other functions because we found that they were not sufficiently different to warrant being treated as unique selling functions. Thus, we consolidated accounts receivable maintenance, order input, order processing, and payment processing and order evaluation and sale servicing into two single categories. As a result of our analysis, we concluded that Thyssen performed 22 separate selling functions in its home market, rather than 27.

Next, we examined whether these selling functions are provided consistently to Thyssen's categories of customers in the home market, finding that the following two functions were provided to all customer categories: freight and delivery arrangements and warranty. Of the remaining 20 selling functions, we noted the following differences: small quantity deliveries were only provided for service center resales; just in time warehousing was only provided for automotive sales; technical advice, post sale technical assistance, customer contacts, customer entertainment, trade association participation, trade fairs, advertising, customer symposiums, sales solicitation new customers, research and development, unpaid invoice follow-up, and inventory maintenance are provided on a limited basis to trading companies and service centers; new product development through early vendor involvement, performance testing, strategic planning, and government regulation advice are not provided to trading companies and service centers. Thyssen indicates that sales to automotive customers are provided more intensive technical assistance and just-in-time warehousing services than are provided to any other of its customer categories. However, based on the information on the record, it does not appear that the services provided to automotive customers differ significantly from the services provided to Thyssen's affiliated service center resale customers.

In conclusion, while Thyssen claimed differences in selling functions in connection with each level of trade, we find that the actual differences in selling functions between affiliated service center resales, automotive, and other end-user channels are relatively minor. Thus, we conclude, based on the information provided by Thyssen in its questionnaire responses, that Thyssen did not adequately support these claims. Therefore, we preliminarily determine that only two LOTs existed for Thyssen in the home market.

In determining whether the single LOT in the U.S. market is at a less remote level of trade than the LOTs that exist in the home market, as Thyssen claims, we examined the selling functions performed by Thyssen for CEP sales. According to Thyssen, the following selling functions were provided for its CEP sales: limited performance testing, strategic planning, research and development, technical advice, customer contacts and customer entertainment, warranty and freight and delivery arrangements. We also noted that there were some selling functions performed by Thyssen that were provided to home market customers but not to its CEP sales (*e.g.*, just-in-time warehousing, new product development, post-sale technical assistance, sales solicitation new customers, trade association participation, trade fairs, advertising, customer symposiums, inventory maintenance, unpaid invoice follow-up, and government regulation advice). Consequently, we preliminarily determine that Thyssen provided significantly different selling functions in the home market than those in the U.S. market for CEP sales.

We next examined whether a LOT adjustment was appropriate when Thyssen's CEP sales are compared to the home market levels of trade. The Department makes this adjustment when it is demonstrated that a difference in LOTs affects price comparability. However, where the available data do not provide an appropriate basis upon which to determine a LOT adjustment, and where the NV is established at a LOT that is at a more advanced stage of distribution than the LOT of the CEP transactions, we adjust NV under Section 773(a)(7)(B) of the Act (the CEP offset provision). In the instant case, we were unable to quantify the LOT adjustment in accordance with Section 773(a)(7)(A) of the Act, as we found that none of the LOTs in the home market matched the LOT of the CEP transactions. Because of this, we were unable to calculate a LOT adjustment. Instead, because we determined that all of Thyssen's home market sales were made at levels of trade more advanced than the LOT of Thyssen's U.S. sales, we granted a CEP offset and applied this to comparisons between Thyssen's CEP sales and all home market sales.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with Section 773A(a) of the Tariff Act.

Verification

As provided in Section 782(i) of the Act, we intend to verify all information to be used in making our final determination.

All Others

Pursuant to Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act, the estimated all-others rate is equal to the estimated weighted-average dumping margin established for Thyssen, the only exporter/producer investigated.

Suspension of Liquidation

In accordance with Section 733(d)(2) of the Act, the Department will direct the U.S. Customs Service to suspend liquidation of all entries of cold-rolled steel producers from Germany, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** We will instruct the U.S. Customs Service to require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin indicated in the chart below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins in the preliminary determination are as follows:

Exporter/manufacturer	Weighted average margin (percentage)
Thyssen	14.52
All Others	14.52

ITC Notification

In accordance with Section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine, before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, whether these imports are materially injuring, or threatening material injury to, the U.S. industry.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several cold-rolled steel cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties, who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the date of the publication of this preliminary determination.

This determination is issued and published in accordance with Sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11187 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–826]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Paige Rivas at (202) 482–0651 or Mark Manning at (202) 482–5253, AD/CVD Enforcement Office IV, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2001).

Preliminary Determination

We preliminarily determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from India are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on October 18, 2001.[1] *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred.

On October 31, 2001, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes, and we received comments on our proposed matching criteria on November 8, 2001. On November 8, 2001, we received model match comments from petitioners and respondents. On November 26, 3001, we informed respondents of our revised model match criteria.

On November 13, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela of cold-rolled steel products. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 57985 (November 19, 2001).

Based on our analysis of an allegation contained in the petition, we found at the initiation of this investigation that there were reasonable grounds to believe or suspect that the respondent's sales of the subject merchandise in its

[1] The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation (collectively, the petitioners).

comparison market were made at prices below its cost of production (COP). Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation. *See Initiation Notice.*

On November 20, 2001, the Department issued a complete antidumping questionnaire to Ispat Industries, Ltd. (Ispat).[2] *See Memorandum to Holly A. Kuga, Selection of Respondents for the Antidumping Investigation of Certain Cold-Rolled Carbon Steel Flat Products from India (Respondent Selection Memo)* (November 20, 2001).

On February 7, 2002, the petitioners requested a postponement of the preliminary determination in this investigation. On February 22, 2002, the Department published a **Federal Register** notice postponing the deadline for the preliminary determination until April 26, 2002. *See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (A–357–816), Australia (A–602–804), Belgium (A–423–811), Brazil (A–351–834), the People's Republic of China (A–570–872), France (A–427–822), Germany (A–428–834), India (A–533–826), Japan (A–588–859), Korea (A–580–848), the Netherlands (A–421–810), New Zealand (A–614–803), Russia (A–821–815), South Africa (A–791–814), Spain (A–469–812), Sweden (A–401–807), Taiwan (A–583–839), Thailand (A–549–819), Turkey (A–489–810) and Venezuela (A–307–822),* 67 FR 36 (February 22, 2002).

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. Using company-specific export data for the period of investigation (POI), which we obtained from a variety of sources under the Harmonized Tariff Schedules of the United States (HTSUS) number that corresponds to the subject merchandise, we found that nine producers/exporters may have exported cold-rolled steel to the United States during the POI. According to data on the record, Ispat represented over half of the imports during the POI. Due to limited resources, we determined that we could only investigate this one largest producer/exporter. *See Respondent Selection Memo.* Therefore, we designated Ispat as the mandatory respondent and sent it the antidumping questionnaire.

Critical Circumstances

In a letter dated December 7, 2001, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of cold-rolled steel from India. On April 10, 2002, the Department preliminarily determined that critical circumstances exist with respect to imports of cold-rolled steel from India. *See Memorandum From Bernard Carreau to Faryar Shirzad Re: Preliminary Affirmative Determinations of Critical Circumstances; see also Notice of Preliminary Determination of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products From Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation,* 67 FR 19157 (April 18, 2002) (*Critical Circumstances Notice*).

Period of Investigation

The POI is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2001).

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, please see the Scope Appendix attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* published concurrently with this preliminary determination.

Facts Available (FA)

1. Application of FA

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On November 20, 2001, the Department issued an antidumping questionnaire to Ispat. Section A was due on December 10, 2001, and Sections B-D were due on December 26, 2001. On November 28, 2001, and December 11, 2001, Ispat notified the Department that it did not intend to respond to the Department's questionnaire. Ispat asserted that its sales to the United States were insignificant and asked the Department to exclude it from the investigation. In letters dated December 6, 2001, and January 10, 2002, Ispat was informed that the Department continued to consider Ispat a mandatory respondent in this investigation. As stated in the *Respondent Selection Memo*, the Department found that Ispat was the largest exporter of subject merchandise during the POI and, therefore, designated Ispat as a mandatory respondent. *See Respondent Selection Memo.* In addition, the Department informed Ispat that it would attempt to accommodate any difficulties that Ispat had in answering the questionnaire, and would consider any suggestions Ispat provided as to alternative methods for submitting the requested information. The Department also advised Ispat that failure to submit the requested information by the date specified might result in use of the FA under section 776 of the Act and section 351.308 of the Department's regulations.

Although we requested that Ispat suggest alternative methods for submitting the requested information, it did not submit a response to that

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

request. Furthermore, Ispat did not respond to the sections A, B, C, and D by the respective due dates, nor did the company request that the Department grant any extension of the deadlines to respond. Rather, Ispat did not respond to the Department's requests for information at all.

As described above, Ispat failed to provide a response to the Department's questionnaire despite the Department's willingness to consider alternative methods for submitting the information. Because Ispat failed to provide any of the necessary information requested by the Department, pursuant to section 776(a)(2)(B) of the Act, we have applied the FA to calculate the dumping margin.

2. Selection of Adverse FA (AFA)

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997). Ispat was notified in the Department's questionnaire and in additional letters that failure to submit the requested information by the date specified might result in use of the FA. Moreover, Ispat failed to offer any alternative methods for submitting the requested information. As a general matter, it is reasonable for the Department to assume that Ispat possessed the records necessary for this investigation and that by not supplying the information the Department requested, Ispat failed to cooperate to the best of its ability. As Ispat failed to cooperate to the best of its ability, we are applying an adverse inference pursuant to section 776(b) of the Act. As AFA, we have used 153.65 percent, the rate derived from the petition. *See Initiation Notice.*

3. Corroboration of Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (see SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see* SAA at 870).

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculations in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*see India Initiation Checklist* on file in the Central Records Unit (*Initiation Checklist*), Room B–099, of the Main Commerce Department building, for a discussion of the margin calculation in the petition). In addition, in order to determine the probative value of the margin in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculation in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and CV calculations on which the margin in the petition was based.

The Department was provided with no useful information by the respondents or other interested parties and is aware of no other independent sources of information that would enable us to further corroborate the margin calculations in the petition. It is worth noting that the implementing regulation for section 776 of the Act states, "(t)he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using secondary information in question." *See* 19 CFR 351.308(c). Additionally, the SAA at 870 specifically states that where "corroboration may not be practicable in a given circumstance," the Department need not prove that the facts available are the best alternative information." Therefore, based on our efforts, described above, to corroborate information contained in the petition, and in accordance with 776(c) of the Act, we consider the margins in the petitions to be corroborated to the extent practicable for purposes of this preliminary determination.

Export Price

With respect to the margin in the petition, EP was based on an offer for sale of two types of Indian cold-rolled steel in the United States. The petitioners calculated a net EP by deducting port charges, freight charges, shipping charges, customs duties, and trading company mark-up. Our review of the EP calculations indicated that the information in the petition has probative value, as the information included in the margin calculations in the petition is from actual source documents and is concurrent, for the most part, with the POI.

Normal Value

The petitioners calculated normal value (NV) from price information obtained from foreign market research for grades and sizes of cold-rolled steel comparable to the products exported to the United States which serve as the basis for EP. The petitioners made no adjustment to NV. The grade and size of this merchandise was comparable to the merchandise offered for sale that was used as the basis of EP. In addition, the home market price quote was contemporaneous with the U.S. offer for sale obtained by the petitioners.

With respect to NV, the petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below COP within the meaning of section 773(b) of the Act. COP consists of the cost of manufacturing (COM), selling, general, and administrative (SG&A) expenses, and packing. To calculate the foreign producers' COP, the petitioners used publicly available data obtained from Ispat's March 31, 2001, financial statements for the cost of the raw material input, hot-rolled coil, and SG&A expenses. The petitioners' used their own information, adjusted for known differences between costs in the United States and India, for the cost of transforming the hot-rolled coil into subject merchandise. Because Ispat does not separately report depreciation attributable to the company's cold-rolling operations in its financial statements, the petitioners excluded Ispat's depreciation relative to cold-rolling from the calculation of COP.

Because the Indian price of cold-rolled carbon steel flat products is below the COP, the petitioners also based NV on CV, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act. The petitioners calculated CV using the same COM and SG&A expenses used to compute home market COP, and included an amount for profit. Because Ispat reported a net loss for the year, the petitioners based the amount for profit on the 2001 financial statements of a company in the same general industry, Tata Iron and Steel Company, Ltd. (TISCO). For initiation purposes, we conservatively recalculated CV by including Ispat's zero profit. This allowed the Department to obtain SG&A expenses, financial expenses, and profit from the same source financial statements. However, we also stated that if we need to rely on the use of facts otherwise available in the future, we would then pursue alternative methods for computing the profit rate. *See Initiation Checklist* at 7.

For purposes of this preliminary determination, pursuant to section 773(e)(2)(B)(iii) of the Act, we calculated CV by including a positive amount for profit. Because the only information on the record concerning the profit of a company other than Ispat in the same general industry is from the petition, we included the same amount for profit as done by the petitioners. The estimate dumping rate using TISCO's profit is 153.65 percent, which is also the petition rate.

With respect to the CV data, we were able to corroborate the reasonableness of these data by examining the financial statements used to calculate COP and the petitioners' own information about the cost of transforming the hot-rolled coil into subject merchandise. With respect to the petitioners' own information regarding the cost of transforming the hot-rolled coil into subject merchandise, we corroborated the information by tracing the surrogate factors and values to the affidavit provided by the U.S. surrogate. Where applicable, we corroborated the petitioners' own information adjusted for known differences with publicly available data. With regard to the CV contained in the petition, the Department was provided no useful information by the respondent or other interested parties and is aware of no other independent sources of information that would enable us to further corroborate the margin calculations in the petition.

Accordingly, in selecting AFA with respect to Ispat, the Department applied the petition rate of 153.65 percent.

All Others

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis,* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all others" rate for exporters and producers not individually investigated. This provision contemplates that we weight-average margins other than zero, *de minimis,* and FA margins to establish the "all others" rate. Where the data do not permit weight-averaging such rates, the SAA, at 873, provides that we may use other reasonable methods. Because the petition contained only an estimated price-to-CV dumping margin, there are no additional estimated margins available with which to create the "all others" rate. In this case, we have determined that the only reasonable method is to use the single margin alleged in the petition, which was also the source of our facts available margin for Ispat. Therefore, we applied the petition margin of 153.65 percent as the "all others" rate. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Indonesia,* 66 FR 22163 (May 3, 2001).

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for India when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 75 days after the publication of this notice in the **Federal Register**.

Suspension of Liquidation

Because of our preliminary affirmative critical circumstances finding in this case, and in accordance with section 733(e) of the Act, we are directing U.S. Customs to suspend liquidation of all entries of cold-rolled steel from India that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**. We are also instructing U.S. Customs to require a cash deposit or the posting of a bond equal to the dumping margin, as indicated in the chart below.

These instructions suspending liquidation will remain in effect until further notice.

Manufacturer/exporter	Margin (percent)
Ispat Industries, Ltd. (Ispat)	153.65
All Others	153.65

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in this investigation in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

For the investigation of cold-rolled steel from India, case briefs must be submitted no later than 50 days after the publication of this notice in the **Federal Register**. Rebuttal briefs must be filed within five calender days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette. Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral

presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination in the investigation of cold-rolled steel from India no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11188 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–859]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon at (202) 482–0162, Mark Hoadley at (202) 482–0666, or Julio Fernandez at (202) 482–0190, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2001).

Preliminary Determination

We preliminarily determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from Japan are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on October 18, 2001.[1] *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001) (*Initiation Notice*). Since the initiation of the investigation, the following events occurred.

On November 13, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of imports from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela of cold-rolled steel products. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 57985 (November 19, 2001).

Based on our analysis of an allegation contained in the petition, we found at the initiation of this investigation that there were reasonable grounds to believe or suspect that the respondent's sales of the subject merchandise in its comparison market were made at prices below its cost of production (COP). Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation. *See Initiation Notice*.

On November 20, 2001, the Department issued Section A antidumping questionnaires to four producers/exporters of subject merchandise, Sumitomo Metal Industries, Ltd. (Sumitomo), NKK Corporation (NKK), Nippon Steel Corporation (Nippon), and Kawasaki Steel Corporation (Kawasaki), requesting that they respond to part 1 of Section A, *i.e.*, the total quantity and value of sales of subject merchandise to the United States, the home market, and to third countries, within 10 days (November 30, 2001). We requested that they complete the remainder of Section A by December 11, 2001.[2] Additionally, the Department issued a request to the Embassy of Japan for information regarding the quantity and value of sales of subject merchandise to the United States for all known producers/exporters. The Department received responses to part 1 of the Section A questionnaire from NKK and Kawasaki on November 30, 2001, but not from Sumitomo or Nippon. On November 30, 2001, Nippon requested, and the Department granted, an extension of the deadline for submitting its response to part 1 of Section A of the Department's questionnaire until December 5, 2001. On December 4, 2001, Sumitomo and Nippon each informed the Department by telephone that they would not be responding to any part of the Department's questionnaire. *See Memorandum to the File from Mark Hoadley through Sally Gannon, Regarding Certain Cold-Rolled Carbon Steel Flat Products from Japan* (December 5, 2001). On December 7, 2001, the Department received quantity and value information from the Embassy of Japan for the four producers/exporters named above and for two additional companies: Nisshin Steel Co., Ltd. and Kobe Steel, Ltd. Also on December 7, 2001, the Department received a request from Kawasaki that the deadline for its submission of the remainder of Section A be extended to December 18, 2001. We granted the extension.

On December 17, 2001, based on the information received on the record, the Department selected Kawasaki and Nippon as mandatory respondents in this investigation and requested that they complete Sections B through E of the antidumping questionnaire. Refer to *Selection of Respondents* section below. We set a deadline of January 21, 2001, for Sections B through E.

On December 18, 2001, the Department received a Section A response from Kawasaki. On January 4, 2001, the Department issued a supplemental questionnaire to

[1] The petitioners in this investigation are Bethlehem Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation (collectively, the petitioners).

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

Kawasaki, pertaining to its December 18 response. We set a deadline of January 18, 2002 to respond to this supplemental questionnaire. The Department never received a response to Sections A through E or requests for extensions from Nippon, and never received a response to the supplemental questionnaire, Sections B through E, or requests for extensions from Kawasaki. On January 18, 2002, Kawasaki submitted a letter informing the Department that it would not be responding further to the Department's questionnaire.

On February 7, 2002, the petitioners requested a postponement of the preliminary determination in this investigation. On February 22, 2002, the Department published a **Federal Register** notice postponing the preliminary determination until April 26, 2002. *See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (A–357–816), Australia (A–602–804), Belgium (A–423–811), Brazil (A–351–834), the People's Republic of China (A–570–872), France (A–427–822), Germany (A–428–834), India (A–533–826), Japan (A–588–859), Korea (A–580–848), the Netherlands (A–421–810), New Zealand (A–614–803), Russia (A–821–815), South Africa (A–791–814), Spain (A–469–812), Sweden (A–401–807), Taiwan (A–583–839), Thailand (A–549–819), Turkey (A–489–810) and Venezuela (A–307–822),* 67 FR 8227 (February 22, 2002).

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can be reasonably examined. Using company-specific export data for the POI provided by the Embassy of Japan in its December 7, 2001 submission, we found that six producers/exporters exported cold-rolled steel to the United States during the POI. According to the data provided by the Embassy, Kawasaki and Nippon combined represented over 60 percent of the imports during the POI. Due to limited resources, we determined that we could only investigate these two largest producers/exporters. Therefore, we designated Kawasaki and Nippon as the mandatory respondents. *See Memorandum to Barbara Tillman from the Team, Regarding Antidumping Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from Japan; Selection of Mandatory Respondents* (December 17, 2001) (*Respondent Selection Memo*).

Period of Investigation

The period of investigation (POI) is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2001).

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Facts Available (FA)

1. Application of FA

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On November 20, 2001, the Department issued Section A of the antidumping questionnaires to Kawasaki and Nippon. The Section A response was due on December 11, 2001. We issued Sections B–E on December 17, 2001, to both companies with a due date of January 21, 2002, and a supplemental to Kawasaki on its Section A response on January 4, 2002, with a due date of January 18, 2002. Furthermore, we granted an extension until December 18, 2001, to Kawasaki to submit its Section A response, the only extension request we received from either of these two parties. Nevertheless, Kawasaki responded only to Section A of our antidumping questionnaire, and Nippon failed to respond to any part of the questionnaire. As stated in the *Respondent Selection Memo*, the Department found that Kawasaki and Nippon were the largest producers/exporters of subject merchandise during the POI and, therefore, designated them as mandatory respondents. *See Respondent Selection Memo.* In addition, the Department informed both companies that it would attempt to accommodate any difficulties that they had in answering the questionnaire. The Department also informed both companies that failure to submit the requested information by the date specified might result in use of FA.

Although we informed both companies that we would attempt to accommodate any difficulties that they had in answering the questionnaire, only Kawasaki submitted an extension request, and only for the original Section A response. Neither party made any additional contact with the Department to request an extension, or to suggest any alternative methods of providing the requested information that would accommodate any difficulties they might have experienced, or expected to experience, in responding to the questionnaires.

As described above, Kawasaki and Nippon failed to provide full responses to the Department's questionnaire despite the Department's willingness to accommodate their difficulties. Because they failed to provide the necessary information requested by the Department, pursuant to section 776(a)(2)(B) of the Act, we have applied the FA to determine their dumping margins.

2. Selection of Adverse FA (AFA)

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and*

Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 62 FR 53808, 53819–20 (October 16, 1997). Kawasaki and Nippon were notified twice in the Department's questionnaires that failure to submit the requested information by the date specified might result in use of FA. As described above, Kawasaki and Nippon failed to contact the Department to express any difficulties they might have been experiencing or to suggest how we might accommodate them in overcoming these difficulties, with the exception of Kawasaki's single extension request, which we granted. As a general matter, it is reasonable for the Department to assume that Kawasaki and Nippon possessed the records necessary for this investigation, and that by not supplying the information the Department requested, they failed to cooperate to the best of their ability. As both companies failed to cooperate to the best of their ability, we are applying an adverse inference pursuant to section 776(b) of the Act. As AFA, we have used 115.22 percent, the highest rate derived from the petition. *See Initiation Notice.*

3. Corroboration of AFA Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (see SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (see SAA at 870).

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculations in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*see Japan Initiation Checklist* on file in the Central Records Unit (*Initiation Checklist*), Room B–099, of the Main Commerce Department building, for a discussion of the margin calculation in the petition). In addition, in order to determine the probative value of the margin in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculation in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margins in the petition were based.

a. *Export Price*

With respect to the margins in the petition, EP was based on a sales offer obtained by petitioners and documented in the petition. We compared price quotes for two different products contained in the offer with contemporaneous, average per-unit customs import values (AUV) for the two ten-digit HTSUS categories matching the two products. We noted that the U.S. price quotes were well within the range of the AUVs reported by U.S. Customs. The petition also contained public U.S. Customs data supporting the conclusion that these two products accounted for a substantial share (over 40 percent) of the products sold by Japan in the United States during the POI and, thus, are representative of Japanese imports as a whole. The petition also contains current, supporting documentation for adjustments made to EP, including U.S. customs data used to calculate the cost of international freight and the amount of customs duties.

b. *Normal Value (NV)*

The petitioners calculated NV from price information obtained from foreign market research for cold-rolled steel comparable to the products used as the basis for EP. The petitioners made no adjustment to NV.

With respect to NV, the petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below the cost of production (COP) within the meaning of section 773(b) of the Act. COP consists of the cost of manufacturing (COM), selling, general, and administrative (SG&A) expenses, and packing. The petitioners calculated COM based on their own production experience, adjusted, using publicly available data, for known differences between costs incurred to produce cold-rolled carbon steel flat products in the United States and Japan. To calculate SG&A, the petitioners relied upon amounts reported in a Japanese company's unconsolidated 2001 financial statements. For interest expense, the petitioners used the Japanese company's consolidated 2001 financial statements. Because the Japanese home market price in the petition of cold-rolled steel products was below the COP, the petitioners also based NV on constructed value (CV), pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act. The petitioners calculated CV using the same COM and SG&A expenses used to compute home market COP, and included an amount for profit. For profit, the petitioners relied upon amounts reported in the Japanese steel producer's unconsolidated 2001 financial statements. *See Initiation Checklist.*

With respect to the CV data, we were able to corroborate the reasonableness of these data by examining the financial statements used to calculate COP and the petitioners' own information about the cost of transforming the hot-rolled coil into subject merchandise. With respect to the petitioners' own information regarding the cost of transforming the hot-rolled coil into subject merchandise, we corroborated the information by tracing the surrogate factors and values to the affidavit provided by the U.S. surrogate. Where applicable, we corroborated the petitioners' own information adjusted for known differences with publicly available data. With regard to the CV contained in the petition, the Department was provided no useful information by the respondents or other interested parties and is aware of no other independent sources of information that would enable us to further corroborate the margin calculations in the petition.

Accordingly, in selecting AFA with respect to Kawasaki and Nippon, the Department decided to apply the CV margin rate of 115.22 percent, which is the highest estimated dumping margin calculated by the petitioners in the petition of this investigation. *See Initiation Notice.*

All Others

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are

zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all others" rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign, as the "all others" rate, the simple average of the margins in the petition. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Canada (Plate from Canada)*, 64 FR 15457 (March 31, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Italy (Plate from Italy)*, 64 FR 15458, 15459 (March 21, 1999). For purposes of this preliminary determination, we are basing the "all others" rate on the simple average of margins in the petition, which is 112.56 percent.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service (Customs) to suspend liquidation of all entries of cold-rolled steel from Japan that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing Customs to require a cash deposit or the posting of a bond equal to the dumping margin, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

Manufacturer/exporter	Margin (percent)
Kawasaki Steel Corporation	115.22
Nippon Steel Corporation	115.22
All Others	112.56

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in these investigations in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Unless otherwise directed by the Department, case briefs must be submitted no later than 50 days after the publication of this notice in the **Federal Register**. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette. Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination in the investigation of cold-rolled steel from Japan no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11189 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–848]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value.

SUMMARY: We preliminarily determine that certain cold-rolled carbon steel flat products ("cold-rolled steel") from Korea are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Ledgerwood or Mark Young, AD/CVD Enforcement Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3836 or (202) 482–6397, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department's") regulations are to 19 CFR part 351 (April 2001).

Case History

On October 18, 2001, the Department initiated antidumping duty investigations on cold-rolled steel (*See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001)) (*Initiation Notice*).

On October 18, 2001, based on information provided in the petition, we found "reasonable grounds to believe or suspect" that sales of the foreign like products in Korea were made at prices below the cost of production ("COP") within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department initiated a country-wide cost investigation on sales of the foreign like products in this market. Since the initiation of this investigation the following events have occurred.

On October 31, 2001, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes, and we received comments on our proposed matching criteria on November 8, 2001 from the petitioners and respondents. On November 26, 2001, we informed respondents of our revised model match criteria.

On November 13, 2001, the United States International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela of cold-rolled steel products. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela,* 66 FR 57985 (November 19, 2001).

On November 16, 2001, the Department issued an antidumping questionnaire to Pohang Iron & Steel CO. Ltd. ("POSCO") and Dongbu Steel Co., Ltd., ("Dongbu").[1] The petitioners made an allegation of sales below COP in the petition. Based on the factual information contained in the petition, we found "reasonable grounds to believe or suspect" that sales below cost occurred. *See Initiation Notice* 66 FR at 54212–13. Accordingly, the Department initiated the requested country-wide cost investigation.

On November 29, 2001, we made a final determination and consequently selected POSCO and Dongbu, the largest two producers/exporters of cold-rolled steel from Korea, as the mandatory respondents in this proceeding. For further discussion, see the memorandum to Melissa Skinner, Director, Office 6, from Mark Young: *Selection of Respondents,* dated November 29, 2001 ("*Selection of Respondents Memo*").

On December 7, 2001, and January 14, 2002, Nucor Corporation, Steel Dynamics, Inc., WCI Steel, Inc., and Weirton Steel Company[2] made submissions requesting that the Department make an expedited finding that critical circumstances exist with respect to imports from Korea. *See* Critical Circumstances section below for further discussion.

During the period December 2001 through April 2002, the Department received responses from POSCO and Dongbu regarding the Department's original and supplemental questionnaires.

On February 5, 2002, the respondents submitted comments regarding petitioners' December 7, 2001 and January 14, 2002 letters alleging that critical circumstances exist with respect to imports of subject merchandise from Korea. Respondents' comments regarding POSCO were inadvertently omitted from the Departments' preliminary determination of critical circumstances (*see Critical Circumstances* section, *infra*). Accordingly, we addressed respondents' comments through a memo to the file. *See Memorandum to File, from Mark Manning: Respondents' Arguments Concerning the Preliminary Determination of Affirmative Critical Circumstances,* dated April 26, 2002. Moreover, on April 12, 2002 the petitioners' submitted a letter with additional comments in support of their request for an expedited finding that critical circumstances exist. However, the petitioners' letter arrived after our preliminary critical circumstance finding had been signed, therefore we will address petitioners' comments in our final determination.

On February 7, 2002, pursuant to 19 CFR 351.205(e), Bethlehem Steel Corporation, National Steel Corp., and United States Steel Corporation made a timely request to postpone the preliminary determination. We granted this request on February 22, 2002, and postponed the preliminary determination until no later than April 26, 2001. (*See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (A–357–816), Australia (A–602–804), Belgium (A–423–811), Brazil (A–351–834), the People's Republic of China (A–570–872), France (A–427–822), Germany (A–428–834), India (A–533–826), Japan (A–588–859), Korea (A–580–848), the Netherlands (A–421–810), New Zealand (A–614–803), Russia (A–821–815), South Africa (A–791–814), Spain (A–469–812), Sweden (A–401–807), Taiwan (A–583–839), Thailand (A–549–819), Turkey (A–489–810) and Venezuela (A–307–822),* 67 FR 8227 (February 22, 2002).)

On April 3, 16, and 18, 2002, petitioners submitted comments regarding POSCO's U.S. selling practices through a Korean trading company and both companies' U.S. affiliates (*i.e.,* "U.S. Channel 3" sales). On April 11, 2002, POSCO submitted comments in rebuttal to petitioners' April 3, 2002 comments. *See* "POSCO's U.S. Channel 3 Sales" in the Export Price section below for further discussion.

On April 9, 2002, petitioners submitted comments on POSCO and its affiliates. On April 12 and 15, 2002, petitioners submitted comments on Dongbu and its affiliates.

On April 15, 2002, respondents submitted rebuttal comments to the petitioners' April 9, 2002 submission regarding POSCO. On April 18, 2002, respondents submitted rebuttal comments to the petitioners' April 12 and 15, 2002 submission regarding Dongbu.

On April 17, 2002, respondents submitted comments on the Department's preliminary determination of critical circumstances (*see Critical Circumstances* section, *infra*).

On April 18, 2002, petitioners submitted comments on POSCO's April 11, 2002 rebuttal comments.

Critical Circumstances

On April 10, 2002, the Department preliminarily determined that critical circumstances exist with respect to all imports of cold-rolled steel from Korea except for those from Dongbu, (*i.e.,* POSCO and all others). *See Memorandum From Bernard Carreau to*

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests the cost of production and constructed value for the subject merchandise that the company sold and/or produced during the POI. The costs reported in a section D response are reported on a product specific basis (*i.e.,* CONNUM specific basis).

[2] The complete list of petitioners in this investigation are: Bethlehem Steel Corporation, LTV Steel Company Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation, (collectively "the petitioners").

Faryar Shirzad Re: Preliminary Affirmative Determinations of Critical Circumstances; see also Notice of Preliminary Determination of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products From Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation, 67 FR 19157 (April 18, 2002) (*Critical Circumstances Notice*).

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonable be examined. Using company-specific export data for the period of investigation ("POI"), which we obtained from a variety of sources under the Harmonized Tariff Schedules of the United States number that corresponds to the subject merchandise, we found that thirty producers/exporters from Korea may have exported cold-rolled steel to the Untied States during the POI. According to the data on the record, POSCO and Dongbu represented more than 80 percent of the imports during the POI. Due to limited resources, we determined that we could only investigate the two largest producers/exporters. See, *Selection of Respondents Memo*. Therefore, we designated POSCO and Dongbu as the mandatory respondents and sent both companies the Department's antidumping questionnaire.

Period of Investigation

The POI is July 1, 2000, through June 30, 2001.

Fair Value Comparisons

To determine whether sales of cold-rolled steel from Korea to the United States were made at LTFV, we compared the export price ("EP") or constructed export price ("CEP") to the normal value ("NV"), as described in the "Export Price," "Constructed Export Price," and "Normal Value" sections of this notice below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs and CEPs to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in the home market during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: hardening and tempering, paint, carbon level, quality, yield strength, minimum thickness, thickness tolerance, width, edge finish, form, temper rolling, leveling, annealing, surface finish, specification, and grade or type.

Export Price

We calculated EP for POSCO and Dongbu, in accordance with section 772(a) of the Act, for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States, or to an unaffiliated purchaser for exportation to the United States, based on the facts of record. We based EP on the packed delivered price to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for price-billing errors and freight revenue. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, ocean freight, marine insurance, U.S. brokerage and handling (including bank and wharfage charges for POSCO), and U.S. customs duties (including harbor maintenance fees and merchandise processing fees).

POSCO's "U.S. Channel 3" EP Sales

On April 3, 16, and 18, 2002, petitioners submitted comments regarding POSCO's U.S. selling practices through a Korean trading company and both companies' U.S. affiliates, expressing concern that POSCO may have dumped subject merchandise through a particular channel by way of a middleman or other questionable means (*i.e.*, "U.S. Channel 3" sales). On April 11, 2002, POSCO submitted comments in rebuttal to petitioners' April 3, 2002 comments.

The petitioners state that the Department needs to collect additional data to evaluate POSCO's "U.S. Channel 3" transactions in greater detail. Moreover, petitioners claim the data and analysis POSCO submitted in its April 11, 2002 submission indicate that POSCO has the ability to provide the Department with the information and data it needs to adequately address the issues raised about these sales. On April 17, 2002, the Department issued a supplemental questionnaire to POSCO which specifically addresses the Department's concerns about these sales. POSCO's reply to this request for information was not available in time for purposes of making our preliminary determination, but we will continue to collect information as necessary and parties are encouraged to comment on this topic for the final determination.

Constructed Export Price

For POSCO and Dongbu, in accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for price-billing errors. We also made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, ocean freight, marine insurance, U.S. brokerage and handling, and U.S. customs duties (including harbor maintenance fees and merchandise processing fees). For further discussion,

see the Sales Calculation Memorandum, dated April 26, 2002 ("Calculation Memorandum"). In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (commissions and imputed credit costs), and indirect selling expenses (including inventory carrying costs).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by POSCO and Dongbu, respectively, and their affiliates on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for the respondent.

B. Arm's Length Test

For POSCO sales to affiliated customers for consumption in the home market which were determined not to be at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, for both Dongbu and POSCO we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, where the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's length. *See e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan*, 62 FR at 60472, 60478 (November 10, 1997), and *Antidumping Duties; Countervailing Duties: Final Rule* ("Antidumping Duties"), 62 FR at 27295, 27355–56 (May 19, 1997). We included in our NV calculations those sales to affiliated customers that passed the arm's length test in our analysis. *See* 19 CFR 351.403; *Antidumping Duties*, 62 FR at 27355–56.

C. Cost of Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that POSCO and Dongbu were selling cold-rolled steel in the home market at prices below their respective COPs. Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether sales were made at prices below their respective COPs (*see Initiation Notice* at 66 FR 54198, 54206).

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses ("G&A"), including interest expenses, and home market packing costs (*see* "Test of Home Market Sales Prices" section below for treatment of home market selling expenses). We relied on the COP data submitted by each respondent except for the following adjustments:

Dongbu

1. We adjusted Dongbu's reported G&A expense to exclude gain on sale of land from the calculation of the G&A expense rate.

2. We adjusted Dongbu's reported interest expense rate. We used Dongbu's consolidated audited financial statements figures in the calculation of the interest expense rate.

POSCO

1. We revised POSCO's reported G&A expenses to exclude the gains on disposition of marketable securities, the gains on valuation of marketable securities, and the reversal of the allowance for bad debt. We also included foreign currency exchange gains on accounts payable and other foreign currency exchange losses in the reported G&A expense to calculate the G&A expense rate.

2. We revised POSCO's reported consolidated financial expense to include foreign currency exchange losses from loans payable and foreign currency exchange gains from cash to calculate the financial expense rate. *See* Memorandum from Ji Young Oh and Ernest Gziryan to Neal Halper, Director, Office of Accounting, dated April 26, 2002, Re: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination ("Cost Calculation Memorandum").

2. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sales prices were below the COP. The prices were exclusive of any applicable movement charges, rebates, discounts, and direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI are at prices less than the COP, we determine that in such instances the below-cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of POSCO's and Dongbu's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on delivered prices to unaffiliated customers. We

made deductions, where appropriate, from the starting price for early payment discounts. We also made deductions for movement expenses, including inland freight (plant to distribution warehouse, plant/warehouse to customer, and affiliated reseller to customer) and warehousing under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses and commissions.

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act. Finally, for comparisons to POSCO's CEP sales, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on the comparison-market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

E. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the EP or CEP transaction. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.; See also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system, for each respondent, in each market (*i.e.*, the "chain of distribution"),[3] including selling functions, class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices[4]), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, Court Nos. 00–1058, 00–1060 (Fed. Cir. 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales to sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act if the difference in level of trade is demonstrated to affect price comparability. For CEP sales only, if a NV LOT is more remote from the factory than the CEP LOT, and there is no basis for determining whether the difference in LOTs between NV and CEP affected price comparability (*i.e.*, no LOT adjustment was practicable), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We obtained information from each respondent regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT analyses containing business proprietary information are incorporated into the company-specific calculation memoranda. Company-specific LOT findings are summarized below.

1. *POSCO*

POSCO reported home market sales through three channels of distribution and to three customer categories. We examined the chain of distribution and the selling activities associated with sales reported by POSCO to each of its customer categories in the home market. We found that these three categories (service centers, trading companies, and end-users) did not differ significantly from each other with respect to selling activities,[5] although there were slight differences between them for meeting with customers and inventory management. *See* Appendix A–6 of POSCO's response to the Department's questionnaire, dated December 14, 2001. Based on our overall analysis, we found that POSCO performs virtually the same selling functions with the same intensity for all its home market customers regardless of their channel of distribution in the home market. Therefore, we preliminarily determine that POSCO made home market sales at one LOT during the POI.

In the U.S. market, POSCO made EP and CEP sales through three channels of distribution and one customer category (trading companies). We examined the chain of distribution and the selling activities associated with sales reported by POSCO to trading companies in the U.S. market. The information on the record demonstrates that the selling activities that POSCO reported for its sales through U.S. channels 1 and 2 (*i.e.*, POSCO's CEP sales) differed significantly from its sales through U.S. channel 3 (*i.e.*, POSCO's EP sales). In particular, for POSCO's EP sales, POSCO performs all categories of selling functions. However, for POSCO's CEP sales, there are several selling functions that POSCO's U.S. affiliate, Pohang Steel America Corp. ("POSAM") is heavily involved in and performs exclusively: POSAM negotiates the sales terms, meets with customers, invoices unaffiliated customers, performs market research, handles importation documents, serves as importer of record, pays U.S. customs duties and wharfage, and extends credit for CEP sales.

Based on our overall analysis, we found that the three U.S. market sales channels constituted two different levels of trade (U.S. LOT 1 for U.S. channels 1 and 2, and U.S. LOT 2 for channel 3). We then compared the U.S. LOTs to the home market LOT. We preliminarily determine that U.S. channel 3 and home market channels 1, 2, and 3 are at the same LOT because the selling functions that POSCO provides are virtually the same in both markets and do not vary according to whether subject merchandise is

[3] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale appears to occur.

[4] Where NV is based on constructed value ("CV"), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

[5] POSCO performs the following selling functions in the home market: Negotiates sales price, invoices customers, meets with customers, freight and delivery arrangement, inventory maintenance, technical advice, arranging customer credit, market research, warranty services, engineering services, research and development, technical programs, advertising, and packing services.

ultimately destined for the U.S. market or the home market. Thus, we matched U.S. LOT 2 sales with sales in the home market and made no LOT adjustment.

U.S. LOT 1 (*i.e.*, POSCO's CEP sales) differed considerably from the home market LOT with respect to selling activities. As noted above, approximately half of the U.S. selling functions, otherwise performed by POSCO, were performed by POSAM. The information on the record demonstrates that the selling activities that POSCO reported for its sales through U.S. channels 1 and 2 (*i.e.*, POSCO's CEP sales) differed significantly from its sales through U.S. channel 3 (*i.e.*, POSCO's EP sales). In particular, for POSCO's EP sales, POSCO performs all categories of selling functions. However, for POSCO's CEP sales, of the selling functions noted above, POSAM is heavily involved and performs exclusively the following: POSAM negotiates the sales terms, meets with customers, invoices unaffiliated customers, performs market research, handles importation documents, serves as importer of record, pays U.S. customs duties and wharfage, and extends credit for CEP sales. Thus, we found POSCO's U.S. LOT 1 (*i.e.*, CEP sales) to be different from the home market LOT and to be at a less advanced LOT than that of the home market LOT. Furthermore, we have no other information on the record that provides an appropriate basis for quantifying the difference in selling functions performed in either market in order to determine an LOT adjustment.

Thus, in accordance with section 773(a)(7)(B) of the Act and as set forth in 19 CFR 351.412(f), a CEP offset will be granted where (1) normal value is compared to CEP sales, (2) normal value is determined at a more advanced LOT than the LOT of the CEP, and (3) despite the fact that the party has cooperated to the best of its ability, the data available do not provide an appropriate basis to determine whether the difference in LOT affects price comparability. Since we have found that to be the case here with respect to POSCO, in accordance with 19 CFR 351.412(f), we are granting POSCO a CEP offset.

2. *Dongbu*

Dongbu reported home market sales through two channels of distribution and to two customer categories. We examined the chain of distribution and the selling activities associated with sales reported by Dongbu to each of its customer categories in the home market. The information on the record demonstrates that Dongbu performs virtually the same selling functions across all home market channels of distribution and customer categories. [6] *See* page A–12 of Dongbu's section A response to the Department's questionnaire, dated December 14, 2001, as well as Dongbu's March 22, 2002 supplemental response at Exhibit A–22. Based on our overall analysis, we found that Dongbu performs virtually the same selling functions with the same intensity for all its customers regardless of the channel of distribution, although there were slight differences between them in terms of the sale process (*i.e.*, sales price is determined through: (1) Typical customer/seller negotiation; or (2) via internet auction bidding process). Therefore, we preliminarily determine that Dongbu made home market sales at one LOT during the POI.

In the U.S. market, Dongbu and Dongbu U.S.A. made EP and CEP sales through four channels of distribution and to three customer categories (*i.e.*, distributors, service centers, or end users). We examined the chain of distribution and the selling activities associated with sales reported by Dongbu and Dongbu U.S.A. to distributors, service centers, and end users in the U.S. market. The information on the record demonstrates that the selling activities reported by Dongbu through U.S. channels 1 and 2 differed only slightly from U.S. channels 3 and 4. Basically, Dongbu's U.S. channels 1 and 2 involved its U.S. sales affiliate, Dongbu U.S.A. (*i.e.*, they are CEP sales), while Dongbu's U.S. channels 3 and 4 did not involve its U.S. sales affiliate, (*i.e.*, EP sales). In particular, for Dongbu's EP sales, Dongbu performs all categories of selling functions. However, for Dongbu's CEP sales, of the selling functions performed for U.S. sales, the majority are performed by Dongbu. [7] Thus, based on our overall analysis of the facts currently on the record, we found that Dongbu's four U.S. sales channels constituted a single LOT (*i.e.*, U.S. LOT 1 for U.S. channels 1, 2, 3, and 4).

Moreover, we have preliminarily determined that Dongbu's home market and U.S. LOTs are the same because the selling functions that Dongbu provides are nearly the same in each market and do not vary significantly between markets. *See* Dongbu's March 22, 2002 supplemental response at Exhibit A–22 for further discussion. Thus no LOT adjustment or CEP offset is warranted.

[6] Dongbu performs the following selling functions in the home market: Inventory maintenance, after sales service, warranties, inland freight, sales price negotiation, invoicing, and arranging customer credit.

[7] The selling functions Dongbu performs for its U.S. CEP sales are: Inventory maintenance, after sales service, warranty services, inland freight in Korea, Korean customs clearance, and international freight.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for Korea when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 75 days (unless postponed) after this preliminary determination.

Suspension of Liquidation

Based on our preliminary affirmative critical circumstances finding with respect to all imports of subject merchandise, except those produced or exported by Dongbu, we are directing the Customs Service to suspend liquidation of all entries of cold-rolled steel entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date on which this notice is published in the **Federal Register** (*see* Critical Circumstances Notice). Furthermore, in accordance with section 733(d)(2) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise by Dongbu that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as appropriate, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice.

The weighted-average dumping margin are as follows:

Exporter/manufacturer	Weighted-average margin percentage
POSCO	5.25
Dongbu	19.03
All Others	13.84

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 75 days (unless postponed) after this preliminary determination. This determination is issued and published pursuant to sections 733(f) and 777(i) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11190 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–614–803]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Carbon Steel Flat Products From New Zealand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Salim Bhabhrawala or Tracy Levstik, AD/CVD Enforcement Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1784 or (202) 482–2815, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR Part 351 (April 2001).

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from New Zealand are being sold, or are likely to be sold, in the United States at less than fair value, as provided in section 733 of the Act. The estimated margin of sales at LTFV is shown in the Suspension of Liquidation section of this notice.

Case History

This investigation was initiated on October 18, 2001.[1] *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001) (*Initiation Notice*). Since the initiation of this investigation, the following events have occurred.

On October 31, 2001, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes, and we received comments on our proposed matching criteria on November 8, 2001. On November 8, 2001, we received model match comments from petitioners and respondents. On November 26, 2001, we informed NZS of our revised model match criteria.

On November 13, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela of certain cold-rolled steel products. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 57985 (November 19, 2001).

The Department issued an antidumping questionnaire to BHP New Zealand Steel Limited (NZS) on November 19, 2001.[2] During the period December 2001 through March 2002, the Department received responses to the Department's original and supplemental questionnaires.

On February 7, 2002, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the

[1] The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation, (collectively, the petitioners).

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market. Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation.

preliminary determination. On February 22, 2002, the Department published a **Federal Register** notice postponing the deadline for the preliminary determination until no later than April 26, 2002. (*See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (A–357–816), Australia (A–602–804), Belgium (A–423–811), Brazil (A–351–834), the People's Republic of China (A–570–872), France (A–427–822), Germany (A–428–834), India (A–533–826), Japan (A–588–859), Korea (A–580–848), the Netherlands (A–421–810), New Zealand (A–614–803), Russia (A–821–815), South Africa (A–791–814), Spain (A–469–812), Sweden (A–401–807), Taiwan (A–583–839), Thailand (A–549–819), Turkey (A–489–810) and Venezuela (A–307–822)*, 67 FR 8277 (February 22, 2002)).

On March 25, 2002, the petitioners requested that the Department initiate a sales-below-cost investigation of NZS. We did so on April 19, 2002.

Period of Investigation

The period of investigation (POI) is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2001).

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. Section 351.210(e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months. We received a request to postpone the final determination from the respondent, NZS, on April 24, 2002. In its request, NZS consented to the extension of provisional measures to no longer than six months.

Since this preliminary determination is affirmative, the request for postponement is made by an exporter that accounts for a significant proportion of exports of the subject merchandise, and there is no compelling reason to deny the respondent's request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register** and have extended provisional measures to no longer than six months.

Scope of the Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producer/exporters of subject merchandise, section 777A(c)(2) of the Act permits us to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid, based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. Using company-specific export data for the POI, which we obtained from a variety of sources under the Harmonized Tariff Schedules of the United States (HTSUS) numbers that correspond to the subject merchandise, we found that there was one producer/exporter, NZS, who may have exported cold-rolled steel to the United States during the POI. Therefore, we designated NZS as the only mandatory respondent and sent it the Department's antidumping questionnaire.

Use of Facts Available

In accordance with section 776(a) of the Act, we have preliminarily applied partial adverse facts available to NZS for purposes of determining normal value (NV). Given that NZS failed to report the downstream sales for an affiliated reseller as we requested in our original section A questionnaire and supplemental section A questionnaire, we have preliminarily determined that NZS did not act to the best of its ability. Therefore, we have applied partial adverse facts available for sales made by the affiliated reseller, pursuant to section 776(b) of the Act. Due to the proprietary nature of the documentation supporting this issue, for further discussion, *see* the Memorandum to Faryar Shirzad from Bernard Carreau Re: Use of Facts Available for NZS for the Preliminary Determination in the 2000–2001 Antidumping Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from New Zealand, dated April 26, 2002.

As adverse facts available, for each model sold to the affiliated reseller, we have used the highest home-market price of a product NZS sold to unaffiliated customers for the same model during the period of investigation to represent the downstream sales prices made to unaffiliated customers in the home market. (*See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Preliminary Results of Antidumping Duty Administrative Reviews, Partial Recession of Administrative Reviews, and Notice of Intent To Revoke Orders in Part*, 66 FR 8931 (February 5, 2001)).

The facts available methodology used in this preliminary determination assumes that the products sold to the reseller are an appropriate surrogate for those sold by the reseller to the first unaffiliated customer. We note, however, that it appears that the affiliated reseller may engage in further processing of the cold-rolled products it purchases from NZS. Specifically, NZS has stated that the affiliated reseller "further processes the cold rolled coil it purchases by slitting and/or cutting the coils into sheets." [3] We will continue to evaluate the information available, and, as appropriate, we may reconsider our facts available methodology and selection for the final determination.

Fair Value Comparisons

To determine whether sales of cold-rolled steel from New Zealand by NZS to the United States were made at LTFV, we compared the constructed export price (CEP) to the normal value (NV), as described in the *Constructed Export Price* and *Normal Value* sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average CEPs to weighted-average NVs.

[3] See NZS' section A submission of December 10, 2001, at page A–19.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by NZS in the home market during the POI that fit the description in the *Scope of Investigation* section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent in the following order of importance: hardening and tempering; painted; carbon level; quality; yield strength; minimum thickness; thickness tolerance; width; edge finish; form; temper rolling; leveling; annealing; and surface finish.

Constructed Export Price

In accordance with section 772(b) of the Act, we CEP for those sales where the merchandise was sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. In this case, we calculated CEP based on the packed prices charged to the first unaffiliated customer in the United States. We found that all of NZS' U.S. sales are CEP sales because the merchandise was sold through NZS' U.S. affiliate, BHP Steel Americas Inc. (BHPSA) in the United States, within the meaning of section 772(b) of the Act. These sales are properly classified as CEP sales because they were made after the date of importation.We made deductions from the starting price, where appropriate, in accordance with section 772(c)(2)(A) of the Act. These deductions included foreign inland freight, international freight, marine insurance, U.S. brokerage and handling and U.S. customs duties (including harbor maintenance fees and merchandise processing fees). In addition, in accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, specifically, indirect selling expenses (including inventory carrying costs), credit expense and warranty expense.

For those U.S. sales for which NZS did not report a date of payment, we have used the signature date of the preliminary determination (*i.e.*, April 26, 2002) in the calculation of imputed credit expenses. In addition, we used NZS' revised weighted average interest rate, which correctly used the Federal Reserve's weighted-average data for commercial and industrial loans of one-month's to one-year's duration, to calculate credit expense in the U.S. market.[4] For further discussion, *see* the Memorandum to the File from Tracy Levstik and Salim Bhabhrawala Re: Calculations Performed for NZS for the Preliminary Determination in the 2000–2001 Antidumping Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from New Zealand, dated April 26, 2002. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using NZS' financial statements pursuant to 19 CFR 351.402(d)(2) of the Act.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for the respondent.

B. Arm's-Length Test

Sales to affiliated customers for consumption in the home market which were determined not to be at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, rebates and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, where the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's length. *See e.g., Notice of Final Results and Partial Rescission of the Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan,* 62 FR at 60472, 60478 (November 10, 1997), and *Antidumping Duties; Countervailing Duties: Final Rule* ("Antidumping Duties"), 62 FR at 27295, 27355–56 (May 19, 1997). *See* 19 CFR 351.403; *Antidumping Duties,* 62 FR at 27355–56. None of NZS' sales to its affiliated reseller passed the arm's-length test.

C. Cost of Production Analysis

On March 25, 2002, the petitioners made a timely sales below cost allegation against NZS. Based on the allegation and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that sales of cold-rolled steel from New Zealand were made at prices below the COP. *See* the Memorandum to Gary Taverman from the Team Re: The Petitioners' Allegation of Sales Below the Cost of Production for BHP New Zealand Steel Limited (NZS), dated April 19, 2002. As a result, the Department is conducting an investigation to determine whether NZS made sales in the home market at prices below the COP during the POI within the meaning of section 773(b) of the Act. On April 19, 2002, we instructed NZS to complete a section D questionnaire. Given the proximity of the preliminary determination, we did not receive NZS' section D response in time to analyze it for the preliminary determination, but will do so for the final determination.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on packed prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length in New Zealand. We adjusted, where applicable, the starting price for discounts and rebates. We made deductions for movement expenses, including inland freight (plant to distribution warehouse and plant/warehouse to customer) and warehousing under section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act. No other adjustments to NV were claimed or allowed.

[4] See NZS' submission of April 12, 2002, at page 12.

E. Level of Trade/Constructed Export Price Offset

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we calculate NV based on sales in the comparison market at the same level of trade (LOT) as the U.S. transaction. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Steel Plate from South Africa*). To determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (i.e. the chain of distribution), including the selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

The NV LOT is that of the starting-price sales in the comparison market, or when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP transactions, it is the level of the constructed sale from the exporter to the importer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Steel Plate from South Africa*.

In implementing these principles in this investigation, we obtained information from NZS about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondent for each channel of distribution. Generally, if the reported LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party reports LOTs that are different for different categories of sales, the functions and activities may be dissimilar.

NZS reported two channels of distribution in the home market, with two customer categories (*i.e.*, distributors and original equipment manufacturers (OEMs)). The first home market channel of distribution, coded in its submissions as channel 2, included sales made by NZS to unaffiliated home market distributors and OEMs. The second home market channel of distribution, coded in its submissions as channel 3, included sales made by NZS to an affiliated reseller (until October 23, 2000) and to unaffiliated home market OEMs. According to NZS, "there is no difference between channels 2 and 3 * * * (NZS) created channel 3 for the response to show affiliated sales * * * separately." [5] We compared these two channels of distribution and determined that sales to the two customer categories in both channels were the same in all respects except regarding the determination of sales prices. NZS maintains supply agreements with distributors and uses a set price list and volume rebate structure whereas for its OEM customers, NZS negotiates price and rebates on a sale-specific basis. Due to the fact that these channels are the same with respect to all other selling activities, that is, forecasting and planning services, account management and sales support, product development and marketing support, order processing, managing customer complaints and technical support, and freight, warehousing and delivery services, we preliminarily determine that home market sales in these two channels of distribution constitute a single LOT.

In the U.S. market, all of NZS' sales are CEP sales. NZS reported that its CEP sales are through one channel of distribution (coded in its submissions as channel 1), that is, they are BHPSA's sales to unaffiliated U.S. customers. The selling activities performed for the channel include forecasting and planning sales (performed by NZS and BHPSA), account management and sales support (performed by NZS and BHPSA), order processing between NZS and BHPSA (performed by NZS and BHPSA), order processing between BHPSA and unaffiliated customers (performed by BHPSA), and managing customer complaints (NZS and BHPSA). We therefore preliminarily conclude that NZS had only one LOT for its CEP sales.

In determining whether separate levels of trade actually existed between CEP sales and home market sales, we examined the chains of distribution, customer categories, and selling functions related to these sales reported in the home market and the United States. In determining LOTs for CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. After making CEP deductions from the end user price, we noted that the only difference was related to product development and marketing support services offered only in the home market and not for CEP sales. *See* section 773(a)(7)(A) of the Act. On this basis, it appears that the LOT of NZS' home market sales do not involve significantly different selling functions than the LOT of the CEP sales, and that the distinctions do not constitute a difference in LOT between sales in the two markets. Therefore, we preliminarily determine that no LOT adjustment or CEP offset is warranted.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain cold-rolled carbon steel flat products from New Zealand, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated below. These instructions suspending liquidation will remain in effect until further notice.

Exporter/producer	Weighted-average margin percentage
BHP New Zealand Steel Limited (NZS)	7.10
All Others	7.10

[5] See NZS' supplemental A response of January 31, 2002 at page 27.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, pursuant to section 735(b)(3) of the Act, the ITC will determine within 75 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

All parties will be notified of the specific schedule for submission of case and rebuttal briefs. In general, case briefs for this investigation must be submitted to the Department no later than one week after the issuance of the verification report. Rebuttal briefs must be filed within five days after the deadline date for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will issue our final determination no later than 135 days after the date of publication of this notice in the **Federal Register**.

This determination is issued and published pursuant to sections 733(f) and 777(i) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11191 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–872]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination in the less-than-fair-value investigation of certain cold-rolled carbon steel flat products from the People's Republic of China.

SUMMARY: The Department of Commerce ("the Department") has preliminarily determined that imports of certain cold-rolled carbon steel flat products ("cold-rolled steel") from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV").

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy at 202–482–0165 or Stephen Shin at 202–482–0413, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2001).

Background

On October 18, 2001, the Department initiated antidumping duty investigations to determine whether imports of cold-rolled steel from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela are being, or are likely to be, sold in the United States at LTFV. See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, 66 FR 54198 (October 26, 2001) ("Initiation Notice"). The petitioners in the concurrent antidumping duty investigations are Bethlehem Steel Corporation, National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel LLC, WCI Steel, Inc., and Weirton Steel Corporation. LTV Steel Company, Inc. is no longer an active petitioner in these investigations.[1]

On November 19, 2001, the International Trade Commission ("ITC") published its determination that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of cold-rolled steel from all of these countries. See Certain Cold-Rolled Carbon Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, 66 FR 57985 (November 19, 2001).

On October 26, 2001, the Department sent letters requesting the quantity and value of shipments of subject merchandise exported to the United States during the period January 1, 2001, through June 30, 2001, to the Embassy of the People's Republic of China, Sichuan Chuaton Changcheng Special Steel Group Co. Ltd., Laiwu Steel Group Ltd., Wuhan Iron and Steel Group Co., Benxi Iron and Steel Co., Shanghai Baosteel Group Corp. ("Baosteel"), and Shanghai Pudong Iron and Steel Group Co., Ltd. On November 8, 2001, Baosteel submitted quantity and value information. We received no other responses to this request.

On November 23, 2001, Pangang Group International Economic & Trading Corp. ("Pangang") submitted a letter which requested that it be treated as a respondent in this investigation. On

[1] Effective January 1, 2002, the party previously known as "United States LLC" changed its name to "United States Steel Corporation."

November 27, 2001, the Department issued its antidumping questionnaire to the Government of the PRC and issued courtesy copies to the six exporters/ producers identified in the petition and to Pangang. The Department only received a response to its questionnaire from Pangang. On December 18, 2001, Baosteel submitted a letter to the Department which stated that it was not going to participate in the instant investigation.

On February 22, 2002, the Department postponed the preliminary determination in this investigation to April 26, 2002. See Postponement of Preliminary Determinations of Antidumping Duty Investigations; Certain Cold-Rolled Carbon Steel Flat Products from Argentina, et al., 67 FR 8227 (February 26, 2002).

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* published concurrently with this preliminary determination.

Period of Investigation

The period of investigation ("POI") for this investigation corresponds to the two most recent fiscal quarters prior to the filing of the petition, i.e., January 1, 2001 through June 30, 2001.

Critical Circumstances

On November 29, 2001, and December 7, 2001, four of the petitioners in the investigation (Nucor Corporation, Steel Dynamics Inc., WCI Steel Inc., and Weirton Steel Company) submitted an allegation of critical circumstances with respect to imports of cold-rolled steel from the PRC and requested an expedited decision in the matter. On April 10, 2002, the Department issued its preliminary affirmative determination that critical circumstances exist with respect to imports of cold-rolled steel from the PRC. See Memorandum to Faryar Shirzad from Joseph A. Spetrini: Preliminary Affirmative Determinations of Critical Circumstances (April 10, 2002); and Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products From Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation, 67 FR 19157 (April 18, 2002) ("Critical Circumstances Notice").

Nonmarket Economy Country Status

The Department has treated the PRC as a nonmarket economy ("NME") country in all past antidumping investigations. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China, 65 FR 33805 (May 25, 2000); Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China, 65 FR 19873 (April 13, 2000); Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China, 66 FR 49632 (September 28, 2001) ("Hot-Rolled Steel from the PRC"). This NME designation remains in effect until it is revoked by the Department. See section 771(18)(C) of the Act. No party has sought revocation of the NME status in this investigation. Therefore, in accordance with section 771(18)(C) of the Act, we will continue to treat the PRC as a NME country.

When the Department is investigating imports from a NME, section 773(c)(1) of the Act directs us to base the normal value ("NV") on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the "Normal Value" section, below. Furthermore, no interested party has requested that we treat the cold-rolled steel industry in the PRC as a market-oriented industry and no information has been provided that would lead to such a determination. Therefore, preliminarily we have continued to treat the PRC as a NME.

Separate Rates

In a NME proceeding, the Department presumes that all companies within the country are subject to governmental control, and assigns separate rates only if the respondent demonstrates the absence of both de jure and de facto governmental control over export activities. See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China, 61 FR 19026, 19027 (April 30, 1996). Pangang has provided the requested company-specific separate-rates information and has indicated that there is no element of government ownership or control. Based on Pangang's claim, we considered whether it is eligible for a separate rate.

The Department's separate-rate test is unconcerned, in general, with macroeconomic/ border-type controls (e.g., export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value, 62 FR 61754, 61757 (November 19, 1997); Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 61276, 61279 (November 17, 1997); and Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value, 60 FR 14725, 14726 (March 20, 1995).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991), as modified by Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"). Under the separate-rates criteria, the Department assigns separate rates in NME cases only if the NME respondents can demonstrate the absence of both de jure and de facto governmental control over export activities. See Silicon Carbide and Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China, 60 FR 22545 (May 8, 1998).

1. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Pangang has placed on the record a number of documents to demonstrate the absence of de jure control, including the "Company Law of the People's Republic of China." In prior cases, the Department has analyzed this law and

found that it establishes an absence of de jure control. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China, 60 FR 54472, 54474 (October 24, 1995). We have no information in this proceeding which would cause us to reconsider this determination.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

As stated in previous cases, there is some evidence that certain enactments of the central government of the PRC have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See Silicon Carbide. Therefore, the Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

Pangang asserted the following: (1) There is no government participation in setting export prices; (2) its managers have authority to bind sales contracts; (3) it does not have to notify any government authorities of its management selection, and (4) there are no restrictions on the use of its export revenue and it is responsible for financing it own losses. Additionally, Pangang's questionnaire response does not suggest that pricing is coordinated among exporters. Furthermore, our analysis of Pangang's questionnaire response reveals no other information indicating government control. Therefore, based on the information provided, we preliminarily determine that there is an absence of de facto governmental control of Pangang's export functions. Consequently, we preliminarily determine that the respondent has met the criteria for the application of a separate rate.

The PRC-Wide Rate

In NME cases, it is the Department's policy to assume that all exporters located in the NME comprise a single exporter under common control, the "NME entity." This presumption can be rebutted. The Department assigns a single NME rate to the NME entity unless an exporter can demonstrate eligibility for a separate rate. All exporters were given the opportunity to respond to the Department's questionnaire. As explained above, we received a timely Section A response from Pangang. Our review of U.S. import statistics, however, reveals that Pangang did not account for all imports of subject merchandise into the United States from the PRC. One producer/exporter of the subject merchandise, Baosteel, reported quantity and value information, but later submitted a letter to the Department announcing its intent not to participate in the investigation. We received no responses from other exporters to whom we sent requests for information. For this reason, we preliminarily determine that the majority of PRC exporters of cold-rolled steel failed to respond to our questionnaire. Consequently, we are applying adverse facts available (see below) to determine the single antidumping rate—the PRC-wide rate—applicable to all other exporters in the PRC based on our presumption that those respondents who failed to demonstrate entitlement to a separate rate constitute a single enterprise under common control by the PRC government. See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China, 65 FR 25706, 25707 (May 3, 2000). The PRC-wide rate applies to all entries of subject merchandise except for entries from Pangang.

Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. As explained above, the majority of exporters of the subject merchandise failed to respond to the Department's request for information. The failure of theses exporters to respond also significantly impede this proceeding. Pursuant to section 776(a) of the Act, in reaching our preliminary determination, we have used total facts available for the PRC-wide rate because these entities did not respond.

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Furthermore, "affirmative evidence of bad faith on the part of the respondent is not required before the Department may make an adverse inference." See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27340 (May 19, 1997). The complete failure of these exporters to respond to the Department's requests for information constitutes a failure to cooperate to the best of their ability. In regard to Baosteel, though the company initially provided quantity and value information, the company subsequently indicated in a December 18, 2001 letter to the Department that it would not participate in the investigation. This conduct constitutes a failure of Baosteel to cooperate to the best of its ability. Therefore, pursuant to section 776(b) of the Act, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. See section 776(b) of the Act. However, section 776(c) provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. See SAA at 870. The SAA clarifies that "corroborate" means that the Department will satisfy

itself that the secondary information to be used has probative value. Id. As noted in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

For our preliminary determination, as adverse facts available, we have used the highest rate calculated for a respondent, *i.e.*, the rate calculated for Pangang. In an investigation, if the Department chooses as facts available a calculated dumping margin of another respondent, the Department will consider information reasonably at its disposal as to whether there are circumstances that would indicate that using that rate is appropriate. Where circumstances indicate that the selected margin may not be appropriate, the Department will attempt to find a more appropriate basis for facts available. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). In this investigation, there is no indication that Pangang's calculated margin is inappropriate to use as adverse facts available.

Accordingly, for the preliminary determination, the PRC-wide rate is 129.85 percent. Because this is a preliminary margin, the Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate final PRC-wide margin.

Fair Value Comparisons

To determine whether sales of cold-rolled steel to the United States by Pangang were made at less than fair value, we compared export price ("EP") to NV, as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs. We calculated weighted-average NVs.

Export Price

In accordance with section 772(a) of the Act, we used EP because the subject merchandise was sold directly to unaffiliated purchasers outside of the United States, with the knowledge that the final destination of the subject merchandise was the United States. Pangang claimed that sales to the United States went through either of two channels of trade. In the first channel, Pangang sold directly to the unaffiliated U.S. importer. In the second channel, Pangang sold through another unaffiliated party to the U.S. importer. Pangang claims that in the second channel, the U.S. importer pays the other party, who then pays Pangang. For both channels of trade, we used the price of Pangang's first sale to an unaffiliated party in, or for exportation to, the United States. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the NVs. We calculated EP based on prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight and brokerage and handling. Because certain domestic charges, such as those for foreign inland freight and brokerage and handling, were provided by NME companies, we valued those charges based on surrogate rates from India. See the Factors-of-Production Valuation Memorandum to Edward Yang through James Doyle from Carrie Blozy and Stephen Shin, dated April 26, 2002 ("FOP Memorandum").

Normal Value

1. Surrogate Country

When the Department is investigating imports from a NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production, valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department, in valuing the factors of production, shall utilize, to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to the NME country and are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the NV section below.

The Department has determined that India, Pakistan, Indonesia, Sri Lanka and the Philippines are countries comparable to the PRC in terms of economic development. See Memorandum from Jeffrey May to James Doyle, dated December 12, 2001. Customarily, we select an appropriate surrogate based on the availability and reliability of data from these countries. For PRC cases, the primary surrogate has often been India if it is a significant producer of comparable merchandise. In this case, we have found that India is a significant producer of comparable merchandise. We used India as the primary surrogate country and, accordingly, we have calculated NV using Indian prices to value the PRC producer's factors of production, when available and appropriate. We have obtained and relied upon publicly available information wherever possible. See FOP Memorandum. In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in this antidumping investigation, interested parties may submit publicly available information to value the factors of production within 40 days after the date of publication of this preliminary determination.

2. Factors of Production

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) The merchandise is exported from a NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Factors of production include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. See 773(c) of the Act. We used factors of production, reported by Pangang, for materials, energy, labor, by-products, and packing. We valued all the input factors using publicly available published information, as discussed in the "Surrogate Country" and "Factor Valuations" sections of this notice. In accordance with 19 CFR 351.408(c)(1), when a producer sources an input from a market economy and pays for it in market-economy currency, the Department employs the actual price paid for the input to calculate the factors-based NV. See also Lasko Metal Products v. United States, 437 F.3d 1442, 1445–1446 (Fed. Cir. 1994) ("Lasko"). Therefore, when Pangang had market-economy inputs and paid for these inputs in a market-economy currency, we used the actual prices paid for those inputs in our calculations.

3. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by

Pangang for the POI. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted imported input prices by including freight costs to make them delivered prices. For a detailed description of all surrogate values used for the respondent, see FOP Memorandum.

We added to Indian import surrogate values a surrogate freight cost using the shorter of (a) the reported distance from the domestic supplier to the factory, or (b) the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision in Sigma Corporation v. United States, 117 F. 3d 1401, 1407–08 (Fed. Cir. 1997).

For those Indian Rupee values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics for India. For those U.S. dollar-denominated values not contemporaneous with the POI, we adjusted for inflation using producer price indices published in the International Monetary Fund's International Financial Statistics for the United States.

Although surrogate-value data based on *Monthly Trade Statistics of Foreign Trade of India*—Volume II—Imports ("Indian Import Statistics") were provided by Pangang, we relied on more contemporaneous Indian Import Statistics (time period: April 2000 through March 2001), where available. Except as noted below, we valued raw-material inputs using the weighted-average unit import values derived from the Indian Import Statistics. When Indian Import Statistics from a contemporaneous period were not available, we used Indian Import Statistics from an earlier period.

Pangang reported that it self-produced all of its own electricity as well as the industrial gases argon, nitrogen and oxygen, which are used in the manufacture of the subject merchandise. In the antidumping investigation of hot-rolled carbon steel flat products from the PRC, the Department valued certain self-produced energy components (electricity, argon, oxygen, and nitrogen) through surrogate valuation as a finished product, rather than valuing the inputs consumed in generating each individual energy component. This was based on the fact that the financial statement of the sole surrogate company indicated that the surrogate company purchased a large portion of the inputs in question and did not appear to self-produce any of the inputs. Therefore, the valuation of the inputs consumed in generating each individual energy component would lead to mathematically incorrect results. See Hot-Rolled Steel from the PRC and accompanying Issues and Decision Memorandum at Comment 2. The Department has followed the approach established in Hot-Rolled Steel from the PRC regarding the valuation of certain self-produced energy inputs.

In its April 10, 2002, submission, Pangang argued that each of the inputs used for producing electricity, argon, nitrogen, and oxygen must be valued separately to reflect the actual production process of the subject merchandise. Pangang maintained that valuation of the finished self-produced input will significantly overstate the cost of producing the input as many of the inputs into the self-produced input are by-products or surplus inputs. Finally, Pangang argued that the reasons for using surrogate valuation to value electricity, argon, nitrogen, and oxygen in Hot-Rolled Steel from the PRC and structural steel beams from the PRC (see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From The People's Republic of China, 66 FR 67197, 67201 (December 28, 2001) ("Structural Steel Beams from the PRC")) do not apply in the present case. Pangang stated that because its power facilities were established decades ago, Pangang has not experienced large capital costs associated with its energy production during the POI. Pangang also asserted that to reject the use of its factors of production would amount to facts available.

In this case, as explained below, to value overhead, selling general and administrative ("SG&A"), interest, and profit, we are relying on the 2000–2001 financial statements of Steel Authority of India Limited ("SAIL") and TATA Steel ("TATA"), both of whom are Indian integrated steel producers of cold-rolled steel. The financial statements of both companies do not indicate that either self-produce argon, nitrogen, and oxygen. However, they do indicate that during the 2000–2001 financial year SAIL and TATA self-produced approximately 60 and 54 percent, respectively, of the electricity they consumed. See SAIL's financial statements at page 53 (Form A), which is attached to the FOP memorandum at Exhibit 7, and TATA's financial statements at page 14 (Form A), which is attached to petitioners' April 9, 2002, submission at Exhibit 2. For purposes of the preliminary determination we are continuing to follow our practice in Hot-Rolled Steel from the PRC and Structural Steel Beams from the PRC, and are valuing self-produced electricity, argon, nitrogen, and oxygen as finished-products, rather than valuing factor inputs going into the production of these inputs. Although the record evidence indicates that SAIL and TATA self-produced 60 and 54 percent, respectively, of their electricity, we find that potential distortion exists as Pangang self-produces all of its electricity as well as its argon, nitrogen, and oxygen. As we explained in Structural Steel Beams from the PRC, "the respondent's methodology would add needless complications to our calculation of NV and lead to potentially erroneous results."

As the basis for valuing electricity, we have relied on the 1997 data published in the International Energy Agency's publication, *Energy Prices and Taxes, Third Quarter, 2000*, and adjusted the amount for inflation. As the basis for valuing argon, nitrogen, and oxygen, we have relied on October 1996 price information from Bhoruka Gases Limited, an Indian manufacturer of industrial gases, and adjusted the amount for inflation.

Pangang reported that it purchased iron ore fines and lumps from market-economy suppliers during the POI. The Department used the weighted-average price reported by Pangang.

We valued all inputs for packing using the average-unit values derived from the Indian Import Statistics.

We used Indian transport information to value transport for raw materials. For all instances in which respondent reported delivery by truck, to calculate domestic inland freight (truck), we used a price quote obtained by the Department from an Indian trucking company for transporting materials between Mumbai and Coimbatore (1265 kilometers). We converted the Indian Rupee value to U.S. dollars and adjusted for inflation through the POI. Similarly, for domestic inland freight (rail), we used a freight rate as quoted from Indian Railway Conference Association price lists.

To value factory overhead, SG&A expenses, interest, and profit, we used financial ratios based on 2000–2001 financial information from two Indian integrated steel producers of cold-rolled steel, SAIL and TATA. In their March 26, 2001, surrogate value submission, Pangang argued that the Department should determine overhead, SG&A, and profit based on data from the Reserve Bank of India, which represents

financial data from 947 private limited companies from the Indian metals and chemical industries. Pangang claimed that the Department should rely on the Reserve Bank data because the financial statistics of a single company will not approximate the experience of Pangang in this case as Pangang is a member of the fully integrated group of companies, which not only produces the subject merchandise, but also produces and sells a range of other chemical and steel products and provides services. In their April 9, 2002, surrogate value submission, petitioners argued that the Department should rely on the most contemporaneous information available for TATA. In the investigation of cut-to-length carbon steel plate from the PRC, the Department determined not to use data from the Reserve Bank of India, explaining, "it is the Department's preference to base SG&A and profit ratios on data from actual producers of subject merchandise in the surrogate country." See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China, 62 FR 61964, 61969, 61970 (November 20, 1997). In their April 18, 2002 submission, the respondent argued that because TATA undertook significant capital investments during the fiscal 2000–2001 year, TATA's financial ratios are not indicative of Pangang's experience. Therefore, Pangang argued that the Department should disregard TATA's financial data.

In addition to the two potential surrogates the parties placed on the record (i.e., TATA and the Reserve Bank of Indian data), the Department located another surrogate, SAIL , and placed its financial information on the record as well. Thus, we have on the record of the investigation financial statements of two Indian producers of cold-rolled steel (i.e., SAIL and TATA). Moreover, like Pangang, both SAIL and TATA are integrated steel producers that are members of a group of companies which produce products in addition to producing the subject merchandise. See FOP Memorandum for a copy of the 2000–2001 financial information for the companies included within the SAIL and TATA Steel Groups. Because the Department prefers to base financial ratios on multiple producers from a contemporaneous period, the Department has calculated a simple average of the financial ratios of SAIL and TATA. See Brake Rotors From the People's Republic of China: Preliminary Results of Third New Shipper Review and Preliminary Results and Partial Rescission of Second Antidumping Duty Administrative Review, 64 FR 73007, 73011 (December 29, 1999). As in Hot-Rolled Steel from the PRC, we used information from TATA from profit. See the Hot-Rolled Factors-of-Production Valuation Memorandum to Edward Yang through James Doyle from Carrie Blozy, Catherine Bertrand and Doreen Chen, dated September 28, 2001.

For labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate at the Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2001 (see *http://ia.ita.doc.gov/wages*). The source of the wage rate data on the Import Administration's web site is the 2000 Year Book of Labour Statistics, International Labor Organization (Geneva: 2000), Chapter 5B: Wages in Manufacturing.

For the by-products, steel slag and iron slag, we used U.S. domestic prices as surrogate values. In previous cases, the Department has determined not to value slag based on Indian Import Statistics because we found that the Indian import values were unusually high compared to the price of the subject merchandise. See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China, 66 FR 22183, 22191 (May 3, 2001) ("Hot-Rolled from the PRC Prelim"); Hot-Rolled Steel from the PRC; and Structural Steel Beams from the PRC. Consistent with these prior determinations, for purposes of the preliminary determination, the Department is valuing steel slag and iron slag based on values for slag from the U.S. Geological Survey *Minerals, Commodities Summaries* from 1998. We adjusted the value for inflation using the U.S. producer price index.

To value the by-products coke oven gas and steam, we: (1) Noted the BTU equivalent of coke oven gas or steam; (2) obtained a ratio of coke oven gas or steam to the BTU equivalent of natural gas; and (3) multiplied this ratio by the surrogate value of natural gas, which was taken from the 1999 financial report of EOG Resources, Inc. This natural gas value was also used in the investigation of hot-rolled steel from the PRC. See Hot Rolled Steel from the PRC Prelim.

We are not granting offsets for the recoveries of hot-rolled steel products and cold-rolled steel products for purposes of the preliminary determination. In its March 12, 2002, supplemental questionnaire response, Pangang explained that inferior steel products, which include hot-rolled and cold-rolled products, "are those steels in good steel quality but which sizes do not meet client needs." We find that inferior hot-rolled and cold-rolled steel products represent sales of non-prime or secondary finished product and hence cannot be classified as by-products as they are more properly considered home market sales of hot-rolled and cold-rolled steel.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for the PRC when we make our final determination regarding sales at LTFV in this investigation, which, unless postponed, will be no later than 75 days after the publication of this notice in the **Federal Register**.

Suspension of Liquidation

Because of our preliminary affirmative critical circumstances finding, we are directing Customs to suspend liquidation of all entries of cold-rolled steel from the PRC entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date on which this notice is published in the **Federal Register**. See Critical Circumstances Notice. We are instructing Customs to require a cash deposit or the posting of a bond equal to the estimated preliminary dumping margin, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

We determine that the following percentage weighted-average margins exist for the POI:

COLD-ROLLED FLAT CARBON STEEL FLAT PRODUCTS

Producer/Manufacturer/Exporter	Weighted-average margin (percent)
Pangang	129.85
PRC-Wide Rate	129.85

The PRC-wide rate applies to all entries of the subject merchandise except for entries from exporters/manufacturers that are identified individually above.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of cold-rolled steel from the PRC are materially

injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments must be submitted to the Assistant Secretary for Import Administration no later than 50 days after the date of publication of this notice, and rebuttal briefs no later than 55 days after the date of publication of this notice. Rebuttal briefs must be limited to the issues raised in the case briefs. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held fifty-seven days after publication of this notice, at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c). We will make our final determination, unless postponed, no later than 75 days after this preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11192 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–815]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of the less-than-fair-value investigation of certain cold-rolled carbon steel flat products from the Russian Federation.

SUMMARY: The Department of Commerce ("Commerce") has preliminarily determined that imports of certain cold-rolled carbon steel flat products ("cold-rolled steel") from the Russian Federation ("Russia") are being, or are likely to be, sold in the United States at less than fair value ("LTFV").

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen 202–482–0409 or Aishe Allen at 202–482–0172, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. Part 351 (2001).

Background

On October 18, 2001, the Department initiated antidumping duty investigations to determine whether imports of cold-rolled steel from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela are being, or are likely to be, sold in the United States at LTFV. See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, 66 FR 54198 (October 26, 2001) ("Initiation Notice"). The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation ("Petitioners").[1]

On November 13, 2001, the International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of cold-rolled steel from all of these countries. See Certain Cold-Rolled Carbon Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, 66 FR 57985 (November 19, 2001).

On November 23, 2001, the Department issued its respondent selection memorandum, selecting JSC Severstal ("Severstal") as the sole mandatory respondent to be investigated. See Memorandum from James C. Doyle to Edward C. Yang: Selection of Respondents, at 2 (November 23, 2001) ("Respondent Selection Memo"). On November 27, 2001, the Department issued its antidumping questionnaire to Severstal and to the Government of the Russian Federation ("GOR"). The Department received no responses to the questionnaire. See Memorandum to The File from Juanita H. Chen: Failure of Respondent JSC Severstal to Respond to Questionnaire (February 4, 2002) ("Failure to Respond Memo").

On February 7, 2002, three of the petitioners requested that the Department postpone the preliminary determination by fifty days. See Letter to the Department from Bethlehem Steel Corporation, National Steel Corp., and United States Steel Corporation (February 7, 2002). On February 22, 2002, the Department postponed the preliminary determination in this investigation to April 26, 2002. See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled

[1] Effective January 1, 2002, the party previously known as "United States Steel LLC" changed its name to "United States Steel Corporation." See letter from Skadden, Arps, Slate, Meagher & Flom LLP (February 1, 2002).

Carbon Steel Flat Products from Argentina, et al., 67 FR 8227 (February 22, 2002).

On March 15, 2002, petitioners submitted a letter requesting that the Department apply a dumping margin based on total adverse facts available for Severstal. Petitioners argue that because Severstal failed to timely provide the information requested by the Department, as adverse facts available, the Department should apply the highest calculated dumping margin of 332.59 percent from the antidumping petition or, in the alternative, apply the highest dumping margin of 137.33 percent from the notice of initiation.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, published concurrently with this preliminary determination.

Period of Investigation

The period of investigation ("POI") is January 1, 2001 through June 30, 2001. This period corresponds to the two most recent fiscal quarters prior to the filing of the petition (*i.e.*, September 2001).

Critical Circumstances

On November 29, 2001 and December 7, 2001, four of the petitioners in the investigation (Nucor Corporation, Steel Dynamics, Inc., WCI Steel, Inc., and Weirton Steel Company) submitted an allegation of critical circumstances with respect to imports of cold-rolled steel from Russia and requested an expedited decision in the matter. On April 10, 2002, the Department issued its preliminary affirmative determination that critical circumstances exist with respect to imports of cold-rolled steel from Russia. *See Memorandum to Faryar Shirzad from Joseph A. Spetrini: Preliminary Affirmative Determinations of Critical Circumstances* (April 10, 2002); and *Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products From Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation*, 67 FR 19157 (April 18, 2002) ("Critical Circumstances Notice").

Nonmarket Economy Country Status

The Department has treated Russia as a nonmarket economy ("NME") country in all past antidumping investigations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value; Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation*, 65 FR 42669 (July 11, 2000); *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 64 FR 38626 (July 19, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation*, 62 FR 61787. This NME designation remains in effect until it is revoked by the Department. See section 771(18)(C) of the Act. No party has sought revocation of the NME status in this investigation.[2] Therefore, in accordance with section 771(1)(C) of the Act, we will continue to treat Russia as a NME country.

Russia-Wide Rate

In a NME proceeding, the Department presumes that all companies within the country are subject to governmental control, and assigns separate rates only if the respondent demonstrates the absence of both *de jure* and *de facto* governmental control over export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996). As no party requested that it be assigned a separate rate in this investigation, there was no demonstration of eligibility for a separate rate under the separate rates criteria. Accordingly, we preliminarily determine all exporters are subject to the Russia-wide rate.

Facts Available

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline for submission of the information, or in the form and manner requested, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) of the Act, facts otherwise available in reaching the applicable determination.

[2] We note there is an ongoing inquiry into the status of Russia as a NME country, for which a hearing was conducted on March 27, 2002. Information on this separate proceeding can be found at Import Administration's website, at http://ia.ita.doc.gov/

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Given the extent to which Severstal exported cold-rolled steel from Russia during the POI, Severstal was designated as the sole mandatory respondent in the investigation. *See* Respondent Selection Memo, at 4. However, both Severstal and the GOR failed to submit any response to the Department's questionnaire. As noted in the *Failure to Respond Memo*, Severstal indicated that it did not plan to respond to the Department's NME antidumping questionnaire, with the understanding that the Department would apply facts available methodology. Without a response from Severstal to the Department's antidumping questionnaire, we have no foundation for determining a margin. Thus, the Department has applied facts available ("FA"), in accordance with section 776(a)(2) of the Act, in making our preliminary antidumping determination.

Selection of Adverse FA

In selecting from among the facts otherwise available, section 776(b) of the Act provides that if the Department finds the respondent "has failed to cooperate by not acting to the best of its ability to comply with a request for information * * * {the Department} may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 62 FR 53808, 53819–20 (October 16, 1997). Severstal did not attempt to respond to the Department's questionnaire, but stated outright its intention of not responding to the questionnaire at all. See Failure to Respond Memo. As a general matter, it is reasonable for the Department to assume that Severstal possessed the records necessary for this investigation, and that by not supplying any information requested by the Department, Severstal failed to cooperate to the best of its ability. Because the Department has determined Severstal failed to cooperate to the best

of its ability, we are applying an adverse inference pursuant to section 776(b) of the Act. As adverse FA, we have applied the margin from initiation (i.e., the highest margin based on the amended petition), which is 137.33 percent, as the Russia-wide rate. See AD Initiation Checklist (October 18, 2001) ("Initiation Checklist"). Pursuant to section 776(c) of the Act, the Department has corroborated the 137.33 percent margin from initiation to the extent practicable. See Total Facts Available Corroboration Memorandum (April 26, 2002). This Russia-wide rate applies to all entries of subject merchandise.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for Russia when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 75 days after the publication of this notice in the **Federal Register**.

Suspension of Liquidation

Because of our preliminary affirmative critical circumstances finding, we are directing Customs to suspend liquidation of all entries of cold-rolled steel from Russia entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date on which this notice is published in the **Federal Register**, in accordance with section 733(e) of the Act. See Critical Circumstances Notice. We are also instructing Customs to require a cash deposit or the posting of a bond equal to the preliminary dumping margin, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

We determine that the following percentage weighted-average margin exists for the POI:

COLD-ROLLED CARBON STEEL FLAT PRODUCTS

Producer/manufacturer/exporter	Weighted-average margin
Russia-Wide Rate	137.33%

The Russia-wide rate applies to all entries of the subject merchandise.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination whether imports of cold-rolled steel from Russia are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments must be submitted to the Assistant Secretary for Import Administration no later than 50 days after the date of publication of this notice, and rebuttal briefs no later than five business days after the deadline for submission of case briefs. Rebuttal briefs must be limited to the issues raised in the case briefs. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c). If this investigation proceeds normally, we will make our final determination no later than 75 days after this preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11193 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–814]

Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Preliminary Determination of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products From South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Negative Preliminary Determination of Critical Circumstances.

SUMMARY: We preliminarily determine that certain cold-rolled carbon steel flat products from South Africa are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended. In addition, we preliminarily determine that critical circumstances do not exist for import of cold-rolled carbon steel flat products from South Africa.

Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Minoo Hatten, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW.,

Washington, DC 20230; telephone: (202) 482–1690.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department's") regulations are to the regulations codified at 19 CFR part 351 (April 2001).

Background

Since the initiation of this investigation (*Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela*, 66 FR 54198 (October 26, 2001) ("*Initiation Notice*")), the following events have occurred.

On November 13, 2001, the United States International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that imports of certain cold-rolled steel products from South Africa are materially injuring the United States industry (*see Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela*, (66 FR 57985 (November 19, 2001)).

On December 5, 2001, we selected the largest producer/exporter of cold-rolled steel from South Africa as a mandatory respondent in this proceeding. For further discussion, see the Memorandum to Laurie Parkhill, Director Office 3, from The Team regarding Selection of Respondents dated December 5, 2001. We issued the antidumping questionnaire to Iscor Limited ("Iscor") on December 5, 2001.

On December 7, 2001, the petitioners [1] alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigations of cold-rolled carbon steel flat products from Argentina, Australia, China, India, the Netherlands, Russia, South Africa, South Korea, and Taiwan. On December 14, 2001, the petitioners supplemented their December 7, 2001, submission with additional information.

During the period January through April 2002, the Department received from Iscor responses to sections A, B, and C of the Department's original and supplemental questionnaires.

On February 7, 2002, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request on February 14, 2002, and postponed the preliminary determination until no later than April 26, 2002 (*Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela*, 67 FR 8227 (February 22, 2002)).

In accordance with 19 CFR 351.206(c)(2)(i), because petitioners submitted the critical circumstances allegation more than twenty days before the scheduled date of the preliminary determination, the Department must issue the preliminary critical circumstances determination not later than the date of the preliminary determination. A full discussion of our analysis may be found in the critical circumstances section of this notice and in the critical circumstances memorandum from Richard W. Moreland to Faryar Shirzad, dated April 26, 2002 (*Preliminary Negative Determinations of Critical Circumstances—South Africa*). A public version of this memorandum is on file at the Import Administration Central Records Unit, in Room B–099 of the Department of Commerce Building.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on April 23, 2002, Iscor requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b)(2)(ii) and (e), because (1) our preliminary determination is affirmative, (2) Iscor accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, please *see* the Scope Appendix attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Preliminary Negative Determination of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Period of Investigation

The period of investigation ("POI") is July 1, 2000, through June 30, 2001.

Fair Value Comparisons

To determine whether sales of cold-rolled steel from South Africa to the United States were made at less than fair value ("LTFV"), we compared the constructed export price ("CEP") to the normal value ("NV"), as described in the "Constructed Export Price" and "Normal Value" sections of this notice below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average CEPs to POI weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent in the home market during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons for U.S. sales. We compared U.S. sales to sales of identical merchandise made in the home market. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared

[1] The petitioners in the concurrent antidumping duty investigations are Bethlehem Steel Corporation, LTV Steel Company, National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel LLC, WCI Steel, Inc., and Weirton Steel Corporation. Weirton Steel Corporation is not a petitioner in the Netherlands case. Effective January 1, 2002, the party previously known as "United States Steel LLC" changed its name to "United States Steel Corporation."

U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: hardening and tempering, painted, carbon level, quality, yield strength, minimum thickness, thickness tolerance, width, edge finish, form, temper rolling, leveling, annealing, and surface finish.

For this preliminary determination, we did not use certain home-market sales reported by Iscor because it did not indicate the quality or yield strength for the products involved in these transactions and reported zero in the quality and yield strength fields. As a result, in the product-comparison portion of the margin program we generated missing values. In its April 8, 2002, supplemental response at pages 11 and 12, Iscor stated that it reported zero because for some orders customers did not specify a quality or yield strength for the merchandise ordered and Iscor did not keep a record of this information. We intend to examine this matter in detail at verification.

Constructed Export Price

In accordance with section 772(b) of the Act, we calculated CEP for all sales to the United States because Iscor sells all the merchandise under investigation to the United States through an affiliated company in the United States, MacSteel International USA Corp.

We based CEP on the FOB prices to unaffiliated purchasers in the United States. We made adjustments for billing adjustments. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these deductions included, where appropriate, domestic inland freight (*i.e.*, inland freight expense from plant/warehouse to port of exit), ocean freight, marine insurance, U.S. brokerage and handling, U.S. customs duties, U.S. wharfage fees, U.S. survey fees, U.S. inland freight expenses (*i.e.*, freight from port to warehouse), and warehousing expenses. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*e.g.*, imputed credit costs) and indirect selling expenses (*e.g.*, inventory carrying costs).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Iscor and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales. *See Preliminary Determination Analysis Memorandum for Iscor.*

We used Iscor's reported constructed value (CV) data to calculate the CEP profit amount. In our original questionnaire dated December 5, 2001, we requested that Iscor respond to the CV portion of section D with respect to products or models sold in the United States for which it had no sales of comparable merchandise in the home or third-country market. As Iscor did not respond to the CV section of the section D, we repeated the request in a supplemental questionnaire. In response to the supplemental questionnaire, Iscor provided a response to the CV portion of the section D questionnaire. Because CV data was on the record and it is the Department's normal practice to use CV data to calculate the CEP profit amount when it is available, we used this data to calculate the CEP profit amount. By using CV data we are able to calculate a profit amount which is more specific to the merchandise under investigation than relying on a profit amount derived from the financial statements which could cover a broader range of merchandise. In using Iscor's CV data, we found that Iscor did not provide CV data for all of its U.S. products. Therefore, for this preliminary determination, and pursuant to section 776(a) of the Act, as facts available, we extracted the cost information available in the U.S. database and information provided in the CV portion of section D response to derive the CV for these sales. Prior to our final determination, we will require Iscor to provide the CV data for the products for which we currently have no CV data so that we can include this data in our calculations for the final determination.

For this preliminary determination we have not included certain expense amounts reported in the U.S. miscellaneous-expense field. In its section C questionnaire response Iscor reported certain expense amounts in the U.S. miscellaneous-expenses field. However, it did not clearly identify the nature of these expenses. In its response to our supplemental questionnaire, Iscor stated that this field is primarily comprised of brokerage fees. However, it did not provide an adequate explanation for the negative amounts reported in this field. Since Iscor did not demonstrate that it was entitled to receive this upward adjustment to U.S. price (*i.e.*, deducting the negative numbers reported in movement expense resulted in an increase in U.S. price for certain transactions) for this preliminary determination, we did not use the negative amounts reported in this field. However, because Iscor provided adequate information with regard to the positive values reported in this field, we used the positive amounts reported in this field. *See Preliminary Determination Analysis Memorandum for Iscor.*

On December 21, 2001, Iscor requested that the Department permit it to exclude from its response to the questionnaire an insignificant quantity of sales which its U.S. affiliate sold to its affiliated customer in the U.S. market as well as that affiliated customer's sales to its unaffiliated customers. The affiliated customer added value to some of the merchandise prior to resale. Iscor stated that providing sales and further-manufacturing data for such an insignificant quantity of sales would be disproportionately burdensome without having any meaningful effect on the calculation of the dumping margin. Consistent with our past practice, because the volume of these sales was small and would have a negligible impact upon the margin calculation, we granted Iscor's request. *See Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan*, 64 FR 8291, 8295 (February 19, 1999) (unchanged in the final determination). In our letter granting the request, however, we informed Iscor that this assertion is subject to verification.

Normal Value

A. Home-Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home-market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home-market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.405(2). Because the respondent's aggregate volume of home-market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for the respondent.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 412(c)(2)(2001). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; *see* also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997).

In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"),[2] including selling functions,[3] class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison-market sales (*i.e.*, NV based on either home-market or third-country prices), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. March 7, 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a NV level of trade is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affected price comparability (i.e., no LOT adjustment was practicable), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.

We obtained information from Iscor regarding the marketing stages involved in making the reported home-market and U.S. sales, including a description of the selling activities performed by the respondent for each channel of distribution. Iscor's LOT findings are summarized below.

Iscor reported one channel of distribution in the home market with two customer categories, merchants (which included distributors, processors and service centers) and end-users. The selling activities associated with all sales were similar (*e.g.*, freight and delivery arrangements, order processing, inventory management, after-sales service, and quality assurance) and, based on our analysis of the selling activities, we preliminarily determine that the reported single home-market channel of distribution constitutes one LOT. Iscor reported one channel of distribution in the U.S. market, represented by its CEP sales. Iscor's CEP level of trade was its sales to its affiliated reseller. After making deductions pursuant to section 772(d) of the Act, we found that the selling functions performed by Iscor at the CEP level (*e.g.*, freight and delivery arrangements, order processing, inventory management, after-sales service and quality assurance) were not sufficiently different from the selling functions performed at the home-market LOT (*e.g.*, freight and delivery arrangements, order processing, inventory management, after-sales service, and quality assurance) to consider the home-market LOT to be different and at a more advanced stage of distribution than the CEP LOT. Because the sole home-market LOT was not different from the CEP LOT we did not make a LOT adjustment.

Although Iscor claimed a CEP-offset adjustment to NV, because we found the CEP LOT to be similar to the home-market LOT we made no CEP-offset adjustment.

D. Calculation of Normal Value Based on Comparison-Market Prices

We calculated NV based on "free on rail ex-works" prices to unaffiliated customers. We made adjustments, where appropriate, to the starting price for billing adjustments, interest revenue, rebates, and early-payment discounts. We also made deductions for movement expenses (*i.e.*, inland freight expense from plant/warehouse to customer) under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses.

We also deducted home-market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Critical Circumstances

Section 733(e)(1) of the Tariff Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, "In general, unless the imports during the "relatively short period" have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive."

Section 351.206(i) of the Department's regulations defines "relatively short period" as generally the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed)

[2] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale appears to occur.

[3] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of this preliminary determination, we have organized the common cold-rolled carbon steel-flat product selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

and ending at least three months later. This section provides further that, if the Department "finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely," then the Department may consider a period of not less than three months from that earlier time.

In determining whether the above statutory criteria have been satisfied, we examined the following information: (1) The evidence presented in the petitioners' submissions of December 7, 2001, and January 14, 2002; (2) new evidence obtained since the initiation of the less-than-fair-value (LTFV) investigations (*i.e.*, additional import statistics released by the Census Bureau); and (3) the International Trade Commission's (ITC) affirmative preliminary injury determination (*see Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela,* International Trade Commission Investigations Nos. 701–TA–422–425 and 731–TA–964–983 Preliminary Determination, 66 FR 57985 (November 19, 2001)).

History of Dumping

In determining whether a history of dumping and material injury exists, the Department generally considers current or recent antidumping duty orders on the subject merchandise from the country in question in the United States and current orders in any other country. *See Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Notice of Preliminary Determination of Critical Circumstances,* 67 FR 6224 (February 11, 2002) (*Carbon and Alloy Steel Wire Rod*). Because we are not aware of any existing antidumping order in any country on cold-rolled carbon steel flat products from South Africa, we do not find a history of dumping from South Africa, pursuant to section 733(e)(1)(A)(i) of the Act. However, the Department may look to the second criterion for determining whether importers knew or should have known that exporters were selling subject merchandise from South Africa at LTFV prices.

Importer Knowledge of Injurious Dumping

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known the exporter was selling cold-rolled steel at less than fair value, the Department normally considers margins of 25 percent or more for export price (EP) sales and 15 percent or more for CEP sales sufficient to impute importer knowledge of sales at LTFV. *See Carbon and Alloy Steel Wire Rod,* 67 FR 6224, 6225.

The Department normally bases its decision with respect to knowledge on the margins determined in the preliminary determination. Therefore, for purposes of this preliminary determination of critical circumstances, we are relying on the margin calculated for Iscor for this preliminary determination. Because this margin is greater than 15 percent (see "Suspension of Liquidation" section below), in the case of South Africa, which has CEP sales, we find that there is a reasonable basis to impute knowledge of dumping with respect to imports from South Africa.

Material Injury

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of dumped imports. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate from the People's Republic of China,* 62 FR 61964 (November 20, 1997). In this case, the ITC preliminarily found that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of subject merchandise from South Africa. *See Determinations and Views of the Commission,* Investigations Nos. 701–TA–422–425 and 731–TA–964–983, Publication 3471 (November 2001) (*ITC Determination*). Due to the ITC's finding of material injury, we preliminarily determine that there is a reasonable basis to believe or suspect that importers knew or should have known that imports of cold-rolled steel from South Africa were likely to cause material injury.

Massive Imports

In determining whether there are "massive imports" over a "relatively short period," pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the "base period") to a comparable period of at least three months following the filing of the petition (*i.e.*, the "comparison period"). However, as stated in 19 CFR 351.206(i), "if the Secretary finds importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time." Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period. We used company-specific shipment data and determined that there were not massive imports either for Iscor or for "all others." For a detailed analysis, see the memorandum from Richard Moreland to Faryar Shirzad, dated April 26, 2002 (*Preliminary Negative Determinations of Critical Circumstances—South Africa*).

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Iscor	43.32
All Others	[1] 43.32

[1] As Iscor was the only respondent that we used in our calculations, we used Iscor's margin as the all-others rate.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, pursuant to section 735(b)(2) of the Act, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports

are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held three days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11194 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–812]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: We preliminarily determine that certain cold-rolled carbon steel flat products from Spain are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. We will make our final determination not later than 75 days after the date of this preliminary determination.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Irina ltkin at (202) 482–0656, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2001).

Preliminary Determination

We preliminarily determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from Spain are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on October 18, 2001.[1] *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela,* 66 FR 54198 (Oct. 26, 2001) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred.

On November 13, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela of cold-rolled steel products. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela,* 66 FR 57985 (Nov. 19, 2001).

On November 16, 2001, the Department issued a complete antidumping questionnaire to Aceralia.[2] *See* the memorandum from the Team to Louis Apple entitled "Antidumping Duty Investigation of Cold-Rolled Carbon Steel Flat Products from Spain—Selection of Respondents," dated November 16, 2001 (*First Respondent Selection Memo*).

On December 13, 2001, Aceralia notified the Department that it did not make sales of subject merchandise during the Period of Investigation (POI). Rather, Aceralia stated that all of its U.S. sales during the POI consisted of either merchandise which was outside the scope of the investigation or a single trial sale of subject merchandise which was later cancelled. On December 19, 2002, we requested that Aceralia provide information on the physical

[1] The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company, National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation (collectively "the petitioners").

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

characteristics of the merchandise which it claimed was outside the scope.

On December 19 and 20, 2002, the Department issued questionnaires to two additional companies believed to produce and/or export subject merchandise (*i.e.*, Laminacion y Derivados, S.A. (Layde) and Troquenor, S.A. (Troquenor), respectively). *See* the memorandum from the Team to Louis Apple entitled "Antidumping Duty Investigation of Cold-Rolled Carbon Steel Flat Products from Spain—Selection of Respondents' dated December 19, 2001 (*Second Respondent Selection Memo*). For further discussion, see the "Selection of Respondents" section of this notice, below.

On December 21 and 27, 2001, we requested additional information from Aceralia regarding the physical characteristics of its out-of-scope merchandise. Also on these dates, we informed Aceralia that, if we determined that Aceralia did in fact make sales of subject merchandise, its response to the remaining sections of the questionnaire would continue to be due in January 2002 with no further extensions possible.

On January 11, 2002, Aceralia provided the information requested in December 2001. On January 22, 2002, we requested further clarification regarding the products exported by Aceralia during the POI. This information was received on January 29, 2002.

Also on January 22, 2002, Layde informed the Department that it had no commercial sales of subject merchandise during the POI. On January 23, 2002, we requested that Layde demonstrate that the subject merchandise exported to the United States was scrapped.

On January 29, 2002, Troquenor informed the Department that all of its exports to the United States were of hot-rolled steel products. On January 31, 2002, we requested that Troquenor provide documentation showing that this was the case. Troquenor provided this information on February 22, 2002.

On February 7, 2002, the petitioners requested a postponement of the preliminary determination in this investigation. On February 22, 2002, the Department published a **Federal Register** notice postponing the deadline for the preliminary determination until April 26, 2002. *See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (A–357–816), Australia (A–602–804), Belgium (A–423–811), Brazil (A–351–834), the People's Republic of China (A–570–872), France (A–427–822), Germany (A–428–834), India (A–533–826), Japan (A–588–859), Korea (A–580–848), the Netherlands (A–421–810), New Zealand (A–614–803), Russia (A–821–815), South Africa (A–791–814), Spain (A–469–812), Sweden (A–401–807), Taiwan (A–583–839), Thailand (A–549–819), Turkey (A–489–810) and Venezuela (A–307–822),* 67 FR 8227 (Feb. 22, 2002).

On February 11, 2002, we requested that Aceralia provide documentation showing that its sale of in-scope merchandise during the POI was cancelled and the corresponding coils were returned by the customer. On February 19, 2002, Aceralia submitted its response to this request.

Also on February 19, 2002, Layde informed the Department that it in fact sold a small quantity of subject merchandise to an unaffiliated customer during the POI. On February 22, 2002, we requested that Layde provide additional documentation regarding this transaction.

On February 28, 2002, Layde informed the Department that it would not provide any additional information in this investigation.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. Using company-specific export data for the period of investigation (POI), which we obtained from a variety of sources under the *Harmonized Tariff Schedule of the United States* (HTSUS) number that corresponds to the subject merchandise, we found that ten producers/exporters may have exported cold-rolled steel to the United States during the POI. According to data on the record, Aceralia represented the vast majority of the imports of subject merchandise during the POI. Due to limited resources, we determined that we could only investigate this one largest producer/exporter. Therefore, we designated Aceralia as the mandatory respondent and sent it the antidumping questionnaire. *See* the *First Respondent Selection Memo.*

On December 13, 2001, Aceralia notified the Department that it did not make sales of subject merchandise during the POI. Rather, Aceralia stated that all of its U.S. sales during the POI consisted of either merchandise which was outside the scope of the investigation or a single trial sale of subject merchandise which was later cancelled.

According to data on the record, Layde was the only other producer of subject merchandise identified in the petition, and Troquenor was the next largest producer of merchandise shown in the Customs Service data relied on previously to select Aceralia. Therefore, we designated Layde and Troquenor as additional mandatory respondents and sent them the antidumping questionnaire. *See* the *Second Respondent Selection Memo.*

On January 29, 2002, Troquenor informed the Department that it did not export any subject merchandise to the United States during the POI. Because neither Aceralia nor Troquenor had POI sales of cold-rolled steel, we are not treating them as respondents in this investigation. Therefore, the Department will apply the "all others" rate to future shipments to the United States made by these companies. For further discussion, see the memorandum from the Team to Louis Apple entitled "Analysis of Merchandise Sold by Aceralia and Troquenor During the POI in the Antidumping Duty Investigation of Cold-Rolled Carbon Steel Flat Products from Spain," dated April 15, 2002.

Period of Investigation

The POI is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2001).

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* published concurrently with this preliminary determination.

Facts Available (FA)

1. Application of FA

Section 776(a)(2) of the Act provides that if an interested party (A) withholds

information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On December 19, 2001, the Department issued its questionnaire to Layde. On January 22, 2002, Layde informed the Department that it had no commercial sales of subject merchandise during the POI. Subsequently, the Department requested further information regarding Layde's claims. In response to this request, Layde stated that it had sales of subject merchandise to the United States in the amount of 12.02 short tons. Upon the Department's request that it report these sales, Layde informed the Department that it no longer intended to participate in this investigation because the total quantity of its sales to the United States was negligible. *See* the February 28, 2002, letter from Layde. Because Layde failed to supply necessary information, we have applied FA to calculate the dumping margin, pursuant to section 776(a)(2)(B) of the Act.

Selection of Adverse FA (AFA)

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review,* 62 FR 53808, 53819–20 (Oct. 16, 1997). The respondent was notified in the Department's questionnaires and in subsequent communications that failure to submit the requested information by the date specified might result in use of FA. As a general matter, it is reasonable for the Department to assume that Layde possessed the records necessary for this investigation and that by not supplying the information the Department requested, Layde failed to cooperate to the best of its ability. As Layde failed to cooperate to the best of its ability, we are applying an adverse inference pursuant to section 776(b) of the Act.

2. Corroboration of Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See,* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see* SAA at 870).

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculations in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*see Spain Initiation Checklist* on file in the Central Records Unit (*Initiation Checklist*), Room B–099, of the Main Commerce Department building, for a discussion of the margin calculation in the petition). In addition, in order to determine the probative value of the margin in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculation in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margin in the petition was based.

Export Price

With respect to the margin in the petition, EP was based on average per-unit customs import values (AUV) for one ten-digit category of the HTSUS corresponding to in-scope imports from Spain during the POI. Our review of the EP calculation indicated that the information in the petition has probative value because certain information (*e.g.,* import statistics) included in the margin calculation in the petition is from public sources concurrent, for the most part, with the POI. We compared the AUV data with U.S. customs data and found the price used by the petitioners to be accurate. As the AUV data is based on official statistics, no further corroboration is necessary. *See Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping Duty Administrative Review,* 64 FR 76, 84 (Jan. 4, 1999) (Comment 13).

Normal Value

The petitioners based normal value on a home market price quote obtained from a Spanish cold-rolled steel producer. The grade and size of this merchandise was comparable to the HTSUS classification used for purposes of EP. In addition, this price quote was contemporaneous with the AUV data used by the petitioners.

The Department was provided with no useful information by the respondents or other interested parties and is aware of no other independent sources of information that would enable us to further corroborate the margin calculations in the petition (*e.g.* the Department attempted to locate home market prices through publically available sources (*see* the memorandum to the File from the Team entitled "Home Market Price Data From Publically-Available Sources in the Antidumping Duty Investigation of Cold-Rolled Carbon Steel Flat Products from Spain," dated April 12, 2002)).

It is worth noting that the implementing regulation for section 776 of the Act states, "(t)he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using secondary information in question." *See* 19 CFR 351.308(c). Additionally, the SAA at 870 specifically states that where "corroboration may not be practicable in a given circumstance," the Department need not prove that the

facts available are the best alternative information."

Therefore, based on our efforts, described above, to corroborate information contained in the petition, and in accordance with 776(c) of the Act, we consider the margins in the petitions to be corroborated to the extent practicable for purposes of this preliminary determination.

Accordingly, in selecting AFA with respect to Layde, the Department decided to apply the margin rate of 46.20 percent, which is the estimated dumping margin calculated by the petitioners in the amended petition of this investigation. *See Initiation Notice.*

All Others

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis,* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all others" rate for exporters and producers not individually investigated. This provision contemplates that we weight-average margins other than zero, *de minimis,* and FA margins to establish the "all others" rate. Where the data do not permit weight-averaging such rates, the SAA, at 873, provides that we may use other reasonable methods. Because the petition contained only one estimated dumping margin, 46.20 percent, there are no additional estimated margins available with which to create an "all others" rate based on an average. Therefore, we have selected the margin of 46.20 percent as the "all others" rate. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Indonesia,* 66 FR 22163 (May 3, 2001).

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise from Spain entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average margin (in percent)
Laminacion y Derivados, S.A. (Layde)	46.20
All Others	46.20

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in this investigation in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

For the investigation of cold-rolled steel from Spain, case briefs must be submitted no later than 35 days after the publication of this notice in the **Federal Register**. Rebuttal briefs must be filed within five business days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette. Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination in the investigation of cold-rolled steel from Spain no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11195 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–807]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Sweden

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Geoffrey Craig at (202) 482–4161 or Frank Thomson at (202) 482–4793, AD/CVD Enforcement Office VI, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2001).

Preliminary Determination

We preliminarily determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from Sweden are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on October 18, 2001.[1] *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred.

On October 31, 2001, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes, and we received comments on our proposed matching criteria on November 8, 2001. On November 8, 2001, we received model match comments from petitioners. On November 26, 2001, we informed respondents of our revised model match criteria.

On November 13, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela of cold-rolled steel products. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 57985 (November 19, 2001).

On November 16, 2001, the Department issued an antidumping questionnaire to SSAB Svenskt Stal AB (SSAB).[2] *See Memorandum to Melissa Skinner, Selection of Respondents for the Antidumping Investigation of Certain Cold-Rolled Carbon Steel Flat Products from Sweden (Respondent Selection Memo)* (November 29, 2001). On December 7, 2001, SSAB stated that it did not intend to participate in this investigation.

On December 4, 2001, we received a letter from AB Sandvik Steel (Sandvik) requesting to participate in the cold-rolled investigation as a voluntary respondent. On December 7, 2001, we accepted Sandvik as a voluntary respondent. In letters dated December 12, 2001, and January 3, 2002, we granted Sandvik extensions to respond to the questionnaire. We received Sandvik's Sections A, B, C and E questionnaire response on January 14, 2002. In a letter dated February 4, 2002, the petitioners requested that the Department commence a sales below cost investigation of cold-rolled steel manufactured by Sandvik.

On February 6, 2002, Sandvik informed the Department that it was withdrawing its participation in this investigation and requested that we remove its proprietary information from the official record of this proceeding and return the information to Sandvik.

On February 7, 2002, the petitioners requested a postponement of the preliminary determination in this investigation. On February 22, 2002, the Department published a **Federal Register** notice postponing the deadline for the preliminary determination until April 26, 2002. *See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (A–357–816), Australia (A–602–804), Belgium (A–423–811), Brazil (A–351–834), the People's Republic of China (A–570–872), France (A–427–822), Germany (A–428–834), India (A–533–826), Japan (A–588–859), Korea (A–580–848), the Netherlands (A–421–810), New Zealand (A–614–803), Russia (A–821–815), South Africa (A–791–814), Spain (A–469–812), Sweden (A–401–807), Taiwan (A–583–839), Thailand (A–549–819), Turkey (A–489–810) and Venezuela (A–307–822)*, 67 FR 8227 (February 22, 2002).

On April 11, 2002, we informed SSAB that failure to submit the requested information by the date specified might result in use of the facts available (FA) under section 776 of the Act and section 351.308 of the Department's regulations.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. Using company-specific export data for the period of investigation (POI), based on the Harmonized Tariff Schedules of the United States (HTSUS) number that corresponds to the subject merchandise, we obtained information from a variety of sources and found that sixteen producers/exporters may have exported cold-rolled steel to the United States during the POI. According to data on the record, SSAB represented a significantly large percent of the imports during the POI. Due to limited resources, we determined that we could only investigate this one largest producer/exporter. *See Respondent Selection Memo*. Therefore, we designated SSAB as the mandatory respondent and sent it the antidumping questionnaire. On December 7, 2001, SSAB stated that it did not intend to participate in this investigation.

Period of Investigation

The POI is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2001).

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, please see the Scope Appendix attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Facts Available (FA)

1. Application of FA

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

[1] The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation (collectively, the petitioners).

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On November 16, 2001, the Department issued an antidumping questionnaire to SSAB. Section A was due on December 7, 2001, and Sections B–D were due on December 24, 2001. SSAB did not respond to the sections A, B, C, and D by the respective due dates, nor did the company request that the Department grant any extension of the deadlines to respond. On December 7, 2001, SSAB notified the Department that it did not intend to respond to the Department's questionnaire. In a letter dated April 11, 2002, we informed SSAB that failure to submit the requested information by the date specified might result in use of the FA under section 776 of the Act and section 351.308 of the Department's regulations. SSAB did not respond to the Department's requests for information at all.

As described above, SSAB failed to provide a response to the Department's questionnaire despite the Department's repeated requests for information. Because SSAB failed to provide any of the necessary information requested by the Department and significantly impeded the proceeding, pursuant to section 776(a)(2)(B) and (C) of the Act, we have applied the FA to calculate the dumping margin.

On December 7, 2001, we accepted Sandvik as a voluntary respondent. We note that 19 CFR 351.204(d)(2) of the Department's regulations states that "A voluntary respondent accepted for individual examination under subparagraph (d)(1) of this section will be subject to the same requirements as an exporter or producer initially selected by the Secretary for individual examination under section 777A(c)(2) or section 777A(e)(2)(A) of the Act, including the requirements of section 782(a) of the Act and, where applicable, the use of the facts available under section 776 of the Act and 351.308."

In letters dated December 12, 2001, and January 3, 2002, we granted Sandvik extensions to respond to the questionnaire. We received Sandvik's Sections A, B, C and E questionnaire response on January 14, 2002. After submitting a questionnaire response, on February 6, 2002, Sandvik subsequently informed the Department that it was withdrawing its participation in this investigation and requested that we remove its proprietary information from the official record of this proceeding and return the information to Sandvik.

As described above, Sandvik withdrew its participation in this investigation subsequent to being accepted as a voluntary respondent and its proprietary information has been taken off the official record of this proceeding. Thus, because Sandvik failed to provide the necessary information requested by the Department and significantly impeded the proceeding, pursuant to section 776(a)(2)(B) and (C) of the Act, we have applied the FA to calculate the dumping margin.

2. Selection of Adverse FA (AFA)

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review,* 62 FR 53808, 53819–20 (October 16, 1997). SSAB was notified in the Department's questionnaire and in a separate letter that failure to submit the requested information by the date specified might result in use of the FA. Sandvik was also notified in the Department's questionnaire that failure to submit the requested information by the date specified might result in use of the FA. Moreover, SSAB and Sandvik failed to offer any alternative methods for submitting the requested information. As a general matter, it is reasonable for the Department to assume that SSAB and Sandvik possessed the records necessary for this investigation and that by not supplying the information the Department requested, SSAB and Sandvik failed to cooperate to the best of their ability. As SSAB and Sandvik failed to cooperate to the best of their ability, we are applying an adverse inference pursuant to section 776(b) of the Act. As AFA, we have used 40.54 percent, the rate derived from the petition. *See Initiation Notice.*

3. Corroboration of Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See,* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (see SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (see SAA at 870).

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculations in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*see Sweden Initiation Checklist* (*Initiation Checklist*) on file in the Central Records Unit, Room B–099, of the Main Commerce Department building, for a discussion of the margin calculation in the petition.) In addition, in order to determine the probative value of the margin in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculation in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margin in the petition was based.

Export Price

With respect to the margin in the petition, EP was based on average per-unit customs import values (AUV) for the ten-digit category of the HTSUS accounting for a significant percentage of in-scope imports from Sweden during the POI and that is comparable to the product on which the normal value price quote information is based. Our review of the EP calculation indicated

that the information in the petition has probative value, as certain information (*e.g.*, import statistics) included in the margin calculation in the petition is from public sources concurrent, for the most part, with the POI. We compared the export prices contained in the petition with U.S. Census values for the same HTSUS categories and found the export prices suggested in the petition to be reasonable and, therefore, corroborated for purposes of calculating a facts available margin. Export prices which are based on U.S. customs data are considered corroborated. *See Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 76, 84 (January 4, 1999) (Comment 13).

Normal Value

The petitioners calculated NV from price information obtained from foreign market research for cold-rolled steel comparable to the products exported to the United States which serve as the basis for EP. The petitioners deducted freight cost from the home market price.

The Department was provided with no useful information by the respondents or other interested parties and is aware of no other independent sources of information that would enable us to further corroborate the margin calculations in the petition.

It is worth noting that the implementing regulation for section 776 of the Act states, "(t)he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using secondary information in question." *See* 19 CFR 351.308(c). Additionally, the SAA at 870 specifically states that where "corroboration may not be practicable in a given circumstance," the Department need not prove that the facts available are the best alternative information."

Therefore, based on our efforts, described above, to corroborate information contained in the petition, and in accordance with 776(c) of the Act, we consider the margins in the petitions to be corroborated to the extent practicable for purposes of this preliminary determination. Our findings are outlined below.

Accordingly, in selecting AFA with respect to SSAB and Sandvik, the Department decided to apply the margin rate of 40.54 percent. *See Initiation Notice.*

All Others

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis*, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all others" rate for exporters and producers not individually investigated. In this case, we have determined that the only reasonable method is to use the single margin alleged in the petition, which was also the source of our facts available margin for SSAB and Sandvik. Therefore, we applied the margin of 40.54 percent as the "all others" rate. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from India*, 64 FR 73126 (December 29, 1999); and *Notice of Final Determination of Sales at Less than Fair Value: Welded Large Diameter Line Pipe from Mexico*, 67 FR 566, 567–68 (January 4, 2002).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of cold-rolled steel from Sweden that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the dumping margin, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

Manufacturer/exporter	Margin (percent)
SSAB Svenskt Stal AB	40.54
AB Sandvik Steel	40.54
All Others	40.54

Disclosure

Within five days of the date of publication of this notice, the Department will disclose its calculations to the parties to this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

For the investigation of cold-rolled steel from Sweden, case briefs must be submitted no later than 50 days after the publication of this notice in the **Federal Register**. Rebuttal briefs must be filed within five calendar days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette. Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination in the investigation of cold-rolled steel from Sweden no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11196 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–839]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Carbon Steel Flat Products From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher Riker or Martin Claessens, AD/CVD Enforcement Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0186 or (202) 482–5451, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (Department's) regulations are to 19 CFR part 351 (April 2001).

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from Taiwan are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margin of sales at LTFV is shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on October 18, 2001.[1] Since the initiation of this investigation (*Initiation of Antidumping Duty Investigations: Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russian, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela,* 66 FR 54198 (October 26, 2001)) (*Initiation Notice*), the following events have occurred.

On October 31, 2001, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes, and we received comments on our proposed matching criteria on November 8, 2001. On November 8, 2001, we received model match comments from the petitioners and CSC. On November 26, 2001, we informed CSC and Kao Hsing of our revised model match criteria.

On November 13, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela of cold-rolled steel products. *See Certain Cold-Rolled Steel Products from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela,* 66 FR 57985 (November 19, 2001).

On November 23, 2001, we selected as mandatory respondents China Steel Corporation including its affiliate Yieh Loong Enterprise Co. Ltd. (Yieh Loong) (collectively CSC) and Kao Hsing Chang Iron & Steel Corporation (Kao Hsing), companies which we believed to be the two largest producers/exporters of certain cold-rolled carbon steel products in Taiwan, as the mandatory respondents in this proceeding. For further discussion, *see* Respondent Selection Memorandum dated November 23, 2001. However, after receiving revised shipment data from the American Institute in Taiwan, the Department amended its respondent selection memorandum and added Ton Yi Industrial Corporation (Ton Yi) to the list of mandatory respondents selected in this investigation. For further discussion, *see* Amended Respondents Selection Memorandum dated November 29, 2001. Questionnaires were issued to CSC on November 20, Kao Hsing on November 23, and Ton Yi on November 29, 2001.[2]

On December 7, 2001, the petitioners filed an allegation of critical circumstances with respect to imports of cold-rolled steel from Taiwan

During the period December 2001 through April 2002, the Department received responses to the original and supplemental questionnaires from CSC. To date, we have not received any information from either Kao Hsing or Ton Yi. On January 4, 2002, we sent letters to both companies informing them that, while we had confirmed that they had received our questionnaire, we had not yet received a response. These letters also went without response, and we have determined that we have no choice but to apply total adverse facts available to these respondents. (For a more detailed explanation, *see* the *Application of Facts Available* section, below.)

On February 7, 2002, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request on February 14, 2002, and postponed the preliminary determination until no later than April 26, 2002. *See Notice of Postponement of Preliminary Determinations of Antidumping Duty Investigations. Certain Cold-Rolled Carbon Steel Flat Products from Argentina (A–357–816), Australia (A–602–804), Belgium (A–423–811), Brazil (A–351–834), the People's Republic of China (A–570–872), France (A–427–822), Germany (A–428–834), India (A–533–826), Japan (A–588–859), Korea (A–580–848), the Netherlands (A–421–810), New Zealand (A–614–803), Russia (A–821–815), South Africa (A–791–814), Spain (A–469–812), Sweden (A–401–807), Taiwan (A–583–839), Thailand (A–549–819), Turkey (A–489–810) and Venezuela (A–307–822),* 67 FR 8227 (February 22, 2002).

On February 8, 2002, the petitioners requested the Department initiate a sales-below-cost investigation of CSC, and requested that the Department solicit CSC's response to section D of the Department's questionnaire. On February 21, 2002, the Department determined that there were reasonable grounds to believe or suspect that CSC made sales of the foreign like product at prices below its cost of production, within the meaning of section 773(b) of the Act and requested that CSC respond to section D of the questionnaire. CSC responded to the Department's request in a timely manner on March 20, 2002.

[1] The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation (collectively, the petitioners).

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market. Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producer/exporters of subject merchandise, section 777A(c)(2) of the Act permits us to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid, based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. Using company-specific export data and U.S. Customs Service import data for the POI, we found that CSC, Kao Hsing and Ton Yi accounted for a majority of the imports during the POI. *See,* Respondent Selection Memorandum dated November 23, 2001; *see also,* Amended Respondents Selection Memorandum dated November 29, 2001. Therefore, as previously stated, we designated these three companies as the mandatory respondents and sent to them the Department's antidumping questionnaire.

Period of Investigation

The period of investigation (POI) is July 1, 2000, through June 30, 2001.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. Section 351.210(e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months. We received a request to postpone the final determination from the respondent, CSC, on April 25, 2002. In its request, CSC consented to the extension of provisional measures to no longer than the date of the final determination.

Since this preliminary determination is affirmative, the request for postponement is made by an exporter that accounts for a significant proportion of exports of the subject merchandise, and there is no compelling reason to deny the respondent's request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register** and have extended provisional measures to no longer than six months.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* published concurrently with this preliminary determination.

Facts Available

1. Application of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information requested by the Department; (B) fails to provide such information by the deadline, or in the form or manner requested; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and, (5) the information can be used without undue difficulties.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. Furthermore, section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. *See also* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Rep. No. 103–316 at 870 (1994).

In accordance with section 776(a)(2), 776(b), and 782(d) and (e) of the Act, for the reasons briefly explained below, we preliminarily determine that the use of total adverse facts available is warranted with respect to Kao Hsing and Ton Yi.

As noted above, Kao Hsing and Ton Yi failed to provide, within the applicable deadlines, responses to the Department's questionnaire. Despite the Department's attempts to obtain Kao Hsing and Ton Yi's U.S. and home market information, both companies failed to reply. Because the requested information is crucial for purposes of preliminary dumping calculations, the Department must resort to facts otherwise available in reaching its preliminary determination, pursuant to section 776(a)(2)(A), (B) and (C).

We also find that the application of an adverse inference in this case is appropriate, pursuant to section 776(b) of the Act. As discussed above, both Kao Hsing and Ton Yi failed to provide the critical data requested, despite the Department's clear directions in the original questionnaire. Furthermore, neither Kao Hsing nor Ton Yi made any effort to provide an explanation or propose an alternate form of submitting the required data. In fact, neither company has responded to the Department's letter of January 4, 2002, in which the Department reminded both companies that it had not received a response to its request for information. For these reasons, we find that neither Kao Hsing nor Ton Yi has acted to the best of its ability in responding to the Department's request for information, and that, consequently, an adverse inference is warranted under section 776(b) of the Act. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan,* 65 FR 42985 (July 12, 2000) (the Department applied total adverse facts available where respondent failed to respond to the antidumping questionnaires).

Accordingly, in selecting adverse facts available with respect to Kao Hsing and Ton Yi, the Department determined to apply a margin rate of 16.80 percent, the highest margin alleged for Taiwan in the petitioners' September 28, 2001 petition. (For a more detailed analysis of the particulars and application of facts available, *see* the Application of Facts Available for Kao Hsing and Ton Yi memorandum dated April 26, 2002.)

2. Corroboration of Information

Section 776(b) of the Act states that an adverse inference may include reliance

on information derived from the petition. *See also* SAA at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see* SAA at 870).

To determine the probative value of the margins in the petition for use as adverse facts available for purposes of this determination, we examined evidence supporting the calculations in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margins in the petition were based. Our review of the EP and NV calculations indicated that the information in the petition has probative value, as certain information included in the margin calculations in the petition is from public sources concurrent, for the most part, with the relevant POI. For purposes of the preliminary determination, we attempted to further corroborate the information in the petition. We re-examined the EP and NV data which formed the basis for the highest margin in the petition in light of information obtained during the investigation and, to the extent practicable, found that it has probative value (*see* the April 26, 2002, memorandum to the file regarding *Application of Facts Available for Kao Hsing Chang Iron & Steel Corporation and Ton Yi Industrial Corporation*).

Accordingly, in selecting adverse facts available with respect to Kao Hsing and Ton Yi, the Department determined to apply a margin rate of 16.80 percent, the highest margin alleged for Taiwan in the petition.

Fair Value Comparisons

To determine whether sales of cold-rolled steel from Taiwan by CSC to the United States were made at LTFV, we compared the EP to the NV, as described in the *Export Price* and *Normal Value* sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent in the home market during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining the appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: hardening and tempering, painted, carbon level, quality, yield strength, minimum thickness, thickness tolerance, width, edge finish, form, temper rolling, leveling, annealing and surface finish.

1. Kick-off pup coil sales

CSC argues that home market sales of "kick-off pup coil" are outside the ordinary course of trade. Specifically, CSC argues that no physical characteristics are maintained for these products because they are the tail and end parts of the coils that are not produced to order and are considered to be of a lesser quality than both secondary or salvage merchandise. Additionally, sales of this merchandise constitute an extremely small portion of CSC's sales and were only made in the home market. As such, for the preliminary determination the Department has excluded sales of the aforementioned merchandise from its analysis. However, the Department intends to verify the accuracy of the information submitted on the record as it pertains to sales of kick-off pup coils and will revise its position if necessary for purposes of the final determination.

2. Carbon Quality

CSC created an additional field in its sales databases requesting that the Department further distinguish grades of commercial quality cold-rolled products. Specifically, CSC requested that the Department accept three subcategories of commercial steel, "CQ1," "CQ2," and "CQS."[3] CSC argued that these three subcategories represent "three separate internal standards" which correspond to distinct sets of mechanical and chemical properties. CSC argues that each subcategory represents a different hardness level, corresponding to carbon content. Additionally, CSC created additional subcategories for other qualities of commercial steels that fall under different hardness levels than three previously mentioned subcategories.

The petitioners argue that it is not the Department's normal practice to allow companies to change reporting criteria based on their own internal product coding system, and that the differences in mechanical and chemical properties are broken out in various other fields.[4] As such, the petitioners argue that the Department should reject CSC's suggestion and continue to use the information originally requested in the questionnaire.

For purposes of the preliminary determination, we have not granted CSC's request to amend the reporting requirements for the quality field. It is the Department's position that the hardness specifications can be distinguished through CSC's response to other fields, including annealing, temper rolling and yield strength. Therefore, we continue to believe that the Department's initial reporting requirements remain appropriate.

Export Price

For the price to the United States, we calculated EP, based on the packed prices charged to the first unaffiliated customer in the United States, pursuant to section 772(a) of the Act because the subject merchandise was either first sold by the exporter or producer outside the United States to an unaffiliated purchaser for exportation to the United States before the date of importation, or to an unaffiliated purchaser for exportation to the United States.

In accordance with section 772(c)(2) of the Act, we reduced the EP by movement expenses, where appropriate.

[3] *See* Letter to the Department of Commerce from China Steel Corporation regarding product characteristics (November 6, 2001); *see also* sections B and C questionnaire response submitted by CSC and Yieh Loong at B–6 and B–7 (January 22, 2002).

[4] *See* Letter to the Department of Commerce from Bethlehem Steel Corporation, National Steel Corporation and United States Steel Corporation regarding comments on the sales information submitted by CSC and Yieh Loong at 6 and 7 (April 8, 2002).

Normal Value

A. Home Market Viability

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for the respondent.

B. Arm's-Length Test

Sales to affiliated customers for consumption in the home market which were determined not to be at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the prices of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts and packing pursuant to section 773(a)(6) of the Act. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, where the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determine that the sales made to the affiliated party were not at arm's length. *See e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan,* 62 FR 60472, 60478 (November 10, 1997), and *Antidumping Duties; Countervailing Duties: Final Rule* (Antidumping Duties), 62 FR 27295, 27355–56 (May 19, 1997). We included in our NV calculations those sales to affiliated customers that passed the arm's-length test in our analysis. *See* 19 CFR 351.403; *Antidumping Duties,* 62 FR 27355–56.

C. Cost of Production Analysis

Based on our analysis of an allegation filed by the petitioners,[5] we found that there were reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below their cost of production (COP). Accordingly, pursuant to section 773(b) of the Act, we initiated a company-specific sales-below-cost investigation to determine whether sales were made at prices below their respective COPs (*see* memo from Nancy Decker and Martin Claessens to Gary Taverman (February 21, 2002)).

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for selling, general and administrative expenses (SG&A), including interest expenses, and home market packing costs (*see Test of Home Market Sales Prices* section below for treatment of home market selling expenses). We relied on the COP data submitted by CSC, except as noted below.

a. During the period of investigation, Yieh Loong purchased from an affiliate slabs used in the production of subject merchandise. In accordance with section 773(f)(2), we adjusted the reported transfer price to reflect the market price of the slabs.

b. We revised CSC's SG&A rate calculation to exclude the following non-operating revenue items: rent revenue/income, gain on long-term investment, gain on physical inventory, revenue from sale of scrap, and revenue from sale of fines. We also included the "depreciation from manage other assets" which was listed as a non-operating expense item and disallowed the "loss for market price decline inventory" which appears as a reduction in non-operating expenses.

c. We revised Yieh Loong's SG&A rate calculation to exclude rental income and exchange gain.

See Memorandum from Laurens van Houten to Neal Halper, Director, Office of Accounting, regarding the Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination (April 26, 2002).

2. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable movement charges, rebates, discounts, and direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made: (1) Within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI are at prices less than the COP, we determine that in such instances the below-cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of CSC's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Home Market Prices

We based home market prices on packed prices to unaffiliated purchasers in Taiwan. We adjusted, where applicable, the starting price for discounts and rebates. We made adjustments for any differences in packing and deducted home market movement expenses and domestic brokerage and handling, pursuant to sections 773(a)(6)(A) and 773(a)(6)(B)(ii) of the Act. We also made circumstance of sale (COS) adjustments, where applicable, by deducting direct selling expenses incurred for home market sales (*e.g.,* credit expenses, inventory maintenance, warranty expenses and technical services). Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

E. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison-market sales, NV may be based on constructed value (CV). Accordingly, for those models of cold-rolled steel for which we could not

[5] See Letter from the petitioners to the Department (February 8, 2002).

determine the NV based on comparison-market sales, either because there were no sales of a comparable product or all sales of the comparison products failed the COP test, we based NV on CV.

Section 773(e)(1) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise plus amounts for selling, general, and administrative expenses (SG&A), profit, and U.S. packing expenses. We calculated the cost of materials and fabrication based on the methodology described in the COP section of this notice. We based CSC's and Yieh Loong's respective SG&A and profit on the actual amounts incurred and realized by each in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

We made adjustments to CV for differences in the COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. These involved the deduction from CV of direct selling expenses incurred on home market sales (*e.g.*, credit expenses, inventory maintenance, warranty expenses and technical services).

F. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP transactions, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the distribution chain between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (*i.e*, the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61733, 61746 (November 19, 1997).

In implementing these principles in this investigation, we obtained information from CSC about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by CSC for each channel of distribution. In identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting price before any adjustments.

The respondents reported two separate channels of distribution in the home market, sales through an unaffiliated coil center, and sales directly to an end-user. While CSC claimed two home market channels of distribution, we preliminarily determine that it is more appropriate to consider their home market sales to have been made via a single channel of distribution, *i.e.*, direct from the factory, albeit to two different customer categories (coil center and end-user). Nevertheless, regardless of the channel of distribution or customer category, all home market transactions received inventory maintenance, warranty services, technical advice, delivery arrangement services and sales support. Therefore, we have determined that there is a single LOT for all sales in the home market.

For sales to the United States, CSC's EP sales were made through one channel of distribution, sales to an unaffiliated trading company or U.S. importer. CSC provided delivery arrangements and warranty service arrangements to its U.S. customer. Our examination of the selling functions, selling expenses and customer categories involved in home market and U.S. sales indicates that home market sales were made at a level more remote from the factory than the level of the EP transactions. However, because there was a single home market LOT, there is no information available with which to determine a pattern of consistent price differences between the sales on which normal value is based and home market sales at the LOT of the export transactions. Further, we do not have information that would allow us to examine pricing patterns based on the respondent's sales of other products, and there are no other respondents or other record information on which such an analysis could be based. Therefore, all available home market sales have been considered in making our product matches and no LOT adjustment has been made.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on daily exchange rates as certified by the Federal Reserve Bank.

Critical Circumstances

Of the petitioners, Nucor Corporation, Steel Dynamics, Inc., WCI Steel, Inc., and Weirton Steel Corporation filed an allegation of critical circumstances with respect to imports of cold-rolled steel from Taiwan on December 7, 2001. Inasmuch as the petitioners submitted critical circumstances allegations more than 20 days before the scheduled date of the preliminary determination, section 351.206(c)(2)(i) of the Department's regulations provides that we must issue our preliminary critical circumstances determinations not later than the date of the preliminary determination.

If critical circumstances are alleged, section 733(e)(1) of the Act directs the Department to examine whether there is a reasonable basis to believe or suspect that: (A)(i) {t}here is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

In order to demonstrate a history of dumping and material injury with respect to Taiwan, the petitioners cite to the September 10, 2001, final dumping determination issued by the Canada Customs and Revenue Agency (CCRA), where the CCRA found that Taiwanese steel had been dumped in Canada at an average margin of 28.71 percent. In addition, the petitioners cite to a newspaper that claims that the Thai steel industry is collecting information on possible dumping by companies from several countries, including Taiwan. *See* the Petition at Exhibit II–52.

In evaluating the evidence supplied by the petitioners, we note that on October 9, 2001, the Canadian International Trade Tribunal (CITT) issued a final injury determination which found that imports of cold-rolled

steel from several countries, including Taiwan, have not caused injury or retardation and are not threatening to cause injury to the domestic industry. Since the CITT issued a negative final injury determination, we find that the Canadian cold-rolled steel antidumping duty investigation does not constitute a history of dumping and material injury. Furthermore, the newspaper article discussing the Thai steel industry's intention of naming Taiwan in a potential antidumping duty petition with the Government of Thailand is not evidence of a history of dumping and material injury. Because we are not aware of any existing or recent antidumping order for Taiwan in the United States or any other country, the Department finds that there is no history of dumping and material injury for cold-rolled steel imports from Taiwan.

The Department normally considers margins of 25 percent or more for EP sales sufficient to impute importer knowledge of sales at LTFV. We have calculated a preliminary margin of 3.15 percent for CSC. With regard to Kao Hsing and Ton Yi, we note that the margin relied upon for the initiation of this investigation, and assigned to these non-responding companies as adverse facts available, was 16.80 percent. This margin, based on an analysis conducted by the petitioners, was conducted with the understanding that cold-rolled steel from Taiwan is sold to unaffiliated trading companies for export to the United States. Finally, with regard to the "All Others" category, it is the Department's practice to conduct its critical circumstances analysis of companies in this category based on the experience of the investigated companies. Therefore, in this case, we have assigned the "all others" category the same rate as was calculated for CSC. Because the petition margin for Taiwan was 16.80 percent, and the calculated rate for CSC is 3.15 percent, the margins fall below the 25 percent threshold we use to impute importer knowledge of sales at LTFV in EP price situations. Therefore, the requirements of the provision in section 733(e)(1)(A)(ii) of the Act are not satisfied.

Given that Taiwan had no history of dumping and that the threshold to impute importer knowledge of sales at LTFV was not met, we preliminarily find no critical circumstances for Taiwan in this investigation.

Verification

In accordance with section 782(i) of the Act, we intend to verify information to be used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of certain cold-rolled carbon steel flat products from Taiwan, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the EP or CEP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/producer	Margin (percentage)
China Steel Corp./Yieh Loong	3.15
Kao Hsing Chang Iron & Steel	16.80
Ton Yi Industrial	16.60
All Others	3.15

With respect to the "all others" rate, section 735(c)(5)(A) of the Act requires that the "all others" rate equal the weighted average of the estimated weighted-average rates established for exporters and producers individually investigated, excluding any zero and de minimis margins and margins based entirely on facts available. Because two of the companies have a rate based entirely on facts available, we have assigned the calculated rate for CSC as the "All Others" rate.

Disclosure

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties of this proceeding within five days of the date of publication of this notice calculations performed in this investigation.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

All parties will be notified of the specific schedule for submission of case and rebuttal briefs. In general, case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will issue our final determination no later than 135 days after the date of publication of this notice in the **Federal Register**.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11197 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–819]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Maureen Flannery at (202) 482–3020, Matthew Renkey at (202) 482–2312, or Elfi Blum at (202) 482–0197, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2001).

Preliminary Determination

We preliminarily determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from Thailand are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on October 18, 2001.[1] *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela,* 66 FR 54198 (October 26, 2001) (*Initiation Notice*). Since the initiation of the investigation, the following events occurred.

On November 13, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of imports from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela of cold-rolled steel products. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela,* 66 FR 57985 (November 19, 2001).

Based on our analysis of an allegation contained in the petition, we found at the initiation of this investigation that there were reasonable grounds to believe or suspect that the respondent's sales of the subject merchandise in its comparison market were made at prices below its cost of production (COP). Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation. *See Initiation Notice.*

On November 19, 2001, the Department issued Sections A–E of its antidumping duty questionnaire to Thai Cold Rolled Steel Sheet Public Company Limited (TCR). Additionally, the Department issued a request to the Embassy of Thailand for information regarding the quantity and value of sales of subject merchandise to the United States for all known producers/exporters of subject merchandise in Thailand. The Department received a request from TCR for an extension to file Section A on December 4, 2001, and the Department granted an extension of the deadline for submitting the response to Section A of the Department's questionnaire until noon December 17, 2001.

On December 11, 2001, the Department determined that TCR would be the only mandatory respondent in this investigation. Refer to *Selection of Respondents* section below. On December 17, 2001, the Department received TCR's response to Section A of the questionnaire. On December 19, 2001, TCR requested an extension to file its responses to Sections B through E, and the Department granted an extension of the deadline for submitting its response to the Department's questionnaire until noon, January 17, 2002. The Department issued a supplemental questionnaire regarding TCR's Section A response on December 21, 2001. TCR requested, and the Department granted an extension to file the response to the supplemental Section A questionnaire until January 11, 2002. On January 17, 2002, six days after the filing deadline for the response to the Department's supplemental questionnaire to Section A, and the extended due date for its responses to Sections B through E, TCR informed the Department that it had decided not to respond to continued requests for information or participate in verification in this antidumping investigation.

On February 7, 2002, the petitioners requested a postponement of the preliminary determination in this investigation. On February 22, 2002, the Department published a **Federal Register** notice postponing the preliminary determination until April 26, 2002. *See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (A–357–816), Australia (A–602–804), Belgium (A–423–811), Brazil (A–351–834), the People's Republic of China (A–570–872), France (A–427–822), Germany (A–428–834), India (A–533–826), Japan (A–588–859), Korea (A–580–848), the Netherlands (A–421–810), New Zealand (A–614–803), Russia (A–821–815), South Africa (A–791–814), Spain (A–469–812), Sweden (A–401–807), Taiwan (A–583–839), Thailand (A–549–819), Turkey (A–489–810) and Venezuela (A–307–822),* 67 FR 8227 (February 22, 2002).

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can be reasonably examined. Using import data from the U.S. Customs Service, we found multiple exporters of cold-rolled steel to the United States during the period of investigation (POI). According to this data, TCR, together with its affiliated trading company, accounted for significantly more than 60 percent of all known exports of the subject merchandise during the POI from Thailand. Due to limited resources,

[1] The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company, National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation (collectively, the petitioners).

we determined that we could only investigate the largest producer/exporter. Therefore, we designated TCR as the only mandatory respondent. *See* the memorandum entitled *Antidumping Duty Investigation of Cold-Rolled Carbon Steel Flat Products from Thailand—Respondent Selection* (December 11, 2001) (*Respondent Selection Memo*).

Period of Investigation

The POI is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2001).

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Facts Available (FA)

1. Application of FA

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statue; or (D) provides such information but the information cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On November 19, 2001, the Department issued sections A–E of its antidumping duty questionnaire to TCR. The Department received a request for an extension to file Section A on December 4, 2001, and the Department granted an extension of the deadline for submitting its response to the Department's questionnaire until December 17, 2001. On December 19, 2001, TCR requested an extension to file its responses to Sections B through E, and the Department granted an extension of the deadline for submitting its response to the Department's questionnaire until January 17, 2002. The Department issued a supplemental questionnaire regarding TCR's Section A response on December 21, 2001. TCR requested, and the Department granted, an extension to file the response to the supplemental Section A questionnaire until January 11, 2002. As stated in the *Respondent Selection Memo*, the Department found that TCR was the largest producer/exporter of the subject merchandise and, therefore, designated it as the sole mandatory respondent. *See Respondent Selection Memo*. In addition, the Department informed TCR that it would attempt to accommodate any difficulties it had in answering the questionnaire. The Department also informed TCR that failure to submit the requested information by the date specified might result in use of FA.

Although we informed TCR that we would attempt to accommodate any difficulties it had in answering the questionnaire, and granted its three extension requests, TCR only responded to Section A of the Department's questionnaire. TCR made no additional contact with the Department to request further extensions, or to suggest any alternative methods of providing the requested information that would accommodate any difficulties it might have experienced, or expected to experience, in responding to the questionnaires.

On January 17, 2002, six days after the filing deadline for the response to the Department's supplemental questionnaire to Section A, and the extended due date for its responses to Sections B through E, TCR informed the Department that it had decided not to respond to continued requests for information or participate in verification in this antidumping investigation. On March 6, 2002, petitioners submitted comments highlighting TCR's failure to submit information requested by the Department. As adverse FA (AFA), petitioners suggested that we apply the highest margin from the original petition, 150.26 percent. Alternatively, petitioners suggested that the Department apply the highest rate from the *Initiation Notice*, 142.78 percent, which was based on petitioners' October 12, 2001 amendment to the petition.

As described above, TCR failed to provide a full response to the Department's questionnaires despite the Department's willingness to accommodate its difficulties. Because TCR failed to provide the necessary information requested by the Department, pursuant to section 776(a)(2)(B) of the Act, we have applied FA to determine its dumping margin.

2. Selection of AFA

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997). TCR was notified twice in the Department's questionnaires that failure to submit the requested information by the date specified might result in the use of FA. As described above, prior to withdrawing, TCR failed to contact the Department to express any difficulties it might have been experiencing or to suggest how we might accommodate it in overcoming these difficulties, with the exception of its three extension requests, which we granted. As a general matter, it is reasonable for the Department to assume that TCR possessed the records necessary for this investigation, and that by not supplying the information requested, it failed to cooperate to the best of its ability. Since TCR failed to cooperate to the best of its ability, we are applying an adverse inference pursuant to section 776(b) of the Act. As AFA, we have used 142.78 percent, the highest rate at which we initiated. *See Initiation Notice*.

3. Corroboration of AFA Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review

under section 751 concerning the subject merchandise." *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (see SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (see SAA at 870).

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculations in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*see Thailand Initiation Checklist* on file in the Central Records Unit (*Initiation Checklist*), Room B–099, of the Main Commerce Department building, for a discussion of the margin calculation in the petition). In addition, in order to determine the probative value of the margin in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculation in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and Normal Value (NV) calculations on which the margins in the petition were based.

a. Export Price

With respect to the margins in the petition, EP was based on average per-unit customs import values (AUV) for the two ten-digit categories of the Harmonized Tariff Schedule of the United States (HTSUS) accounting for a significant percentage of in-scope imports from Thailand during the POI. Our review of the EP calculation indicated that the information in the petition has probative value, as certain information (*e.g.*, import statistics) included in the margin calculations in the petition is from public sources concurrent with the POI. Export prices which are based on U.S. customs data are considered corroborated. *See Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 76, 84 (January 4, 1999) (Comment 13).

b. Normal Value

The petitioners calculated NV from price information obtained from foreign market research for cold-rolled steel comparable to the products used as the basis for EP. The petitioners made no adjustments to NV.

With respect to NV, the petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled carbon steel flat products in the home market were made at prices below the COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Pursuant to section 773(b)(3) of the Act, COP consists of cost of manufacture (COM), selling, general and administrative (SG&A) expenses, and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce cold-rolled carbon steel flat products in the United States and Thailand using publicly available data. To calculate SG&A and interest, the petitioners relied upon amounts reported in TCR's 1999 financial statements. Because the Thai home market price of cold-rolled steel products in the petition was below the COP, the petitioners also based NV for sales in Thailand on constructed value (CV), pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act. The petitioners calculated CV using the same COM, SG&A and interest expense figures used to compute Thai home market costs, and included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in TCR's 1999 financial statements. *See Initiation Checklist.*

With respect to the CV data, we were able to corroborate the reasonableness of these data by examining the financial statements used to calculate COP and the petitioners' own information about the cost of transforming the hot-rolled coil into subject merchandise. With respect to the petitioners' own information regarding the cost of transforming the hot-rolled coil into subject merchandise, we corroborated the information by tracing the surrogate factors and values to the certification provided by the U.S. surrogate. Where applicable, we corroborated petitioners' own information adjusted for known differences with publicly available data. With regard to the CV contained in the petition, the Department was provided no useful information by the respondent or other interested parties and is aware of no other independent sources of information that would enable us to further corroborate the margin calculations in the petition.

Accordingly, in selecting AFA with respect to TCR, the Department decided to apply the CV margin rate of 142.78 percent, which is the highest estimated dumping margin calculated by the petitioners in the amendment to the petition of this investigation. *See Initiation Notice.*

All Others

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis*, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "All Others" rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign, as the "All Others" rate, the simple average of the margins in the petition. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Canada (Plate from Canada)*, 64 FR 15457 (March 31, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Italy (Plate from Italy)*, 64 FR 15458, 15459 (March 21, 1999). For purposes of this preliminary determination, we are basing the "All Others" rate on the simple average of margins for certain products under investigation at which we initiated, which is 127.44 percent.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service (Customs) to suspend liquidation of all entries of cold-rolled steel exported from Thailand that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing Customs to require a cash deposit or the posting of a bond equal to the dumping margin, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

Manufacturer/exporter	Margin (percent)
Thai Cold-Rolled Steel Sheet Public Company, Limited	142.78
All Others	127.44

Disclosure

The Department will disclose calculations performed within five days

of the date of publication of this notice to the parties of the proceedings in these investigations in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Unless otherwise directed by the Department, case briefs must be submitted no later than 50 days after the publication of this notice in the **Federal Register**. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette. Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and location of the hearing 48 hours prior to the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination in the investigation of certain cold-rolled carbon steel flat products from Thailand no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11198 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–810]

Notice of Preliminary Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Carbon Steel Flat Products From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge, or Robert James at (202) 482–3518, (202) 482–1131, or (202) 482–0649, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

THE APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Tariff Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to the regulations at 19 CFR part 351 (April 2001).

Preliminary Determinations

We preliminarily determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from Turkey are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

On October 18, 2001, the Department initiated antidumping investigations of cold-rolled steel from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela. The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corp., NUCOR Corporation, Steel Dynamics, Inc., United States Steel LLC, WCI Steel, Inc., and Weirton Steel Corporation. *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001).

In the initiation the Department set aside a period for all interested parties to raise issues regarding product coverage. For a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination. Since the initiation of these investigations the following events have occurred.

On November 13, 2001, the United States International Trade Commission (ITC) notified the Department that it preliminarily determined there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela. *See Cold-Rolled Steel Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 57985 (November 19, 2001).

On November 8, 2001, the Department issued Section A, Question 1 of the antidumping questionnaire to Borcelik Celik Sanayii ve Ticaret A.S.(Borcelik), Eregli Demir ve Celik, and Cargill Tarim Sanayii ve Ticaret, requesting volume and value information for the POI for each exporter. We received the information requested on November 22,

2001, and November 26, 2001. Based on this information, the Department selected Borcelik, the largest exporter/producer by volume and value, as the respondent in this investigation. *See* Memorandum to Joseph A. Spetrini, "Selection of Respondents," dated November 29, 2001.

Based on our examination of Turkey's inflation indices, we determined the Turkish economy was experiencing high inflation during the POI. "High inflation" is a term used to refer to a high rate of increase in price levels. Investigations involving exports from countries with highly inflationary economies require special methodologies for comparing prices and calculating constructed value and cost of production. Generally a twenty-five percent inflation rate has been used as a guide for assessing the impact of inflation on AD investigations and reviews (*see* Policy Bulletin No. 94.5, "Differences in Merchandise Calculations in Hyper-inflationary Economies," dated March 25, 1994). Based upon our examination of the consumer price and wholesale price indices, which indicated that Turkey experienced an inflation rate of over sixty percent during the POI, we find Turkey's economy experienced high inflation. *See* 2000 and 2001 issues of the International Monetary Fund's *International Financial Statistics*.

On November 30, 2001, the Department issued an antidumping questionnaire to Borcelik. We requested that Borcelik respond to sections A through D.

Respondent submitted its initial response to section A of the Department's questionnaire on December 21, 2001. We received Borcelik's sections B through D response on January 22, 2002. Petitioners filed comments regarding the section A response on January 14, 2002, and on February 11, 2002, regarding the remaining portions of respondent's questionnaire response. We issued the following supplemental questionnaires to respondent: (i) section A on February 6, 2002, and (ii) sections B, C, and D on March 5, 2002. Respondent filed a response to our section A and sections B through D supplemental questionnaires on March 1, 2002 and April 1, 2002, respectively. Petitioners filed comments regarding the section A supplemental questionnaire on April 1, 2002, and on April 12, 2002, regarding the sections B, C, and D supplemental questionnaires.

Period of Investigation

The period of investigation (POI) is July 1, 2000 through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2001), and is in accordance with our regulations. *See* section 19 CFR 351.204(b)(1) of the Department's regulations.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* published concurrently with this preliminary determination.

Product Comparisons

Pursuant to section 771(16) of the Tariff Act, all products produced by Borcelik, covered by the description in the "Scope of the Investigation" above, and sold in Turkey during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on the following fourteen criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: hardening and tempering, painting, carbon level, quality, yield strength, thickness, thickness tolerance, width, edge finish, form, temper rolling, leveling, annealing, and surface finish. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's November 30, 2001 questionnaire. If there was no home market foreign like product to compare to a U.S. sale, we used constructed value (CV).

Fair Value Comparisons

To determine whether sales of cold-rolled steel from Turkey were made in the United States at less than fair value, we compared the export price (EP) to the normal value (NV), as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Tariff Act, we calculated weighted-average EPs for comparison to weighted-average NVs.

Because Turkey's economy experienced high inflation during the POI, as is Department practice, we limited our comparisons to home market sales made during the same month in which the U.S. sale occurred. This methodology minimizes the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and home market sales.

Export Price

We calculated EP in accordance with section 772(a) of the Tariff Act because Borcelik sold the merchandise directly to the first unaffiliated purchaser in the United States prior to the date of importation, and because constructed export price (CEP) methodology was not otherwise appropriate. We based EP for Borcelik on the C&F price to unaffiliated purchasers in the United States. We made adjustments for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign brokerage and handling, international freight, foreign inland freight, marine insurance, and import duties.

Normal Value

Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Borcelik's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Tariff Act. As Borcelik's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined the home market was viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Affiliated-Party Transactions and Arm's-length Test

To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, discounts, direct selling expenses, and packing. Where, for the tested models of the foreign-like product, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined sales

made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c). If these affiliated party sales satisfied the arm's-length test, we used them in our analysis. Merchandise sold to affiliated customers in the home market made at non-arm's-length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102(b). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

In addition to its other home market sales, Borcelik reported the sales to it's home market affiliate, Kerim Celik Mamulleri Imalat ve Ticaret A.S. (Kerim Celik). These sales account for more than 5 percent of the total of Borcelik's home market sales during the POI. *See* 19 CFR 351.403(d). The respondent stated its affiliate, Kerim Celik, cut and slit most of the hot-rolled coils purchased from Borcelik, and the subject merchandise would have a low likelihood of matching to U.S. sales of coiled material. Since Borcelik's sales to Kerim Celik were not at arm's-length, the Department required Borcelik to report home market downstream sales by Kerim Celik for this preliminary determination. *See Antidumping Duties; Countervailing Duties Final Rule,* 62 FR 27296, 27356 (May 19, 1997).

Cost of Production Analysis

Based on our analysis of the cost allegation submitted by petitioners in the original petition, and in accordance with section 773(b)(2)(A)(i) of the Tariff Act, we found reasonable grounds to believe or suspect Turkish producers had made sales of cold-rolled steel in the home market at prices below the cost of production (COP). As a result, the Department initiated an investigation to determine whether Borcelik made home market sales during the POI at prices below their respective COP, within the meaning of section 773(b) of the Tariff Act. We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Tariff Act, we calculated a weighted-average COP based on the sum of Borcelik's cost of materials and fabrication for the foreign like product, plus an amount for home market SG&A expenses, interest expenses, and packing costs. We relied on the COP data provided by Borcelik in its original and supplemental section D cost questionnaire responses except for the following change. We deducted packing expenses from the denominators in the general and administrative and financial expense rate calculations. *See* Memorandum from Gina K. Lee to Neal M. Halper, Director, Office of Accounting, dated April 26, 2002, Re: Cost of Production and Constructed Value Adjustments for Preliminary Determination on file in room B–099 of the Main Commerce building.

B. Test of Home-Market Sales Prices

We compared the adjusted weighted-average COP for Borcelik to the home market sales of the foreign like product, as required under section 773(b) of the Tariff Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) in substantial quantities within an extended period of time, and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Tariff Act.

On a model-specific basis, we compared the revised COP to the home market prices, less any applicable movement charges, discounts, and billing adjustments. *See* section 773(f)(1)(B) of the Tariff Act.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Tariff Act, where less than twenty percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where twenty percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time. In addition, pursuant to section 773(b)(2)(D) of the Tariff Act, we also determined whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time. In such a case, because we compared prices to POI-average costs, we also determined such sales were not made at prices which would permit recovery of all costs within a reasonable period of time. We disregarded the below-cost sales and used the remaining above cost sales in our analysis, in accordance with section 773(b)(1) of the Tariff Act.

We found that for certain models of cold-rolled steel, more than twenty percent of the home-market sales by Borcelik were made within an extended period of time at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded these below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Tariff Act. For those U.S. sales of cold-rolled steel for which there were no comparable home market sales in the ordinary course of trade, we compared EP to constructed value (CV) in accordance with section 773(a)(4) of the Tariff Act. *See* "Price-to-CV Comparisons," below.

D. Calculation of Constructed Value

If no sales made in the ordinary course of trade in the home market remain, NV shall be based on CV. *See* section 773(b)(1) of the Tariff Act. In accordance with section 773(e)(1) of the Tariff Act, we calculated CV based on the sum of Borcelik's cost of materials, fabrication, SG&A, interest, U.S. packing, and an amount for profit. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A and profit on the amounts incurred and realized by Borcelik in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market. For selling expenses we used the weighted-average home market selling expenses. We used the CV data the respondent provided in its sections B through D supplemental questionnaire responses.

Price-to-Price Comparisons

We calculated NV for Borcelik based on the prices of home market sales that passed the COP test. We made deductions, where appropriate, from the starting price for billing adjustments, foreign inland insurance and inland freight, pursuant to section 773(a)(6)(B) of the Tariff Act. Where appropriate, we made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Tariff Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Tariff Act for differences in circumstances of sale (COS) for imputed credit expenses (offset by interest revenue) and warranties. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Tariff Act.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Tariff Act, we based NV on CV if we were unable to find a home market match of identical or similar

merchandise within the contemporaneous period (*i.e.*, within the same month as the U.S. sale). For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses.

Level of Trade

In accordance with section 773(a)(1)(B) of the Tariff Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP the U.S. LOT is also the level of the starting price sale, which is usually from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment pursuant to section 773(a)(7)(A) of the Tariff Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this investigation, we obtained information from Borcelik about the marketing stages involved in its reported U.S. and home market sales, including a description of the selling activities performed by Borcelik for each channel of distribution. In identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting price before any adjustments. Generally, if the reported levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party reports levels of trade that are different for different categories of sales, the functions and activities may be dissimilar.

In the home market Borcelik reported two channels of distribution (sales by Borcelik and sales through its affiliated producer/service center) and two levels of trade (unaffiliated end users and affiliated end users). For both channels of distribution in the home market, Borcelik performed similar selling functions, including providing customer advice or product information, warranty services, the coordination of freight and delivery, and advertising. While we note that inventory maintenance was provided for home market sales through the affiliated service center/reseller and the intensity of the selling activity, providing technical service, may differ, we do not agree that these variations in the selling activities supports Borcelik's claim of two distinct levels of trade in the home market.

First, we note Borcelik did not describe the selling activities for sales through its affiliated producer/service center. In addition, Borcelik provided the same sales process description for both channels of distribution; therefore, we are not persuaded that the processing of customer orders is affected by affiliation. Furthermore, Borcelik's questionnaire responses contradict its claim that the selling activity "providing technical service" is more significant with respect to affiliated producers/resellers. For example, Borcelik claims it provides more technical services to unaffiliated and affiliated end-users than to its affiliated service center/reseller. However, we note that in Borcelik's section B response, the company did not report any direct technical service expenses. Instead, Borcelik reported technical service expenses within indirect selling expenses without regard to end-users and resellers. *See* Borcelik's January 22, 2002 response on B–49. According to respondent's supplemental section A questionnaire response, "there are no customer categories to which Borcelik would not have provided technical assistance during the POI." *See* Borcelik's March 1, 2002 response on page 32. Although the respondent claims more technical assistance is provided to affiliated and unaffiliated end-users than to the service center/reseller, and inventory is maintained by the affiliated service center/reseller, we do not find that these differences support Borcelik's claim that there are two separate levels of trade in the home market. Therefore, we preliminarily determine that home market sales in the two channels of distribution constitute a single level of trade.

In the U.S. market Borcelik had only EP sales (*i.e.*, sales made directly from Borcelik to U.S. trading companies). Borcelik reported one channel of distribution for sales of subject merchandise and one level of trade (to importers) during the POI. *See* Borcelik's December 21, 2001 response at pages A–13 through A–18. We found no differences in the selling functions performed by Borcelik on sales to U.S. importers and those performed for sales in the home market. For example, on sales to both home market customers and to unaffiliated U.S. importers, Borcelik provided customer advice, product information, warranty services, technical services, and arranged freight and delivery. *See* Borcelik's December 21, 2001 response at page A–18. The Department has preliminarily determined the record does not support Borcelik's claim that home market sales through the service center are at a different LOT than the U.S. EP sales. Accordingly, because we find the U.S. EP sales and the home market sales to be at the same lot, no LOT adjustment under section 773(a)(7)(A) of the Tariff Act is warranted for Borcelik. For a more detailed discussion regarding the basis for our LOT determination, refer to our Preliminary Determination Analysis Memorandum for Borcelik, dated April 26, 2002.

Currency Conversions

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales based on the daily exchange rates from the Dow Jones Service, as published in the Wall Street Journal. The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for the Turkish lira. Section 773A(a) of the Tariff Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by more than 2.25 percent. The benchmark is defined as the moving average of rates for the 40 business days immediately prior to the date of the actual daily rate to be classified. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Tariff Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent of eight consecutive weeks. For

an explanation of this method, *see Policy Bulletin 96–1: Currency Conversions*, 61 FR 9434 (March 8, 1996).

Verification

Pursuant to section 782(i) of the Tariff Act, we intend to verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Tariff Act, we are directing the Customs Service to suspend liquidation of all entries of cold-rolled steel from Turkey that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the estimated preliminary dumping margin indicated in the chart below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Borcelik Celik Sanayii ve Ticaret A.S. (Borcelik)	18.34
All Others	18.34

As Borcelik was the only respondent used in our calculations, we used Borcelik's weight-average margin as the "all others" rate.

ITC Notification

In accordance with section 733(f) of the Tariff Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determinations.

Public Comment

Case briefs or other written comments in at least six copies must be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. In accordance with section 774 of the Tariff Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the case and rebuttal briefs. We intend to make our final determination no later than 75 days after the date of this preliminary determination.

This determination is published in accordance with sections 733(f) and 777(i)(1) of the Tariff Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11199 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–810]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from The Netherlands

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value.

SUMMARY: We preliminarily determine that certain cold-rolled carbon steel flat products ("cold-rolled steel") from the Netherlands are being, or likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. We will make our final determination not later than 75 days after the date of this preliminary determination.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Geoffrey Craig or David Salkeld, AD/CVD Enforcement Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4161 or (202) 482–1168, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department's") regulations are to 19 CFR Part 351 (April 2001).

Case History

Since the initiation of this investigation (*Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001)) (*Initiation Notice*), the following events have occurred:

On October 31, 2001, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes, and we received comments on our proposed matching criteria from petitioners on our proposed matching criteria on November 8, 2001. On November 26, 2002, we informed respondent of our revised model match criteria.

Corus Staal BV, a Dutch manufacturer of cold-rolled steel and its U.S. affiliate, Corus Steel, USA, Inc. (collectively "Corus"), requested in a November 7, 2001, letter that the Department revoke the *Initiation Notice* with respect to the Netherlands. In the alternative, Corus asked the Department to amend the *Initiation Notice* by revising the margin alleged by petitioners and to eliminate

the cost of production ("COP") investigation. On November 16, 2001, petitioners [1] rebutted Corus' argument that the Department should rescind or amend the *Initiation Notice. See Request to Revoke Initiation* section below.

On November 13, 2001, the United States International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela of cold-rolled steel products. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela,* 66 FR 57985 (November 19, 2001).

We issued a questionnaire to Corus on November 16, 2001.[2] The petitioners made an allegation of sales below COP in the petition. The Statement of Administrative Action (SAA), submitted to the U.S. Congress in connection with the interpretation and application of the URAA provides that "new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices." SAA, H. Doc. 103–316, Vol. 1, 103d Cong., 2d Session, at 833 (1994). We found "reasonable grounds to believe or suspect" that there were sales of the foreign like product below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. *Initiation Notice,* 66 FR at 54213. Accordingly, the Department initiated the requested country-wide cost investigation.

Corus submitted its response to the section A questionnaire on December 7, 2002, and sections B–E on January 14, 2002. The Department issued supplemental questionnaires to Corus on March 6, 2002, March 13, 2002, April 17, 2002, and April 22, 2002. Corus responded to these supplemental questionnaires, except the April 17, 2002, questionnaire, and April 22, 2002, questionnaire, by April 3, 2002. The deadline for the April 17, 2002, questionnaire is April 26, 2002, and the deadline for the April 22, 2002, questionnaire is May 6, 2002.

On December 7, 2001 and January 14, 2002, the petitioners requested that the Department make an expedited finding that critical circumstances exist with respect to imports from the Netherlands. The Department preliminarily determined that critical circumstances exist with respect to imports of cold-rolled steel. *See Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products From Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation, 67 FR 19157 (April 18, 2002) (Critical Circumstances Notice).* On December 19, 2002, Corus submitted a letter regarding the *Critical Circumstances Notice.* As Corus' comments are pursuant to our request for comment on the surge analysis contained in the *Critical Circumstances Notice,* we will address Corus' December 19, 2002, letter in the final critical circumstances determination.

On February 22, 2002, the Department published a notice postponing the preliminary determination of this investigation until April 26, 2002. *See Postponement of Preliminary Determinations of Antidumping Duty Investigations. Certain Cold-Rolled Carbon Steel Flat Products from Argentina (A–357–816), Australia (A–602–804), Belgium (A–423–811), Brazil (A–351–834), the People's Republic of China (A–570–872), France (A–427–822), Germany (A–428–834), India (A–533–826), Japan (A–588–859), Korea (A–580–848), the Netherlands (A–421–810), New Zealand (A–614–803), Russia (A–821–815), South Africa (A–791–814), Spain (A–469–812), Sweden (A–401–807), Taiwan (A–583–839), Thailand (A–549–819), Turkey (A–489–810) and Venezuela (A–307–822),* 67 FR 8227 (February 22, 2002).

Request to Revoke Initiation

On November 7, 2001, Corus submitted a letter stating that the petition upon which the *Initiation Notice* was based was deficient in that it did not include very specific information, "reasonably available," as required by the Department's regulations (19 CFR 351.202(b)(7)), the statute (section 732(b)(1) of the Act), and U.S. international obligations (Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (1994) at Article 5.2). Corus argues that the alleged dumping margin was computed from a non-representative subset of Dutch import values on the U.S. side, and from constructed value data based on non-Dutch and non-Corus specific cost data on the home market side. Further, Corus argues that the petition ignored COP data that Corus served to petitioners' counsel in the recently completed hot-rolled steel investigation. Corus argues that the Department has the obligation and authority to revoke, or in the alternative, amend the margin contained in the *Initiation Notice* and rescind the sales-below-cost investigation.

Petitioners responded in a November 16, 2001, letter that the Department should deny Corus' request because there is no requirement that the Department rescind or amend a notice of initiation because a petitioner did not utilize all information "reasonably available" to it. Petitioners contravene Corus" argument that it should have used certain public information from the hot-rolled steel investigation on the basis that said data was "unverified, uncorrected, and inaccurate."

We agree with petitioners that we should not rescind the instant investigation. As detailed in the "Initiation Checklist," we examined the data used by petitioners to calculate the alleged dumping margin. We stated that, "Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing export price ("EP") to constructed value ("CV"), we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred." *Initiation Notice* 66 FR at 54209 (emphasis added). Moreover, Corus does not take issue with the fact that the petition contains "information reasonably available," as required by section 702(c)(1)(A) of the Act. Corus' assertion that there is additional public information reasonably available which petitioner did not use to calculate the

[1] The petitioners are Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, Nocor Corporation, Steel Dynamics, Inc., United States Steel LLC and WCI Steel, Inc. (collectively, the petitioners).

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests the cost of production and constructed value related to the merchandise under investigation. Section E requests data related to cost of further manufacturing or assembly performed in the United States of the merchandise under investigation.

alleged margin does not render the petition insufficient.

Corus argues that, as an alternative to revoking the initiation, we should amend the margin contained in the petition. However, the alleged margin (assuming it is above *de minimis* or zero) is relevant only inasmuch as it is sufficient to initiate the investigation. We stated in the *Initiation Notice*, 66 FR at 54205 that, "Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate." In the instant investigation, we have not used facts available to calculate the margin for the preliminary determination. Thus, there is no further relevance to the petition margin.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Selection of Respondent

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777(A)(c)(2) of the Act permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. Using company-specific export data for the period of investigation ("POI"), which we obtained from a variety of sources under the Harmonized Tariff Schedule of the United States (HTSUS) number that corresponds to the subject merchandise, we found that thirteen producers/exporters may have exported cold-rolled steel to the United States during the POI. According to data on the record, Corus was the largest exporter/producer of imports during the POI. Due to limited resources, we determined that we could only investigate this one largest producer/exporter. On November 29, 2001, we confirmed our selection of Corus, the largest producer/exporter of cold-rolled steel from the Netherlands, as the sole mandatory respondent in this proceeding. *See* Memorandum from James Terpstra to Melissa Skinner, "Antidumping Duty Investigation of Cold-Rolled Carbon Steel Flat Products from the Netherlands—Selection of Respondents," dated November 29, 2001, on file in the Central Records Unit ("CRU"), room B–099, of the Department's main building.

Period of Investigation

The POI is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petitioners (*i.e.*, September 2001).

Fair Value Comparisons

To determine whether sales of cold-rolled steel from the Netherlands to the United States were made at LTFV, we compared the constructed export price ("CEP") to the normal value ("NV"), as described in the "Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average CEPs to POI weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by Corus in the home market during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: hardening and tempering; painted; carbon level; quality; yield strength; minimum thickness; thickness tolerance; width; edge finish; form; temper rolling; leveling; annealing; and surface finish.

Constructed Export Price

Corus reported as CEP transactions its sales of subject merchandise sold through Rafferty-Brown Steel Company of Connecticut and Rafferty-Brown Steel Company of North Carolina (collectively, "RBN"), two affiliated steel service centers which further manufacture flat-rolled steel products.

Corus reported the remaining sales as EP transactions which it described as "direct sales." These reported EP sales were shipped from Corus to the unaffiliated U.S. customer. For these reported EP sales, Corus' U.S. affiliate, Corus USA ("CSUSA"), acted as a selling agent. We have preliminarily reclassified Corus" reported EP sales as CEP sales, because the agreement for sale occurred in the United States between CSUSA and the unaffiliated customer. CSUSA provides the final written confirmation of the agreement, establishing the agreed prices and quantities, to the U.S. customer. Thus, in accordance with section 772(b) of the Act, we calculated CEP for all of Corus' U.S. sales because the merchandise was sold (or agreed to be sold) in the United States before or after the date of importation by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. For further discussion, *see* Memorandum from Geoffrey Craig to James Terpstra, "Preliminary Determination Calculation Memorandum-Corus Staal BV" dated April 26, 2002 ("Calculation Memo"). This reclassification is consistent with the Department's recent determination in the LTFV investigation of hot-rolled steel from the Netherlands, in which Corus was a respondent. *See Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands*, 66 FR 50408 (October 3, 2001).

We based CEP on the packed CIF, ex-factory, FOB, or delivered prices to the first unaffiliated customer in, or for exportation to, the United States. Where appropriate, we reduced these prices to reflect discounts. We deducted billing adjustments (upward adjustments were reported as negative amounts and downward adjustments to the gross unit price were reported as positive amounts). We added to the gross unit price an amount equal to the freight revenue that Corus received from U.S. customers as reimbursement for freight expenses.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant to

port of exportation, foreign brokerage, handling and loading charges, international freight, marine insurance, U.S. duties, and U.S. inland freight expenses (freight from port to the customer).

For CEP, in accordance with section 772(d)(1) of the Act, where appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (cost of credit and warranties). In addition, we deducted indirect selling expenses that related to economic activity in the United States. These expenses include certain indirect selling expenses incurred by Corus' U.S. affiliates, CSUSA and RBN. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Corus and its affiliates on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

We deducted the cost of further manufacturing for sales of subject merchandise to which value was added in the United States by RBN prior to sale to unaffiliated customers, in accordance with section 772(d)(2) of the Act.

We also recalculated the imputed credit expense for those sales for which Corus has not received payment. On December 19, 2001, Corus requested that it be exempt from reporting sales by two affiliated U.S. re-sellers, GalvPro LP ("GalvPro") and Apollo Metals, to the first unaffiliated customer. Corus, instead, reported sales by Corus to GalvPro and by RBN to Apollo Metals. With respect to sales by Apollo Metals, consistent with our past practice, because the volume of these sales was very small, we are granting Corus' request. *See Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan*, 64 FR 8291, 8295 (February 19, 1999) (unchanged in the final determination). With respect to GalvPro, we are in the process of obtaining additional information in order to decide whether Corus must report sales by GalvPro. *See* Calculation Memo.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable.

A. Arm's Length Test

Sales to affiliated customers for consumption in the home market which were determined not to be at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, where the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's length. *See e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan*, 62 FR 60472, 60478 (November 10, 1997), and *Antidumping Duties; Countervailing Duties: Final Rule ("Antidumping Duties")*, 62 FR 27295, 27355–56 (May 19, 1997). We included in our NV calculations those sales to affiliated customers that passed the arm's-length test in our analysis. *See* 19 CFR 351.403; *Antidumping Duties*, 62 FR at 27355–56.

B. Cost of Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether sales were made at prices below their respective COP (*see Initiation Notice* at 66 FR 54209).

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses ("G&A"), including interest expenses, and home market packing costs (*see* "Test of Home Market Sales Prices" section below for treatment of home market selling expenses).

2. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable movement charges, rebates, discounts, and direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales (1) were made within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI are at prices less than the COP, we determine that in such instances the below-cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of Corus's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length. We

made deductions, where appropriate, from the starting price for early payment discounts, rebates, and billing adjustments (downward adjustments were reported as positive values and upward adjustments were reported as negative values). We made a change to the reported rebate variable, to account for the fact that for certain observations Corus inadvertently reported billing adjustments as rebates. We also made deductions for movement expenses, including inland freight (from the factory to the point at which the merchandise leaves Corus' premises, plant to customer, and affiliated reseller to customer) under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale ("COS") for imputed credit expenses and inventory carrying cost.

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

In a December 19, 2002 letter, Corus requested that it be exempted from reporting downstream sales by Multisteel, an affiliated service center in the Netherlands due to the small quantity of sales involved and burden placed on Multisteel to report these sales. According to 19 CFR 351.403(d), downstream sales by home market affiliates accounting for less than five percent of total sales are normally excluded from the NV calculation. *See* also section 773(a)(5) of the Act. Because the sales by Multisteel meet the five percent threshold, we are exempting Corus from reporting sales by Multisteel. For a further discussion, *see* Calculation Memo.

E. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the EP or CEP transaction. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there are differences in the stages of marketing. *Id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"),[3] including selling functions,[4] class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (i.e., NV based on either home market or third country prices[5]), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States*, 243 F.3d 1301, 1316 (Fed. Cir. 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affected price comparability (*i.e.* no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–33 (November 19, 1997).

We obtained information from Corus regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by Corus for each channel of distribution.

Corus reported home market sales through one channel of distribution (direct sales to the customer) and to two customer categories: end users and steel service centers. We examined the chain of distribution and the selling activities associated with sales reported by Corus to each of its customer categories in the home market. The information on the record demonstrates that Corus performs the same selling functions across customer categories. *See* Corus' March 27, 2002, submission at Exhibit A–8. Specifically, Corus indicated that to all home market customers, it provides: a high level of strategic and economic planning; a low level of freight/delivery arrangements, a low level of inventory and warehousing support, and a high level of quality assurance/warranty services. The only selling function in which there is a discernible difference is market research. Because Corus performs essentially identical selling functions, regardless of customer category, we have preliminarily determined that one LOT exists for Corus' home market sales.

In the U.S. market, Corus reported two channels of distribution for sales of subject merchandise during the POI (EP sales made directly from Corus to the U.S. customer and CEP sales made through affiliated service centers). For sales made directly by Corus, there were two customer categories (end users and steel service centers). As explained in the *Constructed Export Price* section above, we have reclassified reported EP sales as CEP sales.

In CEP situations, we do not determine the U.S. LOT on the basis of the CEP starting price. Rather, as described above, we determine the U.S. LOT on the basis of the CEP starting price minus the expenses and profit deducted pursuant to section 772(d) of the Act. For both channels of distribution, Corus performed similar selling functions, including strategic and economic planning, market research, technical/warranty services, and engineering/R&D/product development services. The remaining selling functions did not differ significantly by channel of distribution. Corus stated that it treats its affiliated U.S. service centers "in the same manner as all other U.S. customers for all purposes." Corus Section A response at A–29 (public version). Corus also stated that its description of selling functions for reported EP sales "should be considered as containing the information requested for Corus" sales

[3] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale appears to occur.

[4] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of this preliminary determination, we have organized selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

[5] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

to its affiliated U.S. customers." Id. Because channels of distribution do not qualify as separate LOTs when the selling functions performed for each channel are sufficiently similar, we have determined that one LOT exists for Corus' U.S. sales.

With regard to its reported CEP sales, respondent claims that a CEP offset is necessary because the RBN sales are made at a point in the distribution process that is less advanced than Corus' home market sales. As set forth in 19 CFR 351.412(f), a CEP offset will be granted where (1) normal value is compared to CEP sales, (2) normal value is determined to be at a more advanced LOT than the LOT of the CEP, and (3) despite the fact that the party has cooperated to the best of its ability, the data available do not provide an appropriate basis to determine whether the difference in LOT affects price comparability.

In analyzing Corus' request for a CEP offset, we found there to be few differences in the selling functions performed by Corus on sales to its affiliated importers and those performed for sales in the home market. We note that Corus performs the following functions to the same degree for both the CEP and home market LOT: strategic and economic planning; market research; technical services, and engineering/R&D/product development services. We have preliminarily determined that the record does not support Corus' claim that home market sales are at a different, more advanced LOT than the adjusted CEP sales. Thus, we are not granting a CEP offset.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for the Netherlands when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 75 days (unless postponed) after this preliminary determination.

Suspension of Liquidation

Because of our preliminary affirmative critical circumstances finding, we are directing the U.S. Customs Service to suspend liquidation of all entries of cold-rolled steel entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date on which this notice is published in the **Federal Register** (see Critical Circumstances Notice). We are instructing the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.The weighted-average dumping margins are provided below:

Exporter/Manufacturer	Weighted-Average Margin Percentage
Corus Staal BV	6.38
All Others	6.38

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, pursuant to section 735(b)(2) of the Act, the ITC will determine within 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 75 days after this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11200 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–307–822]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Carbon Steel Flat Products From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Catherine Bertrand, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3434 and (202) 482–3207, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments

made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Preliminary Determination

We preliminarily determine that certain cold-rolled carbon steel flat products ("cold-rolled steel) from Venezuela are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

This investigation was initiated on October 18, 2001. *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001) ("Notice of Initiation"). The Department set aside a period for all interested parties to raise issues regarding product coverage. *See* Notice of Initiation, at 66 FR 54204.

On October 31, 2001, the Department requested comments from petitioners and other interested parties regarding the criteria to be used for model matching purposes. On November 8, 2001, petitioners submitted comments on our proposed model matching criteria. On November 19, 2001, the United States International Trade Commission ("ITC") notified the Department of its affirmative preliminary injury determination in this case. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 57985 (November 19, 2001).

On November 19, 2001, the Department issued an antidumping questionnaire to Siderurgica del Orinoco C.A. ("Sidor"). On December 17, 2001, Sidor submitted its response to section A of the questionnaire. Petitioners filed comments on Sidor's section A response on January 7, 2002. We issued a supplemental questionnaire for section A on January 24, 2002. Sidor submitted sections B and C response on January 22, 2002. Petitioners filed comments on Sidor's sections B and C response on February 6, 2002. We issued Sidor a supplemental questionnaire for sections B and C on February 13, 2002. On February 25, 2002, petitioners submitted supplemental section A comments. On February 27, 2002, the Department issued a second supplemental section A questionnaire. On March 13, 2002, Sidor submitted its second supplemental section A response. On March 1, 2002, and March 11, 2002, Sidor submitted its supplemental sections B and C responses. On April 1, 2002, the Department issued a supplemental questionnaire for section A, B and C. Sidor submitted its response on April 11, 2002, and April 15, 2002.

On February 7, 2002, petitioners made a timely request for a fifty-day postponement of the preliminary determination pursuant to section 733(c)(1)(A) of the Act. The Department determined that these concurrent investigations warranted the fifty-day postponement requested by petitioners. On February 14, 2002, we postponed the preliminary determination until April 26, 2002. *See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, the People's Republic of China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela*, 67 FR 8227 (February 22, 2002).

On March 14, 2002, petitioners submitted a sales below cost allegation. The Department concluded that a reasonable basis exists to believe or suspect that sales in the home market have been made at prices below the cost of production. On March 21, 2002, the Department initiated a sales below cost investigation. *See Memorandum to Edward Yang dated March 21, 2002, Antidumping Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from Venezuela: Analysis of Petitioners' Allegation of Sales Below the Cost of Production for Siderurgica del Orinoco C.A.* ("*Allegation of Sales Below Cost*"). On March 22, 2002, the Department instructed Sidor to respond to section D of the questionnaire. On April 5, 2002, Sidor submitted its section D response. On April 9, 2002, petitioners submitted their preliminary determination comments for sections A through C.

Postponement of Final Determination

Pursuant to section 735(a)(2) of the Act, on April 18, 2002, Sidor requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) Sidor accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Period of Investigation

The period of investigation ("POI") is July 1, 2000 through June 30, 2001.

Scope of the Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Fair Value Comparisons

To determine whether sales of cold-rolled steel from Venezuela to the United States were made at less than fair value, we compared the export price ("EP") or constructed export price ("CEP") to the normal value ("NV"), as described in the "export price and constructed export price" and "normal value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

Date of Sale

For its home market and U.S. sales, Sidor reported the date of invoice as the date of sale, in keeping with the Department's stated preference for using the invoice date as the date of sale. Sidor stated that the invoice date best reflects the date on which the material terms of sale are established and that

price and/or quantity may change between order date and invoice date. *See* Sidor's section B and C response dated January 22, 2002, at B–11 and C–11.

Section 351.401(i) of the Department's regulations states that the Department will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale. The preamble to the Final Rules (the "Preamble") provides an explanation of this policy and examples of when the Department may choose to base the date of sale on a date other than the date of invoice. *See* 62 FR at 27348–49 (May 19, 1997). In accordance with 19 CFR 351.401(i), where appropriate, we based date of sale on invoice dates recorded in the ordinary course of business by the involved sellers of the subject merchandise. However, we intend to fully verify information concerning respondent's claims that invoice date is the appropriate date of sale. Based on the outcome of our verification, we will determine whether it is appropriate to continue to use the date of invoice as the date of sale. We will consider, among other things, whether, in fact, there were any changes to the material contract terms between the original order confirmation and the date of invoice. *See e.g., Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation*, 66 FR 21319 (April 30, 2001).

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent covered by the description in the "Scope of the Investigation" section above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales of identical merchandise in the comparison market made in the ordinary course of trade, where possible. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product made in the ordinary course of trade. To determine the appropriate product comparisons, we compared the following physical characteristics of the products in order of importance: hardening and tempering; painted; carbon level; quality; yield strength; minimum thickness; thickness tolerance; width; edge finish; form; temper rolling; leveling, annealing and surface finish.

Export Price and Constructed Export Price

Where Sidor sold merchandise directly to unaffiliated purchasers in the United States, we calculated EP, in accordance with section 772(a) of the Act, because the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States, or to an unaffiliated purchaser for exportation to the United States. We based EP on the packed price to the unaffiliated customer in the United States (the starting price). We made adjustments to the starting price for billing adjustments where applicable. We deducted from the starting price, where applicable, amounts for discounts and rebates. In addition, we deducted movement expenses in accordance with section 772(c)(2)(A) of the Act, where appropriate. In this case, movement expenses include international freight, brokerage and handling charges, marine insurance, U.S. duties, and U.S. inland freight.

We calculated CEP, in accordance with subsections 772(b) of the Act, for those sales made by Siderca Corporation, Sidor's U.S. affiliate, to the first unaffiliated purchaser in the United States. We based CEP on the packed, delivered, duty paid or delivered prices to unaffiliated purchasers in the United States. We made adjustments to the starting price for billing adjustments where applicable. Where appropriate, we made deductions for discounts. We also made deductions for the following movement expenses in accordance with section 772(c)(2)(A) of the Act: international freight; marine insurance; U.S. Customs duties; brokerage and handling; and U.S. inland freight from port to warehouse. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit and warranty expenses), inventory carrying costs, and other indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

We recalculated the U.S. credit expense for EP sales, because Sidor reported it had no U.S. borrowings during the POI. In the event respondent has no U.S. borrowing, the Department's practice is to use a U.S. published commercial bank prime short-term lending rate. *See* Import Administration Policy Bulletin: Imputed Credit Expenses and Interest Rates (February 23, 1998). In recalculating the short-term interest rate, we used the weighted-average effective loan rate for commercial and industrial loans during the POI as reported by the U.S. Federal Reserve statistical release.

The Department is denying Sidor's claim for duty drawback for this preliminary determination because the reported duty drawback was not directly linked to the amount of duty paid on imports used in the production of merchandise for export as required by the Department's two-part test. The two-prong test which the Department considers when deciding whether to grant a duty drawback adjustment is whether the: (1) Import duty and rebate are directly linked to, and dependent upon, one another; and (2) company claiming the adjustment can show that there were sufficient imports of the imported raw materials to account for the drawback received on the exported product. *See Rajinder Pipes Ltd.* v. *United States*, 70 F. Supp. 2d 1350, 1358 (CIT 1999).

In our analysis of Sidor's duty drawback information, we found that Sidor did not provide sufficient evidence on the record to demonstrate that a direct link existed between the import duties paid and the amount rebated upon exportation of the subject merchandise. We issued Sidor the original section B and C questionnaire, followed by two supplemental questionnaires, and the information on the record is still unclear and insufficient for these reasons. First, the respondent provided a chart of the inputs it imported during the POI that were used in the production of cold-rolled steel: however this chart was not translated into English, and therefore not readable. *See* Sidor's second supplemental B and C response dated April 11, 2002 at Exhibit 11. Second, the Venezuelan regulations, that the Department requested Sidor to provide, were also not fully translated into English as required by 19 CFR 351.303(e). The company provided only one page of English translation for approximately fifty pages of Spanish text, and the translated portion was not sufficient to establish the necessary link. *See* Sidor's second supplemental B and C response dated April 11, 2002 at Exhibit 10. Third, we are also unable to tell if the respondent had a sufficient quantity of imports of the inputs in question to account for the duty drawback upon exportation of cold-rolled, as the information on the record was not translated. The Department intends to fully examine this issue at verification, and may reconsider its position for the final determination based on the results of verification.

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-CV Comparison" sections of this notice.

A. Home Market Viability

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Sidor's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because Sidor's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

B. Cost of Production Analysis

Based on the information contained in a timely filed cost allegation by the petitioners on March 14, 2002, the Department found reasonable grounds to believe or suspect that Sidor's sales of the foreign like product in their respective comparison markets were made at prices below the cost of production ("COP"), pursuant to section 773(b)(1) of the Act. As a result, the Department initiated a country-wide sales-below-cost investigation. *See Allegation of Sales Below Cost.*

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Sidor's cost of materials and fabrication for the foreign like product, an amount for selling, general, and administrative expenses ("SG&A") based on actual data pertaining to production and sales of the foreign like product by the exporter in question, interest expenses, and packing costs. We relied on the COP data submitted by Sidor in its section D cost questionnaire response, except as noted below.

1. We revised Sidor's G&A rate to be based on the fiscal year costs and not the POI costs, as reported.

2. We revised respondent's financial expense rate to also be based on fiscal year costs and not on POI costs, as reported. See Memorandum from Gina K. Lee to Neal M. Halper, Director, Office of Accounting, dated April 26, 2002, Re: Cost of Production and Constructed Value Adjustments for Preliminary Determination.

2. Test of Home Market Prices

On a product specific basis, we compared the weighted-average COP figures for Sidor to home market sales prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether sales had been made at prices below their COPs. In determining whether to disregard home market sales made at prices less than the COP, we examined whether: (1) Within an extended period of time, such sales were made in substantial quantities, and (2) the below-cost prices would permit the recovery of all costs within a reasonable period of time. We compared COP to home market prices, less any applicable movement charges, billing adjustments, and direct and indirect selling expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product during the POI were made at prices below the COP, we determined such sales to have been made in "substantial quantities" pursuant to section 773(b)(2)(C)(i) within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to weighted-average COPs for the POI, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, pursuant to section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were made at prices below the COP, we disregarded all sales of that product. For those U.S. sales of subject merchandise for which there were no comparable home market sales in the ordinary course of trade, we compared the EP/CEP to CV in accordance with section 773(a)(4) of the Act.

C. Calculation of Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Sidor's cost of materials, fabrication, SG&A, including interest expenses, profit, and packing. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by Sidor in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Venezuela. For CV, we made the same adjustments described in the COP section above.

D. Price-to-Price Comparisons

We calculated NV for Sidor on prices of home market sales that passed the cost test. We made adjustments for billing adjustments, discounts and rebates, where appropriate. Also, we made deductions, where appropriate, for inland freight and inland toll expenses pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise, as well as for differences in circumstances of sale ("COS") in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments, where appropriate, for imputed credit, warranty expenses, and technical expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act. We recalculated credit expenses for those sales with missing payment date because payment has not yet been made. For sales with missing payment dates, the Department set the date of payment as the projected preliminary determination date. For further explanation, *see Analysis Memorandum from Catherine Bertrand to The File*, dated April 26, 2002.

We have analyzed Sidor's claim for other discounts. We issued Sidor the original section B and C questionnaire, followed by two supplemental questionnaires, and the information on the record is still unclear and insufficient to determine if there were discounts appropriately granted because discounts were granted substantially after invoicing had occurred. *See* Department's questionnaire to Sidor on November 19, 2001, and Department's supplemental questionnaires to Sidor on February 13, 2002 and April 1, 2002. Sidor stated that in the database field "other discounts" it reported data for two types of commercial discounts: (1) Commercial discounts, pursuant to agreements with certain clients, in which a credit note is issued after the merchandise has been shipped and invoiced and is based on commercial consideration; and (2) price adjustments which are either credit notes or debit notes correcting pricing errors in their sales orders. *See* Sidor's second

supplemental B and C response dated April 11, 2002 at 4–5. As both of these discounts are reported in the same field, it is not possible to tell which type of discount is involved for each sale. Also, Sidor did not provide a copy of the agreements on which the first type of discounts is based. Furthermore, Sidor also did not fully explain the term "commercial consideration" which is the reason Sidor provided for granting the commercial discount. Therefore, because the information on the record to date is unclear and insufficient for the Department to determine what type of discount, if any, was granted, the Department is denying this discount for the preliminarily determination. The Department intends to fully examine this issue at verification, and may reconsider its position for the final determination based on the results of verification.

E. Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV when we were unable to find a home market match of such or similar merchandise. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. For comparisons to EP, we made COS adjustments by deducting the weighted average home market selling expenses and adding U.S. direct selling expenses. Where we compared CV to CEP, we deducted from CV the average home market direct selling expenses.

F. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting price comparison sales in the home market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer. To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer in the comparison market. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Certain Cut-to-Length Carbon Steel Plate from South Africa, Notice of Final Determination of Sales at Less Than Fair Value*, 62 FR 61731 (November 19, 1997).

In this investigation, Sidor did not request a level-of-trade adjustment. To ensure that no such adjustment was necessary, in accordance with principles discussed above, we examined information regarding the distribution systems in both the United States and Venezuelan markets, including the selling functions, classes of customers and selling expenses for Sidor. *See Memorandum to Edward Yang, Antidumping Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from Venezuela: Level of Trade Analysis* (April 26, 2002) ("*Level of Trade Memorandum*"). For its home market sales, Sidor reported two channels of distribution—to unaffiliated end users and to unaffiliated distributors. In reviewing Sidor's LOT in the home market, we asked Sidor to identify the specific differences and similarities in selling functions and/or support services between all channels of distribution in the home market and the United States. Sidor reported that it undertakes different levels of selling functions depending on whether its home market sales are made to distributors or end users. *See Level of Trade Memorandum.* Because the selling activities engaged in by Sidor differ significantly by channel of distribution, we preliminarily determine that two levels of trade exist for Sidor's home market sales. *See Level of Trade Memorandum.*

For its U.S. sales, Sidor also reported two channels of distribution. Sidor sold directly to unaffiliated trading companies and also made sales through Siderca Corporation, an affiliated U.S. company, which then sold to unaffiliated customers in the United States. We examined the claimed selling functions performed by Sidor for all U.S. sales. For sales made directly to the unaffiliated U.S. customer (EP sales), Sidor performed the same selling functions that it provided for sales made to Siderica Corporation. Sidor provided the same level of the following services for both EP and CEP sales in the U.S.: technical advice and services, visits to customers, solicitation of customer orders, market research, advertising, freight and delivery arrangements and packing.

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between Sidor and its home market customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market levels of trade constituted more advanced stages of distribution than the CEP level of trade. Sidor requested a CEP offset in this investigation. Sidor reported that it provided virtually no selling functions for the CEP level of trade and that, therefore, the two home market levels of trade are more advanced than the CEP level of trade. To determine whether a CEP offset was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Venezuelan markets, including the selling functions, classes of customer, and selling expenses.

Based on our analysis of the channels of distribution and selling functions performed for sales in the home market and CEP sales in the U.S. market, we preliminarily find that both home market LOTs were at a more advanced stage of distribution when compared to respondent's CEP sales. *See Level of Trade Memorandum.* We were unable to quantify the LOT adjustment in accordance with section 773(a)(7)(A) of the Act, as we found that neither of the LOTs in the home market matched the LOT of the CEP transactions. Accordingly, we did not calculate a LOT adjustment. Instead, we applied a CEP offset to the NV for CEP comparisons. To calculate the CEP offset, we deducted the home market indirect selling expenses from normal value for home market sales that were compared to U.S. CEP sales. We therefore limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

We are unable to make a LOT adjustment for EP sales because Sidor does not sell the subject merchandise in the home market at the same LOT as that of its EP sales, and there is no data on the record that would allow the Department to establish whether there is a pattern of consistent price differences

between sales at different levels of trade in the comparison market. Therefore, and LOT adjustment is not possible for comparisons of EP sales to home market sales.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

Verification

As provided in section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

The All Others Rate

Because the Department investigated one company, Sidor, we used Sidor's margin in this investigation as the all-others rate.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percent)
Sidor	72.81
All Others	72.81

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of cold-rolled steel are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 CFR 351.310(c). We will issue our final determination in this investigation no later than 135 days after the date of publication in the **Federal Register** of the preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11201 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050602A]

Proposed Information Collection; Comment Request; Survey to Measure Effectiveness of Community-Oriented Policing for ESA Enforcement

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 8, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue NW, Washington DC 20230 (or via the Internet at *Mclayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dayna Matthews, National Marine Fisheries Service, 510 Desmond Drive S.E. Suite 103, Lacey, WA 98503.

SUPPLEMENTARY INFORMATION:

I. Abstract

Community-oriented policing promotes the use of various resources and policing-community partnerships for developing strategies to identify, analyze, and address community law enforcement problems at their source. Recognizing the significant role non-traditional enforcement efforts play in Endangered Species Act (ESA) enforcement in the Northwest, the National Marine Fisheries Service proposes to conduct a survey to evaluate the success of its Office for Law Enforcement's community-oriented policing program for ESA enforcement for anadromous species in the Pacific Northwest.

II. Method of Collection

Information will be gathered through both voluntary self-administered surveys and in-depth interviews.

III. Data

OMB Number: 0648–0435.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Individuals or households; Federal Government, State and Local Government.
Estimated Number of Respondents: 787.
Estimated Time Per Response: 20 minutes per survey; 60 minutes per interview.
Estimated Total Annual Burden Hours: 316 hours.
Estimated Total Annual Cost to Public: $0 (estimate does not include valuation of the burden hours).

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 2, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–11634 Filed 5–8–02; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 043002C]

Taking and Importing of Marine Mammals

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

ACTION: Request for nominations.

SUMMARY: The Secretary of Commerce is required by the Marine Mammal Protection Act (MMPA) to conduct specified scientific research and, by December 31, 2002, to make a finding based on the results of that research, on information obtained under the International Dolphin Conservation Program (IDCP), and on any other relevant information as to whether the intentional deployment on or the encirclement of dolphins with purse seine nets is having a "significant adverse impact" on any depleted dolphin stock in the eastern tropical Pacific Ocean (ETP). A proposed organized decision process (ODP) and request for public comment were published in the **Federal Register** on Feb. 15, 2002 describing information the Secretary will consider for the final finding and outlining two expert panels that will assess this information.

This notice solicits nominations for scientists to serve on two expert panels referenced in the proposed ODP: the Ecosystem Expert Panel and the Indirect Effects Expert Panel. It also describes the process NMFS will carry out to solicit nominations, select five qualified scientists for each panel, and recommend them for appointment by the Secretary. The expert panels are scheduled to meet September 4–6, 2002, in La Jolla, CA. Each expert panel will assess peer-reviewed scientific studies and other information and individually provide scientific advice to address specific issues the Secretary will be considering in making his final finding.

DATES: Nominations must be received by June 24, 2002.

ADDRESSES: Nominations should be sent to the Director, NMFS Office of Science and Technology, F/ST, 1315 East-West Highway, Silver Spring, MD, 20910. Nominations may also be sent via facsimile at 301–713–1875. Nominations will not be accepted if submitted via electronic mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Nicole R. Le Boeuf, Office of Protected Resources, NMFS, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Background

The MMPA, 16 U.S.C. 1361 *et seq.*, as amended by the International Dolphin Conservation Program Act (IDCPA), (Public Law 105–42), requires the Secretary of Commerce to conduct scientific research on depleted dolphin stocks in the ETP. The Dolphin Protection Consumer Information Act (16 U.S.C. 1385), as amended by the IDCPA, requires the Secretary to make a finding by December 31, 2002, based on the scientific research, information obtained under the IDCP, and any other relevant information, as to whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a "significant adverse impact" on any depleted dolphin stock in the ETP. There are three depleted dolphin stocks in the ETP: northeastern offshore spotted, eastern spinner, and coastal spotted.

The Organized Decision Process

The proposed ODP provides the Secretary with a systematic approach for evaluating multiple types of data. The ODP guides the Secretary through four separate questions regarding the extent of fishery and environmental effects on depleted dolphin stocks to assist in the final decision. These questions focus on (1) the ETP Ecosystem, (2) Direct Fishing Mortality, (3) Indirect Effects, and (4) Dolphin Stock Status and Trends.

Questions and Charge to the Ecosystem Panel

The questions for the Ecosystem Panel are: during the period of the fishery, has the carrying capacity of the ETP for the three depleted dolphin stocks declined, or has the ecological structure of the ETP changed in a manner or to an extent that could impede depleted dolphin stocks from growing at rates expected in a stable ecosystem? Or has the carrying capacity increased substantially or the ecological structure changed in any way that could promote the three depleted dolphin stocks to grow at rates faster than expected in a static ecosystem?

To determine the answer to these questions, the Secretary will consider scientific information collected and/or evaluated by NMFS, as well as information rendered individually from members of a panel of independent scientific experts in biological oceanography and ecology (the Ecosystem Panel). The panel members' assessments will be based on their review of relevant oceanographic and ecosystem data (physical and biological habitat and distribution, abundance, and ecology of other organisms in the ETP) from the period of the fishery.

Question and Charge to the Indirect Effects Panel

The question for the Indirect Effects Panel is: for each depleted dolphin stock, is the estimated number of dolphins affected by the tuna fishery (considering data on sets per year, mortality attributable to the fishery, indicators of stress in blood, skin and other tissues, cow-calf separation, and other relevant indirect effects information) at a level that is cause for concern (how and to what degree)?

To determine the answer to these questions, the Secretary will consider

scientific information collected and/or evaluated by NMFS, as well as information rendered individually from the Indirect Effects Panel. The panel will include independent scientific experts in veterinary science, physiology, and other stress-related fields. The panel members' assessments will be based on their review of relevant behavioral, ecological, immunological, pathological, and other information with respect to the three depleted dolphin stocks. For this question, the Secretary will also consider the evidence presented by the Ecosystem Panel members regarding possible changes in the carrying capacity and/or the ecosystem structure of the ETP and how it relates to adverse impacts attributable to the fishery on the dolphin stocks as described above.

Nomination Process

Any individual or organization may submit nominations for either or both of the two expert panels. Nominations should include:

1. The name of the nominee and their contact information;
2. A statement of background;
3. A statement of qualifications; and
4. The submitting person or organization's name and affiliation.

Panel Member Qualifications

Nominees must have outstanding scientific credentials relevant to the particular panel and be recognized internationally in their fields of expertise. Credentials must include: (1) doctorate degree from an accredited university or equivalent professional experience related to the questions before each panel; (2) established publication record in juried scientific journals related to the questions before each panel; (3) distinguished professional reputation. Nominees may be affiliated with international as well as domestic scientific bodies, academia, natural resource management agencies, or related organizations. Nominees must be available to travel to the expert panel meetings in La Jolla, CA, September 4–6, 2002, and they must be able to spend the necessary time in advance to prepare for the meeting.

To avoid conflicts of interest and ensure an independent panel, nominees must be able to certify and appointees must certify that they will provide their expert advice free from the influence of Government managers, the fishing industry, environmental groups, or any other interested party and that:

1. They have not received in the past 2 years funds in excess of $20 from any industry or environmental group with a vested interest in any resource for which NMFS has stewardship responsibilities, and

2. They have not received in the past 2 years funds in excess of $20 directly from NMFS via a sole-source contract, other than for invitational travel.

Selection Process

The Secretary will seek advice from professional societies on the qualifications of the nominees. A committee composed of one scientist from the Inter-American Tropical Tuna Commission, one scientist from the Marine Mammal Commission, one scientist from an independent reviewing agency, and three senior scientists from NMFS, including the Director, NMFS Office of Science and Technology, as the ex-officio chair, will select and rank qualified expert panel candidates, with advice from the professional societies. The Director will provide this committee's recommendations to the Secretary, including a ranked list of eight candidates for each panel. The Secretary will appoint two panels of five members each from the list of recommended candidates.

Format of the Expert Panel Meetings

Each panel will meet for 3 days. The first day will involve overview presentations by specialists from NMFS, research institutions, fishery management agencies, and others. The second and third days of each panel discussion will entail panel deliberations and individual drafting sessions. Within five days of the expert panel adjournment, each panel member will submit a complete individual assessment report to the Director, NMFS Office of Science and Technology, for use in the ODP. The panel member reports will be made available to the public with the final finding.

Role of Expert Panel Members

The expert panel members will agree to provide individual written assessments, explicitly addressing the relevant question, to the Secretary to assist in his determination. The panel members will base their assessments on the presentations to the panels, panel member deliberations, the peer-reviewed IDCPA science report, additional information obtained under the IDCP, and other relevant information. The use of independent expert judgment in obtaining guidance on complex and highly technical bodies of information, such as those relevant to the Ecosystem and the Indirect Effects Questions, is consistent with science-based, decision-making processes like that proposed here.

Cost Reimbursement

Panel members will be paid $600 per diem. It is anticipated that preparation will require 80 hours and the panel meeting and travel will require another 40–60 hours. In addition, all travel expenses for panel members to attend the meeting will be paid by the federal government at the prevailing government rates.

Deadline for Submission of Nominations

NMFS is soliciting nominations by June 24, 2002. See **ADDRESSES** above.

Dated: May 3, 2002.

William W. Fox, Jr.

Director, Office of Science and Technology, National Marine Fisheries Service.

[FR Doc. 02–11635 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050102C]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee in May, 2002. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Thursday, May 23, 2002, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Colonial Hotel, 427 Walnut Street, Wakefield, MA 01880; telephone: (781) 245–9300.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: On the agenda will be an update and discussion on a pilot program for a New England industry-based survey; a review and discussion of habitat research and data needs and development of a strategy to address those issues related to management needs; development of a

long-range plan for fisheries research; review of comments on efforts by NMFS to expedite and clarify procedures related to their Experimental Fisheries Program.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: May 6, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–11633 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by June 10, 2002.

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 216, Types of Contracts, and Related Clauses at 252.216; OMB Number 0704–0259.

Type of Request: Extension.

Number of Respondents: 69.

Responses per Respondent: 1.97.

Annual Responses: 136.

Average Burden Per Response: 4.06 hours.

Annual Burden Hours: 552.

Needs and Uses: The clauses at DFARS 252.216–7000, 252.216–7001, and 252.216–7003 require contractors with fixed-price economic price adjustment contracts to submit information to the contracting officer regarding changes in established material prices or wage rates. The contracting officer uses this information to make appropriate adjustments to contract prices.

Affected Public: Business or Other For-Profit.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–11526 Filed 5–8–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission of OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by June 10, 2002.

Title, Form Number, and OMB Number: Continued Health Care Benefit Program (CHCBP) Application; DD Form 2837; OMB Number 0704–0364.

Type of Request: Extension.

Number of Respondents: 808.

Responses per Respondent: 1.

Annual Responses: 808.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 202.

Needs and Uses: The continuing information collection requirement is necessary for individuals to apply for enrollment in the Continued Health Care Benefit Program (CHCBP). The CHCBP is a program of temporary health care benefit coverage that is made available to eligible individuals who lose health care under the Military Health System. In order to be eligible for health care coverage under CHCBP, an individual must first enroll using the DD Form 2837.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Cristal Thomas.

Written comments and recommendations on the proposed information collection should be sent to Ms. Thomas at the Office of the Management and Budget, Desk Officer for DoD Health Affairs, Room 10235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 3, 2002.

Patricial L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–11527 Filed 5–8–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Advisory Group on Electron Devices, Department of Defense.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, May 15, 2002.

ADDRESSES: The meeting will be held at the Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Carr, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects

Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. app. 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: May 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–11529 Filed 5–8–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Change in Meeting Date fo the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a change to a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, May 16 2002.

ADDRESSES: The meeting will be held the Seaside Room, Hyatt Monterey, 1 Old Golf Course Drive, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: May 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–11530 Filed 5–8–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DoD Advisory Group on Electron Devices

AGENCY: Advisory Group on Electron Devices, Department of Defense.

ACTION: Notice

SUMMARY: Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 1300, Wednesday, May 22, 2002.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. sec. 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: May 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–11531 Filed 5–8–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Wideband RadioFrequency Systems will meet in closed session on June 3–4, 2002; June 24–25, 2002; July 25–26, 2002; August 29–30, 2002; September 26–27, 2002; October 21–22, 2002; and November 21–22, 2002; at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will review key aspects of the policy and technology issues associated with the military applications of Wideband Radio Frequency (RF) systems.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will examine. (1) Technical issues associated with the employment of Wideband RF modulation by the Department of Defense (DoD) and Defense-related agencies and its potential impact on other defense and non-Defense users of the RF spectrum; (2) technical issues associated with the employment of Wideband modulation techniques by Defense related agencies taking into account the concurrent interagency review of spectrum requirements for advanced wireless mobile services

(third generation) led by the National Telecommunications and Information Administration and the Federal Communications Commission; (3) implications of the employment of Wideband modulation techniques for US policy at the forthcoming World Administrative Radio Conference; (4) technical impact of the DoD employment of Wideband RF modulation on other users of the RF spectrum; (5) the potential limitations of exploiting variable code length and bandwidth-on-demand characteristics using packet switching techniques to meet DoD's long-term communications requirements; and (6) implications for the cost and technical risk associated with the extensive use of Wideband RF modulation by the DoD.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: May 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–11532 Filed 5–8–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board (DSB) Task Force on Discriminate Use of Force (formerly known as the Task Force on Precision Compellence) will meet in closed session on September 25–26, 2002, and October 21–22, 2002, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. The Task Force will conduct a comprehensive study of the ends and means of the nuanced use of force, in concert with coalition partners, to achieve political, economic and moral change in countries affecting US interests.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will survey the focused use of force so as to alter regimes' behavior, and in ways that are most promising to isolate regimes of concern from their populations and supporting organs and bureaucracies. This will include the means to acquire a well-founded conceptual delineation of targets critically important to the diplomatic, economic and military dominance of the regime. A regime's values and vulnerabilities being highly idiosyncratic, the Task Force shall select some concrete case studies for exploration in depth. These might include current rouge states, terrorist organizations, and future potential adversaries. Of particular relevance are the cleavage planes, where the discriminating use of force might divide the interests of different strata, political, ethnic or religious groups, or even personal rivalries.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: May 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–11533 Filed 5–8–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Threat Reduction Advisory Committee

AGENCY: Department of Defense, Office of the Under Secretary of Defense (Acquisition, Technology and Logistics).

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Threat Reduction Advisory Committee will meet in closed session on Thursday, July 25, 2002, at the Institute for Defense Analyses (IDA), and on Friday, July 26, 2002 in the Pentagon, Washington, DC.

The mission of the Committee is to advise the Under Secretary of Defense (Acquisition, Technology and Logistics) on technology security, counterproliferation, chemical and biological defense, sustainment of the nuclear weapons stockpile, and other matters related to the Defense Reduction Agency's mission.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. Appendix II), it has been determined that this Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly the meeting will be closed to the public.

DATES: Thursday, July 25, 2002, (8 a.m. to 4 p.m.) and Friday, July 26, 2002, (8 a.m. to 9:20 a.m.)

ADDRESSES: Institute for Defense Analyses, Board Room, 4850 Mark Center Drive, Alexandria, Virginia and the USD (AT&L) Conference Room (3D1019), the Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Contact Colonel Rick Baker, Defense Threat Reduction Agency/AST, 8725 John J. Kingman Road MS 6201, Fort Belvoir, VA 22060–6201, Phone: (703) 767–4759.

Dated: May 3, 2002.

Patricia L. Toppings,

OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–11528 Filed 5–8–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

National Reconnaissance Office; Privacy Act of 1974; System of Records

AGENCY: National Reconnaissance Office, DoD.

ACTION: Notice to Add a System of Records.

SUMMARY: The National Reconnaissance Office is adding a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 10, 2002, unless comments are received which result in a contrary determination.

ADDRESSES: National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Freimann at (703) 808–5029.

SUPPLEMENTARY INFORMATION: The National Reconnaissance Office systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 30, 2002, to the House Committee on Government

Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

QNRO 16

SYSTEM NAME:

Reservists Recall Files.

SYSTEM LOCATION:

Deputy Director for Military Support, Reserve Management Office, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Government and contractor personnel currently assigned to NRO who are military reservists.

CATEGORIES OF RECORDS IN THE SYSTEM:

Home information includes individual's name, address, home phone number, marital status, Social Security Number, email address, emergency contact information, whether spouse is in military service, and whether the reservist is lost from or assigned to the NRO.

Work information includes individual's title, company name, department, office, address, phone number and e-mail address, contractor status, and potential conflict of interest notes.

Reserve Assignment information includes site, manager's name, office and email address, geographic location, phone and fax numbers, and reservist's phone number.

NRO Lose information includes losing directorate and office, gaining office, location, phone number, job title; start date, duration, return date, whether mobilized or not, mobilization potential and whether voluntary or involuntary mobilization.

Qualifications and Status information includes individual's military branch status, rank, and pay grade whether officer or enlisted, promotable/selected, National Guard state, specialist code/military occupational specialty (AFSC/MOS), whether an Individual Mobilization Augmentee, duty obligation, category, specialty, and notes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; National Security Act of 1947 as amended; 50 U.S.C. 401 *et seq.*; E.O. 9397 (SSN); E.O. 12333.

PURPOSE(S):

Files are used to track potential and actual mobilization of reservists working in the NRO.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosure generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To other Intelligence Community agencies for the purpose of identifying individuals who are on a job rotation to the NRO who are potentially impacted if mobilization occurs.

The DoD 'Blanket Routines Uses' published at the beginning of the NRO compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and automated information system, maintained in computers and computer output products.

RETRIEVABILITY:

Retrieved alphabetically by individual's name.

SAFEGUARDS:

Records are stored in secure gated facility, a guard, badge, and password access protected. Access to and use of these records are limited to NRO staff whose job requirements require use of the records.

RETENTION AND DISPOSAL:

Disposition pending (until NARA approves a disposition and retention schedule, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director for Military Support, Reserve Management Office, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, address, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, address, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110–3 and NRO Instruction 110–5; 32 CFR part 326; or may be obtained from the NRO Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

RECORD SOURCE CATEGORIES:

Information entered into the system is supplied from the individuals themselves, Military Departments, and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–11534 Filed 5–8–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for Proposed Quonset/Davisville Port and Commerce Park, Narragansett Bay, North Kingstown, RI, Application for Corps Section 10/404 Individuals Permit

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The New England District, Corps of Engineers, has received an application from the State of Rhode Island, Office of the Governor, for a Corps of Engineers permit under section 10 of the Rivers and Harbors Act of 1899 and section 404 of the Clean Water Act to dredge and fill navigable and non-navigable waters of the United States. The project is proposed at Quonset Point in Narragansett Bay, Rhode Island. The Corps has determined that an Environmental Impact Statement (EIS) is required for this proposed project. The applicant's stated purpose is to develop a compact, automated container facility to handle from 250,000 to 1,200,000 containers per year. The project proposes to dredge up to 6.3 million cubic yards of material from the Quonset and Davisville Channels to a depth of 52 feet, provide 4,000 linear feet of marginal wharf for container ship dockage and fill up to 115 acres of Narragansett Bay to provide lay-down area for container processing.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft EIS can be answered by Mr. Greg Penta, Regulatory Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, Massachusetts 017422751, Telephone No. (978) 3188862, or by e-mail at *gregory.r.penta@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The U.S. Navy developed the Naval Air Station at Quonset Point and the Construction Battalion Center at Davisville with the onset of World War II. The Navy is still transferring portions of the 3000-acre site to the Rhode Island Port Authority and Economic Development Corporation. The applicant has indicated that the footprint of the proposed port may occupy less than 200 acres.

The applicant states that increased container terminal capacity will be of assistance to expanding national trade interests, particularly considering an expanding global market. They state that containerized cargo volumes have increased both nationally and regionally for over 20 years, are anticipated to continue to grow at steady rates, and the demand for more container handling terminals in the New England region is evident. Quonset Davisville benefits from existing airport, railway, and highway infrastructure.

The existing channels and basins were last dredged in the 1960's. Original depth were from 35 to 40 feet. The applicant has identified potential disposal sites, but has not decided upon a preferred disposal site. Deeper channels have the potential to change circulation patterns, salinity gradients, dissolved oxygen levels and consequently affect marine ecology within a Narragansett Bay. Studies such as extensive hydrodynamic modeling will be conducted to evaluate impacts. The proposed filing of between 100 to 115 acres of ocean waters, needed to accommodate port operations and container storage, is unprecedented in the Corps New England District's permitting history.

Alternatives to be addressed in the EIS will include the No Action Alternative, alternative port locations within a North American region (potentially including another Rhode Island location), to be determined during scoping, and alternative port options along the Quonset Davisville waterfront.

The EIS will analyze in depth the following significant issues and impacts associated with the construction and operation of the port: Recreational and commercial boating and fishing activities, endangered marine mammals and reptiles, aquatic and benthic habitat destruction and alteration, circulation patterns, invasive species, economics and job creation. The Corps anticipates the Draft EIS will be available for public review in the Summer of 2003.

Other Environmental Review and Consultation Requirements

To the fullest extent possible, the EIS will be integrated with analyses and consultation required by the Endangered Species Act of 1973, as amended (Pub. L. 93–205; 16 U.S.C. 1531, *et seq.*); the Magnuson-Stevens Fishery Conservation and Management Act, as amended (Pub. L. 94–265; 16 U.S.C. 1801, *et seq.*), the National Historic Preservation Act of 1966, as amended (Pub. L. 89–655; 16 U.S.C. 470. *et seq.*); the Fish and Wildlife Coordination Act of 1958, as amended (Pub. L. 85–624; 16 U.S.C. 661, *et seq.*); the Coastal Zone Management Act of 1972, as amended (Pub. L. 92–583; 16 U.S.C. 1451, *et seq.*); and the Clean Water Act of 1977, as amended (Pub. L. 92–500; 33 U.S.C. 1251, *et seq.*), Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 403 *et seq.*); and applicable and appropriate Executive Orders.

Scoping

The Corps will conduct an open scoping and public involvement process during the development of the EIS. The scoping process is the key to preparing a concise EIS and clarifying the significant issues to be analyzed in depth. Public concerns on issues, studies needed, alternatives to be examined, procedures and other related matters will be addressed during scoping. The purpose of the scoping meetings is to assist the Corps in defining the issues that will be evaluated in the EIS. All interested Federal, State and local agencies, affected Indian tribes, interested private and public organizations, and individuals are invited to attend these scoping meetings.

The first scoping meeting will be held on Tuesday, June 4, 2002, at Rhode Island College, 600 Mount Pleasant Avenue, Providence, Rhode Island in the Clarke Science Building, Room 125. Registration begins at noon at the meeting begins at 1 p.m. The second scoping meeting will be held on Thursday, June 6, 2002, at the North Kingstown High School, 150 Fairway Drive, North Kingstown, Rhode Island in the auditorium. Registration begins at 6 p.m. and the meeting begins at 7 p.m.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–11630 Filed 5–8–02; 8:45 am]

BILLING CODE 3710–24–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Estuary Habitat Restoration Council; Open Meeting

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 105(h) of the Estuary Restoration Act of 2000, (Title I, Public Law 106–457), announcement is made of the

forthcoming meeting of the Estuary Habitat Restoration Council. The meeting is open to the public.

DATES: The meeting will be held from 10 a.m. to 12 p.m. on Wednesday, May 22, 2002.

ADDRESSES: The meeting will be in room 3M60/70, 441 G Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Cummings, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000, (202) 761–4558; or Ms. Cynthia Garman-Squier, Office of the Assistant Secretary of the Army (Civil Works), Washington, DC (703) 695–6791.

SUPPLEMENTARY INFORMATION: The Estuary Habitat Restoration Council consists of representatives of five agencies. These are the National Oceanic and Atmospheric Administration (NOAA), Environmental Protection Agency, U.S. Fish and Wildlife Service, Department of Agriculture, and Army. Among the duties of the Council is development of a national estuary restoration strategy designed in part to meet the goal of restoring one million acres by 2010.

Items the Council will consider at this meeting include the recently published draft strategy and the development of a database of restoration project information.

Current security measures require that persons interested in attending the meeting must pre-register with us before 2 p.m. May 20, 2002. Please contact Ellen Cummings at 202–761–4558 to pre-register. When leaving a voice mail message please provide the name of the individual attending, the company or agency represented, and a telephone number, in case there are any questions. The public should enter on the "G" Street side of the GAO building. All attendees are required to show photo identification and must be escorted to the meeting room by Corps personnel. Attendee's bags and other possessions are subject to being searched. All attendees arriving between one-half hour before and one-half hour after 10 a.m. will be escorted to the hearing. Those that are not pre-registered and/or arriving later than the allotted time will be unable to attend the public meeting.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–11629 Filed 5–8–02; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF ENERGY

[DE–PS07–02ID14304]

Supporting Industries

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of availability of financial assistance solicitation.

SUMMARY: The U.S Department of Energy (DOE) Idaho Operations Office (ID) is seeking applications for cost-shared research and development of technologies which will reduce energy consumption, reduce environmental impacts and enhance economic competitiveness of two or more of the following Industry of the Future Sectors: Heat Treating, Forging, Welding, Powder Metals, and Advanced Ceramics.

DATES: The issuance date of Solicitation Number DE–PS07–02ID14304 will be on May 1, 2002. The deadline for receipt of applications will be approximately on June 28, 2002.

ADDRESSES: The solicitation in its full text will be available on the Internet at the following URL address: *http://e-center.doe.gov*. The Industry Interactive Procurement System (IIPS) provides the medium for disseminating solicitations, receiving financial assistance applications and evaluating the applications in a paperless environment. Completed applications are required to be submitted via IIPS. An IIPS "User Guide for Contractors" can be obtained on the IIPS Homepage and then clicking on the "Help" button. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Seb Klein, Contract Specialist, *kleinsm@id.doegov*.

SUPPLEMENTARY INFORMATION: The Roadmaps are available at the following URL: *http://www.oit.doe.gov/related/related/related.shtml*. DOE anticipates making three to five awards each with a duration of four years or less. Award of a cooperative agreement under this solicitation does not commit the Government to fund any follow-on research. Successful applicants will be required to submit quarterly, annual, and final reports to DOE. The statutory authority for the program is the Federal Non-Nuclear Energy Research and Development Act of 1974 (Pub. L. 93–577). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086.

Issued in Idaho Falls on April 30, 2002.

R.J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 02–11610 Filed 5–8–02; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board; Notice of Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board. Federal Advisory Committee Act (Public Law 92–463; 86 Stat. 770) requires that public notice be announced in the **Federal Register**.

DATES: June 20, 2002, 8 a.m. to 5 p.m. and June 21, 2002, 8 a.m. to 3 p.m.

Place: National Renewable Energy Laboratory, 1617 Cole Boulevard, Golden, CO 80401.

FOR FURTHER INFORMATION CONTACT: William J. Raup, Office of Planning, Budget, and Outreach, Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE), Washington, DC 20585, Telephone 202/586–2214.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101–440).

Tentative Agenda:

- STEAB Committee updates
- STEAB Draft Annual Report Review
- Open Session with Assistant Secretary David Garman
- Regional Office Update
- Presentations from NREL Personnel
- Tours of NREL Facilities
- Public Comment Period

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of

the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 6, 2002.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 02–11611 Filed 5–8–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM96–1–019,

Standards For Business Practices of Interstate Natural Gas Pipelines; Notice of Compliance Filing

	Docket No.
Algonquin Gas Transmission Company	RP02–259–000
Algonquin LNG, Inc.	RP02–260–000
Alliance Pipeline L.P.	RP02–315–000
ANR Pipeline Company	RP02–287–000
ANR Storage Company	RP02–282–000
Black Marlin Pipeline Company	RP02–311–000
Blue Lake Gas Storage Company	RP02–285–000
Canyon Creek Compression Company	RP02–267–000
Carnegie Interstate Pipeline Company	RP02–273–000
Central New York Oil and Gas Company, LLC	RP02–274–000
CMS Trunkline Gas Company, LLC	RP02–304–000
CMS Trunkline LNG Company, LLC	RP02–303–000
Colorado Interstate Gas Company	RP02–295–000
Columbia Gas Transmission Corporation	RP02–254–000
Columbia Gulf Transmission Company	RP02–252–000
Cove Point LNG Limited Partnership	RP02–312–000
Crossroads Pipeline Company	RP02–255–000
Dauphin Island Gathering Partners	RP02–266–000
Destin Pipeline Company, L.L.C.	RP02–256–000
Dominion Transmission, Inc.	RP02–246–000
East Tennessee Natural Gas Company	RP02–262–000
Egan Hub Partners, L.P.	RP02–264–000
El Paso Natural Gas Company	RP02–288–000
Enbridge Pipelines (KPC)	RP02–239–000
Enbridge Offshore Pipelines (UTOS) LLC	RP02–247–000
Enbridge Pipelines (AlaTenn) Inc.	RP02–245–000
Enbridge Pipelines (Midla) Inc.	RP02–244–000
Equitrans, L.P.	RP02–278–000
Garden Banks Gas Pipeline, LLC	RP02–251–000
Granite State Gas Transmission, Inc.	RP02–253–000
Great Lakes Gas Transmission Limited Partnership	RP02–322–000
Gulf South Pipeline Company, LP	RP02–313–000
Gulf States Transmission Corporation	RP02–280–000
High Island Offshore System, L.L.C.	RP02–283–000
Honeoye Storage Corporation	RP02–300–000
Horizon Pipeline Company, L.L.C.	RP02–270–000
Iroquois Gas Transmission System, L.P.	RP02–276–000
Kern River Gas Transmission Company	RP02–237–000
Kinder Morgan Interstate Gas Transmission LLC	RP02–249–000
KO Transmission Company	RP02–316–000
Maritimes & Northeast Pipeline, L.L.C.	RP02–265–000
Midwestern Gas Transmission Company	RP02–320–000
MIGC Inc.	RP02–293–000
Mississippi Canyon Gas Pipeline, LLC	RP02–250–000
Mississippi River Transmission Corporation	RP02–298–000
Mojave Pipeline Company	RP02–294–000
National Fuel Gas Supply Corporation	RP02–319–000
Natural Gas Pipeline Company of America	RP02–269–000
Nautilus Pipeline Company, LLC	RP02–257–000
Northern Border Pipeline Company	RP02–321–000
Northern Natural Gas Company	RP02–235–000
Northwest Pipeline Corporation	RP02–308–000
Ozark Gas Transmission, L.L.C.	RP02–271–000
Panhandle Eastern Pipe Line Company	RP02–302–000
Petal Gas Storage, L.L.C.	RP02–281–000
PG&E Gas Transmission, Northwest Corporation	RP02–272–000
Pine Needle LNG Company, LLC	RP02–310–000
Portland Natural Gas Transmission System	RP02–314–000
Reliant Energy Gas Transmission Company	RP02–299–000
Sabine Pipe Line LLC	RP02–317–000
Sea Robin Pipeline Company	RP02–305–000
Southern LNG Inc.	RP02–290–000

	Docket No.
Southern Natural Gas Company	RP02–289–000
Southwest Gas Storage Company	RP02–301–000
Steuben Gas Storage Company	RP02–291–000
Stingray Pipeline Company	RP02–258–000
Tennessee Gas Pipeline Company	RP02–279–000
Texas Gas Transmission Corporation	RP02–307–000
Texas Eastern Transmission, L.P.	RP02–263–000
Trailblazer Pipeline Company	RP02–268–000
Transwestern Pipeline Company	RP02–236–000
Tuscarora Gas Transmission System	RP02–277–000
USG Pipeline Company	RP02–296–000
Vector Pipeline L.P.	RP02–292–000
Venice Gathering System, L.L.C.	RP02–275–000
Viking Gas Transmission Company	RP02–297–000
WestGas Interstate, Inc.	RP02–240–000
Williams Gas Pipelines Central, Inc.	RP02–306–000
Williston Basin Interstate Pipeline Company	RP02–261–000
Wyoming Interstate Company, Ltd.	RP02–286–000
Young Gas Storage Company, Ltd.	RP02–284–000] (Not Consolidated)

Take notice that the above-referenced pipelines made filings in compliance with Docket No. RM96–1–019, Order No. 587–N.[1] These revised tariff sheets to be effective July 1, 2002, implements Commission regulation 284.12(c)(1)(ii)(B) that requires that pipelines permit releasing shippers, as a condition of a capacity release, to recall released capacity and renominate such recalled capacity at each nomination opportunity. The filings implement the first phase of compliance with Order No. 587–N by implementing recalls of scheduled capacity for the Timely and Evening Nomination Cycles and for recalls of unscheduled capacity at any of the four nomination cycles.

Any person desiring to become a party in a proceeding must file a separate motion to intervene or protest in each docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11600 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–N, 67 FR 11906 (March 18, 2002), FERC Stats. & Regs. Regulations Preambles ¶ 31,125 (March 11, 2002).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–79–000]

American Electric Power Service Corp., Complainant, v. Williams Energy Marketing and Trading Co. and Sempra Energy Trading Corp., Respondents; Notice of Filing

May 3, 2002.

Take notice that on May 1, 2002, American Electric Power Service Corporation (AEP) filed a Complaint against Williams Energy Marketing and Trading Co. and Sempra Energy Trading Corp. AEP Requests to hold further procedures regarding the Complaint in abeyance.

AEP states that it has served a copy of the Complaint on Respondents by express overnight delivery.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 21, 2002 . 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. Answers to the complaint shall also be due on or before May 21, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11585 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–60–000]

CMS Trunkline LNG Company, LLC; Notice of Site Visit

May 3, 2002.

On May 14, 2002, at 9:00 a.m., staff from the Office of Energy Projects (OEP) will conduct a pre-certification site visit of the proposed Trunkline LNG Expansion Project at CMS Trunkline LNG Company, LLC's (Trunkline LNG) existing liquefied natural gas import terminal in Calcasieu Parish, Louisiana. Representatives of Trunkline LNG will accompany the OEP staff. The purpose of the site visit is to review the existing and proposed cryogenic design and spill containment features of the LNG terminal.

All interested parties may attend the site visit. Those planning to attend must provide their own transportation. Additionally, for security reasons, anyone planning to attend must contact Trunkline LNG's, Gwen Hughes at (337) 475–4217. For further information on attending the site visit, please contact the Commission's Office of External Affairs at (202) 208–0004.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11584 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–243–000]

Destin Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

May 3, 2002.

Take notice that on April 30, 2002, Destin Pipeline Company, L.L.C. (Destin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 4, proposed to become effective June 1, 2002.

Destin states that purpose of this filing is to revise its system map in accordance with the provisions of Section 154.106 of the Commission Regulations.

Destin states that copies of this filing are being served on all affected shippers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11603 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–242–000]

Discovery Gas Transmission LLC; Notice of Cash-Out Report

May 3, 2002.

Take notice that on April 30, 2002, Discovery Gas Transmission LLC (Discovery) filed with the Commission its annual cash-out report for the calendar year ended December 31, 2001.

Discovery states that the cash-out report reflects an estimated cumulative gain from cash-out transactions. However Discovery has requested that a waiver of section 9.9 of its tariff permit it to use the balance of the cash-out account to make necessary gas purchases. Discovery states that any remaining funds will be refunded in the subsequent reporting period.

Discovery states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before May 10, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11602 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–248–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 3, 2002.

Take notice that on April 30, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective June 1, 2002:

Fifth Revised Sheet No. 71
Third Revised Sheet No. 96
Third Revised Sheet No. 98
Second Revised Sheet No. 107
Second Revised Sheet No. 108
First Revised Sheet No. 205
Original Sheet Nos. 206–213
Sheet Nos. 214–299 (Reserved)

Kern River states that the purpose of this filing is to establish an integrated tariff provision setting forth procedures for posting, bidding on, and awarding unsubscribed and expiring capacity, and for reserving capacity for future expansion projects.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11604 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1654–000]

Oncor Electric Delivery Company, Kiowa Power Partners, LLC; Notice of Filing

May 3, 2002.

Take notice that on May 1, 2002, Oncor Electric Delivery Company (Oncor) conditionally tendered for filing an unexecuted Interconnection Agreement (Agreement) between Oncor and Kiowa Power Partners, LLC, pursuant to Section 210, 211, and 212 of the Federal Power Act and the Offer of Settlement filed by Kiowa as part of its Application in Docket No. TX02–2–000 and later executed by Oncor.

Oncor seeks an effective date for the Agreement of the same date as the date of a final and appealable Commission Order consistent in all material respects with the proposed Order Directing Interconnection And Transmission Services And Approving Settlement attached to the Offer of Settlement in Docket No. TX02–2–000.

Oncor states that this filing has been served upon Kiowa, the Public Utility Commission of Texas, and each person designated on the official service list compiled by the Secretary for Docket No. TX02–2–000.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 13, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11592 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–80–000]

PacifiCorp, Complainant, v. Reliant Energy Services, Inc., Respondent; Notice of Complaint

May 3, 2002.

Take notice that on May 2, 2002, PacifiCorp filed a complaint against Reliant Energy Services, Inc. regarding the rates in certain 90-day contracts which call for delivery during the summer of 2002. PacifiCorp requests that the Commission set a refund effective date of July 1, 2002.

Copies of the complaint were served on Reliant Energy Services, Inc. and relevant state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 22, 2002 . 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. Answers to the complaint shall also be due on or before May 22, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11586 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–81–000]

PacifiCorp, Complainant, v. Morgan Stanley Capital Group Inc., Respondent; Notice of Complaint

May 3, 2002.

Take notice that on May 2, 2002, PacifiCorp filed a complaint against Morgan Stanley Capital Group Inc. regarding the rates in certain 90-day contracts which call for delivery during the summer of 2002. PacifiCorp requests that the Commission set a refund effective date of July 1, 2002.

Copies of the complaint were served on Morgan Stanley Capital Group Inc. and relevant state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 22, 2002. 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. Answers to the complaint shall also be due on or before May 22, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11587 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–82–000]

PacifiCorp, Complainant, v. Williams Energy Marketing & Trading Company Respondent; Notice of Complaint

May 3, 2002.

Take notice that on May 2, 2002, PacifiCorp filed a complaint against Williams Energy Marketing & Trading Company regarding the rates in certain 90-day contracts which call for delivery during the summer of 2002. PacifiCorp requests that the Commission set a refund effective date of July 1, 2002. Copies of the complaint were served on Williams Energy Marketing & Trading Company and relevant state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 22, 2002. 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. Answers to the complaint shall also be due on or before May 22, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11588 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–83–000]

PacifiCorp, Complainant, v. El Paso Merchant Energy, L.P., Respondent; Notice of Complaint

May 3, 2002.

Take notice that on May 2, 2002, PacifiCorp filed a complaint against El Paso Merchant Energy, L.P. regarding the rates in certain 90-day contracts which call for delivery during the summer of 2002. PacifiCorp requests that the Commission set a refund effective date of July 1, 2002. Copies of the complaint were served on El Paso Merchant Energy, L.P. and relevant state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 22, 2002. 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. Answers to the complaint shall also be due on or before May 22, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11589 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–84–000]

PacifiCorp, Complainant, v. Enron Power Marketing, Inc., Respondent; Notice of Complaint

May 3, 2002.

Take notice that on May 2, 2002, PacifiCorp filed a complaint against Enron Power Marketing, Inc. regarding the rates in certain 90-day contracts which call for delivery during the summer of 2002. PacifiCorp requests that the Commission set a refund effective date of July 1, 2002. Copies of the complaint were served on Enron Power Marketing, Inc. and relevant state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 22, 2002. 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. Answers to the complaint shall also be due on or before May 22, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the

Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11590 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL00–95–000, EL00–98–000, ER02–1656–000]

San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; Investigation of Practices of the California; Independent System Operator and the California Power Exchange; California Independent System Operator (MDO2); Amended Notice of Technical Conference and Agenda

May 3, 2002.

The Federal Energy Regulatory Commission Staff is convening a technical conference to facilitate continued discussions between the California Independent System Operator Corporation (CAISO), market participants, state agencies and other interested participants on the development of a revised market design for the CAISO. Attached is the proposed agenda for the conference. This amended notice adds Docket

No. ER02–1656–000. The conference will held in San Francisco, California, at the Renaissance Parc 55 Hotel, 55 Cyril Magnin Street, San Francisco, CA, on May 9 and 10, 2002, beginning at 9 a.m.

For additional information concerning the conference, interested persons may contact Robert Pease at (202) 208–0131 or by electronic mail at "*robert.pease@ferc.gov.*" No telephone communication bridge will be provided at this technical conference.

Magalie R. Salas,

Secretary.

Discussion Issues for FERC Technical Conference on California Market Design May 9–10, 2002.

1. Implementation/Redesign of Markets
   a. Day-Ahead Market
   i. Price Certainty
   ii. Date for Implementation
   iii.Market Separation
   b. Hourly Market
   i. Price Certainty
   ii. Date for Implementation
   c. 10—Minute Market
   i. Price Certainty
2. Feasible Schedules
   a. Ramping Constraints
   b. Transmission Constraints
   c. Balanced Schedules
3. Intrazonal Congestion
4. Capacity Obligations
   a. Presentation by Inter-Agency Task Force on AFEC
   b. Other Presentations
5. Process for Incorporating Stakeholder Input

[FR Doc. 02–11591 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–1–001]

Southern Natural Gas Company; Notice of Amendment

May 3, 2002.

Take notice that on April 29, 2002, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP02–1–001, an amendment to its application for abandonment authorization and for a certificate of public convenience and necessity filed on October 1, 2001 in Docket No. CP02–1–000 to modify certain of the pipeline, compression, measurement, interconnection and appurtenant facilities proposed therein, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Southern states that two of the shippers, Calpine Energy Services, L.P. and SCANA Resources, Inc., participating in the South System Expansion II Project have advised Southern that because of changes in project schedules these shippers will not need their transportation services on the dates indicated in the application. Southern states that it has agreed to assist these shippers in coordinating the availability of Transportation Demands with their revised project schedules and is proposing to reduce the size of the expansion project as well as rescheduling the construction of certain segments of the expansion project. To reflect the reduction in the quantity of firm transportation services to be included in the expansion project from 359,891 Mcf per day to 329,891 Mcf per day, Southern states that it has reduced the miles of pipeline loop as proposed in its application by 9.1 miles and the amount of compression horsepower by 12,270 horsepower.

Southern further states that it is proposing two other changes to certain of the compression and measurement facilities that are unrelated to the above changes in the shippers' project schedules. Southern states that the proposed expansion of its pipeline system will now consist of 114.2 miles of pipeline loop, 64,660 horsepower of compression, the rescheduling and rerating of certain existing compression units, the resizing of the cylinders on certain existing compression units, and the installation of certain interconnection and measurement facilities. Southern states that there are no changes to the compressor units it is proposing to abandon and that the proposed in-service dates for Phase 1 and Phase 2 remain the same, June 1, 2003 and May 1, 2004 respectively. Finally, Southern states that the total cost of the revised facilities is estimated to be $229.1 million, which is $16.4 million less than the estimated cost of the project as originally filed.

Any questions concerning this application may be directed to R. David Hendrickson, Associate General Counsel, Southern Natural Gas Company, Post Office Box 2563, Birmingham, Alabama 35202–2563, at (205) 325–7114 or fax (205) 327–2253.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before May 24, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments

considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11582 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–309–000]

Sunoco, Inc. (R&M), Complainant, v. Transcontinental Gas Pipe Line Corporation, Respondent; Notice of Complaint

May 3, 2002.

Take notice that on May 2, 2002, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, Sunoco, Inc. (R&M) (Sunoco) tendered for filing a Complaint against Transcontinental Gas Pipe Line Corporation (Transco).

Sunoco alleges that Transco has indicated its intention to terminate firm transportation service to Sunoco at certain production area receipt points in contravention of a 1992 FERC-approved settlement agreement that specifically requires Transco to provide firm transportation service at such points. Sunoco further alleges that Transco failed to provide the Commission with complete and accurate information concerning its firm service obligation to Sunoco in its abandonment application filed in Docket No. CP01–34 in which Transco requested authorization to abandon service to Sunoco at certain production area receipt points.

Sunoco requests that the Commission institute a formal investigation to scrutinize and remedy Transco's unilateral abrogation of a FERC-approved settlement agreement and related failure to disclose to the Commission all relevant facts and circumstances pertaining to its firm service obligation to Sunoco in its application seeking abandonment authorization in Docket No. CP01–34. Sunoco further requests that the Commission issue an order pursuant to Sections 5 and 16 of the Natural Gas Act requiring Transco to continue providing firm transportation service to Sunoco at all receipt points designated under its firm transportation service agreement that became effective pursuant the FERC-approved settlement agreement. Alternatively, Sunoco requests the Commission to take such action as it may deem necessary and appropriate pursuant to Sections 5 and 16 of the Natural Gas Act, to modify the settlement to restore the status quo ante and to prevent unjust enrichment to Transco by, among other things, requiring Transco to refund, with interest, take-or-pay charges paid to Transco by Sunoco pursuant to the terms of the settlement.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 22, 2002. 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. Answers to the complaint shall also be due on or before May 22, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11605 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN01–2–002]

Williams Gas Pipelines Central, Inc.; Notice of Filing of Refund Report

May 3, 2002.

Take notice that on April 6, 2001, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing a refund report detailing a February 23, 2001, Webb Storage Refund of $1,362,293.

Williams states that the refund reflects the amount due to storage customers as agreed to in the Stipulation and Agreement between Market Oversight and Enforcement section, Office of the General Counsel (MOE) and Williams that was approved in the "Order Approving Stipulation and Consent Agreement" issued December 26, 2000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 10, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11593 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN01–2–003]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

May 3, 2002.

Take notice that on October 10, 2001, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1 the following tariff sheets to become effective November 1, 2001:

Twelfth Revised Sheet No. 6
Nineteenth Revised Sheet No. 6A

Williams states that this filing is being made pursuant to Section III, Paragraph B of the Stipulation and Agreement approved by Commission Order dated December 26, 2000 in the above-referenced docket. This paragraph required Williams to file revised storage rates reflecting the elimination of $1,584,326 (and the removal of 16.4 million dekatherms of gas) from storage rate base.

Williams states that copies of the revised tariffs are being mailed to Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 10, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11594 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–110–000, et al.]

Triton Power Michigan LLC, et al.; Electric Rate and Corporate Regulation Filings

May 2, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Triton Power Michigan LLC

[Docket No. EG02–110–000]

Take notice that on April 22, 2002, Triton Power Michigan LLC (TP Michigan), with its principal place of business at c/o Jackson Power Facility, 2219 Chapin Street, Jackson, Michigan 49203, filed with the Federal Energy Regulatory Commission (Commission) a supplement to its application for a determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations (18 CFR 365).

TP Michigan, a Delaware special purpose limited liability company, states that it will be engaged directly and exclusively in the business of owning or operating, or both owning and operating, a 535 MW gas-fired combined cycle power generation facility located in Jackson Michigan (Facility). In its supplement to the application, TP Michigan clarifies the lease arrangement between TP Michigan and the owner of the equipment, AlphaGen Power LLC, to clearly state that TP Michigan will have care, custody, and control over the Facility and that AlphaGen will act as a passive owner.

Comment Date: May 23, 2002.

2. Southern Company Services, Inc.

[Docket No. ER02–851–004]

Take notice that on April 26, 2002, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies), made a filing in compliance to the following order of the Federal Energy Regulatory Commission: Southern Company Services, Inc., 98 FERC ¶ 61,328 (2002) (Order). In the Order, the Commission accepted and suspended Tariff sheets, subject to refund, regarding an amendment to the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5) (Tariff). The primary purpose of the amendment was to revise Southern Companies' rate for the use of its bulk transmission facilities (those rated above 44/46 kV) to adopt a formula rate. In the Order, the Commission, among other things, required Southern Companies to file the revenue comparison cost-of-service statements contained in the Commission's filing regulations. In Southern Companies' compliance filing, they tendered those statements to the Commission.

Comment Date: May 17, 2002.

3. Florida Power & Light Company

[Docket No. ER02–854–002]

Take notice that on April 26, 2002, Florida Power & Light Company (FPL) filed, pursuant to the order issued on March 27, 2002 in the above-captioned proceeding, a compliance filing making the required changes to the executed Interconnection and Operation Agreement between FPL and Blue Heron Energy Center, LLC.

Comment Date: May 17, 2002.

4. AES Alamitos, L.L.C.; AES Huntington Beach, L.L.C.; and AES Redondo Beach, L.L.C.

[Docket Nos. ER98–2185–000, ER98–2184–000, and ER98–2186–000]

Take notice that, pursuant to Section 205 of the Federal Power Act, and the Federal Energy Regulatory Commission's (Commission) Orders in the referenced dockets, on April 19, 2002, AES Alamitos, L.L.C., AES Huntington Beach, L.L.C., and AES Redondo Beach, L.L.C., filed Amendment No. 2 dated as of March 5, 2002, to the Capacity Sale and Tolling Agreement dated as of May 1, 1998 (Tolling Agreement), and filed executed Corporate Guarantees to replace Schedules 19.1 and 19.2 of the Tolling Agreement.

Comment Date: May 21, 2002.

5. Wolverine Power Supply Cooperative, Inc.

[Docket No. ES02–30–000]

Take notice that on April 26, 2002, Wolverine Power Supply Cooperative, Inc. (Wolverine) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to assume long-term debt in an amount not to exceed $35,775,000, under two loan agreements with the National Rural Cooperative Finance Corporation in the amounts of $31,300,000 and $4,475,000, respectively.

Wolverine also requests waiver of the competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: May 20, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11538 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–4–000]

Northwest Pipeline Corporation; Notice of Availability of the Environmental Assessment for the Proposed Evergreen Expansion Project

May 3, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Northwest Pipeline Corporation (NWP) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed gas pipeline and aboveground facilities including:

- Four 36-inch-diameter loops totaling approximately 27.8 miles;
- 91,580 horsepower of additional compression or other modifications at ten different compressor stations; and
- Other aboveground facilities including ten tie-in assemblies, each with a block valve and pigging facilities.

The purpose of the proposed facilities would be to provide firm transportation of natural gas to fuel combustion turbine projects under construction or planned for installation at five sites in western Washington. These turbines would add new electric power generation in the Pacific Northwest.

When existing system capacity and capacity turn back are considered, the net increase in system capacity in the Sumas to Chehalis corridor is 220,514 Dth/day. The Evergreen Expansion Project also would add approximately 57,000 Dth/day of physical north flow capacity through the Columbia Gorge corridor of the NWP system to replace approximately 52,000 Dth/day of design day displacement capacity required for existing long-term firm services and reduce the operational flow order risks for existing firm services through that corridor.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

Send two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

- Label one copy of the comments for the attention of Gas/Hydro Group, PJ–11.3;
- Reference Docket No. CP02–4–000; and
- Mail your comments so that they will be received in Washington, DC on or before June 5, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our final order. However, the Commission encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet website (www.ferc.gov) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

CIPS helpline can be reached at (202) 208–2222.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11583 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1895–007, South Carolina]

South Carolina Electric & Gas Company; Notice of Availability of Final Environmental Assessment

May 3, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Columbia Hydroelectric Project, located on the Broad and Congaree Rivers in the City of Columbia and Richland County, South Carolina, and has prepared a Final Environmental Assessment (FEA) for the project. There are no federal lands or Indian reservations occupied by project works or located within the project boundary.

The FEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is on file with the Commission and is available for public inspection. The FEA may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

For further information, contact Charles Hall at (202) 219–2853.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11595 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Settlement Agreement and Solicitation of Comments

May 3, 2002.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project Nos.:* 2364–012 and 2365–023.

c. *Date Filed:* January 31, 2002.

d. *Applicant:* Madison Paper Industries.

e. *Name of Projects:* Abenaki and Anson Projects.

f. *Location:* On the Kennebec River, in the towns of Anson and Madison, Somerset County, Maine. The projects do not occupy any federal lands.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Christopher C. Bean; Vice-President of Engineering, Maintenance, and Utilities; Main Street; P.O. Box 129, Madison, ME; (207) 696–1195. The applicant requests that copies of all correspondence be provided to Maureen Winters, Project Manager, Kleinschmidt Associates, 75 Main Street, P.O. Box 576, Pittsfield, ME 04967; (207) 487–3328.

i. *FERC Contact:* Nan Allen, (202) 219–2938, e-mail: *nan.allen@ferc.gov.*

j. *Deadline for filing comments:* 30 days from the date of this notice. Reply comments due 45 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. Madison Paper Industries (MPI) filed the Settlement Agreement on behalf of itself and the U.S. Fish and Wildlife Service; National Park Service, Bureau of Indian Affairs; Maine State Planning Office; Maine Department of Inland Fisheries and Wildlife; Maine Department of Marine Resources; Maine Department of Conservation; Maine Atlantic Salmon Commission; Town of Anson; Town of Madison; Appalachian Mountain Club; Trout Unlimited, including the Kennebec Valley Chapter of Trout Unlimited; Kennebec Valley Trails; Friends of the Kennebec Salmon; Maine Council of the Atlantic Salmon Federation; Maine Historic Preservation Commission; and American Rivers. The purpose of the Settlement Agreement is to resolve among the signatories all issues associated with issuance of new licenses for the projects regarding the projects' operations, instream flows, fish passage, flow and water level monitoring, Atlantic salmon restoration, wetlands monitoring, shoreland buffers, recreation facilities, protection of cultural resources, time to license expiration; and upgrades to the Abenaki Project. MPI requests that the Commission accept and incorporate into any new licenses for the projects the protection, mitigation, and enhancement measures stated in sections 3.0 and 4.0 of the Settlement Agreement.

l. A copy of the settlement agreement is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in h above.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11596 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing with the Commission, Application and Applicant-Prepared EA Accepted for Filing, Solicitation of Motions To Intervene and Protests, Comments, and Final Recommendations, Terms and Conditions, and Prescriptions, and Intent To Prepare One Multi-Project NEPA Document

May 3, 2002.

Take notice that the following hydroelectric applications and

applicant-prepared environmental assessment have been filed with the Commission and are available for public inspection.

a. *Type of Application:* Two New Major Licenses.

b. *Project Nos.:* 2364–012 and 2365–023.

c. *Date Filed:* April 26, 2002.

d. *Applicant:* Madison Paper Industries.

e. *Name of Projects:* Abenaki and Anson Projects.

f. *Location:* On the Kennebec River, in the towns of Anson and Madison, Somerset County, Maine. The projects do not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)—825(c).

h. *Applicant Contact:* Christopher C. Bean; Vice-President of Engineering, Maintenance, and Utilities; Main Street; P.O. Box 129, Madison, ME; (207) 696–1195. The applicant requests that copies of all correspondence be provided to Maureen Winters, Project Manager, Kleinschmidt Associates, 75 Main Street, P.O. Box 576, Pittsfield, ME 04967; (207) 487–3328.

i. *FERC Contact:* Nan Allen, (202) 219-2938, e-mail: nan.allen@ferc.gov.

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. Deadline for filing motions to intervene and protests, comments, final recommendations, terms and conditions, prescriptions and requests for cooperating agency status: July 2, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (http://www.ferc.gov) under the "e-Filing" link.

l. These applications have been accepted for filing. At this time we do not anticipate the need for preparing a draft Environmental Assessment (EA). We intend to prepare one multi-project environmental document. The EA will include our recommendations for operating procedures and environmental enhancement measures that should be part of any new license issued by the Commission. However, should substantive comments requiring reanalysis be received on the NEPA document, we would consider preparing a subsequent NEPA document.

m. The Abenaki Project consists of: (1) A concrete gravity overflow dam with a 784-foot-long spillway section, 3-foot-high wooden flashboards, and heights from several to about 25 feet; (2) an existing 520 acre-foot reservoir; (3) an existing 830-foot-long by 160-foot-wide forebay; (4) a powerhouse containing seven turbine-generating units with a total installed capacity of 16.977 megawatts (MW) and a hydraulic capacity of 4,980 cubic feet per second (cfs); (5) a 1,950-foot-long bypass reach; (6) a 3,400-foot-long transmission line; and (7) appurtenant facilities. The project is estimated to generate an average of 85.6 million kilowattshours (kwh) annually. The dam and existing project facilities are owned by MPI.

MPI proposes to resurface the existing dam at the Abenaki Project, replace the existing wooden flashboards at the Abenaki dam with an inflatable flashboard system, install a minimum-flow release gate at the existing Abenaki dam, and install a 2.94 MW turbine/generator unit in the existing Abenaki powerhouse.

The Anson Project consists of: (1) 630-foot-long dam, a 5.6-foot-high inflatable flashboard system, and a height that varies from 10 to 36 feet; (2) an existing 5,860 acre-foot reservoir; (3) a powerhouse containing five turbine-generating units with a total installed capacity of 9 MW and a hydraulic capacity of 6,000 cfs; and (4) appurtenant facilities. The project is estimated to generate an average of 51.5 million kwh annually. The dam and existing project facilities are owned by the applicant.

n. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at http://www.ferc.gov using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in h above.

o. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions, and prescriptions concerning the application and APEA be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project numbers of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to these applications must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this

proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11597 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Solicitation of Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

May 3, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2574–032.

c. *Date Filed:* April 29, 2002.

d. *Applicant:* Merimil Limited Partnership.

e. *Name of Project:* Lockwood Project.

f. *Location:* On the Kennebec River in Kennebec County, near City of Waterville and Town of Winslow, Maine. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact:* Mr. F. Allen Wiley, Kennebec Hydro Resources Inc., c/o FPL Energy Maine Hydro, LLC, 150 Main Street, Lewiston, ME 04240, (207) 795–1342.

i. *FERC Contact:* David Turner, (202) 219–2844 or *david.turner@ferc.gov*.

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. *Deadline for filing additional study requests and requests for cooperating agency status:* June 28, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

l. This application is not ready for environmental analysis at this time.

m. *The existing Lockwood Project consists of:* (1) A 1,300-foot-long concrete gravity dam, consisting of three spillway sections, a small island, and the forebay headworks; (2) 450-foot-long forebay; (3) a 81.5-acre reservoir; (3) two powerhouses, one containing six vertical Francis type turbines and the second containing one horizontal variable pitch kaplan turbine, for a total installed capacity of 7,250 kilowatts; (4) about 4,225 feet of buried and overhead transmission lines; and (5) appurtenant facilities. The project is estimated to generate an average of 30,911 megawatthours annually.

n. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

o. With this notice, we are initiating consultation with the *MAINE STATE HISTORIC PRESERVATION OFFICER (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

p. *Procedural schedule and final amendments*: The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Notice of application has been accepted for filing

Notice of NEPA Scoping (unless scoping has already occurred)

Notice of application is ready for environmental analysis

Notice of the availability of the draft NEPA document

Notice of the availability of the final NEPA document

Order issuing the Commission's decision on the application

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11598 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Solicitation of Comments, Recommendations, Terms and Conditions, and Prescriptions

May 3, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Original Minor License.

b. *Project No.:* P–11797–000.

c. *Date filed:* July 29, 1999.

d. *Applicant:* Grande Pointe Power Corporation.

e. *Name of Project:* Three Rivers Hydroelectric Project.

f. *Location:* On the St. Joseph River in the city of Three Rivers, St. Joseph County, Michigan. The project does not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)—825(r).

h. *Applicant Contact:*Mr. Monroe E. Learn, Grand Pointe Power Corporation, 503 West Michigan Avenue, Three Rivers, MI 54601.

Ph. # 1-(616)273–8828.

i. *FERC Contact:* Mr. Sean Murphy, e-mail *sean.murphy@frec.gov* or telephone (202) 219–2964.

j. *Deadline for filing comments, recommendations, terms and conditions and prescriptions:* 60 days from the date of issuance of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comments, recommendations, terms and conditions, and prescriptions, as well as protests and interventions, may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the

official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is ready for environmental analysis.

l. *Description of the Project:* The project consists of the following existing facilities: (1) A right earthen embankment, 750 feet long; (2) a left earthen embankment, 200 feet long; (3) a 283 foot long spillway section with 19 structural steel slide gates, each 15 feet wide and 4.8 feet high yielding an overall spillway elevation of 797.2 feet NGVD; (4) a 601-acre reservoir with a normal water surface elevation of 797.0 feet NGVD; (5) a powerhouse containing 3 vertical Francis turbines each connected to a generator unit for a total installed capacity of 900 kW; and (6) appurtenant facilities. The average annual energy generation is 3,844,920 kWh. Power generated by the project is sold to the city of Sturgis.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link-select "Docket #" and follow the instructions (call 202 208–2222 for assistance). The applicant also has a copy available for inspection and reproduction at the address in item h. above.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

o. The Commission directs, pursuant to Section 4.34(b) of the Regulations (*see* order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," OR "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11599 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

May 3, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. Copies of this filing are on file with the Commission and are available for public inspection. The documents may be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

EXEMPT

Docket No.	Date filed	Presenter or requester
1. Project Nos. 1932–004, 1933–010 and 1934–010	4–22–02	Jon Cofrancesco.
2. CP01–176–000	4–23–02	Laura Turner.*
3. CP01–176–000	4–23–02	Laura Turner.**

* Summary of 4/17 Field Visit attended by representatives of FERC, GSX–US and the U.S. Fish and Wildlife Service

** Summary of Boat Tour of GSX Project

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–11601 Filed 5–8–02; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7209–4]

Agency Information Collection Activities: Continuing Collection; Comment Request; RCRA Hazardous Waste Permit Application and Modification, Part A

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB): RCRA Hazardous Waste Permit Application and Modification, Part A, EPA ICR #262.10, OMB No. 2050–0034, expires on October 31,2002. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 8, 2002.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–2002–RWPN–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U. S. Environmental Protection Agency Headquarters (EPA, HQ) Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA address below. Comments may also be submitted electronically through the Internet to : *rcra-docket@epamail.epa.gov*. Comments in electronic format should also be identified by the docket number F–2002–RWPN–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. This document and the supporting documents that detail the RCRA Permit Application and Modification, Part A ICR are also electronically available. *See* the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT:

RCRA Hotline

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

Part A ICR Details

For more detailed information on specific aspects of the Part A information collection request, contact David Eberly by mail at the Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, by phone at (703) 308–8645, or by Internet e-mail at: eberly.david@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Internet Availability

Today's document and the supporting documents that detail the RCRA Hazardous Waste Permit Application and Modification, Part A ICR are available on the Internet at: *http//www.epa.gov/epaoswer/hazwaste/notify/index.htm*.

Note: The official record for this action will be kept in paper form and maintained at the address in the **ADDRESSES** section above.

Affected Entities: Entities potentially affected by this action are generators, transporters and owners and operators of hazardous waste management facilities.

Title: RCRA Hazardous Waste Permit Application and Modification, Part A, EPA ICR #262.10, OMB No. 2050–0034, expires on October 31, 2002.

Abstract: Section 3010 of Subtitle C of RCRA, as amended, requires any person who generates or transports regulated waste or who owns or operates a facility for the treatment, storage, or disposal (TSDF) of regulated waste to notify EPA of their activities, including the location and general description of activities and the regulated wastes handled. Section 3005 of Subtitle C of RCRA requires TSDFs to obtain a permit. To obtain the permit, the TSDF must submit an application describing the facility's operation. There are two parts to the RCRA permit application—Part A and Part B. Part A defines the processes to be used for treatment, storage, and disposal of hazardous wastes: the design capacity of such processes: and the specific hazardous wastes to be handled at the facility. Part B requires detailed site specific information such as geologic, hydrologic, and engineering data.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The Agency today begins an effort to examine the notification and Part A permit application forms and consider options for reducing their burden and increasing the usefulness of the information these forms collect. The Agency would appreciate any information on the users of this information, how they use this information, how the information could be improved, and how the burden for these forms can be reduced.

Therefore, the EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of

information technology, e.g., permitting electronic submission of responses.

Burden Statement: The estimated average burden for renewing the existing Part A ICR is approximately 25 hours per respondent for submitting a new Part A permit application and approximately 15 hours for submitting a revised Part A permit application. The burden estimates for the Part A ICR includes time for reading the regulations, preparing and submitting initial and revised Part A permit applications, preparing and submitting justifications for changes and preparing and submitting subpart H compliance demonstrations.

For Part A permit applications, EPA estimates that the number of respondents per year is 10 for new Part A permit applications and 49 for Part A revisions. For these ICRs, collection occurs one-time per respondent, unless regulations are revised and promulgated. Timing of the submission of the notification and the Part A permit application forms are variable depending on the status of the respondent and the timing of the promulgation of the regulations. The estimated total annual burden on respondents for new and revised Part A permit applications is 893 hours. These estimates of total annual burden reflect a decrease in burden of 5.5% for Part A permit applications when compared with the previously approved ICR (1999).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 26, 2002.

Matthew Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 02–11654 Filed 5–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7209–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Public Water Systems Supervision Program: Public Notification Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Public Water Systems Supervision (PWSS) Program: Public Notification Amendment, OMB Control No. 2040–0090. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 10, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 0270.41 and OMB Control No. 2040–0090, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by e-mail at *auby.susan@epamail.epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0270.41. For technical questions about the ICR contact Lisa Christ at (202) 564–8354 in the Office of Ground Water Drinking Water.

SUPPLEMENTARY INFORMATION:

Title: Public Water Systems Supervision Program: Public Notification Amendment (OMB Control No. 2040–0090; EPA ICR No. 0270.41) expiring June 30, 2002. This is a request for an revision of a currently approved collection.

Abstract: The 2001 PWSS Program ICR, approved by OMB in November 2001, was the result of a consolidation of some rules and activities covered in the 1993 PWSS ICR and activities and rules previously covered in other standalone ICRs. This ICR amends the 2001 PWSS Program ICR by incorporating the Public Notification ICR (EPA ICR No. 1898.02, OMB No. 2040–0209). The amendment revises the burden estimate for public notification regulations, as required by sections 1414(a)(1) and (a)(2) of the Safe Drinking Water Act. Public water systems are required to give notification to all persons served when a violation of EPA drinking water standards occurs and for other situations posing a risk to health. EPA regulations define the form, manner, frequency, and content of the notices. Ensuring implementation of these requirements by public water systems is principally a responsibility of the States, territories and tribes that have assumed primary enforcement responsibility (primacy) for public water systems under SDWA section 1413.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 4, 2002 (67 FR 585–586), no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3.1 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Public Water Systems and Primacy Agencies.

Estimated Number of Respondents: 44,319.

Frequency of Response: varies by tier.

Estimated Total Annual Hour Burden: 785,590 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $4,731,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 0270.41 and OMB Control No. 2040–0090 in any correspondence.

Dated: May 2, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–11649 Filed 5–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7209–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Drinking Water Customer Satisfaction Survey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Drinking Water Customer Satisfaction Survey, EPA ICR number 2016.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 10, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 2016.01, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, contact Susan Auby at EPA by phone at (202) 566–1672, by E-mail at *auby.susan@epamail.epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 2016.01. For technical questions about the ICR contact Scott Conklin at (202) 564–4640, (202) 564–3757 (fax), by E-mail at *conklin.scott@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

Title: Drinking Water Customer Satisfaction Survey; EPA ICR No. 2016.01. This is a new collection.

Abstract: The Office of Ground Water and Drinking Water is planning to conduct a customer satisfaction survey on the effectiveness of its right-to-know efforts required under the Safe Drinking Water Act. The Safe Drinking Water Act requires EPA to ensure drinking water information is made available to the general public. This survey will allow the EPA to evaluate current public awareness initiatives for disseminating drinking water information to the public. Conducting this survey will help the EPA assess general customer perceptions and habits concerning drinking water. By gauging the effectiveness of current outreach activities, the Agency will measure whether information efforts are meeting customer needs. The Agency will also gain insight on how to improve the way this information is disseminated in the future. The information collected will involve 1250 randomly selected adults from the general public. Of the 1250 respondents, EPA estimates that there will be approximately 250 screening-only respondents and 1000 respondents that will complete the full survey. The survey will be conducted by the Gallup organization under contract to EPA. The selected individuals will be asked specific questions concerning general consumer awareness issues, consumer confidence reports (annual water quality reports), source water assessments, and customer preferences with respect to mechanisms for receiving information. In addition, the survey asks demographic questions about factors that may be drivers of satisfaction. These factors include consumer perceptions of water quality, concerns about taste and odor, and whether consumers already drink bottled water or filter their tap water. The survey instrument is a voluntary telephone questionnaire, averaging 11 minutes, that covers approximately 26 questions. EPA will only conduct this survey once during the period for which the ICR is in effect. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 29, 2001 (66 FR 209); 62 comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 11 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: General Public.

Estimated Number of Respondents: 1,250.

Frequency of Response: One Time Collection.

Estimated Total Annual Hour Burden: 187.5.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 2016.01 in any correspondence.

Dated: May 2, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–11650 Filed 5–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7208–5]

Public Listening Sessions on EPA's Watershed Initiative

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meetings.

SUMMARY: EPA is inviting all interested members of the public to participate in one of four listening sessions on EPA's Watershed Initiative, in Washington DC.

The purpose of these sessions is to solicit ideas and suggestions on the design of the Initiative, specifically the nomination and selection processes, and the development of appropriate selection criteria. On January 25, 2002, EPA announced that the President's 2003 budget would include a request for $21 million for a new Watershed Initiative. Pending appropriations for this purpose, EPA will call for nominations and select up to 20 watershed organizations to receive grants for projects that support innovative watershed-based approaches to watershed protection. Throughout the upcoming months, EPA will be working cooperatively with the States, Tribes, local governments, and community groups to develop the proposed program.

DATES: See **SUPPLEMENTARY INFORMATION** section below for meeting dates and times.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section below for the location of the meetings.

FOR FURTHER INFORMATION CONTACT: For general information about the sessions and to register for one of the sessions, contact James Cole, Environmental Protection Agency, Office of Wetlands, Oceans, and Watersheds, by telephone at 202–566–1291 or by e-mail at *cole.james@epa.gov*. For information about the Watershed Initiative visit EPA's web site at *http://www.epa.gov/owow/watershed/* or contact Carol Peterson, Environmental Protection Agency, Office of Wetlands, Oceans, and Watersheds by telephone at 202–566–1304 or by e-mail at *peterson.carol@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On January 25, 2002, EPA announced that it was including an additional $21 million in its fiscal year 2003 budget proposal for a new initiative to protect, preserve, and restore watersheds across the country. This new Watershed Initiative will seek to encourage successful watershed partnerships aimed at improving the nation's water resources. As part of this community-based effort, EPA will target up to 20 of the nation's most valued watersheds to receive a grant. In Governor Whitman's address, she stated that the Agency will be working cooperatively with Congress, States, local governments, agricultural groups, environmental groups, industry, and watershed community organizations in developing the details of how this Initiative will be designed and implemented.

In the next few weeks, EPA will publish a notice in the **Federal Register** soliciting stakeholder ideas and suggestions on possible approaches EPA might take in designing the new program. This notice will outline the Watershed Initiative, present EPA's current ideas on how the Initiative should be designed, and pose specific questions with respect to the nomination and selection processes for watershed projects. The Agency will provide the public with a 60-day review and comment period.

II. Public Listening Sessions

EPA has scheduled four stakeholder listening sessions during the month of May. It is the Agency's goal that these meetings be comprised of people from diverse interests and perspectives in the hopes of providing an opportunity for open and active discussions. The purpose of these sessions is to attain an array of opinions and viewpoints regarding the details of the Initiative on issues such as, the role of Governors and Tribal Leaders, project scope and criteria, and the nomination and selection processes. EPA will use the information solicited from the public via the **Federal Register** notice and the listening sessions to develop the Watershed Initiative.

Additional sessions may be held in June if there is sufficient interest. Space is limited to approximately 30 people per session, and registration will be on a first-come basis. All participants must register. Due to the limited seating, EPA asks that organizations wishing to attend a session send only one representative.

Meeting Information

Location: All sessions will be held in Room 1117A, EPA East Building, 1201 Constitution Avenue, NW., Washington, DC 20004.

Dates and Times

Tuesday, May 14; 8:30 a.m.–11:30 a.m.
Wednesday, May 15; 8:30 a.m.–11:30 a.m.
Wednesday, May 22; 1 p.m.–4 p.m.
Wednesday, May 29; 8:30 a.m.–11:30 a.m.

Registration: Please register at least two days prior to your session of choice by contacting Mr. James Cole at *cole.james@epa.gov* or 202–566–1291. To register, provide your name, affiliation, mailing and e-mail address, and phone number along with your first and second choice for the listening session you are interested in attending. Please also advise Mr. Cole if you have a disability and require any special accommodations; the room is wheelchair accessible.

Dated: May 3, 2002.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 02–11651 Filed 5–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7209–6]

Air Quality Criteria for Particulate Matter (External Review Draft)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a draft for public review and comment.

SUMMARY: On or about May 8, 2002, the National Center for Environmental Assessment (NCEA), within EPA's Office of Research and Development, will make available for public review and comment a third external review draft of EPA's document *Air Quality Criteria for Particulate Matter*. Under sections 108 and 109 of the Clean Air Act, the purpose of this document is to provide an assessment of the latest scientific information on the effects of airborne particulate matter (PM) on the public health and welfare for use in EPA's current review of the National Ambient Air Quality Standards (NAAQS) for PM.

DATES: Comments on the draft document must be submitted in writing no later than July 10, 2002. Send the written comments to the Project Manager for Particulate Matter, National Center for Environmental Assessment-RTP (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

ADDRESSES: A copy of the *Air Quality Criteria for Particulate Matter (Third External Review Draft)*, consisting of two volumes, will be available on CD ROM from NCEA–RTP. Contact Ms. Diane Ray by phone (919–541–3637), fax (919–541–1818), or e-mail (*ray.diane@epa.gov*) to request the document. Please provide the document's title, *Air Quality Criteria for Particulate Matter (Third External Review Draft)*, and the EPA numbers for each of the two volumes (EPA/600/P–99/002aC, EPA/600/P–99/002bC), as well as your name and address, to properly process your request. Internet users will be able to download a copy from the NCEA home page. The URL is *http://www.epa.gov/ncea/*. Hard copies of the draft document can also be made available upon request.

FOR FURTHER INFORMATION CONTACT: Dr. Dennis Kotchmar, National Center for Environmental Assessment-RTP (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: 919–541–4158; fax: 919–541–1818; e-mail: *kotchmar.dennis@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is in the process of updating and revising, where appropriate, its *Air Quality Criteria for Particulate Matter* as issued in 1996. Sections 108 and 109 of the Clean Air Act require that EPA carry out a periodic review and revision, where appropriate, of the air quality criteria and NAAQS for "criteria" air pollutants such as PM. Details of EPA's plans for the review of the NAAQS for PM were initially announced in a previous **Federal Register** notice (62 FR 55201, October 23, 1997). EPA made a First External Review Draft of the updated *Air Quality Criteria for Particulate Matter* available for review by the Clean Air Act Scientific Advisory Committee (CASAC) and members of the public in October 1999 (64 FR 57884, October 27, 1999). Following that public review period and a meeting of the CASAC in December 1999 (64 FR 61875, November 15, 1999), EPA revised the document as appropriate to incorporate CASAC and public comments, as well as to reflect many studies on the health effects of PM that were not available in time for discussion in the First External Review Draft.

EPA then made a Second External Review Draft of the *Air Quality Criteria for Particulate Matter* available for CASAC and public review in April 2001 (66 FR 18929, April 12, 2001). Following that public review period and a second CASAC meeting in July 2001 (66 FR 34924, July 2, 2001), EPA again revised the document as appropriate to incorporate CASAC and public comments and also made further revisions reflecting new studies on health effects of particulate matter that had become available between issuance of the First and Second External Review Drafts.

EPA is now making a Third External Review Draft available for CASAC and public review. A public meeting with CASAC is scheduled for July 18–19, 2002 (67 FR 15802, April 3, 2002). At the close of CASAC's review, EPA will make final revisions to complete the document.

On June 15, 2001, EPA's Office of Air Quality Planning and Standards (OAQPS) made available for public review and comment (66 FR 32621, June 15, 2001) a preliminary draft Staff Paper (SP) that drew on information in the earlier draft criteria document. The preliminary draft was also submitted to CASAC for discussion with the Committee at its July 2001 meeting. In January 2002 (67 FR 3897, January 28, 2002), OAQPS also made available for CASAC and public review and comment a draft document, *Proposed Methodology for Particulate Matter Risk Analyses for Selected Urban Areas,* which was reviewed by CASAC at a public teleconference on February 27, 2002. OAQPS is now revising the draft SP and the draft risk analyses methodology document to address CASAC and public comments and to incorporate updated information from the current draft criteria document. As in other NAAQS reviews, the SP will evaluate policy implications of key studies and other scientific information in the criteria document, identify critical elements that EPA staff believes should be considered, and present staff conclusions and recommendations for the Administrator's consideration. Dates and details of availability of the updated draft SP and methodology documents and plans for future public meetings on these documents will be published in the **Federal Register**.

Dated: May 3, 2002.

George Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 02–11648 Filed 5–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7209–5]

Availability of "Allocation of Fiscal Year 2002 Operator Training Grants"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability.

SUMMARY: EPA is announcing availability of a memorandum entitled "Allocation of Fiscal Year 2002 Operator Training Grants" issued on April 23, 2002. This memorandum provides National guidance for the allocation of funds used under section 104(g)(l) of the Clean Water Act. Each grant recipient will receive a copy of this document from EPA.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for electronic access of the guidance memorandum.

FOR FURTHER INFORMATION CONTACT: Gary Hudiburgh. (202) 564–0626 or *hudiburgh.gary@epa.gov.*

SUPPLEMENTARY INFORMATION: The subject memorandum may be viewed and downloaded from EPA's homepage, *http://www.epa.gov/owm/mab/owm0320.pdf.*

Dated: April 26, 2002.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 02–11653 Filed 5–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7209–3]

Public Water Supply Supervision Program; Program Revision for the State of Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Tentative Approval.

SUMMARY: Notice is hereby given that the State of Oregon has revised its approved State Public Water Supply Supervision (PWSS) Primacy Program. Oregon has adopted drinking water regulations for disinfectants and disinfection byproducts and has adopted revisions to its surface water treatment regulations and lead and copper regulations. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends on approving these State program revisions. This approval action does not extend to public water systems (PWSs) in Indian Country, as that term is defined in 18 U.S.C. 1151. EPA interprets its past approvals as not extending to Indian Country unless the State has made an explicit demonstration of jurisdiction over Indian Country and EPA has specifically approved the State's Drinking Water program over that area.

All interested parties may request a public hearing. A request for a public hearing must be submitted by June 10, 2002 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by June 10, 2002, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on June 10, 2002. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief

statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, at the following offices: Oregon Department of Human Services, Drinking Water Program, 800 N.E. Oregon Street, Portland, Oregon 97232, and U.S. Environmental Protection Agency, Region 10 Library, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Wendy Marshall, EPA Region 10, Drinking Water Unit, at the Seattle address given above; telephone (206) 553–1890.

Authority: Section 1420 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: April 25, 2002.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 02–11652 Filed 5–8–02; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Availability of Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by U.S. Equal Employment Opportunity Commission

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: The Equal Employment Opportunity Commission (EEOC) hereby announces the availability of its draft information quality guidelines on its website (hard copy available through its Office of Communications of Legislative Affairs) and seeks public comments on those guidelines.

DATES: *Effective Date:* May , 2002.

FOR FURTHER INFORMATION CONTACT: Lizette Molina, Special Assistant to the Director, Office of Information Resources Management, 202–663–4446, or Jay Friedman, Director of Strategic Planning and Management Controls Division, Office of Research, Information and Planning, 202–663–4094.

SUPPLEMENTARY INFORMATION: The EEOC has prepared draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the U.S. Equal Employment Opportunity Commission. These guidelines are available for public comment on EEOC's website *www.eeoc.gov*. Individuals without Internet access may contact EEOC's Office of Communications and Legislative Affairs at (202) 663–4900 or TTY (202) 663–4494 for a hard copy. Comments from the public regarding these draft guidelines will be accepted until June 8, 2002. Public comment regarding these guidelines may be submitted in writing to: U.S. Equal Employment Opportunity Commission, Office of Research, Information and Planning, Room 8219, Washington, DC 20507. Public comment may also be submitted via facsimile at (202) 663–4093. On the cover sheet indicate the fax is for: U.S. Equal Employment Opportunity Commission, Office of Research, Information and Planning, Room 8219. To submit comment via e-mail, contact *guidelinecomments@eeoc.gov*.

Dated: May 2, 2002.

Sallie T. Hsieh,

Director, Office of Information, Resources Management.

[FR Doc. 02–11537 Filed 5–8–02; 8:45 am]

BILLING CODE 6570–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Office of Science and Technology Policy

AGENCY: Office of Science and Technology Policy.

ACTION: Notice of guidelines and request for comments.

SUMMARY: The Office of Science and Technology Policy (OSTP) is seeking comments on its draft Information Quality Guidelines. These Information Quality Guidelines describe OSTP's pre-dissemination information quality control and an administrative mechanism for requests for correction of information publicly disseminated by OSTP. The draft Information Quality Guidelines are posted on OSTP's Web site, *http://www.ostp.gov*.

DATES: Written comments regarding OSTP's draft Information Quality Guidelines are due by June 14, 2002.

ADDRESSES: Please submit comments to Stan Sokul, Office of Science and Technology Policy, Washington, DC 20502 by fax at (202) 456–6021. Comments can also be e-mailed to *ostpinfo@ostp.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Stan Sokul, Office of Science and Technology Policy, Washington, DC 20502. Telephone: (202) 456–7116.

Dated: May 1, 2002.

Barbara Ann Ferguson,

Assistant Director for Budget and Administration, Office of Science and Technology Policy.

[FR Doc. 02–11568 Filed 5–8–02; 8:45 am]

BILLING CODE 3170–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

* * * * *

DATE & TIME: *Tuesday, May 14, 2002 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE & TIME: *Thursday, May 16, 2002 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Final Audit Report of Bauer for President 2000, Inc.

Draft Advisory Opinion 2002–06: Green Party of California by Michael S. Wyman, Treasurer.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–11711 Filed 5–7–02; 10:54 am]

BILLING CODE 6715–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 9 a.m.. (EDI), May 20, 2002.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and part closed to the public.

Matters To Be Considered

Parts Open to the Public

1. National Finance Center Record Keeping and New TSP System.
2. Congressional/Agency/Participant Liaison.
3. Benefits and Investments.
4. Participant Communications.
5. Approval of the minutes of the April 15, 2002, Board member meeting.
6. Thrift Savings Plan Activity Report by the Executive Director.
7. Approval of the Update of the FY 2002 Budget and FY 2003 Estimates.
8. Investment Policy Review.
9. Status of Audit Recommendations.

Part Closed to the Public

10. Status of Litigation.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: May 6, 2002.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 02–11703 Filed 5–6–02; 5:01 pm]

BILLING CODE 6760–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act. 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistnat Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Chandra L. Kennedy, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580 (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

Trans #	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—04/15/2002			
20020631	Jerrold M. Jung	Peter M. Holt, a natural person	HC Industries, LLC d/b/a Holt Rental Services, LLC. Holt Company of Ohio. Holt Texas Properties, Inc.
20020633	Amarin Corporation, plc	Elan Corporation	Elan Corporation.
20020640	AOL Time Warner, Inc	America Online Latin America, Inc	America Online Latin America, Inc.
20020641	TCV IV, L.P	Netflix.com, Inc	Netflix.com, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—04/16/2002			
20020580	Thomson multimedia S.A	Matsushita Electric Industrial Co., Ltd	Panasonic Disc Services Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—04/17/2002			
20020529	CIENA Corporation	ONI Systems Corp.	ONI Systems Corp.
20020584	Sappi Limited	Potlatch Corporation	Potlatch Corporation.
20020638	Welsh, Carson, Anderson & Stowe IX, L.P.	Catholic Health Initiatives	St. Joseph HealthCare System.
20020647	IVAX Corporation	3M Company	3M Innovative Properties Company. Riker Laboratories.
TRANSACTIONS GRANTED EARLY TERMINATION—04/19/2002			
20020627	Apollo Investment Fund, L.P	Oak Hill Capital Partners, L.P	Heavenly Valley, Limited Partnership.
20020632	RWE Aktiengesellschaft	Innogy plc	Innogy plc.
20020643	Franzia Winery LLC	Diageo PLC	Diageo North America, Inc.
20020648	Castle Harlan Partners III, L.P	Morton's Restaurant Group, Inc.	Morton's Restaurant Group, Inc.
20020649	Clayton, Dubilier & Rice Fund VI Limited Partnership.	Clayton, Dubilier & Rice Fund V Limited Partnership.	SIRVA, Inc.
20020652	RHJ Industrial Partners, L.P	D&M Holdings, Inc	D&H Holdings, Inc.
20020653	Marantz Japan, Inc	RHJ Industrial Partners, L.P	Denon, Ltd.
20020654	Blyth, Inc.	Robert E. Kirkland	CBK Ltd. LLC.
20020661	Whitney V, L.P	US Bioservices Corporation (NEWCO) ...	US Bioservices Corporation (NEWCO).
20020662	Quantum Industrial Holdings Ltd	Kellogg Company	Bake-Line Products, Inc. Keebler Company.
20020664	Interpath Communications, Inc	USinternetworking, Inc	USinternetworking, Inc.
20020668	Willis Stein & Partners III, L.P	Roundy's Inc. Voting Trust	Roundy's Inc.

Trans #	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—04/23/2002			
20020626	Abbott Laboratories	Biocompatibles International plc	Biocompatibles Cardiovascular Inc.
20020657	Alkermes, Inc	H Group Holding, Inc	Reliant Pharmaceuticals, LLC
20020658	H Group Holding, Inc	Alkermes, Inc	Alkermes, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—04/24/2002			
20020625	Team Health Holdings, LLC	Spectrum Holding of Delaware, LLC	Spectrum Healthcare Services, Inc.
20020665	OJSC Svyazinvest	Golden Telecom, Inc.	Golden Telecom, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—04/26/2002			
20020610	Alice S. White Trust	Press Holding Corporation	Press Holding Corporation.
20020650	Professor Kurt Jenny	Istechnika Inc	Isotechnika International Inc.

[FR Doc. 02–11569 Filed 5–08–02; 8:45 am]
BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Federal Supply Service; Standard Tender of Service

AGENCY: Federal Supply Service, GSA.

ACTION: Notice for comment on adoption of an interim 2 percent insurance related surcharge.

SUMMARY: In compliance with 41 U.S.C. 418b, the General Services Administration (GSA) is publishing for comment in the attachment to this Notice adoption of an interim 2 percent "insurance related surcharge" requested by the freight motor carrier industry, hereinafter referred to as transportation service provider (TSP). The surcharge will allow TSP's to recover rapidly increasing insurance premiums resulting from changes in the economy compounded by the events of September 11, 2001.

DATES: *Effective Date:* This Notice is effective May 1, 2002.

Comment Date: Please submit your comments by June 10, 2002.

Expiration Date: This Notice will expire October 31, 2002.

ADDRESSES: Mail comments to the General Services Administration, Travel and Transportation Management Division (FBL), Crystal Mall Bldg. 4, Rm. 812, 1941 Jefferson Davis Highway, Arlington, VA 22202, Attn: Raymond Price (Re: Insurance Related Surcharge Federal Register Notice).

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Price, Transportation Programs Branch, by phone at 703–305–7536 or by e-mail at *raymond.price@gsa.gov.*

SUPPLEMENTARY INFORMATION: GSA, through adoption of the 2 percent surcharge reflected in the attachment to this Notice, is providing TSP participants in GSA's General Freight Standard Tender of Service relief from sudden and unforeseen increases in insurances costs that have occurred as a result of fluctuations in the economy compounded by the events of September 11th. Without this surcharge, TSP's that submit tenders for closed van, filing window controlled traffic would not be able to begin recovering the unexpected insurance cost increases until the rates they file under GSA's next Request for Offers become effective on November 1, 2002.

Tauna T. Delmonico,

Director, Travel and Transportation Management Division.

Attachment—Notice to Federal Customer Agencies and Transportation Service Providers Participating in GSA's Freight Management Program (FMP)—2 Percent Insurance Related Surcharge

In a letter to the General Services Administration (GSA) dated March 11, 2002, the Counsel for the National Motor Freight Traffic Association (NMFTA) requested that transportation service providers (TSP's) be allowed to assess a 2 percent surcharge on all domestic closed van freight shipments moving under GSA's FMP. The NMFTA made this request to help offset sudden and unforeseen increases in insurance premiums resulting from economic fluctuations compounded by the events of September 11, 2001. GSA has approved the 2 percent surcharge. As a result, effective May 1, 2002, a TSP may add to an agency's billing invoice a separate line item equivalent to 2 percent of a shipment's line-haul charge.

Identified below are timeframes during which TSP's will have their next opportunity to submit either new or supplemental electronic rate offers (see column titled "Next Open Window Filing Period"). A TSP will need to make adjustments in its rate offers during the appropriate timeframe to continue to recover its costs for any elevated insurance premiums. Consequently, effective November 1, 2002, a TSP that submits electronic tender filings no longer will be permitted to bill agencies participating in GSA's FMP for an insurance related surcharge as a separate line item.

Request for offers (RFO)	Next open window filing period	Effective date
National Industries for the Blind (NIB) and National Industries for the Severely Handicapped (NISH) issued July 6, 2001. General Request for Offers issued February 25, 2002, including:	July or August, 2002	November 1, 2002.

Request for offers (RFO)	Next open window filing period	Effective date
—General freight rate offers (Sec. 8) —Intrastate Alaska rate offers (Sec. 8) —US Postal Service (USPS) rate offers (Sec. 9) —Fire suppression support service rate offers (Sec. 10) —Agency specific non-alternating rate offers (Sec. 11) —Federal Aviation Administration, Oklahoma City, OK, rate offers (Sec. 12) and —Agency specific alternating rate offers (Sec. 13)	August 1–September 6, 2002	November 1, 2002.
*United States Mint issued January 7, 2002	None	May 1, 2003.
*GSA Western Distribution Center, Stockton, CA issued November 9, 2001.	None	May 1, 2003.

*Neither U.S. nor GSA Western Distribution Center, Stockton, CA, RFO's contain a supplemental filing window. Effective November 1, 2002, a TSP will not be permitted to continue billing the 2 percent insurance related surcharge as a separate line item for this traffic unless it submits a request to GSA substantiating the continued need for a surcharge and GSA approves the request.

Additionally, any TSP that has a paper Optional Form 280 (OF 280) on file with GSA for domestic closed van freight shipments will need to submit a supplement to each OF 280 (with an effective date of November 1, 2002) effectively adjusting its rate offers to continue to recover the cost of any elevated insurance premiums. Consequently, effective November 1, 2002, a TSP with an OF 280 freight tender on file with GSA no longer will be allowed to bill agencies participating in GSA's FMP for an insurance related surcharge as a separate line item.

[FR Doc. 02–11638 Filed 5–8–02; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–181]

Public Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces those sites for which ATSDR has completed public health assessments during the period from January 2002 through March 2002. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL), and includes sites for which assessments were prepared in response to requests from the public.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Assistant Surgeon General, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE, Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 498–0007.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments was published in the **Federal Register** on February 22, 2002 [67 FR 8266]. This announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities [42 CFR Part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

Availability

The completed public health assessments and addenda are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 605–6000. NTIS charges for copies of public health assessments and addenda. The NTIS order numbers are listed in parentheses following the site names.

Public Health Assessments Completed or Issued

Between January 2002 and March 2002, public health assessments were issued for the sites listed below. Also included in this **Federal Register** Notice are public health assessments that were issued and are available for the following sites from the period of June 2001 through December 2001.

NPL Sites

Guam

Anderson Air Force Base (PB2002–102182).

Illinois

Gulf Mobile and Ohio Rail Yard (a/k/a Mobile and Ohio Railroad and Former GreenBerg Salvage Site) (PB2002–102745).

Southeast Rockford Groundwater Contamination (a/k/a Southeast Rockford Ground Water Contamination) (PB2002–102183).

Minnesota

Fridley Commons Well Field (a/k/a Fridley Commons Park Well Field) (PB2002–101743).

Montana

Upper Tenmile Creek Mining Area (PB2002–102677).

New Jersey

Iceland Coin Laundry Site (a/k/a Iceland Coin Laundry Area Groundwater Plume) (PB2002–101742).

Oklahoma

Imperial Refining Company (PB2002–101488).

Pennsylvania

Molycorp Incorporated (PB2002–102499).

Non NPL Petitioned Sites

None.

Dated: May 3, 2002.

Donna Garland,

Deputy Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 02–11556 Filed 5–8–02; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02085]

Addressing Asthma From a Public Health Perspective: Implementation of State Asthma Plans; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for Addressing Asthma from a Public Health Perspective. This program addresses the "Healthy People 2010" focus areas of Environmental Health, Respiratory Diseases and Occupational Safety and Health.

The purpose of this program is the to implement State Asthma Plans.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Environmental Health (NCEH): Improve state and local public health capacity to prevent and control asthma.

B. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

If currently funded applicants under Program Announcements 99109 or 01106 Part A apply and are selected for funding under this announcement, they will lose continued funding under those Program Announcements (see Attachments I and II).

To be eligible, applicants must:

1. Submit a copy of your approved, comprehensive State Asthma Plan. Approval can be documented with a letter from the Agency's Health or Medical Director and letters from key partners or by appropriate sign-offs in the asthma plan. Plans that are pending final approval may be accepted if the draft plan is accompanied by letters from the Agency's Health or Medical Director and key partners stating their commitment to and approval of the plan, as well as a description of the plan's approval process status.

2. Have an operational surveillance system for asthma. This may be demonstrated through submission of your most comprehensive published surveillance report(s) (at least one, no more than three) that describes asthma within the jurisdiction, including, if available, a report on asthma in the Medicaid population.

These documents should be placed directly behind the face page (first page) of your application. Applications that fail to submit evidence requested above will be considered non-responsive and returned without review.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $1,500,000 is available in FY 2002 to fund approximately two to four awards. It is expected that the average award will be $700,000. It is expected that the awards will begin on or about September 30, 2002, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

No research may be conducted as a part of this cooperative agreement.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities) and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities:

a. Expand and continue existing surveillance efforts related to asthma occurrence, severity, management and other indicators in order to monitor the effectiveness of the intervention activities.

b. Conduct analysis and interpretation of surveillance data and disseminate this data through appropriate surveillance reports to local, state and federal partners and agencies.

c. Maintain existing statewide coalition and partnership activities to oversee implementation and evaluation of the state asthma plan. Expand partnership activities as appropriate.

d. Implement defined aspects of the completed state asthma plan. Assure institutionalization of asthma intervention activities.

e. Maintain existing asthma related activities currently underway in the health agency and expand as appropriate.

f. For all activities, develop and implement an evaluation plan which measures the effectiveness of your activities involved in each step indicated and document lessons learned.

g. Participate in CDC convened meetings and periodic conference calls for grantees to share experiences, data and materials.

2. CDC Activities

a. Participate with recipients in further development and enhancement of existing surveillance activities, including data collection methods and data analysis.

b. Collaborate with recipients on data analysis and interpretation of individual state surveillance data and release of surveillance reports.

c. Provide technical and scientific assistance and consultation on program development, implementation of asthma plan and intervention activities and operational issues.

d. Serve as a facilitator for communication between states to share expertise regarding various topics, including the expansion and development of partnerships, implementation of state plans, surveillance activities and others.

e. Facilitate working group conference calls with recipients.

f. Collaborate on the development of an appropriate evaluation plan which measures the effectiveness of recipient activities involved in each step indicated.

g. Convene meetings and periodic conference calls for grantees to share experiences, data and materials.

E. Content

Letter of Intent (LOI)

A nonbinding LOI is required for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than two pages, single-spaced, printed on one side, with one inch margins and at least 12 point font. Your letter of intent will be used to ascertain the level of interest in this announcement and to assist in determining the size and composition of the independent review panel and should include the following information:

1. Name and address of organization.

2. Contact person and telephone number.

Applications

The Program Announcement title and number must appear in the application. The narrative should be no more than 30 double-spaced pages, printed on one side, with one-inch margins, and at least 12 point font.

Excluding documents requested in this announcement (e.g., asthma plan, surveillance reports, letters of support, organizational chart, CVs/resumes) attachments/appendices should be limited to 20 pages. The application and attachments/appendices must be submitted unstapled, one-sided and unbound.

The applicant should document assurance of their ability to access and utilize funds, if awarded, for the purposes of this announcement.

The applicant should document assurance of the ability of project staff to travel to Atlanta to participate in the CDC National Asthma Conference and/or grantee meetings and willingness to share innovations, information, data and materials.

Include each of the following sections:

1. Description of Problem

Describe what is known of the asthma problem in the State or jurisdiction. Include a description of populations at increased risk of poorly controlled asthma within the jurisdiction (e.g., ethnic groups, socio-economic groups, geographic areas). Attach published surveillance reports that describe asthma within the jurisdiction including, if available, reports on asthma in the Medicaid population and for the enrollees of the State Children's Health Insurance Program (SCHIP).

2. Approved Asthma Plan

Describe how the asthma plan and the plan's implementation strategy were developed. Include a list of the partners that participated in the development of the plan (if not listed in the provided plan). Also, show support for the plan as demonstrated by a letter from the Agency's Health or Medical Director and from key partners. The approved plan (or attachments to that plan) must include:

a. An assessment of the asthma burden in the state/territory/tribe using population-based data.

b. Measurable objectives that address people with asthma across the state/territory/tribe and include people with asthma of all ages, race/ethnic groups and gender.

c. A description of how the plan's implementation would reach all persons with asthma in the state regardless of age, race/ethnicity or gender.

d. Proposed strategies to meet the plan's objectives, including, but not limited to, efforts to (1) expand surveillance for asthma, (2) improve provider compliance with the National Asthma Education and Prevention Program's (NAEPP) "Guidelines for the Diagnosis and Management of Asthma," (Clinical Practice Guidelines, Guidelines for the Diagnosis and Management of Asthma. National Institutes of Health (NIH), National Heart, Lung and Blood Institute. NIH Publication No. 97–4051, April 1997), (3) improve the skills of patients and families affected by asthma to manage the disease.

e. A methodology for evaluating the asthma plan's implementation and measure progress toward objectives described in "b." above.

f. An assessment of existing and needed resources to implement these strategies.

3. Partnership Oversight

Describe how the partners who developed the asthma plan will continue to work together to implement and monitor the intervention activities and modify the asthma plan over time.

4. Surveillance and Evaluation

Describe the surveillance system currently in place within the health agency and its ability to support the evaluation of asthma intervention activities and a continued planning process. All asthma indicators assessed over time should be noted including, but not limited to, prevalence, mortality, hospitalization, emergency care and measures of disease management status (refer as needed to the surveillance reports that were included under Section 1. Description of the Problem). Ability to provide measurement of progress in meeting all plan objectives should be addressed. Intentions to use Behavioral Risk Factor Surveillance System (BRFSS) asthma module(s) and the frequency of use should be included; also, plans for further development of the asthma surveillance activity should be presented in detail. Surveillance of work-related/occupational asthma is encouraged and must be discussed. This section might include the applicant's definition of work-related/occupational asthma (e.g., Surveillance of Work-Related Asthma in Selected U.S. States Using Surveillance Guidelines for State Health Departments—California, Massachusetts, Michigan and New Jersey, 1993–1995—MMWR June 25, 1999/48(SS03); 1–20). Discussion might include which existing databases will be used to collect and analyze work-related/occupational asthma.

5. Implementation of the Asthma Plan

a. Identify the specific objectives of the asthma plan that are to be focused upon and the specific intervention strategies from the plan to be implemented that will use the resources provided through this announcement. Interventions that change systems and individuals to provide improved disease management or education are preferred. Provide specific, realistic, measurable and time-phased process objectives for each of the strategies and interventions to be implemented that reflect the five-year period of this announcement. Describe how both process and outcome objectives for all activities will be evaluated and documented.

b. Demonstrate the scientific basis for proposed interventions. If proposed interventions include case management programs, assure that patients enrolled are those with moderate to severe persistent asthma and are receiving care consistent with the NAEPP Guidelines for the Diagnosis and Management of Asthma. Explain how it was decided by members of the statewide partnership group that these particular objectives and strategies will be addressed.

c. Describe which objectives and strategies from the plan are currently being addressed utilizing other resources.

d. Demonstrate that the plan addresses asthma in persons of all ages, race/ethnic groups and gender, and includes key environments in which persons with asthma spend significant time (e.g., home, school, workplace). Include a discussion on work-related/occupational asthma in the plan. This discussion might include the guidelines that the applicant will use for work-related/occupational asthma (e.g., Minimum and Comprehensive State-Based Activities in Occupational Safety and Health, June 1995—DHHS (NIOSH) Publication No. 95–107).

e. Explain how the resources from this solicitation will be utilized to leverage additional resources for implementation of other components of the plan. Explain how interventions will be institutionalized and sustained without funding under this announcement.

6. Management and Staffing for Intervention Activities

a. Describe existing asthma program staff within the health department and their management structure, the current function of the asthma staff and their role in this project plan. Provide an organizational chart for the health agency that identifies the unit(s) that

will participate in the proposed activities. If plan implementation will be coordinated from an office other than within the health department, describe that office and its staff, the oversight of that office and its staff, an organizational chart and the ties of that office to the health agency.

b. Describe asthma surveillance staff and their role within the project activities. Describe all staff who will be responsible for oversight of program evaluation.

c. If intervention activities will be implemented through contracts, define the process by which these contracts will be awarded and monitored.

d. Describe staff available or to be hired for those aspects of the plan to be implemented with these resources. For each position, describe the primary roles and responsibilities over the five-year grant period.

e. Include the specific staff activities that will contribute to meeting each objective that is to be addressed. Discuss the role of the statewide partnership group in oversight of intervention activities.

f. Document assurance of ability of key project staff to travel to Atlanta to participate in the CDC National Asthma Conference and/or grantee meetings and willingness to share innovations, information, data and materials.

g. Document assurance of ability to access and utilize funds, if awarded, for the purposes of this announcement.

7. Budget

This section must include a detailed first-year budget and narrative justification and future annual projections. The applicant should describe the program purpose for each budget item. For contracts contained within the application budget, applicants should name the contractor, if known; describe the services to be performed; justify the use of a third party; and provide a breakdown or a justification for the estimated costs of the contracts, the kinds of organizations or parties to be selected, the period of performance and the method of selection. The budget should include travel for key project staff to meet once per year with CDC staff and other grantees. This section should also include a listing of other funds, outside the cooperative agreement, that will be used to support this intervention.

F. Submission and Deadline

Letter of Intent (LOI)

On or before May 24, 2002, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*

Application forms must be submitted in the following order:
Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable)
Narrative

On or before 5:00 pm Eastern Time June 24, 2002, submit the application to:

Technical Information Management-PA02085, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd., Room 3000, Atlanta, GA 30341–4146.

Deadline: Letters of intent and applications shall be considered as meeting the deadline if they are received before 5:00 pm Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be destroyed. Applicants will be notified of their failure to meet the submission requirements.

G. Evaluation Criteria

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement. Measures of Effectiveness must relate to the performance goal (or goals) as stated in section "A. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Description of the Problem (5 points)

The extent to which the agency's commitment to addressing asthma is demonstrated by accomplishments to date in understanding the problem. The extent to which the agency has been able to identify populations at increased risk and effectively disseminate and use that information in the planning process.

2. Asthma Plan (20 points)

The extent to which a wide variety of appropriate partners were engaged to develop the asthma plan; the commitment by the Agency to the implementation of this plan as demonstrated by the inclusion of a letter of support from the Agency's Health or Medical Director; the extent to which the intervention plan is supported in the community by the inclusion of letters of support from key members of the community; and the extent to which the asthma plan is comprehensive and includes the items listed in the application section for this announcement.

3. Partnership Oversight (10 points)

The extent to which appropriate partners will be a part of the implementation and oversight of the asthma plan.

4. Surveillance and Evaluation (20 points)

The current state of the asthma surveillance system; the quality and scope of surveillance reports provided; the ability to provide a measurement of progress in meeting all plan objectives; the plan for appropriate continued development of the asthma surveillance activity; and the ability to support evaluation of implementation activities.

5. Implementation of the Asthma Plan (30 points)

Clear link between the asthma plan and the proposed implementation; the appropriateness and scientific support for the proposed implementation; the involvement of statewide partners in implementation of the plan and its monitoring over time; the use of these resources to leverage additional resources for plan implementation; the plans to institutionalize specific

interventions; specific objectives that are realistic, measurable and time phased; and clear definition of both process and outcome measures for the evaluation of implementation activities.

6. Management and Staffing for Intervention Activities (15 points)

The current functioning of asthma staff (program and surveillance) within the health agency; the description of staff to be hired or contracts to be developed; the link of staff to program objectives; and the continued role of the statewide partnership group.

7. Budget (Not scored)

The extent to which the budget is reasonable, adequately justified and consistent with the intended use of the cooperative agreement funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semi-annual progress reports (The progress report will include a data requirement that demonstrates measures of effectiveness.) The progress reports shall include the following items:

a. A brief project description.

b. A comparison of actual accomplishments to the goals and objectives established for the period.

c. In the case that established goals and objectives may not be accomplished or are delayed; documentation of both the reason for the deviation and the anticipated corrective action or a request for deletion of the activity for the project.

d. A financial summary of obligated dollars to date as a percentage of total available dollars.

e. Other pertinent information (i.e. curriculum vitae for new key personnel).

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment III of the application kit.

AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 317 of the Public Health Service Act, [42 U.S.C. section 241 and 247b], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

For business management assistance, contact:

Sonia V. Rowell, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, Program Announcement 02085, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. *Telephone number:* (770) 488–2724. *Email address: SRowell@cdc.gov.*

For program technical assistance, contact:

Daniel J. Burrows, M.S., Public Health Advisor, Air Pollution and Respiratory Health Branch, National Center for Environmental Health, Centers for Disease Control and Prevention, Mailstop E–17, 1600 Clifton Rd., NE, Atlanta, GA 30333.

Telephone number: (404) 498–1004.
Email address: DBurrows@cdc.gov.

Dated: May 4, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–11564 Filed 5–8–02; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02167]

"Phase I Study To Assess The Safety, Tolerability, Immunogenicity, And Shedding Of Attenuated Measles Vaccine Administered As A Single Intranasal Dose To Healthy Adults"; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for "Phase I Study to Assess the Safety, Tolerability, Immunogenicity, and Shedding of Attenuated Measles Vaccine Administered as a Single Intranasal Dose to Healthy Adults." This program addresses the "Healthy People 2010" focus area "Immunization and Infectious Diseases" and "Medical Product Safety".

The purpose of the program is to conduct a double blinded, randomized, placebo controlled, 2-step, single-center study of intranasal administration of attenuated measles vaccine in healthy adults to assess safety and immunogenicity of vaccine, tolerability of vaccination, and shedding of vaccine virus.

Research Objectives

Primary

1. To determine the safety and tolerability of live attenuated measles vaccine administered intranasally (IN) to healthy adults.

2. To compare the serum antibody responses elicited following IN versus subcutaneous (SC) administration of live attenuated measles vaccine, using standard methods (plaque-reduction neutralization titers and ELISAs).

Secondary

1. To measure the incidence of measles vaccine viral shedding following vaccination.

2. To explore the utility of mucosal antibody measurements in evaluating responses to measles immunization.

Background

Measles continues to be a major source of morbidity and mortality in developing countries despite the availability of an effective vaccine. Expanded immunization programs are hampered by the fact that until now there has only been a parenteral vaccine available. Inappropriate vaccination procedures can lead to injection site infections, nerve damage or transmission of blood-borne pathogens.

Mucosal immunization has proven to be an effective and non-invasive manner by which to induce a local and systemic immune response. Measles immunization via aerosol has been studied extensively and has been found to be safe and effective. Previous studies of IN measles vaccination have yielded variable results attributable to varied doses and methods of administration plus interference by concomitant upper respiratory infections, making it difficult to determine if this is an effective vaccination route. No serious adverse events have been reported. Currently, the only Food and Drug

Administration (FDA) approved method for giving Measles-Mumps-Rubella (MMR) vaccination is by subcutaneous injection.

Research Plan

This is a request for proposals to conduct a phase 1, double blinded, randomly assigned, study comparing the safety, tolerability and immunogenicity of IN vs. SC administration of measles vaccine. The study must be done under an Investigational New Drug application from the FDA, as the goal is to eventually obtain FDA approval for IN vaccination with MMR vaccine. In order to maximize participant safety this request is for proposals to study only measles vaccination, and to begin with immune and semi-immune adults. The first step should include healthy measles-immune adults, the second, partially immune adults. Immune adults are those having a plaque-reduction neutralization titer of 1:120 or higher; partially immune adults are those with detectable titers that fall under 1:120. An Independent Safety Monitor (ISM) should review safety data from step 1 and determine that it is safe to continue before additional work begins with step 2. Before actually doing so, however, the grantee and researchers from the CDC should discuss the report of the ISM and the data, and agree whether or not to proceed with step 2.

Measurable outcomes of the program will be in alignment with the "Government Performance Results Act" (GPRA) performance goals for the National Immunization Program (NIP):

1. Reduce the number of indigenous cases of vaccine-preventable diseases.

2. Ensure that 2 year-olds are appropriately vaccinated.

3. Work with global partners to reduce the cumulative global measles related mortality rate.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, faith-based organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations, and small, minority, women-owned businesses.

Note: Title 2 of the United States Code Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

C. Availability of Funds

Approximately $192,000 is available in FY 2002 to fund one (1) award. It is expected that the award will be begin on or about September 30, 2002 and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress, as evidenced by required reports, and the availability of funds.

Use of Funds

Funds cannot be used for construction or renovation, to purchase or lease vehicles or vans, to purchase a facility to house project staff or carry out project activities, or to supplant existing support.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities). The intention is for the Recipient and the CDC to work jointly and in collaboration in developing, executing and reporting on this project.

1. Recipient Activities

The following section describes the expected activities of the recipient:

a. Develop the study protocol, determining the approaches to take in addressing the specific aims in the program announcement.

b. Plan the analytic approach to be taken to understand and interpret the principal findings from the study.

c. Obtain IRB approval for the protocol.

d. Develop, submit and obtain an Investigational New Drug Application from the FDA for intranasal administration of measles vaccine.

e. With assistance from and in collaboration with CDC staff, develop a plan of studies for phase I/II trials of intranasal rubella and mumps vaccines, as well as further studies of intranasal measles vaccine and phase I/II trials of combined MMR vaccine.

f. Provide research pharmacist and facilities for filling nasal spray device with reconstituted measles vaccine.

g. Hire, manage and train research staff to provide clinical assessments, administer vaccine, collect samples and perform laboratory tests in compliance with Good Clinical Practice.

h. Implement the study protocol, conducting the study according to the protocol and resolving problems in study implementation as they arise.

i. Arrange for an Independent Safety Monitor to review the progress of the study and to determine if it is safe to proceed from step 1 to step 2. Before actually doing so, however, the grantee and researchers from the CDC should discuss the report of the ISM and the data, and agree whether or not to proceed with step 2.

j. Report serious and unexpected adverse events to CDC and FDA in a timely manner.

k. Perform standard measles immunogenicity assays, including ELISAs and plaque-reduction neutralization titers.

l. Perform tests of mucosal immunity.

m. Participate as authors in the preparation of manuscripts describing the results of the research.

n. Prepare reports for regulatory agencies and grantee Institutional Review Board (IRB), as necessary.

o. Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures must be objective/quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of the evaluation.

2. CDC Activities

CDC staff will participate as a partner in the activities of the study, providing technical and laboratory assistance, where needed, as well as scientific collaboration.

a. Provide technical assistance and programmatic information relevant to the project.

b. Assist in the development of a research protocol for IRB review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on an annual basis until the research project is completed.

c. Assist in the performance of the study and participate, with recipient staff members, in the progression from step 1 to step 2 of the research plan (as per "i." of Recipient's Activities).

d. Participate in the development of the plan for future studies (as per "e." of Recipient's Activities).

e. Perform nucleic acid detection (RT–PCR methods) and/or viral cultures to

detect measles vaccine virus in clinical samples.

f. Participate in the analysis and interpretation of data from the study and in presentation and publication of the findings of the research.

E. Content

The Program Announcement title and number must appear in the applications. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Applications will be evaluated on the criteria listed, so it is important to address them when describing the program plan. The narrative should be no more than 20 single-spaced pages and be printed on one side, with one-inch margins and a 12-point unreduced font.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

F. Submission and Deadline

Submit the original application and five copies of PHS 398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm* Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable)
Narrative

On or before 5 p.m. Eastern Time July 15, 2002, submit the application to the Technical Information Management Section, PA# 02167, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

G. Evaluation Criteria

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement. Measures of Effectiveness must relate to the performance goal (or goals) as stated in section "A. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Applications will be evaluated against the following criteria by an independent review group appointed by CDC:

1. Understanding the Project Objectives (10 points)

The extent to which the applicant possesses an understanding of the needs and purpose of the project as demonstrated through knowledge and understanding of current research and activities being performed in this area, past studies, existing literature and the clarity and practicality of the proposed project plan.

2. Research Objectives (10 points)

The extent to which the research proposal addresses the research objectives provided in this announcement, provides a clear description of the methods to be used, and demonstrates adherence to accepted research practices as well as Good Clinical Practice. The applicant should also demonstrate that the applicant's research proposal is clear, feasible and practical.

3. Research Methods (30 points)

The adequacy of the proposed research design, approaches and methodology to carry out the research, including quality assurance procedures and plans for data management and statistical analyses:

a. Recruitment procedures, screening tests and eligibility/exclusion criteria.

b. Method for allocation of subjects to IN vs. SC immunization.

c. Method for masking investigators and participants as to vaccination group.

d. Quality assurance procedures, plans for data analysis, statistical analysis methods and study endpoints.

e. Safety assessments and reporting of adverse events.

f. Methods for testing immunogenicity of vaccine, both in serum and mucosal fluids; these should be consistent with any methods described in the research objectives of this announcement.

g. Criteria for suspending the trial or for moving from step 1 to step 2.

h. A statistical analysis plan appropriate to the primary and secondary objectives.

i. The project time line.

j. Informed consent procedures.

k. Measures of Effectiveness. The Peer Review Panel shall assure that measures set forth in the application are in accordance with CDC's performance plans. (See CDC's Performance plans at website *www.cdc.gov/od/perfplan/2001perfplan.pdf).*

4. Research Population (5 points)

The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

5. Management Plan (20 points)

The soundness and feasibility of the applicant's proposed management plan for accomplishing the work expectations outlined in section D to include identification of applicant's key personnel to be assigned to the study and clear identification of their respective roles in the management and operations of the program.

6. Experience and Capabilities (25 points)

The experience, qualifications, and technical abilities of the applicant and the proposed project staff relevant to:

a. The content areas of immunizations and mucosal immunology.

b. Conducting clinical research and publishing in peer-reviewed journals.

c. Ability to recruit suitable participants.

d. Demonstrable performance of measles serologies using ELISA and plaque-reduction neutralization methods.

e. Transmission of information in a timely, efficient, secure, and accurate manner.

f. Obtaining Investigational New Drug Applications from the FDA.

g. Receiving, storing and shipping biological specimens related to this project.

7. Human Subjects (not scored)

The application should also adequately address the requirements of 45 CFR part 46 for the protection of human subjects. This should include the provision of the FWA number from the Office of Human Research Projection (OHRP).

8. Budget (not scored)

The applicant shall describe their proposed plan for managing the resources necessary to comply with the requirements specified in Section D. This shall include a description of the proposed person hours for each key individual.

9. GPRA Goals (not scored)

The applicant shall describe how their research plan meets the GPRA goals listed in Section A.

H. Other Requirements

Technical Reporting Requirements

The grantee will provide CDC with the original plus two copies of:

1. Quarterly progress reports (the results of the Measures of Effectiveness shall be a data requirement to be submitted with or incorporated into the progress report);

2. Adverse event reports (within 24 hours of discovery of adverse event);

3. Financial status report, no more than 90 days after the end of the budget period;

4. Final financial report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–21 Small, Minority, and Women-Owned Business
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301, 317 and 2102 of the Public Health Service Act, 42 U.S.C. 241, 247 and 30099–2(9), as amended. The Catalog of Federal Domestic Assistance number is 93.185.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

For business management assistance contact: Peaches Brown, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. *Telephone number:* (770) 488–2738. *Email address: PRB0@cdc.gov.*

For program technical assistance, contact: Robert Perry, M.D., M.P.H., Epidemiology and Surveillance Division, National Immunization Program, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Mailstop E–61, Atlanta, GA 30333. *Telephone number:* (404) 639–8224. *Email address: RMP9@cdc.gov.*

Dated: May 4, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–11558 Filed 5–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02098]

Expansion of HIV/AIDS Care Services in Côte d'Ivoire; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for the expansion of HIV/AIDS care services in the Republic of Côte d'Ivoire.

The purpose of this cooperative agreement is to strengthen and expand the community response to Human Immunodeficiency Virus (HIV/AIDS) care services in the ten communities of Abidjan, the capital of Côte d'Ivoire, and selected secondary cities throughout the country.

B. Eligible Applicants

Applications may only be submitted by public and private non-profit and for profit-organizations, state and local governments or their bona fide agents, that currently conduct HIV/AIDS work in Côte d'Ivoire.

Applicants must have at least five years experience in HIV/AIDS work in Côte d'Ivoire including: Community mobilization for prevention of HIV/AIDS and promotion of voluntary counseling and testing; successful working relationships with both local and national government offices such as the mayors' office and the Ministries of Health and AIDS; establishment of support groups for people living with AIDS(PLWA); knowledge and understanding of resources available to create referral networks for clinical and psycho-social support for PLWA and families.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

C. Availability of Funds

Approximately $200,000 is available in FY 2002 to fund this award. It is expected that the average award will begin on or about September 30, 2002, and will be made for a 12-month budget period within a project period of up to three years. Annual funding estimates may change.

Continuation awards within the approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

1. Use of Funds

Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection (with the exception nevirapine in Prevention of Mother to Child Transmission (PMTCT) cases and with prior written approval), occupational exposures, and non-occupational

exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must perform a substantial portion of the activities (including program management, operations and delivery of prevention services) for which funds are requested.

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions:

Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization (WHO), indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Collaborate with the Ministry of AIDS (MOA) and the Ministry of Health (MOH), regional health departments, and mayoral offices to carry out activities.

b. Train healthcare workers to improve quality of care for PLWHA and act as focal points for the development of PLWHA support groups.

c. Identify and train community facilitators to work with health clinics to build support group capacity to provide psycho-social support, teach skills building, and income generating activities.

d. Build capacity of support groups to facilitate community responses that include: Raising awareness of HIV/AIDS, Voluntary Counseling and Testing (VCT) services, behavior change communication for youth, home-based care, nutrition support, resource mobilization, and orphan support.

e. Establish a referral network at community health clinics and other care facilities so that people who are HIV positive can be referred to the nearest community support groups.

f. Establish a referral network at VCT centers so HIV positive people can be referred to community support groups and care and treatment centers.

g. Prepare a workplan and an annual budget for activities.

2. CDC Activities

a. Collaborate with the recipient to design and support the activities listed above.

b. Monitor project performance and budget.

c. Approve the selection of key personnel to be involved in the activities performed under this cooperative agreement.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Applications will be evaluated against the criteria listed below. Therefore, it is important to lay out your program plans accordingly. The narrative should be no more than 25 doublespaced pages, printed on one side, with one-inch margins, and unreduced font. Pages should be numbered and a complete index to the application and any appendices must be included.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

F. Application Submission and Deadline

Submit the original and two copies of PHS FORM 5161–1. Forms are available in the application kit and at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo/htm*. On or before June 14, 2002 submit the application to the Technical Information Management Section, Procurement and Grants Office, 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341.

Deadline:

Applications shall be considered as meeting the deadline if they are either:

Received on or before the deadline date; or

Sent on or before the deadline date and received in time for submission to the independent review group.

Applications which do not meet the criteria in 1. or 2. above will be considered late and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. Applications should consist of: Plan, Objectives, Methods, Evaluation, Budget that demonstrate/describe:

1. Understanding of the problem (20 points)

Extent to which the applicant demonstrates a clear and concise understanding of the nature of the problem described in the Purpose section of this announcement. This specifically includes description of the public health importance of the planned activities to be undertaken and realistic presentation of proposed objectives and projects.

2. Technical approach (25 points)

The extent to which the applicant's proposal includes an overall design strategy, including measurable time lines, the extent to which the proposal addresses regular monitoring and evaluation, and the potential effectiveness of the proposed activities in meeting objectives.

3. Ability to carry out the project (20 points)

The extent to which the applicant documents demonstrated capability to achieve the purpose of the project.

4. Personnel (20 points)

The extent to which professional personnel involved in this project are qualified, including evidence of experience in care and support for people living with AIDS, experience mobilizing communities, and experience as facilitators for training concerning

5. Plans for administration and management of projects (15 points)

Adequacy of the proposed plans for administering the projects.

6. Budget (Reviewed But Not Scored)

The extent to which itemized budget for conducting the project, along with justification, is reasonable and consistent with stated objectives and planned program activities.

7. Human Subjects (Reviewed But Not Scored)

The extent to which the application adequately addresses the requirements of 45 CFR 46 for the protection of human subjects.

H. Other Requirements

Provide CDC with the original plus two copies of:

1. Progress reports (semi-annual); a brief, comprehensive narrative progress report should be submitted no later than

90 days after the end of the budget period. The progress report must include the following: (a) A comparison of the actual accomplishments to the objectives established; (b) the reasons for slippage if established objectives were not met; (c) other pertinent information.

2. Measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant/cooperative agreement. Measures must be objective/quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with your application and shall be an element of evaluation.

3. Financial status report, no more than 90 days after the end of the budget period.

4. Final financial report and performance report, no more than 90 days after the end of the project period.

Obtain annual audit of these CDC funds (program-specific audit) by a United states based audit firm with international branches and current licensure/authority in country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.

A fiscal Recipient Capability Assessment may be required with the potential awardee, prior or post award, in order to review their business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–6 Patient Care
AR–14 Accounting Systems Requirement

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 307 of the Public Health Service Act, (42 U.S.C. section 241(a) and 242l), as amended and section 317 of the PHS Act (42 U.S.C. 247b). The Catalog of Federal Domestic Assistance number is 93.947.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov/* Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Dorimar Rosado, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 1600 Clifton Road, Mailstop E–15, Atlanta, GA 30333, Telephone number: (770) 488–2782, E-Mail: *dpr7@cdc.gov*

For program technical assistance, contact: Karen Ryder, MPH, CDC/HIV 2010 Abidjan Place, Dulles, VA 20189–2010, Telephone: (225)21–25–41–89, E-Mail address: *kkr1@cdc.gov*

Dated: May 4, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Center for Disease Control and Prevention.

[FR Doc. 02–11551 Filed 5–8–02; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02161]

Support for Municipal Health Departments in Zimbabwe for Development of Innovative Programmatic Models for Prevention and Care Services for HIV/AIDS; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY 2002) funds for a cooperative agreement with the Municipal Health Departments in Zimbabwe for Development of Innovative Programmatic Models for Prevention and Care Services for HIV/AIDS.

The purpose of this cooperative agreement is to offer support to municipal health departments in Zimbabwe for implementation of innovative programs to address HIV/AIDS. Special areas of interest include projects for which access to more intensive laboratory services, clinical, or evaluation expertise that are available in a city may be needed in order to develop simplified algorithms or program models that could then be implemented more broadly in Zimbabwe. Examples include programs for delivery of highly active antiretroviral therapy (HAART), programs for the Prevention of Mother-To-Child Transmission (PMTCT). Also, developing and delivering training programs designed for the needs and convenience of private medical practitioners, who tend to be concentrated in large cities, is another target of this request for proposals from municipal health services.

B. Eligible Applicants

Municipal health departments are the sole potential applicants for this announcement for several reasons:

1. The purpose of this announcement is to establish actual programmatic, public sector models for innovative approaches to HIV care, prevention, and training within the health care system of Zimbabwe, so that only licensed, public sector providers of health care within Zimbabwe could apply. The only two other public sector-supported providers of health care in Zimbabwe, the Ministry of Health and Child Welfare (MOHCW), and the Mission Hospitals (represented by the Zimbabwe Association of Church Hospitals (ZACH), have been funded through other cooperative agreements with CDC.

2. Among the publicly supported systems of health care, Municipal Health Departments have consistently served as a source of innovation and development of models that can be readily exported to other public sector services, in particular the MOHCW.

3. At the current time, only the Municipal Health services of the major cities could possibly bring together the required expertise from the Faculty of the UZ Medical School in combination with clinical facilities and staff. Harare and Bulawayo Health Departments have long been in the forefront of innovation and training in public health in Africa. These and other city health departments are the only health system operators that are located in the major population centers where a sufficient volume of patients is available to serve as the basis for large-scale training programs.

C. Availability of Funds

Approximately $200,000 is available in FY 2002 to fund one or two awards between $50,000–$200,000 per award. It is expected that the awards will begin on or about August 30, 2002, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as

evidenced by required reports and the availability of funds.

Use of Funds

The purchase of antiretrovirals, reagents, and laboratory equipment for antiretroviral treatment projects requires pre-approval from the Global AIDS Program (GAP) headquarters.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must perform a substantial portion of the activities including program management and operations and delivery of prevention services for which funds are requested.

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions:

Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization (WHO), indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

Federal law requires that no funds appropriated under this cooperative agreement shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient(s) will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

Implement innovative program models for prevention or care activities for HIV/AIDS, working in the framework of available national guidelines and with participation of the relevant units of the (MOHCU), in areas for which technological sophistication such as special capability in laboratory services, health informatics, evaluation capacity, specialized clinical expertise, or other services are uniquely available. Examples of such areas include, but are not limited to:

a. Programs to deliver Highly Active Antiretroviral Therapy (HAART) in African setting;

b. Programs for PMTCT of HIV infection; and

c. Pograms for multidisciplinary AIDS care for special groups (e.g., HIV-infected children or all hearing-impaired persons) that involve establishing networks of care and referral among diverse health care and social services providers.

Initiate a broad operational research program in the domain of one or more areas of innovative clinical prevention or care services. In the process of providing such care, fully document the nature and cost-effectiveness of such care and prevention strategies, and disseminate the findings. By conducting all these activities in a collaborative, multidisciplinary context, identify and develop tools to help facilitate development of reports, documents, or other products that will lead toward:

a. A resource center for developing simpler public health approaches and models, but providing expert backup and evaluation for those;

b. A referral center for difficult cases encountered in settings with less resources; and

c. A training center for scaling up the implementation nationally.

Collaborate with other CDC grantees and with CDC to identify high priority activities in the domains of clinical prevention and care services that are susceptible to a resource-intensive collaboration of diverse agencies and institutions such as are only found in larger cities. Work to develop and implement protocols that will help elucidate viable public health models for delivering such interventions in the context of public health services in Zimbabwe. Assist in developing tools for program expansion following any successful pilot activities, in collaboration with MOHCW, CDC, University of Zimbabwe, and other partners.

2. CDC Activities

Collaborate with the Recipient on designing and implementing the activities listed above, including but not limited to the provision of technical assistance to develop and implement program activities, analyses, and capacity building assistance.

When necessary, procure specific services, equipment and supplies, as well as other materials required to support implementation of activities covered under this agreement.

Monitor project and budget performance.

E. Content

Letter of Intent (LOI)

A LOI is required for this program. The narrative should be no more than two (2) double-spaced pages, printed on one side, with one-inch margins, and size 12 font. Your letter of intent will be used to help plan the review process, and should include the following information:

1. Principal Organization
2. Partners, Districts, Regions Involved
3. 500 word (or less) abstract outlining "Central Concepts" to be developed more fully in the complete application
4. 300 word (or less) statement of qualifications and capacity.
5. Estimated amount of funds to be requested.

Applications

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should consist of, at a minimum, a plan, objectives, methods, evaluation and budget; and be no more than 20 double-spaced pages, printed on one side, with one-inch margins, and 12-point font.

F. Submission and Deadline

Letter of Intent (LOI)

On or before June 14, 2002, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm* On or before July 15, 2002, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Letters of Intent and final Applications shall be considered as meeting the deadline if they are:

Received on or before the deadline date.

Late: Letters of Intent and Applications which do not meet the above criteria will be returned to the applicant.

G. Evaluation Criteria

Note: Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. Domains for this evaluation will include:

Understanding the Purpose of the Overall Plan of the Application (15 points)

A cogent, brief summary of critical issues; succinct, coherent understanding of the purpose of the program announcement; and cross-cutting, cost-effective approaches to responding to the announcement.

Objectives (15 points)

A translation of the general purposes of the program announcement into no more than four specific objectives, products, or outputs of the cooperative agreement.

Methods (15 points)

Enunciation of a methodology appropriate for accomplishing the Objectives outlined above.

Evaluation (15 points)

Brief explanation of how internal monitoring and evaluation of this program will contribute to strengthening and institutionalization of this program during the period of the grant.

Capacity (40 points)

Strengthening operational capacity of civil service organizations. (20 points)

Expanding prevention, care and support services provided by civil society organizations. (20 points)

Budget and Cost-effectiveness. (Reviewed but not scored)

Creative and convincing approaches to resource utilization (financial, personnel, computing, etc.) to lead to a major impact of available resources.

Human Subjects. (Reviewed but not scored)

The extent to which the application adequately addresses the requirements listed in the 45 CFR part 46 for the protection of human subjects.

H. Other Requirements

Technical Reporting Requirements

1. Progress reports (annual); a brief, comprehensive narrative progress report should be submitted no later than 30 days after the end of the budget period. The progress report must include the following: (a) A comparison of the actual accomplishments to the objectives established; (b) the reasons for slippage if established objectives were not met; and (c) other pertinent information.

2. Measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant/cooperative agreement. Measures must be objective/quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with your application and shall be an element of evaluation.

3. Financial status report, no more than 90 days after the end of the budget period.

4. Final financial report and performance report, no more than 90 days after the end of the project period.

Obtain annual audit of these CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.

A fiscal Recipient Capability Assessment may be required with the potential awardee, prior or post award, in order to review their business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 307 of the Public Health Service Act, (42 U.S.C. section 242l), as amended. The Catalog of Federal Domestic Assistance number is 93.118.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Dorimar Rosado, Grants Management Specialist, International & Territories Acquisition & Assistance Branch Procurement & Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2782, E-mail: *dpr7@cdc.gov*

For program technical assistance, contact: Michael St. Louis, M.D., Global AIDS Program (GAP), Zimbabwe Country Team, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), Zim-CDC AIDS Project Team, 38 Samora Machel Avenue, 2nd Floor, Harare, Zimbabwe, Telephone: 263 4 796040 796048, Fax: 263 4 796032, E-mail: *stlouism@zimcdc.co.zw*

Dated: May 4, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–11560 Filed 5–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02137]

Technology Translation and Transfer of Effective HIV Prevention Behavioral Interventions; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for the technology translation and transfer of effective HIV prevention behavioral interventions. This program addresses the "Healthy People 2010" focus area HIV. The purpose of the program is to:

1. Support translation of the protocols of effective HIV prevention interventions, whose original research was conducted with methodological rigor and which have not been packaged or widely adopted, into a package of materials that prevention providers can use to implement the interventions in their non-research field situations.

2. Support development of curricula for training provider agency staff who will implement the intervention and technical assistance guidance manuals for providing technical assistance to future adopters of the intervention.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-

profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, faith-based organizations, State and local governments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations, and small, minority, women-owned businesses.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $470,000 is available in FY 2002 to fund approximately two awards. It is expected that the average award will be $215,000, ranging from $200,000 to $235,000. It is expected that the awards will begin on or about September 30, 2002 and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may change. An application requesting greater than $235,000 (including indirect costs) will not be considered for review and will be returned to the applicant.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds. Continued funding for year two will be dependent on the completion of required activities for year one.

Use of Funds

Collection of new or supplemental intervention research data, data entry and analysis other than for process evaluation of this project, purchase of furniture or computers, and rental of facilities will not be funded under this program.

Funding Priority

CDC's intention is to support the packaging of interventions for target populations not currently represented in the Replicating Effective Programs collection of packages. This announcement is only for proposals that submit an HIV prevention intervention with demonstrated effectiveness in changing HIV/STD-related risk behavior or health outcomes. Consideration will be given to obtaining diversity of target populations among the proposals selected for funding. The following populations are of particular interest: (1) Incarcerated persons, (2) non-injection substance users, (3) HIV-infected persons, and (4) persons living in rural areas whose behaviors put them at risk for HIV infection.

Interested persons are invited to comment on the proposed funding priority. All comments received within 30 days after publication in the **Federal Register** will be considered before the final funding priority is established. If the funding priority changes because of comments received, a revised announcement will be published in the **Federal Register**, and revised applications will be accepted before the final selections are made. Address comments to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

The program requirements for the first year of activity include:

a. Develop the intervention package, including a promotional or marketing videotape for program administrators, and preliminary versions of the training curricula in collaboration with HIV prevention providers and consumers.

b. Produce a limited number of intervention packages.

c. Identify at least two HIV prevention agencies, that are not collaborating on package development, for case study of the technology transfer process.

d. Develop a process evaluation plan.

Program requirements for the second year of activity include:

a. Initiate the prevention agency case study using the intervention package, training, quality assurance, and technical assistance.

b. Complete the case study by achieving technology transfer with at least one of the selected agencies.

c. Initiate and complete the process evaluation.

d. Revise intervention and training materials based upon the case study results.

e. Develop technical assistance guidance manuals based on transfer experience.

f. Publish and distribute results.

2. CDC Activities

a. Host a meeting with the successful applicants within 60 days of the notice of award to discuss implementation of the project.

b. Provide technical assistance in the general operation of this HIV prevention project.

c. Consult on the choice of prevention agencies for the case studies with the intervention package.

d. Monitor and evaluate scientific and operational accomplishments of this project through frequent telephone contact and review of technical reports, package iterations, and interim data analyses.

e. Conduct site visits to assess program progress and mutually solve problems, as needed.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 double-spaced pages, printed on one side, with one-inch margins, and unreduced font.

Provide a one-page abstract of the proposal and a complete table of contents to the application and its appendices. Beginning with the first page of text, number all pages clearly and sequentially, including each page in the appendices. Replace double-sided article reprints with a one-sided copy.

Include a general introduction, followed by one narrative subsection for each of the numbered content elements per application, in the order in which the elements appear below. Label each narrative subsection with the element title and include all of the information needed to evaluate that element of the application (except for curriculum vitae, references, and letters of support, which are appropriate for the appendices). The application content elements are:

1. Effective behavioral intervention

a. Identify the principal investigator (PI); name and location of the institution(s) that originally developed, conducted, and evaluated the proposed intervention; and population(s) for whom the intervention was designed. Indicate whether the research was part of a multi-site project.

b. If the research was part of a multi-site project, provide letters of support from original developers of the intervention other than the applicant (e.g., PIs at other sites), indicating their intent to collaborate on a portion of the intervention materials that will discuss generalization of the intervention to other target populations or settings.

c. Where the applicant is not an original developer of the intervention, provide written permission from the intervention's original developers to develop and market materials for the intervention package.

d. Describe the research's positive results on behavioral or health outcomes, including how these results are both statistically and practically significant; and, if the intervention is community-level, how long the intervention was in operation before positive effects were detected.

e. Include in the appendix a copy of any reports that have been submitted to the institution funding the research, have been submitted for publication, or have been published in peer reviewed journals, describing the study design and positive behavioral or health outcomes of the intervention. This portion of the appendix should be labeled as "Intervention Study Design and Results."

f. Substantiate the need for an intervention package in terms of target population's risk and potential for generalizability to other populations at risk for HIV infection.

g. Describe the feasibility of implementation by HIV prevention agencies, particularly those with limited resources.

2. Intervention package

a. Describe the contents of the intervention package that will be developed. Include descriptions of:

1. The overall concept, format, and objectives to be in text and in a short promotional or marketing videotape for program administrators, e.g., appropriateness for intended implementing agencies, description of the intervention and the science behind it, target populations for whom the intervention would be appropriate;

2. Pre-implementation phase, e.g., intervention's core elements related to this phase, time line of necessary preparation steps, list of collaborators, training materials, material resources, facilities, staff (numbers, time commitment, and skills), and cost categories for conducting the intervention;

3. Implementation phase, e.g., intervention's core elements related to this phase, protocols and examples for implementing the intervention and ensuring quality and consistency, identification of barriers to implementation and advice on how they may be overcome, and methods for process evaluation; and

4. Maintenance phase, e.g., intervention's core elements related to this phase, how to deal with issues of staff turnover and retraining.

b. Explain how staff from HIV prevention programs (e.g., health departments and community-based organizations) and/or other prevention providers and consumers in the applicant's geographic area will collaborate in the development of the intervention package. Describe the planned procedures for how these collaborators will be identified.

c. Present a time line for developing and reviewing the intervention package and its components.

3. Plan to identify prevention agencies for case study of implementing the packaged intervention in year two.

a. Discuss a plan to identify and recruit potential implementers within your state (i.e., where training, assistance, and evaluation will be feasible within budget constraints) and indicate any agencies which already have shown interest in or may be interested in implementing the proposed intervention.

b. Elaborate on the criteria and mechanism for selecting agencies that will participate in case studies of implementing the packaged intervention.

Note: Any agency that participated in the intervention's original research is excluded from consideration as a potential implementer, as is any agency that currently or previously implemented the intervention.

4. Strategy to assist implementation

a. Describe the strategy to facilitate implementation of the packaged intervention, including development of training curricula, provision of training, and provision of direct technical assistance from the applicant to the selected implementers and plans for assisting selected users find additional funds, if relevant.

b. Discuss procedures to assist selected agencies to implement the packaged intervention, drawing upon the agencies' existing staff and resources, and to identify barriers to implementation and how to overcome them.

5. Plan to evaluate the implementation process

a. Describe methods and measures to be used in assessing (1) fidelity to the intervention's core elements during the implementation phases as specified in the intervention package; (2) quality of intervention delivery according to the methods describe in the package; (3) quality of the applicant's technical assistance and its delivery; (4) impact of barriers to implementation on the case study (e.g., accuracy of record keeping, agency's staff recruitment and training, client recruitment); (5) effectiveness of solutions to barriers; (6) costs of intervention delivery and cost containment strategies; and (7) maintenance of collaborative relationships. No behavioral or health outcomes are to be evaluated.

b. Describe plan to use the process evaluation results in finalizing the intervention package and the training curricula for agency staff and for the preparation of guidance manuals for future technical assistance providers.

Note: The purpose of the program includes achieving technology transfer with at least one HIV prevention agency and studying the process. Selection of two or more implementing agencies may increase the likelihood of achieving technology transfer (i.e., entering implementation phase and conducting all intervention components) with at least one agency.

6. Capacity, and the degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research.

a. Demonstrate capacity to conduct the activities required for this project.

b. Clearly describe the proposed staffing, e.g., show percentages of each staff member's commitment to this and other projects, the division of duties and responsibilities for this project, brief position descriptions for existing and proposed personnel, and any partnerships with HIV prevention agencies.

c. Demonstrate that the applicant's staff have the expertise to complete this project, including ability to produce the intervention package, e.g., include examples of previously developed fact sheets, CD–Roms, web sites, or samples from other intervention packages.

d. Name the staff members who are key to the completion of the project. Provide a brief description of their strengths that relate to this project. Include their curriculum vitae in the appendix.

e. Describe access to graphics expertise for the editing and production of the intervention package in print and/or electronic formats.

f. Briefly describe compliance regarding the inclusion of women, ethnic, and racial groups in the proposed activities or justification when representation is limited or absent.

7. Budget: Provide a detailed, line-item budget for the project; justify each line-item. Plan for two trips to Atlanta each year to meet with CDC representatives.

F. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*, or in the application kit. On or before July 15, 2002, submit the application to: Technical Information Management Section, PA #02137, Procurement and Grants Office, Centers for Disease Control and Prevention

(CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received on or before the deadline date.

Late Applications: Applications which do not meet the criteria above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant/cooperative agreement. Measures must be objective/quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with your application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Effective Behavioral Intervention (20 percent) Clear demonstration of the effectiveness of the proposed intervention in a report that has been submitted to the institution funding the research, has been submitted for publication, or has been published in a peer-reviewed journal. This is an absolute criterion. To be considered effective, the intervention must have been tested using a control or comparison group with participants assigned randomly or without bias to study conditions, have measured pre-intervention and post-intervention outcomes, have completed the data collection and analyses, and have findings that show significant positive results for changing HIV/STD-related risk behavior or health outcomes. If this evidence is present, also consider:

a. The original research for this intervention was conducted and completed with a population at demonstrable risk for acquiring or transmitting HIV, preferably incarcerated persons, non-injection substance users, HIV-infected persons, or persons living in rural areas whose behaviors put them at risk for HIV infection.

b. The feasibility of implementing the proposed intervention by agencies with limited resources.

c. Letters of permission from the intervention's developer(s) to develop and market materials for the proposed intervention package and, if the intervention was from a multi-site project, letters of participation from the same developers.

2. Intervention Package (15 percent) Level of detail in the outline of the proposed package, e.g., for overview, pre-implementation, implementation, and maintenance phases. Clarity of described formats, concepts, intended implementers, and objectives. Justification of the appropriateness of the package's objectives, format and concepts to the intended implementing agencies' needs and capabilities. Adequacy of planned identification of and input from collaborating HIV prevention programs and/or other prevention providers and consumers. Adequacy of planned materials' review, pretesting, and revision. Adequacy of time scheduled for completing the proposed steps of the package's development and contents.

3. Plan to Identify Prevention Agencies to Implement the Packaged Intervention (10 percent) Recognition of which agencies are not eligible to participate in the implementation case study. Quality of plan to identify eligible potential agencies with target populations for whom the intervention is appropriate and to interest them in implementing the package during year two of the project. Selection of active methods to identify and solicit potential implementing agencies. Adequacy of criteria and mechanism for selecting at least two implementing agencies likely to achieve technology transfer.

4. Strategy to Assist Implementation (15 percent) Clarity of the strategy to assist selected agencies in adopting and implementing the proposed intervention, e.g., outline of training curricula and training plan. Understanding of barriers to implementation and how to overcome them. Plan to assist selected users in implementing the entire intervention using their existing resources and staff, e.g., provision of proactive and on-call technical assistance. Plan to help selected agencies find additional funds for implementing the package in year two, if relevant.

5. Plan to Evaluate Implementation Process (15 percent) Feasibility and appropriateness of the applicant's plan to evaluate the selected agencies' implementation of the intervention as specified in the intervention package. Thorough and realistic selection of process measures to evaluate. Adequacy of plans for revising intervention package and training materials based upon the case study results. Adequacy of plans for developing a technical assistance manual based on the agencies' and applicant's implementation and transfer experiences.

6. Demonstrated Capacity, and the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research (25 percent)

a. Overall ability of the applicant to perform the proposed activities as reflected in their staff's and consultants' qualifications and availability. The extent to which the applicant demonstrates that proposed staff have experience with developing materials in various formats, training, and process evaluation and have demonstrated familiarity with HIV behavioral interventions, particularly the intervention to be packaged. The nature of any partnership between researchers and HIV prevention programs. Adequacy of existing support staff, equipment, and facilities.

b. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research.

This includes:

1.The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

7. Budget (not scored)

Extent to which the budget is reasonable, itemized, clearly justified, and consistent with the intended use of the funds. Extent to which the budget includes itemizations, justifications, scope, and deliverables for consultants or contractors.

8. The application must adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects.

H. Other Requirements

Provide measures of effectiveness to evaluate the accomplishment of the various identified objectives of the cooperative agreement. These measures must be objective and quantitative and must measure the intended outcome. The submission of these measures shall be a data element to be submitted with, or incorporated into the annual progress reports.

Technical Reporting Requirements

Provide CDC with original plus two copies of 1. Progress reports (annual); A brief, comprehensive narrative progress

report should be submitted no later than 90 days after the end of the budget period. The progress report must include the following: (1) A comparison of the actual accomplishments to the objectives established; (2) the reasons for slippage if established objectives were not met; and (3) other pertinent information.

2. Financial status report, no more than 90 days after the end of the project period.

3. Final financial report and performance report, no more than 90 days after the end of the project period.

A fiscal Recipient Capability Assessment may be required with the potential awardee, prior or post award, in order to review their business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

At the completion of two years of funding, recipients will be expected to share printed, and possibly, electronic copies of the revised intervention packages with representatives of the agencies that implemented the intervention for the program's case studies, with CDC project officers, and with the intervention's developers, if different from the applicant.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 and 317(k) of the Public Health Service Act, (42 U.S.C. 24 and 247b(k), as amended]. The Catalog of Federal Domestic Assistance number is 93.941.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Lynn Mercer, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. *Telephone number:* 770–488–2810. *Email address: lzm2@cdc.gov.*

For program technical assistance, contact: Craig Studer, Division of HIV/AIDS Prevention, National Center for HIV/STD/TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, Mailstop E–37, Atlanta, GA 30333. *Telephone number:* 404–639–5389. *E-mail address: ccs1@cdc.gov.*

Dated: May 4, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–11565 Filed 5–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 2072]

Multi-Level Parent Training Effectiveness Trial; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement or grant program for a Multi-level Parent Training Effectiveness Trial to test the implementation of a culturally sensitive and responsive parenting program to prevent child maltreatment, specifically child physical abuse and neglect. This program addresses the "Healthy People 2010" focus area of injury and violence prevention.

The purpose of this program is to examine the effectiveness of a multi-level parent training program for families with children ages six and younger. The research trial will test the effectiveness of a multi-level intervention program that promotes positive parenting strategies in order to prevent child maltreatment. As an effectiveness trial, the program is required to examine the broad implementation of interventions with demonstrated efficacy rather than to test the efficacy of new interventions. The program must examine effects both with the individuals directly involved in the interventions, and the larger community in which the intervention program is implemented.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control: Reduce the risk of child maltreatment.

Methodology

This cooperative agreement seeks methodologically rigorous proposals rigorous designs and direct measures of outcomes with extended follow up. Rigorous designs could include experimental designs in which families, communities, or other units are randomly assigned to the intervention group (with level to be determined by assessment) and control or comparison groups, or strong quasi-experimental designs in which families, communities, or other units are matched appropriately. Minimally, applicants are required to justify their use of the research design chosen, and should discuss the merits of the design with respect to attributing changes in behavior to the interventions.

Minimally, applicants are required to conduct measurement pre and post-intervention, and one year after the intervention for intervention and control/comparison group. Repeated measurement should be considered. Measures may require sampling both the individuals directly involved in the intervention, and a larger community sample in order to examine community-wide effects of the intervention program. For example, assessing a community-wide media campaign would require community sampling to measures exposure and impact.

Applicants must include measures of both the positive parenting strategies the interventions seek to change and measures of child maltreatment. Direct measures of parenting strategies (*i.e.,* behavioral observations) utilizing methods such as time sampling or interval recording are required, as are child maltreatment incident reports to measure program effects on child maltreatment. Standardized, validated

indirect measures of parenting and child outcomes are also required (*e.g.,* ECBI, CBCL, PPI, PSI), along with proxy measures for child maltreatment (*e.g.,* CAPI). Finally, measures of social validity (Wolf, 1978) should be used to assess participant reaction to the goals, process, and outcomes of the interventions. Additional measures may of course be included at the applicant's discretion.

Applicants are required to clearly state plans to ensure intervention fidelity. Specifically, applicants must describe plans for ensuring that the curriculum is implemented as it has been designed. Applicants should also describe plans to assess whether staff have been successfully trained (*i.e.,* Can staff demonstrate intervention delivery?) and whether parents have been successfully trained (*i.e.,* Can parents demonstrate the parenting skills taught?). Intervention programs that have certification for those trained to deliver the intervention are preferred.

B. Eligible Applicants

Maximum Competition

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit organizations, community-based organizations, faith-based organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian Tribal Governments, Indian Tribes, or Indian Tribal Organizations.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $1.5 million is available in FY 2002 to fund one award. It is expected that the award will begin on or about September 30, 2002, and will be made for a 12 month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

(a) Design and conduct research to address the described goals of this cooperative agreement. This may include formative research or pilot work.

(b) Collaborate with CDC in the development of the human subjects protocol for the CDC Institutional Review Board (IRB), implementation and evaluation of project delivery.

(c) Collaborate with CDC to write and disseminate reports of research activities to regional, state, and local partners.

(d) Obtain approval of the study protocol by the recipient's local IRB.

(e) Collaborate with CDC to analyze data, perform cost analyses, and publish findings in peer-reviewed journals.

2. CDC Activities

(a) Provide scientific and technical assistance for the design and implementation of this research.

(b) Collaborate with the grantee in the development of a research protocol for IRB review by all collaborating institutions. The CDC's IRB will review the protocol initially and on an annual basis until the project is complete.

(c) Collaborate with the grantee in ensuring human subjects assurances are in place as needed.

(d) Participate in the analysis and dissemination of study findings.

(e) Monitor and evaluate the scientific and operational accomplishments of the project through conference calls, site visits, and review of technical reports.

(f) Provide cost analyses of the design and implementation of this research.

E. Content

Letter of Intent (LOI)

A LOI is optional for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than two double spaced pages, printed on one side, with one inch margins, and unreduced font. The letter should identify the name of the principal investigator and briefly describe the scope and intent of the proposed research work. The letter of intent does not influence review or funding decisions, but the number of letters received will enable CDC to plan the review more effectively and efficiently.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 40 double spaced pages, printed on one side, with one inch margins, and unreduced font. The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and a detailed Itemized Budget.

F. Submission and Deadline

Letter of Intent (LOI)

On or before June 1, 2002, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) and adhere to the instructions on the Errata Instruction Sheet for PHS 398. Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.* Application forms must be submitted in the following order:

Cover Letter, Table of Contents, Application, Budget Information Form, Budget Justification, Checklist, Assurances, Certifications, Disclosure Form, Human Subjects Certification, Indirect Cost Rate Agreement, Narrative

On or before 5 pm Eastern Time June 24, 2002, submit the application to the Technical Information Management Section: 2920 Brandywine Road, Suite, 3000, Atlanta, Georgia 30341.

Deadline: Applications shall be considered as meeting the deadline if they are received before 5 pm Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to the following (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the

application as having been received by the deadline.

Applications which do not meet the criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

G. Evaluation Criteria

Applicants are required to provide Measures of Effectiveness (*i.e.*, rigorous designs and direct measures of outcomes with extended follow-up). Rigorous designs could include experimental designs in which families, communities, or other units are randomly assigned tot he intervention group (with level to be determined by assessment) and control or comparison groups, or strong quasi-experimental designs in which families, communities, or other units are matched appropriately. Measures of Effectiveness must relate to the National Center for Injury Prevention and Control performance goal of reducing the risk of child maltreatment.

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the Eligible Applicants Section (Items 1–5). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Applications which are complete and responsive may be subjected to a preliminary evaluation (triage) by a peer review committee, the Injury Research Grant Review Committee (IRGRC), to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC; CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

Competitive supplemental grant awards may be made if end of fiscal year funds are available, to support research work or activities not previously approved by the IRGRC. Competitive supplement applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the secondary review group.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee IRGRC, recommendations by the secondary review committee Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the IRGRC. All applications will be reviewed for scientific merit using current National Institutes of Health (NIH) criteria to evaluate the methods and scientific quality of the application. Factors to be considered will include:

(a) *Significance.* Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

(b) *Approach.* Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

(c) *Innovation.* Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

(d) *Investigator.* Is the principal investigator appropriately trained and well-suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator and other significant investigator participants? Is there a prior history of conducting injury-related research?

(e) *Environment.* Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

(f) *Ethical Issues.* What provisions have been made for the protection of human subjects and the safety of the research environments? How does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, *e.g.*, suspected child abuse? Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (An application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

(g) *Study Samples.* Are the samples sufficiently rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

(h) *Dissemination.* What plans have been articulated for disseminating findings?

(i) *Measures of Effectiveness.* The Peer Review Panel shall assure that measures set forth in the application are in accordance with CDC's performance plans (*See* attachment 4). How adequately has the applicant addressed these measures?

The IRGRC will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the Science and Program Review Committee (SPRS) from the ACIPC. The ACIPC Federal ex officio members will be invited to attend the secondary review and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). Federal ex officio members will be encouraged to participate in deliberations when

applications address overlapping areas of research interest so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the Federal ex officio members to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as the factors that the SPRS considered.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally funded research does not occur. The Secondary Review Committee has the latitude to recommend to the NCIPC Director, to reach over better ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

(a) The results of the primary review including the application's priority score as the primary factor in the selection process.

(b) The relevance and balance of proposed research relative to the NCIPC programs and priorities.

(c) The significance of the proposed activities in relation to the priorities delineated in the National Research Agenda.

(d) Budgetary considerations.

3. Continued Funding

Continuation awards made after FY 2002, but within the project period, will be made on the basis of the availability of funds and the following criteria:

(a) The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual work plan and satisfactory progress demonstrated through presentations at work-in-progress monitoring workshops.

(b) The objectives for the new budget period are realistic, specific, and measurable.

(c) The methods described will clearly lead to achievement of these objectives.

(d) The evaluation plan will allow management to monitor whether the methods are effective.

(e) The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

H. Other Requirements

Technical Reporting Requirements Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the identified objectives of the cooperative agreement. Measures must be objective/quantitative, and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Provide CDC with original plus two copies of

1. Semiannual progress reports.
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirements
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–6 Patient Care
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status
AR–16 Security Clearance Requirement
AR–17 Peer and Technical Reviews of Final Reports of Health Studies—ATSDR
AR–18 Cost Recovery—ATSDR
AR–19 Third Party Agreements—ATSDR
AR–20 Conference Support
AR–21 Small, Minority, Women-Owned Businesses
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301, 317, and 391–394 of the Public Health Service Act, [42 U.S.C. sections 241, 247b, and 280b–280b–3], as amended. The Catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Angie N. Nation, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. Telephone number (770) 488–2719.

e-mail address: *aen4@cdc.gov*.

For program technical assistance, contact:

Daniel Whitaker, Behavioral Scientist, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway, NE., (K–60), Atlanta, GA 30341–3724. Telephone number: (770) 488–4267. e-mail address: *dwhitaker@cdc.gov*.

Dated: May 3, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–11559 Filed 5–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02151]

A Research Study to Assess Multifaceted Fall Prevention Intervention Strategies Among Community-Dwelling Older Adults; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year FY 2002 funds for a cooperative agreement for a Research Study to Assess Multifaceted Fall Prevention Intervention Strategies Among Community-Dwelling Older Adults. This Program Announcement addresses the "Healthy People 2010" focus area, Injury and Violence Prevention. A copy of "Healthy People 2010" is available at the following Internet site: *http://www.health.gov/healthypeople.*

The purpose of this funding is to develop and implement scientifically-based multifaceted fall prevention strategies and evaluate their effectiveness in community settings. This program is intended to stimulate collaborative research by creating a community planning infrastructure in which State Health Departments, aging services and researchers partner with, for example, community groups, aging centers, health care providers, clinicians, and social service agencies to develop, implement, and evaluate comprehensive community-based fall prevention strategies. This announcement seeks to support cross-disciplinary, multi-level research that will enhance the capacity of communities to deliver comprehensive multifactorial interventions. To accomplish this, applicants will need to develop model service delivery infrastructures that include partnerships between public health agencies and networks that serve the aging community to implement the study.

In addition to developing and evaluating scientifically-based comprehensive fall-prevention strategies, it would be useful to understand the barriers to conducting research that involves collaborative efforts across agencies and among multiple partners, as well as the barriers to implementing community-based fall prevention interventions.

Measurable outcomes of this research study will be in alignment with the following performance goals for the National Center for Injury Prevention and Control (NCIPC), described as a priority area in the NCIPC Research Agenda: to develop, evaluate, and study the dissemination of community-based interventions to prevent falls among older community-dwelling adults.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, managed care organizations and other public and private nonprofit organizations, community-based organizations, faith-based organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Other required eligibility criteria include the following:

1. The recipient must provide evidence of effective and well defined collaborative relationships within the performing organization and with community partners that will ensure implementation of the proposed activities. The collaboration must include at least a State Health Department, an academic institution and an aging services agency. The applicant must include documentation, such as letters of support, that describes the specific commitments and responsibilities that will be undertaken by the collaborating organizations.

2. The recipient must provide evidence of prior experience in designing, conducting, and analyzing multifaceted fall prevention studies among older adults and evidence of prior experience with randomized controlled trials. In addition, the recipient must provide evidence of access to a population of non-institutionalized seniors and experience with accessing and linking appropriate community level data with clinical, medical, pharmacy and falls data. The applicant must include documentation such as publications from peer reviewed journals.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

C. Availability of Funds

Approximately $750,000 will be available in FY 2002 to fund one award. It is expected that the award will begin on or about September 30, 2002 and will be made for a 12 month budget period within a project period of up to three years, in two phases. Funding estimates may change.

Phase I, conducted during the first year, will be dedicated to identifying and building community infrastructures, to assessing community readiness and developing partnerships, building capacity, identifying, accessing and linking data, and designing appropriate interventions to be implemented during Phase II. At the end of Phase I, noncompetitive continuation funding will be available for Phase II, contingent upon successful progress in Phase I, approval of an appropriate research design including acceptable fall prevention strategies, and detailed plans and budget for implementing and evaluating the community-wide fall prevention interventions. Phase II, conducted during years two to three, will be dedicated to implementing and evaluating the comprehensive community-based interventions.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

Overall Study Objectives

1. Develop strategies and establish mutually beneficial collaborations among state health departments, academics, and the community using a systems approach. Identify agencies and organizations with the infrastructure to support research-based interventions, the capabilities to develop linked electronic data bases, and a willingness to work together to establish local priorities and plan strategies to reduce falls and fall-related injuries in the community.

2. Design a randomized multifaceted fall prevention intervention study among functionally competent, community-dwelling adults aged 65 years or older. The interventions must include at least two components that address modifiable risk factors that have been shown scientifically in community settings to reduce falls among older persons (e.g., gait and strength training; exercise programs with balance training as one component; review and

modification of medications, especially psychotropic medications). In addition, interventions should include one or more components that are strongly associated with increased fall risk but have not been well studied in the community setting (e.g., identification and treatment of postural hypotension; vision screening and correction; and improved home lighting.) Community partners must be involved in selecting, developing, and implementing the intervention components.

3. The study would utilize a strong experimental or quasi-experimental research design (e.g., randomization, stratification) to identify the optimal type, duration and intensity of exercise for fall prevention while controlling for potential confounding factors within the study population, such as co-morbidities and functional limitations.

4. Outcome measures based on multi-year follow up should include frequency and severity of falls and fall-related injuries (collected monthly), adherence to and compliance with the various intervention components, medical care utilization, intervention effectiveness among both high and low risk populations, changes in fear of falling and self-efficacy, and the program's cost effectiveness.

5. Activities should be specifically designed to stimulate community ownership and investment in sustaining the program, if effective, beyond the funding period.

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities under "Recipient Activities," and CDC will be responsible for the activities listed under "CDC Activities."

Recipient Activities: (Phase I)

1. Develop a plan to determine community readiness and infrastructure to undertake fall prevention activities, how the community will be involved in decision making about the intervention design and components, and the approach that will be used to identify and assess the data and data linkage systems necessary to conduct and evaluate a falls prevention intervention.

2. Implement a plan for obtaining community input and building partner cooperation, assess community readiness, and identify mutually beneficial activities and linkages to a broad range of collaborators in the community. Develop and utilize a community advisory group consisting of a broad range of professionals, clients, older adults, care-givers, and providers to give the project ongoing guidance and direction.

3. Develop collaborative relationships with organizations, agencies and programs that serve older adults. Partnerships must include organizations that provide medical and/or health care services as well as maintain electronic data base records, and have access to community-dwelling older adults, such as geriatricians, injury control researchers, managed care organizations, and hospitals.

4. Identify the best formats and channels for delivering interventions to ensure acceptability and adoption by community-dwelling seniors.

5. Develop a research and evaluation plan for Phase II based on the results and activities from Phase I, including the rationale and specific components of the interventions, identification and recruitment of program and control groups including randomization procedures, intervention implementation methods, strategies for obtaining, managing, and analyzing data, and methods of controlling for co-morbidities and multiple risk factors. Develop tools to maximize recruitment and retention of older adults into the study.

6. Travel to Atlanta annually to present a briefing to NCIPC staff describing progress to date.

Recipient Activities: (Phase II)

1. Conduct a research study to address the objectives in Section A under "Purpose" by implementing and evaluating a randomized controlled study of multifaceted fall prevention interventions among community-dwelling adults aged 65 or older. Research is sought on strategies that combine both previously tested and effective approaches as well as promising components into comprehensive programs designed to reduce falls and fall risks.

2. Identify appropriate personnel for the project. Skills and experience of project personnel must include: (1) Experience implementing and managing theory-driven intervention studies; (2) experience working with older adults; (3) knowledge of falls, fall risk factors and prevention strategies; (4) knowledge of behavioral theory; (5) experience with medical data and data linkage; (6) expertise in analysis of complex data sets; (7) evaluation expertise; (8) experience in working with community-based organizations; and (9) experience in conducting participatory research.

3. Utilize collaborative relationships established during Phase I to accomplish the project goals.

4. Collaborate and obtain approval for the study design and methods from CDC Injury Center staff. Prepare and submit the approved study protocols to the CDC, institutional, and local IRB review board(s). Activities must be conducted in compliance with Protection of Human Subjects (45 CFR 46).

5. Establish procedures to maintain the rights and confidentiality of all study participants, including securing any assurances necessary to conduct research involving human subjects.

6. Conduct data management activities including data collection and data linkage. Data collection may include medical record reviews, telephone and in-person interviews, and process measures. Data management must include security of data, assurance of participant confidentially, data editing, quality control procedures, and data entry.

7. Analyze and disseminate results through reports, presentations, and publications.

8. If effective, broadly disseminate the program through established partnerships with community programs, health providers, and social services that serve older adults.

9. Travel to Atlanta annually to provide briefings to NCIPC staff describing study status and progress to date.

CDC Activities:

A cooperative agreement reflects an assistance relationship between the Federal Government and the recipient in which substantial programmatic involvement is anticipated about the scientific and/or technical management of this research during its performance. With this in mind, CDC will perform the following during Phases I and II:

1. Provide up-to-date scientific information, technical assistance, and guidance in the design and conduct of the research.

2. Provide technical assistance to awardees in developing data collection instruments and a centralized system for data management.

3. Review plans for intervention development and implementation.

4. Assist in developing a research protocol for annual Institutional Review Board (IRB) review by all cooperating institutions participating in the research study. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research study, including analyses, is completed.

5. Assist in ensuring human subjects assurances are in place as needed.

6. Provide technical assistance on intervention design, development and delivery, data collection methods, and data quality assurance.

7. Assist in analysis and dissemination of results including the preparation of manuscripts, as needed.

8. Monitor and evaluate the scientific and operational accomplishments of the project. This will be accomplished

through periodic site visits, telephone calls, electronic communication, technical reports and interim data analyses.

9. Convene meetings of recipients for the exchange of information.

E. Content

Letter of Intent (LOI)

A LOI is required for this program. The Program Announcement title and number must appear on the LOI. The narrative should be no more than three single-spaced pages, printed on one side, with one inch margins, and unreduced 12 point Times Roman (or equivalent size) font. Your LOI will be used to prepare for the special emphasis panel (SEP) that will review the scientific merit of the applications, and should include the following information: Program Announcement Number 02151; name and address of institution; name and telephone number of a contact person; specific objectives to be addressed by the proposed project; and a brief description of project plans.

Applications

The Program Announcement title and number must appear in the application. Use the information in the "Program Requirements," "Other Requirements," and "Evaluation Criteria" sections to develop the application content. Your application will be evaluated on the criteria listed so it is important to address each, preferably in order, with sufficient detail. Applicants may submit only one proposal.

The narrative should be no more than 25 (8½" x 11") double-spaced pages, printed on one side, with one inch margins on four sides, unreduced 12 point Times Roman (or equivalent size) font, and a page number at the bottom of each page. The narrative should consist of, at a minimum, Aims and Background, Goals and Objectives, Research Design and Methods, Collaborations, Community Capacity, and Budget.

Applications with more than 25 pages will be returned and not reviewed. Please provide only attachments or appendices that are directly relevant to this request for funding. Include sample forms and data collection instruments. The budget and attachments/appendices, including letters of support, are not included in the count for the 25 page limit. All pages, including appendices, should be numbered sequentially. To document eligibility, the narrative must contain the following sections in the order presented below:

1. Abstract (1 page recommended):

Provide a brief abstract of the project. The abstract must reflect the project's focus and the length of the project period (maximum of (3) years) for which assistance is being requested (see "Availability of Funds" for additional information).

2. Specific Aims and Background (3–5 pages recommended):

List the aims and the specific research questions this application is intended to address. Briefly sketch the background leading to the present study. Provide background information to document the capacity to accomplish this study as demonstrated by relevant past or current research studies in injury prevention.

3. Goals and Objectives (3–5 pages recommended):

Provide information to support the scientific basis for the present proposal, the theoretical or conceptual framework based on a critical evaluation of existing knowledge about fall risk factors and intervention strategies, the hypotheses to be tested, the specific goals of the research study (including measurable objectives for each of these goals), and the project time-line.

4. Research Design and Methods (10–15 pages recommended):

a. Describe the research design and the procedures to be used to accomplish the specific aims of the study.

b. Describe the intervention development process, content and delivery, including specific intervention protocols or plans for the development of intervention protocols.

c. Describe the identification, recruitment, and retention of community-dwelling older adults.

d. Describe how data will be collected. Provide power calculations to justify the sample size(s) and anticipated effect size(s). Describe data quality assurance plans.

e. Describe the measures that will be used to evaluate the impact of the various interventions including functional, behavioral, and biological measures. Outcomes should include the following: (1) Morbidity outcomes (e.g., fall and fall injury rates), (2) functional outcomes (e.g., changes in balance and strength, (3) behavioral changes (e.g., changes in numbers or types of medications, corrections in vision, changes in home lighting), (4) social cognitive outcomes (e.g., changes in fear of falling and self-efficacy), and (5) cost-benefits estimates.

f. Describe the data analysis plan including a justification for the statistical techniques chosen to analyze these data.

g. Provide a detailed time-line for the first year of the study as well as a projected time-line for the subsequent two years.

h. Describe the nature and extent of collaboration with CDC and/or others during various phases of the project.

5. Collaborations (3–5 pages):

Describe the proposed personnel and collaborative activities needed to accomplish the proposed activities including existing community partnerships. Personnel should include a range of disciplines and may include (but are not limited to) university scientists, medical and/or health care providers, injury control researchers, professional organizations, and staff from participating community-based organizations. The combined members of the research team must provide evidence of expertise in analytic research and evaluation, and familiarity with and success in providing services to older adults.

6. Community Capacity (6–8 pages):

Provide evidence of effective and well defined working relationships within and between the performing organization and community partners. The applicant should describe their experience in developing community partnerships and the existing and proposed network collaborations as well as the community's current and anticipated capacity to disseminate multi-level intervention programs.

Provide evidence of the availability of appropriate scientific oversight necessary to fulfill research study and intervention implementation objectives. These will include development, implementation, evaluation of the intervention, recruitment and retention of participants, and collection and management of project related data, and experience in delivering behavioral and/or community level interventions. Evidence of the experience and capacity of the project team should include an attachment with curriculum vitaes and position descriptions for all key staff.

7. Human Subject Involvement:

Describe procedures that will provide for the protection of human subjects. Address how these procedures adequately address the requirements of 45 CFR 46 for the protection of human subjects.

8. Inclusion of Women and Racial and Ethnic Populations:

Describe the proposed plan for the inclusion of both sexes and racial and ethnic minority populations. Describe the proposed justification when representation is limited or absent. Include a statement as to whether the design of the study is adequate to measure differences when warranted.

F. Submission and Deadline

Letter of Intent (LOI)

On or before June 1, 2002, submit the LOI, on the applicant's letterhead, to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
Human Subjects Certification
Indirect Cost Rate Agreement
Narrative

On or before 5 p.m. Eastern Time June 24, 2002, submit the application to:

Technical Information Management–PA02151, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadline: Letters of Intent and applications will be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

G. Evaluation Criteria

Applications

CDC staff will review the application first for eligibility, responsiveness to the purpose of this program announcement (as described in Section A) and completeness as outlined under "Eligible Applicants" and "Program Requirements." Applications from ineligible entities as well as incomplete and nonresponsive applications will be returned to the applicant without further consideration. It is important that the applicant's abstract reflects the project's focus because the abstract will be used to help determine the responsiveness of the application.

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of Effectiveness must relate to the performance goals as stated in Section A "Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness will be submitted with the application and will be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Aims and Background (10 percent)

Aims of this study and the specific research questions this application is intended to address. Background information that demonstrates the applicant's knowledge of the field and capacity to carry out the study including relevant past or current injury prevention research activities.

2. Goals and Objectives (20 percent):

Information that forms the basis for the present proposal, the theoretical or conceptual framework based on a critical review of existing knowledge about fall risk factors and intervention strategies, the hypotheses to be tested, the specific goals of the research study (including measurable objectives for each of these goals), and the project time-line.

3. Research Design and Methods (35 percent):

a. The adequacy of the proposed research design and procedures to be used to accomplish the specific aims of the study including justifiable sample sizes.

b. The plans for the development of the interventions, including methods for obtaining community input and assessing community readiness, and how these data will be used in the development, content and delivery of specific interventions.

c. How target and control populations will be selected and how they will be accessed, recruited and retained.

d. The plans for data collection and data management including security of data, assurance of participant confidentially, data entry, editing, and quality assurance procedures.

e. Evaluation of the study and the measurable outcomes to be used to evaluate the impact of the proposed interventions.

f. A statistical analysis plan appropriate for the study design and for evaluating the interventions.

g. A strategy to adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes the: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; and (3) a statement as to whether the design of the study is adequate to measure differences when warranted.

4. Collaborations (15 percent):

The qualifications and appropriateness of the proposed personnel. The experience and capacity of the project team to accomplish the proposed activities and to provide appropriate scientific oversight necessary to fulfill research study and intervention dissemination objectives. The inclusion of multidisciplinary teams including (but not limited to) State health departments or agencies, university scientists, aging services agencies, medical and/or health care providers, injury control research centers, professional organizations, and staff from community-based organizations.

5. Community Capacity (20 percent):

Experience in developing community partnerships, evidence of community expertise with strong existing and proposed network collaborations, effective and well defined working relationships within and between the performing organization and other partners, and evidence of community capacity to promote and disseminate multi-level intervention programs using a variety of approaches including education and media support.

6. Human Subjects (Not scored):

Restate the strategies for the recruitment and retention of human subjects and how the applicant will obtain appropriate consent when necessary. Are the procedures proposed adequate for the protection of human subjects and are they fully documented? Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? (Not scored: however, an application can be disapproved if the research risks are sufficiently serious and protection

against risks is so inadequate as to make the entire application unacceptable.)

7. Budget (Not scored):

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds. All budget categories should be itemized and appropriately justified.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports (The progress report will include a data requirement that demonstrates measures of effectiveness.)

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment II of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition of Use Certain Gun Control Act.
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status
AR–21 Small, Minority, And Women-owned Business
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 317 and 301 of the Public Health Service Act, (42 U.S.C. 241 and 247b) and CFR part 51b. The Catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address, *http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

For business management technical assistance, contact: Nancy Pillar, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. Telephone number: 770–488–2721 e-mail address: *nfp6@cdc.gov.*

For program technical assistance, contact: Judy Stevens, Ph.D., Technical Adviser, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway NE., MS K–63, Atlanta, GA 30341–3724, Telephone number: (770) 488–4649 e-mail address: *JAS2@cdc.gov.*

Dated: May 3, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–11555 Filed 5–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement Number 02128]

Targeted Injury Intervention Programs; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC), National Centers for Injury Prevention and Control (NCIPC), announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement for Targeted Injury Intervention Programs. This program addresses the "Healthy People 2010" focus areas for Injury and Violence Prevention.

The purpose of this program is to strengthen and support the capacity of state injury programs by awarding funds for targeted injury intervention activities to States which demonstrate an existing capacity to access and analyze current state injury data and to design, develop, and implement a targeted injury prevention program of high public health importance in the state.

The goal of this program is to support State public health agencies in developing their capacity to implement effective, comprehensive injury prevention programs, including both unintentional injury and violence prevention components.

B. Eligible Applicants

Assistance will be provided only to the official public health agencies of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

C. Availability of Funds

Approximately $1.2 million is available in FY 2002 to fund approximately three to four awards. It is expected that the average award will be $300,000, ranging from $275,000 to $350,000. It is expected that the awards will begin on or about September 30, 2002 and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may vary and are subject to change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Pre-Application Conference Call: In addition, for interested applicants, a telephone conference call for a pre-application Injury technical assistance workshop will be held on Friday, June 14, 2002, from 1:30 pm to 2:30 pm, Eastern Standard Time. The conference name is "Pre Application Grant Workshop", the bridge number for the conference call is 1–800–713–1971, and the conference code is #52104. If you have a problem during your conference, you may press *0 at anytime to signal the attendant.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under 1 (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Select an injury (unintentional or violence) topic or area for intervention based on identified priorities which have been established by the State's current Injury Prevention Plan (or similar consensus document which provides a framework for existing data-driven action to reduce the burden of injury in the state).

b. Develop, enhance, or provide evidence of a current detailed targeted intervention plan focused specifically on the priority topic or area of injury identified by the State Injury Prevention

Plan (or similar document) identified in a, above.

c. Utilize, for implementation, intervention activities which are based on proven or very promising approaches as documented in the scientific literature (i.e., evidence based intervention activities).

d. Assess the State public health agency's injury infrastructure and capacity and determine key staff, expertise, and associated resources needed to coordinate and implement the targeted intervention plan described above. Determine how the addition of these staff and their activities will best further creation and operation of a comprehensive State injury program.

e. Build new and enhance existing partnerships by identifying and inviting potential key private, professional, voluntary, and non-profit injury prevention organizations, policymakers, consumers, payers, media, state, and Federal agencies, surveillance agencies, research and academic institutions, and others to become members of a new or existing state injury prevention and control coalition. Focus the partnerships on supporting and enhancing the targeted intervention plan's activities. States with existing injury advisory committees might wish to build upon these to form their coalitions, while still maintaining an active focus on development of a comprehensive injury prevention program.

f. Enhance and build new linkages among existing state-based surveillance systems and other data sources to refine and evaluate targeted intervention activities and to further develop comprehensive injury prevention activities.

g. Conduct systematic evaluation of the targeted intervention activities; develop performance indicators to use as benchmarks for improvement and to determine the impact of the targeted intervention activities; determine how conducting these targeted intervention activities impacts the State's ability to develop a comprehensive injury prevention program.

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant/cooperative agreement. Measures must be objective/quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

2. CDC Activities

a. Assist with the exchange of information and collaboration among recipients.

b. Provide to recipients relevant, state of the art, research findings and public health recommendations related to comprehensive injury control.

c. Provide ongoing guidance, consultation, and technical assistance in conducting Recipient Activities.

d. Assist with identifying and developing national injury prevention and control campaigns and materials that can be integrated into comprehensive injury control programs.

E. Content

Application

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 30 double-spaced pages, printed on one side, with one inch margins, and unreduced 12 point Courier Font. Number each page consecutively and provide a complete Table of Contents. The total number of pages should not exceed 50 pages including the appendix. All materials must be provided in an unbound, one-sided, 8.5 x 11 inch pages, suitable for photocopying.

F. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

On or before 5 pm Eastern Standard Time on June 24, 2002, submit the application to:

Technical Information Management-PA02128,
Procurement and Grants Office,
Centers for Disease Control and Prevention,
2920 Brandywine Rd., Room 3000,
Atlanta, GA 30341–4146.

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Forms
HIV Assurance Form
Human Subject Certification
Indirect Cost Rate Agreement
Narrative

G. Evaluation Criteria

Application

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need (15 points)

a. The extent to which the applicant submits a State Injury Prevention Plan or similar consensus document which is up to date and which includes:

(1) An assessment and prioritization of the injury burden (both unintentional injury and violence) in the State using population-based data.

(2) Short-term and long-term goals and objectives that address a range of injury issues based on identified needs.

(3) An inventory assessment of existing and needed resources to implement specific injury intervention programs.

(4) Evidence that the plan was developed as part of a collaborative process with other state governmental and non-governmental agencies.

2. Targeted Intervention Plan (25 points)

a. The extent to which the applicant describes design and development of a specific injury prevention intervention activity or set of activities that focuses on a priority area of injury identified in the State Injury Prevention Plan (*e.g.* motor vehicle injuries, bicycle head injuries, youth violence or suicide prevention, *etc.*)

b. The extent to which proposed targeted intervention activities are based on evidence documented in the scientific literature and on the activities' potential impact in reducing the targeted unintentional injury or violence in the State.

c. The extent to which the injury problem chosen for intervention is based on the relative magnitude of the problem (*i.e.,* in comparison with other causes of injuries in the state and relative to national rates.)

d. The extent to which the applicant describes how injury surveillance data will be used in the context of the targeted intervention activities; the extent to which the applicant documents a process for updating or modifying the surveillance system as new needs are identified; the extent to which the description shows evidence that existing surveillance systems enable the injury program to: collect population-based information on the demographics and incidence of relevant injury morbidity and mortality; identify segments of the population who are at risk for the selected injury; identify factors contributing to the burden of this

particular injury; and, when appropriate, monitor the number and characteristics of people served by relevant targeted intervention activities.

3. Collaborative Partnerships and Community Involvement (10 Points)

a. The extent to which evidence is presented which demonstrates the breadth and appropriateness of (1) existing linkages within and outside the State public health agency to coordinate diverse injury control activities, and (2) the current or proposed broad-based State collaborative partnership to advise and/or support a state injury advisory committee on state injury implementation activities.

b. The extent to which the applicant demonstrates that it will be able to mobilize support for the targeted intervention activities among the public and private sectors, including target communities.

c. The extent to which the applicant provides evidence it will enhance and build new linkages among partners to support existing and new surveillance systems to refine and evaluate targeted intervention activities and to further develop comprehensive injury prevention activities.

4. Methods and Staffing (30 points)

a. The extent to which the applicant includes goals which are relevant to the targeted intervention in the proposed injury area and feasible to accomplish during the project period.

b. The extent to which the applicant describes long and short term objectives which are specific, measurable, attainable, and realistic and which are time-framed process and outcome objectives designed to accomplish all activities of the targeted injury intervention(s).

c. The extent to which the applicant provides a program logic model that identifies and relates the critical elements of the targeted intervention activities with intended outcomes (*e.g.*, inputs, activities, outputs, intermediate and longer term outcomes).

d. The extent to which the applicant provides a detailed framework for implementation of the targeted intervention plan that shows specific intervention activities beginning not later than the latter part of year 1 and that includes a description of expected inputs, resources, and activities (with time lines and organizations/persons responsible and proposed level of effort).

e. The extent to which the applicant provides: (1) A detailed description of how staffing resources (including programmatic, epidemiological and evaluation resources) will be allocated for each activity, and which includes designation of a coordinator with responsibility for coordinating the targeted intervention plan's activities; (2) a reasonable and complete schedule for implementing and completing all activities; and (3) evidence of access or assignment of epidemiological expertise for performing routine data review and analysis activities.

5. Evaluation (20 Points)

a. The extent to which the applicant describes an evaluation plan which includes questions and methods for assessing the targeted intervention's implementation, impact, costs, and the linkage between the targeted intervention activities and the intended outcomes. In addition, since these targeted intervention activities are intended to expand existing capacities in the state to prevent injuries, the extent to which evaluation questions and methods addressing this have been proposed.

b. The extent to which a feasible plan for: assuring the targeted intervention plan is being implemented as designed (*i.e.*, what measure or indicators will be in place to monitor progress and fidelity of implementation); assessing the level of effort that may include developing guidance documents, training, intensity (how much and how often), reach, *etc.* and assessing program outputs and outcomes (intended/unintended, positive/negative) are included.

c. The extent to which the applicant describes data sources and linkages for evaluation purposes and methods to evaluate the data sources, and documents staff availability, expertise, experience, and capacity to perform the evaluation.

d. The extent to which the applicant describes a method for documenting lessons learned, including barriers (anticipated and unanticipated) and recommended changes or other considerations in future similar injury and violence prevention activities.

e. The extent the applicant provides a plan for collecting information related to costs associated with the project, including costs funded by the cooperative agreement, other sources, in-kind and donated (*e.g.*, volunteer) and which include: personnel time (type, amount and hours per activity); equipment and materials; facilities; and any client inputs.

f. The extent to which the applicant provides a plan for describing increased capacities within the state and/or the state public health agency as a result of this project.

g. The extent to which the applicant provides a plan for reporting information on intervention implementation and evaluation results.

6. Budget and Justification (Not Scored)

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned injury prevention program activities and includes an out of state travel budget for two state participants to attend an annual CDC grantees meeting in Atlanta, Georgia.

The Objective Review Panel shall assure that measures set forth in the application are in accordance with CDC's performance plans.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports.
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.
4. The results of the Measures of Effectiveness shall be a data requirement to be submitted with or incorporated into the periodic progress reports.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
AR–14 Accounting System Requirements
AR–16 Security Clearance Requirement

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 (a) and 317k (2) (42 U.S.C. 241(a) and 247b (2)) of the Public Health

Service Act, The Catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Nancy Pillar, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. Telephone number 770–488–2721. e-mail address: *nfp6@cdc.gov.*

For program technical assistance, contact: John Hemphill, Project Officer, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, Division of Injury Disability Outcomes and Programs, 4770 Buford Highway, NE, Mailstop KO2, Atlanta, GA 30341–3724. Telephone (770) 488–1285.

Dated: May 4, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–11563 Filed 5–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02123]

Parenting Program Attrition and Compliance Efficacy Trial; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announce the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for a Parenting Program Attrition and Compliance Efficacy Trial. This program addresses the "Healthy People 2010" focus area: Injury and Violence Prevention.

The purpose of the program is to test strategies and techniques for reducing attrition and enhancing compliance with extant parenting programs for the prevention of child maltreatment. At a minimum, competitive applicants must have previously demonstrated program efficacy or effectiveness in enhancing family functioning and reducing child maltreatment. The project should examine rigorous tests of specific interventions focused on enhancing participation and participant compliance in existing efficacious or effective parenting programs.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control: Reduce the risk of child maltreatment.

B. Eligible Applicants

Applications may be submitted by public and private non-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private non-profit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian Tribal governments, Indian Tribes, or Indian Tribal Organizations.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $400,000 is available in FY 2002 to fund one to two awards. It is expected that the average award will be $200,000, ranging from $200,000 to $400,000. It is expected that the award will begin on or about September 30, 2002 and will be made for a 12 month budget period within a project period of up four years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

(a) Design and conduct research to address the described goals of this cooperative agreement. This may include, formative research or pilot work.

(b) Collaborate with CDC in the development of the human subjects protocol for the CDC Institutional Review Board (IRB), implementation and evaluation of project delivery.

(c) Collaborate with CDC to write and disseminate reports of research activities to regional, state, and local partners.

(d) Obtain approval of the study protocol by the recipient's local IRB.

(e) Collaborate with CDC to analyze data, perform cost analyses, and publish findings in peer-reviewed journals.

2. CDC Activities

(a) Provide scientific and technical assistance for the design and implementation of this research.

(b) Collaborate with the grantee in the development of a research protocol for IRB review by all collaborating institutions. The CDC's IRB will review the protocol initially and on an annual basis until the project is complete.

(c) Collaborate with the grantee to ensure human subjects assurances are in place as needed.

(d) Participate in the analysis and dissemination of study findings.

(e) Monitor and evaluate the scientific and operational accomplishments of the project through conference calls, site visits, and review of technical reports.

(f) Provide cost analyses of the design and implementation of this research.

E. Content

Letter of Intent (LOI)

A LOI is optional for this program. The program announcement title and number must appear in the LOI. The narrative should be no more than two pages, double spaced, printed on one side, with one inch margins, and unreduced font. Your letter of intent will be used to enable CDC to determine level of interests in the announcement.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

The narrative should be no more than 40 pages, double spaced, printed on one side, with one-inch margins, and unreduced fonts. The narrative should consist of, at a minimum, a Plan,

Objectives, Methods, Evaluation and Budget.

F. Submission and Deadline

Letter of Intent (LOI)

On or before June 1, 2002, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the application on or before June 24, 2002. Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application (PHS 398)
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable)
Narrative

On or before 5:00PM Eastern Time June 24, 2002, submit the application to the Technical Information Section, 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341.

Deadline: Letters of intent and applications shall be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

G. Evaluation Criteria

Applicants are required to provide Measures of Effectiveness (*i.e.,* rigorous designs and direct measures of outcomes with extended follow-up). Rigorous designs could include experimental designs in which families, communities, or other units are randomly assigned to the intervention group (with level to be determined by assessment) and control or comparison groups, or strong quasi-experimental designs in which families, communities, or other units are matched appropriately. Measures of Effectiveness must relate to the National Center for Injury Prevention and Control performance goal of reducing the risk of child maltreatment.

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the Eligible Applicants Section (Items 1–5). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Applications which are complete and responsive may be subjected to a preliminary evaluation (triage) by a peer review committee, the Injury Research Grant Review Committee (IRGRC), to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC; CDC will withdraw from further consideration applications judged to be non-competitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

Competitive supplemental grant awards may be made if end of fiscal year funds are available, to support research work or activities not previously approved by the IRGRC. Competitive supplement applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the secondary review group.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee IRGRC, recommendations by the secondary review committee Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the IRGRC. All applications will be reviewed for scientific merit using current National Institutes of Health (NIH) criteria to evaluate the methods and scientific quality of the application. Factors to be considered will include:

a. *Significance:* Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

b. *Approach:* Are the conceptual framework, design, methods, and analyses adequately developed, well integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

c. *Innovation:* Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

d. *Investigator:* Is the principal investigator appropriately trained and well suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator and other significant investigator participants? Is there a prior history of conducting injury-related research?

e. *Environment:* Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

f. *Ethical Issues*: What provisions have been made for the protection of human subjects and the safety of the research environments? How does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, *e.g.,* suspected child abuse? Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (An application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.) The degree to which the applicant has met the CDC Policy requirements regarding the

inclusion of women, ethnic, and racial groups in the proposed research. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community or cummunities and recognition of mutual benefits.

g. *Study Samples*: Are the samples sufficiently rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

h. *Dissemination*: What plans have been articulated for disseminating findings?

i. *Measures of Effectiveness*: The peer Review panel shall assure that measures set forth in the application are in accordance with CDC's performance plans (*see* attachment 4). How adequately has the applicant addressed these measures?

The IRGRC will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the Science and Program Review Committee (SPRS) from the ACIPC. The ACIPC Federal *ex officio* members will be invited to attend the secondary review and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). Federal *ex officio* members will be encouraged to participate in deliberations when applications address overlapping areas of research interest so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the Federal *ex officio* members to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as the factors that the SPRS considered.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally-funded research does not occur. The Secondary Review Committee has the latitude to recommend to the NCIPC Director, to reach over better ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review, including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities delineated in the National Research Agenda.

d. Budgetary considerations.

3. Continued Funding

Continuation awards made after FY 2002, but within the project period, will be made on the basis of the availability of funds and the following criteria:

a. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual work plan and satisfactory progress demonstrated through presentations at work-in-progress monitoring workshops.

b. The objectives for the new budget period are realistic, specific and measurable.

c. The methods described will clearly lead to achievement of these objectives.

d. The evaluation plan will allow management to monitor whether the methods are effective.

e. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

H. Other Requirements

Measures of Effectiveness Requirements

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures must be objective/quantitative, and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Technical Reporting Requirements

Provide CDC with original plus one:

1. Semiannual progress reports

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, *see* Attachment II of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirements
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–6 Patient Care
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status
AR–16 Security Clearance Requirement
AR–17 Peer and Technical Reviews of Final Reports of Health Studies—ATSDR
AR–18 Cost Recovery—ATSDR
AR–19 Third Party Agreements—ATSDR
AR–20 Conference Support
AR–21 Small, Minority, Women-Owned Businesses
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301,317,and 391–394 of the

Public Health Service Act, (42 U.S.C. section 241, 247b, and 280b–280b–3), as amended. The Catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

For business management technical assistance, contact: Angie N. Nation, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. Telephone number: (770) 488–2719. E-mail address: *aen4@cdc.gov.*

For program technical assistance, contact: Linda Anne Valle, Behavioral Scientist, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway, NE.,(K–60), Atlanta, GA 30341–3724, Telephone number: (770) 488–4297. E-mail address: *adv2@cdc.gov.*

Dated: May 3, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Center for Disease Control and Prevention.

[FR Doc. 02–11561 Filed 5–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02088]

Prevention of Complications of Thalassemia; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for Prevention of Complications of Thalassemia. This program addresses the "Healthy People 2010" focus area(s) Access to Quality Health Services and Disability and Secondary Conditions.

The purpose of the program is to assist in: (1) Providing comprehensive healthcare services through a network of thalassemia treatment and prevention centers to prevent complications through assessment, surveillance, outreach, education, consultation, and management; (2) participating in blood safety monitoring and surveillance efforts; (3) maintaining a prevention evaluation network to assess the efficacy of prevention services; and (4) collaborating with lay organizations to deliver consistent prevention messages aimed at preventing complications.

Measurable outcomes of this program will be in alignment with one or more of the following performance goals for the National Center for Infectious Diseases (NCID):

1. Protect Americans from priority infectious diseases.

2. Apply scientific findings to prevent and control infectious diseases.

B. Eligible Applicants

Assistance will be provided only to specialized thalassemia treatment and prevention centers that provide comprehensive treatment and prevention services to patients with thalassemia.

A thalassemia treatment and prevention center is a specialty, prevention, diagnostic and treatment program. Their goal is to provide family-centered, state-of-the-art medical and psycho-social evaluation and care, dental, educational, nutritional, genetic, research, and support services for individuals and families affected by thalassemia including beta thalassemia major, beta thalassemia intermedia, Hemoglobin H (Hb H) disease, Hb H Constant Spring or another variant.

Applicants must serve a minimum of 25 regularly transfused thalassemia patients (thalassemia major) and be able to demonstrate experience in providing multi-disciplinary treatment and prevention services to patients with thalassemia.

Note: Title II of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $1,000,000 is available in FY 2002 to fund approximately six awards. It is expected that the average award will be $150,000, ranging from $100,000 to $200,000. It is expected that the awards will begin on or about September 1, 2002, and will be made for a 12-month budget period within a project period of up to five years. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preference

Preference will be given to applicants with a minimum of 25 patients with severe forms of thalassemia who require chronic blood product transfusion therapy (thalassemia major).

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. The thalassemia treatment and prevention center applicant should develop and coordinate a plan in which a treatment center network within their catchment area would:

(1) Provide comprehensive prevention services to persons with thalassemia directed at attaining and measuring specific outcomes to prevent or reduce complications by using a multi-disciplinary team approach. The treatment center should work closely with other specialists and local health care providers to meet specific needs of persons with thalassemia to increase quality of life from birth throughout life. It should also assist individuals with the prevention and management of complications.

(2) Assess unmet needs and under-served populations. Participate in outreach efforts to identify patients who can benefit from treatment and prevention services and encourage patient participation in treatment center programs.

(3) Participate in development and implementation of CDC surveillance efforts (including the Thalassemia Universal Data Collection Program, investigations of sero-conversions, suspected blood-borne agents, and suspected bacterial contamination), other data collection and surveillance efforts by complying with federal and other required regulations, and offering programs to all active eligible patients to obtain informed consent or refusal.

(4) Identify any patients who have become infected with HIV or hepatitis A, B, C viruses (HAV, HBV, or HCV), new variant Creutzfeld-Jakob Disease (nvCJD), or bacterial contamination possibly as a result of contaminated blood products.

(5) Obtain appropriate assurances as required by the Office of Human Research Protections (OHRP), the Department of Health and Human Services (DHHS). Develop and maintain

strict policies on protecting the confidentiality of patients, and ensure the security of databases and other records through controlled access to areas with confidential information, database password protection, locking file cabinets, and other security features.

(6) Establish a mechanism for consumer input and involvement in planning, implementing, and assessing center prevention activities that include education and outreach by collaborating with local and national consumer organizations, or ad hoc consumer consultation committee.

b. If subcontracting with satellite centers, the applicant should develop appropriate management and evaluation systems to ensure that subcontractors implement the recipient activities of this program appropriately (as outlined in section "D. Program Requirements"), and comply with federal and other required regulations. The applicant should conduct program assessments, site visits, assist treatment centers with problem solving, assess local needs, and provide technical assistance when needed.

c. For all activities, develop and implement an evaluation plan which measures the effectiveness of the activities involved, and document lessons learned.

2. CDC Activities

a. Assist in determining priority areas and long term goals for prevention of complications of thalassemia as a collaborative effort. Encourage treatment and prevention centers to seek input from providers, Community Based Organizations (CBOs), and consumer representatives.

b. Provide consultation, scientific and technical assistance in planning, implementing, and evaluating activities to prevent the complications of thalassemia by using surveillance data to develop interventions and assess their effectiveness. Coordinate the development, implementation, and evaluation of prevention intervention protocols.

c. Assist in the analysis and reporting of aggregate clinical outcomes data, coordinate and consolidate the transfer of tabulated data, analyses, and conclusions among participating treatment and prevention centers, as needed.

d. Provide necessary follow-up and technical assistance, as needed, to treatment and prevention centers implementing changes or recommendations resulting from program evaluations, assessments, or activities required to meet federal and other regulations.

e. Provide technical assistance and coordinate routine annual testing of patient samples for HAV, HBV, HCV, HIV, and other clinically significant tests and reporting of results back to treatment centers. Provide technical assistance to designated laboratory for permanent storage of blood samples.

f. Collaborate with treatment centers and appropriate State or local health departments to investigate any suspected HIV, HAV, HBV, HCV seroconversions, nvCJD, bacterial contaminant or other reported potential blood borne agents.

g. Ensure that surveillance data systems developed through this program will adhere to the National Electronic Disease Surveillance System (NEDSS) Standards as they become available to increase the interoperability of systems and the exchange of data among the users of these systems.

h. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Content

Letter of Intent (LOI)

A LOI is optional for this program. The narrative should be no more than three single-spaced pages, printed on one side, with one inch margins, and unreduced font. Your letter of intent will be used to enable CDC to plan for the review, and should include the following information: (1) The program announcement number 02088, (2) name and address of institution, (3) name, address, and telephone number of a contact person. Notification can be provided by facsimile, postal mail, or electronic mail (e-mail).

Applications

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

The application should include:

1. Background, Unmet Need, and Capacity

Describe the need for blood safety monitoring, data collection, education, outreach, and treatment and prevention services and programs. Explain the basis for providing such programs, expected outcomes and the relevance to preventing complications among people with thalassemia. Describe applicant's experience in providing treatment and prevention services to this population and other activities related to, but not supported by, the cooperative agreement.

2. Objectives

Establish long-term (five year) and short-term (one year) objectives for programmatic plans. Objectives should be specific, measurable, time-phased and realistic.

3. Operational Plan

Describe the methods by which the objectives will be achieved, including their sequence. Address CDC policy requirements as described in the evaluation criteria.

4. Evaluation Plan

Describe the plans to monitor the progress of the program, as well as to evaluate the outcomes of the proposed activities.

5. Program Management

Describe the roles and responsibilities of all project staff in the proposed project, regardless of their funding source. The description should include their titles, qualifications, and experience, as well as the percentage of time each will devote to the project, and the portions of their salaries to be paid by the cooperative agreement.

6. Budget

A detailed first year's budget and budget justification for the cooperative agreement with projections for the next four additional years. Separate detailed budgets with line-item descriptive justifications should be submitted for each sub-grantee if requested. For each performance site (applicant and sub-grantees), include the name and address of the person and organization to receive the contract.

F. Submission and Deadline

Letter of Intent (LOI)

On or before June 15, 2002, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

On or before July 15, 2002, submit the application to: Technical Information Management-PA02088, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd., Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received on or before the deadline date.

Late: Applications which do not meet the criteria above will be returned to the applicant.

G. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal (or goals) as stated in section "A. Purpose" of this announcement.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and need (20 points)

The extent to which the applicant understands the needs, problems, objectives and complexities of the project. Rationale for selection of the targeted community and documentation of health needs and risk factors.

2. Objectives (15 points)

The degree to which the proposed objectives are clearly stated, realistic, time-phased, and related to the purpose of the project.

3. Operational Plan (Total 35 points)

a. The adequacy of the operational plans for carrying out the various initiatives involved in the project. (30 points)

b. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation. (2) The proposed justification when representation is limited or absent. (3) A statement as to whether the design of the study is adequate to measure differences when warranted. (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. (5 points)

4. Collaboration (10 points)

The extent of community sanction/liaison. Evidence of access to, interaction with, and participation of collaborative interactions among all project participants. Demonstration of effective communication channels among researchers.

5. Staff Qualifications (5 points)

The extent to which professional personnel proposed to be involved in this project are qualified, including evidence of past achievements appropriate to this project and capacity to fulfill program goals and objectives.

6. Evaluation Plan (10 points)

The quality and feasibility of the evaluation plan for the various initiatives involved in the project.

7. Measures of Effectiveness (5 points)

The extent to which the applicant provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. The extent to which the measures are objective/quantitative and adequately measure the intended outcome.

8. Human Subjects (Not Scored)

The extent to which the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects.

9. Budget (Not scored)

The extent to which the applicant provides justification for budget expenditures as well as appropriateness of activities proposed in their application.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Semiannual progress reports (the progress report will include a data requirement that demonstrates measures of effectiveness).

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement in the application kit.

AR–1 Human Subjects Requirements

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–7 Executive Order 12372 Review

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–15 Proof of Non-Profit Status

AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), and 317(k)(1) and 317(k)(2) of the Public Health Service Act, (42 U.S.C. sections 241(a), and 247b(k)(1) and 247(k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Merlin Williams, Grants Management Specialist, Acquisition and Assistance, Branch B, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, MS K75, Atlanta, GA 30341–4146.

Telephone Number: 770–488–2765.

E-mail Address: *mqw6@cdc.gov*.

For program technical assistance, contact: Sally O. Crudder, Acting Deputy Chief, Hematologic Diseases Branch, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, MS E64,Atlanta, GA 30333.

Telephone Number: 404–371–5270.

E-mail Address: *SCrudder@cdc.gov*.

Dated: May 4, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–11562 Filed 5–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement #02121]

New Investigator Awards for Unintentional, Violence, and Acute Care, Disability, and Rehabilitation-Related Prevention Research; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for an extramural grant program for new investigator awards in three research areas; unintentional injury prevention, violence-related injury prevention, and injury-related acute care and disability. This program addresses the "Healthy People 2010" focus areas of injury and violence prevention.

The purposes of this program are to:

1. Encourage researchers from a wide spectrum of disciplines such as public health, health care, medicine, criminal justice, and behavioral and social sciences to undertake research to prevent and control unintentional and violence-related injury and disability.

2. Support injury research by recent doctoral-level graduates or researchers who are redirecting their careers toward injury research.

3. Build the scientific base for the prevention and control of unintentional and violence-related injuries, disabilities, and deaths.

This program is designed to encourage qualified applicants who are beginning or redirecting their career to focus on injury-related research. The career development objectives of this program are to encourage scientists to develop independent research skills, and to gain experience in advanced methods and experimental approaches in injury-related research. This program is also intended to jump start the careers of researchers in injury prevention by providing support for pilot studies, enhancements to existing studies, or other studies that will serve as a foundation for a career in injury prevention. Applicants are encouraged to seek mentoring or collaboration with more senior level injury researchers in their proposed research.

Background and Significance

I. Unintentional Injury Prevention Research

For the purposes of this program announcement, unintentional injuries are defined as unintentional damage to the body resulting from acute exposure to thermal, mechanical, electrical, or chemical energy or from the absence of such essentials as heat or oxygen. Unintentional injuries continue to be a major public health problem. In 1999, nearly 98,000 people died in the United States as a result of unintentional injury. Someone dies in this country every six minutes from causes such as motor vehicle crashes, falls, poisonings, drownings, fires and burns, pedestrians struck, bicycle crashes, or suffocation. In addition to deaths, injuries also constitute a significant cause of both permanent and temporary disability. In 2000, unintentional injuries resulted in an estimated 29.1 million emergency department visits and millions more visits to physicians' offices. Although the greatest cost of injury is human suffering, the financial costs also are staggering: over 200 billion dollars a year for medical care, wage and productivity losses and employer costs in 1998.

II. Violence Related Injury Prevention Research

Deaths and injuries associated with interpersonal violence and suicidal behavior are also a major public health problem in the United States and around the world. In 1999, 46,000 people died from homicide and suicide in the United States. Among 15 to 24 year olds, homicide ranked as the second and the third leading causes of death. Violent deaths are the most visible consequence of violent behavior in our society. Morbidity associated with physical and emotional injuries and disabilities resulting from violence, however, also constitute an enormous public health problem. For every homicide that occurs each year there are over 100 nonfatal injuries resulting from interpersonal violence. For every completed suicide it is estimated that there are 20 to 25 suicide attempts. The mortality and morbidity resulting from violence are associated with a variety of types of violence including child maltreatment, youth violence, intimate partner violence, sexual violence, elder abuse, and self-directed violence or suicidal behavior.

III. Injury Related Acute Care, Disability, and Rehabilitation

Each year, Americans make between 30 and 40 million Emergency Department (ED) visits for injuries. While most injured patients are treated and released, many are admitted to inpatient trauma units and later receive rehabilitative services. The most favorable outcomes are achieved when acute care and subsequent rehabilitation are as early as possible and focus on returning patients to baseline or to an optimal level of functioning. Trauma systems are designed to match trauma patients with the acute care and rehabilitative facilities they need, but in many parts of the U.S. trauma systems are not fully operational or are non-existent. Where these systems are lacking, as many as 30 percent to 40 percent of deaths among trauma patients are due to preventable problems in clinical care, including missed diagnoses and treatment delays.

Injuries are a major cause of disabilities in the U.S. Central nervous system injuries (those to the brain and spinal cord) are most likely to result in serious long-term disability. Each year, an estimated 80,000 Americans sustain a Traumatic Brain Injury (TBI) that results in disability; an estimated 5.3 million Americans live with TBI-related disability. Although physical impairments from the injury may contribute to TBI disability, cognitive deficits are the hallmark, frequently resulting in secondary conditions such as depression and other adverse outcomes such as the inability to work. An estimated 177,000 to 200,000 people in the U.S. live with Spinal Cord Injuries (SCI), and this number increases annually by as many as 20,000 individuals.

B. Eligible Applicants

Eligible institutions include any United States public or private universities or colleges, including, but not limited to schools or departments of public health, medicine, nursing, criminal justice, or the behavioral or social sciences. The performance site must be domestic.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(C)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

Applicants must have a research or a health-professional doctorate-level degree from an accredited program and have demonstrated the capacity or potential for highly productive research in the period after the doctorate, commensurate with level of experience. Applicants must be within three years of receiving their doctoral or equivalent degree or redirecting their research to injury-related research.

Documentation of such redirection must be included in the application. Applicants who have been the principal investigator on a Public Health Service (PHS) injury-related research grant or who have had equivalent injury-related

research support from an existing Injury Control Research Center (ICRC) are not eligible. Exceptions are researchers who have redirected their research areas from one area of injury research, *e.g.*, acute care or biomechanics, to another area, *e.g.*, violence prevention research. Recipients of dissertation research grants or NIH Small Grant Awards are eligible to apply.

C. Availability of Funds

Approximately $400,000 is expected to be available for up to four new investigator awards in FY 2002. It is expected that the awards will begin on or about September 30, 2002, and will be made for a 12-month budget period within a one-year project period. Grants will be awarded for twelve months, but may be extended without additional funds for up to a total of 24 months. Grant funds will not be made available to support the provision of direct patient care. The maximum funding level will not exceed $100,000 (direct and indirect costs). Applications that exceed the funding caps noted above will be excluded from the competition and returned to the applicant. The availability of Federal funding may vary and is subject to change.

Allowable Costs

Allowable costs include partial salary for the applicant; direct research project expenses, such as interviewer costs, data processing, payment to participants, statistical consultation services, and supplies; and travel to one scientific meeting, if adequately justified. No tuition support is allowed. Applicants should include travel costs for one, two-day trip to CDC in Atlanta to present research findings.

D. Program Requirements

Research Objectives

For the purpose of this program announcement, the highest priority will be given to research that addresses the following themes within each of the three broad research areas:

I. Unintentional Injury Prevention Research Priorities

1. Communications-based research that focuses on learning how to encourage practitioners and policy makers to adopt science-based programs, policies, laws, and regulations that reduce unintentional injuries.

2. Identifying modifiable human behaviors during a fire and evaluating interventions to prevent fire and burn injuries in fire emergencies.

3. Among children, determining the immediate causes of the most severe and disabling types of falls, and evaluating interventions that prevent serious falls in children.

4. Behavioral safety interventions that utilize applied behavioral analysis and other behavior modification strategies to change injury risk behaviors and risk taking of children and young adults.

5. Developing and evaluating methods to collect participation exposure and injury incidence data in sports, recreation (including playgrounds), and exercise.

6. Testing the effectiveness of implementing new innovative strategies to reduce alcohol impaired driving.

7. Evaluating the effectiveness of behavioral and environmental interventions to prevent pedestrian injury.

8. Measuring the efficacy and effectiveness of booster seats in reducing child injury or developing and testing interventions to increase the proper and consistent use of occupant protection devices among child occupants.

Research that focuses on interventions for unintentional injuries in high-risk groups or settings such as with the elderly, young children and members of minority groups, or in disadvantaged neighborhoods or communities, is especially encouraged.

II. Violence Related Injury Prevention Research

1. Evaluating strategies for disseminating and implementing evidence-based interventions or policies for the prevention of intimate partner violence, sexual violence, child maltreatment, youth violence, or suicidal behavior.

2. Evaluating the efficacy and effectiveness of interventions, programs, and policies to prevent intimate partner violence, sexual violence (includes both sexual violence against adults and child sexual abuse), child maltreatment, youth violence, or suicidal behavior.

3. Identifying common and unique risk and protective factors for the perpetration of intimate partner violence, sexual violence, child maltreatment, youth violence, or suicidal behaviors, and examining the relationships among these forms of violence.

III. Injury Related Acute Care, Disability, and Rehabilitation Priorities

1. Evaluating methods of using point-of-care clinical information systems to report injuries to public health agencies.

2. Measuring the benefits and costs of trauma care systems.

3. Identifying methods and strategies for ensuring that people with TBI or SCI receive needed services.

4. Determining the impact of TBI on special populations.

Other special conditions for new investigator research grants:

1. The applicant must be the designated principal investigator. The principal investigator must be responsible for planning, directing, and executing the proposed project.

2. The applicant must specify which of the three areas the proposal addresses: (1) Unintentional injury; (2) violence-related injury research; or (3) injury-related acute care, disability, and rehabilitation.

3. The grant may not be transferred to another institution, except under unusual and compelling circumstances (such as if the mentor moves to a new institution and both the mentor and the applicant wish to move together).

4. Any publications directly resulting from the grant should be reported to the responsible CDC program official. The grantee also must cite receiving support from the National Center for Injury Prevention and Control, CDC in any publications directly resulting from the new investigator grant.

F. Content

Letter of Intent (LOI)

A LOI is optional for this program. The narrative should be no more than two double-spaced pages, printed on one side, with one inch margins, and unreduced font. The letter should identify the announcement number, the name of the principal investigator, and briefly describe the scope and intent of the proposed research work. The letter of intent does not influence review of funding decisions, but the number of letters received will enable CDC to plan the review more effectively and efficiently.

Application

Use the information in the Program Requirements and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative portion of the application must not exceed 25 pages.

Applications should follow the PHS–398 (Rev. 5/2001) application and Errata sheet and should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of

the findings to reduce injury morbidity, mortality, disability, and economic losses.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan describing the methods that will achieve the objectives, including their sequence.

4. A description of the roles and responsibilities of the principal investigator and mentor, where appropriate.

5. A description of all project staff regardless of their funding sources. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by the grant.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include letters of organizational commitments of support and a clear statement of their roles.

8. A detailed budget for the grant.

9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by injuries.

Additional materials required:

In addition to the completed PHS 398 application form, the applicant must also submit the following materials, attached to the application as appendices:

1. An official transcript of the applicant's graduate school record, if within the last three years.

2. When relevant, documentation showing the researcher has redirected his or her career within the last three years.

3. An overview of the applicant's prior research training and experience, including a statement of the applicant's short-term and long-term research and career goals and intended career trajectory.

4. Where appropriate, a letter from the applicant's mentor or scientific collaborator that outlines the proposed plan for providing scientific advice and consultation to the applicant during the grant period and a biography of the mentor or senior-level collaborator, limited to two pages (use the Biographical Sketch page in application form PHS 398).

G. Submission and Deadline

Letter of Intent

On or before June 1, 2002, submit the LOI to the Grants Management Specialist identified in the Where to Obtain Additional Information section of this announcement.

Application

Submit the original and five copies of PHS 398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction sheet for PHS 398). Forms are in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

On or before 5 p.m. Eastern time on June 24, 2002, submit the application to: Technical Information Management-PA02121, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadlines

Applications shall be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with the guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above-criteria, will not be eligible for competition and will be discarded.

Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Upon receipt, applications will be reviewed by CDC staff for completeness, responsiveness, and eligibility as outlined under the Eligible Applicants Section. Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Applications which are complete and responsive may be subjected to a preliminary evaluation (triage) by a Special Emphasis Panel (SEP) to determine if the application is of sufficient technical and scientific merit to warrant further review by the panel; CDC will withdraw from further consideration applications judged to be non-competitive and promptly notify the principal investigator and the official signing for the applicant organization. Those applications judged to be competitive will be reviewed by the SEP and the secondary review group.

Awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee (SEP), recommendations by the secondary review committee, the Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the SEP. All applications will be reviewed for scientific merit by a committee of no less than three reviewers with appropriate expertise using current National Institutes of Health (NIH) criteria to evaluate the methods and scientific quality of the application. Factors to be considered will include:

a. *Significance.* Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced?

b. *Approach.* Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? does the applicant acknowledge potential problem areas and consider alternative tactics?

c. *Innovation.* Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

d. *Investigator.* Is the principal investigator appropriately trained and well suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator? Is the name and role of a scientific mentor or collaborator described?

e. *Environment.* Does the scientific environment in which the work will be done contribute to the probability of success? Is there evidence of institutional support?

f. *Ethical Issues.* What provisions have been made for the protection of human subjects and the safety of the research environments? Where relevant, how does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, *e.g.,* suspected child abuse? Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (An application can be disapproved if the

research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

g. *Study Samples.* Are the samples sufficiently rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities, and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

h. *Dissemination.* What plans have been articulated for disseminating findings?

The SEP will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of the Advisory Committee for Injury Prevention and Control (ACIPC). The ACIPC Federal ex officio members will be invited to attend the secondary review, will receive modified briefing books, (i.e., abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). Federal *ex officio* members will be encouraged to participate in deliberations when proposals address overlapping areas of research interest so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the Federal *ex officio* members. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as the factors that the SPRS considered.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally funded research does not occur. The Secondary Review Committee has the latitude to recommend to the NCIPC Director, to reach over better-ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in "Healthy People 2010" and the Institute of Medicine report, "Reducing the Burden of Injury."

I. Other Requirements

Technical Reporting Requirements

Grantees must provide CDC with an original plus two copies of:

1. An annual progress report.

2. A financial status report, no more than 90 days after the end of the budget period.

3. A final financial report and performance report, no more than 90 days after the end of the project period.

4. At the completion of the project, the grant recipient will submit a brief (2,500 to 4,000 words written in non-scientific (laymen's) terms) summary highlighting the findings and their implications for injury prevention programs, policies, environmental changes, *etc.* The grant recipient will also include a description of the dissemination plan for research findings. This plan will include publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders outside of academia, (*e.g.,* state injury prevention program staff, community groups, public health injury prevention practitioners, and others). CDC will place the summary report and each grant recipient's final report with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

Send all reports to the Grants Management Specialist identified in the Where to Obtain Additional Information section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, *see* Attachment 1 in the application kit.

AR–1 Human Subjects Certification
AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirements
AR–9 Paperwork Reduction Requirements
AR–10 Smoke-Free Workplace Requirement
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities
AR–21 Small, Minority, and Women-owned Business
AR–22 Research Integrity

J. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) (42 U.S.C. 2412(a)) of the Public Health Service Act and section 391(a)(42 U.S.C. 280(b)) of the Public Service Health Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

K. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC homepage on the Internet. The address for the CDC homepage is *http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Nancy Pillar, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Program Announcement #02121, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341. Telephone: (770) 488–2721. Internet address: *nfp6@cdc.gov.*

For program technical assistance, contact:

I. For Unintentional Injury Prevention Research

David Sleet, PhD, Associate Director for Science, Division of Unintentional Injury Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mail Stop K–63, Atlanta, GA 30341–3724. Telephone: (770) 488–4699. Internet address: *dsleet@cdc.gov*.

II. For Violence Related Injury Prevention Research

Jim Mercy, PhD, Associate Director for Science, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mail Stop K–60, Atlanta, GA 30341–4723. Telephone: (770) 488–4699. Internet Address: *jmercy@cdc.gov*.

III. For Injury Related Acute Care, Disability, and Rehabilitation

Richard Sattin, MD, Associate Director for Science, Division of Injury Disability Outcomes and Programs, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mail Stop K–58, Atlanta, GA 30341–4723. Telephone: (770) 488–4330. Internet address: *rsattin@cdc.gov*.

Dated: May 3, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–11557 Filed 5–8–02; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement No. 02152]

Dissertation Awards for Minority Doctoral Candidates for Violence-Related Injury Prevention Research; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for an extramural grant program for Dissertation Awards to Minority Doctoral Candidates for Violence-Related injury prevention research. This program addresses the "Healthly People 2010" focus areas of injury and violence prevention. Measurable outcomes of the program will be in alignment with one or more of the following performance goals for The National Center for Injury Prevention and Control (NCIPC):

1. Reduce the risk of youth violence.
2. Reduce violence against women.
3. Enhance the capacity of states to implement effective rape prevention and education programs.
4. Increase external input on the research priorities, policies, and procedures related to the extramural research supported by CDC.

The purposes of this program are to:

1. Stimulate and encourage minority doctoral candidates from a variety of academic disciplines and programs, including, but not limited to public health, health care, criminal justice, and behavioral and social sciences, to conduct violence-related injury prevention research.
2. Assist minority students in the completion of their dissertation research on a violence-related topic.
3. Encourage minority investigators to build research careers related to the prevention of violence-related injuries, disabilities, and deaths.

A dissertation represents the most extensive research experience formulated and carried out by a doctoral candidate, with the advice and guidance of a mentor (the chair of the dissertation committee or other academic advisor). Dissertation research involves a major investment of the doctoral student's time, energy, and interest and its substance is often the basis for launching a research career. The number of individuals who are members of minority groups and who are engaged in violence-related injury prevention research is currently small. There is a clear need to develop new ways to assist and encourage minority researchers to become active in the conduct of studies that can advance the rapidly growing knowledge base in this field. This research initiative is aimed at providing minority students with assistance to complete their dissertation research on a violence-related topic and thereby increase their representation in violence-related injury research.

Deaths and injuries associated with interpersonal violence and suicidal behavior are a major public health problem in the United States and around the world. In 1999, over 46,000 people died from homicide and suicide in the United States. Among 15 to 24 year olds, homicide ranked as the second and the third leading causes of death. Violent deaths are the most visible consequence of violent behavior in our society. Morbidity associated with physical and emotional injuries and disabilities resulting from violence, however, also constitute an enormous public health problem. For every homicide that occurs each year there are over 100 non-fatal injuries resulting from interpersonal violence. For every completed suicide it is estimated that there are 20 to 25 suicide attempts. The mortality and morbidity associated with violence are associated with a variety of types of violence including child maltreatment, youth violence, intimate partner violence, sexual violence, elder abuse, and self-directed violence or suicidal behavior. Violence has a disproportionate impact on racial and ethnic minorities. In 1999, homicide was the leading cause of death for African Americans and the second leading cause of death for Hispanics between the ages of 15 and 34. Suicide was the second leading cause of death for American Indians and Alaskan Natives and Asian and Pacific islanders 15 to 34 years of age. It is important to note that existing research indicates that race or ethnicity, per se, is not a risk factor for violent victimization or a cause of violent behavior. Rather, racial or ethnic status is associated with many other factors, such as poverty, that do influence the risk of becoming a victim or behaving violently. Nevertheless, racial and ethnic minorities in the United States are at high risk for both violent victimization and perpetration. A better understanding of the factors that contribute to this vulnerability or protection from such risk is important to furthering effective violence prevention programs that address racial and ethnic minorities.

There is a critical need for highly qualified scientists to carry out research on violence that can help in the development, implementation, and evaluation of effective violence prevention programs. In particular, scientists are needed that bring an understanding and sensitivity to the problems of violence as they affect minority communities. The primary purpose of this extramural research grant program is to attract young minority scientists to the field of violence by encouraging doctoral candidates from a variety of disciplines to conduct violence prevention research and hopefully carry this focus on throughout their careers.

B. Eligibility

Eligible Institutions

Eligible institutions include any United States public or private institution such as a university or college that supports an accredited doctoral level training program. The performance site must be domestic.

Note: Title 2 of the United States Code section 1611 states that an organization described in Section 501(C)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

Eligible Applicants

Applicants must be minority students in good standing enrolled in an accredited doctoral degree program. Applicants must have also successfully defended their dissertation proposal to be eligible for this funding. For the purpose of this program announcement, minorities are defined as individuals belonging to a particular ethnic or racial group (as defined by the U.S. Census Bureau) that has been determined by the applicant institution to be under-represented in biomedical or behavioral research. Applicants must be conducting or intending to conduct research in one of the areas described under the Research Objectives section. The applicant must have obtained approval of the dissertation proposal by the dissertation committee by the time of application. The applicant's eligibility must be verified in a letter of certification from the mentor (the chair of the dissertation committee or other academic advisor) and submitted with the grant application.

The following are applicant requirements:

1. The principal investigator must be a full-time doctoral student in an accredited doctoral program. The principal investigator must have the authority and responsibility to carry out the proposed project.

2. The application must propose dissertation research that will help expand and advance our understanding of violence, its causes, and prevention strategies.

3. The applicant must have the ability to carry out an injury prevention research project with the advice of and consultation of a senior research mentor.

4. The overall match between the applicant's proposed topic and research objectives, and the research objectives described under the Program Requirements.

C. Availability of Funds

Approximately $100,000 is expected to be available in FY 2002 for up to five dissertation awards for minority doctoral candidates. The availability of Federal funding may vary and is subject to change. It is expected that the awards will begin on or about September 30, 2002, and will be made for a 12-month budget period within a one-year project period. Applications that exceed the funding caps noted above will be excluded from the competition and returned to the applicant.

Grants to support dissertation research will provide no more than $20,000 in direct and indirect costs. An application that exceeds this limit will be returned to the applicant without review. Grants will be awarded for twelve months, but may be extended without additional funds for up to a total of 24 months. Grant funds will not be made available to support the provision of direct patient care including medical and/or psychiatric care.

Allowable costs include direct research project expenses, such as interviewer expenses, data processing, participant incentives, statistical consultant services, supplies, and dissertation printing costs; and travel to one scientific meeting, if adequately justified. Applicants should include travel costs for one two-day trip to CDC in Atlanta to present research findings. No tuition support is allowed.

D. Program Requirements

Research Objectives

For the purpose of this program announcement the highest priority will be given to dissertation research that addresses the following areas of inquiry:

a. Identifying shared and unique risk and protective factors for the perpetration of intimate partner violence, sexual violence, child maltreatment, youth violence, or suicidal behaviors, and examining the relationships among these forms of violence.

b. Evaluating the efficacy and effectiveness of interventions, programs, and policies to prevent intimate partner violence, sexual violence (includes both sexual violence against adults and child sexual abuse), child maltreatment, youth violence, or suicidal behavior.

c. Evaluating strategies for disseminating and implementing evidence-based interventions or policies for the prevention of intimate partner violence, sexual violence, child maltreatment, youth violence, or suicidal behavior.

Other Special Conditions for Dissertation Research Grants

a. The doctoral candidate must be the designated principal investigator. The principal investigator will be responsible for planning, directing, and executing the proposed project with the advice and consultation of the mentor and dissertation committee.

b. The responsible program official for CDC must be informed if there is a change of mentor. A biographical sketch of the new mentor must be provided for approval by the CDC program official.

c. A dissertation research grant may not be transferred to another institution, except under unusual and compelling circumstances (such as if the mentor moves to a new institution and both the mentor and the applicant wish to move together).

d. Two copies of the dissertation, including abstract, must be submitted to the CDC program official and will constitute the final report of the grant. The dissertation must be officially accepted by the dissertation committee or university official responsible for the candidate's dissertation and must be signed by the responsible university official.

e. Any publications directly resulting from the grant should be reported to the CDC program official. The grantee also should cite receiving support from the NCIPC and CDC, both in the dissertation and any publications directly resulting from the dissertation grant.

E. Content

Letter of Intent (LOI)

A LOI is optional for this program. The narrative should be no more than two double-spaced pages, printed on one side, with one-inch margins, and unreduced font. The letter should identify the announcement number, the name of the principal investigator, and briefly describe the scope and intent of the proposed research work. The letter of intent does not influence review or funding decisions, but the number of letters received will enable CDC to plan the review more effectively and efficiently.

Application

Use the information in the Program Requirements and Evaluation Criteria sections described below to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

Application forms must be submitted in the following order:

Cover letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Forms
HIV Assurance Form (If Applicable)
Human Subjects Certification
Indirect Cost Rate Agreement
Narrative

Applications should follow the PHS–398 (Rev. 5/2001) application and Errata sheet and should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, and economic losses.
2. Specific, and time-framed objectives.
3. A detailed plan describing the methods by which the objectives will be achieved, including their sequence.
4. A description of the principal investigator's role and responsibilities, along with that of the mentor.
5. A description of all project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.
6. A description of those activities related to, but not supported by the grant.
7. A description of the involvement of other entities that will relate to the proposed project, if applicable. Letters of collaboration and a clear statement of their roles are required from all collaborating organizations.
8. A detailed budget for the grant.
9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by violence-related injuries.

The narrative portion of the application that describes the Research Plan for the dissertation may not exceed fifteen pages.

Additional Materials Required

The applicant must also submit the following materials, attached to the application as appendices:

1. A letter from the applicant's mentor which: (a) Fully identifies the members of the dissertation committee and certifies their approval of the dissertation proposal. (b) Certifies that the mentor has read the application and believes that it reflects the work to be completed in the dissertation. (c) Certifies that the institution's facilities and general environment are adequate to conduct the proposed research.
2. A tentative time line for completion of the research, the dissertation, and the dissertation defense.
3. An official transcript of the applicant's graduate school record showing that the applicant has completed all required coursework for the degree with the exception of the dissertation.
4. A statement of the applicant's career goals and intended career trajectory.
5. A biography of the mentor, limited to two pages (use the Biographical Sketch page in application form PHS 398).

F. Submission and Deadline

Letter of Intent (LOI)

On or before June 1, 2002, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and five copies of PHS 398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction sheet for PHS 398). Forms are in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

On or before 5 pm Eastern Time on June 14, 2002, submit the application to the Technical Information Management Section: 2920 Brandywine Road, Suite, 3000, Atlanta, Georgia 30341.

Deadline

Applications shall be considered as meeting the deadline if they are received before 5 pm Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications that do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

G. Evaluation Criteria

Upon receipt, applications will be reviewed by CDC staff for completeness, responsiveness and eligibility as outlined under the Eligible Applicants Section. Incomplete applications, that are not responsive, or applications from applicants that are not eligible will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Applications which are complete and responsive may be subjected to a preliminary evaluation (triage) by a peer review committee, the Injury Research Grant Review Committee (IRGRC) to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC; CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator and the official signing for the applicant organization. Those applications judged to be competitive will be initially reviewed by the IRGRC and the secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of the Advisory Committee for Injury Prevention and Control (ACIPC).

Awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee (IRGRC), recommendations by the secondary review committee, e.g., the ACIPC, consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the IRGRC. A committee of no less than three reviewers will review all applications for scientific merit with appropriate expertise using current National Institutes of Health (NIH) criteria to evaluate the methods and scientific quality of the application. Factors to be considered will include:

a. Significance: Does this study address an important problem?

b. Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project?

c. Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

d. Investigator: Is the principal investigator appropriately trained and well suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator? Is the name and role of a scientific mentor described?

e. Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Is there evidence of agreements to collaborate or other institutional support?

f. Ethical Issues: What provisions have been made for the protection of

human subjects and the safety of the research environments? Where relevant, how does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, e.g., suspected child abuse? Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (An application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

g. Study Samples: Are the samples rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities, and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

h. Dissemination: What plans have been articulated for disseminating findings?

The IRGRC will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the SPRS of the ACIPC. The ACIPC Federal ex officio members will be invited to attend the secondary review, will receive modified briefing books, (i.e., abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the Federal ex officio members. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as the factors that the SPRS considered.

The Secondary Review Committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review and the relevance and balance of proposed research relative to the NCIPC programs and priorities. The Committee has the latitude to recommend to the NCIPC Director, to reach over better ranked proposals in order to assure maximal impact and balance of proposed research.

The factors to be considered will include:

A. The results of the primary review including the application's priority score as the primary factor in the selection process.

B. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

C. The significance of the proposed activities in relation to the priorities and objectives stated in "People 2010" and the Institute of Medicine report, "Reducing the Burden of Injury."

D. Budgetary considerations.

H. Other Requirements

Technical Reporting Requirements

The grantee must provide CDC with an original plus two copies of:

1. The dissertation, including abstract that will constitute the final report of the grant.

2. A financial status report, no more than 90 days after the end of the budget period.

3. At the completion of the project, the grant recipient will submit a brief (2,500 to 4,000 words written in non-scientific [laymen's] terms) summary highlighting the findings and their implications for injury prevention programs, policies, environmental changes, etc. The grant recipient will also include a description of the dissemination plan for research findings. This plan will include, publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders outside of academia, (e.g., state injury prevention program staff, community groups, public health injury prevention practitioners, and others). CDC will place the dissertation abstract with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program.

AR–1 Human Subjects Certification
AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirement
AR–9 Paperwork Reduction Requirements
AR–10 Smoke-Free Workplace Requirement
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities
AR–21 Small, Minority, and Women-owned Business
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) (42 U.S.C. 241(a)) of the Public Health Service Act and section 391(a) (42 U.S.C. 280(b)) of the Public Service Health Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary application and associated forms can be found on the CDC homepage Internet address—*http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Nancy Pillar, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Program Announcement 02152, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341. *Telephone:* (770) 488–2721. *Email address: nfp6@cdc.gov.*

For program technical assistance, contact: Melinda Williams, Project Officer, Prevention Development and Evaluation Branch, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mail Stop K–60, Atlanta, GA 30341–4723. *Telephone:* (770) 488–4647. *Email address: mwilliams1@cdc.gov.*

Dated: May 3, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–11554 Filed 5–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0144]

Bavarian Red Cross; Opportunity for Hearing on a Proposal to Revoke U.S. License No. 1002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for a hearing on a proposal to revoke the biologics license (U.S. License No. 1002), issued to the Bavarian Red Cross (BRC), for the manufacture of Whole Blood and Red Blood Cells. The proposed revocation is based on the failure of the establishment and the product for which the license has been issued, to conform to the applicable standards established in the license and in the regulations.

DATES: The firm may submit written or electronic requests for a hearing by June 10, 2002, and any data and information justifying a hearing by July 8, 2002. Other interested persons may submit written or electronic comments on the proposed revocation by July 8, 2002.

ADDRESSES: Submit written requests for a hearing, any data and information justifying a hearing, and any written comments on the proposed revocation to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to: http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Michael D. Anderson, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA is initiating proceedings to revoke the biologics license (U.S. License No. 1002) issued to BRC, Herzog-Heinrich-Strasse 4, D–80336, Munich, Germany, for the manufacture of Whole Blood and Red Blood Cells. Additional locations affected by the proposed revocation include: Prof.-Ernst-Nathan-Str. 1, D–90419, Nurnburg, Germany; Klinikstrasse 5, D–97070, Wurzburg, Germany; Dr. Franz-Strasse 3, D–95445, Bayreuth, Germany; Westheimer Strasse 80, D–86156, Augsburg, Germany; Nikolaus-Fey-Strasse 32, D–97353, Wiesentheid, Germany; and Hoher Kreuz Weg 7, D–93055, Regensburg, Germany. The proposed revocation is based on the failure of BRC to conform to the applicable standards established in its license and the requirements of parts 211 and 600 to 680 (21 CFR parts 211 and 600 to 680).

FDA inspected four of the six licensed locations of the BRC from October 27 through November 13, 1997. The inspections were conducted at the Munich, Wiesentheid, Nurnberg, and Bayreuth facilities. During the inspections, FDA observed significant deviations from the standards established in the license as well as the applicable Federal regulations. The standards and regulations are designed to ensure the continued safety, purity, and potency of the manufactured product. FDA also determined that the firm had discontinued the manufacture of Whole Blood and Red Blood Cells intended for distribution in the United States. FDA concluded that a meaningful inspection of BRC's ability to appropriately manufacture products under the license could not be made. The deviations noted during the inspections included, but were not limited to, the following: (1) In violation of § 640.3(b), donor suitability was not adequately determined, in that questions were not asked, concurrently with the direct questions on high risk behavior, for exclusion of donors who are at increased risk for human immunodeficiency virus-1 (HIV–1) group O infection; (2) in violation of §§ 606.140, 610.40, and 610.45, inspections of the Nurnburg and Munich facilities disclosed that the Abbott Prism system, a device not approved by FDA, was utilized to test for antibody to HIV types 1 and 2 plus O (anti-HIV ¹), the hepatitis B surface antigen (HBsAg), the antibody to hepatitis B core antigen (anti-HBc), and antibody to hepatitis C virus encoded antigen (anti-HCV). Additionally, blood and blood products were not tested for HIV–1 antigen and antibody to human lymphotropic virus type I (anti-HTLV–I); (3) in violation of § 606.140, the New LAV-Bolt I by Sanofi Diagnostics Pasteur, an HIV–1 western blot assay that was not approved by FDA, was used as an assay for reentry of donors; (4) in violation of § 606.140, the New LAV-Bolt II by Sanofi Diagnostics Pasteur, an HIV–2 western blot assay that was not approved by FDA, was used as an assay for reentry of donors; and (5) in violation of § 606.121(c)(5)(i), blood and blood products that were intended for transfusion and collected from paid donors were not labeled as to distinguish them from blood products collected from volunteer donors.

In a letter dated July 8, 1998, and issued under § 601.5(b), FDA outlined the deviations noted at the inspection. FDA notified BRC of FDA's intent to revoke U.S. License No. 1002 and announced its intent to offer an opportunity for a hearing unless the deviations were adequately addressed. In a letter to FDA dated July 30, 1998, BRC responded to FDA's concerns about the inability to inspect products prepared under the U.S. License No. 1002.

In a certified, return-receipt letter to BRC, dated January 21, 1999, FDA stated that the firm's July 30, 1998, response was inadequate to address all the violations that FDA documented at the inspections. FDA advised BRC that its response was unsatisfactory in that BRC had not provided a comprehensive corrective action plan, adequate to bring the firm into compliance with the applicable Federal standards and regulations. In the same letter, FDA suggested that the firm voluntarily request that U.S. License No. 1002 be revoked, and a new application be submitted at a later date.

In a letter dated November 3, 2000, FDA notified BRC that since the receipt of the July 30, 1998, letter to FDA, FDA had not received any additional response from the firm. The letter stated that under § 601.5(b)(2), FDA had provided a reasonable period for the firm to demonstrate or achieve compliance with the applicable standards established in the license and regulations before proceeding to initiate revocation of U.S. License No. 1002. Since BRC did not submit a response addressing the methods intended to demonstrate or achieve compliance and did not waive an opportunity for a hearing, FDA notified the firm in the same letter of FDA's intent to revoke the license and to issue a notice of opportunity for a hearing under § 12.21(b) (21 CFR 12.21(b)).

Under § 12.21(b), FDA is issuing a notice of opportunity for a hearing on a proposal to revoke the biologics license (U.S. License No. 1002) issued to BRC.

FDA has placed copies of the documents relevant to the proposed revocation on file with Dockets Management Branch (see **ADDRESSES**) under the docket number found in brackets in the heading of this document. These documents include:

(1) FDA's letters to BRC dated July 8, 1998, January 21, 1999, and November 3, 2000; and (2) BRC's response to FDA dated July 30, 1998. These documents are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

BRC may submit to the Dockets Management Branch (see **ADDRESSES**) a written request for a hearing by June 10, 2002, and any data and information justifying a hearing must be submitted by July 8, 2002. Other interested persons may submit written comments on the proposed license revocation to the Dockets Management Branch by July 8, 2002. The failure of the licensee to file a timely written request for a hearing constitutes an election by the licensee not to avail itself of the opportunity for a hearing concerning the proposed license revocation.

FDA's procedures and requirements governing a notice of opportunity for a hearing, notice of appearance and request for a hearing, grant or denial of hearing, and submission of data to justify a hearing on proposed revocation of a license are contained in 21 CFR parts 12 and 601. A request for a hearing may not rest upon mere allegations or denials but must set forth a genuine and substantial issue of fact that requires a hearing. If the Commissioner of the Food and Drugs (the Commissioner) determines upon review of any objections or request for a hearing that a hearing is not justified, in whole or in part, or if a request for a hearing is not made within the required time with the required format or required analyses, the Commissioner will deny the hearing request, with an explanation for the denial.

Two copies of any submissions are to be provided to FDA, except that individuals may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document. Such submissions, except for data and information prohibited from public disclosure under 21 CFR 10.20(j)(2)(i), 21 U.S.C. 331(j), or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 351 of the Public Health Service Act (42 U.S.C. 262) and sections 201, 501, 502, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, and 371), and under the authority delegated to Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Biologics Evaluation and Research (21 CFR 5.67).

Dated: May 2, 2002.

Kathryn C. Zoon,

Director, Center for Biologics Evaluation and Research.

[FR Doc. 02–11509 Filed 5–8–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Extramural Support Program for Projects To Increase Organ Procurement

AGENCY: Health Resources and Services Administration, Health and Human Services.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of fiscal year (FY) 2002 funds to be awarded under the Division of Transplantation (DoT) program for discretionary grants, under a new competition that supports the evaluation of clinical interventions to increase the number of heart-beating and non-heart-beating organ donors and/or the number of organs that could be recovered from such donors. In concert with HHS' Gift of Life Donation Initiative, this extramural program, Clinical Interventions to Increase Organ Procurement, will fund grants of up to 3 years duration to implement, evaluate, and disseminate model interventions with the greatest potential for yielding a verifiable and demonstrable impact on organ procurement and which are replicable, transferable, and feasible in practice. Applicants must be qualified organ procurement organizations (OPOs) or other nonprofit private organizations actively involved in the field of transplantation. Strong evaluation project components and staffing expertise are required.

Authority for this program is provided by section 371(a)(3) of the Public Health Service (PHS) Act, 42 U.S.C. 273(a)(3), as amended.

DATES: To help HRSA adequately plan for the Objective Review Process, Letters of Intent are encouraged from all applicants. Such letters should be sent to: Lynn Rothberg Wegman, M.P.A., Director, Division of Transplantation, Office of Special Programs, Health Resources and Services Administration, 5600 Fishers Land, Room 7C–22, Rockville, Maryland 20857, or faxed to: 301/594–6095 or 301/443–1267. Such letters should be received by DoT by June 10, 2002. Receipt of these notices of intent will not be routinely acknowledged.

EFFECTIVE DATE: Applications must be received in the HRS Grant Application Center by the close of business July 8, 2002, to be considered for competition. Applications will meet the deadline if they are either (1) received on or before the deadline date or (2) postmarked on or before the deadline date, and received in time for submission to the objective review panel. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted instead of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applications postmarked after the deadline will be returned to the applicant.

ADDRESSES: The official grant application kit and guidance materials for this announcement may be obtained on the following three web sites: *www.hrsa.gov*, *www.hrsa.gov/osp/dot/*, and *www.organdonor.gov*, and from the HRSA Grants Application Center, Attn: CFDA 93.134; 2002 Clinical Interventions to Increase Organ Procurement, The Legin Group, Inc., 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879; telephone 877/477–2123, e-mail address *hrsagac@hrsa.gov*. Applicants are strongly advised to obtain the Guidance before preparing applications. Applicants for grants will use Revised Form PHS 5161–1. This form may be downloaded from the DHHS Program Support Center (PSC) website at: *http://www.psc.gov/forms/PHS/phs.html*. The application guidance may be accessed through HRSA's website at *www.hrsa.gov/grants.htm*.

FOR FURTHER INFORMATION CONTACT: Additional information regarding business, administrative, and fiscal issues related to the awarding of grants under this Notice may be requested from Darren S. Buckner, Grants Management Specialist, HIV/AIDS Bureau, Health Resources and Services Administration, 5600 Fishers Land, Room 7–89, Rockville, MD 20857; telephone 301/443–1913; fax 301/594–6096; e-mail address *DBuckner@hrsa.gov*.

Additional information regarding program issues and the overall Program may be requested from Laura M. Saint Martin, M.D., M.P.H., Medical Officer, or Virginia McBride, R.N., B.S., CPTC, Public Health Analyst, Operations and Analysis Branch, Division of Transplantation, Office of Special Programs, Health Resources and Services Administration, 5600 Fishers Land, Room 7C–22, Rockville, MD 20857; telephone number 301/443–

7577; fax 301/594–6095 or 301/443–1267. Dr. Saint Martin can be reached via e-mail at *LStMartin@hrsa.gov*; Ms. McBride can be reached at *VMcBride@hrsa.gov*.

Technical assistance regarding this funding announcement may be requested from Virginia McBride, R.N., B.S., CPTC, Public Health Analyst, Operations and Analysis Branch, Division of Transplantation, Office of Special Programs, Health Resources and Services Administration, 5600 Fishers Lane, Room 7C–22, Rockville, MD 20857; fax 301/594–6095 or 301/443–1267; e-mail address *VMcBride@hrsa.gov*.

SUPPLEMENTARY INFORMATION:

Purposes

Organ donation has become an increasingly important public health issue. Only about 6,000 deaths in the United States each year result in organ donation, compared with an estimated potential of 8,000–15,000 donors. Moreover, nearly 80,000 patients are currently awaiting transplants and about 5,500 patients die each year because of the critical shortage of transplantable organs.

In September 1999, HRSA's Division of Transplantation (DoT) instituted its Model Interventions to Increase Donation grant program that focused on interventions to increase cadaveric organ and tissue donation. In 2001, the program was expanded to include interventions to increase living donation and the development of hospital donor protocols and educational interventions to increase non-heart-beating donation. To be considered eligible, interventions must be intended to increase organ procurement, raise consent rates for organ donation, and/or increase the rate of declaration of intent to donate coupled with family notification of intent to become an organ donor.

To date, interventions funded by DoT's grant program that address the first criterion, increasing organ procurement, have focused on improving hospital and OPO interactions/practices to identify donors and provide emotional support to donor families. However, additional opportunities to increase the rate of organ procurement exist but continue to fall outside the scope of HRSA's current grant program. In fact, many interventions that would likely increase organ procurement efficiency do not appear to qualify for any HHS funding opportunities possibly because the research would need to be conducted after pronouncement of a donor's death.

For this reason, DoT is proposing the development of a new grant program, Clinical Interventions to Increase Organ Procurement, to support the evaluation of clinical interventions to increase the number of heart-beating and non-heart-beating organ donors and/or the number of organs that could be recovered from such organ donors. Eligible interventions could focus on new and/or improved methods to optimize hemodynamic stability in brain dead patients, improve donor organs with compatible recipients. Additionally, projects leading to more accurate identification of appropriate non-hear-beating donation candidates and improved methods of donor stabilization and organ recovery would qualify. Improving OPO internal processes, such as improved quality assurance practices, also would be acceptable if it can be demonstrated that these efforts result in increased organ procurement.

This grant program is focused solely on clinical interventions to increase heart-beating and non-heart-beating cadaveric donation. Funds will not be used for other types of projects. Examples of research that will *not* be supported under this program are: Living donation; clinical trials of drugs not approved by the FDA or off-label uses of FDA-approved drugs; research involving animals; long-term transplantation outcomes research; interventions to increase tissue donation alone; practices related to the pronouncement of death; and interventions inconsistent with Federal law or statute. Projects falling within the scope of DoT's grant program, Model Interventions to Increase Organ and Tissue Donation, also are not eligible to receive funding under the clinical interventions program.

Projects can employ qualitative studies, quantitative research, or empiric work. As emphasized during the April 1–2, 1998, national conference titled "Increasing Donation and Transplantation: The Challenge of Evaluation" sponsored by HHS' Office of the Assistant Secretary for Planning and Evaluation with additional support provided by the Agency for Healthcare Research and Quality and the National Institute of Allergy and Infectious Diseases, HHS places a high priority on research and evaluation. HHS has served, and plans to continue to serve, as a catalyst for the field by emphasizing and encouraging carefully designed and rigorous evaluation components and research projects to ascertain effective interventions for increasing donation and procurement.

Review Criteria

The review of applications will take into consideration the proposed criteria listed below. The system for scoring each application will range from 0–100 points, with 100 being best.

1. (30 points) Potential of the project to yield a demonstrable and verifiable impact on organ procurement.
2. (25 points) Degree of scientific rigor in the design, implementation, and evaluation of the project.
3. (20 points) Experience and expertise of proposed project staff as supported by education, relevant publications and work history.
4. (15 points) Extent to which projects are replicable, transferable, and practical.
5. (10 points) Adequacy of facilities, resources, and collaborative arrangements relevant to the goals of the project.

Performance Measures

All project must include rigorous outcome evaluation protocols. Outcomes and performance measures must be identified and defined to determine effectiveness of the project. Performance measures are expected to address one or more of the following outcomes:

1. Organ donation rates;
2. Organ procurement rates; and/or
3. Organ transplant rates.

Availability of Funds: The Clinical Interventions to Increase Organ Procurement Program is authorized by Section 371(a)(3) of the Public Health Service (PHS) Act, 42 U.S.C. 273(a)(3), as amended. This section authorizes the Secretary to make grants to qualified organizations for the purpose of carrying out special projects designed to increase the number of organ donors.

HRSA expects to award under this program up to $3 million in FY2002 to support the first year of approximately 12–20 projects. Subsequent years' funding depends on the availability of appropriations, program priorities, and recipient performance. Projects will be awarded for up to 3 years. The budget and project periods for approved and funded projects will begin on or about September 30, 2002. All applicants should submit budgets for the three-year period.

Eligible Applicants: The proposed project may be conducted solely by an OPO or by a consortium of relevant entities or organizations, of which one organizational member (the applicant) carries overall responsibility for project leadership and administration of the HRSA grant award. The applicant must be a Federally designated OPO (section

1138(b) of the Social Security Act) or other nonprofit private organization actively involved in the field of transplantation, or a Federal institution in accordance with section 235 of the Public Health Service Act. If the consortium approach is used, members and roles must be identified in the application and all members must have substantive involvement in the project. For-profit organizations may participate as members of consortia, but not as the applicant.

The OMB Catalog of Federal Domestic Assistance number for the Clinical Interventions to Increase Organ Procurement Program is 93.134.

Paperwork Reduction Act: OMB approval for any data collection in connection with these grants will be sought, as required under the Paperwork Reduction Act of 1995.

Dated: April 19, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–11580 Filed 5–8–02; 8:45 am]

BILLING CODE 4165–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Assessment of the Use of Special Funding for Research on Type 1 Diabetes Provided by the Balanced Budged Act of 1997 and the FY 2001 Consolidated Appropriations Act.

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on November 28, 2001, page 59438 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Assessment of the Use of Special Funding for Research on Type 1 Diabetes Provided by the Balanced Budget Act of 1997 and the FY 2001 Consolidated Appropriations Act. *Type of Information Collection Requested:* NEW. *Need and Use of Information Collection:* This survey will be one source of input into a statutorily mandated assessment and report to the Congress on special funding for research on type 1 diabetes provided by 42 U.S.C. 254c–2 and 42 U.S.C. 1254c–2 note, "Special Diabetes Program for Type 1 Diabetes" (as created by the Balanced Budget Act of 1997, Pub. L. 105–33, and amended by the FY 2001 Consolidated Appropriations Act, Pub. L. 106–554). The primary objective of this study is to gain information, via a brief questionnaire, from NIH research grantees who were the primary recipients of these special funds. The responses will provide valuable information concerning how the funds have facilitated research as intended by these Acts of the Congress. Information from this study will aid in evaluation of the process by which the research goals for use of the special type 1 diabetes funds have been developed and are being pursued. Responses from this study will contribute to a statutorily mandated report, due to the Congress on January 1, 2003 (42 U.S.C. 254c–2 and 42 U.S.C. 1254c–2 note), evaluating the process and efforts under this program and assessing research initiatives funded by these Acts of the Congress. *Frequency of Response:* The initial survey will require a one time response; though, respondents may be contacted again in the event of future congressionally mandated reports on the use of the special type 1 diabetes research funds. *Affected Public:* Research scientists who received the special funds about which the Congress has mandated in law the requirements for an evaluation report. *Type of Respondents:* Laboratory and clinical investigators who have received support from the special type 1 diabetes funds provided under the laws previously cited. The annual reporting burden is as follows: *Estimated number of respondents:* 300; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* 1 hour for nine questions; and *Estimated Total Burden Hours Requested:* 300. The annualized total cost to respondents is estimated at: $15,000. It is expected that the respondents will be contacted and will return their responses via electronic mail. These measures will reduce the burden on the respondents and the overall costs of administering the study. Respondents will be asked to answer nine questions, one-third of which will be answered with "yes" or "no" or a one-word response. There are no Capital Costs, Operating Costs or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information one those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Michelle A. Cissell, AAAS/NIH Science Policy Fellow, Office of Scientific Program and Policy Analysis, NIDDK, NIH, Building 31, Room 9A11, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number (301) 496–6623 or e-mail your request, including your address to: *cissellm@extra.niddk.nih.gov.*

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: April 22, 2002.

Barbara Merchant,

Executive Officer, NIDDK.

[FR Doc. 02–11521 Filed 5–8–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Fogarty International Center Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: May 21, 2002.

Open: 8:30 a.m. to 12:00 p.m.

Agenda: Report of the Director on updates and overview of new FIC programs and initiatives.

Place: Lawton Chiles International House, 16 Center Drive, (Building 16), Bethesda, MD 20892.

Closed: 1 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Lawton Chiles International House, 16 Center Drive, (Building 16), Bethesda, MD 20892.

Contact Person: Irene W. Edwards, Information Officer, Fogarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 Center Drive MSC 2220, Bethesda, MD 20892. 301–496–2075.

Information is also available on the Institute's/Center's home page: *www.nih.gov/fic/about/advisory.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards program, National Institutes of Health, HHS)

Dated: April 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11520 Filed 5–8–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: June 13–14, 2002.

Closed: June 13, 2002, 8:30 a.m to 1:15 p.m.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Boulevard, Room G, Rockville, MD 20852.

Open: June 13, 2002, 1:30 p.m. to 5 p.m.

Agenda: Following opening remarks by the Director, NEI, there will be presentations by staff of the Institute and discussions concerning Institute programs and policies.

Place: 6130 Executive Boulevard, Room G, Rockville, MD 20852.

Open: June 14, 2002, 8:30 a.m. to 12 p.m.

Agenda: Program Planning Meeting.

Place: 6130 Executive Boulevard, Room G, Rockville, MD 20852.

Contact Person: Lore Anne McNicol, Director, Division of Extramural Research, National Eye Institute, National Institutes of Health, Bethesda, MD 20892. 301–496–9110.

Information is also available on the Institue's/Center's home page: *www.nei.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: April 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11518 Filed 5–8–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Clinical Trials Review Committee.

Date: June 23–25, 2002.

Time: 7 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Joyce A Hunter, PhD, Review Branch, Room 7192, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892–7924. 301/435–0277.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11514 Filed 5–8–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Transplant Tolerance: Costimulation, Cytokines & Chimerism.

Date: May 24, 2002.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700–B Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Priti Mehrota, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 6700–B Rockledge Drive, Room 2100, Bethesda, MD 20892–7616. 301–496–2550. *pm158b@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11515 Filed 5–8–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council on Drug Abuse, May 22, 2002, 9 a.m. to May 23, 2002, 3:30 p.m., Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD, 20852 which was published in the **Federal Register** on April 18, 2002, Volume 67, FRN 75.

The date of the meeting has been changed to May 22, 2002. The time of the closed session will be from 9 a.m. to 11 a.m. and the open session will be from 11:15 a.m. to 3:30 p.m. The meeting is partially Closed to the public.

Dated: April 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11519 Filed 5–8–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: June 20–21, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: The Committee will discuss data management activities related to human gene transfer clinical trials, and review selected human gene transfer protocols.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Stephen M. Rose, PhD, Executive Secretary, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Room 705, Bethesda, MD 20892. 301–496–9838. *sr8j@nih.gov.*

Information is also available on the Institute's/Center's home page: *www4.od.nih.gov/oba/*, where an agenda and any additional information for the meeting will be posted when available.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are effected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11516 Filed 5–8–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2002 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of Funding Availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of FY 2002 funds for cooperative agreements for the following activity. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Guidance for Applicants (GFA), including Part I, *Ecstasy, Other Club Drugs, Methamphetamine and Inhalant*

Prevention Infrastructure Development Cooperative Agreements (SP 02–002), and Part II, *General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements,* before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2002	Est. number of Awards	Project period
Ecstasy, Other Club Drugs, Methamphetamine and Inhalant Prevention Infrastructure Development Cooperative Agreements.	July 10, 2002	$4,000,000	12	1 year.

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2002 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–310. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions

Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345. Telephone: 1–800–729–6686.

The PHS 5161–1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web home page: *http://www.samhsa.gov.*

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose

Congress has authorized The Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Prevention to announce the availability of Fiscal Year 2002 funds, for cooperative agreements for Ecstasy, other Club Drugs, Methamphetamine and Inhalant Prevention Infrastructure Development.

Applicants may address either one of the following topics:

- Ecstasy and other club drug prevention infrastructure development.
- Methamphetamine and/or inhalant prevention infrastructure development.

Eligibility

Units of State and local governments or Indian tribes and tribal organizations, and domestic private non-profit organizations may apply.

These organizations can include:

- Community-based organizations
- Non-profit managed care and other health care delivery systems
- Universities and colleges
- Faith-based organizations
- City/county government units
- Local law enforcement agencies
- Others

Availability of Funds

Approximately $4 million will be available for 12 awards for up to $350,000 each for one year in total costs (direct and indirect).

- Approximately 6 awards will be made for ecstasy and other club drug prevention infrastructure development.
- Approximately 6 awards will be made for methamphetamine and/or inhalant prevention infrastructure development.

Period of Support

Awards may be requested for up to 1 year.

Criteria for Review and Funding

General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact

For questions concerning program issues, contact: Soledad Sambrano, Ph.D., Or Pamela C. Roddy, Ph.D., Center for Substance Abuse Prevention, Substance Abuse and Mental Health, Services Administration, Rockwall II, Suite 1075, 5600 Fishers Lane, Rockville, MD 20857. (301) 443–9110. E-Mail: *ssambran@samhsa.gov, proddy@samhsa.gov.*

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857. (301) 443–9666. E-Mail: *shudak@samhsa.gov.*

Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2002 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372

Applications submitted in response to the FY 2002 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. Executive Order 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: May 3, 2002.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–11512 Filed 5–8–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4491–N–07]

Final NEPA Environmental Impact Statement (EIS); 1105–1135 Warburton Avenue, City of Yonkers, NY; Affordable Housing Ordinance (AHO) Mandated by a 1988 Federal Long-Term Plan Order

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development (HUD) gives this notice to the public that the City of Yonkers, New York, has completed and makes available to the public for comment the Final Environmental Impact Statement (FEIS) that analyzes the potential impacts of developing a 4.6 acre property, located on the west side of Warburton Avenue, north of O'Dell Avenue, in the City of Yonkers, New York.

The original project was proposed for 524 units and eleven stories. The FEIS now contains two preferred alternatives, which shall set the development parameters of the project between 418 units and 440 units, and between 7 and 10 stories. Both alternatives are required to provide affordable units mixed with market rate units in accordance with the City's Affordable Housing Ordinance (AHO). The applicant proposes to utilize the 80/20 Program tax exempt financing and federal tax credits. No direct HUD funding is currently involved.

This notice is in accordance with the regulations of the Council on Environmental Quality as described in 40 CFR parts 1500–1508. Federal agencies having jurisdiction by law, special expertise, or other special interest are requested to comment.

DATES: *Comment Due Date:* June 10, 2002.

FOR FURTHER INFORMATION CONTACT: All interested agencies, groups and persons are invited to submit comments on the FEIS directly to Lee Ellman, Planning Director, Department of Planning and Development, City of Yonkers, 87 Nepperhan Avenue, Suite 311, Yonkers, New York, 10701, (914) 377–6558. *lee.ellman@cityofyonkers.com.*

Copies of the FEIS for 1105–1135 Warburton Avenue are available at the Yonkers Public Library: Getty Square Branch, 7 Main Street, Yonkers, NY 10701; Grinton I. Will Branch, 1500 Central Park, Yonkers, NY 10710; Crestwood Branch, 16 Thompson Street, Yonkers, NY 10702; or from the City of Yonkers Planning Bureau, 87 Nepperhan Avenue, Suite 311, Yonkers, New York, 10701.

SUPPLEMENTARY INFORMATION: The Affordable Housing Ordinance (AHO) is mandated by a 1988 Federal Long-Term Plan Order. A subsequent federal court decision requires environmental review of all affordable housing projects under the National Environmental Policy Act (NEPA). This project is an affordable housing development falling under the AHO. The City of Yonkers determined that the housing project constitutes an action significantly affecting the quality of the human environment and therefore required the preparation of an EIS in accordance with NEPA. The residential building proposed sets aside a number of units to satisfy the affordable housing requirement.

A scoping session to determine the issues of the Draft EIS (DEIS) was opened on March 23, 2000 and a final scoping document was accepted on June 29, 2000. The City accepted the DEIS as complete on November 15, 2000, and set a date for a public hearing. The DEIS was the subject of public comments, both oral and written, provided by agencies, interested groups, and individuals, at the public hearing on December 13, 2000, and during the DEIS public comment period which extended through March 3, 2001. In response to public comments on the DEIS, the Yonkers Planning Board, at its February 13, 2002 meeting, chose by resolution to identify two alternatives to carry forward in the FEIS. The public comments and preferred alternatives have been incorporated into the text of the Final EIS, which was completed in March 2002.

The public hearing for the Draft EIS was for the original 524-unit, 11-story building that had 10 percent of the units affordable. Correspondence from 53 involved or interested agencies and interested persons or groups were received on the project. Thirty-four responses were received by the Army Corps of Engineers relating to wetlands. The Army Corps of Engineers conducted its public hearing concurrently with the NEPA/SEQR public hearing process.

Discussion of Mitigation Measures

Public comments that were received on the DEIS primarily focused on issues relating to land use density, height and bulk impacts on scenic view sheds, wetlands protection, parking, and traffic on local streets.

A 1.45-acre portion of the property is wetland. One full acre of the wetland will remain on site and the City has indicated its preference to have the

applicant mitigate the wetland impact with a new wetland at a location within the City of Yonkers or in a mutually accepted location. Relating to wetlands, on- and off-site mitigation measures are subject to approval by the Army Corps of Engineers under application number 1999–10770–YN.

In addition, other mitigation measures proposed for inclusion in the redesign of the project as discussed in the FEIS are the following. To reduce density, the number of units would be reduced from 524 in the original proposal to between 418 and 440 units. To reduce the visual impact on the Old Croton Aqueduct, the 11-story height of the building in the original proposal would be reduced to between 7 and 10 stories, and will be gradually stepped down to 4 stories. The building has also been rotated to further protect views. The project meets and exceeds the Yonkers Zoning Code Parking requirements and the applicant has agreed to continually monitor the parking situation. To mitigate traffic impacts, the applicant has agreed to fund substantial traffic improvements at area intersections and roadways, including a new traffic light at Odell and Warburton Avenue, new pavement, striping, guardrails and traffic signage along Odell Avenue.

Questions may be directed to the individual named above under the heading "For Further Information Contact."

Dated: May 3, 2002.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 02–11647 Filed 5–8–02; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Dr. Raymond Waddell, Fort Morgan Peninsula, Baldwin County, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Dr. Raymond Waddell (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize the take of the Federally listed endangered Alabama beach mouse (*Peromyscus polionotus ammobates*) (ABM), the threatened green sea turtle (*Chelonia mydas*), the threatened loggerhead turtle, (*Caretta caretta*), and the endangered Kemp's ridley sea turtle (*Lepidochelys kempii*), in Baldwin County, Alabama. The proposed taking is incidental to construction of a single family residence on an approximately 31,312 square-foot lot containing 75 linear feet of coastal dune habitat, fronting the Gulf of Mexico. The Project would permanently remove about 18% of the 31,312 square-foot lot (or approximately 5,625 square feet) that could potentially be inhabited by the ABM and three sea turtle species in Baldwin County, Alabama. A description of the mitigation and minimization measures outlined in the Applicant's Habitat Conservation Plan (HCP) to address the effects of the Project to the protected species is described further in the **SUPPLEMENTARY INFORMATION** section below. It should be noted that this application for an incidental take permit is one of seven applications currently being considered by the Fish and Wildlife Service for construction of single family/or duplex residences in coastal dune habitat fronting the Gulf of Mexico, on the Fort Morgan Peninsula, in Baldwin County, Alabama. Other Notices relating to these applications have appeared in previous issues of the **Federal Register** or will appear in this or subsequent issues.

The Service also announces the availability of an environmental assessment (EA) and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before June 10, 2002.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field-Office, U.S. Fish and Wildlife Service, 1208–B Main Street, Daphne, Alabama 36526 (Attn: Ms. Barbara Allen). Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments and requests for the documentation must be in writing to be processed. Please reference permit number TE054183–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313; or Ms. Barbara Allen, Fish and Wildlife Biologist, Daphne Field Office, (see **ADDRESSES** above), telephone: 334/441–5181, extension 33.

SUPPLEMENTARY INFORMATION: The ABM is one of eight subspecies of the oldfield mouse restricted to coastal dunes. The Service estimates that ABM historically occupied approximately 45 km (28 mi) of shoreline. By 1987, the total occupied linear, shoreline habitat for the ABM, Choctawhatchee, and Perdido Key beach mice was estimated at less than 35 km (22 mi). Monitoring (trapping and field observations) of the ABM population on other private lands that hold, or are under review for, an ITP during the last five years indicates the Fort Morgan Peninsula remains occupied (more or less continuously) by ABM along its primary and secondary dunes while ABM use interior habitats intermittently. The current occupied coastline for the ABM extends approximately 37 km (23 miles). ABM habitat on the Applicant's property consists of approximately 10,064 square feet of wet beach, primary and secondary dunes. There is no designated critical habitat on the property.

The green sea turtle has a circumglobal distribution and is found in tropical and sub-tropical waters. The Florida population of this species is federally listed as endangered; elsewhere the species is listed as threatened. Primary nesting beaches in the southeastern United States occur in a six-county area of east-central and southeastern Florida, where nesting activity ranges from approximately 350–2,300 nests annually. The Service's turtle nesting surveys of the Fort Morgan Peninsula, from Laguna Key west to Mobile Point, for the period 1994–2001 have not confirmed any

green turtle nests, though some crawls were suspected in 1999 and 2000.

The loggerhead turtle is listed as a threatened species throughout its range. This species is circumglobal, preferring temperate and tropical waters. In the southeastern United States, 50,000 to 70,000 nests are deposited annually, about 90 percent of which occur in Florida. Most nesting in the Gulf outside of Florida appears to be in the Chandeleur Islands of Louisiana; Ship, Horn and Petit Bois Islands in Mississippi; and the outer coastal sand beaches of Alabama. The Service's nesting surveys of the Fort Morgan Peninsula, from Laguna Key to Mobile Point, for the 2001 report included over 70 loggerhead turtle nests.

The Kemp's ridley sea turtle is an endangered species throughout its range. Adults are found mainly in the Gulf of Mexico. Immature turtles can be found along the Atlantic coast as far north as Massachusetts and Canada. The species' historic range is tropical and temperate seas in the Atlantic Basin and in the Gulf of Mexico. Nesting occurs primarily in Tamaulipas, Mexico, but occasionally also in Texas and other southern states, including an occasional nest in North Carolina. In 1999, a Kemp's ridley sea turtle nested on Bon Secour National Wildlife Refuge and another along the Gulf Island's National Seashore in Perdido Key, Florida. In 2001, two dead Kemp's ridley sea turtle hatchlings were recovered, one on Bon Secour National Wildlife Refuge, and the second in Gulf Shores, Alabama.

The EA considers the environmental consequences of three alternatives, including a no-action alternative that would result in no new construction on the Project site. This alternative would not be economically feasible for the applicant. The remaining two development alternatives involve construction of a single family residence and driveway. The difference between the two development alternatives relates to the amount of undisturbed habitat remaining on the property after construction has been completed.

In the Applicant's preferred alternative, the project involves construction of a single family residence on approximately 18 percent of the total lot. The remaining 82 percent of the habitat on the lot would be undisturbed. Existing dune habitat located outside the building footprint will be conserved and any impacts associated with construction activities will be restored. The preferred alternative includes measures designed to avoid or minimize take by reducing the footprint of impervious surface by reducing the size of the driveway and moving the structure 10 feet north of the Construction Control Line (CCL) established by Alabama Department of Environmental Management (ADEM). The lot outside the footprint of the driveway and house will be undeveloped and remain in indigenous vegetation.

In addition, a more aggressive land development alternative was considered. Under this alternative wholesale clearing, grading, and formal landscaping landward of the Coastal Construction Control Line would remove nearly all of the natural habitat and indigenous vegetation currently present on the property, with the exception of that protected by zoning and construction setbacks.

Trapping has not been done on the lot, however, based on trapping data on adjacent properties with similar habitat and the presence of ABM tracks, the ABM uses portions (some on a permanent basis, others episodically) of the entire lot. The proposed project would adversely impact the ABM population directly by killing individuals in the construction areas via crushing or entombment and indirectly by introduction of house pets (cats), introduction of competitors (house mice), attraction of predators and permanent human disturbances. Occupation of the proposed structures could adversely affect sea turtle nesting by disorienting nesting females and disorienting hatchlings by excess artificial lighting, trampling nests, and trapping or disorienting nesting females and emerging hatchlings among tire ruts or beach equipment left after dark.

Under section 9 of the Act and its implementing regulations, "taking" of endangered and threatened wildlife is prohibited. However, the Service, under limited circumstances, may issue permits to take such wildlife if the taking is incidental to and not the purpose of otherwise lawful activities. The Applicant has prepared an HCP as required for the incidental take permit application, and as described above as part of the proposed project.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: April 26, 2002.

Thomas M. Riley,

Acting Regional Director.

[FR Doc. 02–11549 Filed 5–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Blaine C. and Lynda C. Crum, Fort Morgan Peninsula, Baldwin County, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Blaine C. and Lynda C. Crum (Applicant), seek an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize the take of the Federally listed endangered Alabama beach mouse (*Peromyscus polionotus ammobates*) (ABM), the threatened green sea turtle (*Chelonia mydas*), the threatened loggerhead turtle, (*Caretta caretta*), and the endangered Kemp's ridley sea turtle (*Lepidochelys kempii*), in Baldwin County, Alabama. The proposed taking is incidental to construction of a single family residence on an approximately 29,250 square-foot lot containing 75 linear feet of coastal dune habitat, fronting the Gulf of Mexico. The Project would permanently remove about 24% of the 29,250 square-foot lot (or approximately 6,972 square feet) that could potentially be inhabited by the ABM and three sea turtle species in Baldwin County, Alabama. A description of the mitigation and minimization measures outlined in the Applicant's Habitat Conservation Plan (HCP) to address the effects of the Project to the protected species is described further in the **SUPPLEMENTARY INFORMATION** section below. It should be noted that this application for an incidental take permit is one of seven applications currently being considered by the Fish and Wildlife Service for construction of single family/or duplex residences in coastal dune habitat fronting the Gulf of Mexico, on the Fort Morgan Peninsula, in Baldwin County,

Alabama. Other Notices relating to these applications have appeared in previous issues of the **Federal Register** or will appear in this or subsequent issues.

The Service also announces the availability of an environmental assessment (EA) and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before June 10, 2002.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Office, U.S. Fish and Wildlife Service, 1208–B Main Street, Daphne, Alabama 36526 (Attn: Ms. Barbara Allen). Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments and requests for the documentation must be in writing to be processed. Please reference permit number TE054180–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313; or Ms. Barbara Allen, Fish and Wildlife Biologist, Daphne Field Office, (see **ADDRESSES** above), telephone: 334/441–5181, extension 33.

SUPPLEMENTARY INFORMATION: The ABM is one of eight subspecies of the oldfield mouse restricted to coastal dunes. The Service estimates that ABM historically occupied approximately 45 km (28 mi) of shoreline. By 1987, the total occupied linear, shoreline habitat for the ABM, Choctawhatchee, and Perdido Key beach mice was estimated at less than 35 km (22 mi). Monitoring (trapping and field observations) of the ABM population on other private lands that hold, or are under review for, an ITP during the last five years indicates the Fort Morgan Peninsula remains occupied (more or less continuously) by ABM along its primary and secondary dunes while ABM use interior habitats intermittently. The current occupied coastline for the ABM extends approximately 37 km (23 miles). ABM habitat on the Applicant's property consists of approximately 29,254 square feet of wet beach, primary and secondary dunes. There is no designated critical habitat on the property.

The green sea turtle has a circumglobal distribution and is found in tropical and sub-tropical waters. The Florida population of this species is federally listed as endangered; elsewhere the species is listed as threatened. Primary nesting beaches in the southeastern United States occur in a six-county area of east-central and southeastern Florida, where nesting activity ranges from approximately 350–2,300 nests annually. The Service's turtle nesting surveys of the Fort Morgan Peninsula, from Laguna Key west to Mobile Point, for the period 1994–2001 have not confirmed any green turtle nests, though some crawls were suspected in 1999 and 2000.

The loggerhead turtle is listed as a threatened species throughout its range. This species is circumglobal, preferring temperate and tropical waters. In the southeastern United States, 50,000 to 70,000 nests are deposited annually, about 90 percent of which occur in Florida. Most nesting in the Gulf outside of Florida appears to be in the Chandeleur Islands of Louisiana; Ship, Horn and Petit Bois Islands in Mississippi; and the outer coastal sand beaches of Alabama. The Service's nesting surveys of the Fort Morgan Peninsula, from Laguna Key to Mobile Point, for the 2001 report included over 70 loggerhead turtle nests.

The Kemp's ridley sea turtle is an endangered species throughout its range. Adults are found mainly in the Gulf of Mexico. Immature turtles can be found along the Atlantic coast as far north as Massachusetts and Canada. The species' historic range is tropical and temperate seas in the Atlantic Basin and in the Gulf of Mexico. Nesting occurs primarily in Tamaulipas, Mexico, but occasionally also in Texas and other southern states, including an occasional nest in North Carolina. In 1999, a Kemp's ridley sea turtle nested on Bon Secour National Wildlife Refuge and another along the Gulf Island's National Seashore in Perdido Key, Florida. In 2001, two dead Kemp's ridley sea turtle hatchlings were recovered, one on Bon Secour National Wildlife Refuge, and the second in Gulf Shores, Alabama.

The EA considers the environmental consequences of three alternatives, including a no-action alternative that would result in no new construction on the Project site. This alternative would not be economically feasible for the applicant. The remaining two development alternatives involve construction of a single family residence and driveway. The difference between the two development alternatives relates to the amount of undisturbed habitat remaining on the property after construction has been completed.

In the Applicant's preferred alternative, the project involves construction of a single family residence on approximately 24 percent of the total lot. The remaining 76 percent of the habitat on the lot would be undisturbed. Existing dune habitat located outside the building footprint will be conserved and any impacts associated with construction activities will be restored. The preferred alternative includes measures designed to avoid or minimize take by reducing the footprint of impervious surface through minimizing the size of the driveway and moving the structure 28 feet north of the Construction Control Line (CCL) established by Alabama Department of Environmental Management (ADEM). The lot outside the footprint of the driveway and house will be undeveloped and remain in indigenous vegetation.

In addition, a more aggressive land development alternative was considered. Under this alternative wholesale clearing, grading, and formal landscaping landward of the Coastal Construction Control Line would remove nearly all of the natural habitat and indigenous vegetation currently present on the property, with the exception of that protected by zoning and construction setbacks.

Trapping has not been done on the lot, however, based on trapping data on adjacent properties with similar habitat and the presence of ABM tracks, the ABM uses portions (some on a permanent basis, others episodically) of the entire lot. The proposed project would adversely impact the ABM population directly by killing individuals in the construction areas via crushing or entombment and indirectly by introduction of house pets (cats), introduction of competitors (house

mice), attraction of predators and permanent human disturbances. Occupation of the proposed structures could adversely affect sea turtle nesting by disorienting nesting females and disorienting hatchlings by excess artificial lighting, trampling nests, and trapping or disorienting nesting females and emerging hatchlings among tire ruts or beach equipment left after dark.

Under section 9 of the Act and its implementing regulations, "taking" of endangered and threatened wildlife is prohibited. However, the Service, under limited circumstances, may issue permits to take such wildlife if the taking is incidental to and not the purpose of otherwise lawful activities. The Applicant has prepared an HCP as required for the incidental take permit application, and as described above as part of the proposed project.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service will also evaluate whether the issuance of a section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: April 26, 2002.

Thomas M. Riley,

Acting Regional Director.

[FR Doc. 02–11550 Filed 5–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for FML81A, LLC, Fort Morgan Peninsula, Baldwin County, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: FML81A, LLC (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize the take of the Federally listed endangered Alabama beach mouse (*Peromyscus polionotus ammobates*) (ABM), the threatened green sea turtle (*Chelonia mydas*), the threatened loggerhead turtle (*Caretta caretta*), and the endangered Kemp's ridley sea turtle (*Lepidochelys kempii*), in Baldwin County, Alabama. The proposed taking is incidental to construction of four duplex dwelling units on a 3.23 acre tract containing 100 linear feet of coastal dune habitat, fronting the Gulf of Mexico. The Project would permanently remove about 30% of the 3.23 acre tract (or approximately 41,226 square feet) that could potentially be inhabited by the ABM and three sea turtle species in Baldwin County, Alabama. A description of the mitigation and minimization measures outlined in the Applicant's Habitat Conservation Plan (HCP) to address the effects of the Project to the protected species is described further in the **SUPPLEMENTARY INFORMATION** section below. It should be noted that this application for an incidental take permit is one of seven applications currently being considered by the Fish and Wildlife Service for construction of single family/or duplex residences in coastal dune habitat fronting the Gulf of Mexico, on the Fort Morgan Peninsula, in Baldwin County, Alabama. Other Notices relating to these applications will appear in this issue of the **Federal Register** or in subsequent issues.

The Service also announces the availability of an environmental assessment (EA) and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before June 10, 2002.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Office, U.S. Fish and Wildlife Service, 1208–B Main Street, Daphne, Alabama 36526 (Attn: Ms. Barbara Allen). Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments and requests for the documentation must be in writing to be processed. Please reference permit number TE054163–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313; or Ms. Barbara Allen, Fish and Wildlife Biologist, Daphne Field Office, (see **ADDRESSES** above), telephone: 334/441–5181, extension 33.

SUPPLEMENTARY INFORMATION: The ABM is one of eight subspecies of the oldfield mouse restricted to coastal dunes. The Service estimates that ABM historically occupied approximately 45 km (28 mi) of shoreline. By 1987, the total occupied linear, shoreline habitat for the ABM, Choctawhatchee, and Perdido Key beach mice was estimated at less than 35 km (22 mi). Monitoring (trapping and field observations) of the ABM population on other private lands that hold, or are under review for, an ITP during the last five years indicates the Fort Morgan Peninsula remains occupied (more or less continuously) by ABM along its primary and secondary dunes while ABM use interior habitats intermittently. The current occupied coastline for the ABM extends approximately 37 km (23 miles). ABM habitat on the Applicant's property consists of approximately 3.23 acres of wet beach, primary and secondary dunes, escarpment, and scrub habitat. There is no designated critical habitat on the property.

The green sea turtle has a circumglobal distribution and is found in tropical and sub-tropical waters. The Florida population of this species is federally listed as endangered; elsewhere the species is listed as threatened. Primary nesting beaches in the southeastern United States occur in a six-county area of east-central and southeastern Florida, where nesting activity ranges from approximately 350–

2,300 nests annually. The Service's turtle nesting surveys of the Fort Morgan Peninsula, from Laguna Key west to Mobile Point, for the period 1994–2001 have not confirmed any green turtle nests, though some crawls were suspected in 1999 and 2000.

The loggerhead turtle is listed as a threatened species throughout its range. This species is circumglobal, preferring temperate and tropical waters. In the southeastern United States, 50,000 to 70,000 nests are deposited annually, about 90 percent of which occur in Florida. Most nesting in the Gulf outside of Florida appears to be in the Chandeleur Islands of Louisiana; Ship, Horn and Petit Bois Islands in Mississippi; and the outer coastal sand beaches of Alabama. The Service's nesting surveys of the Fort Morgan Peninsula, from Laguna Key to Mobile Point, for the 2001 report included over 70 loggerhead turtle nests.

The Kemp's ridley sea turtle is an endangered species throughout its range. Adults are found mainly in the Gulf of Mexico. Immature turtles can be found along the Atlantic coast as far north as Massachusetts and Canada. The species' historic range is tropical and temperate seas in the Atlantic Basin and in the Gulf of Mexico. Nesting occurs primarily in Tamaulipas, Mexico, but occasionally also in Texas and other southern states, including an occasional nest in North Carolina. In 1999, a Kemp's ridley sea turtle nested on Bon Secour National Wildlife Refuge and another along the Gulf Island's National Seashore in Perdido Key, Florida. In 2001, two dead Kemp's ridley sea turtle hatchlings were recovered, one on Bon Secour National Wildlife Refuge, and the second in Gulf Shores, Alabama.

The EA considers the environmental consequences of three alternatives, including a no-action alternative that would result in no new construction on the Project site. This alternative would not be economically feasible for the applicant. The remaining two development alternatives involve construction of four duplex residential units, including a common deck with a pool, and a primary crushed rock driveway with extensions and parking pads for each of the four residential buildings. The difference between the two development alternatives relates to the amount of undisturbed habitat remaining on the property after construction has been completed.

In the Applicant's preferred alternative, the project involves construction of four duplex units on approximately 29.3 percent of the total lot (Lot 81 of Resubdivision A, Gulf Beach A Subdivision). The remaining 70.7 percent of the habitat on the lot would be undisturbed. This alternative includes measures designed to avoid or minimize take by reducing the footprint of impervious surface and allowing the remainder of the property to remain in indigenous vegetation.

In addition, a more aggressive land development alternative was considered. Under this alternative wholesale clearing, grading, and formal landscaping landward of the Coastal Construction Control Line would remove nearly all of the natural habitat and indigenous vegetation currently present on the property, with the exception of that protected by zoning and construction setbacks.

Trapping has not been done on the lot, however, based on trapping data on adjacent properties with similar habitat and the presence of ABM tracks, the ABM uses portions (some on a permanent basis, other episodically) of the entire lot. The proposed project would adversely impact the ABM population directly by killing individuals in the construction areas via crushing or entombment and indirectly by introduction of house pets (cats), introduction of competitors (house mice), attraction of predators and permanent human disturbances. Occupation of the proposed structures could adversely affect sea turtle nesting by disorienting nesting females and disorienting hatchlings by excess artificial lighting, trampling nests, and trapping or disorienting nesting females and emerging hatchlings among tire ruts or beach equipment left after dark.

Under section 9 of the Act and its implementing regulations, "taking" of endangered and threatened wildlife is prohibited. However, the Service, under limited circumstances, may issue permits to take such wildlife if the taking is incidental to and not the purpose of otherwise lawful activities. The Applicant has prepared an HCP as required for the incidental take permit application, and as described above as part of the proposed project.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service will also evaluate whether the issuance of a section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: April 19, 2002.

Sam D. Hamilton,

Regional Director.

[FR Doc. 02–11552 Filed 5–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Mr. John Hancock, Fort Morgan Peninsula, Baldwin County, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Mr. John Hancock (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize the take of the Federally listed endangered Alabama beach mouse (*Peromyscus polionotus ammobates*) (ABM), the threatened green sea turtle (Chelonia mydas), the threatened loggerhead turtle (*Caretta caretta*), and the endangered Kemp's ridley sea turtle (*Lepidochelys kempii*), in Baldwin County, Alabama. The proposed taking is incidental to construction of a single family residence on an approximately 0.33 acre tract containing 50 linear feet of coastal dune habitat, fronting the Gulf of Mexico. The Project would permanently remove about 30% of the 0.33 acre tract (or approximately 2,100 square feet) that could potentially be inhabited by the ABM and three sea turtle species in Baldwin County, Alabama. A description of the mitigation and minimization measures outlined in the Applicant's Habitat Conservation Plan (HCP) to address the effects of the Project to the protected species is described further in the **SUPPLEMENTARY INFORMATION** section below. It should be noted that this application for an incidental take permit is one of seven applications currently being considered by the Fish and Wildlife Service for construction of single family/or duplex residences in coastal dune habitat fronting the Gulf of Mexico, on the Fort Morgan Peninsula, in Baldwin County, Alabama. Other Notices relating to these applications will appear in this issue of

the Federal Register or in subsequent issues.

The Service also announces the availability of an environmental assessment (EA) and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before June 10, 2002.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Office, U.S. Fish and Wildlife Service, 1208-B Main Street, Daphne, Alabama 36526 (Attn: Ms. Barbara Allen). Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments and requests for the documentation must be in writing to be processed. Please reference permit number TE054178–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313; or Ms. Barbara Allen, Fish and Wildlife Biologist, Daphne Field Office, (see **ADDRESSES** above), telephone: 334/441–5181, extension 33.

SUPPLEMENTARY INFORMATION: The ABM is one of eight subspecies of the oldfield mouse restricted to coastal dunes. The Service estimates that ABM historically occupied approximately 45 km (28 mi) of shoreline. By 1987, the total occupied linear, shoreline habitat for the ABM, Choctawhatchee, and Perdido Key beach mice was estimated at less than 35 km (22 mi). Monitoring (trapping and field observations) of the ABM population on other private lands that hold, or are under review for, an ITP during the last five years indicates the Fort Morgan Peninsula remains occupied (more or less continuously) by ABM along its primary and secondary dunes while ABM use interior habitats intermittently. The current occupied coastline for the ABM extends approximately 37 km (23 miles). ABM habitat on the Applicant's property consists of approximately 0.33 acres of wet beach, primary and secondary dunes, escarpment, and scrub habitat. There is no designated critical habitat on the property.

The green sea turtle has a circumglobal distribution and is found in tropical and sub-tropical waters. The Florida population of this species is federally listed as endangered; elsewhere the species is listed as threatened. Primary nesting beaches in the southeastern United States occur in a six-county area of east-central and southeastern Florida, where nesting activity ranges from approximately 350–2,300 nests annually. The Service's turtle nesting surveys of the Fort Morgan Peninsula, from Laguna Key west to Mobile Point, for the period 1994–2001 have not confirmed any green turtle nests, though some crawls were suspected in 1999 and 2000.

The loggerhead turtle is listed as a threatened species throughout its range. This species is circumglobal, preferring temperate and tropical waters. In the southeastern United States, 50,000 to 70,000 nests are deposited annually, about 90 percent of which occur in Florida. Most nesting in the Gulf outside of Florida appears to be in the Chandeleur Islands of Louisiana; Ship, Horn and Petit Bois Islands in Mississippi; and the outer coastal sand beaches of Alabama. The Service's nesting surveys of the Fort Morgan Peninsula, from Laguna Key to Mobile Point, for the 2001 report included over 70 loggerhead turtle nests.

The Kemp's ridley sea turtle is an endangered species throughout its range. Adults are found mainly in the Gulf of Mexico. Immature turtles can be found along the Atlantic coast as far north as Massachusetts and Canada. The species' historic range is tropical and temperate seas in the Atlantic Basin and in the Gulf of Mexico. Nesting occurs primarily in Tamaulipas, Mexico, but occasionally also in Texas and other southern states, including an occasional nest in North Carolina. In 1999, a Kemp's ridley sea turtle nested on Bon Secour National Wildlife Refuge and another along the Gulf Island's National Seashore in Perdido Key, Florida. In 2001, two dead Kemp's ridley sea turtle hatchlings were recovered, one on Bon Secour National Wildlife Refuge, and the second in Gulf Shores, Alabama.

The EA considers the environmental consequences of three alternatives, including a no-action alternative that would result in no new construction on the Project site. This alternative would not be economically feasible for the applicant. The remaining two development alternatives involve construction of a single family residence and driveway. The difference between the two development alternatives relates to the amount of undisturbed habitat remaining on the property after construction has been completed.

In the Applicant's preferred alternative, the project involves construction of a single family residence on approximately 30 percent of the total lot. The remaining 70 percent of the habitat on the lot would be undisturbed. This alternative includes measures designed to avoid or minimize take by reducing the footprint of impervious surface, reducing the size of the driveway, and eliminating the concrete pad under the residence. The lot outside the footprint of the house and driveway would remain undeveloped and remain in indigenous vegetation.

In addition, a more aggressive land development alternative was considered. Under this alternative wholesale clearing, grading, and formal landscaping landward of the Coastal Construction Control Line would remove nearly all of the natural habitat and indigenous vegetation currently present on the property, with the exception of that protected by zoning and construction setbacks.

Trapping has not been done on the lot, however, based on trapping data on adjacent properties with similar habitat and the presence of ABM tracks, the ABM uses portions (some on a permanent basis, other episodically) of the entire lot. The proposed project would adversely impact the ABM population directly by killing individuals in the construction areas via crushing or entombment and indirectly by introduction of house pets (cats), introduction of competitors (house mice), attraction of predators and permanent human disturbances. Occupation of the proposed structures could adversely affect sea turtle nesting by disorienting nesting females and disorienting hatchlings by excess artificial lighting, trampling nests, and trapping or disorienting nesting females

and emerging hatchlings among tire ruts or beach equipment left after dark.

Under section 9 of the Act and its implementing regulations, "taking" of endangered and threatened wildlife is prohibited. However, the Service, under limited circumstances, may issue permits to take such wildlife if the taking is incidental to and not the purpose of otherwise lawful activities. The Applicant has prepared an HCP as required for the incidental take permit application, and as described above as part of the proposed project.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service will also evaluate whether the issuance of a section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: April 19, 2002.

Sam D. Hamilton,

Regional Director.

[FR Doc. 02–11553 Filed 5–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Mr. and Mrs. Daniel Sizemore, Fort Morgan Peninsula, Baldwin County, AL

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice.

SUMMARY: Mr. and Mrs. Daniel Sizemore (Applicant), seek an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize the take of the Federally listed endangered Alabama beach mouse (*Peromyscus polionotus ammobates*) (ABM), the threatened green sea turtle (*Chelonia mydas*), the threatened loggerhead turtle, (*Caretta caretta*), and the endangered Kemp's ridley sea turtle (*Lepidochelys kempii*), in Baldwin County, Alabama. The proposed taking is incidental to construction of two single family residences on an approximately 10,640 square-foot lot containing 106 linear feet of coastal dune habitat, fronting the Gulf of Mexico. The Project would permanently remove about 38% of the 10,640 square-foot lot (or approximately 4,070 square feet) that could potentially be inhabited by the ABM and three sea turtle species in Baldwin County, Alabama. A description of the mitigation and minimization measures outlined in the Applicant's Habitat Conservation Plan (HCP) to address the effects of the Project to the protected species is described further in the **SUPPLEMENTARY INFORMATION** section below. It should be noted that this application for an incidental take permit is one of seven applications currently being considered by the Fish and Wildlife Service for construction of single family/or duplex residences in coastal dune habitat fronting the Gulf of Mexico, on the Fort Morgan Peninsula, in Baldwin County, Alabama. Other Notices relating to these applications will appear in this issue of the **Federal Register** or in subsequent issues.

The Service also announces the availability of an environmental assessment (EA) and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before June 10, 2002.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Office, U.S. Fish and Wildlife Service, 1208–B Main Street, Daphne, Alabama 36526 (Attn: Ms. Barbara Allen). Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments and requests for the documentation must be in writing to be processed. Please reference permit number TE054174–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313; or Ms. Barbara Allen, Fish and Wildlife Biologist, Daphne Field Office, (see **ADDRESSES** above), telephone: 334/441–5181, extension 33.

SUPPLEMENTARY INFORMATION: The ABM is one of eight subspecies of the oldfield mouse restricted to coastal dunes. The Service estimates that ABM historically occupied approximately 45 km (28 mi) of shoreline. By 1987, the total occupied linear, shoreline habitat for the ABM, Choctawhatchee, and Perdido Key beach mice was estimated at less than 35 km (22 mi). Monitoring (trapping and field observations) of the ABM population on other private lands that hold, or are under review for, an ITP during the last five years indicates the Fort Morgan Peninsula remains occupied (more or less continuously) by ABM along its primary and secondary dunes while ABM use interior habitats intermittently. The current occupied coastline for the ABM extends approximately 37 km (23 miles). ABM habitat on the Applicant's property consists of approximately 10,064 square feet of wet beach, primary and secondary dunes. There is no designated critical habitat on the property.

The green sea turtle has a circumglobal distribution and is found in tropical and sub-tropical waters. The Florida population of this species is federally listed as endangered; elsewhere the species is listed as threatened. Primary nesting beaches in the southeastern United States occur in a six-county area of east-central and southeastern Florida, where nesting activity ranges from approximately 350–2,300 nests annually. The Service's turtle nesting surveys of the Fort Morgan Peninsula, from Laguna Key west to Mobile Point, for the period 1994–2001 have not confirmed any green turtle nests, though some crawls were suspected in 1999 and 2000.

The loggerhead turtle is listed as a threatened species throughout its range. This species is circumglobal, preferring temperate and tropical waters. In the southeastern United States, 50,000 to 70,000 nests are deposited annually, about 90 percent of which occur in Florida. Most nesting in the Gulf outside of Florida appears to be in the Chandeleur Islands of Louisiana; Ship, Horn and Petit Bois Islands in Mississippi; and the outer coastal sand beaches of Alabama. The Service's nesting surveys of the Fort Morgan Peninsula, from Laguna Key to Mobile Point, for the 2001 report included over 70 loggerhead turtle nests.

The Kemp's ridley sea turtle is an endangered species throughout its range. Adults are found mainly in the Gulf of Mexico. Immature turtles can be found along the Atlantic coast as far north as Massachusetts and Canada. The species' historic range is tropical and temperate seas in the Atlantic Basin and in the Gulf of Mexico. Nesting occurs primarily in Tamaulipas, Mexico, but occasionally also in Texas and other southern states, including an occasional nest in North Carolina. In 1999, a Kemp's ridley sea turtle nested on Bon Secour National Wildlife Refuge and another along the Gulf Island's National Seashore in Perdido Key, Florida. In 2001, two dead Kemp's ridley sea turtle hatchlings were recovered, one on Bon Secour National Wildlife Refuge, and the second in Gulf Shores, Alabama.

The EA considers the environmental consequences of three alternatives, including a no-action alternative that would result in no new construction on the Project site. This alternative would not be economically feasible for the applicant. The remaining two development alternatives involve construction of two single family residences and driveways. The difference between the two development alternatives relates to the amount of undisturbed habitat remaining on the property after construction has been completed.

In the Applicant's preferred alternative, the project involves construction of two single family residences on approximately 38 percent of the total lot. The remaining 62 percent of the habitat on the lot would be undisturbed. Existing dune habitat located outside the building footprint will be restored and planted with sea oats. The Applicant plans to store sand and vegetated material removed during excavation on the western side of the proposed residences. After construction is completed the material will be spread over the dune system to inoculate the area with seeds, stolons and other vegetative material to enhance plant propagation. Approximately 300 units of sea oats will be installed on the primary and secondary dune system. Planting units will contain at least 3 shoots and have achieved a height of 12–18 inches. This alternative includes measures designed to avoid or minimize take by reducing the footprint of impervious surface by reducing the size of the driveway and eliminating a concrete pad under the residence. The lot outside the footprint of the driveway and house will be undeveloped and remain in indigenous vegetation. The mitigation plan described in the applicants' HCP includes an enhancement component. The dunes south of the property line extend in an east/west direction for approximately 100 feet. Sand fencing will be placed continuously along this dune area and approximately 900 sea oat plants installed.

In addition, a more aggressive land development alternative was considered. Under this alternative wholesale clearing, grading, and formal landscaping landward of the Coastal Construction Control Line would remove nearly all of the natural habitat and indigenous vegetation currently present on the property, with the exception of that protected by zoning and construction setbacks.

Trapping has not been done on the lot, however, based on trapping data on adjacent properties with similar habitat and the presence of ABM tracks, the ABM uses portions (some on a permanent basis, others episodically) of the entire lot. The proposed project would adversely impact the ABM population directly by killing individuals in the construction areas via crushing or entombment and indirectly by introduction of house pets (cats), introduction of competitors (house mice), attraction of predators and permanent human disturbances. Occupation of the proposed structures could adversely affect sea turtle nesting by disorienting nesting females and disorienting hatchlings by excess artificial lighting, trampling nests, and trapping or disorienting nesting females and emerging hatchlings among tire ruts or beach equipment left after dark.

Under section 9 of the Act and its implementing regulations, "taking" of endangered and threatened wildlife is prohibited. However, the Service, under limited circumstances, may issue permits to take such wildlife if the taking is incidental to and not the purpose of otherwise lawful activities. The Applicant has prepared an HCP as required for the incidental take permit application, and as described above as part of the proposed project.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service will also evaluate whether the issuance of a section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: April 22, 2002.

Thomas M. Riley,

Acting Regional Director.

[FR Doc. 02–11566 Filed 5–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for FML81, LLC, Fort Morgan Peninsula, Baldwin County, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: FML81, LLC (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize the take of the Federally listed endangered Alabama beach mouse (*Peromyscus polionotus ammobates*) (ABM), the threatened green sea turtle (*Chelonia mydas*), the threatened loggerhead turtle (*Caretta caretta*), and the endangered Kemp's ridley sea turtle (*Lepidochelys kempii*), in Baldwin County, Alabama. The proposed taking is incidental to construction of a duplex dwelling unit on a 0.5 acre tract containing 75 linear feet of coastal dune habitat, fronting the Gulf of Mexico. The Project would permanently remove about 30% of the 0.5 acre tract (or approximately 6,518 square feet) that could potentially be inhabited by the ABM and three sea turtle species in Baldwin County, Alabama. A

description of the mitigation and minimization measures outlined in the Applicant's Habitat Conservation Plan (HCP) to address the effects of the Project to the protected species is described further in the **SUPPLEMENTARY INFORMATION** section below. It should be noted that this application for an incidental take permit is one of seven applications currently being considered by the Fish and Wildlife Service for construction of single family/or duplex residences in coastal dune habitat fronting the Gulf of Mexico, on the Fort Morgan Peninsula, in Baldwin County, Alabama. Other Notices relating to these applications will appear in this issue of the **Federal Register** or in subsequent issues.

The Service also announces the availability of an environmental assessment (EA) and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before June 10, 2002.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Office, U.S. Fish and Wildlife Service, 1208–B Main Street, Daphne, Alabama 36526 (Attn: Ms. Barbara Allen). Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments and requests for the documentation must be in writing to be processed. Please reference permit number TE052383–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313; or Ms. Barbara Allen, Fish and Wildlife Biologist, Daphne Field Office, (see **ADDRESSES** above), telephone: 334/441–5181, extension 33.

SUPPLEMENTARY INFORMATION: The ABM is one of eight subspecies of the oldfield mouse restricted to coastal dunes. The Service estimates that ABM historically occupied approximately 45 km (28 mi) of shoreline. By 1987, the total occupied linear, shoreline habitat for the ABM, Choctawhatchee, and Perdido Key beach mice was estimated at less than 35 km (22 mi). Monitoring (trapping and field observations) of the ABM population on other private lands that hold, or are under review for, an ITP during the last five years indicates the Fort Morgan Peninsula remains occupied (more or less continuously) by ABM along its primary and secondary dunes while ABM use interior habitats intermittently. The current occupied coastline for the ABM extends approximately 37 km (23 miles). ABM habitat on the Applicant's property consists of approximately 0.5 acre of wet beach, primary and secondary dunes. There is no designated critical habitat on the property.

The green sea turtle has a circumglobal distribution and is found in tropical and sub-tropical waters. The Florida population of this species is federally listed as endangered; elsewhere the species is listed as threatened. Primary nesting beaches in the southeastern United States occur in a six-county area of east-central and southeastern Florida, where nesting activity ranges from approximately 350–2,300 nests annually. The Service's turtle nesting surveys of the Fort Morgan Peninsula, from Laguna Key west to Mobile Point, for the period 1994–2001 have not confirmed any green turtle nests, though some crawls were suspected in 1999 and 2000.

The loggerhead turtle is listed as a threatened species throughout its range. This species is circumglobal, preferring temperate and tropical waters. In the southeastern United States, 50,000 to 70,000 nests are deposited annually, about 90 percent of which occur in Florida. Most nesting in the Gulf outside of Florida appears to be in the Chandeleur Islands of Louisiana; Ship, Horn and Petit Bois Islands in Mississippi; and the outer coastal sand beaches of Alabama. The Service's nesting surveys of the Fort Morgan Peninsula, from Laguna Key to Mobile Point, for the 2001 report included over 70 loggerhead turtle nests.

The Kemp's ridley sea turtle is an endangered species throughout its range. Adults are found mainly in the Gulf of Mexico. Immature turtles can be found along the Atlantic coast as far north as Massachusetts and Canada. The species' historic range is tropical and temperate seas in the Atlantic Basin and in the Gulf of Mexico. Nesting occurs primarily in Tamaulipas, Mexico, but occasionally also in Texas and other southern states, including an occasional nest in North Carolina. In 1999, a Kemp's ridley sea turtle nested on Bon Secour National Wildlife Refuge and another along the Gulf Island's National Seashore in Perdido Key, Florida. In 2001, two dead Kemp's ridley sea turtle hatchlings were recovered, one on Bon Secour National Wildlife Refuge, and the second in Gulf Shores, Alabama.

The EA considers the environmental consequences of three alternatives, including a no-action alternative that would result in no new construction on the Project site. This alternative would not be economically feasible for the applicant. The remaining two development alternatives involve construction of a duplex residence, including a deck with a pool, and a driveway. The difference between the two development alternatives relates to the amount of undisturbed habitat remaining on the property after construction has been completed.

In the Applicant's preferred alternative, the project involves construction of a duplex residence on approximately 30 percent of the total lot (Lot 82 in the Ponce de Leon Subdivision). The remaining 70 percent of the habitat on the lot would be undisturbed. This alternative includes measures designed to avoid or minimize take by reducing the footprint of development and habitat disturbance by 3,752 square feet, which will be undeveloped and remain in indigenous vegetation.

In addition, a more aggressive land development alternative was considered. Under this alternative wholesale clearing, grading, and formal landscaping landward of the Coastal Construction Control Line would remove nearly all of the natural habitat and indigenous vegetation currently present on the property, with the exception of that protected by zoning and construction setbacks.

Trapping has not been done on the lot, however, based on trapping data on adjacent properties with similar habitat and the presence of ABM tracks, the ABM uses portions (some on a

permanent basis, other episodically) of the entire lot. The proposed project would adversely impact the ABM population directly by killing individuals in the construction areas via crushing or entombment and indirectly by introduction of house pets (cats), introduction of competitors (house mice), attraction of predators and permanent human disturbances. Occupation of the proposed structures could adversely affect sea turtle nesting by disorienting nesting females and disorienting hatchlings by excess artificial lighting, trampling nests, and trapping or disorienting nesting females and emerging hatchlings among tire ruts or beach equipment left after dark.

Under section 9 of the Act and its implementing regulations, "taking" of endangered and threatened wildlife is prohibited. However, the Service, under limited circumstances, may issue permits to take such wildlife if the taking is incidental to and not the purpose of otherwise lawful activities. The Applicant has prepared an HCP as required for the incidental take permit application, and as described above as part of the proposed project.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service will also evaluate whether the issuance of a section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: April 19, 2002.

Sam D. Hamilton,

Regional Director.

[FR Doc. 02–11567 Filed 5–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Battle of Midway National Memorial Advisory Committee; Meeting Notice

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Battle of Midway National Memorial Advisory Committee will hold its second meeting by teleconference on Thursday, May 30, 2002, from 2 p.m. to 4 p.m. Eastern Daylight Savings Time. During this teleconference, the committee will review plans for the 60th anniversary celebration of the Battle of Midway, the status of historic structures on Midway Atoll National Wildlife Refuge, and the standards for any new memorials to be placed on the atoll.

DATES: May 30, 2003, 2 p.m. to 4 p.m.

ADDRESSES: U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, Virginia, room 205 or by teleconference.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact Barbara Maxfield, External Affairs Chief for the Fish and Wildlife Service's Pacific Islands Office, Box 50088, Honolulu, HI 96805; telephone (808) 541–2749; fax (808) 541–2756 no later than May 24, 2002. You may obtain copies of the draft meeting agenda from the same source.

SUPPLEMENTARY INFORMATION: As directed by Congress, the Secretary of the Interior established the Battle of Midway National Memorial Advisory Committee to facilitate development of a strategy for the dédication and management of this National Memorial. Members of the public are welcome to participate in any of its meetings.

Members of the public in the Washington, DC, area may attend the meeting in person in the U.S. Fish and Wildlife Service's Washington Office at 4401 N. Fairfax Drive, Arlington, Virginia, in room 205. Members of the public may also participate by teleconference, however, teleconference lines are limited. Please call Barbara Maxfield (808) 541–2749 if you are interested in participating in the call and to obtain the dial-in number. Seating in room 205 of the Fish and Wildlife Service's Arlington Square office is limited and is available on a first come, first served basis.

We will distribute written comments submitted to the Fish and Wildlife Service at the Honolulu address above to committee members prior to the meeting if we receive them in sufficient time to allow distribution. We will provide an opportunity for oral comments from the public during this teleconference meeting as well.

Dated: April 26, 2002.

Elizabeth N. Flint,

Acting Project Leader, Hawaiian and Pacific Islands Wildlife Refuge Complex.

[FR Doc. 02–11627 Filed 5–8–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–1990; CA–40204]

Notice of Availability of the Final Environmental Impact Report (EIR)/ Environmental Impact Statement (EIS) for the Proposed Mesquite Mine Expansion

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Newmont Gold Company (NGC), operator of the Mesquite gold mine located in Imperial County, California, has proposed to expand mining operations by a plan modification submitted to the Bureau of Land Management (BLM) El Centro field office, on November 30, 1998. Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), and the California Environmental Quality Act (Public Resources Code, Section 21000, *et seq.*), the BLM and Imperial County, as lead agencies, have directed the preparation of a draft and final environmental impact report (EIR), environmental impact statement (EIS) by a third party contractor on the impacts of an expansion of this gold mining/ processing operation, which would extend the mine a projected six years. The draft EIR/EIS was completed during August, 2000, followed by a combined Federal and State 60 day public review period. Written comments on the draft were accepted until October 30, 2000. The final EIR/EIS is an abbreviated document that consists of responses to comments on the draft and an errata section with specific modifications and corrections to the draft in response to comments. A revised executive summary and list of persons and agencies who received copies of the draft are also included. This information, in conjunction with the draft, constitutes the final EIR/EIS. The final EIR/EIS presents a preferred alternative derived from seven alternatives, including NGC's proposed action. The preferred alternative is the agencies' attempt to reduce or avoid the potential environmental impacts of the proposed action.

DATES: No action will be taken on the project for at least 30 days following publication of this notice.

ADDRESSES: Copies of the final EIR/EIS will be available at the Imperial County Planning and Building Department, 939 Main Street, El Centro, CA 92243; telephone (760) 482–4236, extension 4310. Text of the final is also available on-line at the BLM website: *// www.ca.blm.gov/elcentro/inesquite/.*

Public reading copies will be available for review at the following locations: (1) Bureau of Land Management, California State Office, 2800 Cottage Way, Sacramento, CA; (2) Bureau of Land Management, El Centro Field Office, 1661 South Main Street, El Centro, CA; (3) Imperial County Planning and Building Department, 939 Main Street, El Centro, CA; (4) local libraries in San Diego County, California, and Imperial County, California; and in the town of Yuma, Arizona.

FOR FURTHER INFORMATION: Contact Jurg Heuberger, Imperial County Planning and Building Department, 939 Main Street, El Centro, CA: telephone (760) 482–4236 extension 4310; or Kevin Marty, Bureau of Land Management, 1661 South 4th Street, El Centro, CA: telephone (760) 337–4422.

SUPPLEMENTARY INFORMATION: The Mesquite Mine began operations under an approved plan of operations during 1985. Since this time, plan modifications and expansions have occurred, which are summarized within the approved Mesquite Mine consolidated plan of operations dated October, 1995. On November 30, 1998, Newmont Gold Company, operator of the Mesquite Mine, submitted a plan of operations for an expansion of the mine. The existing mine site encompasses 5,200 acres, of which 3,655 acres have been disturbed by mining activities to date. The total new un-permitted area proposed for disturbance under the expansion is 190 acres.

The expansion would allow the company to continue extracting and processing economical gold deposits, delineated by drilling programs initiated during 1988 and continuing to date. The expansion would increase the mine life a projected six years. The plan modification proposes to process approximately 89 million tons of ore and 242 million tons of waste rock. The Big Chief and Rainbow pit expansions would encompass approximately 350 acres of Federal, State and private (patented) land, of which 76 acres would be new, unpermitted land disturbance. The plan modification also describes alternative methods for storage of waste rock, either in existing mined-out open pits, at new or expanded out-of-pit storage areas, or a combination of both; and construction of ancillary facilities including roads, fencing and drainage diversions. Current project is inactive; however if the price of gold increases to a favorable level, operations may be resumed.

Dated: March 5, 2002.

Greg Thomsen,

Field Manger.

[FR Doc. 02–11445 Filed 5–8–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–HN–003E; MTM 88990, MTM 88991, MTM 88992, MTM 90001]

Public Notice—Jurisdiction Transfer as Required by the Crow Boundary Settlement Act of 1994; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This document provides notification to the public and state and local governmental officials of the transfer of exclusive jurisdiction and administration of the surface estate of 20,861.73 acres of public lands from the Bureau of Land Management to the United States of America, Bureau of Indian Affairs in trust for the Crow Indian Tribe and shall be recognized as part of the Crow Indian Reservation.

FOR FURTHER INFORMATION CONTACT: Russell Sorensen, BLM Dillon Field Office, 1005 Selway Drive, Dillon, Montana 59725–9431, 406–683–8036. By virtue of the authority vested in the Secretary of the Interior pursuant to Section 5(d)(G) of the Crow Boundary Settlement Act of November 2, 1994, Public Law 103–444, it is ordered as follows:

1. Subject to valid existing rights, jurisdiction of the surface estate for the following described lands was transferred to the Bureau of Indian Affairs in trust for the Crow Indian Tribe on the dates listed below:

(a) February 27, 2001, Yellowstone County, Montana:

Principal Meridian, Montana

T. 3 S., R., 25 E.,
  Sec. 36, lots 5 through 10, inclusive, E½E½, SW¼SE¼.
T. 2 S., R. 27 E.,
  Sec. 36, All.
T. 3 S., R. 27 E.,
  Sec. 16, All;
  Sec. 36, All.
T. 1 S., R. 28 E.,
  Sec. 4, S½, S½NW¼;
  Sec. 16, All.
T. 4 S., R. 28 E.,
  Sec. 1, lots 1 through 4, inclusive, S½N½, S½;
  Sec. 4, lots 1 through 4, inclusive, S½N½, S½.

(b) February 27, 2001, Big Horn County, Montana

Principal Meridian, Montana

T. 7 S., R. 28 E.,
  Sec. 6, S½NE¼, S½;
  Sec. 9, S½NE¼, E½SW¼, SE¼;
  Sec. 10, S½N½, S½.
T. 3 S., R. 30 E.,
  Sec. 22, All;
  Sec. 23, All.
T. 4 S., R. 30 E.,
  Sec. 24, All.
T. 5 S., R. 30 E.,
  Sec. 9, All.
T. 3 S., R. 31 E.,
  Sec. 6, lots 1 through 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
  Sec. 7, lots 1 through 4, inclusive, E½, E½W½.
T. 4 S., R. 31 E.,
  Sec. 22, NE¼, SE¼;
  Sec. 23, NE¼.
T. 5 S., R. 31 E.,
  Sec. 3, lots 1 through 4, inclusive, S½N½, S½;
  Sec. 21, N½, SW¼;
  Sec. 28, NW¼.
T. 2 S., R., 32 E.,
  Sec. 10, E½;
  Sec. 11, W½, SE¼.
T. 6 S., R. 32 E.,
  Sec. 1, N½S½.
T. 7 S., R., 32 E.,
  Sec. 25, S½;
  Sec. 26, SE¼;
  Sec. 32, NE¼SW¼, S½SW¼, SE¼;
  Sec. 36, NE¼.
T. 6 S., R. 33 E.,
  Sec. 10, All;
  Sec. 22, SE¼.
T. 7 S., R. 33 E.,
  Sec. 29, S½;
  Sec. 30, lots 3, 4.
T, 9 S., R. 33 E.,
  Sec. 20, S½.
  Sec. 30, lots 1 through 4, inclusive, E½W½, E½;
  Sec. 31, lots 1, 2, E½NW¼, NE¼.
T. 6 S., R. 34 E.,
  Sec. 15, S½;
  Sec. 16, All.
T. 7 S., R. 34 E.,
  Sec. 16, NW¼NW¼;
  Sec. 36, All.
T. 8 S., R. 34 E.,
  Sec. 12, S½;
  Sec. 13, NW¼;
  Sec. 14, SW¼, E½.
T. 9 S., R. 34 E.,
  Sec. 16, SW¼SW¼, E½SE¼;
  Sec. 18, NE¼, NE¼SE¼;
  Sec. 20, S½NE¼, SE¼;
  Sec. 21, NW¼NW¼, S½NW¼, E½, SW¼.
T. 6 S., R. 35 E.,
  Sec. 8, E½;

Sec. 9, W½NW¼, W½SE¼, SW¼.
T. 7 S., R. 35 E.,
Sec. 36, lot 4.
T. 8 S., R. 35 E.,
Sec. 16, NE¼NW¼.
T. 7 S., R. 36 E.,
Sec. 13, NW¼.
T. 9 S., R. 36 E.,
Sec. 13, NE¼.
T. 8 S., R. 37 E.,
Sec. 16, NW¼SE¼, S½SE¼.
T. 7 S., R. 38 E.,
Sec. 1, lot 10, SW¼SW¼;
Sec. 2, S½SE¼;
Sec. 12, lots 5, 6.

(c) May 21, 2001, Yellowstone County, Montana

Principal Meridian, Montana

T. 4 S., R. 25 E.,
Sec. 16, lot 1.

The areas described aggregate 20,861.73 acres in Big Horn and Yellowstone Counties, Montana.

2. The transfer of the above described surface estate for such lands and all activities conducted thereon vests custody and accountability unto the United States of America, on behalf of the Bureau of Indian Affairs, in trust for the Crow Indian Tribe.

John E. Moorhouse,

Acting Deputy State Director, Division of Resources.

[FR Doc. 02–11431 Filed 5–8–02; 8:45 am]

BILLING CODE 4310–$8–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–180–1430–01; CACA 8188]

Public Land Order No. 7524; Partial Revocation of Executive Order No. 4203; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes an Executive Order insofar as it affects 20 acres withdrawn for possible inclusion into the Tahoe National Forest. The land is no longer needed for the purpose for which it was withdrawn. This order makes the land available for exchange.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825–1886, 916–978–4675.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Executive Order No. 4203, which withdrew lands for possible inclusion into national forests, is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

T. 17 N., R. 10 E.,
Sec. 21, W½SE¼NE¼.

The area described contains 20 acres in Nevada County.

2. The above described land is hereby made available for exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 716 (1994).

Dated: April 23, 2002.

Rebecca W. Watson,

Assistant Secretary.

[FR Doc. 02–11576 Filed 5–8–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930; COC–28673]

Public Land Order No. 7521; Opening of National Forest System Lands Under Section 24 of the Federal Power Act; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order opens, subject to the provisions of Section 24 of the Federal Power Act, 456.29 acres of National Forest System lands withdrawn by a United States Geological Survey Order which established Bureau of Land Management Power Site Classification No. 441. This action will permit consummation of a pending Forest Service land exchange and retain the power rights to the United States. The lands have been and will remain open to mineral leasing and, under the provisions of the Mining Claims Rights Restoration Act of 1955, to mining.

EFFECTIVE DATE: June 10, 2002.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, 303–239–3706.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1994), and pursuant to the determination of the Federal Energy Regulatory Commission in DVCO–558–000, it is ordered as follows:

At 9 a.m. on June 10, 2002, the following described National Forest System lands withdrawn by the United States Geological Survey Order dated January 23, 1958, which established Power Site Classification No. 441, will be opened to disposal subject to the provisions of Section 24 of the Federal Power Act as specified by the Federal Energy Regulatory Commission determination DVCO–558–000, and subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

New Mexico Principal Meridian

Rio Grande National Forest

T. 40 N., R. 2 W.,
Sec. 4, E½NW¼SE¼;
Sec. 9, S½SE¼;
Sec. 10, lots 8 to 10, inclusive;
Sec. 11, lots 16 and 17;
Sec. 14, lot 3 and SW¼NW¼SW¼;
Sec. 15, NW¼NW¼ and SW¼NE¼;
Sec. 23, S½SE¼NE¼, NW¼SE¼NE¼, and NE¼SE¼;
Sec. 25, lots 1 and 2.

The areas described aggregate 456.29 acres in Mineral County.

Dated: April 23, 2002.

Rebecca W. Watson,

Assistant Secretary.

[FR Doc. 02–11573 Filed 5–8–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–ET; GPO–02–047; OR–19228]

Public Land Order No. 7523; Revocation of Executive Order Dated November 13, 1889; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive Order in its entirety as to the remaining 313.77 acres of lands withdrawn for the U.S. Army, Corps of Engineers' Coos Bay and Harbor Improvement Project. The lands are no longer needed for the purpose for which they were withdrawn. This action will open the lands to surface entry. The lands have been and will remain open to mineral leasing. The lands are within the Bureau of Land Management's Coos Bay North Spit Special Recreation Management Area and would remain closed to mining.

EFFECTIVE DATE: June 10, 2002.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–808–6189.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated November 13, 1889, which withdrew lands for the Corps of Engineers' Coos Bay and Harbor Improvement Project, is hereby revoked in its entirety as to the following described public lands:

Willamette Meridian

T. 25 S., R. 13 W.,
Sec. 18, lot 8, fractional W½NW¼, and fractional NW¼SW¼.
T. 25 S., R. 14 W.,
Sec. 13, lots 1, 2, and E½SE¼.
The areas described aggregate approximately 313.77 acres in Coos County.

2. At 8:30 a.m. on June 10, 2002, the lands described in paragraph 1 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m. on June 10, 2002, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands described in paragraph 1 are within the Bureau of Land Management's North Spit Special Recreation Management Area and will remain withdrawn from location and entry under the United States mining laws pursuant to Public Land Order No. 7436, 65 FR 15920 (March 24, 2000).

Dated: April 23, 2002.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 02–11575 Filed 5–8–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[SDM 013790, SDM 020559, and SDM 025762]

Public Land Order No. 7522; Partial Revocation of Public Land Order Nos. 1344, 1535, and 1744; South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes three Public Land Orders insofar as they affect approximately 728 acres of National Forest System lands withdrawn for a campground, roadside zone, and ranger station. The lands are no longer needed for these purposes. This action will make approximately 617 acres of National Forest System lands available for exchange and make the remaining lands available for conveyance under Public Law No. 106–329. The Federal lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Glenn Kostelecky, Black Hills National Forest, R.R. #2, Box 200, Custer, South Dakota 57730, 605–673–9252.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order Nos. 1344, 1535, and 1744, which withdrew National Forest System lands for a campground, roadside zone, and ranger station, are hereby revoked insofar as they affect the following described lands:

Black Hills National Forest

(a) PLO No. 1344—Mitchell Lake Campground (SDM 020559).

Black Hills Meridian

T. 1 S., R. 5 E.,
Sec. 28, N½NW¼NW¼ and NW¼NE¼NW¼.
The area described contains 30 acres in Pennington County.

(b) PLO No. 1535—Roadside Zone (SDM 013790).

A strip of land 330 feet on each side of the center line of U.S. Highway Nos. 16 and 16A through the following legal subdivisions:

Black Hills Meridian

T. 1 S., R. 5 E.,
Sec. 20, SW¼SE¼;
Sec. 21, NE¼, SE¼, and SW¼;
Sec. 22, SW¼ and NW¼;
Sec. 25, SE¼SE¼;
Sec. 26, S½SE¼ and S½SW¼;
Sec. 27, SE¼, SW¼NE¼, and NW¼;
Sec. 28, NW¼NW¼;
Sec. 29, NE¼ and NW¼;
Sec. 30, NE¼;
Sec. 35, NE¼;
Sec. 36, N½NE¼ and NW¼.
The area described contains 616.80 acres in Pennington County.

(c) PLO No. 1744—Reder Ranger Station (SDM 025762)

Black Hills Meridian

T. 1 S., R. 5 E.,
Sec. 29, lots 6 and 7;
Sec. 30, lot 19, NW¼SE¼NE¼, and lot A of Reder Placer M.E. 07905, M.S. 433, described as follows: Beginning at Corner No. 3 of M.S. 1986 thence, S. 10° W., 340 feet; S. 89° E., 462 feet; S. 51° W., 593 feet; N. 1° W., 376 feet, to point of beginning.
The area described contains 81.55 acres in Pennington County.

2. The Federal lands lying within the roadside zone are hereby made available for exchange.

3. The remaining Federal lands are hereby made available for disposal under the Black Hills National Forest and Rocky Mountain Research Station Improvement Act (Public Law No. 106–329).

Dated: April 23, 2002.

Rebecca W. Watson,

Assistant Secretary for Land and Minerals Management.

[FR Doc. 02–11574 Filed 5–8–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Mineral Exploration on the Alaska Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for proposed mineral exploration on the Alaska Outer Continental Shelf.

SUMMARY: Minerals Management Service (MMS), in accordance with Federal regulations that implement the National Environmental Policy Act (NEPA), announces the availability of a NEPA-related Environmental Assessment (EA) prepared by MMS for oil and gas exploration activities proposed on the Alaska Outer Continental Shelf (OCS). This notice includes the only proposal for which an EA and Finding of No Significant Impact (FONSI) were prepared by the Alaska OCS Office since July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Persons interested in reviewing the EA and FONSI for the proposal listed above are encouraged to contact the MMS Alaska OCS Regional office. The documents are available for public inspection between the hours of 7:45 a.m. and 4:30 p.m., Monday through Friday at: Minerals Management Service, Alaska OCS Region, Resource Center, 949 East 36th Avenue, Room 330, Anchorage, Alaska 99508–4363, phone: (907) 271–6070 or (907) 271–6621 or toll free at 1–800–764–2627. Request may also be sent to MMS at akwebmaster@mms.gov.

SUPPLEMENTARY INFORMATION: *Proposal.* The proposal is for exploratory-drilling operations that would be conducted in accordance with the OCS Lands Act Amendments. The purpose of the EA is to evaluate the probable environmental effects of the operations, described in the Exploration Plan (EP) for the McCovey Prospect, dated January 2002. The McCovey drill site would be located in the Central Alaskan Beaufort Sea about 14 miles north of Prudhoe Bay and 12 miles east of the Northstar Development. Information about the methods by which the exploration wells would be drilled are detailed in the EP and in the associated Environmental Report and Oil Discharge Prevention and Contingency Plan.

Location

Leases—Blocks
OCS–Y–1577—NR 06–03 475 through 477 inclusive
OCS–Y–1578—NR 06–03 475, 476, 519 & 520
EA Number: EA No. AK 02–01.
FONSI Date: February 27, 2002.

The MMS prepares EAs and FONSIs for proposals which relate to exploration for oil and gas resources on the Alaska OCS. The EAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EAs are used as the basis for determining whether or not approvals of the proposals would significantly affect the quality of the human environment in the sense of NEPA 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. This Notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Dated: April 9, 2002.

John Goll,

Regional Director, Alaska OCS Region, Minerals Mangement Service.

[FR Doc. 02–11639 Filed 5–8–02; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–470]

In the Matter of Certain Semiconductor Memory Devices and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 8, 2002, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Mosel Vitelic Inc. of Hsinchu, Taiwan and Mosel Vitelic Corp. of San Jose, California. A supplement to the complaint was filed on April 25, 2002. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor memory devices and products containing same by reason of infringement of claims 1, 2, 4, 5, 7–10, 12, and 14 of U.S. Letters Patent 5,452,261, claims 12–14, 20, 21, 23, 28, and 29 of U.S. Letters Patent 5,412,257, and claims 1, 2, and 4–8 of U.S. Letters Patent 5,917,214. The complaint further alleges that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's ADD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

FOR FURTHER INFORMATION CONTACT: Shival P. Virmani, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2568.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2001).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 2, 2002, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain semiconductor memory devices or products containing same by reason of infringement of claims 1, 2, 4, 5, 7–10, 12, or 14 of U.S. Letters Patent 5,452,261, claims 12–14, 20, 21, 23, 28, or 29 of U.S. Letters Patent 5,412,257, and claims 1, 2, 4, 5, 6, 7, or 8 of U.S. Letters Patent 5,917,214, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are: Mosel Vitelic Inc., No. 19, Li Hsin Road, Science-Based Industrial Park, Hsinchu, Taiwan, Mosel Vitelic Corp., 3910 North First Street, San Jose, California 95134.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Hitachi, Ltd., 6 Kanda Surugadai 4-chome, Chiyoda-ku, Tokyo, 101–10 Japan; Hitachi Semiconductor (America) Inc., 179 East Tasman Dr., San Jose, California 95134; Elpida Memory, Inc., Sumitomo Seimei Yaesu Bldg. 3F, 2–1 Yaesu 2-chome, Chuo-ku, Tokyo, Japan,; Elpida Memory (USA) Inc., 2001 Walsh Avenue, Santa Clara, California 95050.

(c) Shival P. Virmani, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–J, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the

Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

By order of the Commission.

Dated: Issued: May 6, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–11621 Filed 5–8–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Responses, Compensation, and Liability Act and the Solid Waste Disposal Act

Notice is hereby given that a proposed consent decree in *United States and State of California Department of Toxic Substances Control* v. *J.H. Mitchell & Sons Distributors, Inc. and Screwmatic, Inc.*, Civil No. 02–03009 CAS (RZx) (C.D. Cal.), was lodged on April 11, 2002, with the United States District Court for the Central District of California.

This consent decree represents a settlement of claims brought against J.H. Mitchell & Sons Distributors, Inc. ("J.H. Mitchell") and Screwmatic, Inc. ("Screwmatic") pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601–9675, and Section 7003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (collectively "RCRA"), 42 U.S.C. 6973. In the complaint filed concurrently with the lodging of the consent decree, the United States and the State of California Department of Toxic Substances Control ("DTSC") sought injunctive relief for performance of response actions under CERCLA section 106, 42 U.S.C. 9606, and RCRA Section 7003, 42 U.S.C. 6973, and reimbursement for response costs under CERCLA section 107, 42 U.S.C. 9607, incurred by the United States Environmental Protection Agency ("EPA"), the United States Department of Justice ("DOJ"), and DTSC, in response to releases of hazardous substances at the Baldwin Park Operating Unit of the San Gabriel Valley Superfund Sites, Areas 1–4, located in and near the cities of Azusa, Irwindale, Baldwin Park, and Covina in Los Angeles County, California.

The proposed consent decree requires J.H. Mitchell to pay $516,000 to the United States for response costs incurred by EPA and DOJ, and to pay $84,000 to DTSC for response costs incurred by DTSC. Screwmatic is required to pay $860,000 to the United States and $140,000 to DTSC. The proposed consent decree includes a covenant-not-to-sue under sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, and under section 7003 of RCRA, 42 U.S.C. 6973.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States and the State of California Department of Toxic Substances Control* v. *J.H. Mitchell & Sons Distributors, Inc. and Screwmatic, Inc.*, DOJ Ref. #90–11–2–354/6. Please send a copy of the comments to Robert D. Mullaney, U.S. Department of Justice, 301 Howard St., Suite 1050, San Francisco, CA 94105. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed consent decree may be examined at the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, or by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 514–0097; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). In requesting a copy, please enclose a check, payable to the "U.S. Treasury," in the amount of $88.00. (A copy of the decree, exclusive of attachments, may be obtained for $7.50.)

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 02–11546 Filed 5–8–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with 28 CFR 50.7, 38 FR 19029, notice is hereby given that on April 23, 2002, a Consent Decree was lodged with the United States District Court for the District of Massachusetts in *United States* v. *Waste Management of Massachusetts, Inc.*, Civil Action No. 02–CV–10741–GAO. A complaint in the action was also filed simultaneously with the lodging of the Consent Decree. In the complaint the United States, on behalf of the U.S. Environmental Protection Agency (EPA), alleges that the defendant Waste Management of Massachusetts, Inc. ("WMMA") failed to comply with section 601–618 of the Clean Air Act and regulations at 40 CFR Part 82, subpart F, in connection with its collection and handling of refuse and recyclables pursuant to a contract with the City of Boston, Massachusetts. The consent decree requires WMMA to pay a civil penalty of $775,000, and implement two Supplemental Environmental Projects at a combined cost of $2,671,000. The consent decree also requires WMMA to comply with sections 601 through 618 of the CAA and Subpart F with regard to the handling and disposal of appliances collected pursuant to its contract with the City of Boston. WMMA must also provide training to employees who are involved in tasks with respect to the handling of appliances that may contain refrigerant.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States* v. *Waste Management of Massachusetts, Inc.*, D.J. Ref.# 90–5–2–1–07045.

The proposed consent decree may be examined at the office of the United States Attorney, Suite 9200, 1 Courthouse Way, Boston, Massachusetts

02110, and at the Region I office of the Environmental Protection Agency, One Congress Street, Suite 1100, Boston, Massachusetts 02114. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $8.75 payable to the "United States Treasury."

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 02–11545 Filed 5–8–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 265–2002]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Federal Bureau of Prisons (Bureau) proposes to modify its system of records entitled "Inmate Central Records System, JUSTICE/BOP–005". The system notice, which was last published on June 7, 1984 (49 FR 23711), is now being modified and will become effective 60 days from the date of publication.

As previously published, the system included only those persons who were committed to the custody of the Attorney General and thereby to the Bureau of Prisons under 18 U.S.C. 4003, 4042 and 4082. The Bureau is modifying the system to include all additional individuals who are directly committed to the custody of the Bureau of Prisons, pursuant to the additional authority of 18 U.S.C. 3621 and 5003 (state inmates), and inmates from the District of Colombia pursuant to section 11201 of Chapter 1 of Subtitle C of Title XI of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Pub. L. 105–33; 111 Stat. 740).

In addition to edits which have been made to better describe the system and/or improve its clarity, the Bureau has added a statement on the purpose of this system and expanded the list of records contained in this system to include "drug testing and DNA samples and analysis records." Also, the routine use section has been reorganized to better describe or clarify certain routine uses. New routine uses have been added to allow for the release of information to courts and administrative forums and to prevent immediate loss of life or serious bodily injury. In addition, an existing routine use has been modified to include the General Services Administration (GSA) as a potential recipient of records access during records management inspections. This modification is consistent with Public Law 98–497 (44 U.S.C. 2102) which renamed the National Archives and Records Service as the "National Archives and Records Administration (NARA)" and established it as a separate agency which would continue to share its records management inspection responsibilities with GSA. Accordingly, the routine use has been changed to show that while NARA and GSA are separate agencies, they have retained shared responsibilities for records management inspections under the authority of 44 U.S.C. 2904 and 2906.

Appropriate sections have been revised to reflect technological advances and new agency practices regarding the storage, retrieval, access, retention and disposal of records in the system. The Bureau has re-designated the system manager and also clarified record access procedures.

The exemptions from certain Privacy Act provisions continue, as previously published in 28 CFR 16.97(a) and (b). Exemptions from (e)(1) and (e)(5) have been added for law enforcement purposes.

Title 5 U.S.C. 552a (e)(4) and (11) provide that the public be given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires that it be given a 40-day period in which to review the system. Therefore, please submit any comments by June 10, 2002. The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification. A description of the modified system is provided below.

Dated: April 26, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

Justice/BOP–005

SYSTEM NAME:

Inmate Central Records System.

SYSTEM LOCATION:

Records may be retained at the Central Office, Regional Offices, or at any of the Federal Bureau of Prisons (Bureau) and/or contractor-operated correctional facilities. A list of Bureau locations may be found at 28 CFR part 503 and on the Internet at *http://www.bop.gov*.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals currently or formerly under the custody of the Attorney General and/or the Director of the Bureau of Prisons.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to the care, classification, subsistence, protection, discipline, and programs of federal inmates. Such records may include:

(1) Computation of sentence and supporting documentation; (2) correspondence and other documentation concerning pending charges, and wanted status, including warrants; (3) requests from other federal and non-federal law enforcement agencies for notification prior to release; (4) records of the allowance, forfeiture, withholding and restoration of good time; (5) information concerning present offense, prior criminal background, sentence and parole; (6) identification data including date of birth, Social Security number, driver's license number, alien registration number, physical description, sex, race, religious preference, photographs, fingerprints, digital image, biometric identifier, drug testing and DNA samples and analysis records; (7) institution designation and housing assignments, including separation orders, and supporting documentation; (8) work and payroll records; (9) program selections, assignment and performance or progress reports; (10) prison conduct records, including information concerning disciplinary actions, participation in escapes, assaults, and disturbances; (11) economic, social, and religious background, including special religious dietary requirements; (12) educational data, including industrial and vocational training; (13) physical and mental health data; (14) United States Parole Commission orders, actions and related forms; (15) correspondence regarding the inmate, including his or her release, adjustment and violations; (16) transfer information, including orders and transportation arrangements; (17) mail, visiting and telephone records; (18) personal property records; (19) safety reports and rules; (20) release processing forms and certificates; (21)

interview requests; (22) litigation related records; (23) investigatory information; (24) institution tracking records to locate archived files; (25) referrals of non-federal inmates to Bureau custody and/or referrals of Bureau inmates to state custody.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained under the authority of 18 U.S.C. 3621, 4042, 5003 (state inmates), and section 11201 of Chapter 1 of Subtitle C of Title XI of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Pub. L. 105–33; 111 Stat. 740).

PURPOSE OF THE SYSTEM:

This system assists the Attorney General and the Bureau of Prisons in meeting statutory responsibilities for the safekeeping, care and custody of incarcerated persons. It serves as the primary record system on these individuals and includes information critical to the continued safety and security of federal prisons and the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant data from this system will be disclosed as follows:

(a) To officers and employees of the Bureau of Prisons and the Department of Justice who have a need for the information in the performance of their duties;

(b) To federal, state, local, tribal, foreign and international law enforcement agencies and court officials for law enforcement and court-related purposes such as investigations, possible criminal prosecutions, civil court actions, or regulatory or parole proceedings, and, prior to release of an inmate, to the chief law enforcement officer of the state and local jurisdiction in which the released inmate will reside, as required by 18 U.S.C. 4042(b);

(c) To a court or adjudicative body before which the Department of Justice or the Bureau is authorized to appear, or to a private attorney authorized by the Department of Justice to represent a Bureau employee, when any of the following is a party to litigation or has an interest in litigation and such records are determined by the Bureau to be arguably relevant to the litigation: (1) The Bureau, or any subdivision thereof, or the Department of justice, or (2) any Department of Justice or Bureau employee in his or her official capacity, or (3) any Department of Justice or Bureau employee in his or her individual capacity where the Department of Justice has agreed to provide representation for the employee, or (4) the United States, where the Bureau determines that the litigation is likely to affect it or any of its subdivisions;

(d) In an appropriate proceeding before a court or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding, including federal, state, and local licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit;

(e) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records;

(f) To victims and/or witnesses, pursuant to federal victim/witness legislation and policy requiring the release of information relating to an inmate's furlough, parole (including appearance before the United States Parole Commission), transfer to a community corrections center, mandatory release, expiration of sentence, escape (including apprehension), death, and other such release-related information;

(g) To state agencies and authorities, pursuant to Public Law 98–135, for the purpose of matching the data against state records to review eligibility of these inmates for unemployment compensation; the requesting state is to erase the Bureau data after this determination has been made;

(h) To the Social Security Administration (SSA), pursuant to Public Law 96–473, for the purpose of matching the data against SSA records to enable the SSA to determine the eligibility of Bureau inmates to receive benefits under the Social Security Act and for the purpose of assisting SSA in providing inmate data to the states administering federal benefit programs such as Food Stamps; SSA is to erase the Bureau data after the match has been made;

(i) To the Veterans Administration (VA), pursuant to Public Law 96–385, for the purpose of matching the data against VA records to determine the eligibility of Bureau inmates to receive veterans' benefits; the VA is to erase the Bureau data after the match has been made;

(j) To the Federal Aviation Administration (FAA), pursuant to Public Law 100–690, for the purpose of matching the data against FAA records to determine the eligibility of Bureau inmates to hold and obtain airmen certification and qualification;

(k) To the Internal Revenue Service (IRS) for the purposes of matching the data against IRS records for fraud detection;

(l) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(m) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record;

(n) To the National Archives and Records Administration and General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(o) To any person or entity to the extent necessary to prevent immediate loss of life or serious bodily injury;

(p) To a former employee of the Department, pursuant to subsection (b)(3) of the Privacy Act, for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility; and

(q) To the United States Sentencing Commission (USSC) for the purpose of providing inmate identification data to enable the USSC to perform research and conduct studies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Information maintained in the system is stored in electronic media in Bureau facilities via a configuration of personal computer, client/server, and mainframe systems architecture. Computerized records are maintained on hard disk, floppy diskettes, Compact Discs (CDs), magnetic tapes and/or optical disks. Documentary records are maintained in microfilm, manual file folders and/or index card files.

RETRIEVABILITY:

Records are retrievable by identifying data, including name, inmate register

number, FBI number, alien registration number and/or Social Security number.

SAFEGUARDS:

Information is safeguarded in accordance with Bureau rules and policy governing automated information systems security and access. These safeguards include the maintenance of records and technical equipment in restricted areas, and the required use of proper passwords and user identification codes to access the system. Only those Bureau personnel who require access to perform their official duties may access the system equipment and the information in the system.

RETENTION AND DISPOSAL:

Records in this system are retained for a period of thirty (30) years after the expiration of the sentence. Records of an unsentenced inmate are retained for a period of ten (10) years after the inmate's release from confinement. Documentary records are destroyed by shredding; computer records are destroyed by degaussing and/or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Correctional Programs Division, Federal Bureau of Prisons, 320 First Street NW, Washington, DC 20534.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURES:

All requests for records may be made in writing to the Director, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534, and should be clearly marked "Privacy Act Request." This system is exempt, under 5 U.S.C. 552a(j), from some access. To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Records are generated by: (1) Individual currently or formerly under custody; (2) federal, state, local, foreign and international law enforcement agencies and personnel; (3) federal and state prosecutors, courts and probation services; (4) educational institutions; (5) health care providers; (6) relatives, friends, and other interested individuals or groups in the community; (7) former or future employers; (8) state, local and private corrections staff; and (9) Bureau staff and institution contractors and volunteers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(H), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e).

[FR Doc. 02–11578 Filed 5–8–02; 8:45 am]
BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Microsoft Corporation; Addendum to Public Comments

The United States hereby publishes corrected versions of thirteen (13) of the Tunney Act public comments it received on the Revised Proposed Final Judgment in *United States* v. *Microsoft Corp.*, Civil Action No. 98–1232, pending in the United States District Court for the District of Columbia. The text of these comments was either incorrect or incomplete when originally submitted to the **Federal Register** for publication. This addendum is being published concurrently with the text of all of the public comments, including the incorrect versions of these thirteen comments, received on the Revised Proposed Final Judgment.

MTC–00000827

From: Steve Chambers
To: Microsoft ATR
Date: 11/17/01 11:59 a.m.
Subject: MS Antitrust Settlement

To who it may concern,

I have been following the Microsoft Antitrust case with a great deal of interest and have to say that I am absolutely apalled at the reports that I see in most of the online media on the details of the proposed agreement.

I am a computer support technician. I hold 4 Microsoft Certifications and spend 90 percent of my time working on and supporting Microsoft applications and operating systems.

You could say that my job depends on Microsoft. But regardless of that Microsoft must be prevented from continuing on a course that they seem hell bent on: controlling the very fabric of computing and in perpetuity. Additionally they must be punished for past misdeeds.

Microsoft's whole modus operandi (observed from over 10 years in the business) is to embrace (purchase) new technology, extend that technology in Microsoft-Proprietary ways to essentially lock out competitors.

At the very least severe structural penalties must be implemented to prevent these continued egregious behaviors from continuing. Additionally Microsoft must be made to pay penalties for past misdeed. These penalties could be anything from monetary to release of Microsoft Intellectual Property into the public domain.

I am further disturbed by the proposed settlement, in that it seems to be nothing more than a politically motivated "slap on the wrist." I respectfully urge you to reconsider your current proposed settlement. It is vastly insufficient to reign in the abuses and punish Microsoft.

Cordially,
Steve Chambers
Monmouth Junction, NJ

MTC–827

MTC–MTC–00000830

From: Charles McKnight
To: Microsoft ATR
Date: 11/17/01 12:26 p.m.
Subject: Settlement comments

Greetings,

I would like to express my concern about the settlement reached during the recent Microsoft antitrust case. In the past Microsoft has openly flaunted its disregard of any attempt to impose regulation. The 1995 settlement was essentially toothless, and led to the demise of Netscape as a separately operating company. As a Judge Sporkin pointed out. "simply telling a defendant to go forth and sin no more does little or nothing to address the unfair advantage it has already gained." The current "sanctions" can be, and most likely will be largely ignored by Microsoft. The entire settlement comes across as wishful thinking on the part of the government that this leopard will change its spots.

Although I have no desire to see Microsoft broken up, I am concerned about the predatory tactics it has used in the past and continues to employ. Given the similarities between the 1995 settlement and the currently proposed settlement, I do not believe that any positive effects will be achieved. I believe that Microsoft will continue to drive other companies out of business by bundling software into the operating system, much as they have done with the browser, and are attempting to do with the Windows Media Player and its proprietary formats.

I ask that you reconsider the settlement terms, and offer protection for the smaller companies that are trying to make a living. Don't deny them their chance to enjoy some portion of the same level of success that Microsoft currently enjoys.

Thank you for you time.

Charles McKnight .

Disclaimer: My opinions are my own and do not necessarily reflect the opinions of my employer.

MTC–830

MTC–00000831

From: Joel (038) Sandy Harris
To: Microsoft ATR

Date: 11/17/01 12:25pm
Subject: Antitrust penalty

It is interesting to me that after a very strong case in the court system and in reality a very good view by the appellate court that the government would go for such a weak penalty. Especially one that is worded in ways that sound like Microsoft actually wrote the document.

Has Microsoft demonstrated that they will abide by consent decrees in the past? No. In fact their behavior in the development and release of Windows XP has demonstrated that they have no intent of behaving in a way that allows for competition.

It is completely unreasonable to assert that it is good for the economy for the government to go lightly on Microsoft. The entire basis for antitrust legislation is that it is better for the economy for there to be competition. This proposed "penalty",will not help competition return to the PC desktop. It will, in reality, enable Microsoft to continue with their monopoly and will also allow them to continue the anti-competitive practices well into the future.

Remember: you WON the trial. Please don't let Microsoft off the hook for their abominable behavior. It most likely is not in the best interest of the country for you to come to any kind of agreement with them—it should be a court imposed sentence. This penalty is like a terrorist negotiating his own sentence.

Regards,
Joel Harris
harrisj @iquest.net

MTC–831

MTC–00000834

From: Boombie31@aol.com@inetgw
To: Microsoft ATR
Date: 11/17/01 12:28pm
Subject: ANTITRUST SETTLEMENT

100% BEHIND U.S. DECIDING AGAINST FORCING MICROSOFT REVEALING SECRET BLUEPRINTS OF WINDOWS.

OUR COUNTRY WAS BUILT ON THE IDEA THAT IF YOU BUILT A BETTER PRODUCT BUYERS WOULD BEAT A PATH TO YOUR DOOR.

I CANT BELIEVE THE 9 STATES THAT ARE MONEY HUNGRY ASKING MICROSOFT TO REVEAL THEIR SECRETS. THEY MUST BE OUT OF THEIR MINDS. THEY WOULD PROBABLY INSIST THAT RANDY JOHNSTON TELL THE BATTER WHAT THE NEXT PITCH WOULD BE TO EVEN COMPETITION.

YOURS TRULY,
J.G. HOLLAND
J.L. HOLLAND,Ph.D.

MTC–834

MTC–00000835

From: michael baxter
To: Microsoft ATR
Date: 11/17/01 12:44pm
Subject: what a fucking joke!

bush sold out.
justice department? no justice here.

MTC–835

MTC–00000838

From: Eric Bohm
To: Microsoft ATR
Date: 11/17/01 12:48pm
Subject: Sad about the Settlement

Greetings,

I thank you for the opportunity to convey my opinion about the DOJ vs Microsoft case. As a professional software developer I am quite interested in the future of my industry. I am deeply saddened that you have decided not to punish Microsoft for their illegal practices.

I have personally felt the insidious power of their monopoly. Few executives are expert enough in the actual technology to make well informed decisions. This leaves them extremely vulnerable to the lies and manipulations of the Microsoft Marketing department. This puts a tremendous additional burden on software developers.

Any time we analyze a problem we try to find the best and least expensive solution. If that solution doesn't involve Microsoft products its requires a great deal of additional justification. That justification requires considerable research time and effort. Their monopoly power forces us to consider them the default solution to any problem, completely independent of the quality of the products. Their misleading marketing material about the actual nature of those products further confounds realistic analysis. Their monopoly power permits them to get away with delivering a shoddy product masked by clever marketing.

In the process of your prosecution you proved that Microsoft has abused their monopoly power many times. You proved that the results of their action have been detrimental to the american people. And now you suggest the solution to these problems is a toothless watchdog committee. In order for them to apply any punishment for violation they have to go back through the court system again. Thus giving Microsoft more time and weasel room to ensure that the intended results of their misbehavior are accomplished.

You have betrayed us.
Sincerely,
Eric Bohm

MTC–838

MTC–00000842

From: John Keelin
To: Microsoft ATR
Date: 11/17/01 12:49pm
Subject: Microsoft Settlement

Hello,

Some comments regarding the proposed settlement.

According to an article at USA Today.com, "The Justice Department also considered trying to force Microsoft to sell a stripped-down version of Windows that did not include built-in software for browsing the Internet, reading e-mail, listening to music or sending instant-messages."

I believe that you should have pursued this approach for several reasons. I use both the Windows and Apple Macintosh Operating Systems on a regular basis. Both of these products offer bundled software, which I would agree benefits the consumer. It is the way in which Microsoft leverages the bundled software that highlights Microsoft's abusive behavior.

The following outlines some of the key differences in the way software is bundled by these two leading operating system providers:

Internet Explorer (Microsoft product available on Both MacOS and Windows)

On a macintosh, if a web site address is entered into Internet Explorer incompletely (e.g. news. vs. www.news.com) the browser assumes and correctly takes the user to the requested site (e.g. www.news.com).

On Windows, incomplete web address entries take you to a Microsoft-branded search site.

Conclusion: The bundled web browser on Windows gives Microsoft an unfair advantage on promoting it's web properties.

Software Update Features

On the Macintosh, there is a program called "Software Update" that logs onto an Apple Computer FTP server and provides the user with a list of updated system software. The user selects the updates and the "Software Update" program downloads and installs the new software accordingly.

Windows offers the same feature called "Windows Update." "Windows Update" REQUIRES that a user connect with Internet Explorer to update their system software. instead of a separate program, like Apple Computer offers for the same software update ability, Microsoft requires the use of Internet Explorer to perform these actions.

Conclusion: On the Macintosh, If I remove Internet Explorer and decide to use Netscape, it doesn't take away my ability to update my system software. On Windows, even if a user "chooses" to use the Netscape Browser, they must still rely on Internet Explorer for keeping their systems up to date. Microsoft could have easily separated this update feature from the Browser, but chose to mandate that everyone keep a copy of Internet Explorer on their machines for this purpose.

Instant Messaging

On the Macintosh, a user can choose from many different instant messaging clients. There are no Instant Messaging clients installed by default—the user is free to evaluate, download and use their preferred Instant Messaging Client.

Microsoft's new "Passport" user authentication plan is being closely tied in with their Instant Messaging client, which is the default Instant Messaging client on Windows. They plan to require that a web user that wishes to visit a Microsoft-branded site have a valid passport account. If they succeed in making Passport a standard for web authentication, they will essentially force everyone to have a copy of their Instant Messaging product installed in order to gain access to web sites.

Incidentally, integration with Microsoft Passport is touted as one of the key new "features" of MSN Messenger 2.0 for Macintosh. Why does this matter? It means that if Passport becomes the web-authentication standard, they'll be able to become the market share leader for Instant Messaging clients on the Macintosh platform as well as Windows.

Conclusion: This approach is similar to the software update feature—a back door approach to making a bundled product the

market share leader since everyone is essentially required to have the product installed.

Summary

These are just a few of the ways in which Microsoft uses its bundled software in monopolistic ways. Bundled software is not the problem with Windows, it is how Microsoft leverages its bundled software. A user shouldn't have to keep Microsoft's version of a product on their machine to perform operating system functions if they decide to use a competitive product. Even in the midst of the DOJ inquiry, Microsoft continued down the path of leveraging its bundled software.

I believe that there are two primary remedies for this fundamental problem:

1. Prevent Microsoft from bundling software and allow computer users to make real choices in selecting software. (Put another way—Force Microsoft to sell a stripped-down version of Windows that does not include built-in software for browsing the Internet, reading e-mail, listening to music or sending instant-messages.)

2. Mandate that Microsoft discontinue the practice of tying non-related features together to essentially require that their products be installed even if a user chooses a competitive product.

The second remedy would be difficult to oversee and enforce, making the first remedy a seemingly preferred approach.

Sincerely,

John

MTC–842

MTC–00000846

From: Kevin Goeke
To: Microsoft ATR,tom wible,aras@erols.com@inetgw
Date: 11/17/01 12:53pm
Subject: I disapprove...

I disapprove of the Microsoft antitrust settlement. Microsoft has done way too much damage to the computer industry and consumers for this litigation to settled in such a manner. They are *NOT* a nice company; they always go out of their way to ensure their dominance, no matter what the cost to the industry, the science, and the individual, who may not know any better.

Kevin J. Goeke

I have learned from mistakes I may or may not have made."—George W. Bush

MTC–846

MTC–00000851

From: johnh@mail.truesdail.com@lanset.com@inetgw
To: Microsoft ATR
Date: 11/17/01 1:11pm
Subject: MS–Only EPA Web Sites

I work at an environmental testing laboratory. I would like to move away from the Windows operating system to Linux as a company-wide standard. But we have to submit UCMR data to the EPA via http://epa.lmi.org. This web site ONLY works with Microsoft Internet Explorer 5.0 or 5.5. It cannot be made to function effectively with any other browser. It is unlikely that Microsoft will port Internet Explorer to Linux, or any other platform at this point. Therefore, I do not have a real choice of operating systems. If this were an isolated example, I would not be writing this. But it is not. There are similar situations at GSA, and probably elsewhere.

This restriction apparently arose because the lmi.org website was built with Microsoft tools, and these tools are designed to render other browsers unusable.

My real concern is the new .NET strategy which Microsoft is pushing so hard. If a significant number of new services are created in a framework that also forces anyone wishing to use them to do so from a Microsoft platform, then Microsoft will be in a position to take the whole World Wide Web private.

The Web was >created< by Tim Berners-Lee at CERN, and given away. Microsoft likes to use the word 'innovation' from time to time, often in the context of Open Source projects, as in 'Open Source projects are not a true source of innovation'. I do not think that anything Microsoft has ever created (including Excel and Powerpoint, for which credit is due) comes anywhere near the creation of the Web in terms of innovation. Consider how long the Internet existed prior to the creation of the Web, compare the rate of growth and reach during the pre-Web and post-Web periods, and see if you don't agree. Most people today are unable to distinguish between the Internet and the Web.

So, why should Microsoft be permitted to use its monopoly (which never seemed to be questioned during the trial) to take the Web private?

MTC–851

MTC–00000852

From: Maness, Deborah
To: 'Microsoft.atr(a)usdoj.gov'
Date: 11/17/01 2:37pm
Subject: Microsoft Settlement

I am in favor of the Settlement that the DOJ has entered into with microsoft. I would like for the states to accept this as soon as possible.

Deborah Maness.

MTC–852

MTC–00000853

From: Evan Chaney
To: Microsoft ATR
Date: 11/17/01 2:54pm
Subject: Disappointed

Dept. of Justice:

I am upset with how easily the D.O.J. has given up after all of these years of pursuing a resolution that would be beneficial to the consumers/states who brought about this case. The settlement that has been agreed to is too kind towards Microsoft. Obviously, they can now declare a major victory. The consumer is in no better position than they were when this case started several years ago. What a waste of time and money, all for nothing.

Sincerely,

Evan Chaney

U.S. Citizen & Software Consumer

MTC–853

MTC–00000854

From: Kenneth Nicholson
To: Microsoft ATR
Date: 11/17/01 2:50pm
Subject: Microsoft Settlement

Recommend that ALL legal action against Microsoft be discontinued immediately in order to permit the company to focus full attention in providing those products that most of us need and require in our business.

MTC–854

MTC–00033650

From: Jonathan H. Bari
To: Renata Hesse
Date: 1/28/02 3:23pm
Subject: Microsoft Settlement

Dear Renata,

Pursuant to the Tunney Act, attached please find our comments on the Revised Proposed Final Judgment.

Thank you.

Jon

Jonathan H. Bari
Chairman and CEO
CATAVAULT
100 West Elm Street, Suite 400
Conshohocken, PA 19428
610.941.3388
610.828.9966 (fx)
jon@catavault.com
http://www.catavault.com/company
CC: Microsoft ATR, wtom@morganlewis.com@inetgw,dan@cata...

BEFORE THE UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES OF AMERICA
Plaintiff
v
MICROSOFT CORPORATION,
Defendant
Civil action No. 98–1232 (CKK)
United States District Court for the District of Columbia

STATE OF NEW YORK ex rel. Attorney General Eliot Spitzer, et al.,
Plaintiffs,
v.
MICROSOFT CORPORATION,
Defendant
Civil Action No. 98–1233 (CKK)
United States District Court for District of Columbia

COMMENTS OF CATAVAULT ON THE REVISED PROPOSED FINAL JUDGMENT

INTEREST OF THE COMMENTER

Given that Microsoft's Net Passport is the heart of Windows XP, Microsofts new Operating System that was officially launched on October 25, 2001, Catavault, a software company addressing online identification and authentication, unfortunately finds itself in the cross-hairs of the most powerful software company in the world, since Microsoft has tied its .Net Passport to Windows XP. Pursuant to the Tunney Act, this document sets forth Catavault's comments on the Revised Proposed Final Judgment because we feel that competing products such as Catavault will still unfortunately be set at a disadvantage which is not related to price or quality. If the Revised Proposed Final Judgment is accepted as is, the result will be a weakening of effective competition in the market, a reduction in consumer choice and less technological innovation, generally speaking and specifically to online identification and authentication.

Catavault has developed, commercially licensed and deployed patent pending software that is both complementary and competitive with Microsoft .Net Passport in online identity and authentication services. Although Microsoft's September 20, 2001 announcement that a future version of .Net Passport will be federated,[1] and thus may be interoperable with rivals' services, we believe this in no way alters the extremely serious concerns articulated herein. Moreover, in spite of the Revised Proposed Final Judgment announced between the United States Department of Justice, nine states Attorneys General and Microsoft Corporation, Catavault believes this in no way alters the extremely serious concerns articulated herein. As such Catavault has been encouraged that various states Attorneys General still have the resolve and resources necessary to continue the fight in ensuring conduct remedies that are timely, effective, certain and practical when it comes to curbing Microsoft's recidivistic behavior.

While these Tunney Act comments were prepared from the heart so to speak of the entreprenours managing Catavault, Catavault has been working to promote vigorous competition in computer industry platforms and gateways with our antitrust counselors from Morgan, Lewis and Bockius including Mr. Willard K. Tom based in Washington, D.C. and Mr. Julian M. Joshua based in Brussels.

CATAVAULT OVERVIEW

Catavault is a pioneer in the online user identification and authentication space. Catavault's technology powers the "All Access Pass to the Internet," and it allows users to access more than 3,500 sites ranging from Amazon.com to ZDNet, a couple of orders of magnitude more than Microsofts .Net Passport currently enables access to, without the need to remember all of their authentication credentials for those sites. Unlike .Net Passport which is only accessible from a PC, Catavault is accessible from a PC, PDA, Mobile Phone and Set-top Box, so users can access their information from any device, at any time and from anywhere. CNN Headline News has called Catavault—"one site that can get you in everywhere..." Business Week has called Catavault, "An Open Sesame for the Whole Web." Despite these arguably superior features of its services, Catavault is severely endangered by the steps Microsoft is taking to ensure that .Net Passport becomes the dominant occupant of the online identity and authentication space. Accordingly, Catavault is endangered by the Revised Proposed Final Judgement. The remedial principle is straightforward enough: the remedy should unfetter a market from anticompetitive conduct,... terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation and ensure that there remain no practices likely to result in monopolization in the future.[2] However, in spite of the overwhelming en banc victory on liability, the Revised Proposed Final Judgement does little to ensure that conduct remedies are timely, effective, certain and practical in curbing Microsoft's anti-competitive behavior.

NETWORK CHARACTERISTICS & MICROSOFTS HAILSTORM STRATEGY

Microsoft fully recognizes that, because of the network characteristics of the industry, only subtle uses of its monopoly position are necessary in order to gain an unwarranted, but insuperable dominance in this field. Indeed, its choice of "HailStorm" as a metaphor speaks volumes. As you may know, with each updraft in the natural weather-related occurrence of a hail storm, hail stones get larger as more water molecules attach to the crystalline structures of the hail stones. Similarly, Microsoft makes its monopoly position more impregnable with every adjacent space it dominates. Each layer creates another multiple-level entry problem for potential competitors, as described in the United States Department of Justice's 1984 Merger Guidelines to which the United States Federal agencies still refer in non-horizontal matters. Figure 1 is a visual representation of the troubling processes that Catavault see at work with respect to a monopolist bundling its own applications to its dominant Operating System.

As reported in The Wall Street Journal on September 20, 2001, Microsoft changed the name of its HailStorm initiative to ".Net My Services"—possibly because they realized that its very name, HailStorm, has strong whiffs of antitrust violations.

One can argue that network effects require a lock-in mechanism. However, the traditional lock-in mechanism is access to complements. Some of the services offered by Catavault and .Net Passport require cooperation from third party Internet site(s). If .Net Passport has a much larger number of users, gained through the use of its operating system monopoly, then why would the sites would want to work with Catavault? If the sites cease to work with Catavault, then why would users find Catavault attractive? These questions and their answers are paramount to understanding how market signaling and network effects work towards the monopolists advantages when it ties its own applications to its dominant Operating System.

NETSCAPE—FRUITS OF MICROSOFT'S STATUTORY VIOLATIONS

Most harmful of all is the message that Microsoft's actions have conveyed to every enterprise with the potential to innovate in the computer industry. Through its conduct toward Netscape, IBM, Compaq, Intel and others, Microsoft has demonstrated that it will use its prodigious market power and immense profits to harm any firm that insists on pursuing initiatives that could intensify competition against one of Microsoft's core products. Microsoft's past success in hurting such companies and stifling innovation deters investment in technologies and businesses that exhibit the potential to threaten Microsoft. The ultimate result is that some innovations that would truly benefit consumers never occur for the sole reason that they do no coincide with Microsoft's self-interest.[3]

Accordingly, When Microsoft destroyed Netscape as a potential rival platform, it did more than achieve dominance in browsers. It also prevented rival applications developers from playing Microsoft off against Netscape in the battle to ensure the survival of their applications programs and services. If Netscape and/or other browser/middleware platform software had survived as a serious competitor to Microsoft, competitive pressures would have forced one or more platforms to carry Catavault, because doing so would have provided a competitive advantage. The platform itself would have become more attractive if, through accessing Catavault, users were freed from cumbersome authentication procedures on a much larger number of sites. That competitive pressure is now gone. Thus, Catavault's current predicament flows directly from Microsoft's earlier unlawful acts against Netscape.

MARKET EXPECTATIONS STIFLE INNOVATION AND COMPETITION

Moreover, the very public humbling of an 85 percent market share player like Netscape in itself creates market expectations that where Microsoft announces an intention to dominate a strategic space, it will succeed in doing so. .Net Passport occupies a strategic space as the on-ramp to the Internet as illustrated in Figure 2, and Microsoft has been quite public about that fact as has been reported in articles in The Industry Standard.[4] Consequently, merchants, investors and other marketplace participants become highly resistant to dealing with Microsoft's competitors in such spaces. For example, Benjamin D. Black, a principal of the Rosewood Venture Group, a U.S. venture capital firm in San Francisco, California has stated, "I still won't invest in companies that are directly in front of Microsoft's development path."[5] And Stewart Alsop, a general partner of New Enterprise Associates, a Silicon Valley venture capital firm in the U.S., has been quoted as saying, "The most common question for potential investors is: "What about Windows XP?" You can still compete but if Microsoft bundles it in Windows it makes it much more difficult for nay kind of innovation that is in Microsoft's path.[6] Thus, in this sense, too, Microsoft's earlier unlawful acts against Netscape directly cuts Catavault off from access to important complements.

To that end, one could argue that the competition is ultimately not for the end-user, but for the online service providers who actually pay for online identity and authentication services. Signing up 200 million Hotmail accounts gives Microsoft a huge critical mass of users, but what does it do to get third party sites to work with .Net Passport? To answer this effectively, one

[1] See http://www.microsoft.com/presspass/press/2001/sep01/09–20PassportFederationPR.asp

[2] United States v. Microsoft Corp., slip op. at 99–100, No. 00–5212 (D.C. Cir. June 28, 2001), quoting Ford Motor Corp V. United States, 405 U.S. 562,577 (1972); United States v. United Shoe Mach. Corp., 391 U.S. 244,250 (1068).

[3] Judge Thomas Penfield Jackson's Finding of Fact, 412th and final paragraph, November 5, 1999.

[4] http://www.thestandard.con/article/0,1902,27686,00.html.

[5] The New York Times, September 7, 2001, Competitors See a Giant That is Now Largely Unfettered, by Michael Brick.

[6] The New York Times, September 7, 2001, Pendulum Swings to Microsoft, But the Degree Remains Unclear, by Steve Lohr.

must understand that having so many users signals to the marketplace that Microsoft will dominate online identity and authentication services. Moreover, these third party businesses are motivated to work with Microsoft based on the marketing support that Microsoft can provide them—thus creating value propositions from Microsoft's monopoly position. If third party businesses believe that Microsoft will also succeed in using its Operating System monopoly to push Catavault and/or others aside in terms of subscribers or utilities, then third party firms will not have an incentive to work with Catavault. As former United States Deputy Assistant Attorney General Carl Shapiro has described in his writings, expectations play a very large role in network markets.[7]

MAKING .NET PASSPORT THE DE FACTO IDENTITY SERVICE IN WINDOWS XP

Microsoft has taken a number of steps to ensure, and to make consumers believe, that having a .Net Passport account is necessary in order to access features of Windows XP an/or other Microsoft goods and services. Indeed, the press, encouraged by Microsoft, has come to the conclusion that Microsoft .Net Passport "will be the exclusive identity service on the new Windows XP operating system. Any XP user who wishes to access key services such as Windows Messenger (for Instant Messaging) will have to register for a Passport."[8] Microsoft has not achieved its claimed 2000 million .Net Passport subscribes by offering a superior service. (Competitive market research indicates that .Net Passport is currently accepted by only about 35–70 sites, most of which are owned by Microsoft, have received substantial Microsoft investment or partnered with Microsoft in some sort of business arrangement.) Instead, it has done so by these kinds of suggestions of inevitability and by automatically opening .Net Passport accounts for all Hotmail and MSN users, and even hinting at future integration and potential incompatibilities. Thus, in published reports regarding .Net Passport 2.0, it is stated, "...with this release, Hotmail will move to the Passport code base for easier integration."[9]

Catavault experienced this directly in early September 2001 when a Catavault employee tried to access the latest release candidate of XP. First, he learned that one could not get the latest preview of XP online without a .Net Passport account.[10] Then, after downloading that version of XP and rebooting, he got a blank desktop, but in the system tray in the bottom right, a message popped up that said: "Add your. NET Passport to Windows XP! You've just connected to the Internet. You need a Passport to use Windows XP Internet communications features (such as instant messaging, voice chat, and video), and to access .NET-enabled services on the Internet. Click here to set up your Passport now."

When he clicked, it went to the .NET Passport Wizard to let him sign up for Passport. Thus, whether or not there are actual incompatibilities, Microsoft has been representing to users that they must sign up for .Net Passport in order to access key XP features or other Microsoft services. In a network business, that may be all Microsoft needs to maintain and extend its dominance to this space as well. These network characteristics undoubtedly underlie some of the "vaporware" aspects of Microsoft's dramatic announcements but slow rollout. We have already mentioned how small the number of third party sites accepting .Net Passport is. In the same vein, ZDNet has reported that American Express has yet to sign a contract with Microsoft for HailStorm services. This despite the fact that Microsoft touted American Express as a partner at the very announcement of the HailStorm initiative, by featuring American Express' Chief Information Officer in that announcement.[11]

PROPOSED CONDUCT REMEDIES TO CURB ANTI-COMPETITIVE PRACTICES

If there is no efficiency justification for Microsoft s tactics such as bundling and/or market signaling, they may be acts of monopolization in themselves. But regardless of whether they are or not, the current situation flows directly from Microsoft's earlier unlawful acts against Netscape. While one can never know with certainty exactly what that but-for world would have been had Netscape survived, it was reasonably certain that, for some significant period of time there would have been a competitive struggle between Microsoft and Netscape as alternative nuclei around which other providers of applications and services would coalesce. Both would seek to commoditize the other's space. If Netscape gained the upper hand, multiple operating systems would become available to computer users. If Microsoft gained the upper hand, multiple browsers would become available. Consequently, any remedy for those earlier acts needs to include some kind of mandated intra-system competition to take the place of the competition that would have existed between the two systems to add attractive applications through a Ballot Screen with choices for online identity and authentication services such as Catavault.

We have given a great deal of thought to what order language would be needed to implement the concept of a Ballot Screen. Following is the rationale and the result can be found in Figure 3 with the language marked as to revisions. It uses Microsoft's inclusion of middleware products in its operating system software as the benchmark for what types of products should be included, with the slight modification that it remedies the continuing effects of past inclusions as well as remedying the effects of future inclusions. As you will see, there is a provision for approval by some entity, corresponding to Commission approval in the AOL Time Warner, in order to ensure that the competing products are serious competitors to Microsoft. In the case of online identity and authentication, the seriousness of the competition can be measured by the number of sites, users, and devices accessed by the competitor. These metrics could be written into the order if desired, but in any event the existence of available metrics would ensure that the entity charged with approval would have an objective way of exercising that discretion. As you will also see, when we reviewed Judge Jackson's order, we concluded that online identity and authentication service software would fit comfortably into the definition of "middleware," but for the avoidance of doubt, we included it specifically in the list of examples. In addition to offering services via communications interfaces as now occurs, it is entirely possible that in the future, programmers of sites or of programs used to build sites will write software built upon a Catavault platform.

We have also given further thought to the Department of Justice s observation that a possible standard for relief is that it should be aimed at opening the operating system market to competition. After reflection, we believe that our proposed Ballot Screen relief does in fact further that goal, but that such a standard is nonetheless wrong, in spite of that standard appearing in the Department of Justice's September 6, 2001 press release.

The relief we propose does further the goal of operating system competition, because allowing Microsoft to use its operating system monopoly to obtain a dominant position in the authentication gateway to the Internet will mean the creation of yet another applications barrier to entry, because it will be extremely difficult to police the ways in which Passport could be used to favor Windows if a credible threat to Windows arose.

There is, however, a more fundamental issue: the proper standard must be to restore the competitive conditions that would have existed but for the illegal conduct. It is, of course, too late to revive Netscape as a credible threat to Microsoft's operating system monopoly. One approach might be, as the Department of Justice once proposed, to find in Microsoft's applications software—particularly its dominant Office suite—a sufficiently dangerous competitive threat to the operating system monopoly. As in the competition between Microsoft and Netscape in the but-for world, the point of that remedy was not to assure ultimate, long-term competition in operating systems. The operating system company might with the competitive struggle, and ultimately maintain its monopoly position through lawful means. The point of the remedy was the competitive struggle itself. That remedy was imperfect, as are all the alternatives. But of better or worse, it is now off the table.

Whatever replaces it, the goal should not be to assure ultimate, long-term competition in operating systems. The but-for world did not do so. Microsoft might well have won the competitive struggle, and maintained its monopoly. The point of the Netscape threat to the operating system monopoly was that Microsoft had to compete with better

[7] Speech by Carl Shapiro, Deputy Assistant Attorney General, Antitrust Division, United States Department of Justice. American Law Institute and American Bar Association, "Antitrust/Intellectual Property Claims in High Technology Markets," San Francisco, California, January 25, 1996.

[8] Source: http://www.thestandard.com/article/0,1902,27685,00.html, attached.

[9] Source: http://www.wininformant.com/Articles/Index.cfm?ArticleID=22174, attached.

[10] Source: http://www.microsoft.com/windowsxp/preview/systemreq.asp.

[11] http://www.zdnet.com/zdnn/stories/news/0,4586,5096385,00.html.

products and prices, and in the meantime the rest of the computer industry would be vigorously competitive and innovative, and might nurture the next threat to its surviving monopolist. It is the strangling of that dynamic from which the market must be unfettered, and it is Microsoft's freedom from that dynamic that constitutes the "fruits of its statutory violation." At this point in the evolution of the computer industry, after Microsoft's misconduct, it might well be a hopeless task to restore competition in operating systems.

It is not too late, however, to restore the competitive dynamic that ensured that, while Microsoft battles its chief rivals in the most strategic battleground at any given time, innovators in the next strategic space could play one against the other in order to survive. At the moment, the inter-system competition that Netscape represented is gone, and the Department of Justice is no longer seeking to have competition from Microsoft Office take its place. Thus, the temporary stopgap by which the next strategic space can develop must be intra-system competition, or "must-carry." That will revive some of the competitive dynamic that Microsoft has cut off, and allow competition to flourish in—and on the other side of—those gateways. Ergo, just as Microsoft agreed to change its digital imaging features to give users easier access to digital imaging software from a number of providers such as Kodak, not just those affiliated with Microsoft, so there needs to be a requirement that Microsoft incorporate Catavault (and other online identity and authentication services that may arise) into XP as a complementary and competitive service. Thus, doing some kind of a "Ballot Screen" for consumers to select which online identity and authentication service they would like may be as close as one can get to the competitive landscape that would have existed but for Microsoft's already adjudicated unlawful conduct.

In addition, of course, one would need to prohibit Microsoft from introducing incompatibilities, to forbid Microsoft from making use of .Net Passport as a prerequisite to use other Microsoft goods and services, and so forth. Otherwise, the need to sign up with .Net Passport to get the XP preview is likely to continue to be the typical pattern for accessing anything that Microsoft can control or influence.

MICROSOFT'S FEDERATED ANNOUNCEMENT & INTERNET TRUST NETWORK—ITS EFFECTS AND RELATION TO FEAR, UNCERTAINTY & DOUBT

A "Ballot Screen" remedy would be far superior to waiting to see how Microsoft's latest federated announcement plays out. As the Department of Justice well knows, a "fear, uncertainty and doubt" strategy relies heavily on the passage of time and the uncertainty of the future. (This is undoubtedly why Microsoft has been making every effort to delay judicial and legislative proceedings in the United States.) As of January 28, 2002, Catavault has neither been invited to any Microsoft developers conference yet, nor has it learned of any developers conference yet, albeit Catavault has informed Microsoft about its potential willingness to participate in the conference. Additionally, XP has already been launched with an aggressive marketing campaign and with .Net Passport as the exclusive online identity and authentication service. .Net Passport will have a huge user base that will undoubtedly get larger between now and the time that any Microsoft federation conference or any competitive and/or complementary solution such as the Liberty Alliance initiated by Sun Microsystems produces any tangible results in the marketplace. The agenda of the federated conference and other like it such as the Liberty Alliance may be to develop standards for implementation of online user identification and authentication services, and in the case of Microsoft's Internet Trust Network, built upon a technology platform of Microsoft's choosing, regardless of consumer preferences. Following that developers' conference, there may be a long period of back-and-forth over technical standards. Next may come a period in which Microsoft sows uncertainty about the extent to which other services are fully interoperable, perhaps because of peculiarities in Microsoft's implementation of the common standard. During all that time, .Net Passport will become more and more entrenched, regardless of consumers' preferences as to the features and scope of completing online user identification and authentication services.

Industry pundits used to subscribe to the notion that first mover advantage was the most important mission of many new technology ventures. However, based on present market conditions, we argue that it has nothing to do with first mover advantage anymore; rather it has everything to do with the concept of last man standing. Accordingly with over US $36 billion in case reserves on hand, Microsoft is well positioned to be the last man standing in many industries including online identity and authentication.

PROBLEMS WITH THE REVISED PROPOSED FINAL JUDGEMENT

While there are many troubling issues with the Revised Proposed Final Judgement, two of the more salient problems for the online identity and authentication sector involve the following terms and provisions:

• OEMs—The fact is that Original Equipment Manufacturers (OEMs) are a sub-optimal source to serve as an adequate check and balance on Microsoft's anti-competitive actions. For example, the provisions that allow OEMs to have greater freedom to select which software to use and not to use do absolutely nothing to protect consumer choice and technological innovation.

Thus, providing the OEMs greater freedom as a conduct remedy against Microsoft is meaningless today given consolidation in the PC industry, slumping PC sales, depressed PC margins, and the fact that the OEMs do not want to bite the hand that feeds them—Microsoft.

Moreover, the OEMs know very well that small companies such as Catavault cannot afford to compete against Microsoft, both in terms of operations and marketing. Case in point, Windows XP launched on time because Microsoft lobbied that XP would help revive slumping PC sales, and Microsoft is spending approximately US $250 million just on marketing for XP. As such, OEMs do not necessarily want to bet on smaller players which find themselves in the cross-hairs of Microsoft—thus consumer choice and technological innovation are still harmed.

• AUTHENTICATION LOOPHOLE—The following provision from the proposed settlement seems to be the veritable loophole large enough to drive a truck through, particularly affecting Catavault and other online identity and authentication services.

J. No provision of this Final Judgment shall:

1. Require Microsoft to document, disclose or license to third parties: (a) portions of APIs or Documentation or portions or layers of Communications Protocols the disclosure of which would compromise the security of anti-piracy, anti-virus, software licensing, digital rights management, encryption of authentication systems, including without limitation, keys, authorization tokens or enforcement criteria; or (b) any API, interface or other information related to any Microsoft product if lawfully directed not to do so by a governmental agency of competent jurisdiction.[12] Identification and authentication is singled out for a loophole to free Microsoft's .Net Passport from scrutiny and permit Microsoft to bind a universal identification and authentication service utility to its monopoly operating system without scrutiny under the Revised Proposed Final Judgement. By permitting Microsoft to withhold key part of encryption, digital rights management, authentication, and other security protocols, the Revised Proposed Final Judgement effectively clears the way for the desktop monopolist to the Web-services monopolist in a distributed computing environment. The Revised Proposed Final Judgement could hardly try to place a clearer stamp of approval on an expansion of the scope of an illegally maintained monopoly.

CONCLUSION

The Revised Proposed Final Judgement agreed to by the United States Department of Justice, the Attorneys General on nine states and Microsoft Corporation does not attain its goals of curbing Microsoft's recidivistic behavior in maintaining and extending its operating system monopoly into Web-services such as online identification and authentication, which Microsoft has bet will be the next gateway to the Internet. Specifically, the Revised Proposed Final Judgement does not provide adequate incentives across constituent bodies and penalties for Microsoft to ensure that the Revised Proposed Final Judgement goals are attained. Moreover, the lenient conduct remedies imposed on Microsoft are essentially a slap on the wrist for its illegal conduct and anti-competitive practices. Unfortunately, technological innovation and consumer choice will continue to be harmed, and this will be exacerbated in challenging economic conditions if the Revised Proposed Final Judgement is accepted as is. As such, the Revised Proposed Final Judgement needs to be revised significantly if it is to have any

[12] http://www.usdoj.gov/atr/cases/f9400/9462.htm

real impact in the marketplace in curbing Microsoft's recidivistic behavior. Specifically, as it pertains to the heart of Windows XP and Microsoft's goal of dominating online identification and authentication with .Net Passport, we believe quite passionately that implementing a Ballot Screen for users to choose which identification and authentication service that they would like would go a long way to providing a conduct remedy that was more timely, effective and certain.

Figure 1

"The world of operating systems becomes more homogeneous over time. Today something like 85 percent of the computers on the planet run the same operating system [Microsoft's]. There is sort of a positive feedback cycle here. If you get more applications, it gets more popular, if it gets more popular, it gets more applications."—Bill Gates keynote address, Conference on Internet and Society at Harvard in May 1996; World War 3.0 by Ken Auletta. On June 28, 2001, the District of Columbia Court of Appeals unanimously held that Microsoft engaged in unlawful monopolization. Notwithstanding Judge Jackson's ruling and the appellate ruling, Microsoft prominently announced its major corporate initiative called HailStorm in March 2001; the very choice of HailStorm as a name serves as a metaphor for a positive feedback cycle in Bill Gates opinion or network effects and increasing returns in an antitrust perspective. The heart of HailStorm is based on .Net Passport, Microsoft's proprietary online identification and authentication service. This market signaling transcends into Microsoft's strategy and tactics to gain market advantage in new sectors using .Net Passport. .Net Passport is the exclusive online identification and authentication service on Windows XP. Accordingly, .Net Passport will be the de facto online identification and authentication service which will limit consumer choice and undermine innovation. As reported in The Wall Street Journal on September 20, 2001, Microsoft changed the name of HailStorm to ".Net My Services"—possibly because they realize that its very name—HailStorm—has strong whiffs of antitrust violations.

Note: In its natural weather-related occurrence, hail stones are large frozen raindrops produced by intense thunderstorms. As the frozen drops fall, liquid water freezes onto them forming ice pellets that continue to grow as more and more droplets accumulate. Upon reaching the bottom of the cloud [symbolic for the Internet], some of the ice pellets are carried by the updraft back up to the top of the cloud. As the ice pellets once again fall through the cloud, another layer of ice is added and the hail stones grow even larger. Typically the stronger the updraft, the more times hail stones repeat this cycle and consequently, the larger the hail stones grow. Once the hail stones become too heavy to be supported by the updraft, they fall out of the cloud toward the surface. The hail stones reach the ground as ice since they are not in the warm air below the thunderstorm long enough to melt before reaching the ground. And as one knows, you should take cover from a hail storm. . . .

Figure 2

Microsoft s .Net Passport online identification & authentication technology controls the gateway to all applications in Windows XP

Windows XP

It's our goal to have virtually everybody who uses the Internet to have one of these Passport connections—Bill Gates

Source: The Industry Standard—July 3, 2001

http://www.thestandard.com/article/0,1902,27685,00.html

While digital photography, instant messaging and streaming media all are very important issues to constituents such as Kodak, AOL Time Warner and Real Networks respectively, the backbone to Microsoft s HailStorm (renamed .Net My Services) initiative and full utilization of Windows XP is the Microsoft .Net Passport identification and authentication service. Microsoft has stated that .Net Passport will be the exclusive Internet identity service on Windows XP, and Passport will be required to utilize some or all of the features noted above. Thus, even if competition in those areas is assured, Microsoft will still hold the real keys to access and conceivably will be able to use its .Net Passport monopoly to direct traffic away from competing digital photography, instant messaging and streaming media applications.

Instant Messaging

Digital Imaging Streaming Media

Microsoft s .Net Passport

Identification & Authentication

Technology

Microsoft Office XP

Internet Explorer

Figure 3 Proposed Order (Marked with changes)

3g. Restriction on BindingIncluding Middleware Products toin Operating System Products.

Microsoft shall not, in any Operating System Product distributed six or more months after the effective date of this Final Judgment, Bind include any Middleware Product toin a Windows Operating System unless:

i. that Operating System also includes at least two (2) comparable Middleware Products offered by non-affiliated firms approved by the [Antitrust Division] [Department of Justice] [Court] [Trustee] or Microsoft demonstrates to the satisfaction of [___] that fewer than two such products exist, in which case Microsoft shall include all that exist. The option of using such non-affiliated products shall be displayed to the user on terms no less favorable than those accorded to the Microsoft products.

ii. Microsoft also offers an otherwise identical version of that Operating System Product in which all means of End-User Access to that those Middleware Products can readily be removed (a) by OEMs as part of standard OEM pre-installation kits and (b) by end users using add-remove utilities readily accessible in the initial boot process and from the Windows desktop.; and

iii. when an OEM removes End-User Access to a Microsoft Middleware Product from any Personal Computer on which Windows is preinstalled, the royalty paid by that OEM for that copy of Windows is reduced in an amount not less than the product of the otherwise applicable royalty and the ratio of the number of amount in bytes of binary code of (a) the Middleware Product as distributed separately from a Windows Operating System Product to (b) the applicable version of Windows.

3g. Middleware Products Included in Previously Distributed Operating System Products. If Microsoft has, in any Operating System Product distributed less than six months after the effective date of this Final Judgment, included any Middleware Product in a Windows Operating System, it shall within six months after the effective date of this Final Judgment:

i. release a version of its most recent Operating System that includes at least two (2) comparable Middleware Products offered by non-affiliated firms approved by the [Antitrust Division] [Department of Justice] [Court] [Trustee], unless Microsoft demonstrates to the satisfaction of [___] that fewer than two such products exist, in which case Microsoft shall include all that exist. The option of using such non-affiliated products shall be displayed to the user on terms no less favorable than those accorded to the Microsoft products.

ii. offer an otherwise identical version of that Operating System Product in which all means of End-User Access to those Middleware Products can readily be removed (a) by OEMs as part of standard OEM preinstallation kits and (b) by end users using add-remove utilities readily accessible in the initial boot process and from the Windows desktop.

7q. Middleware means software that operates, directly or through other software, between an Operating System and another type of software (such as an application, a server Operating System, or a database management system, including such Operating Systems and database management systems on an Internet site) by offering services via APIs or Communications Interfaces to such other software, and could, if ported to or interoperable with multiple Operating Systems, enable software products written for that Middleware to be run on multiple Operating System Products. Examples of Middleware within the meaning of this Final Judgment include Internet browsers, online identity and authentication service software, e-mail client software, multimedia viewing software, Office, and the Java Virtual Machine. Examples of software that are not Middleware within the meaning of this Final Judgment are disk compression and memory management.

r. Middleware Product means

i. Internet browsers, e-mail client software, multimedia viewing software, instant messaging software, online identity and authentication service software, and voice recognition software, or

ii. software distributed by Microsoft that—

(1) is, or has in the applicable preceding year been, distributed separately from an Operating System Product in the retail channel or through Internet access providers, Internet content providers, ISVs or OEMs, and

(2) provides functionality similar to that provided by Middleware offered by a competitor to Microsoft.

MTC–00033650

Dorothy B. Fountain,
Deputy Director of Operations.
[FR Doc. 02–11539 Filed 5–8–02; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: reinstatement, with change, of a previously approved collection for which approval has expired; Victims of Crime Act, Crime Victim Assistance Grant Program, Subgrant Award Report.

The Department of Justice (DOJ), Office of Justice Programs, Office of Victims of Crime, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until July 8, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Celestine Williams (202) 616–3565, Office of Victims of Crime, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, With Change, of a Previously Approved Collection for Which Approval has Expired.

(2) *Title of the Form/Collection:* Victims of Crime Act, Crime Victim Assistance Grant Program, Subgrant Award Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1121–0142. Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local or Tribal Government. *Other:* None. The information requested is necessary to ensure compliance with statutory criteria which allows the Director of OVC to collect performance data from recipients of the VOCA victim assistance grant funds. The affected public include up to 57 States and territories administering the crime assistance provisions of the Victims of Crime Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are 57 respondents who will complete a three minute subgrant award report. However, a State can be responsible for entering subgrant data for as many as 9 to 417 programs.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 295 burden hours associated with this information collection. *If additional information is required contact:* Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600 D Street NW., Washington, DC 20530.

Dated: May 3, 2002.

Brenda E. Dyer,
Department Deputy Clearance Officer, Department of Justice.
[FR Doc. 02–11525 Filed 5–8–02; 8:45 am]
BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of The Secretary

Submission for OMB Emergency Review; Comment Request

May 3, 2002.

The Department of Labor has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by June 1, 2002. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on (202) 693–4129 or Email: *King-Darrin@dol.gov*.

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Room 10235, Washington, DC 20503. The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarify of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Agency: Employment and Training Administration (ETA).

Title: Temporary Extended Unemployment Compensation Reports.

OMB Number: 1205–0NEW.

Affected Public: State, Local, or Tribal Government.

Annualized Reporting Burden (time measured in hours):

Number of respondents	Estimated time per response	Number of reports	Total burden
ETA207 53	0.5	4	106
ETA218 53	0.2	4	42
ETA227 53	1.0	4	212
ETA2112 53	0.2	12	127
ETA5130 53	1.0	12	636
ETA5159 53	1.0	12	636
ETA539 53	0.01	52	28

Total Burden Hours: 1,787.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $ 0.

Description: On March 9, 2002, President Bush signed into law the Temporary Extended Unemployment Compensation (TEUC) program. This program provides up to 26 weeks of additional unemployment benefits to eligible claimants who have exhausted their regular entitlement. This is a temporary, federally funded program enacted through December 31, 2002. To properly administer and monitor this program, specific information is required from states. The information requested through these reports are necessary for proper administer of the program and interpretation of labor market conditions. Approval is not being sought for any new forms, but rather, approval is being sought for an additional use of existing forms. There are no state costs since the states are funded for reporting.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 02–11631 Filed 5–8–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Employment and Training

On April 22, 2002, the Secretary of Labor issued a memorandum to the Assistant Secretary for Employment and Training delegating authority and assigning responsibility to invoke all appropriate claims of governmental privilege arising from the functions of the Employment and Training Administration. A copy of that memorandum is annexed hereto as an Appendix.

FOR FURTHER INFORMATION CONTACT: Charles D. Raymond, Associate solicitor for Employment and Training Legal Services, at (202) 693–5710. This is not a toll-free number.

Signed in Washington, DC, this 3rd day of May, 2002.

Eugene Scalia,

Solicitor of Labor.

Secretary of Labor

Washington

April 22, 2002.

Memorandum for: EMILY STOVER DE ROCCO, Assistant Secretary, Employment and Training Administration

From: ELAINE CHAO

Subject: Specific Delegation of Authority to the Assistant Secretary for Employment and Training

Effective immediately, the Assistant Secretary for Employment and Training is hereby delegated authority and assigned responsibility to invoke all appropriate claims of governmental privilege arising from the functions of the Employment and Training Administration, following her personal consideration of the matter, and in accordance with the following guidelines:

(a) Informant's Privilege (to protect from disclosure the identity of any person who has provided information to the Employment and Training Administration in cases arising under the statutes listed in Secretary's Orders 4–75, 3–81 and 2–85): A claim of privilege may be asserted where the Assistant Secretary has determined that disclosure of the privileged matter may: (1) interfere with the Employment and Training Administration's investigation or enforcement of a particular statute for which the Employment and Training Administration exercises investigative or enforcement authority; (2) adversely affect persons who have provided information to the Employment and Training Administration; or (3) deter other persons from reporting violations of the statutes.

(b) Deliberative Process Privilege (to withhold information which may disclose pre-decisional intra-agency or inter-agency deliberations, including the analysis and evaluation of fact, written summaries of factual evidence, and recommendations, opinions or advice on legal or policy matters in cases arising under the statutes listed in Secretary's Orders 4–75, 3–81 and 2–85): A claim of privilege may be asserted where the Assistant Secretary has determined that disclosure of the privileged matter would have an inhibiting effect con the agency's decision-making processes.

(c) Privilege for Investigational Files Compiled for Law Enforcement Purposes (to withhold information which may reveal the Employment and Training Administration's confidential investigative techniques and procedures): The investigative file privilege may be asserted where the Assistant Secretary has determined the disclosure of the privileged matter may have an adverse impact upon the Employment and Training Administration's enforcement of the statutes listed in Secretary's Orders 4–75, 3–81 and 2–85 by: (1) disclosing investigative techniques and methodologies; (2) deterring persons from providing information to the Employment and Training Administration; (3) prematurely revealing the facts of the Employment and Training Administration's case; or (4) disclosing the identities of persons who have provided information under an express or implied promise of confidentiality.

(d) Prior to filing a formal claim of privilege, the Assistant Secretary shall personally review all documents sought to be withheld (or, in case where the volume is so large that all of them cannot be personally reviewed in a reasonable time, an adequate and representative sample of such documents), together with a description or summary of the litigation with which the disclosure is sought.

(e) In asserting a claim of governmental privilege, the Assistant Secretary may ask the Solicitor of Labor, or the Solicitor's representative, to file any necessary legal papers or documents.

[FR Doc. 02–11632 Filed 5–8–02; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–056)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Makel Engineering, Inc., of Chico,

California, has applied for an exclusive license to practice the inventions disclosed in U.S. Patent No. 6,027,954 entitled "Gas Sensing Diode and Method of Manufacturing," (NASA Case No. 16,519–1); and U.S. Patent No. 6,291,838 entitled "Gas Sensing Diode Comprising SiC" (NASA Case No. LEW 16,519–2), both of which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

Written objections to the prospective grant of a license should be sent to NASA Glenn Research Center.

NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: Responses to this notice must be received by July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Attorney, NASA Glenn Research Center, Mail Stop 500–118, 21000 Brookpark Road, Cleveland, Ohio 44135, telephone: (216) 433–8855.

Dated: May 2, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–11625 Filed 5–8–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–055)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Tietronix Software, Inc., having offices in Houston, Texas, has applied for a partially exclusive license to practice the inventions described and claimed in pending U.S. Patent Application entitled "System and Method for Dynamic Optical Filtration (DOFS)," NASA Case No. MSC23037–1, and any continuations, divisional applications, and foreign applications corresponding to the above-listed cases. The above-identified patent application is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the Johnson Space Center.

DATES: Responses to this notice must be received by May 24, 2002.

FOR FURTHER INFORMATION CONTACT: James Cate, Patent Attorney, NASA Johnson Space Center, Mail Stop HA, Houston, TX 77058–8452; telephone (281) 483–1001.

Dated: May 2, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–11624 Filed 5–8–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL MEDIATION BOARD

Notice of Proposed Information Collection Requests

AGENCY: National Mediation Board.

SUMMARY: The Chief Information Officer, Finance and Administration Department, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 8, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Chief Information Officer, Finance and Administration Department, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection contains the following: (1) Type of review requested, e.g. new, revision extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Record keeping burden. OMB invites public comment.

Currently, the National Mediation Board is soliciting comments concerning the proposed extension of the Application for Mediation Services; and the Application for Investigation of Representation Dispute and is interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 3, 2002.

June D.W. King,

Chief Information Officer, Finance and Administration Department, National Mediation Board.

A. Application for Mediation Services

Type of Review: Extension.

Title: Application for Mediation Services, OMB Number: 3140–0002.

Frequency: On occasion.

Affected Public: Carrier and Union Officials, and employees of railroads and airlines.

Reporting and Recordkeeping Hour Burden:

Responses: 70 annually.

Burden Hours: 17.50.

Abstract: Section 5, First of the Railway Labor Act, 45 U.S.C., 155, First. provides that both, or either, of the parties to the labor-management dispute may invoke the mediation services of the National Mediation Board. Congress has determined that it is in the nation's best interest to provide for governmental mediation as the primary dispute resolution mechanism to resolve labor-management disputes in the railroad and airline industries. The Railway Labor Act is silent as to how the invocation of mediation is to be accomplished and the Board has not promulgated regulations requiring any specific vehicle. Nonetheless, 29 CFR 1203.1 provides that applications for mediation services be made on printed forms which may be secured from the National Mediation Board. This section of the regulations provides that applications should be submitted in duplicate, show the exact nature of the dispute, the number of employees involved, name of the carrier and name of the labor organization, date of agreement between the parties, date and copy of notice served by the invoking party to the other and date of final conference between the parties. The application should be signed by the highest officer of the carrier who has been designated to handle disputes under the Railway Labor Act or by the chief executive of the labor organization, whichever party files the application.

The extension of this form is necessary considering the information

provided by the parties is used by the Board to structure a mediation process that will be productive to the parties and result in a settlement without resort to strike or lockout. The Board has been very successful in resolving labor disputes in the railroad and airline industries. Historically, some 97 percent of all NMB mediation cases have been successfully resolved without interruptions to public service. Since 1980, only slightly more than 1 percent of cases have involved a disruption of service. This success ratio would possibly be reduced if the Board was unable to collect the brief information that it does in the application for mediation services.

B. Application for Investigation of Representation Dispute

Type of Review: Extension.

Title: Application for Investigation of Representation Dispute, OMB Number: 3140–0001.

Frequency: On occasion.

Affected Public: Union Officials, and employees of railroads and airlines.

Reporting and Recordkeeping Hour Burden:

Responses: 68 annually.

Burden Hours: 17.

Abstract: Section 2, Fourth of the Railway Labor Act, 45 U.S.C. 152, Fourth provides that railroad and airline employees shall have the right to organize and bargain collectively, through representatives of their own choosing. When a dispute arises among the employees as to who will be their bargaining representative, the National Mediation Board is required by Section 2, Ninth to investigate the dispute, to determine who is the authorized representative, if any, and to certify such representative to the employer. The Board's duties do not arise until its services have been invoked by a party to the dispute. The Railway Labor Act is silent as to how the invocation of a representation dispute is to be accomplished and the Board has not promulgated regulations requiring any specific vehicle. Nonetheless, 29 CFR 1203.2 provides that requests to investigate representation disputes may be made on printed forms. The application shows the name of description of the craft or class involved, the name of the invoking organization, the name of the organization currently representing the employees, if any, and the estimated number of employees in the craft or class involved. This basic information is essential to the Board in that it provides a short description of the particulars of dispute and the Board can begin determining what resources will be required to conduct an investigation.

The extension of this form is necessary considering the information is used by the Board in determining such matters as how many staff will be required to conduct an investigation and what other resources must be mobilized to complete our statutory responsibilities. Without this information, the Board would have to delay the commencement of the investigation, which is contrary to the intent of the Railway Labor Act.

Requests for copies of the proposed information collection request may be accessed from *www.nmb.gov* or should be addressed to Grace Ann Leach, NMB, 1301 K Street NW., Suite 250 E, Washington, DC 20572 or addressed to the e-mail address *leach@nmb.gov* or faxed to 202–692–5081. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to June D.W. King at 202–692–5010 or via internet address *king@nmb.gov* Individuals who use a telecommunications device for the deaf (TDD/TDY) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–11544 Filed 5–08–02; 8:45 am]

BILLING CODE 7550–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice; the first notice was published at 67 FR 8562 and no comments were received. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: National Science Foundation Applicant Survey.

OMB Approval Number: 3145–0096.

Expiration Date of Approval: August 31, 2002.

Type of Request: Intent to seek approval to extend with revision an information collection for three years.

Proposed Project: The current National Science Foundation Applicant survey has been in use for several years. Data are collected from applicant pools to examine the racial/sexual/disability composition and to determine the source of information about NSF vacancies.

Use of the Information: Analysis of the applicant pools is necessary to determine if NSF's targeted recruitment efforts are reaching groups that are underrepresented in the Agency's workforce and/or to defend the Foundation's practices in discrimination cases.

Burden on the Public: The Foundation estimates about 5,000 responses annually at 3 minutes per response; this computes to approximately 250 hours annually.

Dated: May 3, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–11535 Filed 5–8–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; Comment request

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 67 FR 2248 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send e-mail to *splimpto@nsf.gov*.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: The Cross Site Analysis of the Integrative Graduate Education and Research Traineeship (IGERT) Program.

OMB Control No.: 3145–0182.

Abstract: This document has been prepared to support the clearance of data collection instruments to be used in the evaluation of the Integrative Graduate Education and Research Traineeship (IGERT) Program. This site-based interview component is a part of a mixed method implementation and impact study and is comprised of on-site interviews of PIs, trainees, key faculty, and administrative personnel for all IGERT projects in their third year of funding (approximately 20 sites per year). It complements and verifies data from the previously cleared IGERT Distance Monitoring System (a Web-based survey completed annually by the project Principal Investigators, funded trainees, and non-funded associate students). While the Web-based survey provides prescribed and consistent data across all IGERT sites, site visits allow the collection of site-specific, in-depth information that answers questions raised by the Web-based collection and extends its scope. The two approaches inform and enrich each other to provide the clearest and most complete portrait possible of the evaluated program. Data are needed by NSF for program monitoring and to support program analysis, impact assessment, and evaluation activities.

Expected Respondents: Interview respondents at each IGERT project will include: The Principal Investigator, Co-Principal Investigators, Faculty associated with the project or advisors to trainees, Funded Trainees, Non-Funded Associates, and University Administrators.

Burden on the Public: Burden for respondents varies according to role, from 30 minutes to three hours. A total of 34 hours and 30 minutes interview time is projected for the estimated 44 respondents at each site. Over the average of 20 sites each year, this amounts to 880 respondents and a total of 690 hours. Burden to the public is limited because all respondents are limited to those associated with IGERT projects in their third year of implementation.

Dated: May 3, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–11536 Filed 5–8–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–412]

Pennsylvania Power Company, Ohio Edison Company, FirstEnergy Nuclear Operating Company, Beaver Valley Power Station, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR), Section 54.17(c), for Facility Operating License No. NPF–73, issued to FirstEnergy Nuclear Operating Company (the licensee), for operation of the Beaver Valley Power Station, Unit No. 2 (BVPS–2), located in Beaver County, Pennsylvania. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirement of 10 CFR 54.17(c), which specifies that an applicant (for the purposes of license renewal the licensee is the applicant) may apply for a renewed operating license no earlier than 20 years before the expiration of the operating license currently in effect.

The proposed action is in accordance with the licensee's application for an exemption dated December 17, 2001.

The Need for the Proposed Action

In accordance with 10 CFR 54.17(c), the earliest date that the applicant could apply for a renewed operating license for BVPS–2 would be May 28, 2007. The proposed action would allow the applicant to file a license renewal application for BVPS–2 concurrent with the renewal application for Beaver Valley Power Station Unit No. 1 (BVPS–1), which has less than 20 years before expiration of its current operating license on January 29, 2016. The request seeks only schedular relaxation without any other substantive reliefs.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the issuance of the proposed exemption will not have a significant environmental impact. The exemption, if granted, will permit the applicant to apply for renewal of the BVPS–2 license sooner than the schedule specified by 10 CFR 54.17(c). When the applicant does apply for license renewal, the environmental impacts of operating the Beaver Valley units under the renewed licenses will then be submitted by the applicant and evaluated by the staff. In short, granting of the exemption will not necessitate, or lead to, changes to the as-built plant design, or to existing procedures at BVPS–2.

The NRC staff evaluated potential radiological environmental impacts associated with granting the requested exemption. Since no plant design or procedure changes will be made, no new accident causal mechanisms would be introduced.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to the potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. The proposed action involves no plant design or procedure changes, it does not increase or decrease non-radiological plant effluents, and has no other environmental impact from those previously evaluated by the NRC staff in the Final Environmental Statement (FES) for BVPS–2 dated September 1985. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the FES for BVPS–2 dated September 1985.

Agencies and Persons Consulted

In accordance with its stated policy, on March 20, 2002, the NRC staff consulted with Pennsylvania State official, Larry Ryan, Bureau of Radiation Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's request for exemption dated December 17, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 3rd day of May 2002.

For the Nuclear Regulatory Commission.

Daniel Collins,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–11622 Filed 5–8–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication (TAC No. MB2788); Control Room Envelope Habitability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter concerning control room envelope (CRE) habitability determination. The purpose of the proposed generic letter is to: (1) Alert addressees to findings at U.S. power reactor facilities that suggest that CRE licensing and design bases, and applicable regulatory requirements may not be met, and that a technical specification surveillance requirement may not be adequate to verify CRE operability, (2) emphasize the importance of reliable, comprehensive surveillance testing to verify CRE habitability, and (3) request addressees to submit information that demonstrates that the CRE at each of their respective facilities complies with the current licensing and design basis and applicable regulatory requirements, and that suitable design, maintenance and testing control measures are in place for maintaining this compliance. The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter, presented under the Supplementary Information heading.

The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC's final evaluation will include a review of its technical positions and, as appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the NRC Public Document Room.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS) which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room (PERR) on the Internet at < *http://www.nrc.gov/reading-rm/adams.html* >. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff by phone at 1–800–397–4209 or 301–415–4737, by e-mail to <*pdr@nrc.gov*>, or by Fax at 301–415–3548. The ADAMS Accession No. for the document containing the proposed generic letter is ML021090031.

DATES: Comment period expires August 7, 2002. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules and Directives Branch, Division of Administrative Services, U.S. Nuclear Regulatory Commission, Mail Stop T6–D59, Washington, DC 20555–0001. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. to 4:15 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: W. Mark Blumberg, (301) 415–1083

SUPPLEMENTARY INFORMATION:

NRC Generic Letter 2002–XX: Control Room Envelope Habitability

Addressees

All holders of operating licenses for pressurized-water reactors (PWRs) and boiling-water reactors (BWRs), except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel and that it has been more than one year since fuel was irradiated in the reactor vessel.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to:

(1) Alert addressees to findings at U.S. power reactor facilities that suggest that the control room envelope (CRE) licensing and design bases, and applicable regulatory requirements (see section below) may not be met, and that a technical specification surveillance requirement may not be adequate to verify CRE operability,

(2) Emphasize the importance of reliable, comprehensive surveillance testing to verify CRE habitability, and

(3) Request addressees to submit information that demonstrates that the CRE at each of their respective facilities complies with the current licensing and design basis and applicable regulatory requirements, and that suitable design, maintenance and testing control measures are in place for maintaining this compliance.

Background

The control room is the plant area where actions are taken to operate the plant safely under normal conditions, maintain the reactor in a safe condition, or mitigate the consequences of an accident. The CRE encompasses the control room and other rooms and areas that personnel must access to accomplish plant control functions in the event of an accident. The structures that make up the CRE are designed to limit the inleakage of contaminants such as radioactive materials, hazardous chemicals, and smoke from areas outside the CRE. CRE habitability systems (CREHSs) typically provide the functions of shielding, isolation, pressurization, heating, ventilation, air conditioning and filtration, monitoring, and the sustenance and sanitation necessary to ensure that the control room operators can safely remain in the CRE. The personnel protection features incorporated into the design of a plant's CREHSs depend on the nature and scope of the plant-specific challenges to maintaining CRE habitability. Isolation of the CRE atmosphere from the atmosphere of adjacent areas is fundamental to ensuring a habitable environment.

During the design of a nuclear power plant, licensees perform analyses to demonstrate that the CRE and the CREHSs, as designed, provide a habitable environment during postulated design basis events. These design analyses model the transport of potential contaminants into the CRE and their removal. The amount of inleakage of contaminants assumed is important to these analyses. Unaccounted-for contaminants entering the CRE may impact the ability of the operators to perform plant control functions. If contaminants impair the response of the operators to an accident, there could be increased consequences to the public health and safety.

Typically, there are two CRE designs. These designs are referred to as positive-pressure and neutral-pressure CREs. Both designs focus on limiting the amount of contaminant entering the CRE. The positive-pressure CRE intentionally pressurizes the CRE with air from outside the CRE. The pressurization air is treated by a high-efficiency particulate air filter and iodine absorption media to remove contaminants. The neutral-pressure CRE does not intentionally pressurize the CRE, but limits inleakage of contaminants by isolating controlled flow paths into the CRE. Plants with a positive-pressure CRE have generally implemented testing programs. These programs verify those ventilation systems serving the CRE can maintain the CRE at a positive differential pressure relative to adjacent areas. These testing programs are generally implemented through a technical specification surveillance requirement for the CREHSs. The tests are typically referred to as a ΔP test. Plants with a neutral-pressure CRE design typically do not have a CRE integrity testing program. (The term *neutral-pressure* means only that the CRE is not intentionally pressured. The actual pressure of the CRE may be positive, neutral, or negative relative to adjacent areas.)

In addition to the ΔP surveillance testing described above, approximately 30 percent of all addressees have performed CRE integrity testing using the standard test method described in American Society for Testing and Materials (ASTM) consensus standard E741, "Standard Test Method for Determining Air Change in a Single Zone by Means of a Tracer Gas Dilution." Unlike the ΔP test, the E741 test measures the total CRE inleakage from all sources. It is well suited for assessing the integrity of positive-pressure or neutral-pressure CREs. The test basically involves homogeneously dispersing a nontoxic tracer gas throughout the CRE and measuring the dilution of the tracer gas caused by inleakage.

The results of the E741 tests indicate that the ΔP testing is not a reliable method for demonstrating CRE integrity. For all but one facility tested using the E741 standard, the measured inleakage was greater than the inleakage assumed in the design basis analyses. In some cases the measured inleakage was several orders of magnitude greater than the value previously assumed even though some licensees had routinely demonstrated a positive ΔP relative to adjacent areas at their facilities. Affected facilities were subsequently able to achieve compliance with the CRE radiation protection regulatory requirements by sealing, adding new duct work, changing their CRE or by re-analysis of their CRE habitability.

The ΔP surveillance test has two deficiencies. First, it does not measure CRE inleakage. The ΔP surveillance test infers that contamination cannot enter the CRE if the CRE is at a higher pressure than adjacent areas. Second, the ΔP test cannot determine whether there may be unrecognized sources of pressurization of the CRE that could introduce contaminants into the CRE under accident conditions. Two possible contamination pathways are the CREHS fan suction duct work that is located outside the CRE, and the pressurized ducts that traverse the lower pressure CRE en route to another plant area.

The E741 testing has helped to identify a spectrum of CREHS deficiencies that affect system design, construction, and quality; system boundary construction and integrity; and technical specification surveillance requirements. Licensees have determined that the performance of the

CRE and the CREHSs can be affected by (1) the gradual degradation in associated equipment such as seals, floor drain traps, fans, duct work, and other components; (2) the drift of throttled dampers; (3) maintenance on the CRE boundary or the CREHSs; and (4) inadvertent misalignments of the CREHSs. Since inleakage is influenced by pressure differentials between the CRE and adjacent areas, changes in ambient pressure in these adjacent areas can affect the CRE inleakage. These changes can be the result of a modification, the degradation of the ventilation systems serving these areas, or inadequate preventive and corrective maintenance programs.

Licensees and NRC staff have identified other deficiencies in CREHS design, operation, and performance from the review of license amendments, Licensee Event Reports, and records and reports prepared pursuant to 10 CFR 50.59. These deficiencies showed that the licensees' CREs did not meet their design bases. Some of these deficiencies are discussed in Regulatory Issue Summary 2001–19, "Deficiencies in the Documentation of Design Basis Radiological Analyses Submitted in Conjunction With License Amendment Requests." For example, some licensees credited the operation of CREHSs based upon actuation of high-radiation signals from instrumentation. Further investigation revealed that the system would not be actuated due to incorrect setpoints or placement of the instrumentation. Other CRE designs appear not to have considered unfiltered or once-filtered inleakage through idle CREHS ventilation trains. Without adequate consideration of such design deficiencies, design basis radiation exposure limits may be exceeded.

Previous to the E741 testing, a group of licensees had trouble meeting the CRE criteria in Three Mile Island (TMI) Action Item III.D.3.4, "Control Room Habitability Requirements," that the NRC ordered most licensees to implement after the accident at TMI. At that time, radiological source term research suggested that the distribution of the chemical forms of iodine released during an accident could be different from the distribution in the traditional source term defined in U.S. Atomic Energy Commission Technical Information Document (TID) 14844, "Calculation of Distance Factors for Power and Test Reactor Sites." Because of the possible differences, the staff allowed licensees to postpone changing their CREs until the ongoing source term research was completed or until a generic letter on CRE habitability was issued. The staff believed that postponing changes were reasonable since the source term research or improved methods of analyses might prove that they were unnecessary. Many of these licensees incorporated compensatory actions into their operating procedures to assure that the control room operators would be protected in case of an accident. Since then, other licensees have found that they could not meet the thyroid dose limits for habitability without using compensatory actions. The NRC also allowed these facilities to use compensatory actions until completion of the source term research. In August 2000, the NRC staff incorporated the results of the source term into Regulatory Guide 1.183, "Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors," and it is now available for use by licensees.

Although many CRE integrity testing programs focus on radiological concerns, radiation is only one potential design basis challenge to the protection of the operators. The inleakage of other contaminants may have a greater impact on CRE habitability. An inleakage rate that is tolerable for one contaminant may not be tolerable for another. The CRE licensing basis describes the hazardous chemical releases considered in the CRE design, the design features, and the administrative controls implemented to mitigate the consequences of these releases to the control room operators. Smoke and other byproducts of fire within the CRE or in adjacent areas are among the contaminants that can have an adverse impact on CRE habitability.

Discussion

The NRC is concerned that some licensees have not maintained adequate configuration control over their CREs and have not corrected identified design and performance deficiencies. Errors of omission and commission are more likely if CREHSs and CREs do not properly perform as intended in response to challenges from off-normal or accident situations. The CRE must be safe so that operators remain in the CRE to monitor plant performance and take appropriate mitigative actions. This is an underlying assumption in both the design basis and severe accident risk analyses. It is, therefore, imperative to the health and safety of the public that operators are confident of their safety in the CRE at all times.

The scope and magnitude of the problems that NRC staff and licensees have identified raise concerns about whether similar design, configuration, and operability problems exist at other reactor facilities. The NRC staff is particularly concerned about whether licensees' programs to maintain configuration control of CREHSs are sufficient to demonstrate that the physical and functional characteristics of CREHSs are consistent with and are being maintained according to their design bases. It is emphasized that the NRC's position has been, and continues to be, that it is the responsibility of individual licensees to know the licensing basis for the CRE and associated CREHSs. Licensees should also have appropriate documentation of the design basis, and procedures in place, in accordance with NRC regulations, for performing necessary assessments of plant or procedure changes that may affect the performance of the CRE and CREHSs.

The technical specifications for about 75 percent of the CREs (comprised mostly of positive-pressure CREs) have a Surveillance Requirement (SR) to measure the ΔP from the CRE to adjacent areas. The bases of the Improved Standard Technical Specifications say that this SR demonstrates CRE integrity with respect to unfiltered inleakage. The E741 integrated testing proves that it does not. Because 10 CFR 50.36 requires technical specifications to be derived from the safety analyses, the staff feels that the existing deficiency should be corrected. This correction is consistent with the NRC Administrative Letter 98–10, "Dispositioning Of Technical Specifications That Are Insufficient To Assure Plant Safety," which describes the staff's expectation that licensees correct technical specifications that are found to "contain non-conservative values or specify incorrect actions."

Because of the importance of ensuring habitable CREs under all normal and off-normal plant conditions, the addressees are requested to provide certain information that will enable the NRC staff to verify whether addressees can demonstrate and maintain the current design bases for the CRE at their facilities. Addressees are encouraged, but not required, to work closely with industry groups on the coordination of their responses. Coordinating the responses is more efficient and public confidence may ensue from a uniform approach to demonstrating compliance with the design bases of their CREs.

NEI 99–03, "Control Room Habitability Assessment Guidance," provides industry generic guidance on CRE habitability. The NRC staff reviewed NEI 99–03, but rather than fully endorse NEI 99–03, the NRC staff developed its own guidance. Draft Regulatory Guide DG–1114, "Control

Room Habitability at Nuclear Power Reactors," endorses NEI 99–03 to the extent possible and provides additional guidance. Licensees are not required to comply with DG–1114, but may find it useful in responding to this generic letter. Licensees unable to confirm item 1 under the Required Information section may also use DG–1114 to develop and implement corrective actions.

Requested Information

Addressees are requested to provide the following information within 180 days of the date of this generic letter.

1. Confirmation that your facility's CRE meets its applicable habitability regulatory requirements (e.g., GDC 1, 3, 4, 5, and 19) and that the CRE and CREHSs are designed, constructed, configured, operated, and maintained in accordance with the facility's design and licensing basis. Emphasis should be placed on confirming:

(a) That the most limiting unfiltered inleakage into your CRE (and the filtered inleakage if applicable) is no more than the value assumed in your design basis radiological analyses for CRE habitability. Describe how and when you performed the analyses, tests, and measurements for this confirmation.

(b) That the most limiting unfiltered inleakge into your CRE (and filtered inleakage if applicable) is incorporated into your fire and hazardous chemical assessment, and the CRE integrity preserves the reactor control capability from either the CRE or the alternate shutdown panel in the event of a fire.

(c) That your technical specifications are adequate to demonstrate the OPERABILITY of your CRE (where OPERABILITY is defined by your technical specifications). If you currently have a ΔP surveillance requirement to demonstrate CRE integrity, provide the basis for your conclusion that it remains adequate to demonstrate CRE integrity in light of the E741 testing results. If your facility does not currently have a technical specification surveillance requirement for your CRE, explain how and on what frequency you confirm your CRE integrity.

(2) If you currently use compensatory measures to demonstrate CRE habitability, describe the compensatory measures at your facility and the corrective actions to retire these compensatory measures in accordance with your related commitments.

(3) If you believe that your facility is not required to meet either the GDC, draft GDC, or "Principle Design Criteria" regarding CRE habitability, provide documentation (e.g. PSAR, FSAR sections etc.) of the basis for this conclusion and identify your actual requirements.

Requested Response

If an addressee cannot provide the information or cannot meet the requested completion date, the addressee should submit a written response indicating this within 60 days of the date of this generic letter. The response should address any alternative course of action the addressee proposes to take, including the basis for the acceptability of the proposed alternative course of action.

The written response should be addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555–0001. A copy of the response should be sent to the appropriate regional administrator.

NRC staff will review the responses to this generic letter and, if concerns are identified, will notify affected addressees. The staff may conduct inspections to determine licensees' effectiveness in addressing this generic letter.

Applicable Regulatory Requirements

Several provisions of the NRC regulations and plant operating licenses (technical specifications) pertain to the issue of CRE habitability. The general design criteria (GDC) for nuclear power plants (appendix A to 10 CFR part 50), or, as appropriate, quality assurance requirements in the licensing basis for a reactor facility, stated in appendix B of 10 CFR part 50, and the technical specifications, are the bases for the NRC staff's assessment of CRE habitability.

Appendix A to 10 CFR part 50, "General Design Criteria (GDC) for Nuclear Power Plants," and the plant safety analyses require or commit licensees to design and test safety-related structures, systems, and components (SSCs) to provide adequate assurance that they can perform their safety functions. The NRC staff applies these criteria to plants with construction permits issued on or after May 21, 1971, and to those plants whose licensees have committed to them. The applicable GDC are GDC 1, 3, 4, 5, and 19. GDC 1 requires quality standards commensurate with the importance of the safety functions performed. GDC 3 requires SSCs to be designed and located to minimize the effects of fires. GDC 4 requires SSCs to be designed to accommodate the effects of accidents. GDC 5 requires that an accident in one unit will not significantly impair orderly shutdown and cooldown of the remaining unit.

GDC 19 specifies that a control room be provided from which actions can be taken to operate the nuclear reactor safely under normal conditions and maintain the reactor in a safe condition under accident conditions, including a loss-of-coolant accident (LOCA). There must be adequate radiation protection to permit personnel to access and occupy the control room under accident conditions without receiving radiation exposures in excess of specified values.

Before the issuance of the GDC, proposed GDC (sometimes called "principal design criteria") were published in the **Federal Register** for comment. As they evolved, several of the proposed GDC addressed CRE habitability. A facility may have been licensed before the issuance of the GDC, but licensees may have committed to the proposed GDC as they existed at the time of licensing.

Following the accident at Three Mile Island (TMI), TMI Action Plan Item III.D.3.4, "Control Room Habitability Requirements," as clarified in NUREG–0737, "Clarification of TMI Action Plan Requirements," required all licensees to assure that control room operators would be adequately protected against the effects of accidental releases of toxic and radioactive gases and that the nuclear power plant could be safely operated or shut down under design basis accident conditions. When licensees proposed modifications, the NRC issued orders confirming licensee commitments. As a result, most plants licensed before the GDC were formally adopted were then required to meet the TMI Action Plan III.D.3.4 requirements.

Appendix B to 10 CFR part 50, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," establishes quality assurance requirements for the design, construction, and operation of those SSCs that prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public. Criterion III of appendix B, "Design Control," requires that design control measures be provided for verifying or checking the adequacy of design. A suitable testing program is identified as one method of accomplishing this verification.

Section 36 of 10 CFR part 50, "Technical Specifications," requires technical specifications to be derived from the safety analyses.

If, in the course of preparing a response to the requested information, an addressee determines that its facility is not in compliance with the Commission's requirements, the addressee is expected to take appropriate action in accordance with

requirements of appendix B to 10 CFR part 50 and the plant technical specifications to restore the facility to compliance.

Reasons for Information Request

This generic letter transmits an information request that is necessary to permit the assessment of plant-specific compliance with applicable regulatory requirements. Specifically, this information will enable the NRC staff to determine whether the CREs at power reactor facilities comply with the current licensing bases.

The habitability of the CRE and the operability of the CREHS in the event adverse environmental conditions prevail external to the CRE have a direct nexus to maintaining public health and safety. Plant design bases and severe accident risk analyses both assume that the control room operators remain safely within the CRE to monitor plant performance and take appropriate mitigative actions. It is essential that operators be confident of their safety within the CRE at all times.

Backfit Discussion

This generic letter transmits an information request for the purpose of verifying compliance with existing applicable regulatory requirements (see the applicable regulatory requirements section of this generic letter). This generic letter does not constitute a backfit as defined in 10 CFR 50.109(a)(1) since it does not impose modifications or additions to structures, systems, and components or to the design or operation of an addressee's facility. Nor does it impose an interpretation of the Commission's rules that is either new or different from a previous staff position. Therefore, no backfit is either intended or approved by this generic letter, and the staff has not performed a backfit analysis.

Small Business Regulatory Enforcement Fairness Act

The NRC has determined that this action (a generic letter) is not subject to the Small Business Regulatory Enforcement Fairness Act of 1996.

Federal Register Notification

(To be completed after the public comment period.)

Paperwork Reduction Act Statement

This generic letter contains an information collection that is subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This information collection was approved by the Office of Management and Budget, clearance number 3150–0011, which expires July 31, 2003.

The burden to the public for this information collection is estimated to average 200 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The NRC is seeking public comment on the potential impact of the information collection contained in the generic letter and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC? Will the information have practical use?

2. Is the burden estimate accurate?

3. Can the quality, utility, or clarity of the information to be collected be improved?

4. How can the burden of the information collection be minimized? Can automated collection techniques be used?

Comments on any aspect of this information collection, including suggestions for reducing the burden, should be sent to Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 or by Internet electronic mail to *infocollects@nrc.gov;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, an information collection unless the requesting document displays a currently valid OMB control number.

Questions about this matter should be addressed to the technical contact or the Office of Nuclear Reactor Regulation project manager for your facility.

Dated at Rockville, Maryland, this 3rd day of May 2002.

For the Nuclear Regulatory Commission.

William D. Beckner,

Program Director, Operating Reactor Improvements Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–11623 Filed 5–8–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25564; 812–12807]

The Mexico Fund, Inc. and Impulsora del Fondo México, S.A. de C.V.; Notice of Application

May 1, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants, The Mexico Fund, Inc. (the "Fund") and Impulsora del Fondo México, S.A. de C.V. (the "Adviser"), seek an order that would permit an in-kind repurchase of shares of the Fund held by affiliated persons of the Fund.

FILING DATES: The application was filed on March 22, 2002, and amended on April 8, 2002, and on April 29, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 24, 2002, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Sander M. Bieber, Esq., Dechert, 1775 Eye Street, NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: David B. Smith, Jr., Associate Director, at (202) 942–0525 (Division of Investment Management, Public Utility and Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (telephone (202) 942–8090).

Applicants' Representations

1. The Fund, a Maryland corporation, is registered under the Act as a closed-

end management investment company. The Fund's investment objective is to provide long-term capital appreciation through investment primarily in equity securities listed on the Bolsa Mexicana de Valores, S.A. de C.V. (the "Mexican Stock Exchange").[1] Shares of the Fund are listed and trade on the New York Stock Exchange. The Adviser, a Mexican corporation, is registered under the Investment Advisers Act of 1940 as an investment adviser and serves as investment adviser to the Fund.

2. The Fund proposes to repurchase up to 100% of its issued and outstanding shares at no less than 98% of net asset value (the "Repurchase Offer"). Under the Repurchase Offer, the Fund will give its shareholders the right to redeem their shares on an in-kind basis with a pro rata distribution of the Fund's portfolio securities (with exceptions generally for odd lots, fractional shares, and cash items). The Repurchase Offer will be offered pursuant to section 23(c)(2) of the Act and conducted in accordance with rules 13e–3 and 13e–4 under the Securities Exchange Act of 1934.

3. Applicants state that the Repurchase Offer is designed to accommodate the needs of shareholders who wish to participate in the Repurchase Offer and long-term shareholders who would prefer to remain invested in a closed-end vehicle. Under the Repurchase Offer, only participating shareholders will recognize capital gains, while non-participating shareholders would avoid the imposition of a significant tax liability, which would result in a repurchase offer for cash. Applicants request relief to permit any shareholder of the Fund who is an "affiliated person" of the Fund solely by reason of owning, controlling, or holding with the power to vote, 5% or more of the Fund's shares ("Affiliated Shareholder").

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits an affiliated person of a registered investment company, or any affiliated person of the person, acting as principal, from knowingly purchasing or selling any security or other property from or to the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person who directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person. Applicants also state that to the extent that the Repurchase Offer would constitute the purchase or sale of securities by an Affiliated Shareholder, the redemption would be prohibited by section 17(a). Accordingly, applicants request an exemption from section 17(a) of the Act to permit the participation of Affiliated Shareholders in the Repurchase Offer.

2. Section 17(b) of the Act authorizes the Commission to exempt any transaction from the provisions of section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of each registered investment company and with the general purposes of the Act.

3. Applicants assert that the terms of the Repurchase Offer meet the requirements of section 17(b) of the Act. Applicants assert that neither the Fund nor an Affiliated Shareholder has any choice as to the portfolio securities to be received as proceeds from the Repurchase Offer. Instead, shareholders will receive their *pro rata* portion of each of the Fund's portfolio securities, excluding (a) securities which, if distributed, would have to be registered under the Securities Act of 1933 ("Securities Act"), and (b) securities issued by entities in countries which restrict or prohibit the holding of securities by non-nationals (other than qualified investment vehicles), and (c) certain portfolio assets that involve the assumption of contractual obligations, require special trading facilities, or may only be traded with the counterparty to the transaction. Moreover, applicants state that the portfolio securities to be distributed in the Repurchase Offer will be valued according to an objective, verifiable standard, and the Repurchase Offer is consistent with the investment policies of the Fund. Applicants also believe that the Repurchase Offer is consistent with the general purposes of the Act because Affiliated Shareholders would not receive any advantage not available to any other shareholder participating in the Repurchase Offer.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Fund will distribute to shareholders redeeming shares in the Repurchase Offer an in-kind pro-rata distribution of equity portfolio securities except for (a) securities which, if distributed, would be required to register under the Securities Act; (b) securities issued by entities in countries which restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles; and (c) certain portfolio assets (such as forward currency exchange contracts, futures and options contracts, and repurchase agreements) that, although they may be liquid and marketable, include the assumption of contractual obligations, require special trading facilities or can only be traded with the counterparty to the transaction in order to effect a change in beneficial ownership. As to fractional shares and/or odd lots of securities and/or amounts attributable to any cash position (including short-term non-equity securities), for shareholders of record of the Fund will (a) pay cash for fractional shares and/or odd lots of securities and/or amounts attributable to any cash position (including short-term non-equity securities); (b) round off (up or down) odd lots or fractional shares so as to eliminate them prior to distribution; or (c) pay a higher pro-rata percentage of equity securities to represent such items.

2. Securities distributed as proceeds in the Repurchase Offer will be valued in the same manner as they would be valued for the purposes of computing the Fund's net asset value, which, in the case of securities traded on a public securities market for which quotations are available, is their last reported sales price on the exchange on which the securities are primarily traded or at the last sales price on a public securities market, or, if the securities are not listed on an exchange or a public securities market or if there is no such reported price, the average of the most recent bid and asked price (or, if no such asked price is available, the last quoted bid price).

3. The securities distributed to shareholders pursuant to the Repurchase Offer will be limited to securities that are traded on a public securities market or for which quoted bid and asked prices are available.

4. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the Repurchase Offer occurs, the first two years in an easily accessible place, a written record of each repurchase that includes the identity of each shareholder of record that participated in the Repurchase Offer, whether that shareholder was an Affiliated Shareholder, a description of each security distributed, the terms of the distribution and the information or materials upon which the valuation was made.

[1] Applicants state that as of January 31, 2002, 93% of the Fund's assets were invested in equity securities.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–11541 Filed 5–8–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25567; 812–12772]

Independence One Mutual Funds, et al.; Notice of Application

May 3, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain series of a registered open-end management investment company to acquire all of the assets and assume all of the liabilities of certain series of another registered open-end management investment company. Because of certain affiliations, applicants may not rely on rule 17a-8 under the Act.

APPLICANTS: Independence One Mutual Funds, the ABN AMRO Funds and ABN AMRO North America Holding Company ("ABN AMRO").

FILING DATES: The application was filed on February 1, 2002. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 28, 2002, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, c/o Mark L. Winget, Vedder, Price, Kaufman & Kammholz, 222 North LaSalle Street, Chicago, IL 60601.

FOR FURTHER INFORMATION, CONTACT: Jean Minarick, Senior Counsel, at (202) 942–0527, or Nadya Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Independence One Mutual Funds, a Massachusetts business trust, is registered under the Act as an open-end management investment company and currently offers eight series, seven of which will participate in the proposed transactions (the "Acquired Funds"). The ABN AMRO Funds, a Delaware business trust, is registered under the Act as an open-end management investment company and offers thirty-one series, six of which are involved in the proposed transactions. Three existing series of the ABN AMRO Funds are referred to as the "Existing Acquiring Funds" and three newly established series,[1] together with the Existing Acquiring Funds, are referred to as the "Acquiring Funds" (together with the Acquired Funds, the "Funds"). The Independence One Mutual Funds and the ABN AMRO Funds are referred to as the "Trusts."

2. ABN AMRO Asset Management (USA) LLC ("AAAM"), a wholly owned subsidiary of ABN AMRO, will serve as the investment adviser to the Acquired Funds and is the investment adviser to the Acquiring Funds. AAAM is registered under the Investment Advisers Act of 1940. Affiliated persons of ABN AMRO own 5% or more (and in some cases more than 25%) of the outstanding securities of the Acquiring Funds in a fiduciary capacity. In addition, affiliated persons of ABN AMRO, in a fiduciary or custodial capacity, or on behalf of brokerage customers, own 5% or more (and in some cases more than 25%) of the outstanding voting securities of the Acquired Funds.

3. On July 25, 2001 and December 20, 2001, the boards of trustees of the Independence One Mutual Funds and the ABN AMRO Funds (together, the "Boards"), including all the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), unanimously approved the reorganization and an agreement and plan of reorganization (the "Plan of Reorganization"). Under the Plan of Reorganization, the Acquiring Funds acquire all of the assets and liabilities of the corresponding Acquired Funds.[2] Applicants state that the Reorganization will occur on or about June 1, 2002 and June 8, 2002 (each a "Closing Date" and collectively, the "Closing Dates"). On the applicable Closing Date, each class of shares of each Acquiring Fund will acquire all of the assets and liabilities of the corresponding class of shares of the corresponding Acquired Fund in exchange for shares of the designated class of the Acquiring Fund. The shares of each Acquiring Fund exchanged will have an aggregate net asset value equal to the aggregate net asset value of the corresponding Acquired Fund's shares determined as of the close of business on the business day immediately preceding the applicable Closing Date. The net asset value of the Acquiring Funds and value of the assets of the Acquired Funds will be determined according to the Acquiring Funds' then-current valuation policies and procedures stated in their prospectuses and statements of additional information. The Plan of Reorganization provides, however, that each Acquired Fund and the corresponding Acquiring Fund agree to use all commercially reasonable efforts to resolve any material differences between the prices of portfolio securities determined in accordance with the pricing policies and procedures of its corresponding Acquiring Fund and those determined in accordance with the pricing policies and procedures of its corresponding Acquired Fund, and that where a pricing difference results from a difference in pricing methodology, the parties will eliminate such difference by using the corresponding Acquiring Fund's methodology in valuing the Acquired Fund's assets. As soon as

[1] An amendment to the registration statement for the ABN AMRO Funds to register the new series that will participate in the Reorganization was filed with Commission on March 22, 2002 and became effective March 26, 2002.

[2] Under the Plan of Reorganization, the Acquired Funds will merge into the corresponding Acquiring Funds as follows: Independence One U.S. Treasury Money Market Fund will merge into ABN AMRO Treasury Money Market Fund; Independence One Prime Money Market Fund into ABN AMRO Institutional Prime Money Market Fund; Independence One Fixed Income Fund and Independence One U.S. Government Securities Fund into ABN AMRO Investment Grade Bond Fund; Independence One Small Cap Fund into ABN AMRO Select Small Cap Fund; Independence One Equity Plus Fund into ABN AMRO Equity Plus Fund; and Independence One International Equity Fund into ABN AMRO International Equity Fund.

practicable after the applicable Closing Date, the Acquired Funds will distribute the shares of the corresponding Acquiring Funds pro rata to their shareholders of record, determined as of the close of business on the business day immediately preceding the applicable Closing Date. Following the distribution of the Acquiring Funds' shares, the Acquired Funds will terminate.

4. The Acquired Funds offer Class A Shares, which are subject to a sales load, and for certain Acquired Funds, a rule 12b–1 distribution fee, and no shareholder servicing fees; Class B shares, which are subject to a sales load, rule 12b–1 distribution fees of 0.75% and shareholder servicing fees; Class K shares, which are subject to shareholder servicing fees, but no sales load or rule 12b–1 distribution fees; and Class Y Shares and Trust Class Shares, which are not subject to any sales load, rule 12b–1 distribution fees, or shareholder servicing fees. The Acquiring Funds will offer Class N shares, which are subject to rule 12b–1 distribution fees of 0.25%, but no shareholder servicing fees or sales loads; Class I and Class Y Shares, which are not subject to any sales loads, rule 12b–1 distribution fees or shareholder servicing fees; Class S Shares, which are subject to rule 12b–1 distribution fees of 0.25% and shareholder servicing fees, but no sales loads; and Class YS Shares, which are subject to shareholder servicing fees, but no sales loads or rule 12b–1 distribution fees.

5. Shareholders with Class K Shares of the Independence One U.S. Treasury Money Market Fund will receive Class I Shares of the ABN AMRO Treasury Money Market Fund. Shareholders of Class A Shares of the Independence One International Equity Fund will receive Class N Shares of the ABN AMRO International Equity Fund. Shareholders of Trust Class and Class B Shares of the Independence One Fixed Income Fund and shareholders of Class A Shares and Class B Shares of the Independence One U.S. Government Securities Fund will receive Class I shares of the ABN AMRO Investment Grade Bond Fund. Shareholders of Class A Shares of the Independence One Small Cap Fund will receive Class N Shares of the ABN AMRO Select Small Cap Fund. Shareholders of Trust Class, Class A and Class B Shares of the Independence One Equity Plus Fund will receive Class I Shares of the ABN AMRO Equity Plus Fund. Shareholders of Class Y and Class K Shares of the Independence One Prime Money Market Fund will receive Class Y and Class YS Shares, respectively, of the ABN AMRO Institutional Prime Money Market Fund.

6. Applicants state that the investment objectives, policies and restrictions of each Acquired Fund are substantially similar to those of the corresponding Acquiring Fund, except for the Independence One U.S. Government Securities Fund whose investment objectives, policies and restrictions are similar to those of the corresponding Acquiring Fund. Applicants state that the rights and obligations of each class of shares of the Acquired Funds are similar to those of the corresponding class of shares of the Acquiring Funds. No sales charges will be imposed in connection with the Reorganization. AAAM and/or its affiliates (but not the Funds) will bear the costs associated with the Reorganization.

7. The Boards, including all of the Independent Trustees, unanimously determined that the Reorganization is in the best interests of each Fund and its shareholders and that the interests of shareholders of each Fund would not be diluted as a result of the Reorganization. In assessing the Reorganization, the Boards considered various factors, including: (a) The terms and conditions of the Reorganization; (b) the compatibility of the Funds' investment objectives, policies and limitations; (c) the performance histories of the Acquired Funds and corresponding Existing Acquiring Funds; (d) the pro forma expense ratios of the Acquiring Funds; (e) the potential economies of scale to be gained from the Reorganization; (f) the advantages of increased investment opportunities for the Acquired Funds' shareholders; (g) the anticipated tax-free nature of the Reorganization; (h) the service features available to the shareholders of the corresponding Funds; (i) the assumption of all liabilities of the Acquired Funds and (j) the fact that Reorganization expenses will be borne by AAAM and/or its affiliated persons (but not the Funds).

8. The Reorganization is subject to a number of conditions precedent, including that: (a) The shareholders of each Acquired Fund will have approved the Reorganization; (b) the Trusts will have received opinions of counsel that the Reorganization will be tax-free for the Trusts and their shareholders; (c) applicants will have received from the Commission an exemption from section 17(a) of the Act for the Reorganization; (d) the registration statement under the Securities Act of 1933 for the Acquiring Funds will have become effective; and (e) each Acquired Fund shall have declared and paid dividend(s) which shall have the effect of distributing to its shareholders all net investment company taxable income for all taxable periods ending on or before the applicable Closing Date and, with respect to each Acquired Fund that is reorganizing into an Existing Acquired Fund, all of its net capital gains, if any, to its shareholders. The Plan of Reorganization may be terminated by mutual agreement or by either party at or before the Closing Dates. No material changes to the Plan of Reorganization will be made without prior Commission approval.

9. The registration statement on Form N–14 for the ABM AMRO Funds (which contains a combined prospectus/proxy statement) was filed with the Commission on February 6, 2002. The solicitation materials related to the Reorganization were mailed to shareholders of the Acquired Funds on April 5, 2002. A special meeting of shareholders of the Acquired Funds to consider the Reorganization is scheduled for May 10, 2002.

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits any affiliated person of a registered investment company, or any affiliated person of that person, acting as principal, from selling to or purchasing from the registered investment company any security or other property. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a–8 under the Act exempts certain mergers, consolidations, and sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided, that certain conditions are satisfied. Applicants believe that rule 17a–8 may not be available to exempt the Reorganization because the Funds may be deemed to be affiliated by reasons other than having a common investment adviser, common directors, and/or common officers. Applicants state that an affiliated person

of ABN AMRO owns of record and beneficially and has the power to vote more than 5% of the outstanding voting securities of the Independence One Prime Money Market Fund. Applicants state that because affiliated persons of ABN AMRO, in a fiduciary capacity, own 5% or more (and in some cases more than 25%) of the outstanding voting securities of the Acquiring Funds, each may be deemed to be affiliated persons of the Acquiring Funds. In addition, applicants state that because affiliated persons of ABN AMRO also own 5% or more (and in some cases more than 25%) of the outstanding voting securities of the Acquired Funds, in a fiduciary or custodial capacity, or on behalf of brokerage customers, each also may be deemed to be an affiliated person of the Acquired Funds. As a result, the Acquiring Funds may be deemed to be affiliated persons of an affiliated person of the Acquired Funds.

3. Section 17(b) of the Act provides, in relevant part, that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act.

4. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to effect the Reorganization. Applicants submit that the Reorganization satisfies the conditions of section 17(b) of the Act. Applicants also state that the Boards, including all of the Independent Trustees, have determined that the participation of the Funds in the Reorganization is in the best interests of each Fund and that such participation will not dilute the interests of existing shareholders of each Fund. Applicants also state that the Reorganization will be effected on the basis of relative net asset value.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11615 Filed 5–8–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25568; 812–12802]

New York State College Choice Tuition Savings Program Trust Fund, et al.; Notice of Application

May 3, 2002.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application under section 17(b) of the Investment Company Act of 1940 (the "Act") requesting an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit New York State College Choice Tuition Savings Program Trust Fund (the "Trust") to purchase shares of certain series of TIAA–CREF Institutional Mutual Funds ("TIAA–CREF Funds") in-kind.

APPLICANTS: The Trust and TIAA–CREF Funds.

FILING DATE: The application was filed on April 4, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 28, 2002, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, 730 Third Avenue, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust was created by legislation enacted by New York and serves as a vehicle in which participant contributions from a qualified tuition program created pursuant to New York law and section 529 of the Internal Revenue Code of 1986, as amended ("New York Program"), are deposited into New York State College Choice Tuition LLC (the "LLC"). Applicants state that as a state instrumentality, the Trust is exempt from the Act pursuant to section 2(b). The LLC consists of age-based program series ("Program Series") that invest in differing allocations in underlying portfolios of the LLC (the "Underlying Portfolios"). Applicants state that the LLC and the Underlying Portfolios are exempt from the Act pursuant to sections 3(c)(1) and 3(c)(7). Teachers Insurance and Annuity Association of America ("TIAA") serves as the program administrator for the New York Program.

2. TIAA–CREF Funds is an open-end management investment company registered under the Act. TIAA–CREF Funds is comprised of multiple series, three of which are the Institutional Growth Equity, Institutional Bond and Institutional Money Market Funds (the "Affected Funds"). Advisors, an investment adviser registered under the Investment Advisers Act of 1940, and an indirect wholly owned subsidiary of TIAA, serves as investment adviser to the both the Affected Funds and the Underlying Portfolios.

3. Applicants state that subsequent to the establishment of the Trust, New York adopted legislation that would allow the New York Program greater flexibility in its investment options. Applicants propose to convert the New York Program to a simpler structure utilizing TIAA–CREF Funds, and forming new program series ("New Program Series") at the Trust level rather than the LLC level (the "Reorganization"). Applicants state that the Reorganization should result in greater flexibility and reduced costs for the New York Program as the New Program Series will invest directly in the Affected Funds. The Reorganization will involve the purchase by the New Program Series of shares of the Affected Funds in-kind with portfolio securities received by the New Program Series from the Underlying Portfolios ("the In-Kind Purchase"). The Underlying Portfolios subsequently will be liquidated. Applicants state that each Affected Fund has investment objectives and policies substantially identical to those of the corresponding Underlying Portfolio. Applicants further state that

the securities involved in the In-Kind Purchase will be valued in the same manner as they would be valued for purposes of computing the net asset values for the Affected Funds.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from selling to or purchasing from such investment company any security or other property. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Applicants state that the Underlying Portfolios and the Affected Funds may be deemed to be affiliated persons under section 2(a)(3) because they may be deemed to be under the common control of Advisors. The Trust, by controlling the Underlying Portfolios by virtue of its ownership in the Program Series, would be an affiliated person of an affiliated person of TIAA-CREF Funds. In addition, applicants state that the Trust owns more than 5% of the outstanding voting securities of another series of TIAA–CREF Funds and therefore the Trust could be deemed to be an affiliated person of an affiliated person of the Affected Funds. Therefore, applicants state that the In-Kind Purchase may be prohibited by section 17(a).

3. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

4. Applicants submit that the terms of the In-Kind Purchase satisfy the standards set forth in section 17(b). Applicants state that TIAA–CREF Fund's board of trustees, including a majority of the trustees who are not interested persons as defined in section 2(a)(19) of the Act, determined that the In-Kind Purchase would be in the best interests of each Affected Fund and would not dilute existing shareholder interests. Applicants also state that the In-Kind Purchase will comply with rule 17a–7(b) through (g) under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11616 Filed 5–8–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45868; File Nos. SR–DTC–2000–21, SR–OCC–2001–01, SR–NSCC–2001–13, SR–EMCC–2001–02, SR–GSCC–2001–12, and SR–MBSCC–2001–03]

Self-Regulatory Organizations; The Depository Trust Company, The Options Clearing Corporation, National Securities Clearing Corporation, Emerging Markets Clearing Corporation, Government Securities Clearing Corporation, and MBS Clearing Corporation; Order Granting Approval of Proposed Rule Changes Seeking Authority To Enter Into a Multilateral Cross-Guaranty Agreement

May 2, 2002.

I. Introduction

On December 14, 2000, February 20, 2001, June 26, 2001, June 27, 2001, September 21, 2001, and September 25, 2001, The Depository Trust Company ("DTC"), The Options Clearing Corporation ("OCC"), National Securities Clearing Corporation ("NSCC"), Emerging Markets Clearing Corporation ("EMCC"), Government Securities Clearing Corporation ("GSCC"), and MBS Clearing Corporation ("MBSCC") (collectively referred to as the "clearing agencies"), respectively, filed with the Securities and Exchange Commission ("Commission") proposed rule changes (File Nos. SR–DTC–2000–21, SR–OCC–2001–01, SR–NSCC–2001–13, SR–EMCC–2001–02, SR–GSCC–2001–12, and SR–MBSCC–2001–03) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The purpose of the proposed rule change was to enable the clearing agencies to enter into a multilateral cross-guaranty agreement ("Multilateral Agreement"). Notice of the proposals was published in the **Federal Register** on March 14, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule changes.

II. Description

The clearing agencies have filed these proposed rule changes in order that they may enter into a multilateral cross-guaranty agreement that will replace the existing bilateral cross-guaranty agreements that are in place today.[3] In general, each clearing agency that is a party to a bilateral agreement provides the other clearing agency with a limited guaranty of the obligations of any entity that is a member of both clearing agencies. This means that if a common member fails and if one clearing agency winds up its business with the common member with assets of the common member in excess of the clearing member's liabilities to the clearing agency and the other clearing agency winds up its business with the common member with liabilities of the clearing member in excess of the clearing member's assets, (i) the clearing agency with the excess assets pays the clearing agency with the deficiency an amount equal to the lesser of the excess or the deficiency and (ii) the amount paid by the clearing agency with the excess assets to the clearing agency with the deficiency becomes an obligation of the common member to the clearing agency with the excess assets which the clearing agency with the excess assets may satisfy if necessary (thereby reimbursing itself for the amount paid to

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 45524, (March 8, 2002), 67 FR 11521.

[3] At the present time, there are bilateral cross-guaranty agreements in effect between:

(1) DTC and NSCC (forming part of the DTC–NSCC Agreement that also provides for the netting of settlement payments and the collateralization of transactions processed through the facilities of DTC and NSCC), Securities Exchange Act Release Nos. 36867 (February 21, 1996) [File No. SR–DTC–96–06] and 36866 (February 21, 1996) [File No. SR–NSCC–96–03];

(2) MBSCC and Participants Trust Company, Securities Exchange Act Release No. 38604 (May 9, 1997) [File No. SR–PTC–97–01] (Participants Trust Company has been merged into DTC, Securities. Exchange Act Release No. 40357 (August 24, 1998) [File Nos. SR–DTC–98–12, SR–PTC–98–02]);

(3) NSCC and each of MBSCC, GSCC and International Securities Clearing Corporation ("ISCC"), (ISCC has ceased operations and is no longer a registered clearing agency), Securities Exchange Act Release Nos. 37616 (August 28, 1996) [File Nos. SR–MBSCC–96–02, SR–GSCC–96–03 and SR–ISCC–96–04] and 39020 (September 4, 1997) [File No. SR–NSCC–97–11];

(4) NSCC and OCC, Securities Exchange Act Release No. 39022 (September 4, 1997) [File Nos. SR–OCC–97–17 and SR–NSCC–97–12]; and

(5) EMCC and each of NSCC, GSCC, and ISCC, Securities Exchange Act Release Nos. 42180 (November 29, 1999) [File No. SR–EMCC–99–7] and 37616 (August 28, 1996) [File Nos. SR–MBSCC–96–02, SR–GSCC–96–03, and SR–ISCC–96–04].

the clearing agency with the deficiency) from the assets of the common member. In this way, through the mechanism of a limited cross-guaranty and a compensating reimbursement obligation, the assets of a common member at one clearing agency in excess of its liabilities to that clearing agency may be made available to satisfy the liabilities of the common member to another clearing agency where the clearing member has a deficiency of assets to satisfy its liabilities.

Background

The Multilateral Agreement is similar in purpose to the bilateral agreements but differs in that (i) all of the parties to the several bilateral agreements will be parties to the Multilateral Agreement, (ii) all of the transactions of common members with any of the clearing corporations will be subject to the limited cross-guaranties of the Multilateral Agreement, (iii) all of the assets of common members with any of the parties to the Multilateral Agreement will be subject to application pursuant to the provisions of the Multilateral Agreement, (iv) all of the parties to the Multilateral Agreement will rank *pari passu* in terms of the payment of their respective guaranty obligations and entitlements, and (v) all such guaranty obligations and entitlements will be (A) calculated by DTC (based on information provided by the clearing agencies) pursuant to a formula set forth in the Multilateral Agreement and (B) settled through the facilities of DTC upon instructions from the clearing agencies required to make guaranty payments.

Set forth below is a description of the material terms and conditions of the Multilateral Agreement:

If a clearing agency that is a party to the Multilateral Agreement ceases to act for or suspends a person ("ceases to act") and if that person is a member or participant of two or more clearing agencies ("common member"), such clearing agency ("participating clearing agency") must give each other clearing agency a notice ("default notice") that it has ceased to act for such common member (hereinafter referred to as the "defaulting member"). Each other clearing agency that also ceases to act for the defaulting member within a period of ten business days after the default notice is given (also a "participating clearing agency") will have fifteen business days to deliver to each other participating clearing agency an information statement that sets forth the positive or negative sum derived (after application of any applicable liquidation procedures) from adding the amounts (specified in the Multilateral Agreement) owed by the participating clearing agency to the defaulting member as of the close of business on the day on which such participating clearing agency ceased to act for such defaulting member and subtracting the amounts (specified in the Multilateral Agreement) owed by the defaulting member to the participating clearing agency as of the close of business on such date. The resulting amount is the "available net resources" of such participating clearing agency with respect to such defaulting member.

Each participating clearing agency with positive available net resources ("payor clearing agency") will have an obligation to make a payment ("guaranty obligation") to each participating clearing agency with negative available net resources, and each participating clearing agency with negative available net resources ("payee clearing agency") will have an entitlement to receive a payment ("guaranty entitlement") from each participating clearing agency with positive available net resources. The amount of the guaranty obligation or guaranty entitlement will be determined by a formula set forth in the Multilateral Agreement which (i) limits the aggregate guaranty obligation of any payor clearing agency to the amount of its positive available net resources and prorates the aggregate guaranty obligations of all payor clearing agencies (based on their available net resources) if all positive available net resources of all payor clearing agencies exceeds all negative available net resources of all payee clearing agencies and (ii) limits the aggregate guaranty entitlement of any payee clearing agency to the amount of its negative available net resources and prorates the aggregate guaranty entitlements of all payee clearing agencies (based on their available net resources) if the negative available net resources of all payee clearing agencies exceeds the positive available net resources of all payor clearing agencies.

Within two business days after the end of the period for submitting information statements with the available net resources of the participating clearing agencies, DTC, acting for the participating clearing agencies whether or not DTC is a participating clearing agency with respect to any particular claim under the Multilateral Agreement and using only the information on available net resources contained in the information statements, will calculate the guaranty obligations and the guaranty entitlements of the participating clearing agencies in accordance with the formula set forth in the Multilateral Agreement and will deliver a report thereon to the participating clearing agencies. Two business days after that, DTC, acting on appropriate payment instructions from the payor clearing agencies, will debit their settlement accounts at DTC the amounts of their guaranty obligations and will credit the settlement accounts of the payee clearing agencies at DTC the amounts of their guaranty entitlements. Such debits and credits then will be netted and settled with all other debits and credits to the settlement accounts of the participating clearing agencies. All of the clearing agencies are or will be prior to the execution of the Multilateral Agreement participants of DTC.

It is important to note that a clearing agency cannot assert a claim and cannot be obligated to make or be entitled to receive a payment unless it ceases to act for a defaulting member. Each clearing agency will determine on the basis of its own rules whether or not to cease to act for a defaulting member. Generally, a clearing agency may cease to act for a defaulting member to protect the interests of the clearing agency, its other members or participants, and the national system for the clearance and settlement of securities transactions if, among other things, the defaulting member (a) has failed to pay a settlement debit, (b) has failed to pay or perform any other obligation to the clearing agency, or (c) has become the subject of an insolvency proceeding or has become a "failed member" within the meaning of the Federal Deposit Insurance Corporation Improvement Act of 1991 (*e.g.* it ceases to meet its obligations when due even if it has not become the subject of a formal insolvency proceeding). Ceasing to act for a member or participant is a serious measure which clearing agencies do not take lightly or do for minor defaults. Accordingly, by requiring that a clearing agency cease to act for a defaulting member before the procedures of the Multilateral Agreement can be implemented, the Multilateral Agreement ensures that the payment obligations of payor clearing agencies and the reimbursement obligations of defaulting participants to payor clearing agencies will not be triggered by minor defaults which do not pose a threat to the interests of the clearing agencies, their members or participants, or to the national system for the clearance and settlement of securities transactions.

The Multilateral Agreement also provides for subsequent adjustments in guaranty obligations and guaranty entitlements among participating clearing agencies if information is

discovered which, if known at the time of the initial calculation, would have changed the amounts of such guaranty obligations and guaranty entitlements, subject to certain conditions and limitations as described below. If at any time within four years after any payment is made with respect to of a guaranty obligation any participating clearing agency has any information that could result in a change in the calculation of such payment, such participating clearing agency must give each other participating clearing agency an adjustment notice. Within a period of ten business days after the adjustment notice is given, each participating clearing agency must deliver to each other participating clearing agency (and to DTC if DTC is not a participating clearing agency with respect to such default) a supplemental information statement which sets forth (i) the amount of the available net resources of such participating clearing agency with respect to the defaulting member as of the close of business on the day on which such participating clearing agency ceased to act for such defaulting member but taking into account the effect, if any, of the information in the adjustment notice and (ii) the amount of its available net resources, if any, as of the close of business on the day it received the adjustment notice.

Within two business days after the end of the period for submitting supplemental information statements with the available net resources of the participating clearing agencies, DTC, acting for the participating clearing agencies whether or not DTC is a participating clearing agency with respect to such default and using only the information on available net resources contained in the supplemental information statements, will recalculate the guaranty obligations and guaranty entitlements of the participating clearing agencies in accordance with the same formula originally used to calculate the guaranty obligations and guaranty entitlements of the participating clearing agencies and will deliver a report thereon to the participating clearing agencies. However, no participating clearing agency that is required to make a payment as a result of any recalculation of guaranty obligations and guaranty entitlements with respect to a prior default will be required to make any payment in excess of the positive amount of its available net resources on the date it received the adjustment notice plus any cash payments it previously received or minus any cash payments it previously paid pursuant to the terms of the Multilateral Agreement with respect to the same default. Two business days after that, DTC, acting on appropriate instructions from the participating clearing agencies required to make adjustment payments or entitled to receive adjustment payments as a result of the recalculation of the guaranty obligations and guaranty entitlements, will debit and credit the appropriate settlement accounts. Such debits and credits will then be netted and settled with all other debits and credits to the settlement accounts of the participating clearing agencies on the day of settlement.

As the foregoing description of the process for determining and satisfying a claim under the Multilateral Agreement indicates, no clearing agency would ever be required under the Multilateral Agreement to deliver assets or the proceeds of assets of a defaulting member to another clearing agency except for assets or the proceeds thereof in excess of the obligations and liabilities of the defaulting member to the first clearing agency and then only up to the amount needed to discharge the liabilities and obligations of the defaulting member to the second clearing agency. Also, as the foregoing description of the process for adjusting guaranty obligations and guaranty entitlements under the Multilateral Agreement indicates, a clearing agency will never be required to use its own assets to pay the claim of any other clearing agency against a defaulting member. Only the available net assets of the defaulting member will ever be used for this purpose.

Pursuant to the Multilateral Agreement, a clearing agency may be entitled to receive a guaranty payment from one or more other clearing agencies with respect to the obligations of a defaulting member. However, if a clearing agency receives a guaranty payment pursuant to the Multilateral Agreement, it will have a contingent obligation to refund some or all of such guaranty payment under two circumstances (each referred to as a "clawback"):

(i) A repayment as a result of a recalculation of the guaranty obligations and guaranty entitlements of participating clearing agencies, which, as described above, could take place at any time up to four years after the guaranty payment is received; or

(ii) A payment or repayment as a result of a judicial determination that the defaulting member did not owe a participating clearing agency some or all of the amount of the charge covered by the guaranty payment, which, as explained below, could take place at any time up to six years after such charge.

The Multilateral Agreement provides that if a court of competent jurisdiction determines that some or all of the amount paid by a payor clearing agency to a payee clearing agency was not owed by the defaulting member to the payee clearing agency, (i) the payee clearing agency will repay such amount (which may be some or all of the guaranty payment it received from the payor clearing agency) to the payor clearing agency or (ii) the payee clearing agency shall pay such amount to the defaulting member or its legal representative (*e.g.*, a trustee or receiver) if so ordered by a court.

There is no time limit expressed in the Multilateral Agreement within which a payee clearing agency can be required to make a court-ordered repayment to the payor clearing agency or payment to the defaulting member or its legal representative because the parties to the Multilateral Agreement cannot by contract among themselves bind any court or any third party seeking relief in any court to any such time limit. Accordingly, the time within which a payee clearing agency could be required to make such payment or repayment would be the time within which a third party may bring a claim for such relief (*i.e.*, the statutory limitations period applicable to such claim). Although it is difficult to predict how a claim that the payee clearing agency improperly charged the defaulting member and thereby received a guaranty payment from a payor clearing agency for an amount that the defaulting member did not in fact owe to the payee clearing agency would be framed, it is probable that it would be framed as a claim in contract (*i.e.*, that the charge was not a proper charge under the rules of the payee clearing agency). Under the rules of each clearing agency, such rules constitute a contract between such clearing agency and its members or participants and are binding on all parties. In New York, which is the most likely venue of any proceeding and the law that would most likely govern any claim, the statutory limitations period applicable to a claim on contract is generally six years from the time of the breach.

Although, as just discussed, a clawback could occur up to four or six years after a payee clearing agency receives a payment, as a practical matter, it is extremely unlikely that it would take (i) four years for participating clearing agencies to make all necessary adjustments in the calculation of guaranty obligations and guaranty entitlements under the

Multilateral Agreement or (ii) six years for a defaulting member or its legal representative to assert a claim against a payee clearing agency that an amount was improperly charged against such defaulting member. Nevertheless, GSCC and MBSCC are amending their rules to better enable them to deal with a clawback should one ever arise. The following is a summary of the GSCC and MBSCC amendments.

GSCC

GSCC is amending its rules to provide it with two options in dealing with a clawback:

Option 1

GSCC has the option to apply any guaranty payment that it receives pursuant to the Multilateral Agreement upon receipt. If GSCC chooses this option:

a. The members that would have been assessed in the absence of the guaranty payment will be required to reimburse GSCC for any amount subject to a clawback pro rata based on the benefits they received (in terms of the reduction or elimination of assessments made or that otherwise would be made against them) from such guaranty payment;

b. The obligations of the members referred to in (a) above will be secured by requiring that such members must make and maintain additional deposits to the clearing fund in amounts equal to the benefits they received (in terms of the reduction or elimination of assessments made or that would have been made against them) from the guaranty payment;

c. To deal with the possibility that a shortfall may occur in the situation where the additional clearing fund deposit of a particular member referred to in (a) above is no longer available at the time a clawback occurs (because, for example, that member became insolvent and its entire clearing fund deposit was used to cover losses incurred by GSCC), GSCC may treat such shortfall as an "other loss" pursuant to GSCC Rule 4, Section 8(g); and

d. To deal with the fact that at least theoretically a clawback may not occur until four years (in the case of a recalculation of guaranty obligations and guaranty entitlements) or six years (in the case of a court determination of an improper charge) after receipt of a guaranty payment, the additional deposits made pursuant to (b) or (c) above by the members that would have been assessed must be retained by GSCC until GSCC is satisfied that (i) GSCC is no longer subject to a clawback under the Multilateral Agreement and (ii) the members are therefore no longer subject to a corresponding obligation to reimburse GSCC for the amount of any such clawback; and

e. GSCC has the right (i) to waive the obligation of the members to make and maintain additional deposits to the clearing fund to secure an obligation on their part to reimburse GSCC for the amount of any clawback and/or (ii) to pay the clawback from the resources of GSCC without recourse to any member or their deposits to the clearing fund.

Option 2

GSCC has the option to retain the guaranty payment and not apply it to its losses and/or liabilities arising from the default of the member until after the end of the clawback period. If GSCC chooses this option:

a. The members would be assessed pursuant to GSCC's loss sharing rule and

b. At the end of the clawback period, GSCC would distribute the guaranty payment to the members who were assessed (whether or not they are still members at the time of such distribution) pro rata the amounts of such assessments.

Given that similar repayment issues are presented by GSCC's cross-margining arrangements, GSCC is making comparable changes in its rules with respect to the repayment of cross-margining payments.

MBSCC

To deal with clawbacks, MBSCC is amending its rules as follows:

a. Upon receipt of a guaranty payment, MBSCC will reduce or eliminate by an equivalent amount the assessments made or that otherwise would be made against the original contra-side participants pro rata as now provided in Rule 4 of Article III of its rules;

b. The original contra-side participants will be required to reimburse MBSCC for any amount subject to a clawback pro rata the benefits they received (in terms of the reduction or elimination of assessments made or that otherwise would be made against them) from the guaranty payment;

c. MBSCC will secure the obligations of the original contra-side participants referred to above by requiring that such original contra-side participants must make and maintain additional deposits to the participants fund in amounts equal to the benefits they received (in terms of the reduction or elimination of assessments made or that otherwise would be made against them) from the guaranty payment;

d. To deal with the possibility that the participants fund deposit of a particular original contra-side participant referred to in (3) above may no longer be available at the time the clawback occurs (because, for example, that participant became insolvent and its entire participant fund deposit was used to cover losses incurred by MBSCC), the remaining original contra-side participants referred to in (3) above would be required to replenish the deficiency by making additional deposits to the participants fund pro rata their additional deposits to the participants fund pursuant to (3) above;

e. To deal with the fact that at least theoretically a clawback may not occur until four years (in the case of a recalculation of guaranty obligations and guaranty entitlements) to six years (in the case of a court determination of an improper charge) after receipt of a guaranty payment, the additional deposits made, pursuant to (3) or (4) above, by original contra-side participants must be retained by MBSCC until MBSCC is satisfied that (i) MBSCC is no longer subject to a clawback under the Multilateral Agreement and (ii) the original contra-side participants are therefore no longer subject to a corresponding obligation to reimburse MBSCC the amount of any such clawback; and

f. MBSCC has the right to (i) waive the obligation of the original contra-side participants to make and maintain additional deposits to the participants fund to secure an obligation on their part to reimburse MBSCC for the amount of any clawback and/or (ii) to pay any clawback from the resources of MBSCC without recourse to any original contra-side participants or their deposits to the participants fund.

Any clearing agency other than DTC may withdraw from the Multilateral Agreement with ten days advance written notice. Any clearing agency which resigns as a participant of DTC will also cease to be a party to the Multilateral Agreement effective upon such resignation. However, any such withdrawal or resignation will not effect the obligations of a withdrawing or resigning clearing agency with respect to a claim for which a default notice was delivered prior to such withdrawal or resignation and any such termination does not affect the obligations of any clearing agency with respect to a claim for which a default notice was delivered prior to such termination. DTC may terminate the Multilateral Agreement entirely with advance written notice of one year.

In conjunction with entering into the Multilateral Agreement, NSCC, EMCC,

GSCC, MBSCC, and OCC will terminate their current bilateral agreements so that there will be no issues of conflict or of priority with the limited cross-guaranty provisions of the Multilateral Agreement. DTC and NSCC will enter into a Seconded Amended and Restated Netting Contract and Limited Cross-Guaranty Agreement ("New DTC–NSCC Agreement"). The New DTC–NSCC Agreement will modify and supercede the current Amended and Restated Netting Contract and Limited Cross-Guaranty Agreement dated February 21, 1996, between DTC and NSCC ("Old DTC–NSCC Agreement").[4] The New DTC–NSCC Agreement will delete the limited net resources cross-guaranty provisions of the Old DTC–NSCC Agreement so that the limited net resources cross-guaranty provisions of the Multilateral Agreement will be the only such provisions of this type between DTC and NSCC and among DTC, NSCC and the other parties to the Multilateral Agreement.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.[5] For the reasons set forth below, the Commission finds that the proposed rule changes are consistent with these obligations.

The Commission has encouraged the use of cross-guaranty agreements and has previously granted approval to several bilateral cross-guaranty agreements.[6] The Commission believes that by entering into the Multilateral Agreement, the clearing agencies will be improving their cross-guaranty system and their ability to assure the safeguarding of securities and funds in their custody or control. By providing for a mechanism for the use of a defaulting member's assets on deposit at any one of the clearing agencies which is a party to the Multilateral Agreement to reduce or eliminate the defaulting member's obligations at any clearing agency which is a party to the Multilateral Agreement, the Multilateral Agreement should reduce the risk of losses to the clearing agencies due to a member's default.

The Commission also finds that the Multilateral Agreement is consistent with the clearing agencies' obligations to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR–DTC–2000–21, SR–OCC–2001–01, SR–NSCC–2001–13, SR–EMCC–2001–02, SR–GSCC–2001–12, and SR–MBSCC–2001–03) be and hereby are approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–11617 Filed 5–8–02; 8:45 am]

BILLING CODE 8010–01–U

[4] Securities and Exchange Act Release Nos. 36867 (February 27, 1996), 61 FR 7288 [File No. SR–DTC–96–06] and 36866 (February 27, 1996), 61 FR 7288 [File No. SR–NSCC–96–03]) orders amending rules and cross-guaranty agreement to accommodate same-day funds settlement.)

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] *Supra* note 3.

[7] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45869; File No. SR–NYSE–2002–06]

Self Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Amending Exchange Rule 351 Concerning the Reporting of Criminal Offenses by Members and Member Organizations to the Exchange

May 3, 2002.

On January 9, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 351 in order to narrow the scope of criminal offenses that must be reported by members and member organizations to incidents that are more germane to the conduct of a securities related business.

The proposed rule change was published for comment in the **Federal Register** on February 12, 2002.[3] The Commission received one comment letter on the proposal,[4] which supports the proposed rule change. On April 30, 2002, the Exchange filed Amendment No. 1 to the proposed rule change with the Commission.[5]

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of section 6 of the Act[7] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act[8] because narrowing the scope of criminal offenses that members and member organizations would be required to report to the Exchange is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling and facilitating transactions in securities. In particular, limiting the proposed misdemeanors that must be reported should minimize the number of immaterial filings and maximize the effective use of resources committed to fulfilling self-regulatory responsibilities at the Exchange. Moreover, the proposed rule change would continue to capture the reporting of arrests for which any subsequent conviction would subject the individual to a statutory disqualification under Section 3(a)(39) of the Act.[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[10], that the proposed rule change and Amendment

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45404 (February 6, 2002), 67 FR 6565.

[4] *See* letter to Margaret H. McFarland, Deputy Secretary, Commission, from Selwyn J. Notelovitz, Senior Vice President, Global Compliance, Charles Schwab & Co., Inc., dated March 5, 2002 ("Schwab Letter").

[5] *See* letter to Katherine England, Assistant Director, Division of Market Regulation, Commission, from Susan Light, Vice President, Enforcement, NYSE, dated April 29, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange amended the proposed rule change to require that an arrest, arraignment, or conviction before a *military* court of any of the enumerated crimes be reported to the Exchange. In addition, the Exchange added the conspiracy to commit any one of the enumerated misdemeanors under Exchange Rule 351 to the list of crimes that must be reported to the Exchange. This is a technical amendment and is not subject to notice and comment.

[6] In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78c(a)(39).

[10] 15 U.S.C. 78s(b)(2).

No. 1 thereto (File No. SR–NYSE–2002–06) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–11542 Filed 5–8–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Ballard, Marshall, and McCracken Counties in Kentucky and Cape Girardeau and Mississippi Counties in Missouri; Notice of Planning Study

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of planning study.

SUMMARY: The FHWA is issuing this notice to advise the public that the Kentucky Transportation Cabinet (KYTC), in cooperation with the Missouri Department of Transportation (MoDOT) and the Federal Highway Administration (FHWA), is initiating a planning study for the following proposed highway project. "Evaluation of Options for the Location of I–66 from Missouri to I–24 near Paducah, Kentucky."

FOR FURTHER INFORMATION CONTACT: Evan J. Wisniewski, Project Development Team Leader, Federal Highway Administration, 330 West Broadway, Frankfort, KY 40601, Telephone: (502) 223–6740 or Ms. Annette Coffey, Director, Division of Planning, Kentucky Transportation Cabinet, 125 Holmes Street, Frankfort, KY 40622, Telephone: (502) 564–7183.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's Web page at *http://www.access.gpo.gov.nara.*

Background

This project is part of a proposed Transamerica Transportation Corridor fro the Atlantic Coast of Virginia to the Pacific Coast in California, in accordance with the legislative intent of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 and subsequent Federal transportation legislation. This highway is to pass through southern Kentucky and will generally be within a 50 mile wide band centered on the cities of Pikeville, Jenkins, Hazard, London, Somerset, Columbia, Bowling Green, Hopkinsville, Benton, and Paducah. The planning study will address alternatives and issues related to the development of an interstate highway that would provide continuity of I–66 between I–24 in Kentucky and Missouri and improve accessibility throughout the region.

During the development of this planning study, comments will be solicited from appropriate Federal, state, and local agencies, as well as other interested persons and the general public, in accordance with requirements set forth in the National Environmental Policy Act (NEPA) of 1969 and subsequent Federal regulations and guidelines developed by the Executive Office of the President's Council on Environmental Quality and the United States Department of Transportation for the implementation of the NEPA process.

This planning study will include a scoping process for the early identification of potential alternatives for, and environmental issues and impacts related to, the proposed project. At this time, the level of environmental documentation that will ultimately be prepared is not known. However, if an Environmental Impact Statement (EIS) is prepared for the proposed project in the future, the information gained through the scoping process in this planning study may be used as input to the scoping process for the development of that EIS. If an EIS is prepared in the future, written comments on the scope of alternatives and impacts will still be considered at that time, after the filing of the Notice of Intent (NOI).

(Catalog of Federal Domestic Assistance Program Number 20.205, "Highway Planning and Construction". The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: April 30, 2002.

Jose Sepulveda,

Kentucky Division Administrator, Frankfort.

[FR Doc. 02–11524 Filed 5–8–02; 8:45 am]

BILLING CODE 4910–22–M

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–99–6355]

Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Hazardous Liquid Operators With 500 or More Miles of Pipeline)

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of workshop.

SUMMARY: This notice announces a two-day workshop on OPS's findings from inspections conducted from February through April 2002 to evaluate operators' compliance with 49 CFR part 195.452, "Pipeline Integrity Management in High Consequence Areas," effective May 29, 2001. On day 1, OPS will present its assessment of operators' progress identifying pipeline segments that could affect high consequence areas (HCAs). The deadline for completing these identifications was December 31, 2001. OPS will also comment on its plans for conducting the Comprehensive Integrity Management Program Inspections, set to begin in August 2002. On day 2, OPS will provide a forum for the pipeline industry to share and discuss noteworthy integrity management practices that achieve compliance with the rule. Emphasis will be in areas in which OPS believes improvement is needed.

Workshop Dates and Addresses: The workshop will be on July 23, 2002, from 8 a.m. to 5 p.m., and July 24, 2002, from 8 a.m. to noon, at the J.W. Marriott Hotel, 5150 Westheimer Road, Houston, Texas 77056 (tel: 713–961–1500 fax: 713–961–5045). No later than June 10, 2002, rooms may be reserved within a block identified as "USDOT/IMP Meeting Block".

Registration and Further Information: For event planning purposes, we request that you please register via the instructions given at *http://primis.rspa.dot.gov/meetings/Mtg3.mtg.* The website provides links to other useful information (including a meeting agenda, once available) and enables viewers to submit questions to OPS about the workshop.

SUPPLEMENTARY INFORMATION:

1. Background

OPS's integrity management initiative is intended to improve safety and environmental protection and to provide better assurance to the public

about the safety of pipelines. It is also intended to comprehensively address National Transportation Safety Board recommendations, Congressional mandates and pipeline safety and environmental issues raised over the years. It is based on the culmination of experience OPS has gained from pipeline inspections, accident investigations and risk management and system integrity initiatives.

OPS's first integrity management rule (65 FR 75378), issued on November 2, 2000, and effective on May 29, 2001, applies to hazardous liquid operators who own or operate 500 or more miles of pipeline. The rule applies to pipelines that can affect HCAs, which include populated areas defined by the Census Bureau as urbanized areas or places, unusually sensitive environmental areas, and commercially navigable waterways.

Between February and April 2002, OPS inspected all affected operators to evaluate their compliance with the rule's first deadline requiring identification by December 31, 2001, of all pipeline segments that can affect HCAs. OPS also conducted a preliminary assessment of operators' readiness to comply with the rule's March 31, 2002, deadline to implement an integrity management program. OPS will begin more comprehensive inspections addressing the March 31 deadline in August 2002.

OPS is conducting this workshop to assist operators in learning where improvement in integrity management is needed, and what means are available to achieve these improvements. Because the new rule requires fundamental change in the integrity management practices of many affected pipeline operators, OPS's enforcement approach will encourage and monitor continuous improvement in operator compliance with the rule's provisions.

Issued in Washington, DC, on May 3, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–11620 Filed 5–8–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 393X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Nelson and Eddy Counties, ND

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 subpart F-*Exempt Abandonments* to abandon and discontinue service over a 6.00-mile line of railroad between milepost 92.00 in Tolna and milepost 98.00 in Hamar, in Nelson and Eddy Counties, ND. The line traverses United States Postal Service Zip Code 58380.

BNSF 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; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance 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. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 8, 2002,[1] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 20, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 29, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 14, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by May 9, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "*www.stb.dot.gov*."

Decided: May 1, 2002.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–11618 Filed 5–8–02; 8:45 am]

BILLING CODE 4915–00–P

[1] While applicant initially indicated a proposed consummation date of June 5, 2002, and because applicant did not include the required filing fee, a new filing date was entered on April 19, 2002, when the Board received the correct filing fee. However, consummation may not occur prior to June 8, 2002 (50 days after the April 19, 2002 filing date of the verified notice). Applicant's representative has subsequently confirmed that consummation cannot occur before June 8, 2002.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which as of April 8, 2002, is set at $1,100. *See* 49 CFR 1002.2(f)(25).

Corrections

Federal Register
Vol. 67, No. 90
Thursday, May 9, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. FAA–2000–7554; Amendment No. 13–30]

RIN 2120–AF04

Flight Operational Quality Assurance Program

Correction

In rule document 01–27273 beginning on page 55042, in the issue of Wednesday, October 31, 2001, make the following correction:

§ 13.401 [Corrected]

On page 55048, in the third column, § 13.401, paragraph (e), in the third line, "for" should read "or".

[FR Doc. C1–27273 Filed 5–8–02; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Thursday,
May 9, 2002

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 412 et al.
Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2003 Rates; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 412, 413, 482, 485, and 489

[CMS–1203–P]

RIN 0938–AL23

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2003 Rates

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

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the Medicare acute care hospital inpatient prospective payment systems for operating and capital costs to implement changes arising from our continuing experience with these systems. In addition, in the Addendum to this proposed rule, we describe the proposed changes to the amounts and factors used to determine the rates for Medicare hospital inpatient services for operating costs and capital-related costs. These changes would be applicable to discharges occurring on or after October 1, 2002. We also are setting forth proposed rate-of-increase limits as well as proposed policy changes for hospitals and hospital units excluded from the acute care hospital inpatient prospective payment systems.

In addition, we are proposing changes to other hospital payment policies, which include policies governing: payments to hospitals for the direct and indirect costs of graduate medical education; pass-through payments for the services of nonphysician anesthetists in some rural hospitals; clinical requirements for swing-bed services in critical access hospitals (CAHs); payments to provider-based entities; and implementation of the Emergency Medical Treatment and Active Labor Act (EMTALA).

DATES: Comments will be considered if received at the appropriate address, as provided below, no later than 5 p.m. on July 8, 2002.

ADDRESSES: Mail written comments (an original and three copies) to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1203–P, P.O. Box 8010, Baltimore, MD 21244–1850.

If you prefer, you may deliver, by hand or courier, your written comments (an original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or

Room C5–14–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the Humphrey Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters who wish to retain proof of filing by stamping in and keeping an extra copy of the comments being filed.)

Comments mailed to those addresses specified as appropriate for courier delivery may be delayed and could be considered late.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–1203–P.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

For comments that relate to information collection requirements, mail a copy of comments to the following addresses:

Centers for Medicare & Medicaid Services, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Attn: John Burke, CMS–1203–P; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, CMS Desk Officer.

FOR FURTHER INFORMATION CONTACT: Stephen Phillips, (410) 786–4548, Operating Prospective Payments, Diagnosis-Related Groups (DRGs), Wage Index, New Medical Services and Technology, Hospital Geographic Reclassifications, and Postacute Transfer Issues. Tzvi Hefter, (410) 786–4487, Capital Prospective Payment, Excluded Hospitals, Graduate Medical Education, Provider-Based Entities, Critical Access Hospital (CAH), EMTALA Issues. Stephen Heffler, (410) 786–1211, Hospital Market Basket Rebasing. Jeannie Miller, (410) 786–3164, Clinical Standards for CAHs. Tom Hutchinson, (410) 786–8953, Hospital Communication with Medicare+Choice Organizations.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room C5–12–08 of the Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, MD, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. Please call (410) 786–7197 to schedule an appointment to view public comments.

Availability of Copies and Electronic Access

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $9.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access,* a service of the U.S. Government Printing Office. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is *http://www.access.gpo.gov/nara_docs/,* by using local WAIS client software, or by telnet to *swais.access.gpo.gov,* then login as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

I. Background

A. Summary

1. Acute Care Hospital Inpatient Prospective Payment System

Section 1886(d) of the Social Security Act (the Act) sets forth a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance)

based on prospectively set rates. Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of hospital inpatient stays under a prospective payment system. Under these prospective payment systems, Medicare payment for hospital inpatient operating and capital-related costs is made at predetermined, specific rates for each hospital discharge. Discharges are classified according to a list of diagnosis-related groups (DRGs).

The base payment rate is comprised of a standardized amount that is divided into a labor-related share and a nonlabor-related share. The labor-related share is adjusted by the wage index applicable to the area where the hospital is located; and if the hospital is located in Alaska or Hawaii, the nonlabor share is adjusted by a cost-of-living adjustment factor. This base payment rate is multiplied by the DRG relative weight.

If the hospital is recognized as serving a disproportionate share of low-income patients, it receives a percentage add-on payment for each case paid through the acute care hospital inpatient prospective payment system. This percentage varies, depending on several factors which include the percentage of low-income patients served. It is applied to the DRG-adjusted base payment rate, plus any outlier payments received.

If the hospital is an approved teaching hospital, it receives a percentage add-on payment for each case paid through the acute care hospital inpatient prospective payment system. This percentage varies, depending on the ratio of residents to beds.

The costs incurred by the hospital for a case are evaluated to determine whether the hospital is eligible for an additional payment as an outlier case. This additional payment is designed to protect the hospital from large financial losses due to unusually expensive cases. Any outlier payment due is added to the DRG-adjusted base payment rate.

Although payments to most hospitals under the acute care hospital inpatient prospective payment system are made on the basis of the standardized amounts, some categories of hospitals are paid the higher of a hospital-specific rate based on their costs in a base year (the higher of Federal fiscal year (FY) 1982, FY 1987, or FY 1996) or the prospective payment system rate based on the standardized amount. For example, sole community hospitals (SCHs) are the sole source of care in their areas, and Medicare-dependent, small rural hospitals (MDHs) are a major source of care for Medicare beneficiaries in their areas. Both of these categories of hospitals are afforded this special payment protection in order to maintain access to services for beneficiaries (although MDHs receive only 50 percent of the difference between the prospective payment system rate and their hospital-specific rates, if the hospital-specific rate is higher than the prospective payment system rate).

The existing regulations governing payments to hospitals under the acute care hospital inpatient prospective payment system are located in 42 CFR part 412, Subparts A through M.

2. Hospitals and Hospital Units Excluded From the Acute Care Hospital Inpatient Prospective Payment System

Under section 1886(d)(1)(B) of the Act, as amended, certain specialty hospitals and hospital units are excluded from the acute care hospital inpatient prospective payment system. These hospitals and units are: psychiatric hospitals and units; rehabilitation hospitals and units; long-term care hospitals; children's hospitals; and cancer hospitals. Various sections of the Balanced Budget Act of 1997 (Public Law 105–33), the Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999 (Public Law 106–113), and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Public Law 106–554) provide for the implementation of prospective payment systems for rehabilitation hospitals and units, psychiatric hospitals and units, and long-term care hospitals, as discussed below. Children's hospitals and cancer hospitals will continue to be paid on a cost-based reimbursement basis.

The existing regulations governing payments to excluded hospitals and hospital units are located in 42 CFR parts 412 and 413.

Under section 1886(j) of the Act, as amended, rehabilitation hospitals and units are being transitioned from a blend of reasonable cost-based reimbursement subject to a hospital-specific annual limit under section 1886(b) of the Act and Federal prospective payments for cost reporting periods beginning January 1, 2002 through September 30, 2002, to payment on a fully Federal prospective rate effective for cost reporting periods beginning on or after October 1, 2002 (66 FR 41316, August 7, 2001). The statute also provides that IRFs may elect to receive the full prospective payment instead of a blended payment. The existing regulations governing payment under the inpatient rehabilitation facility prospective payment system (for rehabilitation hospitals and units) are located in 42 CFR part 412, subpart P.

Under the broad authority conferred to the Secretary by section 123 of Public Law 106–113 and section 307(b) of Public Law 106–554, we are proposing to transition long-term care hospitals from payments based on reasonable cost-based reimbursement under section 1886(b) of the Act to fully Federal prospective rates during a 5-year period. For cost reporting periods beginning on or after October 1, 2006, we are proposing to pay long-term care hospitals under the fully Federal prospective payment rate. (See the proposed rule issued in the **Federal Register** on March 22, 2002 (67 FR 13416).) Under the proposed rule, long-term care hospitals would also be permitted to elect to be paid based on full Federal prospective rates. The proposed regulations governing payments under the long-term care hospital prospective payment system would be located in 42 CFR part 412, subpart O.

Sections 124(a) and (c) of Public Law 106–113 provide for the development of a per diem prospective payment system for payment for inpatient hospital services furnished by psychiatric hospitals and units under the Medicare program, effective for cost reporting periods beginning on or after October 1, 2002. This system must include an adequate patient classification system that reflects the differences in patient resource use and costs among these hospitals and must maintain budget neutrality. We are in the process of developing a proposed rule, to be followed by a final rule, to implement the prospective payment system for psychiatric hospitals and units.

3. Critical Access Hospitals

Under sections 1814, 1820, and 1834(g) of the Act, payments are made to critical access hospitals (CAHs) (that is, rural hospitals or facilities that meet certain statutory requirements) for inpatient and outpatient services on a reasonable cost basis. Reasonable cost is determined under the provisions of section 1861(v)(1)(A) of the Act and existing regulations under 42 CFR parts 413 and 415.

4. Payments for Graduate Medical Education

Under section 1886(a)(4) of the Act, costs of approved educational activities are excluded from the operating costs of inpatient hospital services. Hospitals with approved graduate medical education (GME) programs are paid for the direct costs of GME in accordance with section 1886(h) of the Act; the

amount of payment for direct GME costs for a cost reporting period is based on the hospital's number of residents in that period and the hospital's costs per resident in a base year.

The existing regulations governing GME payments are located in 42 CFR part 413.

B. Major Contents of This Proposed Rule

In this proposed rule, we are setting forth proposed changes to the Medicare hospital inpatient prospective payment systems for operating costs and for capital-related costs in FY 2003. We also are proposing changes relating to payments for GME costs; payments to excluded hospitals and units; policies implementing EMTALA; clinical requirements for swing beds in CAHs; and other hospital payment policy changes. The proposed changes would be effective for discharges occurring on or after October 1, 2002.

The following is a summary of the major changes that we are proposing to make:

1. Proposed Changes to the DRG Reclassifications and Recalibrations of Relative Weights

As required by section 1886(d)(4)(C) of the Act, we adjust the DRG classifications and relative weights annually. Based on analyses of Medicare claims data, we are proposing to establish a number of new DRGs and to make changes to the designation of diagnosis and procedure codes under other existing DRGs. Our proposed changes for FY 2003 are set forth in section II. of this preamble.

Among the proposed changes discussed are:

- Revisions of DRG 1 (Craniotomy Age >17 Except for Trauma) and DRG 2 (Craniotomy for Trauma Age >17) to reflect the current assignment of cases involving head trauma patients with other significant injuries to MDC 24;
- Reconfiguration of DRG 14 (Specific Cerebrovascular Disorders Except Transient Ischemic Attack) and DRG 15 (Transient Ischemic Attack and Precerebral Occlusions) and creation of a new DRG 524 (Transient Ischemia);
- Creation of a new DRG for heart assist devices;
- Reassignment of the diagnosis code for rheumatic heart failure with cardiac catheterization;
- Assignment of new, and reassignment of existing, cystic fibrosis principal diagnosis codes;
- Designation of a code for insertion of totally implantable vascular access device (VAD);
- Changes in the DRG assignment for the bladder reconstruction procedure code.
- Changes in DRG and MDC assignments for numerous newborn and neonate diagnosis codes; and
- Changes in DRG assignment for cases of tracheostomy and continuous mechanical ventilation greater than 96 hours.

We also are presenting our analysis of applicants for add-on payments for high-cost new medical technologies.

2. Proposed Changes to the Hospital Wage Index

In section III. of this preamble, we discuss proposed revisions to the wage index and the annual update of the wage data. Specific issues addressed in this section include the following:

- The FY 2003 wage index update, using FY 1999 wage data.
- Exclusion from the wage index of Part A physician wage costs that are teaching-related, as well as resident and Part A certified registered nurse anesthetist (CRNA) costs.
- Collection of data for contracted administrative and general, housekeeping, and dietary services.
- Revisions to the wage index based on hospital redesignations and reclassifications by the Medicare Geographic Classification Review Board (MGCRB).
- Requests for wage data corrections, including clarification of our policies on mid-year corrections.

3. Revision and Rebasing of the Hospital Market Basket

In section IV. of this preamble, we discuss issues relating to our proposed rebasing and revision of the hospital market basket in developing the recommended FY 2003 update factor for the operating prospective payment rates and the excluded hospital rate-of-increase limits. We also set forth the data sources used to determine the proposed revised market basket relative weights and choice of price proxies.

4. Other Decisions and Proposed Changes to the Prospective Payment System for Inpatient Operating and Graduate Medical Education Costs

In section V. of this preamble, we discuss several provisions of the regulations in 42 CFR Parts 412 and 413 and set forth certain proposed changes concerning the following:

- Options for expanding the postacute care transfer policy.
- Refinement of the application of a hospital bed-count policy that would more accurately reflect the size of a hospital's operations.
- Clarification of the application of the statutory provisions on the calculation of hospital-specific rates for SCHs.
- Technical change regarding additional payments for outlier cases.
- Rural referral centers proposed case-mix index values for FY 2003.
- Changes relating to the IME adjustment, including resident-to-bed ratio caps and counting beds for IME and DSH adjustments.
- Clarification and codification of classification requirements for MDHs and intermediary evaluations of cost reports for these hospitals.
- Changes to policies on pass-through payments for the costs of nonphysician anesthetists in some rural hospitals.
- Clarification of policies relating to implementing 3-year reclassifications of hospitals and other policies related to hospital reclassifications decisions made by the MGCRB.
- Changes relating to payment for the direct costs of GME.
- Changes related to emergency medical conditions in hospital emergency department under the EMTALA provisions.
- Criteria for and payments to provider-based entities.
- CMS-directed reopening of intermediary determinations and hearing decisions on provider reimbursements.

5. Prospective Payment System for Capital-Related Costs

In section VI. of this preamble, we specify the proposed payment requirements for capital-related costs which include:

- Capital-related costs for new hospitals.
- Additional payments for extraordinary circumstances.
- Restoration of the 2.1 percent reduction to the standard Federal capital prospective payment system rate.
- Clarification of the special exceptions payment policy.

6. Proposed Changes for Hospitals and Hospital Units Excluded From the Prospective Payment Systems

In section VII. of this preamble, we discuss the following proposals concerning excluded hospitals and hospital units and CAHs:

- Payments for existing excluded hospitals and hospital units for FY 2003.
- Updated caps for new excluded hospitals and hospital units.
- Revision of criteria for exclusion of satellite facilities from the acute care hospital inpatient prospective payment system.

- The prospective payment systems for inpatient rehabilitation hospitals and units and long-term care hospitals.
- Changes in the advance notification period for CAHs electing the optional payment methodology.
- Removal of the requirement on CAHs to use a State resident assessment instrument (RAI) for patient assessments for swing-bed patients.

7. Determining Prospective Payment Operating and Capital Rates and Rate-of-Increase Limits

In the Addendum to this proposed rule, we set forth proposed changes to the amounts and factors for determining the FY 2003 prospective payment rates for operating costs and capital-related costs. We also establish the proposed threshold amounts for outlier cases. In addition, we address update factors for determining the rate-of-increase limits for cost reporting periods beginning in FY 2003 for hospitals and hospital units excluded from the acute care hospital inpatient prospective payment system.

8. Impact Analysis

In Appendix A, we set forth an analysis of the impact that the proposed changes described in this proposed rule would have on affected entities.

9. Report to Congress on the Update Factor for Hospitals Under the Prospective Payment System and Hospitals and Units Excluded From the Prospective Payment System

Section 1886(e)(3) of the Act requires the Secretary to report to Congress on our initial estimate of a recommended update factor for FY 2003 for payments to hospitals included in the acute care hospital inpatient prospective payment system, and hospitals excluded from this prospective payment system. This report is included as Appendix B to this proposed rule.

10. Proposed Recommendation of Update Factor for Hospital Inpatient Operating Costs

As required by sections 1886(e)(4) and (e)(5) of the Act, appendix C provides our recommendation of the appropriate percentage change for FY 2003 for the following:

- Large urban area and other area average standardized amounts (and hospital-specific rates applicable to SCHs and MDHs) for hospital inpatient services paid under the prospective payment system for operating costs.
- Target rate-of-increase limits to the allowable operating costs of hospital inpatient services furnished by hospitals and hospital units excluded from the acute care hospital inpatient prospective payment system.

11. Discussion of Medicare Payment Advisory Commission Recommendations

Under section 1805(b) of the Act, the Medicare Payment Advisory Commission (MedPAC) is required to submit a report to Congress, not later than March 1 of each year, that reviews and makes recommendations on Medicare payment policies. This annual report makes recommendations concerning hospital inpatient payment policies. In section VIII. of this preamble, we discuss the MedPAC recommendations and any actions we are proposing to take with regard to them (when an action is recommended). For further information relating specifically to the MedPAC March 1 report or to obtain a copy of the report, contact MedPAC at (202) 653–7220 or visit MedPAC's website at: *www.medpac.gov.*

II. Proposed Changes to DRG Classifications and Relative Weights

A. Background

Under the acute care hospital inpatient prospective payment system, we pay for inpatient hospital services on a rate per discharge basis that varies according to the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case multiplies an individual hospital's payment rate per case by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the average resources used to treat cases in all DRGS.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and relative weights at least annually. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The proposed changes to the DRG classification system and the proposed recalibration of the DRG weights for discharges occurring on or after October 1, 2002 are discussed below.

B. DRG Reclassification

1. General

Cases are classified into DRGs for payment under the acute care hospital inpatient prospective payment system based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The diagnosis and procedure information is reported by the hospital using codes from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM).

For FY 2002, cases are assigned to one of 506 DRGs in 25 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body. For example, MDC 6 is Diseases and Disorders of the Digestive System. However, some MDCs are not constructed on this basis because they involve multiple organ systems (for example, MDC 22 (Burns)).

In general, cases are assigned to an MDC based on the patients' principal diagnosis before assignment to a DRG. However, for FY 2002, there are eight DRGs to which cases are directly assigned on the basis of ICD–9–CM procedure codes. These are the DRGs for heart, liver, bone marrow, lung transplants, simultaneous pancreas/kidney, and pancreas transplants (DRGs 103, 480, 481, 495, 512, and 513, respectively) and the two DRGs for tracheostomies (DRGs 482 and 483). Cases are assigned to these DRGs before classification to an MDC.

Within most MDCs, cases are then divided into surgical DRGs and medical DRGs. Surgical DRGs are based on a hierarchy that orders operating room (O.R.) procedures or groups of O.R. procedures, by resource intensity. Medical DRGs generally are differentiated on the basis of diagnosis and age. Some surgical and medical DRGs are further differentiated based on the presence or absence of complications or comorbidities (CC).

Generally, nonsurgical procedures and minor surgical procedures not usually performed in an operating room are not treated as O.R. procedures. However, there are a few non-O.R. 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.

Patients' diagnosis, procedure, discharge status, and demographic information is fed into the Medicare claims processing systems and subjected 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.

After screening through the MCE and any further development of the claims, cases are classified into the appropriate

DRG by the Medicare GROUPER software program. 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, for a limited number of DRGs, demographic information (that is, sex, age, and discharge status). The GROUPER is used both to classify current cases for purposes of determining payment and to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights.

The records for all Medicare hospital inpatient discharges are maintained in the Medicare Provider Analysis and Review (MedPAR) file. The data in this file are used to evaluate possible DRG classification changes and to recalibrate the DRG weights. However, in the July 30, 1999 final rule (64 FR 41500), we discussed a process for considering non-MedPAR data in the recalibration process. In order for the use of particular data to be feasible, we must have sufficient time to evaluate and test the data. The time necessary to do so depends upon the nature and quality of the data submitted. Generally, however, a significant sample of the data should be submitted by mid-October, so that we can test the data and make a preliminary assessment as to the feasibility of using the data. Subsequently, a complete database should be submitted no later than December 1 for consideration in conjunction with next year's proposed rule.

The major changes we are proposing to the DRG classification system for FY 2003 GROUPER version 20.0 and to the methodology to recalibrate the DRG weights are set forth below. Unless otherwise noted, our DRG analysis is based on data from 100 percent of the FY 2001 MedPAR file, which contains hospital bills received through May 31, 2001, for discharges in FY 2001.

2. MDC 1 (Diseases and Disorders of the Nervous System)

a. Proposed Revisions of DRGs 1 and 2

Currently, adult craniotomy patients are assigned to either DRG 1 (Craniotomy Age >17 Except for Trauma) or DRG 2 (Craniotomy for Trauma Age >17). The trauma distinction recognizes that head trauma patients requiring a craniotomy often have multiple injuries affecting other body parts. However, we note that the structure of these DRGs predates the creation in FY 1991 of MDC 24 (Multiple Significant Trauma). The creation of MDC 24 resulted in head trauma patients with other significant injuries being assigned to MDC 24 and removed from DRG 2. In FY 1990, there was a 16-percent difference in the DRG weights for DRG 1 and DRG 2. In FY 1992, after the creation of MDC 24, the percentage difference in the DRG weights for DRG 1 and DRG 2 had declined to 1.2 percent. The FY 2002 payment weight for DRG 1 is 3.2713 and for DRG 2 is 3.3874, a 3.5 percent difference.

For FY 2003, we reevaluated the GROUPER logic for DRGs 1 and 2 by combining the patients assigned to these DRGs and examining the impact of other patient attributes on patient charges. The presence or absence of a CC was found to have a substantial impact on patient charges.

Cases in DRGs 1 and 2	Number of patients	Average charges
With CC	19,012	$49,659
Without CC	9,618	26,824

Thus, there is an 85.1 percent difference in average charges for the groups with and without CC for the combined DRGs 1 and 2. On this basis, we are proposing to redefine and retitle DRGs 1 and 2 as follows: DRG 1 (Craniotomy Age >17 with CC); and DRG 2 (Craniotomy Age >17 without CC).

b. Proposed Revisions of DRGs 14 and 15

To assess the appropriate classification of patients with stroke symptoms, we evaluated the assignment of cases to DRGs 14 (Specific Cerebrovascular Disorders Except Transient Ischemic Attack (TIA) and DRG 15 (Transient Ischemic Attack and Precerebral Occlusions). Our data review indicated that the cases in DRGs 14 and 15 fell into three discrete groups. The first group included cases in which the patients were very sick, with severe intracranial lesions or subarachnoid hemorrhage and severe consequences. The second group included cases in which patients had not suffered a debilitating stroke but instead may have experienced a transient ischemic attack. The patients in the second group had one half of the average length of stay in the hospital as the first group. The third group of cases included patients who appeared to suffer strokes with minor consequences, as well as those having occluded vessels without having a full-blown stroke.

We found that patients who have intracranial hemorrhage and patients who have infarction are similar in severity. These cases are more frequent in occurrence than cases with patients who have subarachnoid hemorrhage. Therefore, we are proposing to continue to group patients with intracranial hemorrhage and infarction together. These types of cases are different from patients with, for example, an occlusive carotid artery without infarction. In this common group of cases, patients are not as severely ill because they typically have lesser degrees of functional status deficits.

Our analysis indicates that we can improve the clinical and resource cohesiveness of DRGs 14 and 15 by reassigning several specific ICD–9–CM codes. For example, code 436 (Acute, but ill-defined, cerebrovascular disease) is not a specific code and contains patients with a wide range of deficits and anatomic problems. Our data show that these cases consume fewer resources and have shorter lengths of stay than other cases in DRG 14. Therefore, we are proposing to remove code 436 from DRG 14 and reassign it to DRG 15. We also are proposing to create a third new DRG to further identify these cases. The proposed revised or new DRG titles are as follows: DRG 14 (Intracranial Hemorrhage and Stroke with Infarction); DRG 15 (Nonspecific Cerebrovascular and Precerebral Occlusion without Infarction); and DRG 524 (Transient Ischemia).

The following table represents a proposed reconfiguration of DRGs 14 and 15 and the creation of a new DRG 524 reflecting these three categorizations:

Proposed DRG and title	Number of cases	Average length of stay (days)	Average charge
Revised DRG 14 (Intracranial Hemorrhage and Stroke with Infarction)	164,786	6.1	$15,643
Revised DRG 15 (Nonspecific Cerebrovascular and Precerebral Occlusion without Infarction)	70,866	4.9	11,595
New DRG 524 (Transient Ischemia)	92,835	3.3	8,633

The proposed reconfiguration of DRGs 14 and 15 would result in the following codes being designated as principal diagnosis codes in proposed revised DRG 14:

- 430, Subarachnoid hemorrhage
- 431, Intracerebral hemorrhage
- 432.0, Nontraumatic extradural hemorrhage
- 432.1, Subdural hemorrhage
- 432.9, Unspecified intracranial hemorrhage
- 433.01, Occlusion and stenosis of basilar artery, with cerebral infarction
- 433.11, Occlusion and stenosis of carotid artery, with cerebral infarction
- 433.21, Occlusion and stenosis of vertebral artery, with cerebral infarction
- 433.31, Occlusion and stenosis of multiple and bilateral arteries, with cerebral infarction
- 433.81, Occlusion and stenosis of other specified precerebral artery, with cerebral infarction
- 433.91, Occlusion and stenosis of unspecified precerebral artery, with cerebral infarction
- 434.01, Cerebral thrombosis with cerebral infarction
- 434.11, Cerebral embolism with cerebral infarction
- 434.91, Cerebral artery occlusion, unspecified, with cerebral infarction

In addition, we are proposing that the following two codes be moved from DRG 14 to DRG 34 (Other Disorders of Nervous System with CC) and DRG 35 (Other Disorders of Nervous System without CC): Code 437.3 (Cerebral aneurysm, nonruptured) and Code 784.3 (Aphasia). These codes do not represent acute conditions. Aphasia, for example, could result from a cerebral infarction, but if it does, the infarction should be correctly coded as the principal diagnosis.

The proposed redefined DRG 15 would contain the following principal diagnosis codes:

- 433.00, Occlusion and stenosis of basilar artery, without mention of cerebral infarction
- 433.10, Occlusion and stenosis of carotid artery, without mention of cerebral infarction
- 433.20, Occlusion and stenosis of vertebral artery, without mention of cerebral infarction
- 433.30, Occlusion and stenosis of multiple and bilateral arteries, without mention of cerebral infarction
- 433.80, Occlusion and stenosis of other specified precerebral artery, without mention of cerebral infarction
- 433.90, Occlusion and stenosis of unspecified precerebral artery, without mention of cerebral infarction
- 434.00, Cerebral thrombosis without mention of cerebral infarction
- 434.10, Cerebral embolism without mention of cerebral infarction
- 434.90, Cerebral artery occlusion, unspecified, without mention of cerebral infarction
- 436, Acute, but ill-defined, cerebrovascular disease

In addition, we are proposing to remove the following codes from the existing DRG 15 and place them in the proposed newly created DRG 524:

- 435.0, Basilar artery syndrome
- 435.1, Vertebral artery syndrome
- 435.2, Subclavian steal syndrome
- 435.3, Vertebrobasilar artery syndrome
- 435.8, Other specified transient cerebral ischemias
- 435.9, Unspecified transient cerebral ischemia

We are proposing to move code 437.1 (Other generalized ischemic cerebrovascular disease) from DRG 16 (Nonspecific Cerebrovascular Disorders with CC) and DRG 17 (Nonspecific Cerebrovascular Disorders without CC) and add it to the proposed new DRG 524. This proposed change represents a modification to improve clinical coherence and seems to be a logical change for the construction of the proposed new DRG 524.

3. MDC 5 (Diseases and Disorders of the Circulatory System)

a. Heart Assist Systems

Heart failure is typically caused by persistent high blood pressure (hypertension), heart attack, valve disease, other forms of heart disease, or birth defects. It is a chronic condition in which the lower chambers of the heart (ventricles) cannot pump sufficient amounts of blood to the body. This causes the organs of the body to progressively fail, resulting in numerous medical complications and frequently death. DRG 127 (Heart Failure and Shock), to which heart failure cases are assigned, is the single most common DRG in the Medicare population, and represents the medical, not surgical, treatment options for this group of patients.

In many cases, heart transplantation would be the treatment of choice. However, the low number of donor hearts limits this treatment option. Circulatory support devices, also known as heart assist systems or left ventricular assist devices (LVADs), offer a surgical alternative for end-stage heart failure patients. This type of device is often implanted near a patient's native heart and assumes the pumping function of the weakened heart's left ventricle. Studies are currently underway to evaluate LVADs as permanent support for end-stage heart failure patients.

We have reviewed the payment and DRG assignment of this type of device in the past. Originally, these cases were assigned to DRG 110 (Major Cardiovascular Procedures with CC) and DRG 111 (Major Cardiovascular Procedures without CC) in the September 1, 1994 final rule (59 FR 45345). A more specific procedure code, 37.66 (Implant of an implantable, pulsatile heart assist system) was made effective for use with hospital discharges occurring on or after October 1, 1995. In the August 29, 1997 final rule (62 FR 45973), we reassigned these cases to DRG 108 (Other Cardiothoracic Procedures), because it was the most clinically similar DRG with the best match in resource consumption according to our data. In the July 31, 1998 final rule (63 FR 40956), we again reviewed our data and discovered that the charges for implantation of an LVAD were increasing at a greater rate than the average charges for DRG 108. The length of stay for cases with code 37.66 was approximately 32 days, or three times as long as all other DRG 108 cases. Therefore, we decided to move LVAD cases from DRG 108 to DRG 104 (Cardiac Valve and Other Major Cardiothoracic Procedures with Cardiac Catheterization) and DRG 105 (Cardiac Valve and Other Major Cardiothoracic Procedures without Cardiac Catheterization). We continued to review our data and discuss this topic in the FY 1999 and FY 2000 annual final rules: July 30, 1999 (64 FR 41498) and August 1, 2000 (65 FR 47058).

In the August 1, 2001 final rule (66 FR 39838), we remodeled MDC 5 to add five new DRGs. We also added procedure codes 37.62 (Implant of other heart assist system), 37.63 (Replacement and repair of heart assist system), and 37.65 (Implant of an external, pulsatile heart assist system) to DRGs 104 and 105. We removed defibrillator cases from DRGs 104 and 105 and assigned them to DRG 514 (Cardiac Defibrillator Implant with Cardiac Catheterization) and DRG 515 (Cardiac Defibrillator Implant without Cardiac Catheterization) to make these DRGs more clinically coherent. This also increased the relative weights for DRGs 104 and 105, as the defibrillator cases had lower average charges than other cases in those two DRGs.

In the FY 2001 MedPAR data file, we found 185 LVAD cases in DRG 104 and 90 cases in DRG 105, for a total of 275 cases. These cases represent 1.3 percent of the total cases in DRG 104, and approximately 0.5 percent of the total

cases in DRG 105. However, the average charges for these cases are approximately $36,000 and $85,000 higher than the average charges for cases in DRGs 104 and 105, respectively.

This situation presents a dilemma, in that the technology has been available since 1995 and is gradually increasing in utilization, while LVAD cases involving the technology remain a small part of the total cases in these two DRGs. In fact, removing LVAD cases from the calculation of the average charge changes the average by only -0.4 percent and -0.5 percent for DRGs 104 and 105, respectively. Therefore, despite the dramatically higher average charges for LVADs compared to the DRG averages, the relative volume is insufficient to affect the average to any great degree.

Therefore, we are proposing to create a new DRG 525 (Heart Assist System Implant), which would contain these cases. The proposed FY 2003 relative weight for proposed new DRG 525 is 11.3787.

The new DRG would consist of any principal diagnosis in MDC 5, plus one of the following surgical procedures:

- 37.62, Implant of other heart assist system
- 37.63, Replacement and repair of heart assist system
- 37.65, Implant of an external, pulsatile heart assist system
- 37.66, Implant of an implantable, pulsatile heart assist system

Cases in which a subsequent heart transplant occurs during the hospitalization episode would continue to be assigned to DRG 103 (Heart Transplant) because cases involving procedure codes 336 (Combined heart/lung transplant) and 375 (Heart transplant) are assigned to DRG 103, regardless of other codes included on the bill.

We reiterate a discussion we included in the August 1, 2000 final rule (65 FR 47058) regarding placement of code 37.66 in the MCE screening software as a noncovered procedure. The default designation for that code will continue to be "noncovered" because of the stringent conditions that must be met by hospitals in order to receive payment for implantation of the device.

Section 65–15 of the Medicare Coverage Issues Manual (Artificial Hearts and Relative Devices) provides the national coverage determination regarding Medicare coverage of these devices. This section may be accessed online at *www.hcfa.gov/pubforms/06_cim/ci00.htm.*

b. Moving Diagnosis Code 398.91 (Rheumatic Heart Failure) From DRG 125 to DRG 124

DRG 124 (Circulatory Disorders Except Acute Myocardial Infarction (AMI), with Cardiac Catheterization and Complex Diagnosis) and DRG 125 (Circulatory Disorders Except Acute Myocardial Infarction (AMI) with Cardiac Catheterization without Complex Diagnosis) have a somewhat complex DRG logic. In order to be assigned to DRG 124 or 125, the patient must first have a circulatory disorder, which would be one of the diagnoses included in MDC 5. However, these DRGs exclude acute myocardial infarctions. Therefore, these DRGs are comprised of cases with a diagnosis from MDC 5, excluding acute myocardial infarction, but also with a cardiac catheterization during the stay.

DRGs 124 and 125 are then further defined by whether or not the patient had a complex diagnosis. If the patient had a complex diagnosis, the case is assigned to DRG 124. If the patient does not have a complex diagnosis, the case is assigned to DRG 125. A list of diagnoses that comprise complex diagnoses is identified within DRG 124. These diagnoses can be listed as either a principal or secondary diagnosis.

We have received correspondence regarding the current assignment of diagnosis code 398.91 (Rheumatic heart failure). The correspondent pointed out that, while other forms of heart failure are listed as complex diagnoses under DRG 124, rheumatic heart failure is not included as a complex diagnosis within that DRG. Currently, if a patient with rheumatic heart failure receives a cardiac catheterization, the case is assigned to DRG 125.

The correspondent had conducted a study and found that patients with rheumatic heart failure who receive a cardiac catheterization have lengths of stay that are significantly longer than patients with other forms of heart failure who receive a cardiac catheterization and who are assigned to DRG 125. The correspondent found that these patients have lengths of stay more similar to those cases assigned to DRG 124 (which have other forms of heart failure), and recommended that diagnosis code 398.91 be added to the list of complex diagnoses within DRG 124.

Within our claims data, we found 439 cases of patients in DRG 125 with rheumatic heart failure who received a cardiac catheterization. The average charges for these rheumatic heart failure cases were almost twice as much as for other cardiac patients in DRG 125 who received a cardiac catheterization and who did not have a diagnosis of rheumatic heart failure. We also conferred with our medical consultants and they agree that rheumatic heart failure with cardiac catheterization is a complex diagnosis and should be assigned to DRG 124 along with the other complex forms of heart failure cases involving cardiac catheterization.

We are proposing to add code 398.91 to DRG 124 as a complex diagnosis. As a result, catheterization cases with rheumatic heart disease would no longer be assigned to DRG 125.

c. Radioactive Element Implant

In the August 1, 2001 final rule, we created DRG 517 (Percutaneous Cardiovascular Procedure without Acute Myocardial Infarction (AMI) with Coronary Artery Stent Implant) as a result of the overall DRG splits based on the presence of AMI (66 FR 39839). We assigned code 92.27 (Implantation or insertion of radioactive elements) to DRG 517 because we believed that code 92.27 would always accompany cases involving a percutaneous cardiovascular procedure and intravascular radiation treatment. We have since determined that code 92.27 can also be present as a stand-alone code in other types of cases. When cases with code 92.27 do not meet the criteria for DRG 517, they are currently directed into DRG 468 (Extensive O.R. Procedure Unrelated to Principal Diagnosis). Because DRG 468 is for cases in which the O.R. procedure is unrelated to the principal diagnosis, rather than assign cases with code 92.27 that would otherwise be assigned to MDC 5 to DRG 468 because they do not meet the criteria for assignment to DRG 517, we are proposing to assign these cases to DRG 120 (Other Circulatory System O.R. Procedures).

4. MDC 10 (Endocrine, Nutritional, and Metabolic Diseases and Disorders)

Currently, when ICD–9–CM code 277.00 (Cystic Fibrosis without mention of meconium ileus) is reported as the principal diagnosis, it is assigned to the following DRG series in MDC 10: DRG 296 (Nutritional and Metabolic Disease, Age >17 with CC); DRG 297 (Nutritional and Metabolic Disease, Age >17 without CC); and DRG 298 (Nutritional and Metabolic Disease, Age 0–17).

As part of our annual review of DRG assignments and based on correspondence that we have received, we examined claims relating to cases involving code 277.00 as a principal diagnosis in DRGs 296, 297, and 298. Our analysis of the average charges for cases in which code 277.00 was the principal diagnosis in DRGs 296, 297, and 298 indicates that resource

utilization for these cases is quite different from resource utilization for other cases in the three DRGs. We believe that this difference in resource utilization is due to the fact it is not uncommon for cystic fibrosis patients to be admitted with pulmonary complications. Our findings on the number of cases and the average charges in the three DRGs when code 277.00 is assigned as the principal diagnosis, and our findings for all cases in the three DRGs, are indicated in the charts below.

CASES IN DRG 296, 297, AND 298 WITH CODE 277.00 AS THE PRINCIPAL DIAGNOSIS

DRG and description	Number of cases	Average charges
DRG 296 (Nutritional & Metabolic Disease Age >17 with CC)	271	$34,111
DRG 297 (Nutritional & Metabolic Disease Age >17 with CC)	133	21,998
DRG 298 (Nutritional & Metabolic Disease Age 0–17)	0	.....

ALL CASES IN DRG 296, 297, 298

DRG and description	Number of cases	Average charges
DRG 296 (Nutritional & Metabolic Disease Age >17 with CC)	169,768	$10,480
DRG 297 (Nutritional & Metabolic Disease Age >17 without CC)	31,560	6,190
DRG 298 (Nutritional & Metabolic Disease Age 0–17)	17	8,603

Based on the results of our analysis, we are proposing that three new cystic fibrosis principal diagnosis codes be assigned to specific DRGs and MDCs, and that other changes be made to DRG and MDC assignments of existing cystic fibrosis codes, as discussed below.

We are proposing to create the following three new principal diagnosis codes:

- 277.02 (Cystic fibrosis with pulmonary manifestations)
- 277.03 (Cystic fibrosis with gastrointestinal manifestations)
- 277.09 (Cystic fibrosis with other manifestations)

We are proposing that existing code 277.01 (Cystic fibrosis with mention of meconium ileus) would continue to be assigned to DRG 387 (Prematurity with Major Problems) and DRG 389 (Full Term Neonate with Major Problems) in MDC 15 (Newborns and Other Neonates with Conditions Originating in the Perinatal Period), since it is a newborn diagnosis code.

Because proposed new code 277.02 would identify those patients with cystic fibrosis who have pulmonary manifestations, we are proposing to assign cases in which the principal diagnosis is the proposed new code 277.02 to DRG 79 (Respiratory Infection and Inflammations Age >17 with CC), DRG 80 (Respiratory Infections and Inflammations Age >17 without CC), or DRG 81 (Respiratory Infections and Inflammations Age 0–17) in MDC 4 (Diseases and Disorders of the Respiratory System).

We are proposing that proposed new code 277.03 would be assigned to DRG 188 (Other Digestive System Diagnoses Age >17 with CC), DRG 189 (Other Digestive System Diagnoses Age >17 without CC), and DRG 190 (Other Digestive System Diagnoses Age 0–17) in MDC 6 (Diseases and Disorders of the Digestive System), because of its specific relationship to the digestive system.

Since proposed new code 277.09 could involve a number of manifestations (excluding pulmonary and gastrointestinal), we are proposing to assign this proposed new code to DRGs 296, 297, and 298 in MDC 10, where we are retaining the current assignment of existing code 277.00.

The following chart summarizes our proposed DRG and MDC assignments for new and existing cystic fibrosis principal diagnosis codes:

Principal diagnosis code and description	Proposed MDC assignment	Proposed DRG assignments
Existing 277.00 (Cystic fibrosis without mention of meconium ileus)	10	296, 297, 298
Existing 277.01 (Cystic fibrosis with mention of meconium ileus)	15	387, 389
Proposed new 277.02 (Cystic fibrosis with pulmonary manifestations)	4	79, 80, 81
Proposed new 277.03 (Cystic fibrosis with gastrointestinal manifestations)	6	188, 189, 190
Proposed new 277.09 (Cystic fibrosis with other manifestations)	10	296, 297, 298

5. MDC 11 (Diseases and Disorders of the Kidney and Urinary Tract)

a. Insertion of Totally Implantable Vascular Access Device (VAD)

In the August 1, 2001 final rule (66 FR 39844), we discussed our review of the DRG assignment of code 86.07 (Insertion of totally implantable vascular access device (VAD)). Code 86.07 is considered a nonoperative procedure when it occurs in MDC 11. Therefore, patients in renal (kidney) failure requiring implantation of this device for dialysis are grouped to medical DRG 316 (Renal Failure). We examined whether implantation of this device should be removed from DRG 316 and placed into surgical DRG 315 (Other Kidney and Urinary Tract O.R. Procedures).

Implantation of a VAD into the chest wall and blood vessels of a patient's upper body allows access to a patient's vessels via an implanted valve and cannula. Two devices are implanted during one operative session. One system is implanted arterially (the "draw"), while the other is implanted venously (the "return"). Typically, the VAD allows access to the patient's blood for hemodialysis purposes when other sites in the body have been exhausted. The device is usually inserted in the outpatient setting. Operative time is approximately 1 to 1.5 hours.

In the FY 2002 final rule (66 FR 39844–39845), we pointed out that cases where the VAD was inserted as an inpatient procedure also involved other complications, leading to higher average charges. Therefore, we indicated that we were not assigning code 86.07 to DRG 315 at that time, but we would consider other alternative adjustments to DRGs 315 and 316.

For FY 2003, we explored whether DRG 315 should be split based on existence or nonexistence of CCs. However, during our consideration of this alternative, we discovered that DRG 315 does not lend itself to a CC split due to the high occurrence of cases in this DRG that already have complications identified on the CC list. Therefore, we reexamined cases in DRGs 315 and 316 in the FY 2001 MedPAR file. The results are reflected in the chart below:

	With Code 86.07	Without Code 86.07
DRG 315 (surgical):		
Number of Cases	354	21,089.
Average Length of Stay.	12.6 days	6.7 days.
Average Charges	$47,251	$25,622.
DRG 316 (Medical):		
Number of Cases	887	76,676.
Average Length of Stay.	10.3	6.6 days.
Average Charges	$31,904	$16,934.

These results are similar to the findings included in the FY 2002 final rule that were based on data from the FY 2000 MedPAR file (66 FR 39845).

We found that the average length of stay in DRG 315 for patients not receiving the VAD is 6.7 days, while those patients who received the VAD had an average length of stay of 12.6 days. We found the average charges in DRG 315 for patients not receiving the VAD were approximately $25,622, while the average charges for those patients who received the VAD were $47,251.

We found that the cases receiving the VAD as an inpatient procedure are significantly more costly than other cases in DRG 316. Therefore, we are proposing to designate code 86.07 as an O.R. procedure under MDC 11. Specifically, code 86.07 would be recognized as an O.R. procedure code in MDC 11 and assigned to DRG 315 when combined with the following principal diagnosis codes from DRG 316:

- 403.01, Malignant hypertensive renal disease with renal failure
- 403.11, Benign hypertensive renal disease with renal failure
- 403.91, Unspecified hypertensive renal disease with renal failure
- 404.02, Malignant hypertensive heart and renal disease with renal failure
- 404.12, Malignant hypertensive heart and renal disease with renal failure
- 404.92, Unspecified hypertensive heart and renal disease with renal failure
- 584.5, Acute renal failure with lesion of tubular necrosis
- 584.6, Acute renal failure with lesion of renal cortical necrosis
- 584.7, Acute renal failure with lesion of renal medullary (papillary) necrosis
- 584.8, Acute renal failure with other specified pathological lesion in kidney
- 584.9, Acute renal failure, unspecified
- 585, Chronic renal failure
- 586, Renal failure, unspecified
- 788.5, Oliguria and anuria
- 958.5, Traumatic anuria

b. Bladder Reconstruction

We received correspondence regarding the current classification of procedure code 57.87 (Reconstruction of urinary bladder) as a minor bladder procedure and the assignment of the code under DRG 308 (Minor Bladder Procedures with CC) and DRG 309 (Minor Bladder Procedures without CC). The correspondent believed that bladder reconstruction is not a minor procedure, submitted individual hospital charges to support this contention, and recommended that the code be classified as a major procedure and assigned to a higher weighted DRG.

Our clinical advisors indicated that reconstruction of the bladder is a more extensive procedure than the other minor bladder procedures in DRGs 308 and 309. They agree that the bladder reconstruction procedure is as complex as the procedures under code 57.79 (Total cystectomy) and the other major bladder procedures in DRGs 303 through 305.

As indicated in the chart below, we found that the average charges for bladder reconstruction are significantly higher than the average charges for other minor procedures within DRGs 308 and 309:

	With Code 57.87	Without Code 57.87
DRG 308 (minor bladder procedure with CC):		
Number of Cases	64	5,066
Average Charges	$36,560	$19,923
DRG 309 (minor bladder procedures without CC):		
Number of Cases	25	3,021
Average Charges	$23,390	$11,200

We found that procedure code 57.87 may be more appropriately placed in DRG 303 (Kidney, Ureter and Major Bladder Procedures for Neoplasm), 304 (Kidney, Ureter and Major Bladder Procedures for Nonneoplasm with CC), and DRG 305 (Kidney, Ureter and Major Bladder Procedures for Nonneoplasm without CC), based on average charges for procedures in these three DRGS as indicated in the following chart:

DRG	Number of cases	Average charges
303 (Kidney, Ureter and Major Bladder Procedures for Neoplasm)	14,116	$30,691
304 (Kidney, Ureter and Major Bladder Procedures for Nonneoplasm with CC)	8,060	30,577
305 (Kidney, Ureter and Major Bladder Procedures for Nonneoplasm without CC)	2,029	15,492

Based on the results of our analysis and the advice of our medical consultants discussed above, we are proposing to classify code 57.87 as a major bladder procedure and to assign it to DRGs 303, 304, and 305.

6. MDC 15 (Newborns and Other Neonates with Conditions Originating in the Perinatal Period)

The primary focus of updates to the Medicare DRG classification system is for changes relating to the Medicare patient population, not the pediatric or neonatal patient populations. However, the Medicare DRGs are sometimes used to classify other patient populations.

Over the years, we have received comments about aspects of the Medicare newborn DRGs that appear problematic, and we have responded to these on an individual basis. Some correspondents have requested that we take a closer

overall look at the DRGs within MDC 15.

To respond to this request relating to review of MDC 15, we contacted the National Association of Children's Hospitals and Related Institutions (NACHRI), along with our own medical advisors, to obtain proposals for possible revisions of the existing DRG categories in MDC 15. The focus of the requested proposals was to refine category definitions within the framework of the existing seven broadly defined neonatal DRGs. The proposals also were to take advantage of the new, more specific neonatal diagnosis codes to be adopted, effective October 1, 2002, to assist with refinements to the existing DRG category definitions.

In preparing these proposed changes to MDC 15, we have considered comments and suggestions previously received, including suggestions from NACHRI on how to make improvements within the existing framework of seven very broadly defined neonatal DRGs. In the future, we may consider broader changes to MDC 15.

a. Definition of MDC 15

The existing diagnosis definitions for MDC 15 include certain diagnoses that may be present at the time of birth but may also continue beyond the perinatal period.

These diagnoses are basically congenital anomalies, and even though they may continue beyond the perinatal period, they are assigned to MDC 15 which is specific to newborns and neonates.

The diagnosis codes assigned to the DRGs under MDC 15 have been a source of confusion because older children and adults can be admitted with these principal diagnoses and assigned to newborn or neonate DRGs in MDC 15 as if they were newborns.

Our medical consultants and NACHRI have reviewed the listing of diagnosis codes and identified those that should not be routinely classified under MDC 15. As a result of this review, we are proposing that the following list of diagnosis codes be removed from MDC 15:

- 758.9, Conditions due to anomaly of unspecified chromosome
- 759.4, Conjoined twins
- 759.7, Multiple congenital anomalies, so described
- 759.81, Prader-Willi Syndrome
- 759.83, Fragile X Syndrome
- 759.89, Other specified anomalies
- 759.9, Congenital anomaly, unspecified
- 779.7, Periventricular leukomalacia
- 795.2, Nonspecific abnormal findings on chromosomal analysis

We are proposing to assign the nine diagnosis codes listed above to the following MDCs and DRGs (if medical):

Diagnosis code	Title	Proposed MDC assignment	Proposed DRG assignment
758.9	Conditions due to anomaly of unspecified chromosome.	23	467 (Other Factors Influencing Health Status).
759.4	Conjoined twins	6	188, 189, 190 (Other Digestive System Diagnoses, age >17 with CC, Age >17 without CC, and Age 0–17, respectively).
759.7	Multiple congenital anomalies, so described	8	256 (Other Musculoskeletal System and Connective Tissue Diagnoses).
759.81	Prader-Willi Syndrome	8	256 (Other Musculoskeletal System and Connective Tissue Diagnoses).
759.83	Fragile x Syndrome	19	429 (Organic Disturbances and Mental Retardation)
759.89	Other specified anomalies	8	256 (Other Musculoskeletal System and Connective Tissue Diagnoses).
759.9	Congenital anomaly, unspecified	23	467 (Other Factors Influencing Health Status).
779.7	Periventricular leukomalacia	1	34, 35 (Other Disorders of the Nervous System with CC and without CC, respectively).
795.2	Nonspecific abnormal findings on chromosomal analysis.	23	467 (Other Factors Influencing Health Status).

The following three specific 4-digit diagnosis codes have been determined invalid by the ICD–9–CM Coordination and Maintenance Committee, effective October 1, 2002, and we are proposing to remove them from MDC 15.

- 770.8, Other newborn respiratory problems
- 771.8, Other infection specific to the perinatal period
- 779.8, Other specified conditions originating in the perinatal period

The above three codes are being replaced by 5-digit codes to capture more detail. These new 5-digit codes are assigned to DRGs within MDC 15 and are listed among the codes in Table 6A—New Diagnosis Codes in the Addendum of this proposed rule.

In addition, the ICD–9–CM Coordination and Maintenance Committee created a number of new codes, effective October 1, 2002, to capture newborn and neonatal conditions. Therefore, we are proposing to add the following new 23 diagnosis codes to MDC 15:

- 747.83, Persistent fetal circulation
- 765.20, Unspecified weeks of gestation
- 765.21, Less than 24 completed weeks of gestation
- 765.22, 24 completed weeks of gestation
- 765.23, 25–26 completed weeks of gestation
- 765.24, 27–28 completed weeks of gestation
- 765.25, 29–30 completed weeks of gestation
- 765.26, 31–32 completed weeks of gestation
- 765.27, 33–34 completed weeks of gestation
- 765.28, 35–36 completed weeks of gestation
- 765.29, 37 or more completed weeks of gestation
- 770.81, Primary apnea of newborn
- 770.82, Other apnea of newborn
- 770.83, Cyanotic attacks of newborn
- 770.84, Respiratory failure of newborn
- 770.89, Other respiratory problems after birth
- 771.81, Septicemia [sepsis] of newborn
- 771.82, Urinary tract infection of newborn
- 771.83, Bacteremia of newborn
- 771.89, Other infections specific to the perinatal period
- 779.81, Neonatal bradycardia
- 779.82, Neonatal tachycardia
- 779.89, Other specified conditions originating in perinatal period

b. DRG 386 (Extreme Immaturity or Respiratory Distress Syndrome, Neonate)

The existing DRG 386 is defined by the presence of one of the ICD–9–CM extreme prematurity codes (765.01 through 765.05) with the fifth digit indicating birthweight less than 1,500 grams (3.3 pounds). NACHRI has identified two weaknesses in the use of the fifth digit to define prematurity.

One weakness relates to determining extreme immaturity, which, in part, is limited by the existing ICD–9–CM diagnosis codes. The existing ICD–9–CM definition for the extreme immaturity codes "usually implies birthweight less than 1,000 grams (2.2 pounds) or gestational age less than 28 completed weeks," or both. The fifth digit provides range values for birthweight but gives no information on gestational age. A specific and distinct set of ICD–9–CM diagnosis codes for gestational age is to be introduced effective October 1, 2002. These new codes will provide a clearer basis for differentiating extreme immaturity or gestational age, or both.

The second weakness is that diagnosis code 769 (Respiratory distress syndrome in newborn) is currently only associated with DRG 386, which requires extreme prematurity, but respiratory distress syndrome in newborns can occur with all levels of prematurity. Therefore, we believe that code 769 should not be used to classify a diagnosis under DRG 386.

The proposed revision to DRG 386 would reflect the upcoming new ICD–9–CM diagnosis codes. We are proposing to redefine DRG 386 to include those newborns whose preterm birthweight is less than 1,000 grams or gestational age is less than 27–28 completed weeks, or both. Therefore, we would remove diagnosis code 769 from DRG 386, as this code is associated with all levels of prematurity, not just extreme immaturity. In addition, we are proposing to revise the title of DRG 386 to read "Extreme Immaturity".

Because birthweight for neonates varies at all gestational ages, some neonates will meet the DRG 386 criteria for preterm extremely low birthweight (less than 1,000 grams) but not the DRG 386 criteria for extremely short gestation age (less than 27–28 completed weeks). The reverse may also occur, where a neonate meets the DRG 386 criteria for extremely short gestational age (less than 27–28 completed weeks) but not for preterm extremely low birthweight (less than 1,000 grams). In either situation, the neonate would be assigned to the proposed retitled DRG 386 (Extreme Immaturity).

NACHRI provided the following information on the measurement of gestational age and its use in the definition of Medicare neonatal DRGs. First, they noted that gestational age can be as powerful a predictor of a newborn's hospitalization course as birthweight and corresponds more directly to organ system immaturity. Second, while gestational age can be identified with a reasonable level of accuracy, it cannot be measured as precisely as birthweight. These two considerations led NACHRI to recommend the inclusion of gestational age in the definition of the Medicare neonatal DRGs, but in a conservative manner. Specifically, extremely short gestational age, as identified earlier, usually implies gestational age less than 28 weeks. The proposed new definition of DRG 386 includes only the gestational age codes for less than 27 to 28 completed weeks. Thus, there is a 1-week conservative bias in the use of the new gestational age codes for DRG 386. It is also important to note that the existing DRG 386 definition includes existing codes 765.01 through 765.05, which include extreme immaturity without a specific identification of gestational age and birthweight up to 1,499 grams (3.3 pounds). Thus, the proposed revised definition of DRG 386 is actually somewhat more stringent as well as more specific.

To implement these changes, we are proposing to remove the following diagnosis codes from the list of "principal or secondary diagnosis" under DRG 386:

- 765.04, Extreme immaturity, 1,000–1,249 grams
- 765.05, Extreme immaturity, 1,250–1,499 grams
- 769, Respiratory distress syndrome in newborn

Note, as explained above, while we are proposing to remove diagnosis codes 765.04, 765.05, and 769 from the list of principal or secondary diagnosis under DRG 386, a neonate would still be assigned to DRG 386 if there is a diagnosis of gestational age less than 27 to 28 completed weeks reported (765.21 through 765.23).

We are proposing to add the following diagnosis codes to the list of "principal or secondary diagnosis" under DRG 386:

- 765.11, Other preterm infants, less than 500 grams
- 765.12, Other preterm infants, 500–749 grams
- 765.13, Other preterm infants, 750–999 grams
- 765.21, Less than 24 completed weeks of gestation
- 765.22, 24 completed weeks of gestation
- 765.23, 25–26 completed weeks of gestation

c. DRG 387 (Prematurity With Major Problems)

The existing definition of DRG 387 has the following three components: (1) Principal or secondary diagnosis of prematurity; (2) Principal or secondary diagnosis of major problem (these are diagnoses that define MDC 15); or (3) secondary diagnosis of major problem (these are diagnoses that do not define MDC 15 so they can only be secondary diagnosis codes for patients assigned to MDC 15). We are proposing changes for each component of the definition for DRG 387.

We are proposing to revise the definition for the first component of DRG 387, "principal or secondary diagnosis of prematurity", to include all preterm low birthweight codes with fifth digit range code values indicating birthweight between 1,000 grams (2.2 pounds) and 2,499 grams (5.5 pounds), or gestational age between 27 to 28 and 35 to 36 completed weeks, or both. This would include all of the preterm low birthweight and gestational age codes except those assigned to the proposed revised DRG 386 and except for the following four preterm and gestational age codes: 765.10, 765.19, 765.20, and 765.29.

It is possible for a neonate to be premature and greater than 2,500 grams (5.5 pounds). In this instance, one of the new gestational age codes that specifically identifies the newborn to be less than 37 completed weeks of gestation would need to be present to meet the criteria for inclusion in DRG 387. This is not a conceptual change for DRG 387, in that diagnosis codes 765.10 and 765.19 should both refer to newborns less than 37 completed weeks of gestation. Therefore, we are proposing to take into consideration the new ICD–9–CM codes that require a more specific affirmation that the newborn is less than 37 completed weeks of gestation. Because DRG 387 is a broadly defined category (1,000–2,499 grams or 27–36 completed weeks of gestation), NACHRI recommends that it is important to require specific information for inclusion of patients at the high end of the birthweight/gestational age range.

We are proposing to remove the following diagnosis codes from the list of diagnoses defined as "principal or secondary diagnosis of prematurity" for DRG 387:

- 765.10, Other preterm infants, unspecified (weight)

- 765.11, Other preterm infants, less than 500 grams
- 765.12, Other preterm infants, 500–749 grams
- 765.13, Other preterm infants, 750–999 grams
- 765.19, Other preterm infants, 2,500+ grams

We are proposing to add the following diagnosis codes to the list of diagnoses defined as "principal or secondary diagnosis of prematurity" for DRG 387:

- 765.04, Extreme immaturity, 1000–1249 grams
- 765.05, Extreme immaturity, 1250–1499 grams
- 765.24, 27–28 completed weeks of gestation
- 765.25, 29–30 completed weeks of gestation
- 765.26, 31–32 completed weeks of gestation
- 765.27, 33–34 completed weeks of gestation
- 765.28, 35–36 completed weeks of gestation

We are proposing to revise the definition for the second component of DRG 387, "principal or secondary diagnosis of major problem", to remove certain diagnosis codes and to add other diagnosis codes. We are proposing to remove three groups of diagnosis codes. The first group of diagnosis codes that we are proposing to remove includes the fetal malnutrition codes for the birthweight ranges less than 2500 grams. NACHRI indicates that these newborns are not necessarily more complicated than preterm infants of the same birthweight range. These newborns have fewer problems related to organ system immaturity and often demonstrate excellent catch-up growth after delivery. Some of the fetal malnutrition diagnosis neonates may have serious problems. Therefore, it is best for the classification system to look for other more specific, major problem diagnoses than to include all of these newborns in DRG 387. We are proposing to remove the following diagnosis codes from DRG 387.

- 764.11, "Light-for-dates" with signs of fetal malnutrition, less than 500 grams
- 764.12, "Light-for-dates" with signs of fetal malnutrition, 500–749 grams
- 764.13, "Light-for-dates" with signs of fetal malnutrition, 750–999 grams
- 764.14, "Light-for-dates" with signs of fetal malnutrition, 1,000–1,249 grams
- 764.15, "Light-for-dates" with signs of fetal malnutrition, 1,250–1,499 grams
- 764.16, "Light-for-dates" with signs of fetal malnutrition, 1,500–1,749 grams
- 764.17, "Light-for-dates" with signs of fetal malnutrition, 1,750–1,999 grams
- 764.18, "Light-for-dates" with signs of fetal malnutrition, 2,000–2,499 grams
- 764.21, Fetal malnutrition without mention of "light-for-dates", less than 500 grams
- 764.22, Fetal malnutrition without mention of "light-for-dates", 500–749 grams
- 764.23, Fetal malnutrition without mention of "light-for-dates", 750–999 grams
- 764.24, Fetal malnutrition without mention of "light-for-dates", 1,000–1,249 grams
- 764.25, Fetal malnutrition without mention of "light-for-dates", 1,250–1,499 grams
- 764.26, Fetal malnutrition without mention of "light-for-dates", 1,500–1,749 grams
- 764.27, Fetal malnutrition without mention of "light-for-dates", 1,750–1,999 grams
- 764.28, Fetal malnutrition without mention of "light-for-dates", 2,000–2,499 grams

The second group of codes we are proposing to remove from the list of "principal or secondary diagnosis of major problems" under DRG 387 consists of the following 13 diagnosis codes. The majority of these diagnosis codes do not represent a major problem for a newborn at or shortly after birth. NACHRI believes that costs associated with newborns with these conditions are similar to costs associated with neonates without a major problem.

- 763.4, Cesarean delivery affecting fetus or newborn
- 770.1, Meconium aspiration syndrome
- 770.8, Other newborn respiratory problems
- 771.8, Other infection specific to the perinatal period
- 772.0, Fetal blood loss
- 773.2, Hemolytic disease due to other and unspecified isoimmunization of fetus or newborn
- 773.5, Late anemia due to isoimmunization of fetus or newborn
- 775.5, Other transitory neonatal electrolyte disturbances
- 775.6, Neonatal hypoglycemia
- 776.0, Hemorrhagic disease of newborn
- 776.6, Anemia of prematurity
- 777.1, Meconium obstruction in fetus or newborn
- 777.2, Intestinal obstruction due to inspissated milk in newborn

We note that diagnosis code 770.8 (Other newborn respiratory problems) and diagnosis code 771.8 (Other infection specific to the perinatal period) are 4-digit codes that are being replaced by a series of more specific 5-digit codes, effective October 1, 2002. (See Table 6C in the Addendum of this proposed rule.) The listing of the codes on the second group above includes some of these new 5-digit codes.

The third group of diagnosis codes that we are proposing to remove from the list of diagnosis defined as "principal or secondary diagnosis of major problem" under DRG 387 includes the following two diagnosis codes. These codes are no longer assigned to MDC 15 when they are the principal diagnosis.

- 759.4, Conjoined twins
- 779.7, Periventricular leukomalacia

We are proposing to add the following nine new and existing diagnosis codes to the list of "principal or secondary diagnosis of major problem" that defines DRG 387. These nine diagnosis codes generally represent major problems at the time of birth and have costs more similar to those of neonates with major problems than neonates without major problems. Many of these diagnosis codes are related to congenital anomaly conditions.

- 747.83, Persistent fetal circulation (new code)
- 769, Respiratory distress syndrome in newborn
- 770.84, Respiratory failure of newborn (new code)
- 771.3, Tetanus neonatorum
- 771.81, Septicemia of newborn (new code)
- 771.82, Neonatal urinary tract infection (new code)
- 771.83, Bacteremia of newborn (new code)
- 771.89, Other infections specific to perinatal period (new code)
- 776.7, Transient neonatal neutropenia

Of special note is the handling of diagnosis code 769 (Respiratory distress syndrome in newborn). Earlier in this preamble, we discussed the proposed removal of this diagnosis code from the definition of proposed retitled DRG 386 (Extreme Immaturity) because, even though it is usually associated with prematurity, it may occur with all levels of prematurity. We are proposing to add respiratory distress syndrome (which was previously assigned to existing DRG 386) to the list of diagnoses that define "principal or secondary diagnosis of major problem" for DRG 387. We are not proposing to add it to the list of diagnoses that define "principal or secondary diagnosis of prematurity" for DRG 387. The rationale for not adding code 769 as a prematurity diagnosis is that it occurs in only a small subset of neonates in the birthweight range of 1,000 to 2,499 grams (2.2 to 5.5 pounds), and the vast majority of occurrences is in the upper end of this birthweight range. Respiratory distress syndrome

might not be indicative of a major problem for neonates at the low end of this range (for example, those closer to 1,000 to 1,249 grams), because these neonates will most likely have multiple significant problems. Therefore, we are proposing that respiratory distress syndrome be classified as a major problem and included among the list of "principal or secondary diagnosis of major problem" for DRG 387.

In addition, we are proposing to revise the definition for the third defining component of DRG 387, "secondary diagnosis of major problem". This list of major problem diagnoses can only be secondary diagnoses because they are not among the list of principal diagnoses that defines MDC 15 for the Medicare DRG classification system. Based on NACHRI's recommendations, we are proposing to add and remove diagnoses from this list on the same basis as previously described for the list of "principal or secondary diagnosis of major problems" for DRG 387. That is, diagnoses are removed if, in the majority of instances, the condition does not represent a major problem for a newborn at or shortly after birth, and on average exhibits costs similar to the costs associated with neonates without a major problem. In addition, we are proposing to remove the asthma with status asthmaticus diagnosis codes, as these diagnosis codes pertain to newborns or other conditions arising in the perinatal period.

We are proposing to remove the following diagnosis codes from the list of "secondary diagnosis of major problem" for DRG 387:

- 276.5, Volume depletion
- 349.0, Reaction to spinal or lumbar puncture
- 457.2, Lymphangitis
- 493.01, Extrinsic asthma with status asthmaticus
- 493.11, Intrinsic asthma with status asthmaticus
- 493.91, Asthma, unspecified type, with status asthmaticus
- 578.1, Blood in stool
- 683, Acute lymphadenitis
- 693.0, Dermatitis due to drugs and medicines taken internally
- 695.0, Toxic erythema
- 708.0, Allergic urticaria
- 745.4, Ventricular septal defect
- 785.0, Tachycardia, unspecified
- 995.2, Unspecified adverse effect of drug, medicinal and biological substance, not elsewhere classified
- 999.5, Other serum reaction, not elsewhere classified
- 999.6, ABO incompatibility reaction, not elsewhere classified
- 999.7, Rh incompatibility reaction, not elsewhere classified
- 999.8, Other transfusion reaction, not elsewhere classified

We are proposing to add the following 65 diagnosis codes to the list of "secondary diagnosis of major problem" for DRG 387:

- 416.0, Primary pulmonary hypertension
- 416.8, Other chronic pulmonary heart diseases
- 425.3, Endocardial fibroelastosis
- 425.4, Other primary cardiomyopathies
- 427.0, Paroxysmal supraventricular tachycardia
- 427.1, Paroxysmal ventricular tachycardia
- 466.11, Acute bronchiolitis due to respiratory syncytial virus (RSV)
- 466.19, Acute bronchiolitis due to other infectious organisms
- 478.74, Stenosis of larynx
- 480.0, Pneumonia due to adenovirus
- 480.1, Pneumonia due to respiratory syncytial virus
- 480.2, Pneumonia due to parainfluenza virus
- 480.8, Pneumonia due to other virus not elsewhere classified
- 480.9, Viral pneumonia, unspecified
- 745.0, Common truncus
- 745.10, Complete transposition of great vessels
- 745.11, Double outlet right ventricle
- 745.12, Corrected transposition of great vessels
- 745.19, Other transposition of great vessels
- 745.2, Tetralogy of Fallot
- 745.3, Common ventricle
- 745.60, Endocardial cushion defect, unspecified type
- 745.61, Ostium primum defect
- 745.69, Other endocardial cushion defects
- 746.01, Atresia of pulmonary valve, congenital
- 746.1, Tricuspid atresia and stenosis, congenital
- 746.2, Ebstein's anomaly
- 746.7, Hypoplastic left heart syndrome
- 746.81, Subaortic stenosis, congenital
- 746.82, Cor triatriatum
- 746.84, Obstructive anomalies of heart, congenital, not elsewhere classified
- 746.86, Congenital heart block
- 747.10, Coarctation of aorta (preductal) (postductal)
- 747.11, Interruption of aortic arch
- 747.41, Total anomalous pulmonary venous connection
- 747.81, Anomalies of cerebrovascular system, congenital
- 748.3, Other congenital anomalies of larynx, trachea, and bronchus
- 748.4, Cystic lung, congenital
- 748.5, Agenesis, hypoplasia, and dysplasia of lung, congenital
- 750.3, Tracheoesophageal fistula, esophageal atresia and stenosis, congenital
- 751.1, Atresia and stenosis of small intestine, congenital
- 751.2, Atresia and stenosis of large intestine, rectum, and anal canal, congenital
- 751.3, Hirschsprung's disease and other congenital functional disorders of colon
- 751.4, Anomalies of intestinal fixation, congenital
- 751.62, Congenital cystic disease of liver
- 751.69, Other congenital anomalies of gall bladder, bile ducts, and liver
- 751.7, Anomalies of pancreas, congenital
- 753.0, Renal agenesis and dysgenesis
- 753.5, Exstrophy of urinary bladder
- 756.51, Osteogenesis imperfecta
- 756.6, Anomalies of diaphragm, congenital
- 756.70, Congenital anomaly of abdominal wall, unspecified
- 756.71, Prune belly syndrome
- 756.79, Other congenital anomalies of abdominal wall
- 758.1, Patau's Syndrome
- 758.2, Edwards' Syndrome
- 758.3, Autosomal deletion syndromes
- 759.4, Conjoined twins
- 759.7, Multiple congenital anomalies, so described
- 759.81, Prader-Willi Syndrome
- 759.89, Other specified anomalies
- 7797, Periventricular leukomalacia
- 785.51, Cardiogenic shock
- 785.59, Other shock without mention of trauma
- 789.5, Ascites

d. DRG 388 (Prematurity Without Major Problems)

We are proposing to revise the definition for prematurity for DRG 388 ((Prematurity without Major Problems) in the same manner that we proposed to revise the definition of prematurity for DRG 387 (Prematurity with Major Problems).

We are proposing to remove the following five diagnosis codes from the list of codes pertaining to the "principal or secondary diagnosis of prematurity" for DRG 388:

- 765.10, Other preterm infants unspecified (weight)
- 765.11, Other preterm infants, less than 500 grams
- 765.12, Other preterm infants, 500–749 grams
- 765.13, Other preterm infants, 750–999 grams

- 765.19, Other preterm infants, 2,500+ grams

We are proposing to add the following seven diagnosis codes to the definition of principal or secondary diagnosis of prematurity for DRG 388:

- 765.04, Extreme immaturity, 1000–1249 grams
- 765.05, Extreme immaturity, 1250–1499 grams
- 765.24, 27–28 completed weeks of gestation
- 765.25, 29–30 completed weeks of gestation
- 765.26, 31–32 completed weeks of gestation
- 765.27, 33–34 completed weeks of gestation
- 765.28, 35–36 completed weeks of gestation

e. DRG 389 (Full Term Neonate With Major Problem)

We are proposing to revise the definition of "principal or secondary diagnosis of major problem" for DRG 389 (Full Term Neonate with Major Problem) in the same manner that we proposed to revise the definition for DRG 387 (Prematurity with Major Problem).

f. DRG 390 (Neonate With Other Significant Problems)

DRG 390 is defined as patients with "principal or secondary diagnosis of newborn or neonate, with other significant problems, not assigned to DRG 385 through 389, 391, or 469 (principal diagnosis invalid as discharge diagnosis). As a result of our proposed changes to other neonatal DRGs, we are proposing to make conforming changes related to diagnosis codes assigned to DRG 390.

g. DRG 391 (Normal Newborn)

DRG 391 (Normal Newborn) is defined by a list of principal diagnoses (for example, V30, Newborn codes plus certain minor newborn problems) and no secondary diagnoses or only certain secondary diagnoses (that is, minor problem diagnoses). NACHRI recommended that the definition of DRG 391 be modified to expand the number of minor problem newborn diagnoses included in both the list of principal diagnoses and the list of only certain secondary diagnoses that define DRG 391. The diagnoses that we are proposing to add to DRG 391 are conditions that NACHRI has identified as occurring with some frequency in the newborn population and having costs more similar to that of DRG 391 than DRG 390 (Neonates with Other Significant Problems).

We are proposing to add the following diagnosis codes to the list of "principal diagnosis" that defines DRG 391:

- 764.00, "Light-for-dates" without mention of fetal malnutrition, unspecified (weight)
- 764.90, Fetal growth retardation unspecified (weight)
- 765.10, Other preterm infants unspecified (weight)
- 765.19, Other preterm infants, 2,500+ grams
- 765.20, Unspecified weeks of gestation
- 765.29, 37 or more completed weeks of gestation

We also are proposing to add the above six diagnosis codes to the list of "only certain secondary diagnosis" that defines DRG 391, as indicated below. Of these diagnosis codes, NACHRI indicates that the highest volume diagnosis code is 765.19 (Other preterm infants, 2,500+ grams). NACHRI notes that when this diagnosis code is recorded and no major problem or significant problem diagnosis is recorded, these patients have costs that are not much different than those for other normal newborns.

We are proposing to add the following codes to the list of "only certain secondary diagnosis" that defines DRG 391:

- 216.0, Benign neoplasm of skin of lip
- 216.1, Benign neoplasm of eyelid, including canthus
- 216.2, Benign neoplasm of ear and external auditory canal
- 216.3, Benign neoplasm of skin of other and unspecified parts of face
- 216.4, Benign neoplasm of scalp and skin of neck
- 216.5, Benign neoplasm of skin of trunk, except scrotum
- 216.6, Benign neoplasm of skin of upper limb, including shoulder
- 216.7, Benign neoplasm of skin of lower limb, including hip
- 216.8, Benign neoplasm of other specified sites of skin
- 216.9, Benign neoplasm of skin, site unspecified
- 228.00, Hemangioma of unspecified site
- 228.01, Hemangioma of skin and subcutaneous tissue
- 228.1, Lymphangioma, any site
- 379.8, Other specified disorders of eye and adnexa
- 379.90, Disorder of eye, unspecified
- 379.92, Swelling or mass of eye
- 379.93, Redness or discharge of eye
- 379.99, Other ill-defined disorders of eye
- 427.60, Premature beats, unspecified
- 427.61, Supraventricular premature beats
- 427.9, Cardiac dysrhythmia, unspecified
- 528.4, Cysts of oral soft tissues
- 553.1, Umbilical hernia without mention of obstruction or gangrene
- 603.8, Other specified types of hydrocele
- 603.9, Hydrocele, unspecified
- 607.89, Other specified disorders of penis
- 607.9, Unspecified disorder of penis and perineum
- 624.9, Unspecified noninflammatory disorder of vulva and perineum
- 692.9, Contact dermatitis and other eczema unspecified cause
- 701.1, Keratoderma, acquired
- 701.3, Striae atrophicae
- 701.8, Other specified hypertrophic and atrophic conditions of skin
- 701.9, Unspecified hypertrophic and atrophic conditions of skin
- 702.8, Other specified dermatoses
- 705.1, Prickly heat
- 706.1, Other acne
- 706.2, Sebaceous cyst
- 709.8, Other specified disorders of skin
- 709.9, Unspecified disorder of skin and subcutaneous tissue
- 719.61, Other symptoms referable to joint of shoulder region
- 719.65, Other symptoms referable to joint of pelvic region and thigh
- 755.00, Polydactyly, unspecified digits
- 755.01, Polydactyly of fingers
- 755.02, Polydactyly of toes
- 755.10, Syndactyly of multiple and unspecified sites
- 755.11, Syndactyly of fingers without fusion of bone
- 755.12, Syndactyly of fingers with fusion of bone
- 755.13, Syndactyly of toes without fusion of bone
- 755.14, Syndactyly of toes with fusion of bone
- 755.66, Other congenital anomalies of toes
- 755.67, Anomalies of foot, congenital, not elsewhere classified
- 755.9, Unspecified congenital anomaly of unspecified limb
- 757.2, Dermatoglyphic anomalies
- 757.32, Vascular hamartomas
- 757.39, Other specified congenital anomalies of skin
- 757.4, Specified congenital anomalies of hair
- 757.5, Specified congenital anomalies of nails
- 757.6, Specified congenital anomalies of breast
- 757.8, Other specified congenital anomalies of the integument
- 757.9, Unspecified congenital anomaly of the integument
- 760.0, Maternal hypertensive disorders affecting fetus or newborn

- 760.1, Maternal renal and urinary tract diseases affecting fetus or newborn
- 760.2, Maternal infections affecting fetus or newborn
- 760.3, Other chronic maternal circulatory and respiratory diseases affecting fetus or newborn
- 760.4, Maternal nutritional disorders affecting fetus or newborn
- 760.5, Maternal injury affecting fetus or newborn
- 760.6, Surgical operation on mother affecting fetus or newborn
- 760.70, Unspecified noxious substance affecting fetus or newborn via placenta or breast milk
- 760.74, Anti-infectives affecting fetus or newborn via placenta or breast milk
- 760.76, Diethylstilbestrol (DES) exposure affecting fetus or newborn via placenta or breast milk
- 760.79, Other noxious influences affecting fetus or newborn via placenta or breast milk
- 760.8, Other specified maternal conditions affecting fetus or newborn
- 760.9, Unspecified maternal condition affecting fetus or newborn
- 761.0, Incompetent cervix affecting fetus or newborn
- 761.1, Premature rupture of membranes affecting fetus or newborn
- 761.5, Multiple pregnancy affecting fetus or newborn
- 761.7, Malpresentation before labor affecting fetus or newborn
- 761.8, Other specified maternal complications of pregnancy affecting fetus or newborn
- 761.9, Unspecified maternal complication of pregnancy affecting fetus or newborn
- 762.8, Other specified abnormalities of chorion and amnion affecting fetus or newborn
- 762.9, Unspecified abnormality of chorion and amnion affecting fetus or newborn
- 763.4, Cesarean delivery affecting fetus or newborn
- 763.5, Maternal anesthesia and analgesia affecting fetus or newborn
- 763.7, Abnormal uterine contractions affecting fetus or newborn
- 763.89, Other specified complications of labor and delivery affecting fetus or newborn
- 764.00, "Light-for-dates" without mention of fetal malnutrition, unspecified (weight)
- 764.90, Fetal growth retardation unspecified (weight)
- 765.10, Other preterm infants unspecified (weight)
- 765.19, Other preterm infants, 2,500+ grams
- 765.20, Unspecified weeks of gestation
- 765.29, 37 or more completed weeks of gestation
- 767.2, Fracture of clavicle due to birth trauma
- 767.3, Other injuries to skeleton due to birth trauma
- 767.8, Other specified birth trauma
- 767.9, Unspecified birth trauma
- 768.2, Fetal distress before onset of labor, in liveborn infant
- 768.3, Fetal distress first noted during labor, in liveborn infant
- 768.4, Fetal distress, unspecified as to time of onset, in liveborn infant
- 768.9, Unspecified severity of birth asphyxia in liveborn infant
- 70.9, Unspecified respiratory condition of fetus and newborn
- 772.8, Other specified hemorrhage of fetus or newborn
- 772.9, Unspecified hemorrhage of newborn
- 773.1, Hemolytic disease due to ABO isoimmunization of fetus or newborn
- 773.2, Hemolytic disease due to other and unspecified isoimmunization of fetus or newborn
- 773.5, Late anemia due to isoimmunization of fetus or newborn
- 775.6, Neonatal hypoglycemia
- 775.9, Unspecified endocrine and metabolic disturbances specific to the fetus and newborn
- 776.4, Polycythemia neonatorum
- 776.8, Other specified transient hematological disorders of fetus or newborn
- 776.9, Unspecified hematological disorder specific to fetus or newborn
- 777.1, Meconium obstruction in fetus or newborn
- 777.3, Hematemesis and melena due to swallowed maternal blood of newborn
- 777.8, Other specified perinatal disorders of digestive system
- 777.9, Unspecified perinatal disorder of digestive system
- 778.3, Other hypothermia of newborn
- 778.4, Other disturbances of temperature regulation of newborn
- 778.6, Congenital hydrocele
- 778.7, Breast engorgement in newborn
- 778.9, Unspecified condition involving the integument and temperature regulation of fetus and newborn
- 779.9, Unspecified condition originating in the perinatal period
- 780.6, Fever
- 781.0, Abnormal involuntary movements
- 781.3, Lack of coordination
- 782.1, Rash and other nonspecific skin eruption
- 782.2, Localized superficial swelling, mass, or lump
- 782.4, Jaundice, unspecified, not of newborn
- 782.61, Pallo
- 782.62, Flushin
- 782.7, Spontaneous ecchymose
- 782.8, Changes in skin texture
- 782.9, Other symptoms involving skin and integumentary tissues
- 783.3, Feeding difficulties and mismanagement
- 784.2, Swelling, mass, or lump in head and neck
- 784.9, Other symptoms involving head and neck
- 785.2, Undiagnosed cardiac murmurs
- 785.3, Other abnormal heart sounds
- 785.9, Other symptoms involving cardiovascular system
- 786.00, Respiratory abnormality, unspecified
- 786.7, Abnormal chest sounds
- 786.9, Other symptoms involving respiratory system and chest
- 787.3, Flatulence, eructation, and gas pain
- 790.6, Other abnormal blood chemistry
- 790.7, Bacteremia
- 790.99, Other nonspecific findings on examination of blood
- 795.6, False positive serological test for syphilis
- 795.79, Other and unspecified nonspecific immunological findings
- 796.1, Abnormal reflex
- 910.0, Abrasion or frictions burn of face, neck, and scalp except eye, without mention of infection
- 910.2, Blister of face, neck, and scalp except eye, without mention of infection
- 910.8, Other and unspecified superficial injury of face, neck, and scalp, without mention of infection
- 920, Contusion of face, scalp, and neck except eye(s)
- 999.5, Other serum reaction, not elsewhere classified
- 999.6, ABO incompatibility reaction, not elsewhere classified
- V01.1, Contact with or exposure to tuberculosis
- V01.6, Contact with or exposure to venereal diseases
- V01.7, Contact with or exposure to other viral diseases
- V01.81, Contact with or exposure to communicable diseases, anthrax
- V01.89, Contact with or exposure to communicable diseases, other communicable diseases
- V01.9, Contact with or exposure to unspecified communicable disease
- V02.3, Carrier or suspected carrier of other gastrointestinal pathogens
- V05.3, Need for prophylactic vaccination and inoculation against viral hepatitis
- V05.4, Need for prophylactic vaccination and inoculation against varicella

- V05.8, Need for prophylactic vaccination and inoculation against other specified disease
- V05.9, Need for prophylactic vaccination and inoculation against unspecified single disease
- V07.8, Need for other specified prophylactic measure
- V07.9, Need for unspecified prophylactic measure
- V18.0, Family history of diabetes mellitus
- V18.1, Family history of other endocrine and metabolic diseases
- V18.2, Family history of anemia
- V18.3, Family history of other blood disorders
- V18.8, Family history of infectious and parasitic diseases
- V19.2, Family history of deafness or hearing loss
- V19.8, Family history of other condition
- V71.9, Observation for unspecified suspected condition
- V72.0, Examination of eyes and vision
- V72.6, Laboratory examination
- V73.89, Special screening examination for other specified viral diseases
- V73.99, Special screening examination for unspecified viral disease

7. MDC 23 (Factors Influencing Health Status and Other Contacts With Health Services)

In the August 1, 2001 final rule, we included in Table 6A—New Diagnosis Codes (66 FR 40064) code V10.53 (History of malignancy, renal pelvis), which was approved by the ICD–9–CM Coordination and Maintenance Committee as a new code effective October 1, 2001. We assigned the code to DRG 411 (History of Malignancy without Endoscopy) and DRG 412 (History of Malignancy with Endoscopy).

We received correspondence which suggested that we should have also assigned code V10.53 to DRG 465 (Aftercare with History of Malignancy as Secondary Diagnosis). The correspondent pointed out that all other codes for a history of malignancy are included in DRG 465.

We agree that code V10.53 should be included in the list of the history of malignancy codes within DRG 465. Therefore, we are proposing to add V10.53 to the list of secondary diagnosis in DRG 465.

8. Pre-MDC: Tracheostomy

DRG 483 (Tracheostomy Except for Face, Mouth and Neck Diagnoses) is used to classify patients who require long-term mechanical ventilation. Mechanical ventilation can be administered through an endotracheal tube for a limited period of time. When an endotracheal tube is used for an extended period of time (beyond 7 to 10 days), the patient runs a high risk of permanent damage to the trachea. In order to maintain a patient on mechanical ventilation for a longer period of time, the endotracheal tube is removed and a tracheostomy is performed. The mechanical ventilation is then administered through the tracheostomy.

A tracheostomy also may be performed on patients for therapeutic purposes unrelated to the administration of mechanical ventilation. Patients with certain face, mouth, and neck disease may have a tracheostomy performed as part of the treatment for the face, mouth, or neck disease. These patients are assigned to DRG 482 (Tracheostomy for Face, Mouth and Neck Diagnoses).

Therefore, patients assigned to DRGs 482 and 483 are differentiated based on the principal diagnosis of the patient. At certain times, selecting the appropriate principal diagnosis for the patients receiving tracheostomies for assignment to a DRG can be difficult. The overall number of tracheostomy patients increased by 13 percent between 1994 and 1999. During the same period, the percent of tracheostomy patients in DRG 483 (patients without certain face, mouth, or neck diseases) versus DRG 482 increased from 83.6 percent to 87.6 percent.

The payment weight for DRG 483 is more than four times greater than the DRG 482 payment weight, and this has led to concerns about coding compliance. Specifically, the fact that cases are assigned to DRG 483 based on the absence of a code indicating face, mouth, or neck diagnosis creates an incentive to omit codes indicating these diagnoses.

To address issues of possible coding noncompliance, we are proposing to modify DRGs 482 and 483 to differentiate the assignment to either DRG based on the presence or absence of continuous mechanical ventilation that lasts more than 96 hours (code 96.72). This modification would ensure that the patients assigned to DRG 483 are patients who had the tracheostomy for long-term mechanical ventilation. Based on an examination of claims data from the FY 2001 MedPAR file, we found that many patients assigned to DRG 483 do not have the code 96.72 for mechanical ventilation greater than 96 hours recorded. In part, this is the result of the limited number of procedure codes (six) that can be submitted on the current uniform hospital claim form, and the fact that code 96.72 does not currently affect the DRG assignment.

We found that many of the patients who are assigned to DRG 483 have multiple procedures, making it impossible for all procedures performed to be submitted on the hospital claim form. Because of the current underreporting of code 96.72 for continuous mechanical ventilation greater than 96 hours, we do not believe we can accurately determine the payment weights for modified DRGs 482 and 483 as described above.

In order to encourage the reporting of the code 96.72 for continuous mechanical ventilation for greater than 96 hours, we are proposing to change the definition of DRG 483 so that patients who have a tracheostomy and continuous mechanical ventilation greater than 96 hours (code 96.72) with a principal diagnosis unrelated to disease of the face, mouth, or neck would be assigned to DRG 483. DRG 483 would be retitled "Tracheostomy/ Mechanical Ventilation 96+ Hours Except Face, Mouth, and Neck Diagnosis."

We will give future consideration to modifying DRGs 482 and DRG 483 based on the presence of code 96.72, and invite comments on this area.

9. Medicare Code Editor (MCE) Change

As explained under section II.B.1. of this preamble, the MCE is a software program that detects and reports errors in the coding of Medicare claims data.

The MCE includes an edit for "nonspecific principal diagnosis" that identifies a group of codes that are valid according to the ICD–9–CM coding scheme, but are not as specific as the coding scheme permits. The fiscal intermediaries use cases identified in this edit for educational purposes for hospitals only. That is, when a hospital reaches a specific threshold of cases (usually 25) in this edit, the fiscal intermediary will contact the hospital and educate it on how to code diagnoses using more specific codes in the ICD–9–CM coding scheme. The claims identified in this nonspecific principal diagnosis edit are neither denied nor returned to the hospital.

Code 436 (Acute, but ill-defined, cerebrovascular disease) is one of the codes included in the groups of codes identified in the nonspecific principal diagnosis edit, and is widely used in smaller hospitals where testing mechanisms are not available to more specifically identify the location and condition of cerebral and precerebral vessels. Because of the frequent use of code 436 among smaller hospitals, we

are proposing to remove the code from the nonspecific principal diagnosis edit in the MCE. We address the use of code 436 in section II.B.3. of this proposed rule under the discussion of MDC 5 changes with regard to the remodeling of DRGs 14 and 15.

10. Surgical Hierarchies

Some inpatient stays entail multiple surgical procedures, each one of which, occurring by itself, could result in assignment of the case to a different DRG within the MDC to which the principal diagnosis is assigned. Therefore, it is necessary to have a decision rule within the GROUPER by which these cases are assigned to a single DRG. The surgical hierarchy, an ordering of surgical classes from most resource-intensive to least resource-intensive, performs that function. Its application ensures that cases involving multiple surgical procedures are assigned to the DRG associated with the most resource-intensive surgical class.

Because the relative resource intensity of surgical classes can shift as a function of DRG reclassification and recalibrations, we reviewed the surgical hierarchy of each MDC, as we have for previous reclassifications and recalibrations, to determine if the ordering of classes coincides with the intensity of resource utilization.

A surgical class can be composed of one or more DRGs. For example, in MDC 11, the surgical class "kidney transplant" consists of a single DRG (DRG 302) and the class "kidney, ureter and major bladder procedures" consists of three DRGs (DRGs 303, 304, and 305). Consequently, in many cases, the surgical hierarchy has an impact on more than one DRG. The methodology for determining the most resource-intensive surgical class involves weighting the average resources for each DRG by frequency to determine the weighted average resources for each surgical class. For example, assume surgical class A includes DRGs 1 and 2 and surgical class B includes DRGs 3, 4, and 5. Assume also that the average charge of DRG 1 is higher than that of DRG 3, but the average charges of DRGs 4 and 5 are higher than the average charge of DRG 2. To determine whether surgical class A should be higher or lower than surgical class B in the surgical hierarchy, we would weight the average charge of each DRG in the class by frequency (that is, by the number of cases in the DRG) to determine average resource consumption for the surgical class. The surgical classes would then be ordered from the class with the highest average resource utilization to that with the lowest, with the exception of "other O.R. procedures" as discussed below.

This methodology may occasionally result in assignment of a case involving multiple procedures to the lower-weighted DRG (in the highest, most resource-intensive surgical class) of the available alternatives. However, given that the logic underlying the surgical hierarchy provides that the GROUPER searches for the procedure in the most resource-intensive surgical class, this result is unavoidable.

We note that, notwithstanding the foregoing discussion, there are a few instances when a surgical class with a lower average charge is ordered above a surgical class with a higher average charge. For example, the "other O.R. procedures" surgical class is uniformly ordered last in the surgical hierarchy of each MDC in which it occurs, regardless of the fact that the average charge for the DRG or DRGs in that surgical class may be higher than that for other surgical classes in the MDC. The "other O.R. procedures" class is a group of procedures that are only infrequently related to the diagnoses in the MDC but are still occasionally performed on patients in the MDC with these diagnoses. Therefore, these procedures should only be considered if no other procedure more closely related to the diagnoses in the MDC has been performed.

A second example occurs when the difference between the average charges for two surgical classes is very small. We have found that small differences generally do not warrant reordering of the hierarchy since, as a result of the hierarchy change, the average charges are likely to shift such that the higher-ordered surgical class has a lower average charge than the class ordered below it.

Based on the preliminary recalibration of the DRGs, we are proposing modifications of the surgical hierarchy as set forth below.

At this time, we are proposing to revise the surgical hierarchy for the pre-MDC DRGs and for MDC 5 (Diseases and Disorders of the Circulatory System) as follows:

- In the pre-MDC DRGs, we are proposing to reorder DRG 495 (Lung Transplant) above DRG 512 (Simultaneous Pancreas/Kidney Transplant).
- In MDC 5, we are proposing to reorder DRG 525 (Heart Assist System Implant) above DRGs 104 and 105 (Cardiac Valve and Other Major Cardiothoracic Procedures with and without Cardiac Catheterization, respectively).

11. Refinement of Complications and Comorbidities (CC) List

In the September 1, 1987 final notice (52 FR 33143) concerning changes to the DRG classification system, we modified the GROUPER logic so that certain diagnoses included on the standard list of CCs would not be considered valid CCs in combination with a particular principal diagnosis. Thus, we created the CC Exclusions List. We made these changes for the following reasons: (1) To preclude coding of CCs for closely related conditions; (2) to preclude duplicative coding or inconsistent coding from being treated as CCs; and (3) to ensure that cases are appropriately classified between the complicated and uncomplicated DRGs in a pair. We developed this standard list of diagnoses using physician panels to include those diagnoses that, when present as a secondary condition, would be considered a substantial complication or comorbidity. In previous years, we have made changes to the standard list of CCs, either by adding new CCs or deleting CCs already on the list. At this time, we are not proposing to delete any of the diagnosis codes on the CC list.

In the May 19, 1987 proposed notice (52 FR 18877) concerning changes to the DRG classification system, we explained that the excluded secondary diagnoses were established using the following five principles:

- Chronic and acute manifestations of the same condition should not be considered CCs for one another (as subsequently corrected in the September 1, 1987 final notice (52 FR 33154)).
- Specific and nonspecific (that is, not otherwise specified (NOS)) diagnosis codes for the same condition should not be considered CCs for one another.
- Codes for the same condition that cannot coexist, such as partial/total, unilateral/bilateral, obstructed/unobstructed, and benign/malignant, should not be considered CCs for one another.
- Codes for the same condition in anatomically proximal sites should not be considered CCs for one another.
- Closely related conditions should not be considered CCs for one another.

The creation of the CC Exclusions List was a major project involving hundreds of codes. The FY 1988 revisions were intended only as 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 CCs of another diagnosis. For that reason, and in light of comments and questions on the CC list, we have continued to review the remaining CCs to identify additional exclusions and to remove diagnoses from the master list that have been shown not to meet the definition of a CC. (See the September 30, 1988 final rule (53 FR 38485) for the revision made for the discharges occurring in FY 1989; the September 1, 1989 final rule (54 FR 36552) for the FY 1990 revision; the September 4, 1990 final rule (55 FR 36126) for the FY 1991 revision; the August 30, 1991 final rule (56 FR 43209) for the FY 1992 revision; the September 1, 1992 final rule (57 FR 39753) for the FY 1993 revision; the September 1, 1993 final rule (58 FR 46278) for the FY 1994 revisions; the September 1, 1994 final rule (59 FR 45334) for the FY 1995 revisions; the September 1, 1995 final rule (60 FR 45782) for the FY 1996 revisions; the August 30, 1996 final rule (61 FR 46171) for the FY 1997 revisions; the August 29, 1997 final rule (62 FR 45966) for the FY 1998 revisions; the July 31, 1998 final rule (63 FR 40954) for the FY 1999 revisions, the August 1, 2000 final rule (65 FR 47064) for the FY 2001 revisions; and the August 1, 2001 final rule (66 FR 39851) for the FY 2002 revisions. In the July 30, 1999 final rule (64 FR 41490), we did not modify the CC Exclusions List for FY 2000 because we did not make any changes to the ICD–9–CM codes for FY 2000.

We are proposing a limited revision of the CC Exclusions List to take into account the proposed changes that will be made in the ICD–9–CM diagnosis coding system effective October 1, 2002. (See section II.B.13. of this preamble for a discussion of ICD–9–CM changes.) These proposed changes are being made in accordance with the principles established when we created the CC Exclusions List in 1987.

Tables 6G and 6H in the Addendum to this proposed rule contain the revisions to the CC Exclusions List that would be effective for discharges occurring on or after October 1, 2002. Each table shows the principal diagnoses with changes to the excluded CCs. Each of these principal diagnoses is shown with an asterisk, and the additions or deletions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

CCs that are added to the list are in Table 6G—Additions to the CC Exclusions List. Beginning with discharges on or after October 1, 2002, the indented diagnoses would not be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

CCs that are deleted from the list are in Table 6H—Deletions from the CC Exclusions List. Beginning with discharges on or after October 1, 2002, the indented diagnoses would be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

Copies of the original CC Exclusions List applicable to FY 1988 can be obtained from the National Technical Information Service (NTIS) of the Department of Commerce. It is available in hard copy for $133.00 plus shipping and handling. A request for the FY 1988 CC Exclusions List (which should include the identification accession number (PB) 88–133970) should be made to the following address: National Technical Information Service, United States Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161; or by calling (800) 553–6847.

Users should be aware of the fact that all revisions to the CC Exclusions List (FYs 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, and 2002) and those in Tables 6F and 6G of the final rule for FY 2003 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, 2002. (Note: There was no CC Exclusions List in FY 2001 because we did not make changes to the ICD–9-CM codes for FY 2001.)

Alternatively, the complete documentation of the GROUPER logic, including the current CC Exclusions List, is available from 3M/Health Information Systems (HIS), which, under contract with CMS, is responsible for updating and maintaining the GROUPER program. The current DRG Definitions Manual, Version 19.0, is available for $225.00, which includes $15.00 for shipping and handling. Version 20.0 of this manual, which includes the final FY 2002 DRG changes, is available for $225.00. These manuals may be obtained by writing 3M/HIS at the following address: 100 Barnes Road, Wallingford, CT 06492; or by calling (203) 949–0303. Please specify the revision or revisions requested.

12. Review of Procedure Codes in DRGs 468, 476, and 477

Each year, we review cases assigned to DRG 468 (Extensive O.R. Procedure Unrelated to Principal Diagnosis), DRG 476 (Prostatic O.R. Procedure Unrelated to Principal Diagnosis), and DRG 477 (Nonextensive O.R. Procedure Unrelated to Principal Diagnosis) to determine whether it would be appropriate to change the procedures assigned among these DRGs.

DRGs 468, 476, and 477 are reserved for those cases in which none of the O.R. procedures performed are related to the principal diagnosis. These DRGs are intended to capture atypical cases, that is, those cases not occurring with sufficient frequency to represent a distinct, recognizable clinical group. DRG 476 is assigned to those discharges in which one or more of the following prostatic procedures are performed and are unrelated to the principal diagnosis:

60.0 Incision of prostate
60.12 Open biopsy of prostate
60.15 Biopsy of periprostatic tissue
60.18 Other diagnostic procedures on prostate and periprostatic tissue
60.21 Transurethral prostatectomy
60.29 Other transurethral prostatectomy
60.61 Local excision of lesion of prostate
60.69 Prostatectomy NEC
60.81 Incision of periprostatic tissue
60.82 Excision of periprostatic tissue
60.93 Repair of prostate
60.94 Control of (postoperative) hemorrhage of prostate
60.95 Transurethral balloon dilation of the prostatic urethra
60.99 Other operations on prostate

All remaining O.R. procedures are assigned to DRGs 468 and 477, with DRG 477 assigned to those discharges in which the only procedures performed are nonextensive procedures that are unrelated to the principal diagnosis. The original list of the ICD–9–CM procedure codes for the procedures we consider nonextensive procedures, if performed with an unrelated principal diagnosis, was published in Table 6C in section IV. of the Addendum to the September 30, 1988 final rule (53 FR 38591). As part of the final rules published on September 4, 1990 (55 FR 36135), August 30, 1991 (56 FR 43212), September 1, 1992 (57 FR 23625), September 1, 1993 (58 FR 46279), September 1, 1994 (59 FR 45336), September 1, 1995 (60 FR 45783), August 30, 1996 (61 FR 46173), and August 29, 1997 (62 FR 45981), we moved several other procedures from DRG 468 to 477, and some procedures from DRG 477 to 468. No procedures were moved in FY 1999, as noted in the July 31, 1998 final rule (63 FR 40962); in FY 2000, as noted in the July 30, 1999 final rule (64 FR 41496); in FY 2001, as noted in the August 1, 2000 final rule (65 FR 47064); or in FY 2002, as noted in the August 1, 2001 final rule (66 FR 39852).

a. Moving Procedure Codes From DRGs 468 or 477 to MDCs

We annually conduct a review of procedures producing assignment to

DRG 468 or DRG 477 on the basis of volume, by procedure, to see if it would be appropriate to move procedure codes out of these DRGs into one of the surgical DRGs for the MDC into which the principal diagnosis falls. The data are arrayed two ways for comparison purposes. We look at a frequency count of each major operative procedure code. We also compare procedures across MDCs by volume of procedure codes within each MDC.

We identified those procedures occurring in conjunction with certain principal diagnoses with sufficient frequency to justify adding them to one of the surgical DRGs for the MDC in which the diagnosis falls. Based on this year's review, we did not identify any necessary changes in procedures under DRG 477. Therefore, we are not proposing to move any procedures from DRG 477 to one of the surgical DRGs. However, we have identified a number of procedure codes that should be removed from DRG 468 and put into more clinically coherent DRGs. The proposed assignments of these codes are specified in the charts below.

MOVEMENT OF PROCEDURE CODES FROM DRG 468

Procedure Code	Description	Included in DRG	Description
MDC 6—Diseases and Disorders of the Digestive System			
387	Interruption vena cava	170	Other Digestive System O.R. Procedures with CC.
387	Interruption vena cava	171	Other Digestive System O.R. Procedures without CC.
3950	Angioplasty or atherectomy of noncoronary vessel ..	170	Other Digestive System O.R. Procedures with CC.
3950	Angioplasty or atherectomy of noncoronary vessel ..	171	Other Digestive System O.R. Procedures without CC.
MDC 7—Diseases and Disorders of the Hepatobiliary System and Pancreas			
387	Interruption vena cava	201	Other Hepatobiliary & Pancreas Procedures.
3949	Other revision of vascular procedure	201	Other Hepatobiliary & Pancreas Procedures.
3950	Angioplasty or atherectomy of noncoronary vessel ..	201	Other Hepatobiliary & Pancreas Procedures.
MDC 8—Diseases and Disorders of the Musculoskeletal System and Connective Tissue			
387	Interruption vena cava	233	Other Musculoskeletal System & Connective Tissue O.R. Procedures with CC.
387	Interruption vena cava	234	Other Musculoskeletal System & Connective Tissue O.R. Procedures without CC.
3950	Angioplasty or atherectomy of noncoronary vessel ..	233	Other Musculoskeletal System & Connective Tissue O.R. Procedures with CC.
3950	Angioplasty or atherectomy of noncoronary vessel ..	234	Other Musculoskeletal System & Connective Tissue O.R. Procedures without CC.
MDC 9—Diseases and Disorders of the Skin, Subcutaneous Tissue and Breast			
8344	Other fasciectomy	269	Other Skin, Subcutaneous Tissue & Breast Procedures with CC.
8344	Other fasciectomy	270	Other Skin, Subcutaneous Tissue & Breast Procedures without CC.
8345	Other myectomy	269	Other Skin, Subcutaneous Tissue & Breast Procedures with CC.
8345	Other myectomy	270	Other Skin, Subcutaneous Tissue & Breast Procedures without CC.
8382	Muscle or fascia graft	269	Other Skin, Subcutaneous Tissue & Breast Procedures with CC.
8382	Muscle or fascia graft	270	Other Skin, Subcutaneous Tissue & Breast Procedures without CC.
MDC 10—Endocrine, Nutritional and Metabolic Diseases and Disorders			
387	Interruption vena cava	292	Other Endocrine, Nutritional, & Metabolic O.R. Procedures with CC.
387	Interruption vena cava	293	Other Endocrine, Nutritional, & Metabolic O.R. Procedures without CC.
5459	Other Lysis of Peritoneal adhesions	292	Other Endocrine, Nutritional, & Metabolic O.R. Procedures with CC.
5459	Other Lysis of Peritoneal adhesions	293	Other Endocrine, Nutritional, & Metabolic O.R. Procedures without CC.
MC 11—Diseases and Disorders of the Kidney and Urinary Tract			
0492	Implantation or replacement of peripheral neurostimulator.	315	Other Kidney & Urinary Tract O.R. Procedures.
3821	Blood vessel biopsy	315	Other Kidney & Urinary Tract O.R. Procedures.
387	Interruption vena cava	315	Other Kidney & Urinary Tract O.R. Procedures.
3949	Other revision of vascular procedure	315	Other Kidney & Urinary Tract O.R. Procedures.

MOVEMENT OF PROCEDURE CODES FROM DRG 468—Continued

Procedure Code	Description	Included in DRG	Description
MDC 12—Diseases and Disorders Male Reproductive System			
387	Interruption vena cava	344	Other Male Reproductive System O.R. Procedures for Malignancy.
387	Interruption vena cava	345	Other Male Reproductive System O.R. Procedures Except for Malignancy.
8622	Excisional debridement of wound, infection, or burn	344	Other Male Reproductive System O.R. Procedures for Malignancy.
8622	Excisional debridement of wound, infection, or burn	345	Other Male Reproductive System O.R. Procedures Except for Malignancy.
MDC 13—Diseases and Disorders of the Female Reproductive System			
387	Interruption vena cava	365	Other Female Reproductive System O.R. Procedures.
MDC 16—Diseases and Disorders of the Blood, Blood Forming Organs, Immunological Disorders			
387	Interruption vena cava	394	Other O.R. Procedures of the Blood & Blood Forming Organs.

b. Reassignment of Procedures Among DRGs 468, 476, and 477

We also annually review the list of ICD–9–CM procedures that, when in combination with their principal diagnosis code, result in assignment to DRGs 468, 476, and 477, to ascertain if any of those procedures should be reassigned from one of these DRGs to another of these DRGs based on average charges and length of stay. We look at the data for trends such as shifts in treatment practice or reporting practice that would make the resulting DRG assignment illogical. If we find these shifts, we would propose moving cases to keep the DRGs clinically similar or to provide payment for the cases in a similar manner. Generally, we move only those procedures for which we have an adequate number of discharges to analyze the data. Based on our review this year, we are not proposing to move any procedures from DRG 468 to DRGs 476 or 477, from DRG 476 to DRGs 468 or 477, or from DRG 477 to DRGs 468 or 476.

c. Adding Diagnosis Codes to MDCs

Based on our review this year, we are not proposing to add any diagnosis codes to MDCs.

13. Changes to the ICD–9–CM Coding System

As described in section II.B.1. of this preamble, the ICD–9–CM is a coding system that is used for the reporting of diagnoses and procedures performed on a patient. In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee, co-chaired by the National Center for Health Statistics (NCHS) and CMS, charged with maintaining and updating the ICD–9–CM system. The Committee is jointly responsible for approving coding changes, and developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in the *Tabular List* and *Alphabetic Index for Diseases*, while CMS has lead responsibility for the ICD–9–CM procedure codes included in the *Tabular List* and *Alphabetic Index for Procedures*.

The Committee encourages participation in the above process by health-related organizations. In this regard, the Committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for representatives of recognized organizations in the coding field, such as the American Health Information Management Association (AHIMA) (formerly American Medical Record Association (AMRA)), the American Hospital Association (AHA), and various physician specialty groups as well as physicians, medical record administrators, health information management professionals, and other members of the public, to contribute ideas on coding matters. After considering the opinions expressed at the public meetings and in writing, the Committee formulates recommendations, which then must be approved by the agencies.

The Committee presented proposals for coding changes for implementation in FY 2003 at public meetings held on May 17 and 18, 2001, and November 1 and 2, 2001, and finalized the coding changes after consideration of comments received at the meetings and in writing by January 8, 2002.

Copies of the Coordination and Maintenance Committee minutes of the 2001 meetings can be obtained from the CMS home page at: *http://www.cms.gov/medicare/icd9cm.htm*. Paper copies of these minutes are no longer available and the mailing list has been discontinued. We encourage commenters to address suggestions on coding issues involving diagnosis codes to: Donna Pickett, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; NCHS; Room 1100; 6525 Belcrest Road; Hyattsville, MD 20782. Comments may be sent by E-mail to: *dfp4@cdc.gov*.

Questions and comments concerning the procedure codes should be addressed to: Patricia E. Brooks, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; CMS, Center for Medicare Management, Purchasing Policy Group, Division of Acute Care; C4–08–06; 7500 Security Boulevard; Baltimore, MD 21244–1850. Comments may be sent by E-mail to: *pbrooks@cms.hhs.gov*.

The ICD–9–CM code changes that have been approved will become effective October 1, 2002. The new ICD–

9–CM codes are listed, along with their DRG classifications, in Tables 6A and 6B (New Diagnosis Codes and New Procedure Codes, respectively) in the Addendum to this proposed rule. As we stated above, the code numbers and their titles were presented for public comment at the ICD–9–CM Coordination and Maintenance Committee meetings. Both oral and written comments were considered before the codes were approved. In this proposed rule, we are only soliciting comments on the proposed DRG classification of these new codes.

Further, the Committee has approved the expansion of certain ICD–9–CM codes to require an additional digit for valid code assignment. Diagnosis codes that have been replaced by expanded codes or other codes or have been deleted are in Table 6C (Invalid Diagnosis Codes). These invalid diagnosis codes will not be recognized by the GROUPER beginning with discharges occurring on or after October 1, 2002. For codes that have been replaced by new or expanded codes, the corresponding new or expanded diagnosis codes are included in Table 6A (New Diagnosis Codes). New procedure codes are shown in Table 6B. Table 6C contains invalid diagnosis codes. There are no invalid procedure codes for FY 2002 (Table 6D). Revisions to diagnosis code titles are in Table 6E (Revised Diagnosis Code Titles), which also includes the DRG assignments for these revised codes. Revisions to procedure code titles are in Table 6F (Revised Procedure Codes Titles).

14. Other Issues

In addition to the specific topics discussed in section II.B.1. through 13. of this proposed rule, we examined a number of other DRG-related issues. Below is a summary of the issues that were addressed. However, we are not proposing any changes at this time.

a. Intestinal Transplantation

We examined our data to determine whether it is appropriate to propose a new intestinal transplant DRG. There were nine intestinal transplantation cases reported by two facilities. Two of the cases involved a liver transplant during the same admission and, therefore, would be assigned to DRG 480 (Liver Transplant). We do not believe that this is a sufficient sample size to warrant the creation of a new DRG.

b. Myasthenia Gravis

Myasthenia Gravis is an autoimmune disease manifested by a syndrome of fatigue and exhaustion of the muscles that is aggravated by activity and relieved by rest. The weakness of the muscles can range from very mild to life-threatening.

This disease is classified to ICD–9–CM diagnosis code 358.0 and is assigned to DRG 12 (Degenerative Nervous System Disorders). Myasthenia Gravis in crisis patients is being treated with extensive plasmapheresis. We received a request to analyze the charges associated with Myasthenia Gravis in crisis patients receiving plasmapheresis to determine whether DRG 12 is an equitable DRG assignment for these cases. We are currently unable to differentiate between the mild and severe forms of this disease because all types are classified to code 358.0. Therefore, we have requested the NCHS to create a new diagnosis code for Myasthenia Gravis in crisis so that we can uniquely identify these cases to ensure the DRG assignment is appropriate.

c. Cardiac Mapping and Ablation

In the August 1, 2001 final rule (66 FR 39840), in response to a comment received, we agreed to continue to evaluate DRGs 516 (Percutaneous Cardiovascular Procedure with Acute Myocardial Infarction (AMI)), 517 (Percutaneous Cardiovascular Procedure with Coronary Artery Stent without AMI), and 518 (Percutaneous Cardiovascular Procedure without Coronary Artery Stent or AMI) in MDC 5. We reviewed code 37.26 (Cardiac electrophysiologic stimulation and recording studies), code 37.27 (Cardiac mapping), and code 37.34 (Catheter ablation of lesion or tissues of heart). The commenter had recommended that CMS either create a separate DRG for cardiac mapping and ablation procedures, or assign codes 37.27 and 37.34 to DRG 516 after retitling the DRG. We have reviewed FY 2001 MedPAR data on these specific codes. Over 97 percent of cases with these codes were assigned to DRG 518 and had average charges of $1,741 below the average for all cases in the DRG. Therefore, the data do not support making any DRG changes for these procedure codes.

d. Aortic Endograft

In the August 1, 2001 final rule (66 FR 39841), we responded to a comment concerning the placement of aortic endografts in DRG 110 (Major Cardiovascular Procedures with CC) and DRG 111 (Major Cardiovascular Procedures without CC). The commenter noted that the cost of the device alone is greater than the entire payment for DRG 111 and recommended that these cases be assigned specifically to DRG 110. Our response at that time was that DRGs 110 and 111 are paired DRGs, differing only in the presence or absence of a CC.

We reviewed the MedPAR data again for FY 2001 using the following criteria: all cases were either in DRG 110 or 111, had a principal diagnosis of 441.4 (Abdominal aneurysm without mention of rupture), and included procedure code 39.71 (Endovascular implantation of graft in abdominal aorta). Our conclusion is that the majority of aneurysm cases are already grouped to DRG 110, where they are appropriately compensated. Therefore, we are not proposing to assign cases without CCs from DRG 111 to DRG 110. We reiterate that hospitals should code their records completely and record and submit all relevant diagnosis and procedure codes that have a bearing on the current admission (in particular, any complications or comorbidities associated with a case).

e. Platelet Inhibitors

In the August 1, 2002 final rule (66 FR 39840), we addressed a commenter's concern that modifications to MDC 5 involving percutaneous cardiovascular procedures would fail to account for the use of GP IIB–IIIA platelet inhibiting drugs for cases with acute coronary syndromes. GROUPER does not recognize procedure code 99.20 (Injection or infusion of platelet inhibitor) as a procedure. Therefore, its presence on a claim does not affect DRG assignment. We agreed to continue to evaluate this issue.

We reviewed cases in the FY 2001 MedPAR file for DRG 121 (Circulatory Disorders with AMI and Major Complication, Discharged Alive), DRG 122 (Circulatory Disorders with AMI without Major Complication, Discharged Alive) and DRGs 516, 517, and 518. We looked at all cases in these DRGs containing procedure code 99.20 by total number of procedures and by average charges. There were a total of 73,480 cases where platelet inhibitors were administered, with 70,216 of these cases in DRGs 516, 517, and 518. The average charges for platelet inhibitor cases in these three DRGs are actually slightly below the average for all cases in the respective DRGs. Therefore, we believe these cases are appropriately placed in the current DRGs, and are not proposing any changes to the assignment of these procedure codes.

f. Drug-Eluting Stents

The drug-eluting stents technology has been developed to combat the problem of restenosis of previously treated blood vessels. The drug is placed onto the stent with a special polymer

and slowly released into the vessel wall tissue over a period of 30 to 45 days, and is intended to prevent the build-up of scar tissue that can narrow the reopened artery.

In Table 6B of the Addendum to this proposed rule, we list a new procedure code 36.07 (Insertion of drug-eluting coronary artery stents(s)) that will be effective for use October 1, 2002. We also are proposing to add code 00.55 (Insertion of drug-eluting noncoronary artery stent).

A manufacturer of this technology requested that code 36.07 be assigned to DRG 516 (Percutaneous Cardiovascular Procedure with Acute Myocardial Infarction (AMI)) even without the presence of AMI. The manufacturer asserted that this technology is significantly more costly than other technologies currently assigned to DRG 517 (Percutaneous Cardiovascular Procedure with Coronary Artery Stent without AMI) (average charges of $29,189 compared to average charges of $22,998), and warrants this DRG assignment.

In addition, the manufacturer argued that this technology should be given preferential treatment because it will fundamentally change the treatment of multivessel disease. Specifically, the manufacturer stated that due to the absence of restenosis in patients treated with the drug-eluting stents based on the preliminary trial results, bypass surgery may no longer be the preferred treatment for many patients.[1] The manufacturer believes lower payments due to the decline in Medicare bypass surgeries will offset the higher payments associated with assigning all cases receiving the drug-eluting stent to DRG 516.

Currently, this technology has not been approved for use by the FDA. If the technology is approved by the FDA and further evidence is presented to us regarding the clinical efficacy and the impact that this technology has on the treatment of multivessel disease, we may reassign this code to another DRG or reassess the construct of all affected DRGs. We also are specifically soliciting comments on our proposal to treat the new codes cited above consistent with the current DRG assignment for stents.

g. Cardiac Resynchronization Therapy

Cardiac resynchronization therapy for heart failure provides strategic electrical stimulation to the right atrium, right ventricle, and left ventricle, in order to coordinate ventricular contractions and improve cardiac output. This therapy includes cardiac resynchronization therapy pacemakers (CRT–P) and cardiac resynchronization therapy defibrillators (CRT–D). While similar to conventional pacemakers and internal cardioverter-defibrillators, cardiac resynchronization therapy is different because it requires the implantation of a special electrode within the coronary vein, so that it can be attached to the exterior wall of the left ventricle.

Currently, defibrillator cases are assigned to either DRG 514 (Cardiac Defibrillator Implant with Cardiac Catheterization) or DRG 515 (Cardiac Defibrillator Implant without Cardiac Catheterization). DRG 514 has a higher relative weight than DRG 515. We received a recommendation that we assign implantation of CRT–D (code 00.51, effective October 1, 2002) to either DRG 104 (Cardiac Valve and Other Major Cardiothoracic Procedure with Cardiac Catheterization) or DRG 514 (Cardiac Defibrillator Implant With Cardiac Catheterization). It is argued that the change should be made because the current DRG structure for cardioverter-defibrillator implants does not recognize the significant amount of additional surgical resources required for cases involving patients with heart failure.

The recommendation supported assigning new code 00.50 (Implantation of cardiac resynchronization pacemaker without mention of defibrillation, total system [CRT–P]) to DRG 115 (Permanent Cardiac Pacemaker Implantation With AMI, Heart Failure, or Shock, or AICD Lead or Generator Procedure). Currently, pacemaker implantation procedures are assigned to either DRG 115 (Permanent Cardiac Pacemaker Implant with AMI, Heart Failure, or Stroke, or AICD Lead or Generator Procedure) or DRG 116 (Other Permanent Cardiac Pacemaker Implant). DRG 115 has the higher relative weight. Because DRG 115 recognizes patients with heart failure, the manufacturer believed CRT–P cases would be appropriately classified to DRG 115.

Our proposed DRG assignment for code 00.51 would be to DRG 514 or 515. Our proposed DRG assignment for code 00.50 would be to DRG 115 and 116. However, we are soliciting comments on these proposed DRG assignments and will carefully consider any relevant evidence about the clinical efficacy and costs of this technology.

h. Hip and Knee Revisions

We received a request to consider assigning hip and knee revisions (codes 81.53 and 81.55) out of DRG 209 (Major Joint and Limb Reattachment Procedures of Lower Extremity) because these revisions are significantly more resource intensive and costly than initial insertions of these joints.

We examined claims data and concluded that, while the charges for the hip and knee revision cases were somewhat higher than other cases within DRG 209, they do not support the establishment of a separate DRG.

i. Multiple Level Spinal Fusions

We received a comment suggesting that we create new spinal fusion DRGs that differentiate by the number of discs that are fused in a spinal fusion. The commenter indicated that the existing ICD–9–CM codes do not identify the number of discs that are fused. Codes were modified for FY 2002 to clearly differentiate between fusions and refusions, and new codes were created for the insertion of interbody spinal fusion device (84.51), 360 degree spinal fusion, single incision approach (81.61), and the insertion of recombinant bone morphogenetic protein (84.52) (66 FR 39841 through 39844).

ICD–9–CM codes have not historically been used to differentiate among cases by the number of repairs or manipulations performed in the course of a single procedure. However, we will explore the possibility of creating codes to differentiate cases by the number of discs fused during a spinal fusion procedure at the scheduled April 18 and 19, 2002 meeting of the ICD–9–CM Coordination and Maintenance Committee.

We also note that DRGs generally do not segregate cases based on the number of repairs or devices that occur in the course of a single procedure. For instance, DRGs are not split based on the number of vessels bypassed in cardiac surgery, nor are they split based on the number of cardiac valves repaired. Therefore, we are not proposing DRG changes for multiple level spinal fusions in this proposed rule.

j. Open Wound of the Hand

We received a recommendation that we move code 882.0 (Open Wound of Hand Except Finger(s) Alone Without Mention of Complication) from its current location in MDC 9 (Diseases and Disorders of the Skin, Subcutaneous Tissue and Breast) under DRGs 280 through 282 (Trauma to the Skin, Subcutaneous Tissue and Breast Age >17 with CC, Age >17 without CC, and Age 0–17, respectively) into MDC 21 (Injuries, Poisonings and Toxic Effects of Drugs) under DRGs 444 through 446 (Traumatic Injury Age >17 with CC, Age

[1] "Comparison of Coronary-Artery Bypass Surgery and Stenting for the Treatment of Multivessel Disease," Serruys, P. W., Unger, F., et. al., *The New England Journal of Medicine*, April 12, 2001, Vol. 344, No. 15, p. 1117.

>17 without CC, and Age 0–17, respectively).

In examining our data, we found relatively few cases with code 882.0. These cases had charges that were less than the average charges for DRGs to which they are currently assigned. The data do not support a DRG change. Our medical consultants also believe that the cases are appropriately assigned to DRGs 280 through 282.

k. Cavernous Nerve Stimulation

As discussed in August 1, 2001 final rule (66 FR 39845), we reviewed data in MDC 12 (Diseases and Disorders of the Male Reproductive System). We looked specifically for code 89.58 (Plethysmogram) in DRG 334 (Major Male Pelvic Procedures with CC), and DRG 335 (Major Male Pelvic Procedures without CC).

Our data show that very few (six) of these procedures were reported on FY 2001 claims. It is not clear whether the small number reflects the fact that the procedure is not being performed, the ICD–9–CM code is not recorded, or the code is recorded but it is not in the top six procedures being performed. However, in all six cases where this procedure was performed, it occurred in conjunction with radical prostatectomy, so we are confident that these cases are consistent with the DRGs to which they have been grouped. Therefore, we are not proposing any DRG assignment changes to code 89.58 or DRGs 334 and 335.

C. Recalibration of DRG Weights

We are proposing to use the same basic methodology for the FY 2003 recalibration as we did for FY 2002 (August 1, 2001 final rule (66 FR 39828)). That is, we would recalibrate the weights based on charge data for Medicare discharges. However, we are proposing to use the most current charge information available, the FY 2001 MedPAR file. (For the FY 2002 recalibration, we used the FY 2000 MedPAR file.) The MedPAR file is based on fully coded diagnostic and procedure data for all Medicare inpatient hospital bills.

FY 2001 MedPAR data include discharges occurring between October 1, 2000 and September 30, 2001, based on bills received by CMS through December 31, 2001, from all hospitals subject to the acute care hospital inpatient prospective payment system and short-term acute care hospitals in waiver States. The FY 2001 MedPAR file includes data for approximately 11,420,001 Medicare discharges. The data include hospitals that subsequently became CAHs, although no data are included for hospitals after the point they are certified as CAHs. Section IX. of this preamble contains information about how to obtain the MedPAR data.

The proposed methodology used to calculate the DRG relative weights from the FY 2001 MedPAR file is as follows:

- To the extent possible, all the claims were regrouped using the DRG classification revisions discussed in section II.B. of this preamble.
- Charges were standardized to remove the effects of differences in area wage levels, indirect medical education and disproportionate share payments, and, for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment. (See section IX.A.15. of this proposed rule for information on the availability of the prospective payment system standardizing file.)
- 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. A transfer case is counted as a fraction of a case based on the ratio of its transfer payment under the per diem payment methodology to the full DRG payment for nontransfer cases. That is, transfer cases paid under the transfer methodology equal to half of what the case would receive as a nontransfer would be counted as 0.5 of a total case.
- We then eliminated statistical outliers, using the same criteria used in computing the current weights. That is, all cases that are outside of 3.0 standard deviations from the mean of the log distribution of both the charges per case and the charges per day for each DRG are 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 relative weight.
- We established the relative weight for heart and heart-lung, liver, and lung transplants (DRGs 103, 480, and 495) in a manner consistent with the methodology for all other DRGs except that the transplant cases that were used to establish the weights were limited to those Medicare-approved heart, heart-lung, liver, and lung transplant centers that have cases in the FY 1999 MedPAR file. (Medicare coverage for heart, heart-lung, liver, and lung transplants is limited to those facilities that have received approval from CMS as transplant centers.)
- Acquisition costs for kidney, heart, heart-lung, liver, lung, and pancreas transplants continue to be paid on a reasonable cost basis. Unlike other excluded costs, the acquisition costs are concentrated in specific DRGs: DRG 302 (Kidney Transplant); DRG 103 (Heart Transplant); DRG 480 (Liver Transplant); DRG 495 (Lung Transplant); and DRGs 512 (Simultaneous Pancreas/Kidney Transplant) and 513 (Pancreas Transplant). Because these acquisition costs are paid separately from the prospective payment rate, it is necessary to make an adjustment to exclude them from the relative weights for these DRGs. Therefore, we subtracted the acquisition charges from the total charges on each transplant bill that showed acquisition charges before computing the average charge for the DRG and before eliminating statistical outliers.

When we recalibrated the DRG weights for previous years, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight. We used that same case threshold in recalibrating the proposed DRG weights for FY 2003. Using the FY 2001 MedPAR data set, there are 41 DRGs that contain fewer than 10 cases. We computed the weights for these 41 low-volume DRGs by adjusting the FY 2002 weights of these DRGs by the percentage change in the average weight of the cases in the other DRGs.

The proposed new weights are normalized by an adjustment factor (1.43430) so that the average case weight after recalibration is equal to the average case weight before recalibration. This adjustment is intended to ensure that recalibration by itself neither increases nor decreases total payments under the prospective payment system.

Section 1886(d)(4)(C)(iii) of the Act requires that, beginning with FY 1991, reclassification and recalibration changes be made in a manner that assures that the aggregate payments are neither greater than nor less than the aggregate payments that would have been made without the changes. Although normalization is intended to achieve this effect, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals because payments to hospitals are affected by factors other than average case weight. Therefore, as we have done in past years and as discussed in section II.A.4.a. of the Addendum to this proposed rule, we are proposing to make a budget neutrality adjustment to ensure that the requirement of section 1886(d)(4)(C)(iii) of the Act is met.

D. Proposed Add-On Payments for New Services and Technologies

1. Background

Section 533(b) of Public Law 106–554 amended section 1886(d)(5) of the Act to add subparagraphs (K) and (L) to establish a process of identifying and ensuring adequate payment for new medical services and technologies under Medicare. Section 1886(d)(5)(K)(ii)(I) of the Act specifies that the process must apply to a new medical service or technology if, "based on the estimated costs incurred with respect to discharges involving such service or technology, the DRG prospective payment rate otherwise applicable to such discharges . . . is inadequate." Section 1886(d)(5)(K)(vi) of the Act specifies that a medical service or technology will be considered "new" if it meets criteria established by the Secretary (after notice and opportunity for public comment).

In the September 7, 2001 final rule (66 FR 46902), we established that a new technology would be an appropriate candidate for an additional payment when it represents an advance in medical technology that substantially improves, relative to technologies previously available, the diagnosis or treatment of Medicare beneficiaries (§ 412.87(b)(1)).

We also established that new technologies meeting this clinical definition must be demonstrated to be inadequately paid otherwise under the DRG system to receive special payment treatment (§ 412.87(b)(3)). To assess whether technologies would be inadequately paid under the DRGs, we established this threshold at one standard deviation beyond the geometric mean standardized charge for all cases in the DRGs to which the new technology is assigned (or the case-weighted average of all relevant DRGs, if the new technology occurs in many different DRGs) (§ 412.87(b)(3)).

Table 10 in the Addendum to this proposed rule lists the proposed qualifying criteria by DRG based on the discharge data used to calculate the proposed FY 2003 DRG weights. The thresholds published in the final rule will be used to evaluate applicants for new technology add-on payments during FY 2004 (beginning October 1, 2003). Similar to the timetable for applying for new technology add-on payments during FY 2003, we are proposing that applicants for FY 2004 must submit a significant sample of the data no later than early October 2002. Subsequently, we are proposing that a complete database must be submitted no later than mid-December 2002.

In addition to the clinical and cost criteria, we established that, in order to qualify for the special payment treatment, a specific technology must be "new" under the requirements of § 412.87(b)(2) of our regulations. The statutory provision contemplated the special payment treatment for new technologies until such time as data are available to reflect the cost of the technology in the DRG weights through recalibration (no less than 2 years and no more than 3 years). There is a lag of 2 to 3 years from the point a new technology is first introduced on the market and when data reflecting the use of the technology are used to calculate the DRG weights. For example, data from discharges occurring during FY 2001 are used to calculate the proposed FY 2003 DRG weights in this proposed rule.

Technology may be considered "new" for purposes of this provision within 2 or 3 years after the point at which data begin to become available reflecting the ICD–9–CM code assigned to the technology. After CMS has recalibrated the DRGs to reflect the costs of an otherwise new technology, the special add-on payment for new technology will cease (§ 412.87(b)(2)). For example, an approved new technology that received FDA approval in October 2001 would be eligible to receive add-on payments as a new technology until FY 2004 (discharges occurring before October 1, 2003), when data reflecting the costs of the technology would be used to recalibrate the DRG weights. Because the FY 2004 DRG weights will be calculated using FY 2002 MedPAR data, the costs of such a new technology would be reflected in the FY 2004 DRG weights.

For technologies that do not qualify for special payments under § 412.87, we will continue our past practice of evaluating whether existing procedures are appropriately classified to a DRG. To the extent the introduction of a new code for existing technology helps to better identify higher costs associated with a procedure, we would work to expedite the appropriate assignment of that code (for example, using more recent MedPAR data).

In the September 7, 2001 final rule, we established that Medicare would provide higher payments for cases with higher costs involving identified new technologies, while preserving some of the incentives under the average-based payment system. The payment mechanism is based on the cost to hospitals for the new technology. Under § 412.88, Medicare would pay a marginal cost factor of 50 percent for the costs of the new technology in excess of the full DRG payment. If the costs of a new technology case exceed the DRG payment by more than the estimated costs of the new technology, Medicare payment would be limited to the DRG payment plus 50 percent of the estimated costs of the new technology.

The report language accompanying section 533 of Public Law 106–554 indicated Congressional intent that the Secretary implement the new mechanism on a budget neutral basis (H.R. Conf. Rep. No. 106–1033, 106th Cong., 2d Sess. at 897 (2000)). Section 1886(d)(4)(C)(iii) of the Act requires that the adjustments to annual DRG classifications and relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. Therefore, we account for projected payments under this provision for new technology during the upcoming fiscal year at the same time we estimate the payment effect of changes to the DRG classifications and recalibration. The impact of additional payments under this provision would then be included in the budget neutrality factor, which is applied to the standardized amounts.

Because any additional payments directed toward new technology under this provision would be offset to ensure budget neutrality, it is important to carefully consider the extent of this provision and ensure that only technologies representing substantial advances are recognized for additional payments. In that regard, we indicated that we will discuss in the annual proposed and final rules those technologies that were considered under this provision; our determination as to whether a particular new technology meets our criteria for a new technology; whether it is determined further that cases involving the new technology would be inadequately paid under the existing DRG payment; and any assumptions that went into the budget neutrality calculations related to additional payments for that new technology, including the expected number, distribution, and costs of these cases.

To appropriately balance Congress' intent to increase Medicare's payments for eligible new technologies with concern that the total size of those payments not result in significantly reduced payments for other cases, we set a target limit for estimated special payments for new technology under the provisions of section 533(b) of Public Law 106–554 at 1.0 percent of estimated total operating prospective payments.

If invoked, the target limit would reduce the level of payments for approved technologies across the board,

to ensure estimated payments do not exceed the limit. Using this approach, all cases involving approved new technologies that would otherwise receive additional payments would still receive special payments, albeit at a reduced amount. Although the marginal payment rate for individual technologies will be reduced, this would be offset by large overall payments to hospitals for new technologies under this provision.

2. Applicants for FY 2003

We received five applications for new technologies to be designated eligible for inpatient add-on payments under the policy we implemented in the September 7, 2001 final rule. One of these applications was subsequently withdrawn. The remaining four applicants are discussed below.

a. Drotrecogin Alfa (Activated)—Xigris ™

Eli Lilly and Company (Lilly) developed drotrecogin alfa (activated), trade name Xigris™, as a new technology and submitted an application to us for consideration under the new technology add-on provision. Xigris™ is used to treat patients with severe sepsis.

According to the application—

"Approximately 750,000 cases of sepsis associated with acute organ dysfunction (severe sepsis) occur annually in the United States. The mortality rates associated with severe sepsis in the United States range from 28 percent to 50 percent and have remained essentially unchanged for several decades. Each year, 215,000 deaths are associated with severe sepsis; deaths after acute myocardial infarction occur at approximately an equal rate."

Xigris™ is a biotechnology product that is a recombinant version of naturally occurring Activated Protein C (APC). APC is needed to ensure the control of inflammation and clotting in the blood vessels. In patients with severe sepsis, Protein C cannot be converted in sufficient quantities to the activated form. It appears that Xigris™ has the ability to bring blood clotting and inflammation back into balance and restore blood flow to the organs.

In support of its application, Lilly submitted data from the Phase III Protein C Worldwide Evaluation in Severe Sepsis (PROWESS) trial. According to Lilly, this was "an international, multicenter, randomized, double-blind, placebo-controlled trial in which 1,690 patients with severe sepsis received either placebo (n = 840) or drotrecogin alfa (activated) (n = 850)." The results of the trial were published in an article in the March 8, 2001 edition of *The New England Journal of Medicine* (Bernard, G. R., Vincent, J. L., et. al., "Efficacy and Safety of Recombinant Human Activated Protein C for Severe Sepsis," Vol. 344, No, 10, p. 699).

A 6.1 percent reduction in mortality was reported. This conclusion was based on a measure of 28-day all-cause mortality. However, at 28 days, over 10 percent of the study participants were still hospitalized. Whether these patients subsequently went on to recover or died was not reported.

Because the reduction in mortality was the result of a treatment effect in a relatively small number of patients and mortality was looked at only 28 days after treatment, we plan to review unpublished data on all-cause mortality at the time of hospital discharge for all patients enrolled in the study using an intent-to-treat analysis. We have asked the trial sponsor to provide CMS with these unpublished data and the analyses performed in the original report, including confidence intervals and Kaplan-Meier curve with log-rank statistics, for death from any cause assessed at the time of hospital discharge. A small increase in the number of deaths among treated patients still hospitalized at 28 days could nullify the survival advantage attributed to the use of Xigris™.

The study had a number of other important methodological limitations that also merit further consideration. Therefore, we are unable to conclude, based on the published data, that Xigris™ represents an advance that substantially improves, relative to technology previously available, treatment for Medicare beneficiaries. However, we are continuing our assessment and will announce our final determination in the final rule. If we subsequently determine that Xigris™ represents a substantial improvement, payment would likely be limited to a subpopulation of patients with severe sepsis, consistent with the FDA labeling and possible other restrictions.

Detailed bills were available for 604 of 705 patients in the United States in the PROWESS clinical trial (303 placebo patients and 301 treatment patients). In all, 83 hospitals submitted detailed bills. These data included an indicator whether the patient received the treatment or a placebo, total charges and standardized charges for the stay as well as for the biological, and the patients' APACHE II scores (an assessment of the risk of mortality based on *a*cute *p*hysiology *a*nd *c*hronic *h*ealth *e*valuation). The FDA's approval letter (issued November 21, 2001) stated "drotrecogin alfa (activated) is indicated for the reduction of mortality in adult patients with severe sepsis (sepsis associated with acute organ dysfunction) who have a high risk of death (e.g., as determined by APACHE II)."

Of the 604 cases with detailed billing data, 274 were patients age 65 or older. The average total charge for these 274 cases, including the average standardized charge for the biological, was $86,184 (adjusted for inflation using the applicable hospital market baskets, as patients were enrolled in the trial from July 1998 through June 2000). The inflated average standardized charge of the biological only for these cases was $15,562.

Lilly also submitted detailed ICD–9–CM diagnosis and procedure codes for a subset of 157 of the 604 U.S. patients with billing data from the PROWESS trial. These data were not requested as part of the trial, but were sent in separately. Of these 157 patients, 82 were over 65 years of age. These 82 patients grouped into 23 DRGs. Approximately 75 percent of these 82 cases were in 5 DRGs: 29 percent were in DRG 475 (Respiratory System Diagnosis with Ventilator Support); 17 percent were in DRG 483 (Tracheostomy Except for Face, Mouth, and Neck Diagnoses); 15 percent were in DRG 416 (Septicemia Age >17); 7 percent were in DRG 415 (OR Procedure for Infectious and Parasitic Diseases); and 5 percent were in DRG 148 (Major Small and Large Bowel Procedures With CC).

Using the methodology described in the September 7, 2001 final rule (66 FR 46918), we calculated a case-weighted threshold based on the distribution of these 82 cases across 23 DRGs. In order to qualify for new technology payments based on these DRGs, the threshold would be $82,882 (compared to the average standardized charge of $86,184 noted above).

In the September 7, 2001 final rule, we stated that the data submitted must be of a sufficient sample size to demonstrate a significant likelihood that the sample mean approximates the true mean across all cases likely to receive the new technology. Using a standard statistical methodology for determining the needed (random) sample size based on the standard deviations of the DRGs identified in the trial as likely to include cases receiving Xigris ™, we have determined that a random sample of 274 cases can be reasonably expected to produce an estimate within $3,500 of the true mean.[1] Of course, the data

[1] The formula is $n = 4\sigma^2/\beta^2$, where σ is the standard deviation of the population, and β is the

submitted do not represent a random sample.

The 274 case sample was for all U.S. patients over age 65 included in the PROWESS trial. In the September 7, 2001 final rule, we indicated our preference for using Medicare cases identifiable in our MedPAR database, although data from a trial without matching MedPAR data could be considered. We also indicated our intention to independently verify the data submitted.

According to Lilly, the patient consent agreements for the PROWESS trial did not provide for the collection and submission of data to CMS. Therefore, we have been unable to identify matching cases in our MedPAR database, or independently verify the data. Due to the passage of Public Law 106–554 in December 2000 and the publication of the final rule in September 2001, it is understandable that our data requirements in order to analyze applicants for new technology add-on payments were not accommodated in the design of the PROWESS trial. We will continue to work with Lilly to independently verify the data in the event it is determined that Xigris™ does represent a substantial clinical improvement.

In particular, we note that, even without the biological charges, the standardized mean charge for the cases submitted for analysis is well above the standardized case-weighted DRG mean ($70,623 for the PROWESS trial cases compared to $54,058 for all cases in the relevant DRGs). We are analyzing our MedPAR data to develop a cohort group of patients to assess the validity of the charges reported for the patients in the PROWESS trial and will report the result of our analysis in the final rule. We solicit comments on this and other approaches to verifying these data.

Cases where Xigris™ is administered will be identified by use of the new ICD–9–CM procedure code 00.11 (Infusion of drotrecogin alfa (activated)). According to Lilly, "(t)he net wholesale price for drotrecogin alfa (activated) is $210 for a 5-milligram vial and $840 for a 20-milligram vial. The average cost for a one-time 96-hour course of therapy for an average adult patient is $6,800 (24 ug/kg/hr for 96 hours for a 70 kg person)." Because code 00.11 does not identify the actual amount of the drug administered per patient, any additional payment would be based on the average cost per patient of $6,800. If this technology were to be approved for add-on payment under § 412.88, cases involving the administration of Xigris™ would be eligible for additional payments of up to $3,400 (50 percent of the average cost of the drug).

For purposes of budget neutrality, we need to estimate the additional payments that would be made under this provision during FY 2003. Lilly has estimated that, initially, 25,000 Medicare patients would receive drotrecogin alfa (activated). If the maximum $3,400 add-on payment is made for all 25,000 of these patients, the total amount that would be paid for these cases would be an additional $85 million. However, comparing the total standardized charges for the 274 patients age 65 or older, 56 percent had average standardized charges below the weighted average standardized charges for the 23 DRGs into which these cases were categorized. Therefore, assuming the costs for these cases would be below the payment received, these 56 percent of cases would not receive any additional payment. Therefore, for purposes of budget neutrality, we estimate the total payments likely to be made under this provision during FY 2003 for cases involving the administration of drotrecogin alfa (activated) would be $37.4 million (44 percent of $85 million).

b. Bone Morphogenetic Proteins (BMPs) for Spinal Fusions

BMPs have been isolated and shown to have the capacity to induce new bone formation. Using recombinant techniques, some BMPs (referred to as rhBMPs) can be produced in large quantities. This has cleared the way for their potential use in a variety of clinical applications such as in delayed unions and nonunions of fractured bones and spinal fusions. One such product, rhBMP–2, is developed for use instead of a bone graft with spinal fusions.

An application was submitted by Medtronic Sofamor Danek for the InFUSE™ Bone Graft/LT-CAGE™ Lumbar Tapered Fusion Device for approval as a new technology eligible for add-on payments. The product is applied through use of an absorbable collagen sponge and an interbody fusion device, which is then implanted at the fusion site. The patient undergoes a spinal fusion, and the product is placed at the fusion site to promote bone growth. This is done in place of the more traditional use of autogenous iliac crest bone graft.

In 1997, in a pilot study conducted under a FDA approved device exemption, 14 patients were enrolled at 4 investigational sites. Eleven patients received rhBMP–2, with 3 control patients. Radiographs and computed tomography scans at 6, 12, and 24 months after surgery showed that all 11 patients who received rhBMP–2 had solid fusions, whereas only 2 of the 3 patients who received autogeneous bone graft had solid fusions. Scores from the Oswestry Low Back Pain Disability Questionnaire showed that 6 of 11 patients treated with rhBMP–2 had a successful outcome at 3 months after surgery, compared with 0 of 3 control patients. After 6 months, the results had changed to 7 of 11 rhBMP–2 patients and 2 control patients with successful treatments; and at 12 months, 10 rhBMP–2 patients and 2 control patients were judged successful. The results were unchanged at 24 months. The trial results were presented in an article in the February 1, 2000 edition of SPINE (Bone, S., Zdeblick, T.. et. al., "The Use of rhBMP–2 in Interbody Fusion Cages-Definitive Evidence of Osteoinduction in Humans: A Preliminary Report"), Vol. 25, No. 3, p. 376.

The above study was then expanded to involve 281 patients at 16 sites, with 143 patients in the rhBMP–2 group and 138 patients in the autogenous iliac crest bone graft group. In the rhBMP–2 group, 76.9 percent of the patients showed an improvement of at least 15 points in their disability scores at 12 months postoperatively. This compared favorably to 75 percent of patients in the control group. At 6 months following surgery, 97 percent of patients in the rhBMP–2 group showed evidence of interbody fusion, as compared to 95.8 percent in the control group. At 12 months, 96.9 percent of patients in the rhBMP–2 group were fused as compared to 92.5 percent in the control group. At this time, the results of this study are unpublished.

On January 10, 2002, the FDA issued an approvable letter for this technology. At this point, however, the technology has not been approved by the FDA for general use. Therefore, we are not proposing to approve this technology for add-on payments in this proposed rule. We discuss thoroughly the data submitted with the application below. However, if the FDA approves the product for general use prior to our issuance of the final rule by August 1, 2002, we will issue a determination whether this technology represents a substantial clinical improvement under the criteria outlined in the September 7, 2001 final rule.

Cost data were submitted for 88 patients participating in the followup study described above. This trial was a single-level, anterior lumbar interbody

---

bound on the error of the estimate (the range within which the sample means can reliably predict the population mean). See Statistics for Management and Economics, Fifth Edition, by Mendenhall, W., Reinmuth, J., Beaver, R., and Duhan, D.

fusion clinical study. Of these 88 bills with cost data, the applicant calculated an average standardized charge for these single-level fusion cases of $33,757. According to the applicant, "it is anticipated that a large number, if not the majority, of cases using BMP technology will, in practice, be multi-level fusions". The applicant reported the estimated hospital charges (based on general charging practices) to be $17,780 for each level. In order to account for the use of this technology in multilevel spinal fusions, the applicant assumed 47 percent of spinal fusions were multilevel (based on analysis of Medicare spinal fusion cases). Increasing the average standardized charge for the cases in the trial by $17,780, the applicant calculated a weighted average standardized charge (53 percent single-level and 47 percent multilevel) of $45,556.

Of these 88 cases, 11 were assigned to DRG 497 (Spinal Fusion Except Cervical With CC) and 77 were assigned to DRG 498 (Spinal Fusion Except Cervical Without CC). In order to qualify for new technology payments based on these DRGs, the threshold would be $37,815.

The applicant has submitted data that estimate between 2,300 and 4,600 Medicare spinal fusion procedures involving this technology in FY 2003. The cost of the technology is $3,900 per level. For approximately 45 percent of spinal fusion involving multilevel fusions, the weighted cost of the technology is $5,686, resulting in a maximum add-on payment amount of $2,843. In reference to the utilization estimates above, the total amount for these cases if each case qualified for a new technology payment would be between $6.5 million and $13.0 million.

c. Zyvox ™

Zyvox™ is the first antibiotic in the oxazolidinone class and is widely used by hospitals in the United States and other countries against the medically significant gram-positive bacteria, including those that are resistant to other therapies. Gram-positive bacterial infections have become increasingly prevalent in recent years, most commonly implicated in infections in the lower respiratory tract, skin and soft tissue, bone and bloodstream, and in meningitis. Significant morbidity and mortality trends are associated with such pathogens. Epinomics Research, Inc., submitted the application on behalf of Pharmacia Corporation (Pharmacia), which markets the drug.

The FDA approved Zyvox™ on April 18, 2000, for the treatment of serious infections caused by antibiotic-resistant bacteria. The applicant contends that this qualifies Zyvox™ for approval within the 2-year to 3-year period referenced at § 412.87(b)(2). Furthermore, the applicant notes that the approval of the new ICD–9–CM code 00.14 (Injection or infusion of oxazolidinone class of antibiotics) effective October 1, 2002, will permit a more precise identification of these cases. However, as noted previously, technology will no longer be considered new after the costs of the technology are reflected in the DRG weights. Because the costs of Zyvox™ are currently reflected in the DRG weights, Zyvox™ does not meet our criterion that a medical service or technology be "new". The FY 2001 MedPAR data used to calculate the proposed DRG weights for FY 2003 include cases where Zyvox™ was administered. The application itself noted that the use of Zyvox™ is widespread. Therefore, even though the existing code, 99.21 (Injection of antibiotic) is a general code used for the administration of various antibiotics including Zyvox™, and does not separately identify the administration of Zyvox™ as will be possible with the new code 00.14, the charges associated with these cases are reflected in the proposed FY 2003 DRG weights.

As stated above, we note that the applicant itself points out that Zyvox™ is widely used currently by hospitals. In its 4th quarter 2001 earnings report, Pharmacia reports total sales in the United States of $97 million, which is an increase of 105 percent over the previous year. This would indicate expanding access to the drug.

We would point out that, in response to a comment that technologies should qualify as "new" beginning with the assignment of an appropriate tracking code, we clarified in the September 7, 2001 final rule that we would not consider technologies that have been on the market for more than 2 or 3 years to be "new" on the basis that a more precise ICD–9-CM procedure code has been created (66 FR 46914). However, although such technologies would not qualify for add-on payments under this provision, we did indicate that we would evaluate whether the existing DRG assignments of the technology are appropriate.

For example, currently the administration of Zyvox ™ does not affect the DRG to which a case is assigned. In its application for add-on payments, Epinomics provided CMS data that included clinical trials as well as data from a sample that spanned MedPAR files from FY 2000 through FY 2002. For its sample study, Epinomics obtained patient records from 70 hospitals that used Zyvox™ treatment on 832 Medicare patients. The cases were distributed across 151 DRGs. Epinomics calculated that the mean standardized charge for these 485 cases was $74,174. The case-weighted mean standardized charge for all cases in these DRGs would be $33,740 (based on the distribution of Zyvox™ cases across the 151 DRGs).

The unit price for the drug varies from approximately $30 for a 100 milliliter bag (200 milligram linezolid) to approximately $1,350 for 600 milligram tablets (unit doses of 30 tablets). Nevertheless, it appears the high average charges associated with patients receiving the drug are not directly attributable to the administration of Zyvox™. Therefore, we are not proposing any changes to the DRG assignment of these cases at this time. To the extent these cases are more expensive due to the severity of illness of the patients being treated, the current outlier policy will offset any extraordinarily high costs incurred.

d. Renew™ Radio Frequency Spinal Cord Stimulation Therapy

An application was submitted by Advanced Neuromodulation Systems (ANS) for the Renew™ Spinal Cord Stimulation Therapy for approval as a new technology eligible for add-on payments. ANS is a medical device company that deals with management of chronic pain that is severe, persistent, and unresponsive to drugs or surgery. Spinal cord stimulation (SCS) offers a treatment alternative to expensive ongoing comprehensive care. Renew™ SCS was introduced in July 1999 as a device for the treatment of chronic intractable pain of the trunk and limbs.

According to the applicant:

"SCS is a reversible method of pain control that works well for certain types of chronic intractable pain. SCS requires a surgical procedure to implant a receiver and leads. These implanted devices generate electrical stimulation that interrupts pain signals to the brain. SCS is considered to be a treatment of last resort, and is usually undertaken only when first and second-line therapies for chronic pain fail to provide adequate relief. SCS uses low-intensity electrical impulses to trigger nerve fibers selectively along the spinal cord. The stimulation of these nerve fibers diminishes or blocks the intensity of the pain message being transmitted to the brain. SCS replaces areas of intense pain with a more pleasant sensation * * *," masking the pain that is normally present.

Prior to Renew™, SCS systems offered few technical capabilities for treating complex chronic pain patients who suffered with pain that spanned

noncontiguous areas (multi-focal) or that varied in intensity over the painful area. The Renew™ system features a multiplex output mode that controls separate stimulation programs to allow outputs of varying frequencies to be used at the same time. According to ANS, "The significance of this technology is that it is now possible to multiplex (link and cycle) up to 8 programs to provide pain relieving paresthesia overlap of anatomical regions that are not contiguous or that cannot be captured by a single program."

The Renew™ technology also allows the concomitant use of separate programs for patients who require different power settings for different areas that have pain. With this technology, separate programs can be programmed from the same unit, with electrical output parameters customized for each painful region. ANS contends that the clinical significance of this technology is that patients who find satisfactory pain relief will require fewer alternative treatments to treat unrelieved pain.

The ANS application specifically requests add-on payments for the costs of the Radio Frequency System (RF System). This system only requires one surgical placement and does not require additional surgeries to replace batteries as do other internal SCS systems. ANS estimates that there are 2,900 RF Systems implanted annually; only 10 percent are in the inpatient setting. ANS is the only company that offers a 16-channel/electrode system.

ANS provided the 2001 hospital acquisition cost for ANS Renew™ 8 and 16 Channel/Electrode RF SCS Systems as follows:

	ANS 2001 List Price
8 Channel/Electrode System:	
One Lead (8 Electrode)	$2,750
One Extension (8 Electrode)	695
Receiver (8 Channel)	4,995
Transmitter (8 Channel)	4,995
Total System	13,435
16 Channel/Electrode System:	
Two Leads (16 Electrodes)	5,500
Two Extensions (16 Electrodes)	1,390
Receiver (16 Channel)	7,295
Transmitter (16 Channel)	7,295
Total System	21,480

Currently, implanting the ANS 8 or 16 Channel/Electrode SCS System falls into DRG 4 (Spinal Procedures) under ICD–9–CM procedure code, 03.93 (Insertion or replacement, spinal neurostimulation). According to the September 7, 2001 **Federal Register**, the threshold to qualify for additional new technology payments for services classified to DRG 4 would be $38,242 (based on adding the geometric mean and the standard deviation of standardized charges) (66 FR 46922).

Relative to hospital invoice information, ANS provided the following estimates:

"* * * 90% of the U.S. hospital cost-to-charge ratios fall between .24 and .69, and 75% fall between .29 and .58. The median is .41. This median costs-to-charge ratio equates to an average hospital markup of 144%. If you apply the average hospital markup of 144% to the device acquisition cost plus the estimated facility cost, the result is an estimated hospital invoice for the SCS implant procedure of $40,101.00, for the 8 Channel/Electrode System and $59,731.00 for the 16 Channel/Electrode System."

In support of its application, ANS provided detailed bills for 12 patients. Of the 12 cases with detailed billing data, 3 patients were age 65 or older. The average total charge for these 3 cases, including the average standardized charge for operating room costs, was $42,820.

As noted previously, technology will no longer be considered new after the costs of the technology are reflected in the DRG weights. Because the Renew ™ RF System was introduced in July 1999, the FY 2001 MedPAR data used to calculate the proposed DRG weights for FY 2003 includes any Medicare cases that involved the implantation of the Renew™ RF System. The charges associated with these cases are reflected in the proposed FY 2003 DRG weights. Therefore, the Renew™ RF System is not considered "new" under our criteria. However, we will continue to monitor these cases in DRG 4 to determine whether this is the most appropriate DRG assignment.

III. Proposed Changes to the Hospital Wage Index

A. Background

Section 1886(d)(3)(E) of the Act requires that, as part of the methodology for determining prospective payments to hospitals, the Secretary must adjust the standardized amounts "for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level." In accordance with the broad discretion conferred under the Act, we currently define hospital labor market areas based on the definitions of Metropolitan Statistical Areas (MSAs), Primary MSAs (PMSAs), and New England County Metropolitan Areas (NECMAs) issued by the Office of Management and Budget (OMB). OMB also designates Consolidated MSAs (CMSAs). A CMSA is a metropolitan area with a population of one million or more, comprising two or more PMSAs (identified by their separate economic and social character). For purposes of the hospital wage index, we use the PMSAs rather than CMSAs since they allow a more precise breakdown of labor costs. If a metropolitan area is not designated as part of a PMSA, we use the applicable MSA. Rural areas are areas outside a designated MSA, PMSA, or NECMA. For purposes of the wage index, we combine all of the rural counties in a State to calculate a rural wage index for that State.

We note that, effective April 1, 1990, the term Metropolitan Area (MA) replaced the term MSA (which had been used since June 30, 1983) to describe the set of metropolitan areas consisting of MSAs, PMSAs, and CMSAs. The terminology was changed by OMB in the March 30, 1990 **Federal Register** to distinguish between the individual metropolitan areas known as MSAs and the set of all metropolitan areas (MSAs, PMSAs, and CMSAs) (55 FR 12154). For purposes of the prospective payment system, we will continue to refer to these areas as MSAs.

Under section 1886(d)(8)(B) of the Act, hospitals in certain rural counties adjacent to one or more MSAs are considered to be located in one of the adjacent MSAs if certain standards are met. Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals for geographic reclassification from a rural area to a MSA, one rural area to another rural area, or from one MSA to another MSA, for purposes of payment under the acute care hospital inpatient prospective payment system.

In a December 27, 2000 notice published in the **Federal Register** (65 FR 82228), OMB issued its revised standards for defining MSAs. In that notice, OMB indicated that it plans to announce in calendar year 2003 definitions of MSAs based on the new standards and the Census 2000 data. We will evaluate the new area designations and their possible effects on the

Medicare wage index, as well as other provider payment implications. Although the final construct of the redefined MSAs will not be known until 2003, we intend to work closely with OMB to begin to assess the potential ramifications of these changes.

Beginning October 1, 1993, section 1886(d)(3)(E) of the Act requires that we update the wage index annually. Furthermore, this section provides that the Secretary base the update on a survey of wages and wage-related costs of short-term, acute care hospitals. The survey should measure, to the extent feasible, the earnings and paid hours of employment by occupational category, and must exclude the wages and wage-related costs incurred in furnishing skilled nursing services. As discussed below in section III.F. of this preamble, we also take into account the geographic reclassification of hospitals in accordance with sections 1886(d)(8)(B) and 1886(d)(10) of the Act when calculating the wage index.

Section 304(c) of Public Law 106–554 amended section 1886(d)(3)(E) of the Act to provide for the collection of data every 3 years on the occupational mix of employees for each short-term, acute care hospital participating in the Medicare program, in order to construct an occupational mix adjustment to the wage index. The initial collection of these data must be completed by September 30, 2003, for application beginning October 1, 2004 (the FY 2005 wage index).

In the May 4, 2001 proposed rule (66 FR 22674), we suggested possible occupational categories from the Occupational Employment Statistics (OES) survey conducted by the Bureau of Labor Statistics. In response to comments on the proposed rule, we agreed to work with the health care industry to develop a workable data collection tool. After we develop a method that appropriately balances the need to collect accurate and reliable data with the need to collect data that hospitals can be reasonably expected to have available, we will issue instructions as to the type of data to be collected, in advance of actually requiring hospitals to begin providing the data.

B. Proposed FY 2003 Wage Index Update

The proposed FY 2003 wage index values in section V. of the Addendum to this proposed rule (effective for hospital discharges occurring on or after October 1, 2002 and before October 1, 2003) are based on the data collected from the Medicare cost reports submitted by hospitals for cost reporting periods beginning in FY 1999 (the FY 2002 wage index was based on FY 1998 wage data).

The proposed FY 2003 wage index includes the following categories of data associated with costs paid under the hospital inpatient prospective payment system (as well as outpatient costs), which were also included in the FY 2002 wage index:

- Salaries and hours from short-term, acute care hospitals.
- Home office costs and hours.
- Certain contract labor costs and hours.
- Wage-related costs.

Consistent with the wage index methodology for FY 2002, the proposed wage index for FY 2003 also continues to exclude the direct and overhead salaries and hours for services such as skilled nursing facility (SNF) services, home health services, and other subprovider components that are not paid under the hospital inpatient prospective payment system.

We calculate a separate Puerto Rico-specific wage index and apply it to the Puerto Rico standardized amount. (See 62 FR 45984 and 46041.) This wage index is based solely on Puerto Rico's data. Finally, section 4410 of Public Law 105–33 provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is not located in a rural area may not be less than the area wage index applicable to hospitals located in rural areas in that State.

C. FY 2003 Wage Index Proposal

1. Removal of Wage Costs and Hours Related to Graduate Medical Education (GME) and Certified Registered Nurse Anesthetists (CRNAs)

Because the hospital wage index is used to adjust payments to hospitals under the acute care hospital inpatient prospective payment system, the wage index should, to the extent possible, reflect the wage costs associated with those cost centers and units paid under the hospital inpatient prospective payment system. Costs related to graduate medical education (GME) (teaching physicians and residents) and certified registered nurse anesthetists (CRNAs) are paid by Medicare separately from the hospital inpatient prospective payment system. In 1998, the AHA convened a workgroup to develop a consensus recommendation on this issue. The workgroup, which consisted of representatives from national and State hospital associations, recommended that costs related to GME and CRNAs be phased out of the wage index calculation over a 5-year period. Based upon our analysis of hospitals' FY 1996 wage data, and consistent with the AHA workgroup's recommendation, we specified in the July 30, 1999 final rule (64 FR 41505) that we would phase out these costs from the calculation of the wage index over a 5-year period, beginning in FY 2000.

FY 2003 would be the fourth year of the phaseout. Therefore, the wage index calculation for FY 2003 would blend 20 percent of a wage index with GME and CRNA costs included and 80 percent of a wage index with GME and CRNA costs removed. FY 2004 would begin the calculation with 100 percent of the GME and CRNA costs removed. However, we are proposing to remove 100 percent of GME and CRNA costs from the FY 2003 wage index, as discussed below.

We have analyzed the FY 2003 wage index both with 100 percent of GME and CRNA costs removed and with 80 percent of these costs removed. We found that the majority of labor market areas, both rural and urban, would benefit by the removal of all of these costs (298 out of 373). Only two rural labor market areas would be negatively impacted by this change (Pennsylvania by −0.01 percent, and New Hampshire by −0.12 percent). We note that, as part of its Report to the Congress on Medicare in Rural America (June 2001), the MedPAC recommended fully implementing this phaseout during FY 2002. Similar to our findings, MedPAC found the effect of completely eliminating GME and CRNA costs "might not be negligible for some areas, but it would not be large in any case" (page 76). Of the urban labor market areas that would be negatively affected, the impacts on all but two areas are less than 0.50 percent, and the largest negative impact is 1.12 percent.

Because we believe removing GME and CRNA costs from the wage index calculation is appropriate, and the impact is generally positive and relatively small, we are proposing to remove 100 percent of GME and CRNA costs beginning with FY 2003 wage index.

2. Contract Labor for Indirect Patient Care Services

Our policy concerning the inclusion of contract labor costs for purposes of calculating the wage index has evolved with the increasing role of contract labor in meeting special personnel needs of many hospitals. In addition, improvements in the wage data have allowed us to more accurately identify contract labor costs and hours. As a result, effective with the FY 1994 wage index, we included the costs for direct patient care contract services in the

wage index calculation, and with the FY 1999 wage index, we included the costs for certain management contract services. (The August 30, 1996 final rule (61 FR 46181) provided an in-depth discussion of the issues related to the inclusion of contract labor costs in the wage index calculation.) Further, the FY 1999 wage index included the costs for contract physician Part A services, and the FY 2002 wage index included the costs for contract pharmacy and laboratory services.

We continue to consider whether to expand our contract labor definition to include more types of contract services in the wage index. In particular, we have examined whether to include the costs for acquired dietary and housekeeping services, as many hospitals now provide these services through contracts. Costs for these services tend to be below the average wages for all hospital employees. Therefore, excluding the costs and hours for these services if they are provided under contract, while including them if the services are provided directly by the hospital, creates an incentive for hospitals to contract for these services in order to increase their average hourly wage for wage index purposes.

It has also been suggested that we expand our definition to include all contract services, including both direct and indirect patient care services, in order to more appropriately calculate relative hospital wage costs. Our goal is to ensure that our wage index policy continues to be responsive to the changing need for contract labor and allow those hospitals that must depend on contract labor to supply needed services to reflect those costs in their wage data. At the same time, we are concerned about hospitals' ability to provide documentation that sufficiently details contract costs and hours. The added overhead, supplies, and miscellaneous costs typically associated with contract labor may result in higher costs for contract labor compared to salaried labor. If these costs are not separately identifiable and removed, they may cause distortions in the wage index.

We agree that it may be appropriate to include indirect patient care contract labor costs in the wage index. However, in light of concerns about hospitals' ability to accurately document and report these costs, we believe the best approach is to assess and include these costs incrementally. Through incremental changes, we can better determine the impact that specific costs have on area wage index values. Also, by including these costs incrementally, hospitals and fiscal intermediaries are able to adjust to the additional documentation and review requirements associated with reporting the additional contract costs and hours.

In this proposed rule, we are proposing to begin collecting contract labor costs and hours for management services and the following overhead services: administrative and general, housekeeping, and dietary. We selected these three overhead services because they are provided at all hospitals, either directly or through contracts, and together they comprise about 60 percent of a hospital's overhead hours. In addition, consistent with our consideration of administrative and general services, we propose to collect costs and hours associated with contract management services that are not currently included on Worksheet S–3, Part II, Line 9 (that is, management services other than those of the chief executive officer, chief financial officer, chief operating officer, and nurse administrator).

We propose to revise the FY 2002 Medicare cost report (or the next available cost report) to provide for the separate reporting of contract management, administrative and general, housekeeping, and dietary costs and hours. After evaluating these data, we will determine the feasibility of adding these categories of contract labor to the wage index calculation.

D. Verification of Wage Data From the Medicare Cost Report

The data for the proposed FY 2003 wage index were obtained from Worksheet S–3, Parts II and III of the FY 1999 Medicare cost reports. The data file used to construct the wage index includes FY 1999 data submitted to us as of February 15, 2002. As in past years, we performed an intensive review of the wage data, mostly through the use of edits designed to identify aberrant data.

We asked our fiscal intermediaries to revise or verify data elements that resulted in specific edit failures. Some unresolved data elements are included in the calculation of the proposed FY 2003 wage index, pending their resolution before calculation of the final FY 2003 wage index. We have instructed the intermediaries to complete their verification of questionable data elements and to transmit any changes to the wage data no later than April 5, 2002. We expect that all unresolved data elements will be resolved by that date. The revised data will be reflected in the final rule.

Also, as part of our editing process, we removed data for 96 hospitals that failed edits. For 6 of these hospitals, we were unable to obtain sufficient documentation to verify or revise the data because the hospitals are no longer participating in the Medicare program, are under new ownership and the data cannot be verified, or are in bankruptcy status. We identified 90 hospitals with incomplete or inaccurate data resulting in zero or negative average hourly wages. Therefore, they were removed from the calculation. The data for these hospitals will be included in the final wage index if we receive corrected data that pass our edits. As a result, the proposed FY 2003 wage index is calculated based on FY 1999 wage data for 4,718 hospitals.

E. Computation of the Proposed FY 2003 Wage Index

The method used to compute the proposed FY 2003 wage index follows.

Step 1—As noted above, we based the proposed FY 2003 wage index on wage data reported on the FY 1999 Medicare cost reports. We gathered data from each of the non-Federal, short-term, acute care hospitals for which data were reported on the Worksheet S–3, Parts II and III of the Medicare cost report for the hospital's cost reporting period beginning on or after October 1, 1998 and before October 1, 1999. In addition, we included data from some hospitals that had cost reporting periods beginning before October 1998 and reported a cost reporting period covering all of FY 1999. These data were included because no other data from these hospitals would be available for the cost reporting period described above, and because particular labor market areas might be affected due to the omission of these hospitals. However, we generally describe these wage data as FY 1999 data. We note that, if a hospital had more than one cost reporting period beginning during FY 1999 (for example, a hospital had two short cost reporting periods beginning on or after October 1, 1998 and before October 1, 1999), we included wage data from only one of the cost reporting periods, the longest, in the wage index calculation. If there was more than one cost reporting period and the periods were equal in length, we included the wage data from the latest period in the wage index calculation.

Step 2—Salaries—Beginning with the FY 2003 wage index, the method used to compute a hospital's average hourly wage excludes all GME and CRNA costs.

In calculating a hospital's average salaries plus wage-related costs, we subtracted from Line 1 (total salaries) the GME and CRNA costs reported on lines 2, 4.01, and 6, the Part B salaries

reported on Lines 3 and 5, home office salaries reported on Line 7, and excluded salaries reported on Lines 8 and 8.01 (that is, direct salaries attributable to SNF services, home health services, and other subprovider components not subject to the acute care hospital inpatient prospective payment system). We also subtracted from Line 1 the salaries for which no hours were reported on Line 4. To determine total salaries plus wage-related costs, we added to the net hospital salaries the costs of contract labor for direct patient care, certain top management, pharmacy, laboratory, and nonteaching physician Part A services (Lines 9, 9.01, 9.02, and 10), home office salaries and wage-related costs reported by the hospital on Lines 11 and 12, and nonexcluded area wage-related costs (Lines 13, 14, and 18).

We note that contract labor and home office salaries for which no corresponding hours are reported were not included. In addition, wage-related costs for nonteaching physician Part A employees (Line 18) are excluded if no corresponding salaries are reported for those employees on Line 4.

Step 3—Hours—With the exception of wage-related costs, for which there are no associated hours, we computed total hours using the same methods as described for salaries in Step 2.

Step 4—For each hospital reporting both total overhead salaries and total overhead hours greater than zero, we then allocated overhead costs to areas of the hospital excluded from the wage index calculation. First, we determined the ratio of excluded area hours (sum of Lines 8 and 8.01 of Worksheet S–3, Part II) to revised total hours (Line 1 minus the sum of Part II, Lines 2, 3, 4.01, 5, 6, 7, and Part III, Line 13 of Worksheet S–3). We then computed the amounts of overhead salaries and hours to be allocated to excluded areas by multiplying the above ratio by the total overhead salaries and hours reported on Line 13 of Worksheet S–3, Part III. Next, we computed the amounts of overhead wage-related costs to be allocated to excluded areas using three steps: (1) we determined the ratio of overhead hours (Part III, Line 13) to revised hours (Line 1 minus the sum of Lines 2, 3, 4.01, 5, 6, and 7); (2) we computed overhead wage-related costs by multiplying the overhead hours ratio by wage-related costs reported on Part II, Lines 13, 14, and 18; and (3) we multiplied the computed overhead wage-related costs by the above excluded area hours ratio. Finally, we subtracted the computed overhead salaries, wage-related costs, and hours associated with excluded areas from the total salaries (plus wage-related costs) and hours derived in Steps 2 and 3.

Step 5—For each hospital, we adjusted the total salaries plus wage-related costs to a common period to determine total adjusted salaries plus wage-related costs. To make the wage adjustment, we estimated the percentage change in the employment cost index (ECI) for compensation for each 30-day increment from October 14, 1998 through April 15, 2000 for private industry hospital workers from the Bureau of Labor Statistics' *Compensation and Working Conditions*. We use the ECI because it reflects the price increase associated with total compensation (salaries plus fringes) rather than just the increase in salaries. In addition, the ECI includes managers as well as other hospital workers. This methodology to compute the monthly update factors uses actual quarterly ECI data and assures that the update factors match the actual quarterly and annual percent changes. The factors used to adjust the hospital's data were based on the midpoint of the cost reporting period, as indicated below.

MIDPOINT OF COST REPORTING PERIOD

After	Before	Adjustment factor
10/14/98	11/15/98	1.04550
11/14/98	12/15/98	1.04325
12/14/98	01/15/99	1.04111
01/14/99	02/15/99	1.03880
02/14/99	03/15/99	1.03632
03/14/99	04/15/99	1.03369
04/14/99	05/15/99	1.03092
05/14/99	06/15/99	1.02801
06/14/99	07/15/99	1.02509
07/14/99	08/15/99	1.02230
08/14/99	09/15/99	1.01962
09/14/99	10/15/99	1.01687
10/14/99	11/15/99	1.01385
11/14/99	12/15/99	1.01056
12/14/99	01/15/2000	1.00710
01/14/2000	02/15/2000	1.00358
02/14/2000	03/15/2000	1.00000
03/14/2000	04/15/2000	0.99638

For example, the midpoint of a cost reporting period beginning January 1, 1999 and ending December 31, 1999 is June 30, 1999. An adjustment factor of 1.02509 would be applied to the wages of a hospital with such a cost reporting period. In addition, for the data for any cost reporting period that began in FY 1999 and covered a period of less than 360 days or more than 370 days, we annualized the data to reflect a 1-year cost report. Annualization is accomplished by dividing the data by the number of days in the cost report and then multiplying the results by 365.

Step 6—Each hospital was assigned to its appropriate urban or rural labor market area before any reclassifications under section 1886(d)(8)(B) or section 1886(d)(10) of the Act. Within each urban or rural labor market area, we added the total adjusted salaries plus wage-related costs obtained in Step 5 for all hospitals in that area to determine the total adjusted salaries plus wage-related costs for the labor market area.

Step 7—We divided the total adjusted salaries plus wage-related costs obtained under both methods in Step 6 by the sum of the corresponding total hours (from Step 4) for all hospitals in each labor market area to determine an average hourly wage for the area.

Step 8—We added the total adjusted salaries plus wage-related costs obtained in Step 5 for all hospitals in the nation and then divided the sum by the national sum of total hours from Step 4 to arrive at a national average hourly wage. Using the data as described above, the national average hourly wage is $22.9949.

Step 9—For each urban or rural labor market area, we calculated the hospital wage index value by dividing the area average hourly wage obtained in Step 7 by the national average hourly wage computed in Step 8.

Step 10—Following the process set forth above, we developed a separate Puerto Rico-specific wage index for purposes of adjusting the Puerto Rico standardized amounts. (The national Puerto Rico standardized amount is adjusted by a wage index calculated for all Puerto Rico labor market areas based on the national average hourly wage as described above.) We added the total adjusted salaries plus wage-related costs (as calculated in Step 5) for all hospitals in Puerto Rico and divided the sum by the total hours for Puerto Rico (as calculated in Step 4) to arrive at an overall average hourly wage of $10.8935 for Puerto Rico. For each labor market area in Puerto Rico, we calculated the Puerto Rico-specific wage index value by dividing the area average hourly wage (as calculated in Step 7) by the overall Puerto Rico average hourly wage.

Step 11—Section 4410 of Public Law 105–33 provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is located in an urban area of a State may not be less than the area wage index applicable to hospitals located in rural areas in that State. Furthermore, this wage index floor is to be implemented in such a manner as to ensure that aggregate prospective payment system payments are not greater or less than those that would have been made in the year if this section did not apply. For FY 2003, this change affects 163 hospitals in 40 MSAs. The MSAs affected by this provision are identified by a footnote in Table 4A in the Addendum of this proposed rule.

F. Revisions to the Wage Index Based on Hospital Redesignation

1. General

Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system. Hospitals can elect to reclassify for the wage index or the standardized amount, or both, and as individual hospitals or as rural groups. Generally, hospitals must be proximate to the labor market area to which they are seeking reclassification and must demonstrate characteristics similar to hospitals located in that area. Hospitals must apply for reclassification to the MGCRB, which issues its decisions by the end of February for reclassification to become effective for the following fiscal year (beginning October 1). The regulations applicable to reclassifications by the MGCRB are in §§ 412.230 through 412.280.

Section 1886(d)(10)(D)(v) of the Act provides that, beginning with FY 2001, a MGCRB decision on a hospital reclassification for purposes of the wage index is effective for 3 fiscal years, unless the hospital elects to terminate the reclassification. Section 1886(d)(10)(D)(vi) of the Act provides that the MGCRB must use the 3 most recent years' average hourly wage data in evaluating a hospital's reclassification application for FY 2003 and any succeeding fiscal year.

Section 304(b) of Public Law 106–554 provides that, by October 1, 2001, the Secretary must establish a mechanism under which a statewide entity may apply to have all of the geographic areas in the State treated as a single geographic area for purposes of computing and applying a single wage index, for reclassifications beginning in FY 2003.

Beginning October 1, 1988, section 1886(d)(8)(B) of the Act permits a hospital located in a rural county adjacent to one or more urban areas to be designated as being located in the MSA to which the greatest number of workers in the county commute, if the rural county would otherwise be considered part of an urban area under the standards published in the **Federal Register** on January 3, 1980 (45 FR 956) for designating MSAs (and for designating NECMAs), and if the commuting rates used in determining outlying counties (or, for New England, similar recognized area) were determined on the basis of the aggregate number of resident workers who commute to (and, if applicable under the standards, from) the central county or counties of all contiguous MSAs (or NECMAs). Hospitals that met the criteria using the January 3, 1980 version of these OMB standards were deemed urban for purposes of the standardized amounts and for purposes of assigning the wage index.

Section 402 of Public Law 106–113 provided that, for FYs 2001 and 2002, hospitals could elect whether to apply standards developed by OMB in 1980 or 1990 in order to qualify for redesignation under section 1886(d)(8)(B) of the Act. However, we are proposing that, beginning with FY 2003, redesignation under section 1886(d)(8)(B) of the Act will be based on the standards published in the **Federal Register** by the Director of OMB based on the most recent decennial census.

2. Effects of Reclassification

The methodology for determining the wage index values for redesignated hospitals is applied jointly to the hospitals located in those rural counties that were deemed urban under section 1886(d)(8)(B) of the Act and those hospitals that were reclassified as a result of the MGCRB decisions under section 1886(d)(10) of the Act. Section 1886(d)(8)(C) of the Act provides that the application of the wage index to redesignated hospitals is dependent on the hypothetical impact that the wage data from these hospitals would have on the wage index value for the area to which they have been redesignated. Therefore, as provided in section 1886(d)(8)(C) of the Act, the wage index values were determined by considering the following:

- If including the wage data for the redesignated hospitals would reduce the wage index value for the area to which the hospitals are redesignated by 1 percentage point or less, the area wage index value determined exclusive of the wage data for the redesignated hospitals applies to the redesignated hospitals.
- If including the wage data for the redesignated hospitals reduces the wage index value for the area to which the hospitals are redesignated by more than 1 percentage point, the area wage index determined inclusive of the wage data for the redesignated hospitals (the combined wage index value) applies to the redesignated hospitals.
- If including the wage data for the redesignated hospitals increases the wage index value for the area to which the hospitals are redesignated, both the area and the redesignated hospitals receive the combined wage index value.
- The wage index value for a redesignated urban or rural hospital cannot be reduced below the wage index value for the rural areas of the State in which the hospital is located.
- Rural areas whose wage index values would be reduced by excluding the wage data for hospitals that have been redesignated to another area continue to have their wage index values calculated as if no redesignation had occurred.
- Rural areas whose wage index values increase as a result of excluding

the wage data for the hospitals that have been redesignated to another area have their wage index values calculated exclusive of the wage data of the redesignated hospitals.

- The wage data for a reclassified urban hospital is included in both the wage index calculation of the area to which the hospital is reclassified (subject to the rules described above) and the wage index calculation of the urban area where the hospital is physically located.

The proposed wage index values for FY 2003 are shown in Tables 4A, 4B, 4C, and 4F in the Addendum to this proposed rule. Hospitals that are redesignated should use the wage index values shown in Table 4C. Areas in Table 4C may have more than one wage index value because the wage index value for a redesignated urban or rural hospital cannot be reduced below the wage index value for the rural areas of the State in which the hospital is located.

Tables 3A and 3B in the Addendum of this proposed rule list the 3-year average hourly wage for each labor market area before the redesignation of hospitals, based on FY 1997, 1998, and 1999 wage data. Table 3A lists these data for urban areas and Table 3B lists these data for rural areas. In addition, Table 2 in the Addendum to this proposed rule includes the adjusted average hourly wage for each hospital from the FY 1997 and FY 1998 cost reporting periods, as well as the FY 1999 period used to calculate the FY 2003 wage index. The 3-year averages are calculated by dividing the sum of the dollars (adjusted to a common reporting period using the method described previously under computation of the proposed FY 2003 wage index) across all 3 years, by the sum of the hours. If a hospital is missing data for any of the previous years, its average hourly wage for the 3-year period is calculated based on the data available during that period.

At the time this proposed wage index was constructed, the MGCRB had completed its review of FY 2003 reclassification requests. We have included in this proposed rule a new Table 9, which shows hospitals that have been reclassified under either section 1886(d)(8)(B) or section 1886(d)(10)(D) of the Act. This table includes hospitals reclassified for FY 2003 by the MGCRB, as well as hospitals that were reclassified for the wage index in either FY 2001 or FY 2002 and are, therefore, in either the third or second year of their 3-year reclassification. There are 60 hospitals reclassified for the wage index beginning during FY 2003. In addition, 369 hospitals are reclassified for FY 2003 based on their 3-year reclassification that became effective during FY 2001, and 170 hospitals are reclassified for FY 2003 based on their 3-year reclassification that became effective during FY 2002. There are 124 hospitals included in the 3-year reclassification from FY 2001 that were reclassified in accordance with section 152(b) of Public Law 106–113. In addition, there are 38 rural hospitals redesignated to an urban area under section 1886(d)(8)(B) of the Act, and 14 urban hospitals that have been designated rural in accordance with section 1886(d)(8)(E) of the Act. Finally, there are 61 hospitals reclassified by the MGCRB for the standardized amount for FY 2003 (including one hospital that is also redesignated under section 1886(d)(8)(B) of the Act to a different MSA). The final number of reclassifications may vary because some MGCRB decisions are still under review by the Administrator and because some hospitals may withdraw their requests for reclassification.

Table 9 shows the various reclassifications and redesignations discussed above by individual hospital. The table does not reflect any hospital withdrawals from reclassifications approved by the MGCRB or decisions of the CMS Administrator. In the final rule to be published by August 1, 2002, we will include a similar table that will include all final reclassifications for FY 2003.

Under § 412.273, hospitals that have been reclassified by the MGCRB are permitted to withdraw their applications within 45 days of the publication of this proposed rule in the **Federal Register**. In addition, hospitals may terminate an existing 3-year reclassification within 45 days of the publication of this proposed rule. The request for withdrawal of an application for reclassification or termination of an existing 3-year reclassification that would be effective in FY 2003 must be received by the MGCRB by June 24, 2002. A hospital that withdraws its application or terminates an existing 3-year reclassification may not later request reinstatement of the MGCRB decision, except by canceling such a withdrawal or termination in a subsequent year (see § 412.273(b)(2)(i), and the proposed changes and clarifications to the cancellation procedures in section V. of this preamble).

Any changes to the wage index that result from withdrawals of requests for reclassification, wage index corrections, appeals, and the Administrator's review process will be incorporated into the wage index values published in the final rule following this proposed rule. The changes may affect not only the wage index value for specific geographic areas, but also the wage index value redesignated hospitals receive; that is, whether they receive the wage index value for the area to which they are redesignated, or a wage index value that includes the data for both the hospitals already in the area and the redesignated hospitals. Further, the wage index value for the area from which the hospitals are redesignated may be affected.

We are proposing limited changes and clarifications to the policies related to withdrawals, terminations, and cancellations of the 3-year wage index reclassifications. These are discussed in section V. of this preamble.

3. OMB Standards for Hospitals To Qualify for Redesignation

In the August 1, 2001 final rule, we implemented section 402 of Public Law 106–113. Section 402 provided that hospitals could elect whether to apply standards developed by OMB in 1980 or 1990 in order to qualify for redesignation under section 1886(d)(8)(B) of the Act. However, section 402 also states that, beginning with FY 2003, hospitals will be required to use the standards published in the **Federal Register** by the Director of OMB based on the most recent decennial census.

At this time, the 1990 standards are the most recent available. Although OMB is working to develop updated standards based on the 2000 census, that work is not yet completed. If the 2000 census population data become available prior to the preparation and publication of the final rule by August 1, 2002, CMS will work with the Population Distribution Branch within the Population Division of the U.S. Census Bureau to compile a list of hospitals that meet the established standards using the 2000 census population data. Otherwise, for purposes of redesignation for FY 2003. under section 1886(d)(8)(B) of the Act, qualifying hospitals must be located in counties meeting the 1990 standards.

In the August 1, 2001 final rule, we determined that three counties that qualified for redesignation under the 1980 standards qualified for redesignation to a different MSA using the 1990 standards (66 FR 39869). These counties, which will be redesignated to the MSA to which they qualify based on the 1990 standards, are as follows:

Rural county	1980 MSA designation	1990 MSA designation
Ionia, MI	Lansing-East Lansing, MI	Grand Rapids-Muskegon-Hollan, MI.
Caswell, NC	Danville, VA.	Greensboro-Winston Salem-High Point, NC.
Harnett, NC	Fayetteville, NC	Raleigh-Durham-Chapel Hill, NC.

Section 402 of Public Law 106–113 allowed hospitals to elect to use either the January 3, 1980 standards or March 30, 1990 standards for payments during FY 2001 and FY 2002. Several hospitals in counties that did not qualify under the January 3, 1980 standards elected to use those older standards so they would not receive the urban designation accorded them under section 402 because they would lose their special rural designation (that is, a sole community hospital (SCH) or Medicare-dependent hospital (MDH)). Under section 402, the option to make such an election was available only for FY 2001 and FY 2002. Effective for FY 2003, we are proposing that hospitals located in counties qualifying for redesignation under section 1886(d)(8)(B) of the Act based on the 1990 standards would be redesignated under this provision.

We also noted in the August 1, 2001 final rule that five rural counties no longer meet the qualifying criteria when we apply the 1990 OMB standards (66 FR 39870). These rural counties are as follows: Indian River, FL; Mason, IL; Owen, IN; Morrow, OH; and Lincoln, WV. Therefore, beginning FY 2003, hospitals in these counties will not be eligible for redesignation unless the counties again qualify when the standards based on the 2000 census data are available.

G. Requests for Wage Data Corrections

As stated in section II.D. of this preamble, the data used to construct the proposed wage index includes FY 1999 data submitted to CMS as of February 15, 2002. In a memorandum dated December 19, 2001, we instructed all Medicare intermediaries to inform the prospective payment hospitals they service of the availability of the wage data file and the process and timeframe for requesting revisions. The wage data file was made available on January 12, 2002, through the Internet at CMS's home page (*http://www.hcfa.gov*). We also instructed the intermediaries to advise hospitals of the availability of these data either through their representative hospital organizations or directly from CMS. Additional details on ordering this data file are discussed in section IX.A. of this preamble, "Requests for Data from the Public."

In addition, Table 2 in the Addendum to this proposed rule contains each hospital's adjusted average hourly wage used to construct the proposed wage index values for the past 3 years, including the FY 1999 data used to construct the proposed FY 2003 wage index. It should be noted that the hospital average hourly wages shown in Table 2 only reflect changes made to a hospital's data and transmitted to CMS prior to February 15, 2002. Changes approved by a hospital's fiscal intermediary and forwarded to CMS by April 5, 2002, will be reflected in the final public use wage data file scheduled to be made available on or about May 10, 2002.

We believe hospitals have sufficient time to ensure the accuracy of their FY 1999 wage data. Moreover, the ultimate responsibility for accurately completing the cost report rests with the hospital, which must attest to the accuracy of the data at the time the cost report is filed. Hospitals should know what wage data were submitted on their cost reports. In addition, they are notified of any changes to their data as a result of their fiscal intermediary's review. However, if a hospital believed that its FY 1999 wage data were incorrectly reported, the hospital was to submit corrections along with complete, detailed supporting documentation to its intermediary by February 8, 2002. Hospitals were notified of this deadline, and of all other possible deadlines and requirements, through the December 19, 2001 memorandum referenced above.

After reviewing requested changes submitted by hospitals, fiscal intermediaries transmitted any revised cost reports to CMS and forwarded a copy of the revised Worksheet S–3, Parts II and III to the hospitals. In addition, fiscal intermediaries were to notify hospitals of the changes or the reasons that changes were not accepted. This procedure ensures that hospitals have every opportunity to verify the data that will be used to construct their wage index values. We believe that fiscal intermediaries are generally in the best position to make evaluations regarding the appropriateness of a particular cost and whether it should be included in the wage index data. However, if a hospital disagrees with the fiscal intermediary's resolution of a policy issue (whether a general category of cost is allowable in the wage data), the hospital may contact CMS in an effort to resolve policy disputes. We note that the April 5, 2002 deadline also applies to these requested changes. During this review, we will not consider issues such as the adequacy of a hospital's supporting documentation, as these types of issues should have been resolved earlier in the process.

These deadlines are necessary to allow sufficient time to review and process the data so that the final wage index calculation can be completed for development of the final FY 2003 prospective payment rates to be published by August 1, 2002.

We have created the process described above to resolve all substantive wage data correction disputes before we finalize the wage data for the FY 2003 payment rates. Accordingly, hospitals that do not meet the procedural deadlines set forth above will not be afforded a later opportunity to submit wage data corrections or to dispute the intermediary's decision with respect to requested changes. Specifically, our policy is that hospitals that do not meet the procedural deadlines set forth above will not be permitted to later challenge, before the Provider Reimbursement Review Board, CMS's failure to make a requested data revision (See *W. A. Foote Memorial Hospital* v. *Shalala*, No. 99–CV–75202–DT (E.D. Mich. 2001)).

The final wage data public use file will be released on approximately May 10, 2002. Hospitals should examine both Table 2 of this proposed rule and the May 2002 final public use wage data file (which reflects revisions to the data used to calculate the values in Table 2) to verify the data CMS is using to calculate the wage index.

As with the file made available in January 2002, CMS will make the final wage data file released in May 2002 available to hospital associations and the public on the Internet. However, the May 2002 public use file will be made available solely for the limited purpose of identifying any potential errors made by CMS or the fiscal intermediary in the entry of the final wage data that result from the correction process described above (with the February 8 deadline). Hospitals are encouraged to review their hospital wage data promptly after the release of the May 2002 file. Data presented at this time cannot be used by hospitals to initiate new wage data correction requests.

If, after reviewing the final file, a hospital believes that its wage data are incorrect due to a fiscal intermediary or CMS error in the entry or tabulation of the final wage data, it should send a letter to both its fiscal intermediary and CMS. The letters should outline why the hospital believes an error exists and provide all supporting information, including dates. These requests must be *received* by CMS and the fiscal intermediaries no later than June 7, 2002. Requests mailed to CMS should be sent to: Center for Medicare & Medicaid Services, Center for Health Plans and Providers, Attention: Wage Index Team, Division of Acute Care, C4–07–05, 7500 Security Boulevard, Baltimore, MD 21244–1850. Each request must also be sent to the hospital's fiscal intermediary. The intermediary will review requests upon receipt and contact CMS immediately to discuss its findings.

At this point in the process, that is, between release of the May 2002 wage index file and June 7, 2002, changes to the hospital wage data will only be made in those very limited situations involving an error by the intermediary or CMS that the hospital could not have known about before its review of the final wage data file. Specifically, neither the intermediary nor CMS will accept the following types of requests at this stage of the process:

- Requests for wage data corrections that were submitted too late to be included in the data transmitted to CMS by fiscal intermediaries on or before April 5, 2002.
- Requests for correction of errors that were not, but could have been, identified during the hospital's review of the January 2002 wage data file.
- Requests to revisit factual determinations or policy interpretations made by the intermediary or CMS during the wage data correction process.

Verified corrections to the wage index received timely (that is, by June 7, 2002) will be incorporated into the final wage index to be published by August 1, 2002 and effective October 1, 2002.

Again, we believe the wage data correction process described above provides hospitals with sufficient opportunity to bring errors in their wage data to the fiscal intermediaries' attention. Moreover, because hospitals will have access to the final wage data by May 2002, they will have the opportunity to detect any data entry or tabulation errors made by the fiscal intermediary or CMS before the development and publication of the FY 2003 wage index by August 1, 2002, and the implementation of the FY 2003 wage index on October 1, 2002. If hospitals avail themselves of this opportunity, the wage index implemented on October 1 should be accurate. Nevertheless, in the event that errors are identified after that date, we retain the right to make midyear changes to the wage index under very limited circumstances.

Specifically, in accordance with § 412.63(x)(2) of our existing regulations, we make midyear corrections to the wage index only in those limited circumstances in which a hospital can show (1) that the intermediary or CMS made an error in tabulating its data; and (2) that the hospital could not have known about the error, or did not have an opportunity to correct the error, before the beginning of FY 2003 (that is, by the June 7, 2002 deadline). As indicated earlier, since a hospital will have the opportunity to verify its data, and the fiscal intermediary will notify the hospital of any changes, we do not expect that midyear corrections would be necessary. However, if the correction of a data error changes the wage index value for an area, the revised wage index value is effective prospectively from the date the correction is approved.

This policy for applying prospective corrections to the wage index was originally set forth in the preamble to the January 3, 1984 final rule (49 FR 258) implementing the hospital inpatient prospective payment system. It has been our longstanding policy to make midyear corrections to the hospital wage data and adjust the wage index for the affected areas on a prospective basis.

Section 412.63(x)(3) states that revisions to the wage index resulting from midyear corrections to the wage index values are incorporated in the wage index values for other areas at the beginning of the next Federal fiscal year. Prior to October 1, 1993, the wage index was based on a wage data survey submitted by all hospitals (prior to that, the data came from the Bureau of Labor Statistics' hospital wage and employment data file). Beginning October 1, 1993, as required by section 1886(d)(3)(E) of the Act, we began updating the wage index data on an annual basis. Because the wage index has been updated annually since FY 1994, § 412.63(x)(3) is no longer necessary, and we are proposing to delete it. Similarly, § 412.63(x)(4) provides that the effect on program payments of midyear corrections to the wage index values is taken into account in establishing the standardized amounts for the following year. Again, the wage data are now updated annually. Therefore, § 412.63(x)(4) is no longer necessary, and we are proposing to delete it as well.

Finally, we are proposing to revise § 412.63(x)(2) to clarify that CMS will make a midyear correction to the wage index for an area only if a hospital can show that the intermediary or CMS made an error in tabulating the hospital's own data. That is, this provision is not available to a hospital seeking to revise another hospital's data that may be affecting the requesting hospital's wage index. As described above, the requesting hospital must show that it could not have known about the error, or that it did not have the opportunity to correct the error, before the beginning of the Federal fiscal year.

IV. Proposed Rebasing and Revision of the Hospital Market Baskets

A. Operating Costs

1. Background

Effective for cost reporting periods beginning on or after July 1, 1979, we developed and adopted a hospital input price index (that is, the hospital "market basket") for operating costs. Although "market basket" technically describes the mix of goods and services used to produce hospital care, this term is also commonly used to denote the input price index (that is, cost category weights and price proxies combined) derived from that market basket. Accordingly, the term "market basket" as used in this document refers to the hospital input price index.

The percentage change in the market basket reflects the average change in the price of goods and services hospitals purchased in order to furnish inpatient care. We first used the market basket to adjust hospital cost limits by an amount that reflected the average increase in the prices of the goods and services used to furnish hospital inpatient care. This approach linked the increase in the cost limits to the efficient utilization of resources.

With the inception of the acute care hospital inpatient prospective payment system, the projected change in the hospital market basket has been the integral component of the update factor by which the prospective payment rates are updated every year. For FY 2003, payment rates will be updated by the projected increase in the hospital market basket minus 0.55 percentage points. A detailed explanation of the hospital market basket used to develop the prospective payment rates was published in the **Federal Register** on September 3, 1986 (51 FR 31461). We also refer the reader to the August 29, 1997 **Federal Register** (62 FR 45966) in

which we discussed the previous rebasing of the hospital input price index.

The hospital market basket is a fixed-weight, Laspeyres-type price index that is constructed in three steps. First, a base period is selected and total base period expenditures are estimated for a set of mutually exclusive and exhaustive spending categories based upon type of expenditure. Then, the proportion of total operating costs that each category represents is determined. These proportions are called cost or expenditure weights. Second, each expenditure category is matched to an appropriate price or wage variable, referred to as a price proxy. These price proxies are price levels derived from publicly available statistical series and are published on a consistent schedule, preferably at least on a quarterly basis.

Finally, the expenditure weight for each category is multiplied by the level of the respective price proxy. The sum of these products (that is, the expenditure weights multiplied by the price levels) for all cost categories yields the composite index level of the market basket in a given year. Repeating this step for other years produces a series of market basket index levels over time. Dividing one index level by an earlier index level produces rates of growth in the input price index over that time.

The market basket is described as a fixed-weight index because it answers the question of how much it would cost, at another time, to purchase the same mix of goods and services that was purchased in the base period. The effects on total expenditures resulting from changes in the quantity or mix of goods and services (intensity) purchased subsequent to the base period are not measured. For example, shifting a traditionally inpatient type of care to an outpatient setting might affect the volume of inpatient goods and services purchased by the hospital, but would not be factored into the price change measured by a fixed weight hospital market basket. In this manner, the index measures only the pure price change. Only rebasing (changing the base year) the index would capture these quantity and intensity effects. Therefore, we rebase the market basket periodically so the cost weights reflect changes in the mix of goods and services that hospitals purchase (hospital inputs) in furnishing inpatient care. We last rebased the hospital market basket cost weights in 1997, effective for FY 1998 (62 FR 45993). This market basket, still used through FY 2002, reflects base year data from FY 1992 in the construction of the cost weights.

We note that there are separate market baskets for acute care hospital inpatient prospective payment system hospitals and excluded hospitals and hospital units. In addition, we are in the process of conducting the necessary research to determine if separate market baskets for the inpatient rehabilitation, long-term care, and psychiatric hospital prospective payment systems can be developed. However, for the purpose of this preamble, we are only discussing the market basket based on all excluded hospitals together.

2. Rebasing and Revising the Hospital Market Basket

The terms rebasing and revising, while often used interchangeably, actually denote different activities. Rebasing means moving the base year for the structure of costs of an input price index (for example, we are proposing to shift the base year cost structure from FY 1992 to FY 1997). Revising means changing data sources, cost categories, or price proxies used in the input price index.

We are proposing to use a rebased and revised hospital market basket in developing the FY 2003 update factor for the prospective payment rates. The new market basket would be rebased to reflect FY 1997, rather than FY 1992, cost data. The 1992-based market baskets contained expenditure data for hospitals from Medicare cost reports for cost reporting periods beginning on or after October 1, 1991, and before October 1, 1992. The 1997-based market baskets use data for hospitals from Medicare cost reports for cost reporting periods beginning on or after October 1, 1996, and before October 1, 1997. Fiscal year 1997 was selected as the new base year because 1997 is the most recent year for which relatively complete data are available. These include data from FY 1997 Medicare cost reports as well as 1997 data from two U.S. Department of Commerce publications: the Bureau of the Census' Business Expenditure Survey (BES) and the Bureau of Economic Analysis' Annual Input-Output Tables. In addition, preliminary analysis of FYs 1998 and 1999 Medicare cost report data showed little difference in cost shares from FY 1997 data.

In developing the proposed rebased and revised market baskets, we reviewed hospital operating expenditure data for the market basket cost categories in determining the cost weights. We relied primarily on Medicare hospital cost report data for the proposed rebasing. We prefer to use cost report data wherever possible because these are the cost data supplied directly from hospitals. Other data sources such as the BES and the input-output tables serve as secondary sources used to fill in where cost report data are not available or appear to be incomplete. Below we are providing a detailed discussion of the process for calculating cost share weights.

Cost category weights for the proposed FY 1997-based market baskets were developed in several stages. First, base weights for several of the categories (Wages and Salaries, Employee Benefits, Contract Labor, Pharmaceuticals and Blood and Blood Products) were derived from the FY 1997 Medicare cost reports for operating costs. The expenditures for these categories were calculated as a percentage of total operating costs from those hospitals covered under the inpatient hospital prospective payment system. These data were then edited to remove outliers and ensure that the hospital participated in the Medicare program and had Medicare costs. However, we were unable to measure only those operating costs attributable to the inpatient portion of the hospital, because many cost centers are utilized by both inpatients and outpatients in the hospital. Health Economics Research (HER), under contract with CMS, is currently in the process of researching the possibility of constructing a separate outpatient market basket for CMS' outpatient hospital prospective payment system. This research may provide some insight and guidance for separating inpatient and outpatient costs. We excluded hospital-based subprovider cost centers (for example, skilled nursing, nursing, hospice, psychiatric, rehabilitation, intermediate care/mental retardation, and other long-term care) as well as the portion of overhead and ancillary costs incurred by these subproviders.

Second, the weight for professional liability insurance was calculated using data from a survey conducted by ANASYS under contract to CMS. This survey, called the National Hospital Malpractice Insurance Survey (NHMIS), was conducted to estimate hospital malpractice insurance costs over time at the national level. A more detailed description of this survey is found later in this preamble.

Third, data from the 1997 Business Expenditure Survey (BES) was used to develop a weight for the utilities and telephone services categories. Like most other data sources, the BES includes data for all hospitals and does not break out data by payer. However, we believe the overall data from the BES does not produce results that are inconsistent with the prospective payment system hospitals, particularly at the detailed

cost category level with which we are working.

Fourth, the sum of the weights for wages and salaries, employee benefits, contract labor, professional liability insurance, utilities, pharmaceuticals, blood and blood products, and telephone services was subtracted from other operating expenses to obtain a portion for all other expenses.

Finally, the remainder of the weight for all other expenses was divided into subcategories using relative cost shares from the 1997 Annual Input-Output Table for the hospital industry, produced by the Bureau of Economic Analysis, U.S. Department of Commerce. The 1997 Benchmark Input-Output data will be available, at the earliest, in late 2002, so we will be unable to incorporate these data in the final rule.

Below, we further describe the sources of the six main category weights and their subcategories in the proposed FY 1997-based market basket. We note the differences between the methodologies used to develop the FY 1992-based and the FY 1997-based market baskets.

- *Wages and Salaries:* The cost weight for the wages and salaries category was derived using Worksheet S–3 from the FY 1997 Medicare cost reports. Contract labor, which is also derived from the FY 1997 Medicare cost reports, is split between the wages and salaries and employee benefits cost categories, using the relationship for employed workers. An example of contract labor is registered nurses who are employed and paid by firms that contract for their work with the hospital. The wages and salaries category in the FY 1992-based market basket was developed from the FY 1992 Medicare cost reports. In addition, we used the 1992 Current Population Survey to break out more detailed occupational subcategories. These subcategories were not broken out for the proposed FY 1997-based market basket.
- *Employee Benefits:* The cost weight for the employee benefits category was derived from Worksheet S–3 of the FY 1997 Medicare cost reports. The employee benefits category in the FY 1992-based market basket was developed from FY 1992 Medicare cost reports and used the 1992 Current Population Survey to break out various occupational subcategories. These subcategories were not broken out for the proposed FY 1997-based market basket.
- *Nonmedical Professional Fees:* This category refers to various types of nonmedical professional fees such as legal, accounting, engineering and management and consulting fees. Management and consulting and legal fees make up the majority of professional fees in the hospital sector. The cost weight for the nonmedical professional fees category was derived from the Bureau of Economic Analysis Input-Output data for 1997. The FY 1992-based index used a combination of data from the American Hospital Association (AHA) and the Medicare cost reports to arrive at a weight. However, because the AHA survey data for professional fees are no longer published, we were unable to duplicate this method. Had we used the proposed methodology to calculate the FY 1992 nonmedical professional fees component, the proportion would have been similar to the FY 1997 share.
- *Professional Liability Insurance:* The proposed FY 1997-based market basket uses a weight for professional liability insurance derived from a survey conducted by ANASYS under contract to CMS (Contract Number 500–98–005). This survey attempted to estimate hospital malpractice insurance costs over time at the national level for years 1996 and 1997. The population universe of the survey was defined as all non-Federal short-term, acute care prospective payment system hospitals. A statistical sample of hospitals was drawn from this universe and data collected from those hospitals. This sample of hospitals was then matched to the appropriate cost report data so that a malpractice cost weight could be calculated. The questions used in the survey were based on a 1986 General Accounting Office (GAO) malpractice survey questionnaire that was modified so data could be collected to calculate a malpractice cost weight and the rate of change for a constant level of malpractice coverage at a national level. The 1997 proportion as calculated by ANASYS was compared to limited data for FYs 1998 and 1999 contained in the Medicare Health Care System Cost Report Information System (HCRIS). The percentages are relatively comparable. However, since this field was virtually incomplete in the FY 1997 cost report file, we were unable to use this cost report data.

In contrast, the FY 1992-based market basket professional liability insurance weight was determined using the cost report data for PPS–6 (cost reporting periods beginning in FY 1989), the last year these costs had to be treated separately from all other administrative and general costs, trended forward to FY 1992 based on the relative importance of malpractice costs found in the previous market basket.

- *Utilities:* For the proposed FY 1997-based market baskets, the cost weight for utilities was derived from the Bureau of the Census' Business Expenditures Survey. For the FY 1992-based market baskets, the cost weight for utilities was derived from the Bureau of the Census' Asset and Expenditures Survey. The Business Expenditure Survey replaced the Asset and Expenditure Survey and the categories and results are similar.
- *All Other Products and Services:* The all other products and services category includes the remainder of products and services that hospitals purchase in providing care. Products found in this category include: direct service food, contract service food, pharmaceuticals, blood and blood products, chemicals, medical instruments, photo supplies, rubber and plastics, paper products, apparel, machinery and equipment, and miscellaneous products. Services found in this category include: telephone, postage, other labor-intensive services, and other nonlabor-intensive services. Labor-intensive services include those services for which local labor markets would likely influence prices. A complete discussion of the labor-related share is presented later in this preamble. The shares for pharmaceuticals and blood and blood products were derived from the FY 1997 Medicare cost reports, while the share for telephone services was derived from the BES. Relative shares for the other subcategories were derived from the 1997 Bureau of Economic Analysis Annual Input-Output Table for the hospital industry.

The calculation of these subcategories involved calculating a residual from the Input/Output Table using categories similar to those not yet accounted for in the market basket. Subcategory weights were then calculated as a proportion of this residual and applied to the similar residual in the market basket.

- *Blood and blood products:* When the market basket was last revised and rebased to FY 1992, the component for blood services was discontinued because of the lack of appropriate data to determine a weight. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) required that CMS consider the prices of blood and blood products purchased by hospitals and determine whether those prices are adequately reflected in the market basket. In accordance with this requirement, CMS has done considerable research to determine if a component for blood and blood products should be added to the market basket and, if so, how the weight should be determined. CMS has studied four alternative data sources to possibly

determine a weight for blood in the market basket. If none of these data sources was deemed acceptable, we could conclude that a component for blood should not be reintroduced in the hospital market basket. In a December 2001 report by the MedPAC entitled "Blood Safety in Hospitals and Medicare Inpatient Payment," MedPAC recommended that the market basket should explicitly account for the cost of blood and blood products by reintroducing a separate component for their prices.

The first alternative data source studied was using data from the Medicare cost reports. The cost reports have two cost centers where the costs of blood can be recorded: (1) whole blood and packed red blood cells (nonsalary); and (2) blood storing, processing, and transfusion (nonsalary). Although all prospective payment system hospitals submit a cost report, less than half of these hospitals reported data in either of the two blood cost centers. However, if we can determine that the hospitals reporting blood are representative of all prospective payment system hospitals, then a cost share can be computed using the cost reports.

The second alternative involves constructing weights from the Input-Output Table from the BEA, Department of Commerce. These data were used to construct the weight when the market basket was revised before FY 1992. Unfortunately, BEA stopped reporting blood separately in their Input-Output Table in 1987. One possible use of these data would be to calculate a weight by updating the prior weight by the relative price change for blood between the last data point available and 1997. However, by using this method, only the escalation in prices, not the changes in quantity or intensity of use of blood products, would be captured.

The third alternative was using data from the MedPAR files. This option was discussed in MedPAC's December 2001 report, and involves using claims data or data on hospital charges. In order to construct a weight for the market basket, the underlying costs of blood must be calculated from the claims data. An analysis of cost-to-charge ratios of hospitals can determine if this is feasible.

The final alternative data source is the Bureau of the Census' quinquennial Business Expenditure Survey and the Economic Census. A weight can be obtained indirectly by taking the ratio of receipts of nonprofit blood collectors to total operating expenses of hospitals. Some adjustments would be needed in order for the weight calculated in this way to be completely valid. In addition, this method assumes that all blood used by hospitals comes from nonprofit sources. However, in 1999, hospitals collected 7 percent of the donated units.

After a thorough analysis, CMS has determined that the Medicare cost reports, after minor adjustments, are the best option. The data from the Input-Output Table are not optimal because they are not current and would have to be aged using only price data, which do not reflect quantity and intensity changes over this period. Although the MedPAR data could be adjusted to compute a cost share, using claims data is not the preferred alternative. Census data would be an attractive option if the cost reports were not available.

The main weakness of the Medicare cost reports is the inconsistent reporting of hospitals in the two blood cost centers. In 1997, only 48.0 percent of all hospitals reported blood in one or both cost centers. However, these hospitals accounted for 62.2 percent of the operating costs of all hospitals. In order for the calculation of the blood cost share weight to be acceptable, the hospitals that reported blood would need to be adjusted to be representative of all hospitals, including those that did not report blood on the cost reports.

Because of the similarity of data in the two blood cost centers, the assumption was made that if a hospital reported blood in only one of the two cost centers, all of its blood costs were reported in that cost center. In the FY 1997 cost reports, of the hospitals that reported blood, 41.3 percent reported only in the blood cells cost center, 58.2 percent reported only in the blood storing cost center, and only 0.5 percent reported in both blood cost centers. To calculate a weight, the numerator was the summation of the data in both blood cost centers. The denominator was the summation of the operating costs of each hospital that reported blood in each cost center minus the operating costs of the few hospitals that reported blood in both cost centers to avoid double counting.

The blood cost share calculated from these data was then adjusted so that the hospitals reporting blood had the same characteristics of all other hospitals. Adjustments were necessary because the hospitals that reported blood were more likely to be urban and teaching hospitals than those hospitals that did not report blood. The adjustments made less than a 0.1 percent difference in the cost share.

The weight produced using the cost report for FY 1997 was 0.875 percent. We also looked at cost report data from FYs 1996 and 1998. The weights calculated in these years were similar to the FY 1997 weight. The calculation of the blood cost share using the alternative data sources cited above was similar to the results using the cost reports. Given the consistency with these other sources, the representativeness of our estimate, and the stability of the cost share, we are proposing to use the Medicare cost reports to determine a weight for blood and blood products in the proposed hospital market basket.

Overall, our work resulted in the identification of 23 separate cost categories that represent the rebased weights in the proposed rebased and revised hospital market basket. There is one more category than was included in the FY 1992-based market basket (FY 1992-based had 22). The differences between the weights of the major categories determined from the Medicare cost reports for the proposed FY 1997-based index and the previous FY 1992-based index are summarized in Table 1.

TABLE 1.—FY 1992-BASED AND PROPOSED FY 1997-BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING MAJOR COST CATEGORIES AND WEIGHTS AS DETERMINED FROM THE MEDICARE COST REPORTS

Expense categories	Proposed rebased FY 1997 hospital market basket	FY 1992-based hospital market basket
Wages and Salaries	50.686	50.244
Employee Benefits	10.970	11.146
Pharmaceuticals	5.416	4.162
Blood and Blood Products	0.875	.....

TABLE 1.—FY 1992-BASED AND PROPOSED FY 1997-BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING MAJOR COST CATEGORIES AND WEIGHTS AS DETERMINED FROM THE MEDICARE COST REPORTS—Continued

Expense categories	Proposed rebased FY 1997 hospital market basket	FY 1992-based hospital market basket
All Other	32.053	34.448
Total	100.000	100.000

Table 2 sets forth all of the proposed market basket cost categories and weights. For comparison purposes, the 1992-based cost categories and weights are included in the table.

TABLE 2.—FY 1992-BASED AND PROPOSED FY 1997-BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING COST CATEGORIES AND WEIGHTS

Expense categories	Proposed rebased FY 1997 hospital market basket weights	FY 1992-based hospital market basket weights
1. Compensation	61.656	61.390
A. Wages and Salaries*	50.686	50.244
B. Employee Benefits*	10.970	11.146
2. Professional Fees*	5.401	2.127
3. Utilities	1.353	1.542
A. Fuel, Oil, and Gasoline	0.284	0.369
B. Electricity	0.833	0.927
C. Water and Sewerage	0.236	0.246
4. Professional Liability Insurance	0.840	1.189
5. All Other	30.749	33.752
A. All Other Products	19.537	24.825
(1.) Pharmaceuticals	5.416	4.162
(2.) Direct Purchase Food	1.370	2.314
(3.) Contract Service Food	1.274	1.072
(4.) Chemicals	2.604	3.666
(5.) Blood and Blood Products	0.875	.....
(6.) Medical Instruments	2.192	3.080
(7.) Photographic Supplies	0.204	0.391
(8.) Rubber and Plastics	1.668	4.750
(9.) Paper Products	1.355	2.078
(10.) Apparel	0.583	0.869
(11.) Machinery and Equipment	1.040	0.207
(12.) Miscellaneous Products	0.956	2.236
B. All Other Services	11.212	8.927
(1.) Telephone Services	0.398	0.581
(2.) Postage	0.857	0.272
(3.) All Other: Labor Intensive*	5.438	7.277
(4.) All Other: Non-Labor Intensive	4.519	0.796
Total	100.000	100.000

*Labor-related.
Note: Due to rounding, weights may not sum to total.

3. Selection of Price Proxies

After computing the FY 1997 cost weights for the proposed rebased hospital market basket, it is necessary to select appropriate wage and price proxies to monitor the rate of change for each expenditure category. Most of the indicators are based on Bureau of Labor Statistics (BLS) data and are grouped into one of the following BLS categories:

• Producer Price Indexes—Producer Price Indexes (PPIs) measure price changes for goods sold in other than retail markets. PPIs are preferable price proxies for goods that hospitals purchase as inputs in producing their outputs because a PPI would better reflect the prices faced by hospitals. For example, we used the PPI for ethical (prescription) drugs, rather than the Consumer Price Index (CPI) for prescription drugs, because hospitals generally purchase drugs directly from the wholesaler. The PPIs that we use measure price change at the final stage of production.

• Consumer Price Indexes—Consumer Price Indexes (CPIs) measure change in the prices of final goods and services bought by the typical consumer. Because they may not represent the price faced by a producer, the consumer price indexes were used only if an appropriate PPI was not available, or if the expenditure was more similar to that of retail consumers in general rather than a purchase at the wholesale level. For example, the CPI for food purchased away from home was

used as a proxy for contracted food services.

• Employment Cost Indexes—Employment Cost Indexes (ECIs) measure the rate of change in employee wage rates and employer costs for employee benefits per hour worked. These indexes are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. They are appropriately not affected by shifts in employment mix.

Table 3 sets forth the complete proposed hospital market basket including cost categories, weights, and price proxies. For comparison purposes, the respective FY 1992-based market basket price proxies are listed as well. A summary outlining the choice of the various proxies follows the table.

TABLE 3.—PROPOSED FY 1997-BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING COST CATEGORIES, AND WEIGHTS, AND FY 1992-BASED AND PROPOSED FY 1997-BASED PRICE PROXIES

Expense categories	Proposed rebased FY 1997 hospital market basket weights	Proposed rebased FY 1997 hospital market basket price proxy	FY 1992 hospital market basket price proxy
1. Compensation	61.656		
A. Wages and salaries *	50.686	ECI-wages and salaries, civilian hospital workers.	CMS occupational wage proxy.
B. Employee benefits *	10.970	ECI—benefits, civilian hospital workers	CMS occupational benefit proxy.
2. Professional fees *	5.401	ECI—compensation for professional specialty & technical.	ECI—compensation for professional, specialty & technical.
3. Utilities	1.353		
A. Fuel, oil, and gasoline	0.284	PPI refined petroleum products	PPI refined petroleum products.
B. Electricity	0.833	PPI commercial electric power	PPI commercial electric power.
C. Water and sewerage	0.236	CPI–U water & sewerage maintenance	CPI–U water & sewerage maintenance.
4. Professional liability insurance	0.840	CMS professional liability insurance premium index.	CMS professional liability insurance premium index.
5. All other products	30.749		
A. All other products	19.537		
(1.) Pharmaceuticals	5.416	PPI ethical (prescription) drugs	PPI ethical (prescription) drugs.
(2.) Direct purchase food	1.370	PPI processed foods and feeds	PPI processed foods and feeds.
(3.) Contract service food	1.274	CPI–U food away from home	CPI–U food away from home.
(4.) Chemicals	2.604	PPI industrial chemicals	PPI industrial chemicals.
(5.) Blood and blood products	0.875	PPI blood and blood derivatives, human use.	N/A.
(6.) Medical instruments	2.192	PPI medical instruments & equipment	PPI medical instruments and equipment.
(7.) Photographic supplies	0.204	PPI photographic supplies	PPI photographic supplies.
(8.) Rubber and plastics	1.668	PPI rubber & plastic products	PPI rubber and plastic products.
(9.) Paper products	1.355	PPI converted paper and paperboard products.	PPI converted paper and paperboard products.
(10.) Apparel	0.583	PPI apparel	PPI apparel.
(11.) Machinery and equipment	1.040	PPI machinery and equipment	PPI machinery and equipment.
(12.) Miscellaneous products	0.956	PPI finished goods less food and energy	PPI finished goods.
B. All other services	11.212		
(1.) Telephone services	0.398	CPI–U telephone services	CPI–U telephone services.
(2.) Postage	0.857	CPI–U postage	CPI–U postage.
(3.) All other: labor intensive *	5.438	ECI—Compensation for private service occupations.	ECI—compensation for private service occupations.
(4.) All other: non-labor intensive	4.519	CPI–U all items	CPI–U all items.
Total	100.000		

* Labor related.

a. Wages and Salaries

For measuring the price growth of wages in the FY 1997-based market basket, we are proposing to use the ECI for civilian hospitals. This differs from the proxy used in the FY 1992-based index in which a blended occupational wage index was used. The blended occupational wage proxy used in the FY 1992-based index and the ECI for wages and salaries for hospitals both reflect a fixed distribution of occupations within the hospital. The major difference between the two proxies is in the treatment of professional and technical wages. In the blended occupational wage proxy, the professional and technical category is blended evenly between the ECI for wages and salaries for hospitals and the ECI for wages and salaries for professional and technical occupations in the overall economy, instead of hospital-specific occupations as reflected in the ECI for hospitals. This blend was done to create a normative price index that did not reflect the market imperfections in the hospital labor markets that existed for much of the 1980s and early 1990s.

Between 1987 (the first year the ECI for hospitals was available, although the pattern existed before then using other measures of hospital wages) and 1994, the ECI for wages and salaries for hospital workers grew faster than the blended occupational wage proxy. This trend then reversed for the 1995 through 2000 period when the ECI grew slower than the blended occupational wage proxy each year. This is the apparent result of the shift of private insurance enrollees from fee-for-service plans to managed care plans and the tighter controls these plans exhibited over hospital utilization and incentives to shift care out of the inpatient hospital setting. More recently, the ECI for wages

and salaries for hospital workers is again growing faster than the blended occupational wage proxy, raising the question of whether the relationship between hospital wages and the occupational wage blend from 1994 through 2000 was the signaling of a new era in the competitiveness of the hospital labor market, or simply the temporary reversal of the long-term pattern of labor market imperfections in hospitals.

In order to answer this question, we researched the historical determinants of this relationship and estimated what the future market conditions are likely to be. Our analysis indicated that the driving force behind the long-term differential between hospital wages and the blended occupational wage proxy was the increased demand for hospital services and the subsequent increase in hospital utilization, particularly in outpatient settings. However, during the 1994–2000 period, the major force behind the reversal of the differential was the shift of enrollees to managed care plans that had tighter restrictions on hospital utilization and encouraged the shift of care out of the hospital setting. To a lesser extent, the robust economic growth and tight economy-wide labor markets that accompanied this period helped to reverse the differential as well. Over the last year or two, there has been a move back towards less restrictive plans, and a subsequent increase in the utilization of medical services. This recent surge appears to reflect the true underlying fundamentals of health care demand. This concept is reinforced by the similar patterns being observed for nursing homes and other health sectors as well. This is an important development, specifically when compared to the ECI for wages and salaries for nursing homes, which reflect less skilled occupations, yet still experienced a similar acceleration in wage growth. Thus, we would expect that this recent surge in hospital wages is reflective of competitive labor market conditions, and would likely persist only as long as the underlying demand for health care was accelerating.

While the shift to managed care plans had a noticeable one-time effect, we do feel that the hospital labor market is more competitive than prior to this period and that the expected shift towards more restrictive insurance plans over the coming decade will act to create a wage differential that reflects the underlying increases in demand for hospital services. As shown in Table 5, using the ECI has only a minor overall impact (0.1 percentage point per year) from FY 1995 through FY 2001 on the hospital market basket. For FY 2003, the proposed hospital market basket is forecast to increase 0.2 percentage points faster (3.3 vs. 3.1) than it would have if the occupational blend had been used. Based on this, we are proposing to use the ECI for wages and salaries for hospitals and the ECI for benefits for hospitals as the proxies in the hospital market basket for wages and benefits, respectively. The ECI met our criteria of relevance, reliability, availability, and timeliness. Relevance means that the proxy is applicable and representative of the cost category that it proxies. Reliability indicates that the index is based on valid statistical methods and has low sampling variability. Availability means that the proxy is publicly available. Timeliness implies that the proxy is published regularly, at least once a quarter.

b. Employee Benefits

The proposed FY 1997-based hospital market basket uses the ECI for employee benefits for civilian hospitals. This differs from the FY 1992-based index in which a blended occupational index was used. Our conclusions were based on a similar analysis that was done for the wages and salaries proxy described above.

c. Nonmedical Professional Fees

The ECI for compensation for professional and technical workers in private industry is applied to this category since it includes occupations such as management and consulting, legal, accounting and engineering services. The same price measure was used in the FY 1992-based market basket.

d. Fuel, Oil, and Gasoline

The percentage change in the price of gas fuels as measured by the PPI (Commodity Code #0552) was applied to this component. The same price measure was used in the FY 1992-based market basket.

e. Electricity

The percentage change in the price of commercial electric power as measured by the PPI (Commodity Code #0542) was applied to this component. The same price measure was used in the FY 1992-based market basket.

f. Water and Sewerage

The percentage change in the price of water and sewerage maintenance as measured by the Consumer Price Index (CPI) for all urban consumers (CPI Code # CUUR0000SEHG01) was applied to this component. The same price measure was used in the FY 1992-based market basket.

g. Professional Liability Insurance

The percentage change in the hospital professional liability insurance price as estimated by the CMS Hospital Malpractice Index was applied. In the FY 1992-based market basket, the same proxy was used.

We are currently conducting research into improving our proxy for professional liability insurance. This research includes subcontracting with ANASYS through a contract with DRI-WEFA to extend the results of its NHMIS survey to set up a sample of hospitals from which malpractice insurance premium data will be directly collected. This new information, which would include liability estimates for hospitals that self-insure, would be combined with our current proxy data to obtain a more accurate price measure. Depending on the timing of this new information, the proxy for professional liability insurance in the market basket may be modified for the final rule. In addition, we are researching a BLS PPI for malpractice premiums that may be a more appropriate proxy for this cost category.

h. Pharmaceuticals

The percentage change in the price of prescription drugs as measured by the PPI (Commodity Code # PPI283D#RX) was applied to this variable. This is a special index produced by BLS. The previous price proxy used in the FY 1992-based index (Commodity Code #0635) was discontinued after BLS revised its indexes.

i. Food, Direct Purchases

The percentage change in the price of processed foods and foods as measured by the PPI (Commodity Code #02) was applied to this component. The same price measure was used in the FY 1992-based market basket.

j. Food, Contract Services

The percentage change in the price of food purchased away from home as measured by the CPI for all urban consumers (CPI Code # CUUR0000SEFV) was applied to this component. The same price measure was used in the FY 1992-based market basket.

k. Chemicals

The percentage change in the price of industrial chemical products as measured by the PPI (Commodity Code #061) was applied to this component. While the chemicals in this category include industrial as well as other types

of chemicals, the industrial chemicals component constitutes the largest proportion by far. Thus, Commodity Code #061 is the appropriate proxy. The same price measure was used in the FY 1992-based market basket.

l. Blood and Blood Products

The percentage change in the price of blood and derivatives for human use as measured by the PPI (Commodity Code #063711) was applied to this component. As discussed earlier in this preamble, a comparable cost category was not available in the FY 1992-based market basket.

We are proposing that the blood and blood products cost category use the PPI for blood and blood derivatives as its price proxy. This proxy is relevant, reliable, available, and timely. We considered placing the blood weight in the Chemicals or Pharmaceuticals cost category, but found this made only minor changes to the total index. We also considered constructing an index based on blood cost data received from the American Red Cross, America's Blood Centers, and Zeman and Company. However, these data are collected annually and not widely available. The PPI for blood and blood derivatives was the only index we found that met all of our criteria.

m. Surgical and Medical Equipment

The percentage change in the price of medical and surgical instruments as measured by the PPI (Commodity Code #1562) was applied to this component. The same price measure was used in the FY 1992-based market basket.

n. Photographic Supplies

The percentage change in the price of photographic supplies as measured by the PPI (Commodity Code #1542) was applied to this component. The same price measure was used in the FY 1992-based market basket.

o. Rubber and Plastics

The percentage change in the price of rubber and plastic products as measured by the PPI (Commodity Code #07) was applied to this component. The same price measure was used in the FY 1992-based market basket.

p. Paper Products

The percentage change in the price of converted paper and paperboard products as measured by the PPI (Commodity Code #0915) was used. The same price measure was used in the FY 1992-based market basket.

q. Apparel

The percentage change in the price of apparel as measured by the PPI (Commodity Code #381) was applied to this component. The same price measure was used in the FY 1992-based market basket.

r. Machinery and Equipment

The percentage change in the price of machinery and equipment as measured by the PPI (Commodity Code #11) was applied to this component. The same price measure was used in the FY 1992-based market basket.

s. Miscellaneous Products

The percentage change in the price of all finished goods less food and energy as measured by the PPI (Commodity Code #SOP3500) was applied to this component. The percentage change in the price of all finished goods was used in the FY 1992-based market basket. This change was made to remove the effect of food and energy prices, which are already captured elsewhere in the market basket.

t. Telephone

The percentage change in the price of telephone services as measured by the CPI for all urban consumers (CPI Code # CUUR0000SEED) was applied to this component. The same price measure was used in the FY 1992-based market basket.

u. Postage

The percentage change in the price of postage as measured by the CPI for all urban consumers (CPI Code # CUUR0000SEEC01) was applied to this component. The same price measure was used in the FY 1992-based market basket.

v. All Other Services, Labor Intensive

The percentage change in the ECI for compensation paid to service workers employed in private industry was applied to this component. The same price measure was used in the FY 1992-based market basket.

w. All Other Services, Nonlabor Intensive

The percentage change in the all-items component of the CPI for all urban consumers (CPI Code # CUUR0000SA0) was applied to this component. The same price measure was used in the FY 1992-based market basket.

For further discussion of the rationale for choosing many of the specific price proxies, we reference the August 30, 1996 final rule (61 FR 46326). Table 4 shows the historical and forecasted updates under both the proposed FY 1997-based and the FY 1992-based market baskets. For comparison purposes, the FY 1997-based index incorporating different wage and benefit proxies is included in Table 5.

TABLE 4.—FY 1992-BASED AND PROPOSED FY 1997-BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING INDEX PERCENT CHANGE, 1995–2004

Fiscal year (FY)	Prospective rebased 1997 hospital market basket	FY 1992-based market basket
Historical data:		
FY 1995	2.8	3.1
FY 1996	2.3	2.4
FY 1997	1.6	2.1
FY 1998	2.7	2.9
FY 1999	2.7	2.5
FY 2000	3.3	3.6
FY 2001	4.2	4.1
Average FYs 1995–2001	2.8	3.0
Forecast:		
FY 2002	3.7	2.8
FY 2003	3.3	3.0
FY 2004	2.9	3.2

TABLE 4.—FY 1992-BASED AND PROPOSED FY 1997-BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING INDEX PERCENT CHANGE, 1995–2004—Continued

Fiscal year (FY)	Prospective rebased 1997 hospital market basket	FY 1992-based market basket
Average FYs 2002–2004	3.3	3.0

Source: Global Insights, Inc, DRI–WEFA, 1st Qtr. 2002; @USMACRO/MODTREND @CISSIM/TRENDLONG0202.

Table 5 indicates that switching the proxy for wages and benefits to the ECI for Civilian Hospitals has a minimal effect on the FY 2003 update and a minimal effect over time. However, we believe that it is a more appropriate measure of price change in hospital wages and benefit prices given the current labor market conditions facing hospitals.

TABLE 5.—PROPOSED 1997-BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING INDEX PERCENT CHANGE, USING DIFFERENT WAGE AND BENEFIT PROXIES, 1995–2004

Fiscal year (FY)	Proposed rebased 1997 hospital market basket using ECIs for wages and benefits	Proposed rebased 1997 market basket using occupational wage and benefit proxies
Historical data:		
FY 1995	2.8	2.9
FY 1996	2.3	2.5
FY 1997	1.6	2.3
FY 1998	2.7	3.2
FY 1999	2.7	2.9
FY 2000	3.3	3.5
FY 2001	4.2	4.0
Average FYs 1995–2001	2.8	3.0
Forecast:		
FY 2002	3.7	3.0
FY 2003	3.3	3.1
FY 2004	2.9	3.1
Average FYs 2002–2004	3.3	3.

Source: Global Insights, Inc, DRI–WEFA, 1st Qtr. 2002; @USMACRO/MODTREND @CISSIM/TRENDLONG0202.

The reintroduction of a cost component for blood and blood products in the market basket also does not make a noticeable impact on the market basket. Table 6 shows the proposed FY 1997-based market basket percentage change with blood broken out separately compared to market baskets with blood included in either chemicals or drugs.

TABLE 6.—PROPOSED 1997-BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING INDEX PERCENT CHANGE, USING COST CATEGORIES FOR BLOOD AND BLOOD PRODUCTS, 1995–2004

Fiscal year (FY)	Proposed FY 1997-based market basket		
	With blood as a separate category	With blood included in chemicals	With blood included in drugs
Historical data:			
FY 1995	2.8	2.9	2.8
FY 1996	2.3	2.3	2.4
FY 1997	1.6	1.6	1.6
FY 1998	2.7	2.7	2.8
FY 1999	2.7	2.5	2.7
FY 2000	3.3	3.4	3.3
FY 2001	4.2	4.2	4.2
Average FYs 1995–2001	2.8	2.8	2.8
Forecast:			
FY 2002	3.7	3.6	3.7
FY 2003	3.3	3.3	3.3
FY 2004	2.9	3.0	3.0
Average FYs 2002–2004	3.3	3.3	3.3

Source: Global Insights, Inc, DRI-WEFA, 1st Qtr. 2002; @USMACRO/MODTREND @CISSIM/TRENDLONG0202.

4. Labor-Related Share

Sections 1886(d)(2)(H) and (d)(3)(E) of the Act direct the Secretary to estimate from time to time the proportion of payments that are labor-related: "The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs of the DRG prospective payment rates * * *".

In its June 2001 Report to Congress, MedPAC recommended that "To ensure accurate input-price adjustments in Medicare's prospective payment systems, the Secretary should reevaluate current assumptions about the proportions of providers' costs that reflect resources purchased in local and national markets." (Report to the Congress: Medicare in Rural America, p. 80, Recommendation 4D.) MedPAC believes that the labor-related share is an estimate of the national average proportion of providers' costs associated with inputs that are *only* affected by local market wage levels. MedPAC recommended the labor-related share include the weights for wages and salaries, fringe benefits, contract labor, and other labor-related costs for locally purchased inputs only. By changing the definition, and thereby lowering the labor-related share, funds would be transferred from urban to rural hospitals, which generally have wage index values less than 1.0.

Given the recommendation by MedPAC and our proposal to rebase and revise the hospital market basket, we have reviewed the definition and methodology of the labor-related share. In addition, we reviewed the differences between urban and rural hospitals, updated regression results, and began reviewing possible alternative methodologies for calculating the labor-related share.

The labor-related share is used to determine the proportion of the national prospective payment system base payment rate to which the area wage index is applied. In the past we have defined the labor-related share for prospective payment system acute care hospitals as the national average proportion of operating costs that are related to, influenced by, or vary with the local labor market. The labor-related share for the acute care hospital inpatient prospective payment system market basket has been the sum of the weights for wages and salaries, fringe benefits, professional fees, contract labor, postage, business services, and labor-intensive services.

The difference between the CMS definition of the labor-related share and MedPAC's recommendation is that MedPAC includes inputs that can only be purchased in the local labor market, while CMS' includes inputs that are related to, influenced by, or vary with the local labor market, even if those services may be purchased at the national level. We believe our measure of the labor-related share reflects the cost of those inputs that are likely purchased in the local market, and is consistent with the requirements under sections 1886(d)(2)(H) and (d)(3)(E) of the Act described at the beginning of section IV.A.4. of this proposed rule.

In connection with the rebasing and revising of the prospective payment system hospital market basket to 1997 data, we are proposing to recalculate the labor-related share of the standardized amounts. Our methodology is consistent with that used in the past to determine the labor-related share, which is the summation of the cost categories from the market basket deemed to vary with the local labor market. Based on the relative weights listed in Table 7, the proposed labor-related portion (wages and salaries, employee benefits, professional fees, and all other labor-intensive services) of the prospective payment system hospital market basket is 72.5 percent, and the nonlabor-related portion is 27.5 percent. By capturing more than just the direct labor costs that are available from the Medicare cost reports, our definition captures the "buy-versus-hire" decisions hospitals make in the purchase of their inputs. Accordingly, effective with discharges occurring on or after October 1, 2002, we are proposing to use these revised labor-related and nonlabor-related shares of the large urban and other areas' standardized amounts used to establish the prospective payment rates. Table 7 compares the FY 1992-based labor-related share with the proposed FY 1997-based labor-related share. As shown in Table 7, we have removed postage costs from the proposed FY 1997-based labor-related share because we do not believe these costs are likely to vary with the local labor market. Also, by changing the data source used to determine professional fees, the weight for that category has increased significantly.

TABLE 7.—LABOR-RELATED SHARE

Cost category	FY 1992-based weight	Proposed 1997-based weight	Difference
Wages and salaries	50.244	50.686	0.442
Fringe benefits	11.146	10.970	−0.176
Nonmedical professional fees	2.127	5.401	3.274
Postal services*	0.272	.....	−0.272
Other labor-intensive services**	7.277	5.438	−1.839
Total labor-related	71.066	72.495	1.429
Total nonlabor-related	28.934	27.505	−1.429

*No longer considered to be labor-related.

**Other labor-intensive services includes landscaping services, services to buildings, detective and protective services, repair services, insurance services, laundry services, auto parking and repairs, physical fitness facilities, other medical services, colleges and professional schools, and other government enterprises.

We are concerned that the result of this methodology could have negative impacts that would fall predominantly on rural hospitals and are interested in public comments on alternative methodologies. While we are not proposing to change the methodology for calculating the labor-related share in this proposed rule, we have begun the research necessary to reevaluate the current assumptions used in determining this share. This reevaluation is consistent with the MedPAC recommendation in MedPAC's June 2001 report. Our research involves analyzing the compensation share separately for urban and rural hospitals, using regression analysis to determine

the proportion of costs influenced by the area wage index, and exploring alternative methodologies to determine whether all or just a portion of professional fees and nonlabor intensive services should be considered labor-related. Although we have not completed our research into this issue, we are summarizing some of our preliminary findings below. We encourage comments on this research and any information that is available to help determine the most appropriate measure.

The compensation share of costs for hospitals in rural areas was higher on average than the compensation share for hospitals in urban areas. Using FY 1997 Medicare cost report data, rural areas had an average compensation share of 62.7 percent, while urban areas had a share of 61.5 percent. This compares to a share of 61.7 percent for all hospitals. These findings were validated consistently through our regression analysis, described in more detail below, as the coefficient on the wage index was higher when the regressions were run only for rural hospitals compared to when the regressions were run only for urban hospitals. Based on these findings, it does not appear that using a national average labor share for all hospitals to adjust the national payment rate by the area wage index disadvantages rural hospitals that tend to have a wage index value below 1.0.

Our research attempted to validate our national average labor share by conducting regression analysis to determine the proportion of hospital's costs that varied with the area wage index. We have conducted this type of regression analysis before in helping to determine the labor-related share, most recently for the SNF prospective payment system (66 FR 39585). Our first step was to edit the data, which had significant outliers in some of the variables we used in the regressions. We originally began with an edit that excluded the top and bottom 5 percent of reports based on average Medicare cost per discharge and number of discharges. We also used edits to exclude reports that did not meet basic criteria for use, such as having costs greater than 0 for total, operating, and capital for the overall facility and for only the Medicare proportion. We also required that the hospital occupancy rate, length of stay, number of beds, full-time equivalents (FTEs), and overall and Medicare discharges be greater than 0. Finally, we excluded reports with occupancy rates greater than 1.

Our initial regression specification (in log form) was the Medicare operating cost per Medicare discharge as the dependent variable and the independent variables being the area wage index, the case mix index, the ratio of interns and residents per bed (as proxy for IME status), and a dummy for large urban hospitals. This regression produced a coefficient for all hospitals for the area wage index of 0.638 (which is equivalent to the labor share and can be interpreted as an elasticity because of the log specification) with an adjusted R-squared of 64.3. While on the surface this would appear to be a reasonable result, this same specification for urban hospitals had a coefficient of 0.532 (adjusted R-squared = 53.2) and a coefficient of 0.709 (adjusted R-squared = 36.4) for rural hospitals. This highlighted some apparent problems with the specification because the overall regression results appear to be masking underlying problems. It would not seem reasonable that urban hospitals would have a labor share below their actual compensation share or that the discrepancy between urban and rural hospitals would be this large. The other major problem with the regression was that the coefficient on the case-mix index was significantly below 1.0 for each specification. When we standardized the Medicare operating cost per Medicare discharge for case mix, the fit fell dramatically and the urban/rural discrepancy became even larger.

Based on this initial result, we tried two modifications to the regressions to correct for the underlying problems. First, we edited the data differently to determine if a few reports were causing the inconsistent results. We found that when we tightened the edits, the wage index coefficient was lower and the fit was worse. When we loosened the edits, we found higher wage index coefficients and still a worse fit. Second, we added variables to the regression equation to attempt to explain some of the variation that was not being captured. We found the best fit occurred when the following variables were added: the occupancy rate, the number of hospital beds, a dummy for control status, the Medicare length of stay, the number of FTEs per bed, and the age of fixed assets. The result of this specification was a wage index coefficient of 0.620 (adjusted R-squared = 68.7), with the regression on rural hospitals having a coefficient of 0.772 (adjusted R-squared = 45.0) and the regression on urban hospitals having a coefficient of 0.474 (adjusted R-squared = 60.9). Neither of these alternatives seemed to help the underlying difficulties with the regression analysis.

Because the market basket method determines the proportion of labor-related costs for the entire hospital, not just Medicare costs (due to the unavailability of Medicare specific data for such detailed cost categories) we also ran the regressions on overall hospital operating cost per discharge. The initial specification (only 4 independent variables) produced similar results to those discussed above, that is, what appeared to be a reasonable overall share but with major problems underlying the data. The more detailed specification also did not improve the results over the previous runs.

Because of these problems, we did not believe the regression analysis was producing enough sound evidence at this point for us to make the decision to change from the current method for calculating the labor-related share using market basket categories. We plan to continue to analyze these data and work on alternative specifications, including working with MedPAC, which has done a similar analysis in its studies of payment adequacy in the past. We welcome comments on this approach, given the difficulties we have encountered.

We also have been examining ways to refine our market basket approach to more accurately account for the proportion of costs influenced by the local labor market. Specifically, we have been looking at the professional fees and labor intensive cost categories to determine if only a proportion of the costs in these categories should be considered labor-related, not the entire cost category. Professional fees include management and consulting fees, legal services, accounting services, and engineering services. Labor-intensive services are mostly building services, but also include other maintenance and repair and insurance services. While we have identified some possible approaches for accomplishing this, we do not believe at this point that we have completely validated them and thus are not proposing to change from our current method. Below we briefly describe the possible approaches and some of the issues surrounding these approaches.

One possible option would be to only include in the labor-related share the compensation portion of the cost category for each industry included in professional fees and labor-intensive services. This could be done using data from the 1997 BES, which reports detailed cost categories by industry (SIC) code. For example, management and consulting fees (SIC 874) is one of the major pieces of professional fees. The BES indicates that compensation accounts for 59.2 percent of operating costs in management and consulting

fees. If we only considered for inclusion in the labor-related share the portion that is compensation, this would result in a lower labor share. However, at this point, there does not appear to be enough information available from the BES to do this for every industry code. It is also not clear that at least some proportion of noncompensation costs of these inputs for hospitals would not vary with the local labor market. We are still researching the appropriateness of this option and whether it could be used to assist in determining the labor-related share.

Another possible option would be to use data from the Bureau of the Census' 1992 Enterprise Statistics to attempt to determine the proportion of costs for professional fees and labor-intensive services associated with centrally located overhead. That is, could we identify the proportion of costs that are borne in a central location such that they would not be related to the local labor market? The Enterprise Statistics include payroll data for both auxiliary establishments of a multiestablishment company and the entire company. Since auxiliary establishments primarily manage, administer, service, and support the activities of other establishments of the company, we were considering using this information to estimate the proportion of professional fees and labor-intensive services associated with central locations instead of with the location of the hospital. The Enterprise Statistics data are available for specific enterprise industry codes (EIC) that could seemingly be matched to the industry codes from the I–O used to determine professional fees and labor-intensive services. The methodology would consist of determining the auxiliary establishments payroll share of the total establishment, and subtracting that portion from the compensation portion of expenses for each I–O industry code. The initial research into this method is pointing out some difficulties in matching industry and EIC codes since the Enterprise Statistics do not contain as much detail as the I–O. In addition, it is not clear yet that this method would remove the appropriate amount of central office labor costs. We will continue to research this option, but at this time we are not proposing to use it in the calculation of the labor-related share.

We plan to continue researching whether an alternative methodology for determining the labor-related share would be more appropriate than our current methodology, including working with MedPAC. We plan to complete this research prior to August 1 and would make the appropriate changes in the final rule if we found another methodology to be superior to our current methodology. At this time, we are proposing to continue to use our existing methodology in determining the labor-related share.

5. Separate Market Basket for Hospitals and Hospital Units Excluded From the Acute Care Hospital Inpatient Prospective Payment System

In its March 1, 1990 report, ProPAC recommended that we establish a separate market basket for hospitals and hospital units excluded from the acute care hospital inpatient prospective payment system. Effective with FY 1991, we adopted ProPAC's recommendation to implement separate market baskets. (See the September 4, 1990 final rule (55 FR 36049).) Prospective payment system hospitals and excluded hospitals and units tend to have different case mixes, practice patterns, and composition of inputs. The fact that excluded hospitals are not included under the acute care hospital inpatient prospective payment system in part reflects these differences. Studies completed by CMS, ProPAC, and the hospital industry have documented different weights for excluded hospitals and units and prospective payment system hospitals.

The excluded hospital market basket is a composite set of weights for Medicare-participating psychiatric hospitals and units, rehabilitation hospitals and units, long-term care hospitals, children's hospitals, and cancer hospitals. We are proposing to use cost report data for excluded freestanding hospitals whose Medicare average length of stay is within 15 percent (that is, 15 percent higher or lower) of the total facility average length of stay for excluded hospitals, except psychiatric hospitals. A tighter measure of Medicare length of stay within 8 percent (that is, 8 percent higher or lower) of the total facility average length of stay is proposed for freestanding psychiatric hospitals. This was done because psychiatric hospitals have a relatively small proportion of costs from Medicare and a relatively small share of Medicare psychiatric cases. While the 15 percent length of stay edit was used for the FY 1992-based index, the tighter, 8 percent edit for psychiatric hospitals was not. We believe that limiting our sample to hospitals with a Medicare average length of stay within a comparable range to the total facility average length of stay provides a more accurate reflection of the structure of costs for treating Medicare patients.

Table 8 compares major weights in the proposed rebased FY 1997 market basket for excluded hospitals with weights in the proposed rebased FY 1997 market basket for acute care prospective payment system hospitals. Wages and salaries are 51.998 percent of total operating costs for excluded hospitals compared to 50.686 percent for acute care prospective payment hospitals. Employee benefits are 11.253 percent for excluded hospitals compared to 10.970 percent for acute care prospective payment hospitals. As a result, compensation costs (wages and salaries plus employee benefits) for excluded hospitals are 63.251 percent of costs compared to 61.656 percent for acute care prospective payment hospitals, reflecting the more labor-intensive services conducted in excluded hospitals.

A significant difference in the category weights also occurs in pharmaceuticals. Pharmaceuticals represent 5.416 percent of costs for acute care prospective payment hospitals and 6.940 percent for excluded hospitals. The weights for the excluded hospital market basket were derived using the same data sources and methods as for the acute care prospective payment market basket as outlined previously. Differences in weights between the proposed excluded hospital and acute care prospective payment hospital market baskets do not necessarily lead to significant differences in the rate of price growth for the two market baskets. If individual wages and prices move at approximately the same annual rate, both market baskets may have about the same overall price growth, even though the weights may differ substantially, because both market baskets use the same wage and price proxies. Also, offsetting price increases for various cost components can result in similar composite price growth in both market baskets.

TABLE 8.—PROPOSED FY 1997-BASED EXCLUDED HOSPITAL AND PROSPECTIVE PAYMENT HOSPITAL MARKET BASKETS, COMPARISON OF SIGNIFICANT WEIGHTS

Category	Proposed rebased 1997 excluded hospital market basket	Proposed rebased 1997 Prospective Payment System hospital market basket
Wages and salaries	51.998	50.686
Employee benefits	11.253	10.970
Professional fees	4.859	5.401
Pharmaceuticals	6.940	5.416
All other	24.950	25.527
Total	100.000	100.000

Table 9 lists the cost categories, weights, and proxies for the proposed FY 1997-based excluded hospital market basket. For comparison, the FY 1992-based cost category weights are included. The proxies are the same used in the proposed FY 1997-based acute care hospital inpatient prospective payment system market basket discussed above.

TABLE 9.—FY 1992-BASED AND PROPOSED FY 1997-BASED EXCLUDED HOSPITAL OPERATING COST CATEGORIES, WEIGHTS, AND PRICE PROXIES

Expense categories	Proposed rebased 1997 excluded hospital market basket weights	FY 1992-based excluded hospital market basket weights	FY 1997-based price proxy
1. Compensation	63.251	63.721	
A. Wages and salaries*	51.998	52.152	ECI-wages and salaries, civilian hospitals.
B. Employee benefits*	11.253	11.569	ECI-benefits, civilian hospitals.
2. Professional fees*	4.859	2.098	ECI-compensation for professional, specialty & technical.
3. Utilities	1.296	1.675	—
A. Fuel, oil, and gasoline	0.272	0.401	PPI commercial natural gas.
B. Electricity	0.798	1.007	PPI commercial electric power.
C. Water and sewerage	0.226	0.267	CPI–U water and sewerage maintenance.
4. Professional liability insurance	0.805	1.081	CMS professional liability insurance premiums index.
5. All other	29.790	31.425	—
A. All other products	19.680	24.227	—
(1) Pharmaceuticals	6.940	3.070	PPI ethical (prescription) drugs.
(2) Direct purchase food	1.233	2.370	PPI processed foods & feeds.
(3) Contract service food	1.146	1.098	CPI–U food away from home.
(4) Chemicals	2.343	3.754	PPI industrial chemicals.
(5) Blood and blood products	0.821	N/A	PPI blood and blood derivatives, human use.
(6) Medical instruments	1.972	3.154	PPI medical instruments & equipment.
(7) Photographic supplies	0.184	0.400	PPI photographic supplies.
(8) Rubber and plastics	1.501	4.865	PPI rubber & plastic products.
(9) Paper products	1.219	2.182	PPI converted paper & paperboard products.
(10) Apparel	0.525	0.890	PPI apparel.
(11) Machinery and equipment	0.936	0.212	PPI machinery & equipment.
(12) Miscellaneous products	0.860	2.232	PPI finished goods less food and energy.
B. All other services	10.110	7.198	—
(1) Telephone services	0.382	0.631	CPI–U telephone services.
(2) Postage	0.771	0.295	CPI–U postage.
(3) All other: labor intensive*	4.892	5.439	ECI-compensation for private service occupations.
(4) All other: Non-labor intensive	4.065	0.833	CPI–U all items.
Total	100.000	100.000	—

*Labor-related.
Note: Due to rounding, weights may not sum to total.

Table 10 shows the historical and forecasted updates under both the proposed FY 1997-based and the FY 1992-based excluded hospital market baskets.

TABLE 10.—FY 1992-BASED AND PROPOSED FY 1997-BASED EXCLUDED HOSPITAL OPERATING INDEX PERCENT CHANGE, 1995–2004

Fiscal year (FY)	Proposed rebased 1997 excluded hospital market basket	FY 1992-based excluded hospital market basket
Historical data:		
FY 1995	2.7	3.2
FY 1996	2.4	2.5
FY 1997	1.7	2.0
FY 1998	3.0	2.7
FY 1999	2.9	2.4
FY 2000	3.3	3.6
FY 2001	4.3	4.1
Average FYs 1995–2001	2.9	2.9
Forecast:		
FY 2002	3.7	2.8
FY 2003	3.4	3.0
FY 2004	3.0	3.1
Average FYs 2002–2004	3.4	3.0

Source: Global Insights, Inc, DRI-WEFA, 1st Qtr. 2002; @USMACRO/MODTREND @CISSIM/TRENDLONG0202.

A comparison of the proposed FY 1997-based index incorporating the new wage and benefits proxies (ECIs) and updated occupational wage proxies is included in Table 11.

TABLE 11.—PROPOSED FY 1997-BASED EXCLUDED HOSPITAL OPERATING INDEX PERCENT CHANGE, USING DIFFERENT WAGE AND BENEFIT PROXIES, 1995–2004

Fiscal year (FY)	Proposed rebased 1997 excluded hospital market basket	
	Using ECIs for hospital wages and nenefits	Using occupational wage and benefit proxies
Historical data:		
FY 1995	2.7	2.9
FY 1996	2.4	2.5
FY 1997	1.7	2.3
FY 1998	3.0	3.4
FY 1999	2.9	3.1
FY 2000	3.3	3.5
FY 2001	4.3	4.0
Average FYs 1995–2001	2.9	3.1
Forecast:		
FY 2002	3.7	3.1
FY 2003	3.4	3.2
FY 2004	3.0	3.2
Average FYs 2002–2004	3.4	3.2

Source: Global Insights, Inc, DRI–WEFA, 1st Qtr. 2002; @USMACRO/MODTREND @CISSIM/TRENDLONG0202.

Like the proposed FY 1997-based prospective payment hospital index showed, there is little difference in the index over time when different compensation proxies are used. Table 12 shows the labor-related share for excluded hospitals.

TABLE 12.—LABOR-RELATED SHARE, EXCLUDED HOSPITALS

Cost category	FY 1992-based weight	Proposed FY 1997-based weight	Difference
Wages and salaries	52.152	51.998	−0.154
Fringe benefits	11.569	11.253	−0.316
Nonmedical professional fees	2.098	4.859	2.761
Postal services*	0.295	.....	−0.295
Other labor intensive services**	5.439	4.892	−0.547
Total labor-related	71.553	73.002	1.449

TABLE 12.—LABOR-RELATED SHARE, EXCLUDED HOSPITALS—Continued

Cost category	FY 1992-based weight	Proposed FY 1997-based weight	Difference
Total nonlabor-related	28.447	26.998	−1.449

* No longer considered to be labor-related.
** Other labor-intensive services includes landscaping services, services to buildings, detective and protective services, repair services, insurance services, laundry services, auto parking and repairs, physical fitness facilities, other medical services, colleges and professional schools, and other government enterprises.

B. Capital Input Price Index

The Capital Input Price Index (CIPI) was originally detailed in the September 1, 1992 **Federal Register** (57 FR 40016). There have been subsequent discussions of the CIPI presented in the May 26, 1993 (58 FR 30448), September 1, 1993 (58 FR 46490), May 27, 1994 (59 FR 27876), September 1, 1994 (59 FR 45517), June 2, 1995 (60 FR 29229), September 1, 1995 (60 FR 45815), May 31, 1996 (61 FR 27466), and August 30, 1996 (61 FR 46196) rules in the **Federal Register**. The August 30, 1996 rule discussed the most recent revision and rebasing of the CIPI to a FY 1992 base year, which reflects the capital cost structure facing hospitals in that year.

We are proposing to revise and rebase the CIPI to a FY 1997 base year to reflect the more recent structure of capital costs. To do this, we reviewed hospital expenditure data for the capital cost categories of depreciation, interest, and other capital expenses. As with the FY 1992-based index, we have developed two sets of proposed weights in order to calculate the proposed FY 1997-based CIPI. The first set of proposed weights identifies the proportion of hospital capital expenditures attributable to each capital expenditure category, while the second set of proposed weights is a set of relative vintage weights for depreciation and interest. The set of vintage weights is used to identify the proportion of capital expenditures within a cost category that is attributable to each year over the useful life of capital assets in that category. A more thorough discussion of vintage weights is provided later in this section.

Both sets of weights are developed using the best data sources available. In reviewing source data, we determined that the Medicare cost reports provided accurate data for all capital expenditure cost categories. We are proposing to use the FY 1997 Medicare cost reports for acute care prospective payment system hospitals, excluding expenses from hospital-based subproviders, to determine weights for all three cost categories: Depreciation, interest, and other capital expenses. We compared the weights determined from the Medicare cost reports to other data sources for 1997, specifically the Bureau of the Census' BES and the AHA Annual Survey, and found the weights to be consistent with those data sources.

Lease expenses are not a separate cost category in the CIPI, but are distributed among the cost categories of depreciation, interest, and other, reflecting the assumption that the underlying cost structure of leases is similar to capital costs in general. We assumed 10 percent of lease expenses are overhead and assigned them to the other capital expenses cost category as overhead, as was done in previous capital market baskets. The remaining lease expenses were distributed to the three cost categories based on the weights of depreciation, interest, and other capital expenses not including lease expenses.

Depreciation contains two subcategories: Building and fixed equipment and movable equipment. The split between building and fixed equipment and movable equipment was determined using the Medicare cost reports. This methodology was also used to compute the FY 1992-based index.

Table 13 presents a comparison of the proposed rebased FY 1997 capital cost weights and the FY 1992 capital cost weights.

TABLE 13.—COMPARISON OF FY 1992 AND PROPOSED REBASED FY 1997 COST CATEGORY WEIGHTS

Expense categories	FY 1992 weights	Proposed rebased FY 1997 weights	Price proxy
Total	1.0000	1.0000	
Total depreciation	0.6484	0.7135	
Building and fixed equipment depreciation	0.3009	0.3422	Boeckh Institutional Construction Index—vintage weighted (23 years).
Movable equipment depreciation	0.3475	0.3713	PPI for machinery and equipment—vintage weighted (11 years).
Total interest	0.3184	0.2346	
Government/nonprofit interest	0.2706	0.1994	Average yield on domestic municipal bonds (Bond Buyer 20 bonds)—vintage weighted (23 years).
For-profit interest	0.0478	0.0352	Average yield on Moody's Aaa bonds—vintage weighted (23 years).
Other	0.0332	0.0519	CPI—Residential Rent.

Because capital is acquired and paid for over time, capital expenses in any given year are determined by past and present purchases of physical and financial capital. The vintage-weighted CIPI is intended to capture the long-term consumption of capital, using vintage weights for depreciation (physical capital) and interest (financial capital). These vintage weights reflect the purchase patterns of building and fixed equipment and movable

equipment over time. Because depreciation and interest expenses are determined by the amount of past and current capital purchases, we used the vintage weights to compute vintage-weighted price changes associated with depreciation and interest expense.

Vintage weights are an integral part of the CIPI. Capital costs are inherently complicated and are determined by complex capital purchasing decisions over time, based on such factors as interest rates and debt financing. Capital is depreciated over time instead of being consumed in the same period it is purchased. The CIPI accurately reflects the annual price changes associated with capital costs, and is a useful simplification of the actual capital accumulation process. By accounting for the vintage nature of capital, we are able to provide an accurate, stable annual measure of price changes. Annual nonvintage price changes for capital are unstable due to the volatility of interest rate changes. These unstable annual price changes do not reflect the actual annual price changes for Medicare capital-related costs. CMS's CIPI reflects the underlying stability of the capital acquisition process and provides hospitals with the ability to plan for changes in capital payments.

To calculate the vintage weights for depreciation and interest expenses, we used a time series of capital purchases for building and fixed equipment and movable equipment. We found no single source that provides the best time series of capital purchases by hospitals for all of the above components of capital purchases. The early Medicare cost reports did not have sufficient capital data to meet this need. While the AHA Panel Survey provided a consistent database back to 1963, it did not provide annual capital purchases. The AHA Panel Survey did provide time series of depreciation and interest expenses that could be used to infer capital purchases over time. Although the AHA Panel Survey was discontinued after September 1997, we were able to use all of the available historical data from this survey since our proposed base year is FY 1997.

In order to estimate capital purchases from AHA data on depreciation and interest expenses, the expected life for each cost category (building and fixed equipment, movable equipment, debt instruments) is needed. The expected life is used in the calculation of vintage weights. We used FY 1997 Medicare cost reports to determine the expected life of building and fixed equipment and movable equipment. The expected life of any piece of equipment can be determined by dividing the value of the fixed asset (excluding fully depreciated assets) by its current year depreciation amount. This calculation yields the estimated useful life of an asset if depreciation were to continue at current year levels, assuming straight-line depreciation. From the FY 1997 cost reports, we determined the expected life of building and fixed equipment to be 23 years, and the expected life of movable equipment to be 11 years. By comparison, the FY 1992-based index showed that the expected life for building and fixed equipment was 22 years, while that for movable equipment was 10 years. Our analysis of data for FYs 1996, 1998, and 1999 indicates very little change in these measures over time.

We used the fixed and movable weights derived from the FY 1997 Medicare cost reports to separate the AHA Panel Survey depreciation expenses into annual amounts of building and fixed equipment depreciation and movable equipment depreciation. By multiplying the annual depreciation amounts by the expected life calculations from the FY 1997 Medicare cost reports, we determined year-end asset costs for building and fixed equipment and movable equipment. We subtracted the previous year asset costs from the current year asset costs and estimated annual purchases of building and fixed equipment and movable equipment back to 1963. From this capital purchase time series, we were able to calculate the vintage weights for building and fixed equipment, movable equipment, and debt instruments. Each of these sets of vintage weights is explained in detail below.

For building and fixed equipment vintage weights, we used the real annual capital purchase amounts for building and fixed equipment derived from the AHA Panel Survey. The real annual purchase amount was used to capture the actual amount of the physical acquisition, net of the effect of price inflation. This real annual purchase amount for building and fixed equipment was produced by deflating the nominal annual purchase amount by the building and fixed equipment price proxy, the Boeckh institutional construction index. Because building and fixed equipment has an expected life of 23 years, the vintage weights for building and fixed equipment are deemed to represent the average purchase pattern of building and fixed equipment over 23-year periods.

Vintage weights for each 23-year period are calculated by dividing the real building and fixed capital purchase amount in any given year by the total amount of purchases in the 23-year period. This calculation is done for each year in the 23-year period, and for each of the twelve 23-year periods from 1963 to 1997. The average of the twelve 23-year periods is used to determine the 1997 average building and fixed equipment vintage weights.

For movable equipment vintage weights, we used the real annual capital purchase amounts for movable equipment derived from the AHA Panel Survey. The real annual purchase amount was used to capture the actual amount of the physical acquisition, net of price inflation. This real annual purchase amount for movable equipment was calculated by deflating the nominal annual purchase amount by the movable equipment price proxy, the PPI for machinery and equipment. Because movable equipment has an expected life of 11 years, the vintage weights for movable equipment are deemed to represent the average purchase pattern of movable equipment over 11-year periods.

Vintage weights for each 11-year period are calculated by dividing the real movable capital purchase amount for any given year by the total amount of purchases in the 11-year period. This calculation is done for each year in the 11-year period, and for each of the twenty-four 11-year periods from 1963 to 1997. The average of the twenty-four 11-year periods is used to determine the FY 1997 average movable equipment vintage weights.

For interest vintage weights, we used the nominal annual capital purchase amounts for total equipment (building and fixed, and movable) derived from the AHA Panel Survey. Nominal annual purchase amounts were used to capture the value of the debt instrument. Because debt instruments have an expected life of 23 years, the vintage weights for interest are deemed to represent the average purchase pattern of total equipment over 23-year periods.

Vintage weights for each 23-year period are calculated by dividing the nominal total capital purchase amount for any given year by the total amount of purchases in the 23-year period. This calculation is done for each year in the 23-year period and for each of the twelve 23-year periods from 1963 to 1997. The average of the twelve 23-year periods is used to determine the FY 1997 average interest vintage weights. The vintage weights for the FY 1992 CIPI and the proposed FY 1997 CIPI are presented in Table 14.

TABLE 14.—CURRENT AND PROPOSED VINTAGE WEIGHTS FOR CAPITAL-RELATED PRICE PROXIES

Year (from farthest to most recent)	Building and fixed equipment		Movable equipment		Interest	
	FY 1992 22 years	Proposed FY 1997 23 years	FY 1992 10 years	Proposed FY 1997 11 years	FY 1992 22 years	Proposed FY 1992 23 years
1	0.019	0.018	0.069	0.063	0.007	0.007
2	0.020	0.021	0.075	0.068	0.008	0.009
3	0.023	0.023	0.083	0.074	0.010	0.011
4	0.026	0.025	0.091	0.080	0.012	0.012
5	0.028	0.026	0.097	0.085	0.014	0.014
6	0.030	0.028	0.103	0.091	0.016	0.016
7	0.031	0.030	0.109	0.096	0.018	0.019
8	0.032	0.032	0.115	0.101	0.021	0.022
9	0.036	0.035	0.124	0.108	0.024	0.026
10	0.039	0.039	0.133	0.114	0.029	0.030
11	0.043	0.042	.....	0.119	0.035	0.035
12	0.047	0.044	.....	.....	0.041	0.039
13	0.050	0.047	.....	.....	0.047	0.045
14	0.052	0.049	.....	.....	0.052	0.049
15	0.055	0.051	.....	.....	0.059	0.053
16	0.059	0.053	.....	.....	0.067	0.059
17	0.062	0.057	.....	.....	0.074	0.065
18	0.065	0.060	.....	.....	0.081	0.072
19	0.067	0.062	.....	.....	0.088	0.077
20	0.069	0.063	.....	.....	0.093	0.081
21	0.072	0.065	.....	.....	0.099	0.085
22	0.073	0.064	.....	.....	0.103	0.087
23	.....	0.065	.....	.....	.....	0.090
Total	1.000	1.000	1.000	1.000	1.000	1.000

After the capital cost category weights were computed, it was necessary to select appropriate price proxies to reflect the rate of increase for each expenditure category. Our proposed price proxies for the FY 1997-based CIPI are the same as those for the FY 1992-based CIPI. We still believe these are the most appropriate proxies for hospital capital costs that meet our selection criteria of relevance, timeliness, availability, and reliability. We ran the proposed FY 1997-based index using the Moody's Aaa bonds average yield and using the Moody's Baa bonds average yield as proxy for the for-profit interest cost category. There was no difference in the two sets of index percent changes either historically or forecasted. The rationale for selecting the price proxies is explained more fully in the August 30, 1996 final rule (61 FR 46196). The proposed proxies are presented in Table 13.

Global Insights, Inc., DRI–WEFA forecasts a 0.7 percent increase in the proposed rebased FY 1997 CIPI for FY 2003, as shown in Table 15.

TABLE 15.—FY 1992 AND PROPOSED FY 1997-BASED CAPITAL INPUT PRICE INDEX, PERCENT CHANGE, 1995–2004

Federal fiscal year	CIPI, FY 1992-based	Proposed CIPI, FY 1997-based
1995	1.2	1.5
1996	1.0	1.3
1997	0.9	1.2
1998	0.7	0.9
1999	0.7	0.9
2000	0.9	1.1
2001	0.7	0.9
Average: FYs 1995–2001	0.9	1.1
Forecast:		
2002	0.6	0.8
2003	0.5	0.7
2004	0.6	0.7
Average: FYs 2002–2004	0.6	0.7

Source: Global Insights, Inc, DRI–WEFA, 1st Qtr. 2002; @USMACRO/MODTREND @CISSIM/TRENDLONG0202.

This 0.7 percent increase is the result of a 1.3 percent increase in projected vintage-weighted depreciation prices (building and fixed equipment, and movable equipment) and a 2.7 percent increase in other capital expense prices, partially offset by a 2.2 percent decrease in vintage-weighted interest rates in FY 2003, as indicated in Table 16.

TABLE 16.—CMS PROPOSED CAPITAL INPUT PRICE INDEX PERCENT CHANGES, TOTAL AND COMPONENTS, FISCAL YEARS 1985–2005

Fiscal year	Total	Total depreciation	Depreciation, building and fixed equipment	Depreciation, movable equipment	Interest	Other
Wgts FY 1997	1.000	0.7135	0.3422	0.3713	0.2346	0.0519
Vintage-Weighted Price Changes						
1995	1.5	2.7	4.0	1.6	−1.8	2.5
1996	1.3	2.5	3.8	1.4	−2.3	2.6
1997	1.2	2.3	3.6	1.2	−2.4	2.8
1998	0.9	2.1	3.3	0.9	−3.0	3.2
1999	0.9	1.9	3.2	0.7	−2.8	3.2
2000	1.1	1.7	3.1	0.4	−1.6	3.4
2001	0.9	1.5	2.9	0.1	−2.2	4.3
Forecast:						
2002	0.8	1.4	2.8	0.0	−2.2	4.0
2003	0.7	1.3	2.7	−0.1	−2.2	2.7
2004	0.7	1.3	2.5	−0.1	−2.1	2.8
2005	0.7	1.3	2.5	−0.1	−2.0	2.8

Rebasing the CIPI from FY 1992 to FY 1997 increased the percent change in the FY 2003 forecast by 0.2 percentage points, from 0.5 to 0.7 as shown in Table 15. The difference is caused mostly by changes in cost category weights, particularly the smaller weight for interest and larger weight for depreciation. Because the interest component has a negative price change associated with it for FY 2003, the smaller share it accounts for in the FY 1997-based index means it has less of an impact than in the FY 1992-based index. The changes in the expected life and vintage weights have only a minor impact on the overall percent change in the index.

V. Other Decisions and Proposed Changes to the Prospective Payment System for Inpatient Operating Costs and Graduate Medical Education Costs

A. Transfer Payment Policy

1. Expanding the Postacute Care Transfer Policy to Additional DRGs (§ 412.4)

Existing regulations at § 412.4(a) define discharges under the acute care hospital inpatient prospective payment system as situations in which a patient is formally released from an acute care hospital or dies in the hospital. Section 412.4(b) defines transfers from one acute care hospital to another, and § 412.4(c) defines transfers to certain postacute care providers. Our policy provides that, in transfer situations, full payment is made to the final discharging hospital and each transferring hospital is paid a per diem rate for each day of the stay, not to exceed the full DRG payment that would have been made if the patient had been discharged without being transferred.

Under section 1886(d)(5)(J) of the Act, which was added by section 4407 of Public Law 105–33, a "qualified discharge" from one of 10 DRGs selected by the Secretary to a postacute care provider is treated as a transfer case beginning with discharges on or after October 1, 1998. This section requires the Secretary to define and pay as transfers all cases assigned to one of 10 DRGs selected by the Secretary if the individuals are discharged to one of the following postacute care settings:

- A hospital or hospital unit that is not a subsection 1886(d) hospital. (Section 1886(d)(1)(B) of the Act identifies the hospitals and hospital units that are excluded from the term "subsection (d) hospital" as psychiatric hospitals and units, rehabilitation hospitals and units, children's hospitals, long-term care hospitals, and cancer hospitals.)
- A skilled nursing facility (as defined at section 1819(a) of the Act).
- Home health services provided by a home health agency, if the services relate to the condition or diagnosis for which the individual received inpatient hospital services, and if the home health services are provided within an appropriate period (as determined by the Secretary).

In the July 31, 1998 final rule (63 FR 40975 through 40976), we specified the appropriate time period during which we would consider postacute home health services to constitute a transfer situation as within 3 days after the date of discharge. Also, in the July 31, 1998 final rule, we did not include in the definition of postacute transfer cases patients transferred to a swing-bed for skilled nursing care (63 FR 40977).

The Conference Agreement that accompanied Public Law 105–33 noted that "(t)he Conferees are concerned that Medicare may in some cases be overpaying hospitals for patients who are transferred to a postacute care setting after a very short acute care hospital stay. The conferees believe that Medicare's payment system should continue to provide hospitals with strong incentives to treat patients in the most effective and efficient manner, while at the same time, adjust PPS [prospective payment system] payments in a manner that accounts for reduced hospital lengths of stay because of a discharge to another setting." (H.R. Report No. 105–217, 105th Cong., 1st Sess., 740 (1997).)

In the July 31, 1998 final rule (63 FR 40975), we implemented section 1886(d)(5)(J) of the Act, which directed the Secretary to select 10 DRGs based upon a high volume of discharges to postacute care and a disproportionate use of postacute care services. As discussed in the July 31, 1998 final rule, these 10 DRGs were selected in 1998 based on the MedPAR data from FY 1996. Using that information, we identified and selected the first 20 DRGs that had the largest proportion of discharges to postacute care (and at least 14,000 such transfer cases). In order to select 10 DRGs from the 20 DRGs on our list, we considered the volume and percentage of discharges to postacute care that occurred before the mean length of stay and whether the discharges occurring early in the stay were more likely to receive postacute care. We identified the following DRGs

to be subject to the special 10 DRG transfer rule:

- DRG 14 (Specific Cerebrovascular Disorders Except Transient Ischemic Attack);
- DRG 113 (Amputation for Circulatory System Disorders Except Upper Limb and Toe);
- DRG 209 (Major Joint Limb Reattachment Procedures of Lower Extremity);
- DRG 210 (Hip and Femur Procedures Except Major Joint Procedures Age >17 with CC);
- DRG 211 (Hip and Femur Procedures Except Major Joint Procedures Age >17 without CC);
- DRG 236 (Fractures of Hip and Pelvis);
- DRG 263 (Skin Graft and/or Debridement for Skin Ulcer or Cellulitis with CC);
- DRG 264 (Skin Graft and/or Debridement for Skin Ulcer or Cellulitis without CC);
- DRG 429 (Organic Disturbances and Mental Retardation); and
- DRG 483 (Tracheostomy Except for Face, Mouth and Neck Diagnoses).

Similar to our existing policy for transfers between two acute care hospitals, the transferring hospital in a postacute transfer for 7 of the 10 DRGs receives twice the per diem rate the first day and the per diem rate for each following day of the stay prior to the transfer, up to the full DRG payment. However, 3 of the 10 DRGs exhibit a disproportionate share of costs very early in the hospital stay in postacute transfer situations. For these 3 DRGs, hospitals receive 50 percent of the full DRG payment for the first day of the stay and 50 percent of the per diem for the remaining days of the stay, up to the full DRG payment. This is consistent with section 1886(d)(5)(J)(i) of the Act, which recognizes that in some cases "a substantial portion of the costs of care are incurred in the early days of the inpatient stay."

The statute provides that, after FY 2000, the Secretary is authorized to expand this policy to additional DRGs. In July 1999, the previous Administration committed to not expanding the number of DRGs included in the policy until FY 2003. Therefore, CMS did not propose any change to the postacute care settings or the 10 DRGs in FY 2001 or FY 2002.

Under contract with CMS (Contract No. 500–95–0006), Health Economics Research, Inc. (HER) conducted an analysis of the impact on hospitals and hospital payments of the postacute care transfer provision. We included in the August 1, 2000 final rule (65 FR 47079) a summary of that analysis. Among other issues, the analysis sought to evaluate the reasonableness of expanding the transfer payment policy beyond the current 10 selected DRGs.

The analysis supported the initial 10 DRGs selected as being consistent with the nature of the Congressional mandate. According to HER, "[t]he top 10 DRGs chosen initially by HCFA exhibit very large PAC [postacute care] levels and PAC discharge rates (except for DRG 264, Skin Graft and/or Debridement for Skin Ulcer or Cellulitis without CC, which was paired with DRG 263). All 10 appear to be excellent choices based on the other criteria as well. Most have fairly high short-stay PAC rates (except possibly for Strokes, DRG 14, and Mental Retardation, DRG 429)."

The HER report discussed the issues related to potentially expanding the postacute care transfer policy to all DRGs. In favor of this expansion, HER pointed to the following benefits:

- A simple, uniform, formula-driven policy;
- The same policy rationale exists for all DRGs;
- DRGs with little utilization of short-stay postacute care would not be harmed by the policy;
- Less confusion in discharge destination coding; and
- Hospitals that happen to be disproportionately treating the current 10 DRGs may be harmed more than hospitals with an aggressive, short-stay, postacute care transfer policy for other DRGs.

The complete HER report may be obtained at: *http://www.cms.gov/medicare/ippsmain.htm.*

Consistent with HER's findings, we believe expanding the postacute care transfer policy to all DRGs may be the most equitable approach at this time, since a policy that is limited to certain DRGs may result in disparate payment treatment across hospitals, depending on the types of cases treated. We are considering implementing this expansion of the postacute transfer policy in the final rule. For example, a hospital specializing in some of the types of cases included in the current 10 DRG transfer policy would receive reduced payments for those cases transferred for postacute care after a brief acute inpatient stay, while a hospital specializing in cases not included in the current 10 DRGs may be just as aggressive in transferring its patients for postacute care, but it would receive full payment for those cases.

Another aspect of the issue is that some hospitals have fewer postacute care options available for their patients. In its June 2001 Report to Congress: Medicare in Rural America, MedPAC wrote: "[a] shortage of ambulatory and post-acute care resources may prevent rural hospitals from discharging patients as early in the episode of care as urban hospitals would" (page 68). MedPAC went on to note that the decline in length of stay for urban hospitals since 1989 was greater for urban hospitals than for rural hospitals (34 percent compared with 25 percent through 1999), presumably due to earlier discharges to postacute care settings. Although MedPAC contemplated returning money saved by expanding the policy to the base payment rate, thereby increasing payments for nontransfer cases, currently section 1886(d)(5)(I)(ii) of the Act provides that any expansion to the postacute transfer policy would not be budget neutral. (Budget neutrality refers to adjusting the base payment rates to ensure total aggregate payments are the same after implementing a policy change as they were prior to the change.) Nevertheless, over the long run, reducing the Medicare Trust Fund expenditures for patients who are transferred to a postacute care setting after a very short acute care hospital stay will improve the program's overall financial stability. Our analysis indicates that expanding the postacute care transfer policy to all DRGs would reduce program payments for these cases by approximately $1.9 billion for FY 2002.

If we were to expand the transfer policy to all DRGs, we would expand the list of those DRGs where a disproportionate share of the costs of the entire stay occurs early in the stay. We conducted analysis to identify those DRGs that would be eligible for the special transfer payment methodology specified in § 412.4(f)(2). As stated above, currently, three DRGs (DRGs 209, 210, and 211) are paid under a special transfer payment calculation whereby they receive 50 percent of the full DRG payment amount on the first day of the stay for cases transferred to a postacute care provider.

We identified cases that were transferred to home health care, SNFs, or long-term care, matching records by beneficiary identification numbers and discharge and admission dates. We standardized charges to account for differences in area wage levels, indirect medical education costs, and disproportionate share payments, and we reduced charges to costs using the available cost-to-charge ratios.

We then grouped the costs by DRG and length of stay. The average costs for transfer cases with a length of stay of 1 day were compared to the costs of transfer cases whose length of stay

approximated the geometric mean length of stay for that particular DRG. The average costs for the transfer cases with a length of stay of 1 day were also compared to costs for all cases with a length of stay approximating the geometric mean length of stay across the DRG. Based on this analysis, we identified the following DRGs that, if the postacute care transfer policy were to be expanded, would qualify for the special postacute care transfer payment policy of 50 percent of the full DRG payment for the first day of the stay:

- DRG 7 (Peripheral and Cranial Nerve and Other Nervous System Procedures with CC);
- DRG 159 (Hernia Procedures Except Inguinal and Femoral Age >17 with CC);
- DRG 218 (Lower Extremity and Humerus Procedure Except Hip, Foot, Femur Age >17 with CC);
- DRG 226 (Soft Tissue Procedures with CC);
- DRG 263 (Skin Graft and/or Debridement for Skin Ulcer or Cellulitis with CC);
- DRG 264 (Skin Graft and/or Debridement for Skin Ulcer or Cellulitis without CC);
- DRG 306 (Prostatectomy with CC);
- DRG 308 (Minor Bladder Procedures with CC);
- DRG 315 (Other Kidney and Urinary Tract O.R. Procedures);
- DRG 493 (Laparoscopic Cholecystectomy without C.D.E. with CC); and
- DRG 497 (Spinal Fusion Except Cervical with CC).

This list contains DRGs not currently paid under the special formula (DRGs 209, 210, and 211 will continue to receive the special payment). All of the DRGs in the list meet the following criteria: The average costs of transfer cases on the first day equals the average costs of cases staying the geometric mean length of stay; the geometric mean length of stay is 4 days or greater; and there were at least 50 transfer cases occurring on the first day of the stay.

We also note that DRGs 263 and 264 (which are included in the current list of 10 DRGs subject to the postacute care transfer policy) would qualify for special payment, even though both DRGs have not previously received payment under the special payment provision. However, DRG 264 does qualify under the criteria described above for identifying cases for the potential expanded postacute care transfer policy. Because DRGs 263 and 264 are paired DRGs (that is, the only difference in the cases assigned to DRG 263 as opposed to DRG 264 is that the patient has a complicating or comorbid condition), we would include both DRGs under this expanded policy. If we were to include only DRG 264, there would be an incentive not to include a code identifying a complicating or comorbid condition, so that a transfer case would be assigned to DRG 264 instead of DRG 263 due to the higher per diem payment for DRG 264.

Rather than expand the postacute care transfer policy to all DRGs, another option that we are considering for the final rule is expanding the postacute care transfer policy only to additional DRGs that have high rates of transfers, similar to the initial implementation of only 10 DRGs. For example, an incremental expansion would be to add another 10 DRGs to the policy. Using the same criteria to identify DRGs with high postacute care transfer rates, we identified additional DRGs to include in the postacute care transfer policy. We note that three of the DRGs we identified are paired DRGs (that is, they contain a CC/no-CC split). For the same reason given above for treating paired DRGS consistently, we would include the pairs for the 10 DRGs identified. We estimate the impact of this approach would be to reduce payments to hospitals by approximately $916 million for FY 2002. Under this approach, discharges from the following 13 DRGs (in addition to the 10 DRGs already subject to the postacute care transfer policy) could be considered to be subject to an alternative postacute care transfer policy:

- DRG 12 (Degenerative Nervous System Disorders);
- DRG 79 (Respiratory Infections and Inflammations Age >17 with CC);
- DRG 80 (Respiratory Infections and Inflammations Age >17 without CC);
- DRG 107 (Coronary Bypass with Cardiac Catheterization);
- DRG 109 (Coronary Bypass with PTCA or Cardiac Catheterization);
- DRG 148 (Major Small and Large Bowel Procedures with CC);
- DRG 149 (Major Small and Large Bowel Procedures without CC);
- DRG 239 (Pathological Fractures and Musculoskeletal System and Connective Tissue Malignancy);
- DRG 243 (Medical Back Problems);
- DRG 320 (Kidney and Urinary Tract Diagnoses Age >17 with CC);
- DRG 321 (Kidney and Urinary Tract Diagnoses Age >17 without CC);
- DRG 415 (O.R. Procedure for Infections and Parasitic Diseases); and
- DRG 468 (Extensive O.R. Procedure Unrelated to Principal Diagnosis).

Expanding the postacute care transfer policy in this limited manner, however, would retain many of the potential inequities of the current system. Although we are concerned about the potential for a large impact of implementing any expansion of the postacute care transfer payment policy, we believe that the current policy may create payment inequities across patients and across hospitals. By expanding the postacute transfer policy, we would expect to reduce or eliminate these possible inequities. Therefore, we are soliciting comments on the two options we have identified and discussed in this proposed rule. In the final rule, we could adopt one of the approaches discussed above, or some other approach based on comments received on this proposal for addressing this issue. If commenters submit comments on alternate approaches, we are asking them to also provide useful data relating to alternative DRGs to which the expansion should or should not apply and detailed supporting explanations.

If we adopt either of the proposals discussed above or a variation based on comments submitted, we would follow procedures similar to those that are currently followed for treating cases identified as transfers in the DRG recalibration process. That is, as described in the discussion of DRG recalibration in section II.C. of this proposed rule, additional transfer cases would be counted as a fraction of a case based on the ratio of a hospital's transfer payment under the per diem payment methodology to the full DRG payment for nontransfer cases.

2. Technical Correction

When we revised our regulations on payments for discharges and transfers under § 412.4 in the July 31, 1998 final rule (63 FR 41003), we inadvertently did not exclude discharges from one hospital area or unit to another inpatient area or unit of the hospital that is paid under the acute care hospital inpatient prospective payment system (§ 412.4(b)(2)) from the types of cases paid under the general rule for transfer cases. We are proposing to correct the regulation text to reflect our policy (as reflected in prior preamble language) that transfers from one area or unit within a hospital to another are not paid as transfers (except as described under the special 10 DRG rule at § 412.4(c)). We are proposing to correct this error by revising § 412.4(f)(1) to provide that only the circumstances described in paragraph (b)(1) and (c) of § 412.4 are paid as transfers under the general transfer rule. This proposed correction

would reflect the fact that transfers under § 412.4(b)(2) are to be paid as discharges and not transfers.

B. Sole Community Hospitals (SCHs) (§§ 412.77 and 412.92)

1. Phase-In of FY 1996 Hospital-Specific Rates

Under the acute care hospital inpatient prospective payment system, special payment protections are provided to a sole community hospital (SCH). Section 1886(d)(5)(D)(iii) of the Act defines an SCH as a hospital that, by reason of factors such as isolated location, weather conditions, travel conditions, absence of other like hospitals (as determined by the Secretary), or historical designation by the Secretary as an essential access community hospital, 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 located in § 412.92.

To be classified as an SCH, a hospital either must have been designated as an SCH prior to the beginning of the hospital inpatient prospective payment system on October 1, 1983, or must be located more than 35 miles from other like hospitals, or the hospital must be located in a rural area and meet one of the following requirements:

- It is located between 25 and 35 miles from other like hospitals, and it—
  —Serves at least 75 percent of all inpatients, or at least 75 percent of Medicare beneficiary inpatients, within a 35-mile radius or, if larger, within its service area; or
  —Has fewer than 50 beds and would qualify on the basis of serving at least 75 percent of its area's inpatients except that some patients seek specialized care unavailable at the hospital.
- It is located between 15 and 35 miles from other like hospitals, and because of local topography or extreme weather conditions, the other like hospitals are inaccessible for at least 30 days in each of 2 out of 3 years.
- The travel time between the hospital and the nearest like hospital is at least 45 minutes because of distance, posted speed limits, and predictable weather conditions.

Effective with hospital cost reporting periods beginning on or after April 1, 1990, section 1886(d)(5)(D)(i) of the Act, as amended by section 6003(e) of Public Law 101–239, provides that SCHs are paid based on whichever of the following rates yields the greatest aggregate payment to the hospital for the cost reporting period:

- The Federal rate applicable to the hospital;
- The updated hospital-specific rate based on FY 1982 costs per discharge; or
- The updated hospital-specific rate based on FY 1987 costs per discharge.

Section 405 of Public Law 106–113 added section 1886(b)(3)(l) to the Act, and section 213 of Public Law 106–554 made further amendments to that section of the Act extending to all SCHs the ability to rebase their hospital-specific rates using their FY 1996 operating costs, effective for cost reporting periods beginning on or after October 1, 2000. The provisions of section 1886(b)(3)(l) of the Act were addressed in the June 13, 2001 interim final rule with comment period (66 FR 32177) and were finalized in the August 1, 2001 final rule (66 FR 39872).

In the June 13, 2001 interim final rule, we correctly described the provisions of section 1886(b)(3)(l) of the Act, as amended, and their implementation. However, in the August 1, 2001 final rule, in summarizing the numerous legislative provisions that had affected payments to SCHs, we incorrectly described the application of the statutory provisions in the background section of the preamble on SCHs (66 FR 39872). (We wish to point out that the Addendum to the August 1, 2001 final rule accurately describes the calculation of the hospital-specific rate (66 FR 39944).) Specifically, the payment options that we described in the August 1, 2001 preamble language on SCHs were incorrect in that we did not include the Federal rate in the blends. Therefore, we are providing below a correct description of the provisions of section 1886(b)(3)(l) of the Act and clarifying their application in determining which of the payment options will yield the highest rate of payment for SCHs.

For purposes of payment to SCHs for which the FY 1996 hospital-specific rate yields the greatest aggregate payment, the Federal rate is included in the blend, as set forth below:

- For discharges during FY 2001, 75 percent of the greater of the Federal amount or the updated FY 1982 or FY 1987 hospital-specific rates (identified in the statute as the subsection (d)(5)(D)(i) amount), plus 25 percent of the updated FY 1996 hospital-specific rate (identified in the statute as the "rebased target amount").
- For discharges during FY 2002, 50 percent of the greater of the Federal amount or the updated FY 1982 or FY 1987 hospital-specific rates, plus 50 percent of the updated FY 1996 hospital-specific rate.
- For discharges during FY 2003, 25 percent of the greater of the Federal amount or the updated FY 1982 or FY 1987 hospital-specific rates, plus 75 percent of the updated FY 1996 hospital-specific rate.
- For discharges during FY 2004 and subsequent fiscal years, the hospital-specific rate would be determined based on 100 percent of the updated FY 1996 hospital-specific rate.

For each cost reporting period, the fiscal intermediary determines which of the payment options will yield the highest rate of payment. Payments are automatically made at the highest rate using the best data available at the time the fiscal intermediary makes the determination. However, it may not be possible for the fiscal intermediary to determine in advance precisely which of the rates will yield the highest payment by year's end. In many instances, it is not possible to forecast the outlier payments, the amount of the disproportionate share hospital (DSH) adjustment, or the indirect medical education (IME) adjustment, all of which are applicable only to payments based on the Federal rate. The fiscal intermediary makes a final adjustment at the close of the cost reporting period to determine precisely which of the payment rates would yield the highest payment to the hospital.

If a hospital disagrees with the fiscal intermediary's determination regarding the final amount of program payment to which it is entitled, it has the right to appeal the fiscal intermediary's decision in accordance with the procedures set forth in Subpart R of Part 405, which concern provider payment determinations and appeals.

The regulation text of § 412.77 and § 412.92(d) that was revised to incorporate the provisions of section 1886(b)(3)(I) of the Act, as amended, and published in the June 13, 2001 interim final rule with comment period (66 FR 32192 through 32193) and finalized in the August 1, 2001 final rule (66 FR 39932), is accurate.

2. SCH Like Hospitals

Section 1886(d)(5)(D)(iii) of the Act provides that, to qualify as a SCH, a hospital must be not more than 35 road miles from another hospital. There are several other conditions under which a hospital may qualify as a SCH, including if it is the "* * * sole source of inpatient hospital services reasonably available to individuals in a geographic area * * *" because of factors such as the "* * * absence of other like hospitals * * *" We have defined a "like hospital" in regulations as a hospital furnishing short-term, acute

care (§ 412.92(c)(2)). Like hospitals refers to hospitals paid under the acute care hospital inpatient prospective payment system.

We have become aware that, in some cases, new specialty hospitals that offer a very limited range of services have opened within the service area of a SCH and may be threatening the special status of the SCH. For example, a hospital that offers only a select type of surgery on an inpatient basis would qualify under our existing rules as an SCH "like hospital" if it met the hospital conditions of participation and was otherwise eligible for payment under the acute care hospital inpatient prospective payment system. Under our existing regulations, a SCH could lose its special status due to the opening of such a specialty hospital, even though there is little, if any, overlap in the types of services offered by the SCH and the specialty hospital.

We believe that limiting eligibility for SCH status to hospitals without SCH like hospitals in their service area is a way to identify those hospitals that truly are the sole source of short-term acute-care inpatient services in the community. A limited-service, specialty hospital, by definition, would not offer an alternate source of care in the community for most inpatient services and therefore, we believe, should not be considered a "like" hospital with the effect of negating SCH status of a hospital that is the sole source of short-term acute care inpatient services in the community. Therefore, we are proposing to amend the definition of SCH like hospitals under § 412.92(c)(2), effective with cost reporting periods beginning on or after October 1, 2002, to exclude any hospital that provides no more than a very small percent of the services furnished by the limited-service facility that overlap with the services provided by the SCH. We believe the percentage of overlapping services should be sufficiently small so that we can ensure that only hospitals that truly are the sole source of short-term acute-care in their community qualify for SCH status. Therefore, we are proposing that this percentage be set at 3 percent. However, we are soliciting public comments on alternate appropriate levels of service overlap, as well as on the overall proposed change to the definition of like hospitals.

C. Outlier Payments: Technical Change (§ 412.80)

Sections 1886(d)(5)(A) and (d)(5)(K) of the Act provide for payments, in addition to the basic prospective payments, for "outlier" cases; that is, cases involving extraordinarily high costs. Cases qualify for outlier payments by demonstrating costs that exceed a fixed loss cost outlier threshold equal to the prospective payment rate for the DRG plus any IME (§ 412.105) and DSH (§ 412.106) payments for the case and, for discharges on or after October 1, 2001, additional payments for new technologies or services.

Implementing regulations for outlier payments are located in subpart F of part 412. Paragraph (a) of § 412.80 specifies the basic rules for making the additional outlier payments, broken down into three applicable effective periods. We have become aware that in paragraph (a)(2), which relates to outlier payments for discharges occurring on or after October 1, 1997, and before October 1, 2001, we did not include language to specify that the additional costs of outlier cases must exceed the standard DRG payment and any additional payment the hospital would receive for IME and for DSH, plus a fixed loss dollar threshold. Therefore, we are proposing to make a technical change by revising § 412.80(a)(2), applicable for discharges occurring during the period between October 1, 1997 and October 1, 2001, to include the appropriate language regarding additional payments for IME and payments for DSH. (We note that when we amended § 412.80 to incorporate the provisions on the additional payments for new technology under paragraph (a)(3) (66 FR 46924, September 7, 2001), effective October 1, 2001, we did include this language.)

D. Rural Referral Centers (§ 412.96)

Under the authority of section 1886(d)(5)(C)(i) of the Act, the regulations at § 412.96 set forth the criteria that a hospital must meet in order to qualify under the prospective payment system as a rural referral center. For discharges occurring before October 1, 1994, rural referral centers received the benefit of payment based on the other urban amount rather than the rural standardized amount. Although the other urban and rural standardized amounts were the same for discharges beginning with that date, rural referral centers continue to receive special treatment under both the DSH payment adjustment and the criteria for geographic reclassification.

Section 1886(d)(8)(E) of the Act, as amended, creates a mechanism, separate and apart from the MGCRB, permitting an urban hospital to apply to the Secretary to be treated as being located in the rural area of the State in which the hospital is located. The statute directs the Secretary to treat a qualifying hospital as being located in the rural area for purposes of provisions under section 1886(d) of the Act. One of the criteria under section 1886(d)(8)(E) of the Act is that the hospital would qualify as an SCH or a rural referral center if it were located in a rural area. An SCH would be eligible to be paid on the basis of the higher of its hospital-specific rate or the Federal rate. On the other hand, a primary benefit under section 1886(d) of the Act for an urban hospital to become a rural referral center would be waiver of the proximity requirements that are otherwise applicable under the MGCRB process, as set forth in § 412.230(a)(3)(i).

Although hospitals that are reclassified as rural under section 1886(d)(8)(E) of the Act are not permitted to reclassify through the MGCRB, effective October 1, 2000, hospitals located in what is now an urban area if they were ever a rural referral center, were reinstated to rural referral center status. These hospitals may then take advantage of the waiver from the proximity requirements for reclassification.

In addition, as discussed in 62 FR 45999 and 63 FR 26317, under section 4202 of Public Law 105–33, a hospital that was classified as a rural referral center for FY 1991 is to be classified as a rural referral center for FY 1998 and later years so long as that hospital continued to be located in a rural area and did not voluntarily terminate its rural referral center status. Otherwise, a hospital seeking rural referral center status must satisfy applicable criteria. One of the criteria under which a hospital may qualify as a rural referral center is to have 275 or more beds available for use. A rural hospital that does not meet the bed size requirement can qualify as a rural referral center if the hospital meets two mandatory prerequisites (specifying a minimum case-mix index and a minimum number of discharges) and at least one of three optional criteria (relating to specialty composition of medical staff, source of inpatients, or referral volume). With respect to the two mandatory prerequisites, a hospital may be classified as a rural referral center if—

- The hospital's case-mix index is at least equal to the lower of the median case-mix index for urban hospitals in its census region, excluding hospitals with approved teaching programs, or the median case-mix index for all urban hospitals nationally; and
- The hospital's number of discharges is at least 5,000 per year, or, if fewer, the median number of discharges for urban hospitals in the census region in which the hospital is located. (The number of discharges criterion for an osteopathic

hospital is at least 3,000 discharges per year.)

1. Case-Mix Index

Section 412.96(c)(1) provides that CMS will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. The methodology we use to determine the proposed national and regional case-mix index values is set forth in regulations at § 412.96(c)(1)(ii). The proposed national mean case-mix index value includes all urban hospitals nationwide, and the proposed regional values are the median values of urban hospitals within each census region, excluding those with approved teaching programs (that is, those hospitals receiving indirect medical education payments as provided in § 412.105). These values are based on discharges occurring during FY 2001 (October 1, 2000 through September 30, 2001) and include bills posted to CMS's records through December 2001.

We are proposing that, in addition to meeting other criteria, hospitals with fewer than 275 beds, if they are to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 2002, must have a case-mix index value for FY 2001 that is at least—

- 1.3229; or
- The median case-mix index value for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.105) calculated by CMS for the census region in which the hospital is located.

The median case-mix index values by region are set forth in the following table:

Region	Case-Mix index value
1. New England (CT, ME, MA, NH, RI, VT)	1.2089
2. Middle Atlantic (PA, NJ, NY)	1.2235
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	1.2985
4. East North Central (IL, IN, MI, OH, WI)	1.2377
5. East South Central (AL, KY, MS, TN)	1.2459
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	1.1616
7. West South Central (AR, LA, OK, TX)	1.2641
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	1.3255
9. Pacific (AK, CA, HI, OR, WA)	1.2779

The preceding numbers will be revised in the final rule to the extent required to reflect the updated FY 2001 MedPAR file, which will contain data from additional bills received through March 31, 2002.

Hospitals seeking to qualify as rural referral centers or those wishing to know how their case-mix index value compares to the criteria should obtain hospital-specific case-mix index values from their fiscal intermediaries. Data are available on the Provider Statistical and Reimbursement (PS&R) System. 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 CMS will set forth the national and regional numbers of discharges in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. As specified in section 1886(d)(5)(C)(ii) of the Act, the national standard is set at 5,000 discharges. We are proposing to update the regional standards based on discharges for urban hospitals' cost reporting periods that began during FY 2001 (that is, October 1, 2000 through September 30, 2001). That is the latest year for which we have complete discharge data available.

Therefore, we are proposing that, in addition to meeting other criteria, a hospital, if it is to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 2002, must have as the number of discharges for its cost reporting period that began during FY 2001 a figure that is at least—

- 5,000; or
- The median number of discharges for urban hospitals in the census region in which the hospital is located, as indicated in the following table:

Region	Number of discharges
1. New England (CT, ME, MA, NH, RI, VT)	6,905
2. Middle Atlantic (PA, NJ, NY)	8,648
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	8,914
4. East North Central (IL, IN, MI, OH, WI)	8,040
5. East South Central (AL, KY, MS, TN)	6,748
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	5,696
7. West South Central (AR, LA, OK, TX)	6,220
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	9,167
9. Pacific (AK, CA, HI, OR, WA)	7,053

We note that the median number of discharges for hospitals in each census region is greater than the national standard of 5,000 discharges. Therefore, 5,000 discharges is the minimum criterion for all hospitals. These numbers will be revised in the final rule based on the latest FY 2001 cost report data.

We reiterate that an osteopathic hospital, if it is to qualify for rural referral center status for cost reporting periods beginning on or after October 1, 2002, must have at least 3,000 discharges for its cost reporting period that began during FY 2001.

E. Indirect Medical Education (IME) Adjustment (§ 412.105)

1. Background

Section 1886(d)(5)(B) of the Act provides that prospective payment hospitals that have residents in an approved graduate medical education (GME) program receive an additional payment for a Medicare discharge to reflect the higher indirect operating costs of teaching hospitals relative to nonteaching hospitals. The existing regulations regarding the calculation of this additional payment, known as the indirect medical education (IME) adjustment, are located at § 412.105. The additional payment is based on the IME adjustment factor. The IME adjustment factor is calculated using a hospital's ratio of residents to beds, which is represented as r, and a multiplier, which is represented as c, in the following equation: $c \times [(1 + r)^{.405} - 1]$. The formula is traditionally described in terms of a certain percentage increase in payment for every 10-percent increase in the resident-to-bed ratio. Section 1886(d)(5)(B)(ii)(VII) of the Act provides that, for discharges occurring during FY 2003 and thereafter, the "c" variable, or formula multiplier, is 1.35. The formula multiplier of 1.35 represents a 5.5-percent increase in IME payment for every 10-percent increase in the resident-to-bed ratio.

2. Temporary Adjustments to the FTE Cap To Reflect Residents Affected by Residency Program Closure: Resident-to-Bed Ratio for Displaced Residents (§§ 412.105(a) and (f)(1)(ix))

In the August 1, 2001 hospital inpatient prospective payment system final rule (66 FR 39899), we expanded the policy at existing § 413.86(g)(8) (proposed to be redesignated as § 413.86(g)(9) in this proposed rule), which allows a temporary adjustment to a hospital's FTE cap when a hospital trains additional residents because of another hospital's closure, to also allow a temporary adjustment when a hospital trains residents displaced by the closure of another hospital's residency program (but the hospital itself remains open). We revised regulations at existing § 413.86(g)(8) to state that, if a hospital that closes its residency training program agrees to temporarily reduce its FTE cap, another hospital(s) may receive a temporary adjustment to its FTE cap to reflect residents added because of the closure of the former hospital's residency training program. We defined "closure of a hospital residency training program" as when the hospital ceases to offer training for residents in a particular approved medical residency training program. The methodology for adjusting the caps for the "receiving" hospital and the "hospital that closed its program" as they apply to the IME adjustment and direct GME payments is set forth in the regulations at existing §§ 412.105(f)(1)(ix) and 413.86(g)(8)(iii), respectively.

In the August 1, 2001 rule, we noted a commenter who requested that CMS further revise the regulations to grant temporary relief to hospitals in calculating the IME adjustment with regard to application of the resident-to-bed ratio cap (66 FR 39900). The commenter believed that while the cap on the number of residents has been temporarily adjusted, if the receiving hospital is not allowed to also adjust its resident-to-bed ratio in the prior year, the lower resident-to-bed ratio from the prior year would act to reduce the IME payments to the receiving hospital. The commenter suggested that, similar to the exception for residents in hospitals that begin new programs under § 412.105(a)(1), an adjustment should be made to the prior year's FTE residents equal to the increase in the current year's FTEs that is attributable to the transferred residents. In response to the commenter, we stated that we had decided not to allow the exclusion of these displaced residents in applying the resident-to-bed ratio cap. We explained that, while we believed that the receiving hospital may be held to a lower cap in the first year of training the displaced residents, the receiving hospital would benefit from the higher cap in the subsequent years as the displaced residents complete their training and leave that hospital. However, we indicated that we would consider suggestions for possible future changes to this policy.

We have revisited this policy and now realize that our rationale for not allowing the adjustment for displaced residents to the resident-to-bed ratio cap may have been faulty. We initially believed that, in the year following the last year in which displaced residents trained at the receiving hospital, the receiving hospital would benefit from the higher resident-to-bed ratio cap. However, we have determined that, while it is correct that the hospital will have a higher resident-to-bed ratio cap because of the higher number of displaced residents in the prior year, the receiving hospital's FTE count decreases as the displaced residents finish their training. Therefore, the receiving hospital would not need a higher resident-to-bed ratio cap to accommodate the remaining FTEs. Consequently, the higher resident-to-bed ratio cap in fact would not benefit the receiving hospital. Thus, we are now proposing to allow the exclusion of residents displaced by either the closure of another hospital's program or another hospital's closure in applying the resident-to-bed ratio cap. Specifically, assuming a hospital is eligible to receive a temporary adjustment to its FTE cap as described in existing § 413.86(g)(8), we are proposing that, solely for purposes of applying the resident-to-bed ratio cap in the *first* year in which the receiving hospital is training the displaced residents, the receiving hospital may adjust the numerator of the prior year's resident-to-bed ratio by the number of FTE residents that has caused the receiving hospital to exceed its FTE cap. (We note that this adjustment to the resident-to-bed ratio cap does not apply to changes in bed size). In the years subsequent to the first year in which the receiving hospital takes in the displaced residents, we believe an adjustment to the numerator of the prior year's resident-to-bed ratio is unnecessary because the receiving hospital's actual FTE count in those years would either stay the same or, as the displaced residents complete their training or leave that hospital, decrease each year. If all other variables remain constant, an increase in the current year's resident-to-bed ratio will establish a higher cap for the following year. In the second and subsequent years of training the displaced residents, the receiving hospital's resident-to-bed ratio for the current year would not be higher than the prior year's ratio and thus would not be limited by the resident-to-bed ratio cap.

In the cost reporting period following the departure of the last displaced residents, when the temporary FTE cap adjustment is no longer applicable, we are proposing that, solely for purposes of applying the resident-to-bed ratio cap, the resident-to-bed ratio be calculated *as if* the displaced residents had not trained at the receiving hospital in the prior year. In other words, in the year that the hospital is no longer training displaced residents, the attendant FTEs should be removed from the numerator of the resident-to-bed ratio from the prior year (that is, the resident-to-bed ratio cap). We believe that because we are proposing to allow the adjustment to the resident-to-bed ratio cap in the first year in which the receiving hospital trains displaced residents, it is equitable to remove those FTEs when calculating the resident-to-bed ratio cap after all the displaced

residents have completed their training at the receiving hospital.

The following is an example of how the receiving hospital's IME resident-to-bed ratio cap would be adjusted for displaced residents coming from either a closed hospital or a closed program:

Example: Hospital A has a family practice program with 3 residents. On June 30, 2002, Hospital A closes. Hospital B, which also has a family practice program, agrees to continue the training of Hospital A's residents beginning July 1, 2002. Its fiscal year end is June 30. As of July 1, 2002, the 3 residents displaced by the closure of Hospital A include 1 PGY1 resident, 1 PGY2 resident, and 1 PGY3 resident. In addition, Hospital B has 5 of its own residents, an IME FTE resident cap of 5, and 100 beds. Subject to the criteria under existing § 413.86(g)(8), Hospital B's FTE cap is temporarily increased to 8 FTEs. According to the proposed policy stated above, Hospital B's resident-to-bed ratio and resident-to-bed ratio cap would be determined as follows:

July 1, 2002 through June 30, 2003

• Resident-to-bed ratio: 5 FTEs + 3 displaced FTEs / 100 beds = .08 (line 3.18 of Worksheet E, Part A of the Medicare cost report, Form CMS 2552–96).

(**Note:** For purposes of applying the rolling average calculation at § 412.105(f)(1)(v) to this example, it is assumed that Hospital B had 5 FTE residents in both the prior and the penultimate cost reporting periods. Therefore, 5 FTEs are used in the numerator of the resident-to-bed ratio. Under § 412.105(f)(1)(v), displaced residents are added to the receiving hospital's rolling average FTE count in each year that the displaced residents are training at the receiving hospital.)

• Resident-to-bed ratio cap: 5 FTEs (from fiscal year end June 30, 2002) + *3 displaced FTEs (from fiscal year end June 30, 2003)* / 100 beds = .08 (line 3.19 of Worksheet E, Part A of Form CMS 2552–96).

• The lower of the resident-to-bed ratio from the current year (.98) or the resident-to-bed ratio cap from the prior year (.08) is used to calculate the IME adjustment. Therefore, Hospital B would use a resident-to-bed ratio of .08 (line 3.20 of Worksheet E, Part A of Form CMS 2552–96).

July 1, 2003 through June 30, 2004

The PGY3 displaced resident has completed his or her family practice training on June 30, 2003 and has left Hospital B. Hospital B continues to train a displaced (now) PGY2 resident, and a displaced (now) PGY3 resident.

• Resident-to-bed ratio: 5 FTEs + 2 displaced FTEs / 100 beds = .07 (line 3.18 of Worksheet E, Part A of Form CMS 2552–96).

• Resident-to-bed ratio cap: 5 FTEs (from fiscal year end June 30, 2003) + 3 displaced FTEs (from fiscal year end June 30, 2003) / 100 beds = .08 (line 3.19 of Worksheet E, Part A of Form CMS 2552–96).

• The lower of the resident-to-bed ratio from the current year (.07) or the resident-to-bed ratio cap from the prior year (.08) is used to calculate the IME adjustment. Hospital B would use a resident-to-bed ratio of .07 (line 3.20 of Worksheet E, Part A of Form CMS 2552–96).

July 1, 2004 through June 30, 2005

Another of the remaining displaced residents has completed his or her family practice training on June 30, 2004 and has left Hospital B. Hospital B continues to train one displaced (now) PGY3 resident.

• Resident-to-bed ratio: 5 FTEs + 1 displaced FTE / 100 beds = .06 (line 3.18 of Worksheet E, Part A of Form CMS 2552–96).

• Resident-to-bed ratio cap: 5 FTEs (from fiscal year end June 30, 2004) + 2 displaced FTEs (from fiscal year end June 30, 2004) / 100 beds = .07 (line 3.19 of Worksheet E, Part A of Form CMS 2552–96).

• The lower of the resident-to-bed ratio from the current year (.06) or the resident-to-bed ratio cap from the prior year (.07) is used to calculate the IME adjustment. Hospital B would use a resident-to-bed ratio of .06 (line 3.20 of Worksheet E, Part A of Form CMS 2552–96).

July 1, 2005 through June 30, 2006

The last displaced resident has completed his or her family practice training on June 30, 2005 and has left Hospital B. Hospital B no longer trains any displaced residents, and, therefore, the last displaced resident is *removed* from the numerator of the resident-to-bed ratio cap.

• Resident-to-bed ratio: 5 FTEs + 0 displaced FTEs / 100 beds = .05

• Resident-to-bed ratio cap: 5 FTEs (from fiscal year end June 30, 2005) + *0 displaced FTEs (subtract 1 displaced FTE from FYE June 30, 2005)* / 100 beds = .05

• The lower of the resident-to-bed ratio from the current year (.05) or the resident-to-bed ratio cap from the prior year (.05) is used to calculate the IME adjustment. Hospital B would use a resident-to-bed ratio of .05.

We are proposing that this exception to the resident-to-bed ratio cap for residents coming from a closed hospital or a closed program would be effective for cost reporting periods beginning on or after October 1, 2002. We are proposing to revise § 412.105(a)(1) accordingly.

3. Counting Beds for the IME and DSH Adjustments (§ 412.105(b) and § 412.106(a)(l)(i))

As discussed under section V.E.2. of this proposed rule, the regulations for determining the number of beds to be used in calculating the resident-to-bed ratio for the IME adjustment are located at § 412.105(b). These regulations also are used to determine the number of beds for other purposes, including calculating the DSH adjustment at § 412.106(a)(l)(i). Section 412.105(b) specifies that the number of beds in a hospital is determined by counting the number of available bed days during the cost reporting period and dividing that number by the number of days in the cost reporting period. The number of available bed days does not include beds or bassinets in the healthy newborn nursery, custodial care beds, or beds in excluded distinct part hospital units.

Section 2405.3G of Part I of the Medicare Provider Reimbursement Manual (PRM) further defines "available" beds. Specifically, section 2405.3G states that an available bed is a bed that is permanently maintained and is available for use to lodge inpatients. However, there has been some uncertainty concerning the application of this definition of "available." For example, a question arises as to whether beds in rooms or entire units that are unoccupied for extended periods of time should continue to be counted on the basis that, if there would ever be a need, they could be put into use.

Counting the number of beds in a hospital is intended to measure the size of a hospital's routine acute care inpatient operations. While hospitals necessarily maintain some excess capacity, we believe there is a point where excess capacity may distort the bed count. Therefore, we are proposing to revise our policy concerning the determination of a hospital's bed size to exclude beds that represent an excessive level of unused capacity. We believe this proposed refinement of our bed counting policy would better capture the size of a hospital's inpatient operations as described above.

We analyzed Medicare hospital data and found that, among hospitals that have between 100 and 130 beds, hospitals receiving DSH payments have lower occupancy rates than similar hospitals not receiving DSH payments. Because DSH payments are higher for urban hospitals with more than 100

beds, there may be an incentive for these hospitals to maintain excess capacity in order to qualify for those higher payments. Among 189 urban hospitals in this bed-size range that did not receive DSH payments during FY 1999, the average occupancy rate was 55 percent. However, among 294 urban hospitals in this bed-size range that did receive DSH payments during FY 1999, the average occupancy rate was 47 percent. Twenty-five percent of this group of hospitals (those receiving DSH payments) had occupancy rates below 35 percent. Among the hospitals not receiving DSH payments, 25 percent had occupancy rates below 43 percent. We believe this is indicative of a tendency among some small urban hospitals to maintain excess capacity in order to qualify for higher DSH payments. Therefore, we are proposing that if a hospital's reported bed count results in an occupancy rate (average daily census of patients divided by number of beds) below 35 percent, the applicable bed count, for purposes of establishing the number of available beds for that hospital, would exclude beds that would result in an average annual occupancy rate below 35 percent (proposed § 412.105(b)(3)).

For example, if a hospital reports 105 beds for a cost reporting period, but has an average daily census of 26 patients for that same cost reporting period, its occupancy rate equals 24.8 percent (that is, 26/105). Because its occupancy rate is below the proposed minimum threshold of 35 percent, its maximum available bed count would be 74, which is the number of beds that would result in an occupancy rate of 35 percent, given an average daily census of 26 patients (that is, 26/.35).

We would otherwise continue to determine a hospital's bed size using existing regulations and program manual instructions, including the application of the available bed policy.

Following are the steps a hospital would undertake in determining its number of beds in a cost reporting period under our proposed policy:

Step 1: Determine the number of available beds using the existing regulations at § 412.105(b) and PRM instructions.

Step 2: Determine the average daily census by dividing the total number of inpatient acute care days in the hospital by the number of days in the cost reporting period.

Step 3: Divide the average daily census determined in step 2 by 35 percent.

Step 4: Use the *lower* of the number of beds as determined under step 1, or the result of step 3 for purposes of the IME and DSH calculations.

We believe that this proposed policy more accurately indicates the size of a hospital's operations. We are proposing to specify under proposed § 412.105(b)(3) that if a hospital's reported bed count results in an occupancy rate below 35 percent, the applicable bed count for that hospital would be the number of beds that would result in an occupancy rate of 35 percent. We are proposing to make this proposed policy effective for discharges occurring on or after October 1, 2002.

F. Medicare-Dependent, Small Rural Hospitals: Ongoing Review of Eligibility Criteria (§ 412.108(b))

Section 6003(f) of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239) added section 1886(d)(5)(G) to the Act and created the category of Medicare-dependent, small rural hospitals (MDHs). MDHs are eligible for a special payment adjustment under the acute care hospital inpatient prospective payment system. Initially, in order to be classified as an MDH, a hospital must have met all of the following criteria:

- The hospital is located in a rural area (as defined in § 412.63(b);
- The hospital has 100 or fewer beds (as defined at § 412.105(b)) during the cost reporting period;
- The hospital is not classified as an SCH (as defined at § 412.92); and
- The hospital has no less than 60 percent of its inpatient days or discharges attributable to inpatients receiving Medicare Part A benefits during its cost reporting period beginning in FY 1987.

MDHs were eligible for a special payment adjustment under the acute care hospital inpatient prospective payment system, effective for cost reporting periods beginning on or after April 1, 1990, and ending on or before March 31, 1993. Hospitals classified as MDHs were paid using the same methodology applicable to SCHs, that is, based on whichever of the following rates yielded the greatest aggregate payment for the cost reporting period:

- The national Federal rate applicable to the hospital.
- The updated hospital-specific rate based on FY 1982 costs per discharge.
- The updated hospital-specific rate based on FY 1987 costs per discharge.

Section 13501(e)(1) of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66) extended the MDH provision through FY 1994 and provided that, after the hospital's first three 12-month cost reporting periods beginning on or after April 1, 1990, the additional payment to an MDH whose applicable hospital-specific rate exceeded the Federal rate was limited to 50 percent of the amount by which the hospital-specific rate exceeded the Federal rate. The MDH provision expired effective with cost reporting periods beginning on or after October 1, 1994.

Section 4204(a)(3) of Public Law 105–33 reinstated the MDH special payment for discharges occurring on or after October 1, 1997 and before October 1, 2001, but did not revise the qualifying criteria for these hospitals or the payment methodology.

Section 404(a) of Public Law 106–113 extended the MDH provision to discharges occurring before October 1, 2006.

As specified in the June 13, 2001 interim final rule with comment period (66 FR 32172) and finalized in the August 1, 2001 final rule (66 FR 39883), section 212 of Public Law 106–554 provided that, effective with cost reporting periods beginning on or after April 1, 2001, a hospital has the option to base MDH eligibility on two of the three most recently audited cost reporting periods for which the Secretary has a settled cost report, rather than on the cost reporting period that began during FY 1987 (section 1886(d)(5)(G)(iv)(IV) of the Act). According to section 1886(d)(5)(G)(iv)(IV) of the Act, the criteria for at least 60 percent Medicare utilization will be met if, in at least "2 of the 3 most recently audited cost reporting periods for which the Secretary has a settled cost report", at least 60 percent of the hospital's inpatient days or discharges were attributable to individuals receiving Medicare Part A benefits.

We would like to point out that cost reports undergo different levels of review. For example, some cost reports are settled with a desk review; others, through a full field audit. We believe the intention of the law is to provide hospitals the ability to qualify for MDH status based on their most recent settled cost reporting periods, each of which undergoes a level of audit in its settlement.

Hospitals that qualify under section 1886(d)(5)(G)(iv)(IV) of the Act are subject to the other provisions already in place for MDHs. That is, all MDHs are paid using the payment methodology as defined in § 412.108(c) and may be eligible for the volume decrease provision as defined in § 412.108(d).

Under existing classification procedures at § 412.108(b), a hospital must submit a written request to its fiscal intermediary to be considered for

MDH status based on at least two of its three most recently audited cost reporting periods for which the Secretary has a settled cost report (as specified in § 412.108(a)(1)(iii)(c)). The fiscal intermediary will make its determination and notify the hospital within 90 days from the date it receives the hospital's request and all of the required documentation. The intermediary's determination is subject to review under 42 CFR Part 405, Subpart R. MDH status is effective 30 days after the date of written notification of approval.

We are proposing to clarify and to codify in the regulations (proposed § 412.108(b)(4)) that an approved classification as an MDH remains in effect unless there is a change in the circumstances under which the classification was approved. That is, in order to maintain its eligibility for MDH status, a hospital must continue to be a small (100 or fewer beds), rural hospital, with no less than 60 percent Medicare inpatient days or discharges during either its cost reporting period beginning in FY 1987 or during at least two of its three most recently settled cost reporting periods.

We also are proposing to clarify and to codify in the regulations (proposed § 412.108(b)(5)) that the fiscal intermediary will evaluate on an ongoing basis whether or not a hospital continues to qualify for MDH status. This proposed clarification would include evaluating whether or not a hospital that qualified for MDH status under section 1886(d)(5)(G)(iv)(IV) of the Act continues to qualify for MDH status based on at least two of its three most recently settled cost reporting periods.

In addition, we are proposing, (proposed § 412.108(b)(6)) that if a hospital loses its MDH status, that change in status would become effective 30 days after the fiscal intermediary provides written notification to the hospital that it no longer meets the MDH criteria. If the hospital would like to be considered for MDH status after another cost reporting period has been audited and settled, we are proposing to require that the hospital must reapply by submitting a written request to its fiscal intermediary (proposed § 412.108(b)(7)). An MDH that continues to meet the criteria would not have to reapply.

G. Eligibility Criteria for Reasonable Cost Payments to Rural Hospitals for Nonphysician Anesthetists (§ 412.113(c))

Currently, a rural hospital can qualify and be paid on a reasonable cost basis for qualified nonphysician anesthetists (certified registered nurse anesthetists (CRNAs) and anesthesiologist assistants) services for a calendar year beyond 1990 and subsequent years as long as it can establish before January 1 of that year that it did not provide more than 500 surgical procedures requiring anesthesia services, both inpatient and outpatient.

In the September 1, 1983 interim final rule with comment period that implemented the acute care hospital inpatient prospective payment system, we established the general policy to include, under that prospective payment system, inpatient hospital services furnished incident to a physician's service, with a time-limited exception for the inpatient hospital services of anesthetists (48 FR 39794). The purpose of this exception, which originally was for cost reporting periods beginning before October 1, 1986, was that the practice of physician-employer and anesthetist-employee was so widespread that we believed "it would be disruptive of medical practice and adverse to the quality of patient care to require all such contracts to be renegotiated in the limited time available before the implementation of the prospective payment system."

Section 2312 of Public Law 98–369 provided for reimbursement to hospitals on a reasonable cost basis as a pass-through for the costs that hospitals incur in connection with 27 the services of CRNAs. [3] Section 2312(c) provided that the amendment was effective for cost reporting periods beginning on or after October 1, 1984, and before October 1, 1987.

Section 9320 of Public Law 99–509 (which established a fee schedule for the services of nurse anesthetists) amended section 2312(c) of Public Law 98–369 by extending the pass-through provision for cost reporting periods beginning before January 1, 1989. Section 608 of Public Law 100–485 limited the pass-through provision effective during 1989, 1990, and 1991, to hospitals meeting the following criteria:

- As of January 1, 1988, the hospital employed or contracted with a certified nonphysician anesthetist;
- In 1987, the hospital had a volume of surgical procedures (including inpatient and outpatient procedures) requiring anesthesia services that did not exceed 250 (or such higher number as the Secretary determines to be appropriate); and
- Each certified nonphysician anesthetist employed by, or under contract with, the hospital has agreed not to bill under Part B of Medicare for professional services furnished by the anesthetist at the hospital.

Subsequently, section 6132 of Public Law 101–239 amended section 608 of Public Law 100–458 by raising the established 250-procedure threshold to 500 procedures (effective for anesthesia services furnished on or after January 1, 1990), and extended the cost pass-through indefinitely. However, section 6132 of Public Law 101–239 left intact the requirement that the hospital must have not exceeded a maximum number of surgical procedures (effectively raised to 500), both inpatient and outpatient, requiring anesthesia services during 1987. Also, the statutory authority for the Secretary to adopt such other appropriate maximum threshold volume of procedures as determined appropriate was not affected by section 6132.

In light of the age of this provision, we undertook to reexamine the appropriateness of the current 500-procedure threshold. Nonphysician anesthetists who are not employed by or have a contractual relationship with a hospital paid under this provision may receive payments under a fee schedule. Payments under the fee schedule are generally somewhat lower than those made on a reasonable cost basis. Therefore, hospitals that exceed 500 procedures may have difficulty retaining access to nonphysician anesthetists' services because cost reimbursement is unavailable. According to data from the American Association of Nurse Anesthetists (AANA), the average total annual compensation for a CRNA in 2001 was approximately $155,000. The AANA estimates that, based on payments under the Medicare fee schedule, a CRNA would have to provide at least 800 anesthesia procedures to reach this average level of compensation.

The statute provides the Secretary with the authority to determine the appropriateness of the volume threshold, in part, so that changes necessary to meet the needs of rural hospitals can be made. As we have found that hospitals that exceed the 500 surgical procedures may have difficulty in retaining access to nonphysician anesthetists' services, we believe that the appropriate maximum threshold for surgical procedures should be raised in order for the payment exception to apply to those hospitals most in need of this payment treatment. Based upon the data available to us concerning the best

[3] We noted in the August 31, 1984 final rule that section 2312 and the Conference Report used the term "CRNA" throughout. However, we believed it was Congressional intent to apply this pass-through payment amount to the services of all qualified hospital-employed nonphysician anesthetists (49 FR 34748).

estimates of average total compensation to a CRNA, we believe that the maximum volume threshold for surgical procedures requiring anesthesia services should be raised to 800. Therefore, to ensure continued access to nonphysician anesthetists' services in rural hospitals, we are proposing to revise §§ 412.113(c)(2)(ii) and (c)(2)(iii) to raise the 500-procedure threshold to 800 procedures.

H. Medicare Geographic Classification Review Board (MGCRB) Reclassification Process (§§ 412.230, 412.232, and 412.273)

With the creation of the MGCRB, beginning in FY 1991, under section 1886(d)(10) of the Act, hospitals could request reclassification from one geographic location to another for the purpose of using the other area's standardized amount for inpatient operating costs or the wage index value, or both (September 6, 1990 interim final rule with comment period (55 FR 36754), June 4, 1991 final rule with comment period (56 FR 25458), and June 4, 1992 proposed rule (57 FR 23631)). Implementing regulations in Subpart L of Part 412 (§§ 412.230 *et seq.*) set forth criteria and conditions for redesignations from rural to urban, rural to rural, or from an urban area to another urban area, with special rules for SCHs and rural referral centers.

1. Withdrawals, Teminations, and Cancellations

Under § 412.273(a) of our regulations, a hospital, or group of hospitals, may withdraw its application for reclassification at any time before the MGCRB issues its decision or, if after the MGCRB issues its decision, within 45 days of publication of our annual notice of proposed rulemaking concerning changes to the acute care hospital inpatient prospective payment system for the upcoming fiscal year (for example, this proposed rule for FY 2003). In the August 1, 2001 final rule, we specified that, for purposes of implementing section 304 of Public Law 106–554, the withdrawal procedures and the applicable timeframes in the existing regulations would apply to hospitals that receive 3-year reclassification for wage index purposes (66 FR 39886). Once effective, a withdrawal means that the hospital would not be reclassified for purposes of the wage index for FY 2003 (and would not receive continued reclassification for FYs 2004 and 2005), unless the hospital subsequently cancels its withdrawal.

Consistent with section 1886(d)(10)(D)(v) of the Act, a hospital may terminate its approved 3-year reclassification during the second or third years (§ 412.273(b)). This is a separate action from a reclassification withdrawal that occurs in accordance with the timeframes described above. Currently, in order to terminate an approved 3-year reclassification, we require the hospital to notify the MGCRB in writing within 45 days of the publication date of the annual proposed rule for changes to the hospital inpatient prospective payment system (§ 412.273(b)(1)(i)). A termination, unless subsequently cancelled, is effective for the full fiscal years remaining in the 3-year period.

We also provided that a hospital may apply for reclassification to a different area for the year corresponding to the second or third year of the reclassification (that is, an area different from the one to which it was originally reclassified) and, if successful, the reclassification would be for 3 years. Since the publication of the final rule, we received an inquiry regarding a situation where a hospital with an existing 3-year wage index reclassification successfully reclassifies to a different area, then withdraws from that second reclassification within the allowable timeframe for withdrawals. This scenario raises several issues not specifically addressed in the August 1, 2001 final rule, which we are proposing to clarify in this proposed rule.

For example, the question arises, at what point does a hospital's termination of a 3-year reclassification become effective when a hospital applies for reclassification to another area? As noted above, the August 1, 2001 final rule specified that a hospital must file a written request with the MGCRB within 45 days of publication of the annual proposed rule to terminate the reclassification. However, the rules do not specify at what point a previous 3-year reclassification is terminated when a hospital applies for reclassification to another area in subsequent years. One might conclude that an application for a wage index reclassification to another area constitutes a written notification of a hospital's intent to terminate an existing 3-year reclassification. Under this scenario, however, if the application to the second area were denied, it would then be necessary for the hospital to formally cancel the termination of its reclassification to the first area within 45 days of publication of the proposed rule to avoid a lapse in reclassification status the following year. Therefore, we are proposing to clarify, in § 412.273(b)(2)(iii), that, in a situation where a hospital with an existing 3-year wage index reclassification applies to be reclassified to another area, its existing 3-year reclassification will be terminated when a second 3-year wage index reclassification goes into effect for payments for discharges on or after the following October 1. In such a case, it will not be necessary for the hospital to submit a separate written notice of its intent to terminate its existing 3-year reclassification. Of course, a hospital also may still terminate an existing 3-year reclassification through written notice to the MGCRB, regardless of whether it successfully reclassifies to a different area.

The scenario of a hospital with an existing 3-year reclassification seeking reclassification to a second area raises another issue. If the hospital's request is approved by the MGCRB, but the hospital withdraws from that successful reclassification and "falls back" to its original 3-year reclassification, does the hospital retain the right to cancel that withdrawal the next year? In this way, a hospital could accumulate multiple reclassifications from which it could choose in any given year through canceling prior withdrawals or terminations to one area and withdrawing or terminating reclassifications to other areas.

We do not believe section 304 of Public Law 106–554 was intended to be used in such a manner. Therefore, we are proposing to clarify existing policy that a previous 3-year reclassification may not be reinstated after a subsequent 3-year reclassification to another area takes effect. This would mean that a hospital that is reclassified to an area for purposes of the wage index may have only one active 3-year reclassification at a time. Once a 3-year reclassification to a second area becomes effective, a previously terminated 3-year reclassification may not be reinstated by terminating or withdrawing the reclassification to the second area and then canceling the termination or withdrawal of the reclassification to the first area.

As we stated in the August 1, 2001 final rule, we believe the 3-year wage index reclassification policy was intended to provide consistency and predictability in hospital reclassifications and the wage index data. Allowing hospitals multiple reclassification options to choose from would create a situation where many hospitals move in unpredictable ways between the proposed and final rules based on their calculation of which of several areas would yield the highest wage index. This would reduce the predictability of the system, hampering the ability of the majority of hospitals to

adequately project their future revenues. Therefore, we are proposing to amend § 412.273(b)(2)(ii) to provide that, once a 3-year reclassification becomes effective, a hospital may no longer cancel a withdrawal or termination of another 3-year reclassification, even within 3 years from the date of such withdrawal or termination. We are also proposing a technical correction to § 412.273(b)(2)(i) to correct the terminology regarding canceling (rather than terminating) a withdrawal.

Finally, the August 1, 2001 final rule did not specifically describe the process to cancel a withdrawal or termination. Therefore, we are proposing to add a new § 412.273(d) (existing paragraph (d) would be redesignated as paragraph (e)) to describe the process whereby a hospital may cancel a previous withdrawal or termination of a 3-year wage index reclassification. Specifically, a hospital may cancel a previous withdrawal or termination by submitting written notice of its intent to the MGCRB no later than the deadline for submitting reclassification applications for reclassifications effective at the start of the following fiscal year (§ 412.256(a)(2)).

2. Effect of Change of Ownership on Hospital Reclassifications

Sections 412.230(e)(2)(ii) and 412.232(d)(2)(ii) provide that, for reclassifications effective beginning FY 2003, a hospital must provide a 3-year average of its average hourly wages using wage survey data from the CMS hospital wage survey used to construct the wage index in effect for prospective payment purposes.

As discussed in the August 1, 2001 final rule, we received a comment suggesting that, for purposes of calculating the 3-year average hourly wages, we permit a hospital that has changed ownership the option of excluding prior years' wage data submitted by a previous owner in order for the new hospital to qualify for reclassification. Although we responded to the comment (66 FR 39890), we have now determined that there is a need to further clarify our policy regarding change of ownership and hospitals that do not accept assignment of the previous owner's provider agreement.

In our response to the comment, we stated that, where a hospital has simply changed ownership and the new owners have acquired the financial assets and liabilities of the previous owners, all of the applicable wage data associated with that hospital are included in the calculation of its 3-year average hourly wage. Where this is not the case and there is no obligation on the part of the new hospital to claim the financial assets or assume the liabilities of a predecessor hospital, the wage data associated with the previous hospital's provider number would not be used in calculating the new hospital's 3-year average hourly wage.

Section 489.18(c) provides that, when there is a change of ownership, the existing provider agreement will automatically be assigned to the new owner. Our regulations at § 412.230(e)(2) do not specifically address the situation of new hospitals seeking to reclassify for wage index purposes, in light of the requirement that reclassification is based on a 3-year average hourly wage. Therefore, we are proposing to revise § 412.230(e)(2), by adding a new paragraph (e)(2)(iii), to clarify our existing policy to specify that, in situations where a hospital does not accept assignment of the existing hospital's provider agreement under § 489.18, the hospital would be treated as a new hospital with a new provider number. In that case, the wage data associated with the previous hospital's provider number would not be used in calculating the new hospital's 3-year average hourly wage. As we stated in the August 1, 2001 final rule, we believe this policy clarification is consistent with how we treat hospitals whose ownership has changed for other Medicare payment purposes. We are proposing to revise § 412.230 to clarify, under proposed new paragraph (e)(2)(iii), that once a new hospital has accumulated at least 1 year of wage data using survey data from the CMS hospital wage survey used to determine the wage index, it is eligible to apply for reclassification on the basis of those data.

I. Payment for Direct Costs of Graduate Medical Education (§ 413.86)

1. Background

Under section 1886(h) of the Act, Medicare pays hospitals for the direct costs of graduate medical education (GME). The payments are based in part on the number of residents trained by the hospital. Section 1886(h) of the Act caps the number of residents that hospitals may count for direct GME.

Section 1886(h)(2) of the Act, as amended by section 9202 of the Consolidated Omnibus Reconciliation Act (COBRA) of 1985 (Public Law 99–272), and implemented in regulations at § 413.86(e), establishes a methodology for determining payments to hospitals for the costs of approved GME programs. Section 1886(h)(2) of the Act, as amended by COBRA, sets forth a payment methodology for the determination of a hospital-specific, base-period per resident amount (PRA) that is calculated by dividing a hospital's allowable costs of GME for a base period by its number of residents in the base period. The base period is, for most hospitals, the hospital's cost reporting period beginning in FY 1984 (that is, the period of October 1, 1983 through September 30, 1984). The PRA is multiplied by the weighted number of full-time equivalent (FTE) residents working in all areas of the hospital complex (or nonhospital sites, when applicable), and the hospital's Medicare share of total inpatient days to determine Medicare's direct GME payments. In addition, as specified in section 1886(h)(2)(D)(ii) of the Act, for cost reporting periods beginning on or after October 1, 1993, through September 30, 1995, each hospital's PRA for the previous cost reporting period is not updated for inflation for any FTE residents who are not either a primary care or an obstetrics and gynecology resident. As a result, hospitals with both primary care and obstetrics and gynecology residents and nonprimary care residents in FY 1994 or FY 1995 have two separate PRAs: one for primary care and obstetrics and gynecology and one for nonprimary care.

Section 1886(h)(2) of the Act was further amended by section 311 of Public Law 106–113 to establish a methodology for the use of a national average PRA in computing direct GME payments for cost reporting periods beginning on or after October 1, 2000, and on or before September 30, 2005. Generally, section 1886(h)(2)(D) of the Act establishes a "floor" and a "ceiling" based on a locality-adjusted, updated, weighted average PRA. Each hospital's PRA is compared to the floor and ceiling to determine whether its PRA should be revised. For cost reporting periods beginning on or after October 1, 2000, and before October 1, 2001, the floor PRA is 70 percent of the locality-adjusted, updated, weighted average PRA. For cost reporting periods beginning on or after October 1, 2001, and before October 1, 2002, section 511 of Public Law 106–554 amended the floor PRA to equal 85 percent of the locality-adjusted, updated, weighted average PRA. PRAs that are below the applicable floor PRA for a particular cost reporting period would be adjusted to equal the floor PRA. PRAs that exceed the ceiling, that is, 140 percent of the locality-adjusted, updated, weighted average PRA, would, depending on the fiscal year, either be frozen and not increased for inflation, or

increased by a reduced inflation factor. Existing regulations at § 413.86(e)(4) specify the methodology for calculating each hospital's weighted average PRA and the steps for determining whether a hospital's PRA will be revised.

2. Determining the Weighted Average PRAs for Newly Participating Hospitals (§ 413.86(e)(5))

As stated earlier, under section 1886(h) of the Act and implementing regulations, in most cases Medicare pays hospitals for the direct costs of GME on the basis of per resident costs in a 1984 base year. However, under existing § 413.86(e)(5), if a hospital did not have residents in an approved residency training program, or did not participate in Medicare during the base period, the hospital's base period for its PRA is its first cost reporting period during which the hospital participates in Medicare and the residents are on duty during the first month of that period. If there are at least three existing teaching hospitals with PRAs in the same geographic wage area (MSA), as that term is used in 42 CFR Part 412, the fiscal intermediary will calculate a PRA based on the lower of the new teaching hospital's actual cost per resident in its base period or a weighted average of all the PRAs of existing teaching hospitals in the same MSA. There must be at least three existing teaching hospitals with PRAs in the MSA for this calculation. If there are less than three existing teaching hospitals with PRAs within the new teaching hospital's MSA, effective for cost reporting periods beginning on or after October 1, 1997, the fiscal intermediary uses the updated regional weighted average PRA (determined for each of the nine census regions established by the Bureau of Census for statistical and reporting purposes) for the new teaching hospital's MSA (see 62 FR 46004, August 29, 1997). A new teaching hospital is assigned a PRA equal to the lower of its actual allowable direct GME costs per resident or the weighted average PRA as calculated by the fiscal intermediary. Using a methodology based on a weighted average ensures that a new teaching hospital receives a PRA that is representative of the costs of training residents within its specific geographic wage area.

Under existing policy, to calculate the weighted average PRA of teaching hospitals within a particular MSA, the fiscal intermediary begins by determining the base year PRA and the base year FTE count of each respective teaching hospital within that MSA. The weighted average PRA is (a) the sum of the products of each existing teaching hospital's base year PRA in the MSA and its base year FTEs, (b) divided by the sum of the base year FTEs from each of those hospitals. While a methodology using base year PRAs and FTEs was appropriate and workable in the years closely following the implementation of hospital-specific PRAs, it has become administratively burdensome for both CMS and the fiscal intermediaries to recreate base year information in calculating a weighted average. The methodology is particularly problematic in instances where there are large numbers of teaching hospitals in an MSA.

In addition, as discussed in section V.I.1. of this proposed rule, hospitals that were training nonprimary care residents during FYs 1994 and 1995 have a distinct nonprimary care PRA, because there was no update in the inflation factor for these years (§ 413.86(e)(3)(ii)). Thus, most teaching hospitals currently have two PRAs: one for primary care and obstetrics and gynecology; and one for all other residents. (Hospitals that first train residents after FY 1995 only have a single PRA, regardless of whether they train primary care or other residents.) However, since the current methodology for calculating weighted average PRAs is based on data from FY 1984, which was prior to the years during which the PRAs were not adjusted for inflation to reflect nonprimary care residents, the methodology does not account for *all* PRAs (both primary care and obstetrics and gynecology and nonprimary care) within an MSA.

Accordingly, we are proposing to simplify and revise the weighted average PRA methodology under § 413.86(e)(5)(i)(B) to reflect the average of all PRAs in an MSA, both primary care and obstetrics and gynecology, and nonprimary care. We would continue to calculate a weighted average PRA. However, rather than using 1984 base year data, we are proposing to use PRAs (both primary care and obstetrics and gynecology and nonprimary care) and FTE data from the most recently settled cost reports of teaching hospitals in an MSA. We are proposing that the intermediary would calculate the weighted average PRA using the following steps:

Step 1: Identify *all* teaching hospitals (including those serviced by another intermediary(ies)) in the same MSA as the new teaching hospital.

Step 2: Identify the respective primary care and obstetrics and gynecology FTE counts, the nonprimary care FTE counts, or the total FTE count (for hospitals with a single PRA) of each teaching hospital in step 1 from the most recently settled cost reports. (Use the FTE counts from line 3.07 and line 3.08 of the Medicare cost report, CMS–2552–96, Worksheet E–3, Part IV.)

Step 3: Identify the PRAs (either a hospital's primary care and obstetrics and gynecology PRA and nonprimary care PRA, or a hospital's single PRA) from the most recently settled cost reports of the hospitals in step 1, and update the PRAs using the CPI–U inflation factor to coincide with the fiscal year end of the new teaching hospital's base year cost reporting period. For example, if the base year fiscal year end of a new teaching hospital is December 31, 2003, and the most recently settled cost reports of the teaching hospitals within the MSA are from the fiscal year ending June 30, 2000, September 30, 2000, or December 31, 2000, the PRAs from these cost reports would be updated for inflation to December 31, 2003.

Step 4: Calculate the weighted average PRA using the PRAs and FTE counts from steps 2 and 3. For each hospital in the calculation:

(a) Multiply the primary care PRA by the primary care and obstetrics and gynecology FTEs.

(b) Multiply the nonprimary care PRA by the nonprimary care FTEs.

(c) For hospitals with a single PRA, multiply the single PRA by the hospital's total number of FTEs.

(d) Add the products from steps (a), (b), and (c) for all hospitals.

(e) Add the FTEs from step 3 for all hospitals.

(f) Divide the sum from step (d) by the sum from step (e). The result is the weighted average PRA for hospitals within an MSA.

The following is an example of how to calculate a weighted average PRA under the proposed methodology:

Example

Assume that new Hospital A has a June 30 fiscal year end and begins training residents for the first time on July 1, 2003. Thus, new Hospital A's base year for purposes of establishing a PRA is the fiscal year ending June 30, 2004. New Hospital A is located in MSA 1234, in which three other teaching hospitals exist, Hospital B, Hospital C, and Hospital D. These three hospitals also have a fiscal year end of June 30 and their most recently settled cost reports are for the fiscal year ending June 30, 2000. For fiscal year ending June 30, 2000, Hospital B has 200 primary care and obstetrics and gynecology FTEs, 150 nonprimary care FTEs, and 150 nonprimary care FTEs. Hospital C has 50 primary care and obstetrics and gynecology FTEs and 60

nonprimary care FTEs. Hospital D has 25 FTEs. After updating the PRAs for inflation by the CPI–U to June 30, 2004, Hospital B has a primary care and obstetrics and gynecology PRA of $120,000 and a nonprimary care PRA of $115,000, Hospital C has a primary care and obstetrics and gynecology PRA of $100,000 and a nonprimary care PRA of $97,000, and Hospital D has a single PRA of $90,000.

(a) Primary care:
Hospital B: $120,000 × 200 FTEs = $24,000,000
Hospital C: $100,000 × 50 FTEs = $5,000,000
(b) Nonprimary care:
Hospital B: $115,000 × 150 FTEs = $17,250,000
Hospital C: $97,000 × 60 FTEs = $5,820,000
(c) Single PRA:
Hospital D: $90,000 × 25 FTEs = $2,250,000
(d) $24,000,000 + 5,000,000 + $17,250,000 + $5,820,000 + $2,250,000 = $54,320,000.
(e) 200 + 50 + 150 + 60 + 25 = 485 total FTEs.
(f) $54,320,000/485 FTEs = $112,000, the weighted average PRA for MSA1234 for fiscal year ending June 30, 2004.

New Hospital A's PRA would be the lower of $112,000 or its actual base year GME costs per resident.

We are proposing that this new weighted average calculation would be effective for hospitals with direct GME base years that begin on or after October 1, 2002.

In addition, we are taking the opportunity to clarify the language under existing § 413.86(e)(5)(i)(B), which relates to calculating the weighted average under existing policy. Specifically, existing § 413.86(e)(5)(i)(B) states: "The weighted mean value of per resident amounts of all hospitals located in the same geographic wage area, as that term is used in the prospective payment system under part 412 of this chapter, *for cost reporting periods beginning in the same fiscal years* [emphasis added]." We believe this language could be misinterpreted to imply that only those PRAs of hospitals in the same geographic wage area (MSA) *that have the same fiscal year end as the new teaching hospital* should be used in the weighted average calculation. However, the PRAs of *all* hospitals within the MSA of the new teaching hospital should be used, not just the PRAs of hospitals with the same fiscal year end as the new teaching hospital. The proposed revision appears under a proposed new § 413.86(e)(5)(i)(c).

3. Aggregate FTE Limit for Affiliated Groups (§§ 413.86 (b) and (g)(7))

Section 1886(h)(4)(H)(ii) of the Act permits, but does not require, the Secretary to prescribe rules that allow institutions that are member of the same affiliated group (as defined by the Secretary) to elect to apply the FTE resident limit on an aggregate basis. This provision allows the Secretary to permit hospitals flexibility in structuring rotations within a combined cap when they share residents' time. In accordance with the broad authority conferred by the statute, we created criteria for defining "affiliated group" and "affiliation agreements" in both the August 29, 1997 final rule (62 FR 45965) and the May 12, 1998 final rule (63 FR 26317). Because we have received many inquiries from the hospital industry on this policy, we are proposing to clarify in regulations the requirements for participating in an affiliated group. These requirements are explicitly derived from the policy explained in the August 29, 1997 and May 12, 1998 final rules.

Specifically, we are proposing to add under § 413.86(b) a new definition of "Affiliation agreement." This new proposed definition would state that an affiliation agreement is a written, signed, and dated agreement by responsible representatives of each respective hospital in an affiliated group (as defined in § 413.86(b)), that specifies—

- The term of the agreement, which, at a minimum must be one year, beginning on July 1 of a year.
- Each participating hospital's direct and indirect FTE cap.
- The annual adjustment to each hospital's FTE caps, for both direct GME and IME. This adjustment must reflect the fact that any positive adjustment to one hospital's direct and indirect FTE caps must be offset by a negative adjustment to the other hospital's (or hospitals') direct and indirect FTE caps of at least the same amount.
- The names of the participating hospitals and their Medicare provider numbers.

In addition, we are proposing to add a new § 413.86(g)(5)(iv) and a new § 413.86(g)(7) to clarify the requirements for a hospital to receive a temporary adjustment to its FTE cap through an affiliation agreement. (Existing § 413.86(g)(5)(iv) through (vi) are proposed to be redesignated as § 413.86(g)(5)(v) through (vii), respectively; and existing §§ 413.86(g)(7) through (g)(12) are proposed to be redesignated as §§ 413.86(g)(8) through (g)(13), respectively, to accommodate these additions.) Specifically, we are proposing that a hospital may receive a temporary adjustment to its FTE cap, which is subject to the averaging rules, to reflect residents added or subtracted because the hospital is participating in an affiliated group (as that term is defined under § 413.86(b)). Under this proposed provision—

- Each hospital in the affiliated group must submit the affiliation agreement (as that term is proposed to be defined under § 413.86(b)), to the CMS fiscal intermediary servicing the hospital and send a copy to CMS's Central Office no later than July 1 of the residency program year during which the affiliation agreement will be in effect.
- There must be a rotation of a resident(s) among the hospitals participating in the affiliated group during the term of the affiliation agreement, such that more than one of the hospitals counts the proportionate amount of the time spent by the resident(s) in their FTE resident counts. (However, no resident may be counted in the aggregate as more than one FTE.) This requirement is intended to ensure that the participating hospitals maintain a "cross-training" relationship during the term of the affiliation agreement.
- The net effect of the adjustments (positive or negative) on the affiliated hospitals' aggregate FTE cap for each affiliation agreement must not exceed zero.
- If the affiliation agreement terminates for any reason, the FTE cap for each hospital in the affiliated group will revert to the individual hospital's pre-affiliation FTE cap.

Except for the proposed new § 413.86(g)(7)(iv) regarding the treatment of FTE caps after termination of the affiliation agreement, each provision of proposed new § 413.86(g)(7) is explicitly derived from policy stated in the May 12, 1998 final rule (63 FR 26336). We are proposing to incorporate in regulations policy that was previously established under the formal rulemaking process.

We are proposing a change in policy concerning what happens to each participating affiliated hospital's FTE cap when an affiliation agreement terminates (proposed new § 413.86(g)(7)(iv)). In the preamble of the May 12, 1998 final rule (63 FR 26339), we stated: "Each agreement must also specify the adjustment to each respective hospital cap in the event the agreement terminates, dissolves, or, if the agreement is for a specified time period, for residency training years and cost reporting periods subsequent to the

period of the agreement for purposes of applying the FTE cap on an aggregate basis. In the absence of an agreement on the FTE caps for each respective institution following the end of the agreement, each hospital's FTE cap will be the indirect and direct medical education FTE count from each hospital's cost reporting period ending in 1996 and the cap will not be applied on an aggregate basis." Our purpose for allowing hospitals to redistribute their FTE caps (within the limits of the aggregate FTE caps) upon the termination of an affiliation was to enable hospitals by agreement to more closely reflect the realities of the residency rotational arrangement. However, in practice, very few hospitals have altered their FTE caps following termination of affiliation agreements. Rather, the vast majority of hospitals opted to revert to their respective 1996 FTE caps upon the termination of an affiliation. In addition, we have found that our existing policy is susceptible to the following abusive practice that does not comport with our original purpose for allowing redistribution of FTE caps among hospitals following termination of an affiliation agreement. We have learned of a number of instances in which one hospital (Hospital A) affiliated with another hospital (Hospital B) in anticipation of Hospital B's closure at some point during the residency program year. In these instances, the affiliation agreement was made solely for the purpose of obtaining a permanent adjustment to Hospital A's FTE cap through the terms of the termination clause. We do not believe these permanent FTE cap adjustments that result from hospital closures (or any other circumstances) were intended when Congress passed the provision on affiliation agreements. As stated above, we believe affiliations were meant to provide flexibility for hospitals in the rotations of residents where, in the normal course of an affiliation between two or more hospitals, the actual number of residents training at each hospital may vary somewhat from year to year. Affiliations were *not* intended to be used as a vehicle for circumventing the statutory FTE cap on the number of residents. In addition, we have separately addressed issues that arise when residents are displaced because of a pending hospital closure. We have in place a policy at existing § 413.86(g)(8) (proposed to be redesignated as § 413.86(g)(9) in this proposed rule) that permits *temporary* FTE cap adjustments for hospitals that take on the training of residents displaced by the closure of another hospital.

Therefore, we are proposing that, effective October 1, 2002, for hospitals with affiliation agreements that terminate (for any reason) on or after that date, the direct and indirect FTE caps for each hospital in the affiliated group will revert back to each individual hospital's original FTE cap prior to the affiliation (proposed new § 413.86(g)(7)(iv)). This policy would not preclude the participating hospitals from entering into additional affiliation agreements for later residency years.

Since this proposed policy would be effective for agreements that terminate on or after October 1, 2002, hospitals that have already received a permanent FTE cap adjustment from their fiscal intermediaries through the existing termination clause policy would retain those cap adjustments.

We also are proposing to make a conforming clarification at § 412.105(f)(1)(vi) for purposes of IME payments.

4. Rotating Residents to Other Hospitals

At existing § 413.86(f), we state, in part, that a hospital may count residents training in all areas of the hospital complex; no individual may be counted as more than one FTE; and, if a resident spends time in more than one hospital or in a nonprovider setting, the resident counts as a partial FTE based on the proportion of *time worked at the hospital* to the total time worked (emphasis added). A similar policy exists at §§ 412.105(f)(1)(ii) and (iii) for purposes of counting resident FTEs for IME payment. Although these policies concerning the counting of the number of FTE residents for IME and direct GME payment purposes have been in effect since October 1985, we continue to receive questions about whether residents can be counted by a hospital for the time during which the resident is rotated to other hospitals.

We would like to clarify that it is longstanding Medicare policy, based on language in both the regulations and the statute, to prohibit one hospital from claiming the FTEs training at another hospital for IME and direct GME payment. This policy applies even when the hospital that proposes to count the FTE resident(s) actually incurs the costs of training the residents(s) (such as salary and other training costs) at another hospital.

First, section 1886(h)(4)(B) of the Act states that the rules governing the direct GME count of the number of FTE residents "shall take into account individuals who serve as residents for only a portion of a period with a hospital or simultaneously with more than one hospital." In the September 4, 1990 **Federal Register** (55 FR 36064), we stated that " * * * regardless of which teaching hospital employs a resident who rotates among hospitals, each hospital would count the resident in proportion to the amount of time spent at its facility." Therefore, another hospital *cannot* count the time spent by residents training at another hospital. Only the hospital where the residents are actually training can count those FTEs for that portion of time. For example, if, during a cost reporting year, a resident spends 3 months training at Hospital A and 9 months training at Hospital B, Hospital A can only claim .25 FTE and Hospital B can only claim .75 FTE. Over the course of the entire cost reporting year, the resident would add up to 1.0 FTE.

We have been made aware of some instances where an urban hospital may incur all the training costs of residents while those residents train at a rural hospital, because the rural hospital may not have the resources or infrastructure to claim those costs and FTEs on a Medicare cost report. However, even in this scenario, the urban hospital is precluded from claiming any FTEs for the proportion of time spent in training at that rural hospital, or at any other hospital.

We note, however, that, consistent with the statutory provisions of section 1886(d)(5)(B)(iv) of the Act for IME payment and section 1886(h)(4)(E) of the Act for direct GME payment, a hospital may count the time residents spend training in a *nonhospital* setting if the hospital complies with the regulatory criteria at § 413.86(f)(4).

J. Responsibilities of Medicare-Participating Hospitals in Emergency Cases (EMTALA)

1. Background

Sections 1866(a)(1)(I), 1866(a)(1)(N), and 1867 of the Act impose specific obligations on Medicare-participating hospitals that offer emergency services. These obligations concern individuals who come to a hospital emergency department and request examination or treatment for medical conditions, and apply to all of these patients, regardless of whether or not they are beneficiaries of any program under the Act. Section 1867 of the Act sets forth requirements for medical screening examinations for medical conditions, as well as necessary stabilizing treatment or appropriate transfer. In addition, section 1867 of the Act specifically prohibits a delay in providing required screening or stabilization services in order to inquire

about the individual's payment method or insurance status. Section 1867 of the Act also provides for the imposition of civil monetary penalties on hospitals and physicians responsible for the following: (a) Negligently failing to appropriately screen a patient seeking emergency medical care; (b) negligently failing to provide stabilizing treatment to an individual with an emergency medical condition; or (c) negligently transferring a patient in an inappropriate manner. (Section 1867(e)(4) of the Act defines "transfer" to include both transfers to other health care facilities and cases in which the patient is released from the care of the hospital without being moved to another health care facility.)

These provisions, taken together, are frequently referred to as the Emergency Medical Treatment and Labor Act (EMTALA), also known as the patient antidumping statute. EMTALA was passed in 1986 as part of the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA). As a result, many people initially referred to EMTALA as "COBRA" or the "COBRA antidumping" statute. Congress enacted these antidumping provisions in the Social Security Act because of its concern with an "increasing number of reports" that hospital emergency rooms were refusing to accept or treat patients with emergency conditions if the patients did not have insurance:

"* * * The Committee is most concerned that medically unstable patients are not being treated appropriately. There have been reports of situations where treatment was simply not provided. In numerous other situations, patients in an unstable condition have been transferred improperly, sometimes without the consent of the receiving hospital.

"There is some belief that this situation has worsened since the prospective payment system for hospitals became effective. The Committee wants to provide a strong assurance that pressures for greater hospital efficiency are not to be construed as license to ignore traditional community responsibilities and loosen historic standards.

"[Under the statute] [a]ll participating hospitals with emergency departments would be required to provide an appropriate medical screening examination for any individual who requests it (or has a request made on his behalf) to determine whether an emergency medical condition exists or if the patient is in active labor." (H.R. Rept. No. 99–241, Part 1, 99th Cong., 1st Sess. (1985), p. 27.)

The regulations implementing section 1867 of the Act are found at 42 CFR 489.24, Special responsibilities of Medicare hospitals in emergency cases. Section 489.24 provides for the following:

- Paragraph (a) requires that when an individual presents to a hospital's emergency department and a request is made on the individual's behalf for examination or treatment of a medical condition, the hospital must provide for an appropriate medical screening examination to determine whether or not an emergency medical condition exists.
- Paragraph (b) provides the definitions of terms, including "comes to the emergency department," "emergency medical condition," "stabilized," and "to stabilize."
- Paragraph (c) addresses procedures a hospital must follow when it determines that an emergency medical condition exists. If the hospital determines that an emergency medical condition exists, the hospital must provide for further medical examination and treatment as required to stabilize the patient. If the hospital does not have the capabilities to stabilize the patient, an appropriate transfer to another facility is permitted. A transfer is appropriate when the medical benefits of the transfer outweigh the medical risks of the transfer and other requirements, specified in the regulation at paragraph (d), are met. Also, the hospital may transfer an unstable patient who makes an informed written request. Paragraph (c) further states that a hospital may not delay an appropriate medical screening examination, or further examination or treatment, to inquire about the individual's payment method or insurance status.

In addition, § 489.24 addresses: (a) Restriction of a transfer until the individual is stabilized; (b) the responsibilities of the receiving hospital; (c) termination of the provider agreement for failure to comply with EMTALA requirements; and (d) matters concerning consultation with Peer Review Organizations (paragraphs (d) through (h), respectively).

Some EMTALA-related requirements are implemented under regulations at §§ 489.20(l), (m), (q), and (r)(1), (r)(2), and (r)(3). Those regulations deal with a hospital's obligations to report the receipt of patients that it has reason to believe may have been transferred inappropriately; to post signs in the emergency department describing a patient's rights to emergency treatment under section 1867 of the Act; and to maintain patient records, physician on-call lists, and emergency room logs. We are including this brief description for informational purposes but, because we are not proposing to change the regulations in § 489.20, they will not be discussed further in this document.

In promulgating these cited regulatory sections and in enforcing the provisions of EMTALA, we are aware of the necessary balance between the hospital's and a physician's legal duty to provide examination and treatment under the statute and the practical realities of the manner in which hospitals and medical staffs are organized and operated on a day-to-day basis, as well as proper mobilization of resources within hospitals in order to comply with these legal duties. Reports of overcrowding in hospital emergency departments are common in many parts of the country. Within the requirements of EMTALA, individuals should be treated at the appropriate site of care.

Hospitals and physicians have now had over 15 years of experience in organizing themselves to comply with the provisions of EMTALA. Throughout this section of this proposed rule relating to EMTALA, we solicit comments from hospitals, physicians, patients, and beneficiary groups on the proposed changes to the EMTALA policies.

2. Special Advisory Bulletin on EMTALA Obligations

On November 10, 1999, CMS (previously, HCFA) and the Office of the Inspector General (OIG) published jointly in the **Federal Register** a Special Advisory Bulletin addressing the requirements of the patient antidumping statute and the obligations of hospitals to medically screen all patients seeking emergency services and provide stabilizing medical treatment as necessary to all patients, including enrollees of managed care plans, whose conditions warrant it (64 FR 61353). The Special Advisory Bulletin addressed issues of dual staffing of hospital emergency rooms by managed care and nonmanaged care physicians, prior authorization requirements of some managed care plans, use of advance beneficiary notices (ABNs) or other financial responsibility forms, handling of individuals' inquiries about financial liability for emergency services, and voluntary withdrawal of a treatment request. Although it does not amend the Code of Federal Regulations, the Special Advisory Bulletin informs individuals of HHS policy regarding application of the patient antidumping statute and offers advice on the best practices to follow to avoid violation of the requirements imposed under that statute.

As discussed further in section V.J.4. of this preamble, we are now proposing to codify certain policies on prior authorization that are currently stated only in the Special Advisory Bulletin. We believe these changes in the regulations are needed to ensure uniform and consistent application of policy and to avoid any misunderstanding of EMTALA requirements by patients, physicians, or hospital employees.

3. EMTALA Provisions in This Proposed Rule

Recently, a number of questions have been raised about the applicability of § 489.24 to specific situations. These questions arise in the context of managed care plans' requirements for prior authorization, case experiences involving elective procedures, and situations when patients have been admitted as inpatients but are not stabilized, or later experience a deterioration in their medical condition. Some hospitals are uncertain whether various conditions of participation found in 42 CFR part 482 apply to these situations or whether the EMTALA requirements included in the provider agreement regulations at § 489.24 apply, or both. Some representatives of the provider community have asked us to reexamine CMS policy on the applicability of EMTALA to provider-based departments. Finally, there have also been questions concerning the applicability of EMTALA to physicians who are "on call" and to hospitals that own ambulances when those ambulances operate under communitywide emergency medical services (EMS) protocols. To help promote consistent application of the regulations concerning the special responsibilities of Medicare hospitals in emergency cases, we are proposing changes to § 489.24 to clarify its application to these situations and at the same time address concerns about EMTALA raised by the Secretary's Advisory Committee on Regulatory Reform. These changes are discussed more fully below and include the following:

- We are proposing to change the requirements relating to emergency patients presenting at those off-campus outpatient clinics that do not routinely provide emergency services. We believe these changes would enhance the quality and promptness of emergency care by permitting individuals to be referred to appropriately equipped emergency facilities close to such clinics.
- We are proposing to clarify when EMTALA applies to both inpatients and outpatients. We believe these clarifications would enhance overall patient access to emergency services by helping to relieve administrative burdens on frequently overcrowded emergency departments.
- We are proposing to clarify the circumstances in which physicians, particularly specialty physicians, must serve on hospital medical staff "on-call" lists. We expect these clarifications would help improve access to physician services for all hospital patients by permitting hospitals local flexibility to determine how best to maximize their available physician resources. We are currently aware of reports of physicians, particularly specialty physicians, severing their relationships with hospitals, especially when those physicians belong to more than one hospital medical staff. Physician attrition from these medical staffs could result in hospitals having no specialty physician service coverage for their patients. Our proposed clarification of the on-call list requirement would permit hospitals to continue to attract physicians to serve on their medical staffs and thereby continue to provide services to emergency room patients.
- We are proposing to clarify the responsibilities of hospital-owned ambulances so that these ambulances can be more fully integrated with citywide and local community EMS procedures for responding to medical emergencies and thus use these resources more efficiently for the benefit of these communities.

We solicit comments on all of these proposed changes.

4. Prior Authorization

Some managed care plans may seek to pay hospitals for services only if the hospitals obtain approval from the plan for the services before providing the services. Requirements for this approval are frequently referred to as "prior authorization" requirements. However, EMTALA (specifically, section 1867(h) of the Act and our regulation at § 489.24(c)(3)) explicitly prohibit hospitals from delaying screening or stabilization services in order to inquire about the individual's method of payment or insurance status. Thus, prior authorization requirements are a matter of concern because hospitals could, in seeking prior authorization from an insurer, present a barrier to or delay in the provision of services required by EMTALA.

After review of these considerations, we believe that our existing policy will best implement the intent of the statute by prohibiting a participating hospital from seeking authorization from the individual's insurance company for screening services or services required to stabilize an emergency medical condition until after the hospital has provided the appropriate medical screening examination required by EMTALA to the patient and has initiated any further medical examination and treatment that may be required to stabilize the patient's emergency medical condition.

We are soliciting comments as to whether the regulations should be further revised to state that the hospital may seek other information (apart from information about payment) from the insurer about the individual, and may seek authorization for all services concurrently with providing any stabilizing treatment, as long as doing so does not delay required screening and stabilization services.

In addition, we are proposing to specify that an emergency physician is not precluded from contacting the patient's physician at any time to seek advice regarding the patient's medical history and needs that may be relevant to the medical screening and treatment of the patient, as long as this consultation does not inappropriately delay required screening or stabilization services.

As explained earlier, this policy was stated in a Special Advisory Bulletin published jointly by CMS (then HCFA) and the OIG. However, we are now proposing to clarify existing language at § 489.24(c)(3) (proposed to be redesignated as paragraph (d)(4)) in this proposed rule to include this policy in the regulations.

5. Hospital Responsibility for Communication With Medicare+Choice Organizations Concerning Post-Stabilization Care Services

Section 422.113 of our existing regulations establishes rules concerning the responsibility of Medicare+Choice organizations for emergency and post-stabilization care services provided to Medicare+Choice enrollees (65 FR 40170, June 29, 2000). Under § 422.113(c)(2), a Medicare+Choice organization is financially responsible for post-stabilization care under certain circumstances, including situations in which the organization cannot be contacted or does not respond timely to a hospital's request for preapproval of this care.

It has come to our attention that, in some instances, hospitals may have failed to contact Medicare+Choice organizations on a timely basis to seek authorization for post-stabilization services. In such a case, the Medicare+Choice organization does not

have the opportunity provided for under the regulations to decide whether to approve the provision of post-stabilization services at the hospital where the emergency services were provided, or to require that the enrollee instead be transferred to another hospital for such services. Therefore, we are proposing to add a new paragraph (d)(6) under § 489.24 to specify that a hospital must promptly contact the Medicare+Choice organization after a Medicare+Choice enrollee who is treated for an emergency medical condition is stabilized.

6. Clarification of "Comes to the Emergency Department"

Section 1867(a) of the Act and our regulations at § 489.24(a) provide, in part, that if any individual comes to the emergency department of a hospital and a request is made on that individual's behalf for examination or treatment of a medical condition, the hospital must provide an appropriate medical screening examination within the capability of the hospital's emergency department. If the hospital determines that such an individual has an emergency medical condition, the hospital is further obligated to provide either necessary stabilizing treatment or an appropriate transfer. Occasionally, questions have arisen as to whether these EMTALA requirements apply to situations in which a patient comes to a hospital, but does not present to the hospital's emergency department. We are proposing to clarify under what circumstances a hospital is obligated under EMTALA to screen, stabilize, or transfer an individual who comes to a hospital, presenting either at its dedicated emergency department, as proposed to be defined below, or elsewhere on hospital property, seeking examination or treatment.

Sometimes individuals come to hospitals seeking examination or treatment for medical conditions that could be emergency medical conditions, but present for examination or treatment at areas of the hospital other than the emergency department. For example, a woman in labor may go directly to the labor and delivery department of a hospital or a psychiatric outpatient experiencing a psychiatric crisis may present at the psychiatry department. In the June 22, 1994 final rule (59 FR 32098), we defined "comes to the emergency department" at § 489.24(b) to clarify that a hospital's EMTALA obligations are triggered whenever an individual presents on hospital property in this manner in an attempt to gain access to the hospital for emergency care and requests examination or treatment for an emergency medical condition. At the time we adopted this interpretation of "comes to the emergency department," we explained:

"We believe that section 1867 of the Act also applies to all individuals who attempt to gain access to the hospital for emergency care. An individual may not be denied services simply because the person failed to actually enter the facility's designated emergency department." (59 FR 32098)

We repeated this standard for situations in which a hospital becomes bound to meet EMTALA's screening and stabilization or transfer requirements with respect to individuals who present on hospital property in an attempt to gain access to the hospital for emergency care, but outside of a hospital's emergency department, in interpretative guidelines published in the State Operations Manual:

"If an individual arrives at a hospital and is not technically in the emergency department, but is on the premises (including the parking lot, sidewalk and driveway) of the hospital and requests emergency care, he or she is entitled to a medical screening examination." (State Operations Manual Appendix V—Responsibilities of Medicare Participating Hospitals in Emergency Cases, V–16)

Thus, an individual can "come to the emergency department," creating an EMTALA obligation on the part of the hospital, in one of two ways: The individual can present at a hospital's dedicated emergency department (as proposed to be defined below) and request examination or treatment for a medical condition; or the individual can present elsewhere on hospital property in an attempt to gain access to the hospital for emergency care (that is, at a location that is on hospital property but is not part of a dedicated emergency department), and request examination or treatment for what may be an emergency medical condition.

Because of the need to clarify the applicability of EMTALA to a particular individual depending on where he or she presents on hospital property in order to obtain emergency care, we are proposing to define "dedicated emergency department." "Dedicated emergency department" would mean a specially equipped and staffed area of the hospital that is used a significant portion of the time for the initial evaluation and treatment of outpatients for emergency medical conditions, as defined in § 489.24(b), and is either located: (1) On the main hospital campus; or (2) off the main hospital campus and is treated by Medicare under § 413.65(b) as a department of the hospital. The EMTALA statute was intended to apply to individuals presenting to a hospital for emergency care services. Accordingly, we believe it is irrelevant whether the dedicated emergency department is located on or off the hospital main campus, as long as the individual is presenting to "a hospital" for those services. Therefore, we are proposing in our definition of "dedicated emergency department" that such a department may be located on the main hospital campus, or it may be a department of the hospital located off the main campus. (We note that this proposed definition would encompass not only what is generally thought of as a hospital's "emergency room," but would also include other departments of hospitals, such as labor and delivery departments and psychiatric units of hospitals, that provide emergency or labor and delivery services, or both, or other departments that are held out to the public as an appropriate place to come for medical services on an urgent, nonappointment basis.)

We are soliciting public comment on whether this proposed definition should more explicitly define what is a "dedicated emergency department." Specifically, we are seeking comment on whether a "significant portion of the time" should be defined more objectively; for example, in terms of some minimum number or minimum percentage of patients (20, 30, 40 percent or more of all patients seen) presenting for emergency care at a particular area of the hospital in order for it to qualify as a "dedicated emergency department." As an alternative, we could also consider a qualifying criteria that is based on determining whether the facility is used "regularly" for the evaluation or treatment of emergency medical conditions. Similarly, we are seeking comments on how we could define "regularly" more objectively in our consideration of this alternative. We further seek comments from hospitals, physicians, and others on how hospitals currently organize themselves to react to situations in which individuals come to a hospital requesting a screening examination or medical treatment, or both.

This proposed rule would clarify for hospitals that they must provide at least a medical screening examination to all individuals who present to an area of a hospital meeting the definition of dedicated emergency department and request examination or treatment for a medical condition, or have such a request made on their behalf. As we explain in section V.J.7. of this preamble, individuals who present to an

area of a hospital other than a dedicated emergency department on hospital property must receive a medical screening examination under EMTALA, only when the individual requests examination or treatment for what may be an emergency medical condition, or has such a request made on his or her behalf, as provided in the proposed changes to § 489.24(b) in this proposed rule.

7. Applicability of EMTALA: Individual Comes to the Dedicated Emergency Department for Nonemergency Services

We sometimes receive questions as to whether EMTALA's requirements apply to situations in which an individual comes to a hospital's dedicated emergency department, but no request is made on the individual's behalf for emergency medical evaluation or treatment. In view of the specific language of section 1867 of the Act and the discussion in section V.J.6. of this proposed rule, which proposes to define a hospital's dedicated emergency department as a specially equipped and staffed area of the hospital that is used a significant portion of the time for the initial evaluation and treatment of outpatients for emergency medical conditions located on the main hospital campus or at an off-campus department of the hospital, we believe that a hospital must be seen as having an EMTALA obligation with respect to any individual who comes to the dedicated emergency department, if a request is made on the individual's behalf for examination or treatment for a medical condition, whether or not the treatment requested is explicitly for an emergency condition. A request on behalf of the individual would be considered to exist if a prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs examination or treatment for a medical condition. This does not mean, of course, that all EMTALA screenings must be equally extensive. The statute plainly states that the objective of the appropriate medical screening examination is to determine whether or not an emergency medical condition exists. Therefore, hospitals are not obligated to provide screening services beyond those needed to determine that there is no emergency.

In general, a medical screening examination is the process required to reach, with reasonable clinical confidence, a determination about whether a medical emergency does or does not exist. We expect that in most cases in which a request is made for medical care that clearly is unlikely to involve an emergency condition, an individual's statement that he or she is not seeking emergency care, together with brief questioning by qualified medical personnel, would be sufficient to establish that there is no emergency condition and that the hospital's EMTALA obligation would thereby be satisfied.

To clarify our policy in this area, we are proposing to redesignate paragraphs (c) through (h) of § 489.24 as paragraphs (d) through (i) (we are proposing to remove existing paragraph (i), as explained in section V.J.10. of this preamble) and to add a new paragraph (c) to state that if an individual comes to a hospital's dedicated emergency department and a request is made on his or her behalf for examination or treatment for a medical condition, but the nature of the request makes it clear that the medical condition is not of an emergency nature, the hospital is required only to perform such screening as would be appropriate for any individual presenting in that manner, to determine that the individual does not have an "emergency medical condition" as defined in paragraph (b). (See example 1 below.)

Example 1: A woman walks up to the front desk of a hospital's emergency room, a dedicated emergency department, and tells the hospital employee attending the front desk that she had a wound sutured several days earlier and was directed by her doctor to have the sutures removed that day. The front desk attendant registers the woman according to the hospital's normal registration procedure and directs the woman to the waiting area. An emergency nurse, who has been designated by the hospital as a "qualified medical person" (as provided for in existing § 489.24(a)), calls the woman into the examination area of the emergency room. The nurse asks the woman if she has experienced any discomfort or noticed any problems in the area sutured. The woman explains that she is feeling fine, and the wound is not causing her any discomfort, but that her doctor had directed her a week ago to have the sutures removed that day. The nurse physically inspects the sutures and determines that the wound is healing appropriately. The nurse explains to the woman that she does not have an emergency medical condition and may direct the woman to an outpatient clinic where nonemergency personnel will provide the services the woman has requested.

Application: In this case, the woman presented at the hospital's dedicated emergency department and requested examination or treatment for a medical condition—specifically, she asked that her sutures be removed. Therefore, the hospital is bound under section 1867(a) of the Act to provide her a medical screening examination in order to determine whether or not she has an emergency medical condition. The actions of the nurse, "a qualified medical person," constitute an appropriate medical screening examination under EMTALA because the nurse has determined, with reasonable clinical confidence, that the woman has no emergency medical condition. This appropriate medical screening examination fully satisfies the hospital's EMTALA obligations as to that woman; because the screening examination revealed no emergency medical condition, the hospital properly referred the woman to an outpatient clinic for nonemergency care.

8. Applicability of EMTALA: Individual Presents at an Area of the Hospital on the Hospital's Main Campus Other Than the Dedicated Emergency Department

Routinely, individuals come to hospitals as outpatients for many nonemergency medical purposes, and if such an individual initially presents at an on-campus area of the hospital other than a dedicated emergency department, we would expect that the individual typically would not be seeking emergency care. Under most of these circumstances, EMTALA would therefore not apply (this concept is further discussed in section V.J.8. of this preamble). A hospital would, however, incur an EMTALA obligation with respect to an individual presenting at that area who requests examination or treatment for what may be an emergency medical condition, or had such a request made on his or her behalf. This policy would not require that an emergency medical condition be found, upon subsequent medical examination, to exist. Rather, EMTALA is triggered in on-campus areas of the hospital other than a dedicated emergency department where, in an attempt to gain access to the hospital for emergency care, an individual comes to a hospital and requests an examination or treatment for a medical condition that may be an emergency.

We are proposing to specify in the regulations that such a request would be considered to exist if the individual requests examination or treatment for what the individual believes to be an emergency medical condition. Where there is no actual request because, for example, the individual is unaccompanied and is physically incapable of making a request, the request from the individual would be considered to exist if a prudent layperson observer would believe, based upon the individual's appearance or behavior, that the individual needs emergency examination or treatment. We believe this proposed policy is appropriate because it would not be

consistent with the intent of section 1867 of the Act to deny its protections to those individuals whose need for emergency services arises upon arrival on hospital on-campus property at the hospital's main campus but have not been presented to the dedicated emergency department.

Under the proposed policies discussed above, a request for examination or treatment by an individual presenting for what may be an emergency medical condition at an on-campus area of the hospital other than the dedicated emergency department would not have to be expressed verbally in all cases, but in some cases should be inferred from what a prudent layperson observer would conclude from an individual's appearance or behavior. While there may be a request (either through the individual or a prudent layperson), thereby triggering an EMTALA obligation on the part of the hospital, this policy does not mean that the hospital must maintain emergency medical screening or treatment capabilities in each department or at each door of the hospital, nor anywhere else on hospital property other than the dedicated emergency department. If an individual presents at an on-campus area of the hospital other than the dedicated emergency department in an attempt to gain access to the hospital for emergency care, EMTALA would mandate that the hospital (as a whole) would provide for screening and stabilizing the individual. For example, upon presentation of an individual requesting emergency care, if the department to which the individual presents cannot readily provide screening and, if needed, stabilization services, the department may arrange for appropriate staff to provide these services. Care required to be provided under EMTALA should be provided in the most appropriate setting, as determined by the hospital.

Example 2: An individual bleeding profusely from a severe scalp laceration enters a hospital through the main entry for hospital visitors, and says to one of the receptionists: "I need help." The receptionist sees that the individual's head is bleeding and, noting his request, arranges to have the individual taken to the dedicated emergency department. Minutes later, the staff from the emergency department arrive and transport the individual to the hospital's emergency department to complete the screening and to give any necessary stabilizing treatment.

Application: The individual presented at an on-campus area of the hospital other than the dedicated emergency department (in this case, the main entry for hospital visitors), with his head bleeding profusely, asking for help. The receptionist, a prudent layperson observing the individual, believed that the individual was seeking emergency examination or treatment, thereby triggering an EMTALA obligation on the part of the hospital. (We note that EMTALA would have been triggered even if no verbal request had been made, since the individual's appearance indicated the clear possibility of an emergency medical condition.) Since the main entry for hospital visitors did not have emergency examination or treatment capabilities, the receptionist appropriately called the hospital's emergency department to summon emergency department staff to provide emergency care for that individual. Once the emergency department staff arrived and transported the individual to the hospital's emergency department, and provided him with the emergency care needed and stabilized the individual, the hospital had satisfied its EMTALA obligation to that individual.

Again, we solicit comments from hospitals and physicians that give examples of ways in which hospitals presently react to situations such as for the example noted above.

Most individuals who come to hospitals as outpatients come for many nonemergency purposes; under most circumstances, EMTALA would not apply. We are proposing that EMTALA would not apply to such an individual who then experiences what may be an emergency medical condition if the individual is an outpatient (as that term is defined at 42 CFR § 410.2) who has come to the hospital outpatient department for the purpose of keeping a previously scheduled appointment. We would consider such an individual to be an outpatient if he or she has begun an encounter (as that term is defined at § 410.2) with a health professional at the outpatient department. Because such individuals are patients of the hospital already, that is, they have a previously established relationship with the hospital, and have come to the hospital for previously scheduled medical appointments, we believe it is inappropriate that they be considered to have "come to the hospital" for purposes of EMTALA. However, we note that such an outpatient under this proposal who experiences what may be an emergency medical condition after the start of an encounter with a health professional would have all protections afforded to patients of a hospital under the Medicare hospital conditions of participation (as discussed in section V.J.13. of this proposed rule). Hospitals that fail to provide treatment to these patients could face termination of their Medicare provider agreements for a violation of the conditions of participation. In addition, as patients of a health care provider, these individuals are accorded protections under State statutes or common law as well as under general rules of ethics governing the medical professions.

Example 3: A patient who had been discharged from inpatient status following knee replacement surgery comes to the hospital outpatient department for a physical therapy session which had been scheduled 2 weeks earlier. While undergoing therapy, the patient complains of chest pains and lightheadedness. Acting under protocols established by the hospital, staff of the outpatient department contact the hospital's dedicated emergency department, which dispatches appropriate personnel to the department. The patient is taken to the hospital's dedicated emergency department for examination. Upon arrival in the dedicated emergency department, she is given a medical screening examination, which reveals that she has an emergency medical condition related to coronary artery disease. She is stabilized in the dedicated emergency department and is released to the care of her daughter.

Application: In this case, the individual is an outpatient. While she is in a physical therapy session in an outpatient department of the hospital, she experiences what may be an emergency medical condition—chest pains and lightheadedness. This outpatient is under the care of the hospital; she is in a previously scheduled physical therapy appointment and clearly has a previously established relationship with the hospital. In addition, the encounter with hospital staff has begun since her condition arose while she was undergoing therapy. Therefore, although the individual may be experiencing what may be an emergency medical condition, the hospital is not obligated under EMTALA. However, the hospital appropriately provided treatment for this patient, as required under the Medicare conditions of participation (specifically, 42 CFR § 482.55, which requires the hospital to fulfill its condition of participation responsibility for emergency care by contacting the hospital's dedicated emergency department and providing care to the individual through staff of that department). We solicit comments from hospitals and physicians as to what current practices are when an outpatient with a previously scheduled appointment experiences an emergency medical condition.

We are proposing to retitle the definition of "property" at § 489.24(b) to "hospital property" and relocate it as a

separate definition. In addition, we are proposing to clarify which areas and facilities are not considered hospital property.

9. Scope of EMTALA Applicability to Hospital Inpatients

While most issues regarding EMTALA arise in connection with ambulatory patients, questions have occasionally been raised about whether EMTALA applies to inpatients. In late 1998, the United States Supreme Court considered a case (*Roberts* v. *Galen of Virginia*) that involved, in part, the question of whether EMTALA applies to inpatients in a hospital. In the context of that case, the United States Solicitor General advised the Supreme Court that the Department of Health and Human Services (DHHS) would develop a regulation clarifying its position on that issue. After reviewing the issue in the light of the EMTALA statute, we are proposing that EMTALA would apply to inpatients only under limited circumstances, as described in the following paragraphs.

As noted earlier, once a hospital has incurred an EMTALA obligation with respect to an individual, that obligation continues while the individual remains at the hospital, so that any transfer to another medical facility or discharge of the individual must be in compliance with the rules restricting transfer until the individual is stabilized under existing § 489.24(d). In many cases, medical judgment will dictate that a patient be admitted to the hospital for further treatment on an inpatient basis because the patient's emergency medical condition has not yet been stabilized.

In these cases, the hospital continues to be obligated under section 1867, irrespective of the inpatient admission. Admitting an individual whose emergency medical condition has not been stabilized does not relieve the hospital of further responsibility to the individual under this section. An individual's emergency medical condition will be considered to have been stabilized only when the criteria in § 489.24(b) are met; that is, the individual's condition must be such that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during a transfer of the individual from the facility or, if the patient is a pregnant woman who is having contractions, that the woman has delivered the child and the placenta.

Consistent with the above policy, we emphasize that an admission to inpatient status cannot be used to evade EMTALA responsibilities. Indeed, permitting inpatient admission to end EMTALA obligations would provide an obvious means of circumventing these requirements that would seemingly contradict the point of the statute to protect emergency patient health and safety. This point should be particularly evident in the case of a woman in labor, a central focus of the statute. Such women are frequently admitted, and the statute clearly contemplated protecting them until completion of the delivery (that is, stabilization). In addition, if an inpatient who had been admitted from the dedicated emergency department with an unstabilized emergency medical condition was never stabilized as an inpatient and is transferred, we would still apply EMTALA in reviewing the transfer. In this context, stability for transfer reflects a complex medical judgment that can be made only based on review of all relevant information in each particular case, including all conditions that could cause the patient to be medically unstable. A patient who goes in and out of apparent stability with sufficient rapidity or frequency would not be considered "stabilized" within the meaning of § 489.24; transient stability of such a patient does not relieve the hospital of its EMTALA obligation. Such a patient would continue to be covered by EMTALA until the patient's overall medical stability with respect to all conditions is achieved.

Except for the limited circumstances described above, we are proposing to clarify that EMTALA does not apply to hospital inpatients. We believe EMTALA does not apply to hospital inpatients because we interpret section 1867 of the Act by reading the statutory language as a whole, with the requirements of paragraphs (b), "Necessary Stabilizing Treatment for Emergency Medical Conditions and Labor," and (c), "Restricting Transfer Until Individual is Stabilized," applying only to those individuals who satisfy the threshold requirement of coming to the hospital and requesting emergency care (as interpreted in this proposed regulation). This interpretation is based upon the statutory language and the legislative history. First, the Congress defined "emergency medical condition" at section 1867(e)(1) of the Act by referring solely to "acute symptoms," which are self-identified, and did not mention other potentially relevant indications, in particular, signs or objective data. "Signs" are observable findings that are identified or confirmed by a clinician based on examination and use of objective data (for example, physiologic measurements, x-ray results). When a patient's condition deteriorates in the inpatient setting, awareness of a situation potentially requiring emergency care is based on any symptoms, signs, and objective data, reflecting a situation that is not captured by the targeted definition at section 1867(e)(1) of the Act. If the Congress had intended EMTALA to apply to transfers at any time during an inpatient stay, it would not have used a definition of emergency medical condition that focuses exclusively on symptoms and that uniquely defines the individual's status at the time of his or her initial presentation to the hospital, not his or her status as an inpatient. Furthermore, the definition of "appropriate transfer" in paragraph (c)(2) of section 1867 of the Act includes a variety of terms (observation, signs, symptoms, preliminary diagnosis) associated with patient information that is gathered at the initial stage of clinical intervention, when the course of treatment is just beginning. Thus, it would appear to be clear that the authors of this legislation understood the precise meanings of these clinical terms and utilized them accordingly. Further indication that Congress intended this result is the language in section 1867(b)(1)(A) of the Act (stabilization), which requires that the hospital provide "for such further medical examination" as necessary to stabilize. Congress' use of the word "further" acknowledges that there was some initial treatment that occurred in the emergency department.

In addition, the legislative history of EMTALA is replete with references to the problem of individuals denied emergency medical care at hospital emergency rooms, whereas there is no explicit reference to similar problems faced by hospital inpatients. (*See*, for example, 131 Cong. Rec. 28.587 and 28.588 (1985)). When the Congress considered the need for EMTALA legislation, it noted that Medicare-participating hospitals were bound to meet hospital conditions of participation, but that no specific requirements then existed for appropriate treatment of emergency patients. (*See* H.R. Rept. No. 241 (I)(1985), reprinted in 1986 U.S.C.C.A.N. 579, 605.) Arguably, the Congress also considered other protections available to hospital inpatients (for example, private causes of action).

This interpretation that EMTALA was not intended to apply to transfers at any time during an inpatient's stay is further supported by the language of the appropriate transfer provisions of section 1867(c) of the Act. While that paragraph does refer to individuals at a

"hospital," rather than individuals at an "emergency department," the same paragraph also makes reference to actions to be taken by "a physician * * * physically present in the emergency department." This explicit mention of a hospital emergency department, even in a paragraph that generally cites an individual at a "hospital," supports the view that EMTALA was not intended to apply to admitted inpatients who may become unstable subsequent to admission, but only to patients who initially come to the hospital's emergency department with an emergency medical condition, and only until the condition has been stabilized. Finally, we note that once a hospital admits an individual as a patient, that hospital has a variety of other legal, licensing, and professional obligations with respect to the continued proper care and treatment of such patients.

a. Admitted Emergency Patients. A related issue concerns whether a hospital may satisfy its EMTALA obligations to an admitted emergency inpatient only by effectuating an actual stable discharge or appropriate transfer. We are proposing to clarify that even when an admitted emergency patient is not actually transferred, a determination may be made as to whether or not the patient has been stabilized such that he or she could be transferred at a certain point without likely material deterioration of the patient's condition, as defined in section 1867(e)(3)(B) of the Act. Under our proposed policy, if the admitted emergency patient could have been transferred as "stable" under the statute and the period of stability is documented by relevant clinical data in the patient's medical record, the hospital has satisfied its EMTALA obligation by meeting the statutory requirement of providing stabilizing treatment to the point of stability for transfer, and the hospital's obligation under EMTALA ends, even though the patient may remain in inpatient status at the hospital. If, after stabilization, the individual who was admitted as an inpatient again has an apparent decline of his or her medical condition, either as a result of the injury or illness that created the emergency for which he or she initially came to the dedicated emergency department or as a result of another injury or illness, the hospital must comply with the conditions of participation under 42 CFR Part 482, but has no further responsibility under EMTALA with respect to the individual.

We also note that, just because a hospital may stabilize a patient for purposes of ending its EMTALA obligation to that patient, this does not relieve the hospital of any further health and safety obligations as to that patient under the Medicare program. While they remain patients in that hospital, these patients are still protected by a number of Medicare health and safety standards (conditions of participation), as explained further below. In addition, as explained above, nothing under EMTALA in any way changes a hospital's other legal, licensing, and professional obligations with respect to the continued proper care and treatment of its patients.

Example 4: A patient comes to Hospital C's emergency department and requests treatment for an emergency medical condition. The patient knows he has severe heart disease and his chest pains have become more frequent. The patient receives an appropriate medical screening examination and is found to have an emergency medical condition, as indicated by a pain pattern and EKG abnormalities consistent with unstable angina. Stabilizing treatment in the emergency department on an outpatient basis, consisting of oxygen, nitrates and heparin, is initiated.

After several hours of outpatient care, the emergency physician determines that the patient is still not stable for purposes of discharge to his home. The emergency physician concludes that the patient can be treated most effectively by being admitted to Hospital C where he is currently being treated as an outpatient. The patient is admitted as an inpatient for further treatment. The attending physician knows that patients with indications for coronary angioplasty are usually transferred to Hospital D in another city because Hospital D has specialized capabilities that are unavailable at admitting Hospital C. A trip to Hospital D typically requires 2 hours travel by ground ambulance. The physician determines that the patient is stable for purposes of this type of transfer; that is, such a transfer is not likely to result in a material deterioration of the patient's condition, and documents relevant clinical data in the patient's medical record. Even though patients with this degree of coronary arterial disease and acute infarction risk are usually transferred, the patient opposes transfer and wants to remain in the local community. In accordance with the wishes of the patient and his family, the attending physician agrees to treat the patient in Hospital C while informing the patient of the risks involved.

Application: In this situation, the admitted patient is not stable for purposes of discharge to his home but the attending physician determined that the patient is stable for the type of transfer usually undertaken by Hospital C for patients with unstable angina considered for angioplasty. This stabilization, which is documented by relevant clinical data in the patient's medical record, ends Hospital C's EMTALA obligation to the patient, and that obligation would not be reinstated by any subsequent deterioration in the patient's condition.

We are proposing to redesignate paragraph (c) of § 489.24 as paragraph (d), and include these stabilization requirements under a new proposed § 489.2(d)(2). (Proposed redesignated paragraph (d) would be revised further as explained in section V.K.9.b. of this preamble.)

b. Admitted Elective (Nonemergency) Patients. Most hospital admissions do not consist of emergency cases. In most cases, a patient who comes to the hospital and requests admission does so to obtain elective (nonemergency) diagnosis or treatment for a medical condition. Questions have arisen, however, as to whether a hospital would be bound under EMTALA in the situation in which an admitted nonemergency inpatient experiences a deterioration of his or her medical condition.

Under our interpretation of section 1867 of the Act as described above, we believe EMTALA was intended to provide protection to patients coming to a hospital to seek care for an emergency condition. Therefore, we believe that the EMTALA requirements do not extend to admitted nonemergency inpatients. These patients are protected by a number of the Medicare hospital conditions of participation, as explained further under section V.K.13. of this preamble. These patients are further protected by a hospital's other legal, licensing, and professional obligations with respect to the continued proper care and treatment of its patients.

We are proposing to also include these requirements under the proposed redesignated § 489.24(d)(2).

10. Applicability of EMTALA to Provider-Based Entities

On April 7, 2000, we published a final rule specifying the criteria that must be met for a determination regarding provider-based status (65 FR 18504). The regulations in that the April 2000 final rule were subsequently revised to incorporate changes mandated by section 404 of Public Law 106–554 (66 FR 59856, November 30, 2001). However, those revisions did not substantively affect hospitals' obligations with respect to off-campus departments.

a. Applicability of EMTALA to Off-Campus Hospital Departments. In the April 7, 2000 final rule (65 FR 18504), we also clarified the applicability of EMTALA to hospital departments not located on the main provider campus. At that time, we revised § 489.24 to include a new paragraph (i) to specify the antidumping obligations of hospitals

with respect to individuals who come to off-campus hospital departments for the examination or treatment of a potential emergency medical condition. As explained in the preamble to the April 7, 2000 final rule, we made this change because we believed it was consistent with the intent of section 1867 of the Act to protect individuals who present on hospital property (including off-campus hospital property) for emergency medical treatment. Since publication of the April 7, 2000 final rule, it has become clear that many hospitals and physicians continue to have significant concerns with our policy on the applicability of EMTALA to these off-campus locations. After further consideration, we are proposing to clarify the scope of EMTALA's applicability in this scenario to those off-campus departments that are treated by Medicare under § 413.65(b) to be departments of the hospital, and that are equipped and staffed areas that are used a significant portion of the time for the initial evaluation and treatment of outpatients for emergency medical conditions. That is, we are proposing to narrow the applicability of EMTALA to only those off-campus departments that are "dedicated emergency departments" as defined in proposed revised § 489.24(b).

This proposed definition would include such departments whether or not the words "emergency room" or "emergency department" were used by the hospital to identify the departments. The definition would also be interpreted to encompass those off-campus hospital departments that would be perceived by a prudent layperson as appropriate places to go for emergency care. Therefore, we are proposing to revise the definition of "Hospital with an emergency department" at § 489.24(b) to account for these off-campus dedicated emergency departments and to also amend the definition of "Comes to the emergency department" at § 489.24(b) to include this same language. We believe this proposed change would enhance the quality of emergency care by facilitating the prompt delivery of emergency care in those cases, thus permitting individuals to be referred to nearby facilities with the capacity to offer appropriate emergency care.

In general, we expect that off-campus departments that meet the proposed definitions stated above would in practice be functioning as "off-campus emergency departments." Therefore, we believe it is reasonable to expect the hospital to assume, with respect to these off-campus departments, all EMTALA obligations that the hospital must assume with respect to the main hospital campus emergency department. For instance, the screening and stabilization or transfer requirements described in section V.K.1. of this preamble ("Background") would extend to the off-campus emergency departments, as well as to any such departments on the main hospital campus.

In conjunction with this proposed change in the extent of EMTALA applicability with respect to off-campus facilities, we are also proposing to delete all of existing § 489.24(i), which, as noted above, was established in the April 7, 2000 final rule. We are proposing to delete this paragraph in its entirety because its primary purpose is to describe a hospital's EMTALA obligations with respect to patients presenting to off-campus departments that do not routinely provide emergency care. Under the proposals outlined above, however, a hospital would have no EMTALA obligation with respect to individuals presenting to such departments. Therefore, it would no longer be necessary to impose the requirements in existing § 489.24(i). Even though off-campus provider-based departments that do not routinely offer services for emergency medical conditions would not be subject to EMTALA, some individuals may occasionally come to them to seek emergency care. Under such circumstances, we believe it would be appropriate for the department to call an emergency medical service (EMS) if it is incapable of treating the patient, and to furnish whatever assistance it can to the individual while awaiting the arrival of EMS personnel. Consistent with the hospital's obligation to the community and similar to our requirements under § 482.12(f)(2) that apply to hospitals that do not provide emergency services, we would expect the hospital to have appropriate protocols in place for dealing with individuals who come to off-campus nonemergency facilities to seek emergency care. To clarify a hospital's responsibility in this regard, we are proposing to revise § 482.12(f) by adding a new paragraph (3) to state that if emergency services are provided at the hospital but are not provided at one or more off-campus departments of the hospital, the governing body of the hospital must assure that the medical staff of the hospital has written policies and procedures in effect with respect to the off-campus department(s) for appraisal of emergencies and referral when appropriate. (We note that, in a separate document (62 FR 66758, December 16, 1997), we proposed to relocate the existing § 482.12(f) requirement to a new section of Part 482. Any change to the existing § 482.12(f) that is adopted as a result of the proposal described above will be taken into account in finalizing the December 19, 1997 proposal.) However, the hospital would not incur an EMTALA obligation with respect to the individual.

In summary, we are proposing in existing § 489.24(b) to revise the definitions of "comes to the emergency department" and "hospital with an emergency department", and to include these off-campus departments in our new definition of "dedicated emergency department." We welcome comments on whether this new term is needed or if the term "emergency department" could be defined more broadly to encompass other departments that provide urgent or emergent care services. We are proposing to delete all of existing § 489.24(i) and to make conforming revisions to § 413.65(g)(1).

b. On-Campus Provider-Based Applicability. At existing § 413.65(g)(1), we state, in part, that if any individual comes to any hospital-based entity (including an RHC) located on the main hospital campus, and a request is made on the individual's behalf for examination or treatment of a medical condition, the entity must comply with the antidumping rules at § 489.24. Since provider-based entities, as defined in § 413.65(b), are not under the certification and provider number of the main provider hospital, this language, read literally, would appear to impose EMTALA obligations on providers other than hospitals, a result that would not be consistent with section 1867, which restricts EMTALA applicability to hospitals. To avoid confusion on this point and to prevent any inadvertent extension of EMTALA requirements outside the hospital setting, we are proposing to clarify that EMTALA applies in this scenario to only those *departments* on the hospital's main campus that are provider-based; EMTALA would not apply to provider-based *entities* (such as RHCs) that are on the hospital campus.

In addition, we are proposing in § 489.24(b) to revise the definition of "Comes to the emergency department" to include an individual who presents on hospital property, in which "hospital property" is in part defined as "the entire main hospital campus as defined at § 413.65(b) of this chapter, including the parking lot, sidewalk, and driveway, but excluding other areas or structures that may be located within 250 yards of the hospital's main building but are not part of the hospital, such as physician offices, RHCs, SNFs, or other entities

that participate separately in Medicare, or restaurants, shops, or other nonmedical facilities." We are specifically seeking comments on this proposed revised definition. Generally, this proposed language would clarify that EMTALA does not apply to provider-based entities, whether or not they are located on a hospital campus. This language is also consistent with our policy as stated in questions and answers published on the CMS website: *www.cms.gov* (CMS EMTALA guidance, 7/20/01, Q/A # 1) that clarifies that EMTALA does not apply to other areas or structures located on the hospital campus that are not part of the hospital, such as fast food restaurants or independent medical practices.

If this proposed change limiting EMTALA applicability to only those on-campus departments of the hospital becomes finalized, we believe that if an individual comes to an on-campus provider-based entity or other area or structure on the campus not applicable under the new policy and presents for emergency care, it would be appropriate for the entity to call the emergency medical service if it is incapable of treating the patient, and to render whatever assistance it can to the individual while awaiting the arrival of emergency medical service personnel. However, the hospital on whose campus the entity is located would not incur an EMTALA obligation with respect to the individual.

We welcome comments from providers and other interested parties on the proper or best way to organize hospital resources to react to situations on campus where an individual patient or prospective patient requires immediate medical attention.

We are proposing in § 489.24(b) to revise the definition of "Comes to emergency department" (specifically, under proposed new paragraph (1)) and make conforming changes at § 413.65(g)(1).

11. EMTALA and On-Call Requirements

We have frequently received inquiries concerning the applicability of EMTALA for physicians on call. We believe there are a number of misconceptions in the provider industry concerning the extent to which EMTALA requires physicians to provide on-call coverage. Therefore, we are including a section in this preamble that clarifies what kinds of obligations physicians have to provide on-call coverage under EMTALA.

Section 1866(a)(1)(I)(iii) of the Act states, as a requirement for participation in the Medicare program, that hospitals must keep a list of physicians who are on call for duty after the initial examination to provide treatment necessary to stabilize an individual with an emergency medical condition. If a physician on the list is called by a hospital to provide emergency screening or treatment and either fails or refuses to appear within a reasonable period of time, the hospital and that physician may be in violation of EMTALA as provided for under section 1867(d)(1)(C) of the Act.

The CMS State Operations Manual (SOM) further clarifies a hospital's responsibility for the on-call physician. The SOM (Appendix V, page V–15, Tag A404) states:

- Each hospital has the discretion to maintain the on-call list in a manner to best meet the needs of its patients.
- Physicians, including specialists and subspecialists (for example, neurologists), are not required to be on call at all times. The hospital must have policies and procedures to be followed when a particular specialty is not available or the on-call physician cannot respond because of situations beyond his or her control.

Thus, hospitals are required to maintain a list of physicians on call at any one time and physicians or hospitals, or both, may be responsible under the EMTALA statute to provide emergency care if a physician who is on the on-call list fails to or refuses to appear within a reasonable period of time. However, Medicare does not set requirements on how frequently a hospital's staff of on-call physicians are expected to be available to provide on-call coverage. We are aware that practice demands in treating other patients, conferences, vacations, days off, and other similar factors must be considered in determining the availability of staff. We also are aware that some hospitals, particularly those in rural areas, have stated that they incur relatively high costs of compensating physician groups for providing on-call coverage to their emergency departments, and that doing so can strain their already limited financial resources. CMS allows hospitals flexibility to comply with EMTALA obligations by maintaining a level of on-call coverage that is within their capability.

We understand that some hospitals exempt senior medical staff physicians from being on call. This exemption is typically written into the hospital's medical staff bylaws or the hospital's rules and regulations, and recognizes a physician's active years of service (20 or more years) or age (that is, 60 years of age or older), or a combination of both. We wish to clarify that providing such exemptions to members of hospitals' medical staff does not necessarily violate EMTALA. On the contrary, we believe that the hospital is responsible for maintaining an on-call list in a manner that best meets the needs of its patients as long as the exemption does not affect patient care adversely. Thus, CMS allows hospitals flexibility in the utilization of their emergency personnel.

We also note that there is no predetermined "ratio" that CMS uses to identify how many days that a hospital must provide medical staff on-call coverage based on the number of physicians on staff for that particular specialty. In particular, CMS has no rule stating that whenever there are at least three physicians in a specialty, the hospital must provide 24 hour/7 day coverage. Generally, in determining EMTALA compliance, CMS will consider all relevant factors, including the number of physicians on staff, other demands on these physicians, the frequency with which the hospital's patients typically require services of on-call physicians, and the provisions the hospital has made for situations in which a physician in the specialty is not available or the on-call physician is unable to respond.

Example 5: Hospital D has 75 beds and is located in a rural area. The hospital provides on-call coverage of orthopedic services on all weekdays and the first 3 weekends of each month. On the fourth weekend of one month, an individual presents at Hospital D's dedicated emergency department and requests examination for a medical condition. The emergency physician on duty screens the individual and finds that she has an orthopedic emergency medical condition requiring the services of an orthopedist. Hospital D does not have on-call orthopedic physician coverage on this date and, therefore, transfers the individual to an urban hospital 20 miles away for necessary treatment. The transfer is arranged in accordance with procedures that Hospital D has for meeting patient needs when a particular specialty is not available or the physician cannot respond for reasons beyond his or her control.

Analysis: Hospital D incurred an EMTALA obligation when the individual presented at Hospital D's dedicated emergency department and requested examination for a medical condition. At that time, Hospital D did not have on-call coverage to provide necessary stabilizing treatment for what was an orthopedic emergency medical condition, even though an orthopedic physician was on-call at other times. The emergency physician at Hospital D weighed the risks involved to transfer the individual to an urban hospital with capabilities to treat the individual and found that it would be more beneficial to the individual to transfer him or her

to the urban hospital 20 miles away, than to provide screening and stabilizing treatment within Hospital D's capabilities (which, at that time, did not include orthopedic services). Hospital D has satisfied its EMTALA obligation by providing screening services within its capability, followed by an appropriate transfer, under procedures developed in advance. To clarify our policies on EMTALA requirements regarding the availability of on-call physicians, we are proposing to add to § 489.24 a new paragraph (j) to specify that each hospital has the discretion to maintain the on-call list in a manner to best meet the needs of its patients. This paragraph would further specify that physicians, including specialists and subspecialists (for example, neurologists), are not required to be on call at all times, and that the hospital must have policies and procedures to be followed when a particular specialty is not available or the on-call physician cannot respond because of situations beyond his or her control.

12. EMTALA Applicability to Hospital-Owned Ambulances

We stated in the June 22, 1994 final rule (59 FR 32098) that if an individual is in an ambulance owned and operated by a hospital, the individual is considered to have come to the hospital's emergency department, even if the ambulance is not on hospital property. This policy, currently set forth at § 489.24(b), was necessary because we were concerned that some hospitals that owned and operated ambulances at that time were transporting individuals who had called for an ambulance to other hospitals, thereby evading their EMTALA responsibilities to the individuals.

Concerns have since been raised by the provider industry about applications of this policy to ambulances that are owned by hospitals but are operating under communitywide EMS protocols that may require the hospital-owned and other ambulances to transport individuals to locations other than the hospitals that own the ambulances. For instance, we understand that some community protocols require ambulances to transport individuals to the nearest hospital to the patient geographically, whether or not that hospital owns the ambulance.

To avoid imposing requirements that are inconsistent with local EMS requirements, we are proposing to clarify, at proposed revised § 489.24(b) in the definition of "Comes to the emergency department", an exception to our existing rule requiring EMTALA applicability to hospitals that own and operate ambulances. Our proposal would account for hospital-owned ambulances operating under communitywide EMS protocols. Under our proposal, the rule on hospital-owned ambulances and EMTALA does not apply if the ambulance is operating under a communitywide EMS protocol that requires it to transport the individual to a hospital other than the hospital that owns the ambulance. In this case, the individual is considered to have come to the emergency department of the hospital to which the individual is transported, at the time the individual is brought onto hospital property.

13. Conditions of Participation for Hospitals

We are reminding hospitals and others that while this proposed regulation would make it clear that stabilizing an emergency inpatient relieves the hospital of its EMTALA obligations, it does not relieve the hospital of all further responsibility for the patient who is admitted or indicate that the hospital is thus free to improperly discharge or transfer him or her to another facility. Inpatients who experience acute medical conditions receive protections under the hospital conditions of participation, which are found at 42 CFR part 482. In addition, as noted earlier in this preamble, we believe that outpatients who experience what may be an emergency medical condition after the start of an encounter with a health professional would have all protections afforded to patients of a hospital under the Medicare conditions of participation. There are six conditions of participation that provide these protections: emergency services, governing body, discharge planning, quality assurance, medical staff, and outpatient services. We are not proposing in this proposed rule to make changes to any of the conditions of participation.

If a hospital inpatient develops an acute medical condition and the hospital is one that provides emergency services, the hospital is required to ensure that it meets the emergency needs of the patient in accordance with accepted standards of practice. Similarly, regardless of whether the hospital provides emergency services, if an inpatient develops an acute medical condition, the governing body condition of participation (§ 482.12(f)(2), which applies to all Medicare-participating hospitals) would apply. This condition of participation requires that the hospital governing body must ensure that the medical staff has written policies and procedures for appraisal of emergencies, initial treatment, and referral when appropriate.

The discharge planning condition of participation (§ 482.43, which applies to all Medicare-participating hospitals) requires hospitals to have a discharge planning process that applies to all patients. This condition of participation ensures that patient needs are identified and that transfers and referrals reflecting adequate discharge planning are made by the hospital. If an inpatient develops an acute medical condition and the hospital either does not offer emergency services or does not have the capability to provide necessary treatment, a transfer to another hospital with the capabilities to treat the emergency medical condition could be warranted. Hospitals are required to meet the discharge planning condition of participation in carrying out such a transfer.

The hospital condition of participation governing medical staff (§ 482.22) requires that the hospital have an organized medical staff that operates under bylaws approved by the governing body and is responsible to the governing body for the quality of medical care provided to patients by the hospital. Should the medical staff not be held accountable to the governing body for problems regarding a lack of provision of care to an inpatient who develops an emergency medical condition, this lack of accountability may be reviewed under the medical staff condition of participation, as well, and may result in a citation of noncompliance at the medical staff condition level for the hospital.

Finally, the quality assurance condition of participation (§ 482.21, which applies to all Medicare-participating hospitals) requires the governing body to ensure that there is an effective, hospital-wide quality assurance program to evaluate the provision of patient care. In order to comply with this condition of participation, the hospital must evaluate the care it provides hospital-wide. Complaints regarding a lack of provision of care to an inpatient who develops an emergency medical condition must be addressed under the hospital's quality assurance program and may be reviewed under the quality assurance condition of participation.

A hospital's failure to meet the conditions of participation requirements cited above may result in a finding of noncompliance at the condition level for the hospital and lead to termination of the hospital's Medicare provider agreement.

K. Provider-Based Entities

1. Background

a. The April 7, 2000 Final Rule

Since the beginning of the Medicare program, some providers, which we refer to as "main providers," have functioned as a single entity while owning and operating multiple provider-based departments, locations, and facilities that were treated as part of the main provider for Medicare purposes. Having clear criteria for provider-based status is important because this designation can result in additional Medicare payments for services furnished at the provider-based facility, and may also increase the coinsurance liability of Medicare beneficiaries for those services.

In the April 7, 2000 **Federal Register** (65 FR 18504), we published a final rule specifying the criteria that must be met for a determination regarding provider-based status. The regulations at § 413.65(a)(2) define provider-based status as "the relationship between a main provider and a provider-based entity or a department of a provider, remote location of a hospital, or satellite facility, that complies with the provisions of this section." The regulations at existing § 413.65(b)(2) state that before a main provider may bill for services of a facility as if the facility is provider-based, or before it includes costs of those services on its cost report, the facility must meet the criteria listed in the regulations at § 413.65(d). Among these criteria are the requirements that the main provider and the facility must have common licensure (when appropriate), the facility must operate under the ownership and control of the main provider, and the facility must be located in the immediate vicinity of the main provider.

The effective date of these regulations was originally October 10, 2000, but was subsequently delayed and is now in effect for new facilities or organizations for cost reporting periods beginning on or after January 10, 2001, as explained further below. Program instructions on provider-based status issued before that date, found in Section 2446 of the Provider Reimbursement Manual, Part 1 (PRM–1), Section 2004 of the Medicare State Operations Manual (SOM), and CMS Program Memorandum (PM) A–99–24, will apply to any facility for periods before the new regulations become applicable to it. (Some of these instructions will not be applied because they have been superseded by specific legislation on provider-based status, as described in section V.K.3. of this preamble).

b. Frequently Asked Questions Regarding Provider-Based Issues

Following publication of the April 7, 2000 final rule, we received many requests for clarification of policies on specific issues related to provider-based status. In response, we published a list of "Frequently Asked Questions" and the answers to them on the CMS website at *www.hcfa.gov/medlearn/provqa.htm*. (This document can also be obtained by contacting any of the CMS (formerly, HCFA) Regional Offices.) These questions and answers did not revise the regulatory criteria, but do provide subregulatory guidance for their implementation.

c. Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Public Law 106–554)

On December 21, 2000, the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000 (Public Law 106–554) was enacted. Section 404 of BIPA contains provisions that significantly affect the provider-based regulations at § 413.65. Section 404 includes a grandfathering provision for facilities treated as provider-based on October 1, 2000; alternative criteria for meeting the geographic location requirement; and criteria for temporary treatment as provider-based.

(1) Two-Year "Grandfathering"

Under section 404(a) of BIPA, any facilities or organizations that were "treated" as provider-based in relation to any hospital or CAH on October 1, 2000, will continue to be treated as such until October 1, 2002. For the purpose of this provision, we interpret "treated as provider-based" to include those facilities with formal CMS determinations, as well as those facilities without formal CMS determinations that were being paid as provider-based as of October 1, 2000. As a result, existing provider-based facilities and organizations may retain that status without meeting the criteria in the existing regulations under §§ 413.65(d), (e), (f), and (h) until October 1, 2002. These provisions concern provider-based status requirements, joint ventures, management contracts, and services under arrangement. Thus, the provider-based facilities and organizations affected under section 404(a) of BIPA are not required to submit an application for or obtain a provider-based status determination in order to continue receiving reimbursement as provider-based during this period.

These provider-based facilities and organizations are not exempt from the EMTALA responsibilities of provider-based facilities and organizations set forth at § 489.24, which we are proposing to revise as discussed above, or from the other obligations of hospital outpatient departments and hospital-based entities in existing § 413.65(g), such as the responsibility of off-campus facilities to provide written notices to Medicare beneficiaries of coinsurance liability. These rules are not preempted by the grandfathering provisions of section 404 of BIPA because they do not set forth criteria that must be met for provider-based status as a department of a hospital, but instead identify responsibilities that flow from that status. These responsibilities become effective for hospitals on the first day of the hospital's cost reporting period beginning on or after January 10, 2001.

(2) Geographic Location Criteria

Section 404(b) of BIPA provides that those facilities or organizations that are not included in the grandfathering provision at section 404(a) are deemed to comply with the "immediate vicinity" requirements of the existing regulations under § 413.65(d)(7) if they are located not more than 35 miles from the main campus of the hospital or CAH. Therefore, those facilities located within 35 miles of the main provider satisfy the immediate vicinity requirement as an alternative to meeting the "75/75 test" under existing § 413.65(d)(7).

In addition, BIPA provides that certain facilities or organizations are deemed to comply with the requirements for geographic proximity (either the "75/75 test" or the "35-mile test") if they are owned and operated by a main provider that is a hospital with a disproportionate share adjustment percentage greater than 11.75 percent and is (1) owned or operated by a unit of State or local government, (2) a public or private nonprofit corporation that is formally granted governmental powers by a unit of State or local government, or (3) a private hospital that has a contract with a State or local government that includes the operation of clinics of the hospital to ensure access in a well-defined service area to health care services for low-income individuals who are not entitled to benefits under Medicare or Medicaid.

These geographic location criteria will continue indefinitely. While those facilities or organizations treated as provider-based on October 1, 2000 are covered by the 2-year grandfathering

provision noted above, the geographic location criteria at section 404(b) of BIPA and the existing regulations at § 413.65(d)(7) will apply to facilities or organizations not treated as provider-based as of that date, effective with the hospital's cost reporting period beginning on or after January 10, 2001. On October 1, 2002, the statutory moratorium on application of these criteria to the grandfathered facilities will expire. In this proposed rule, we are proposing a further delay, as discussed below.

(3) Criteria for Temporary Treatment as Provider-Based

Section 404(c) of BIPA also provides that a facility or organization that seeks a determination of provider-based status on or after October 1, 2000, and before October 1, 2002, shall be treated as having provider-based status for any period before a determination is made. Thus, recovery for overpayments will not be made retroactively once a request for a determination during that time period has been made. For hospitals that do not qualify for grandfathering under section 404(a) of BIPA, a request for provider-based status should be submitted to the appropriate CMS Regional Office. Until a uniform application is available, at a minimum, the request should include the identity of the main provider and the facility or organization for which provider-based status is being sought and supporting documentation for purposes of applying the provider-based status criteria in effect at the time the application is submitted. Once such a request has been submitted on or after October 1, 2000, and before October 1, 2002, CMS will treat the facility or organization as being provider-based from the date it began operating as provider-based until the effective date of a CMS determination that the facility or organization is not provider-based.

Facilities requesting a provider-based status determination on or after October 1, 2002, will not be covered by the provision concerning temporary treatment as provider-based in section 404(c) of BIPA. Thus, as stated in § 413.65(n), the CMS Regional Offices will make provider-based status effective as of the earliest date on which a request for determination has been made and all requirements for provider-based status in effect as of the date of the request are shown to have been met, not on the date of the formal CMS determination. Under existing regulations at § 413.65(j), if a facility or organization does not qualify for provider-based status and CMS learns that the provider has treated the facility or organization as provider-based without having obtained a provider-based determination under applicable regulations, CMS will review all payments and may seek recovery for overpayments, including overpayments made for the period of time between submission of the request or application for provider-based status and the issuance of a formal CMS determination. (As explained in the previous paragraph, such retroactive recovery of payments would not be made for any period to the extent it is prohibited by section 404(c) of BIPA.)

d. The August 24, 2001 and November 30, 2001 Published Regulations

In August 24, 2001 **Federal Register** (66 FR 44672), we proposed to revise the provider-based regulations to reflect the changes mandated by section 404 of BIPA and to make other technical and clarifying changes in those regulations. In the November 30, 2001 **Federal Register** (66 FR 59856), following consideration of public comments received on the August 24, 2001 proposal, we published a final rule that revised the provider-based regulations. However, the only substantive changes in the provider-based regulations were those required by the BIPA legislation.

2. Proposed Changes

In the preamble to the proposed rule published on August 24, 2001 (66 FR 44709), we stated our intent to reexamine the EMTALA regulations and, in particular, to reconsider the appropriateness of applying EMTALA to off-campus locations. We announced that we planned to review these regulations with a view toward ensuring that these locations are treated in ways that are appropriate to the responsibility for EMTALA compliance of the hospital as a whole. We also pointed out that, at the same time, we want to ensure that those departments that Medicare pays as hospital-based departments are appropriately integrated with the hospital as a whole.

In addition, since the statutory grandfathering provision in the BIPA legislation remains in effect only until October 1, 2002, many hospital representatives have contacted CMS to request more guidance because they are concerned that their facilities are not in compliance with existing regulations and would not be able to continue billing as provider-based once the grandfathering provision expires. These hospital representatives are also concerned that the organizational and contractual changes needed to meet current provider-based requirements could take several months to complete. Moreover, resolution of some of the issues surrounding the provider-based regulations is needed in order to allow development of a uniform application form to enable the CMS Regional Offices to efficiently process the multitudes of requests for provider-based determinations that we expected as the grandfathering period expires.

To address the provider-based issues raised by the hospital industry and to allow for an orderly and uniform implementation strategy once grandfathering ends, we are proposing the following regulatory changes:

a. Scope of Provider-Based Requirements (§ 413.65(a))

Since publication of the April 2000 final rule, we have received many questions about which specific facilities or organizations are subject to the provider-based requirements. In the "Frequently Asked Questions" posted on the CMS website, we identified a number of facility types for which provider-based determinations would not be made, since such determinations would not affect either Medicare payment or Medicare beneficiary liability or scope of benefits. The regulations at § 413.65(a) were further revised to incorporate the exclusion of these facility types from review under the provider-based criteria. We now are proposing to further revise § 413.65(a)(1)(ii) to state that provider-based determinations will not be made with respect to independent diagnostic testing facilities that furnish only services paid under a fee schedule, such as facilities that furnish only screening mammography services, as defined in section 1861(jj) of the Act, facilities that furnish only clinical diagnostic laboratory tests, or facilities that furnish only some combination of these services. A provider-based determination would not be appropriate for a facility that furnishes only screening mammography because of a change made by section 104 of BIPA. That legislation, which amended section 1848(j)(3) of the Act, mandates that all payment for screening mammography services furnished on or after January 1, 2000, be made under the Medicare Physician Fee Schedule (MPFS). Under the MPFS methodology, Medicare payment for the service, regardless of the setting in which it is furnished, is set at the lesser of the fee schedule amount or the actual charge; and no Part B deductible applies. Regardless of the setting, Part B coinsurance is assessed at 20 percent of the lesser of the fee schedule amount or the actual charge. Because the status of a facility as provider-based or freestanding would

not affect the amount of Medicare or Medicaid payment, the beneficiary's scope of benefits, or the beneficiary's liability for coinsurance or deductible amounts, it is not necessary to make a provider-based determination regarding facilities that furnish only screening mammography. We are also proposing to revise § 413.65(a)(1)(ii) by adding a new paragraph (J) to state that we will not make provider-based determinations with respect to departments of providers (for example, laundry or medical records departments) that do not furnish types of health care services for which separate payment could be claimed under Medicare or Medicaid. (Such services frequently are referred to as "billable" services.) As explained more fully below, we would not make determinations with respect to these departments because their status (that is, whether they are provider-based or not) would have no impact on Medicare or Medicaid payment or on the scope of benefits or beneficiary liability under either program.

Despite the previous clarifications described above, providers, associations, and their representatives have continued to state that they are confused as to which facilities or organizations will be the subject of provider-based determinations.

In this document, we are proposing to further clarify the types of facilities that are subject to the provider-based rules, by making several changes to the definitions of key terms in § 413.65(a)(2). First, we are proposing to revise the definition of "department of a provider" to remove the reference to a physician office as being a department of a provider. While a hospital outpatient department, in fact, may furnish services that are clinically indistinguishable from those of physician offices, physician offices and provider departments are paid through separate methods under Medicare and beneficiaries may be liable for different coinsurance amounts. Thus, it is essential to distinguish between these facility types, and we believe avoiding confusion on this issue requires us to remove the reference to a hospital department as a physician office.

We also are proposing to revise § 413.65(a)(2) to state that a "department of a provider", "provider-based entity", or "remote location of a hospital" comprises both the specific physical facility that serves as the site of services of a type for which separate payment could be claimed under the Medicare or Medicaid programs, and the personnel and equipment needed to deliver the services at that facility. We believe this change would help to clarify that we would make determinations with respect to entities considered in their role as sources of health care services and not simply as physical locations. We also wish to clarify that we do not intend to make provider-based determinations with respect to various organizational components or units of providers that may be designated as "departments" or "organizations" but do not themselves furnish types of services for which separate payment could be claimed under Medicare or Medicaid. Examples of components for which we would not make provider-based determinations include the medical records, housekeeping, and security departments of a hospital. Such departments do perform functions that are essential to the provision of inpatient and outpatient hospital services, but the departments do not provide health care services for which Medicare or Medicaid benefits are provided under title XVIII or title XIX of the Act, and for which separate payment therefore could be claimed, assuming certification and other applicable requirements were met, to one or both programs. Therefore, neither Medicare or Medicaid program liability nor beneficiary liability or scope of benefits would be affected by the ability or inability of these departments to qualify as "provider-based." (We also would not make a provider-based determination with respect to any facility or organization that furnishes only types of health care services for which separate payment could be claimed under either Medicare or Medicaid, even if the facility or organization met all requirements for provider-based status. For example, if a hospital that is not eligible for DSH payments under Medicare or Medicaid or for IME payments under Medicare were to establish a dedicated facility providing only types of cosmetic surgery or experimental therapies that could not be covered under either Medicare or Medicaid, no determination would be made with respect to that facility.)

By contrast, Medicare or Medicaid payment (or both) to hospital departments that provide diagnostic or therapeutic radiology services to outpatients, or primary care, ophthalmology, or other specialty services to outpatients are affected by provider-based status, as would beneficiary liability for Medicare coinsurance amounts. Therefore, we would make provider-based determinations for these departments.

Similarly, if two acute care hospitals that have approved graduate medical education (GME) programs were to merge to form a single, multicampus hospital consisting of the main hospital campus and a remote location, it would be appropriate to make a determination as to whether the remote location is provider-based with respect to the main hospital campus. Such a determination would be needed because each hospital with an approved residency training program has its own hospital-specific cap on the number of residents (or FTE cap), its own PRA, and its own Medicare utilization used for purposes of receiving Medicare GME payments. A merger of the two hospitals would aggregate the two hospitals' individual FTE caps into a merged FTE cap under the main hospital's provider number, and would require recalculation of the hospital's PRA and a merging of these entities' respective Medicare utilization, resulting in a level of Medicare GME payment to the merged hospital that exceeds the sum of the payments that would be made to each hospital as separate entities. Thus, a provider-based determination would be appropriate and necessary in such a case, even though payment for services by both facilities would be made under the Medicare acute care hospital inpatient prospective payment system.

In deciding whether to make a provider-based determination with respect to a particular facility, it would not be significant that the facility might have a low rate of Medicare utilization, might be utilized by only Medicare or only Medicaid patients, or might not have admitted any Medicare or Medicaid patients in a particular period. The fact that the facility furnishes types of services that are billable under Medicare or Medicaid, or both, would be sufficient to make a determination appropriate.

We are proposing to retain the rules that a department of a provider or a remote location of a hospital (such as, for example, one campus of a multicampus hospital) may not by itself be qualified to participate in Medicare as a provider under the regulations on provider agreements in § 489.2, and the Medicare conditions of participation do not apply to a department as an independent entity. However, we are proposing to delete the requirement at § 413.65(a)(2) that such a department may not be licensed to provide services in its own right. Some States require separate licensing of facilities that Medicare would treat as a department of a hospital or other provider. In these States, we would not require a common license. We would retain the provision that, for purposes of Part 413, the term "department of a provider" does not

include an RHC or, except as specified in § 413.65(m), an FQHC.

Questions have arisen regarding whether the provider-based criteria in § 413.65 are applicable in determining payment for ambulance services. Medicare is converting payment for ambulance services to a fee schedule, as described in a final rule published on February 27, 2002 (67 FR 9100). The ambulance fee schedule is effective April 1, 2001, and involves a transition period. During this transition period, the status of an ambulance supplier as provider-based could influence the amount of Medicare payment. However, the specific provider-based criteria in § 413.65 were not developed for ambulance suppliers, and we believe that many of these criteria could not reasonably be applied to them. Therefore, we are not proposing to apply the criteria at § 413.65 to ambulance services.

b. Further Delay in Effective Date of Provider-Based Rules

As noted earlier, § 413.65(b) was recently revised to reflect the "grandfathering" provision in section 404(a)(1) of BIPA. Under that provision, if a facility was treated as provider-based in relation to a hospital or CAH on October 1, 2000, it will continue to be considered provider-based in relation to that hospital or CAH until October 1, 2002.

It now appears likely that any new provider-based rules that may be adopted as the result of this rulemaking effort will not be published in final before mid-summer of 2002. To allow hospitals and other facilities the time they need to make contractual and organizational changes to comply with the new rules, and to ensure that CMS Regional Offices and contractors are able to provide for an orderly transition to the new provider-based rules, we believe an additional delay in the effective date of the provider-based criteria is needed. Therefore, we are proposing to revise § 413.65(b)(2) to state that if a facility was treated as provider-based in relation to a hospital or CAH on October 1, 2000, it will continue to be considered provider-based in relation to that hospital or CAH until the start of the hospital's first cost reporting period beginning on or after July 1, 2003. We are proposing to further provide that the requirements, limitations, and exclusions specified in § 413.65(d) through (j) (as proposed to be redesignated) will not apply to that hospital or CAH for that facility until the start of the hospital's first cost reporting period beginning on or after July 1, 2003. For purposes of paragraph (b)(2), a facility would be considered as having been provider-based on October 1, 2000, if on that date it either had a written determination from CMS that it was provider-based, or was billing and being paid as a provider-based department or entity of the hospital. We are proposing to make the new requirements effective on October 1, 2002, with respect to provider-based status for facilities not qualifying for the grandfathering provision.

c. Revision of Application Requirement

Existing regulations at § 413.65(b)(2) establish an explicit application requirement for all facilities seeking provider-based status, except for grandfathered facilities and those treated as provider-based pending a determination on an application filed on or after October 1, 2000, and before October 1, 2002. Under existing § 413.65(b)(3), a main provider or a facility must contact CMS, and the facility must be determined by CMS to be provider-based, before the main provider bills for services of the facility as if the facility were provider-based, or before it includes costs of those services on its cost report. Many providers and provider representatives have expressed concern that the requirement to file an application will increase paperwork burden for hospitals unnecessarily. In response to these concerns, we are proposing to revise the application requirements as follows:

First, we would delete the existing application requirement under § 413.65(b)(3). We are proposing to revise this section to state that except where payment is required to be made under BIPA, as specified in proposed revised § 413.65(b)(2) and (b)(5), if a potential main provider seeks an advance determination of provider-based status for a facility that is located on the main campus of the potential main provider, the provider would be required to submit an attestation stating that its facility meets the criteria in § 413.65(d) and, if it is a hospital, also attest that its facility will fulfill the obligations of hospital outpatient departments and hospital-based entities, as described in proposed § 413.65(g). The provider also would be required to maintain documentation of the basis for its attestations and to make that documentation available to CMS upon request. We note that, under our proposal, there would no longer be an explicit requirement that a provider-based approval be obtained before a facility is treated as provider-based for billing or cost reporting purposes. However, under the proposed revisions to existing § 413.65(k) (Correction of errors) as described below, CMS would provide a delay in the effective date for any facility that is found not to meet the provider-based criteria following a previous advance determination, if the reason the provider-based criteria are not met is a material change in the provider-facility relationship that was properly reported to CMS. The removal of provider-based status would be effective as of the first cost reporting period following notification of the redetermination, but not less than 6 months after the date of notification.

We are further proposing that if the facility is not located on the main campus of the potential main provider, the provider that wishes to obtain an advance determination of provider-based status would be required to submit an attestation stating that its facility meets the criteria in proposed revised §§ 413.65(d) and (e) and, if the facility is operated as a joint venture or under a management contract, the requirements in proposed §§ 413.65(f) and (h), as applicable. If the potential main provider is a hospital, the hospital also would be required to attest that it will fulfill the obligations of hospital outpatient departments and hospital-based entities described in proposed revised § 413.65(g). The provider seeking such an advance determination would be required to supply documentation of the basis for its attestations to CMS at the time it submits its attestations. We believe the use of a self-attestation process would strike an appropriate balance between the legitimate interests of hospitals in reducing paperwork and reporting, and the equally legitimate need of CMS to ensure proper accountability for compliance with the qualification requirements for a status that typically leads to a higher level of Medicare or Medicaid payment.

We note that, under these proposed revisions to the application procedures at § 413.65(b), a hospital would not be explicitly required to submit an application and receive a provider-based determination for a facility before the time at which the hospital may bill for services at that facility as provider-based. However, we are considering, alternatively, retaining the existing regulations at § 413.65(b)(2) which state that, except where payment is required to be made under BIPA as specified in proposed revised §§ 413.65(b)(2) and (b)(5), hospitals are explicitly required to submit provider-based applications, and to withhold billing as provider-based until CMS determines that a facility meets the provider-based rules. We are soliciting comments on the

appropriateness of this or other alternative application procedures.

d. Requirements Applicable to All Facilities or Organizations

Under existing § 413.65, all facilities seeking provider-based status with respect to a hospital or other main provider must meet a common set of requirements. These include requirements relating to common licensure (paragraph (d)(1)), operation under the ownership and control of the main provider (paragraph (d)(2)), administration and supervision (paragraph (d)(3)), integration of clinical services (d)(4)), financial integration (paragraph (d)(5)), public awareness (paragraph (d)(6)), and location in the immediate vicinity of the main provider (paragraph (d)(7)). (In addition, as described more fully below, specific rules applicable to all facilities rule out provider-based status for facilities operated as joint ventures by two or more providers (paragraph (e)) and limit the types of management contracts that facilities seeking provider-based status may operate under (paragraph (f)).)

Since publication in final of the existing provider-based rules in April 2000, hospitals and other providers have expressed concern that the requirements outlined above are overly restrictive and do not allow them enough flexibility to enter into appropriate business arrangements with other facilities. We understand these concerns, and agree that Medicare rules should not restrict legitimate business arrangements that do not lead to abusive practices or disadvantage Medicare beneficiaries. At the same time, we believe our existing rules provide a high level of assurance that a facility complying with them is, in fact, an integral and subordinate part of the facility with which it is based, and do not accord provider-based status to facilities that are not integral and subordinate to a main provider, but in fact have only a nominal relationship with that provider.

After considering all comments received on these issues, we believe that further changes in the provider-based rules would be appropriate. In particular, we agree with those who argue that a facility's or organization's location relative to the main campus of the provider is relevant to the integration that is likely to exist between the facility or organization and the main provider. For example, if a facility or organization is located on the main campus of a provider, is operated under the main provider's State license, is medically and financially integrated with that provider, and is held out to the public and other payers as a part of that provider, we believe the necessary degree of integration of the facility or organization into the main provider can be assumed to exist. We also are concerned that further prescribing the types of management contracts or other business arrangements that may exist between the main provider and the facility or organization would unnecessarily restrict its flexibility to establish cost-effective agreements without significantly enhancing the integration of the facility or organization into the main provider. Therefore, we are proposing to simplify the requirements applicable to facilities or organizations located on the campus of the main provider (as campus is defined in existing regulations at § 413.65(a)(2)). Under our proposal, all facilities seeking provider-based status, including both on-campus and off-campus facilities, would be required to comply with the existing requirements regarding licensure, clinical services integration, financial integration, and public awareness. (These requirements are currently codified at §§ 413.65(d)(1), (d)(4), (d)(5), and (d)(6) and, under this proposed rule, would be redesignated as paragraphs (d)(1) through (d)(4), respectively, of § 413.65.)

With respect to financial integration, existing regulations at § 413.65(d)(5) require that the financial operations of the facility or organization be fully integrated within the financial system of the main provider, as evidenced by shared income and expenses between the main provider and the facility or organization. The regulations also require that costs of a provider-based facility or organization be reported in a cost center of the provider, and that the financial status of any provider-based facility or organization be incorporated and readily identified in the main provider's trial balance.

Some hospital representatives have questioned the appropriateness of requiring that the costs of a remote location of a hospital be reported in a single cost center, noting that such costs ordinarily would appear in multiple cost centers of the main provider, with (for example) employee health and welfare costs of the remote location being included in the corresponding cost center of the main provider. In recognition of this concern, we are proposing to revise the requirement to state that the costs of a facility or organization that is a hospital department must be reported in a cost center of the provider, and that costs of a provider-based facility or organization other than a hospital department must be reported in the appropriate cost center or cost centers of the main provider.

Paragraph (d) of § 413.65 would be retitled "Requirements applicable to all facilities or organizations" and, as indicated by its revised title, would set forth those core requirements that any facility or organization would have to meet to qualify for provider-based status.

We are proposing to delete from this paragraph (d) the requirements in existing paragraphs (d)(2) and (d)(3) relating to operation under the ownership and control of the main provider and administration and supervision because we are proposing to no longer apply these requirements to on-campus facilities or organizations. These requirements would be moved to paragraph (e) as described below to reflect the proposed limitation of their applicability to off-campus departments. The core requirements for all facilities or organizations, including facilities located on the main campus, also would not include the requirement regarding location in the immediate vicinity of the main provider (existing § 413.65(d)(7)). Because any facilities or organizations located on the campus of the main provider automatically meet the requirement regarding location in the immediate vicinity (existing § 413.65(d)(7)), the requirement is only of relevance to off-campus facilities or organizations. For clarity, we are proposing to relocate the requirement to paragraph (e) as described below.

We also are proposing to require, in paragraph (d)(5) of § 413.65, all hospital outpatient departments and hospital-based entities, including those located on campus and those located off the campus of the main provider hospital, to fulfill the obligations currently codified and proposed to be retained at § 413.65(g) in order to qualify for provider-based status. (Fulfillment of these obligations is currently required under § 413.65(g).) As explained further below, we also are proposing other changes to paragraph (g).

e. Additional Requirements Applicable to Off-Campus Facilities or Organizations

We recognize that facilities or organizations located off the main provider campus may also be sufficiently integrated with the main provider to justify provider-based designation. However, the off-campus location of the facilities or organizations may make such integration harder to achieve, and such integration should not simply be presumed to exist. Therefore, to ensure that off-campus facilities or organizations seeking

provider-based status are appropriately integrated, we are proposing to retain for these facilities or organizations certain requirements that we are proposing to remove for on-campus facilities or organizations. These requirements are set forth in proposed new § 413.65(e). The requirements set forth in proposed paragraphs (e)(1), (e)(2), and (e)(3) include the requirements on operation under the ownership and control of the main provider (existing § 413.65(d)(2)), administration and supervision (existing § 413.65(d)(3)), and location (existing § 413.65(d)(7)). We also are proposing to include language in proposed new § 413.65(e) to state more clearly that a facility or organization seeking provider-based status must be located in the same State or, when consistent with the laws of both States, in adjacent States.

f. Joint Ventures

Consistent with our views as expressed earlier in this preamble regarding the assumption that a higher degree of integration can be presumed for on-campus facilities or organizations and in recognition of the need to promote reasonable cooperation among providers and avoid costly duplication of specialty services, we are proposing to revise the regulations on joint ventures (currently set forth under § 413.65(e)) to limit their scope to facilities or organizations not located on the campus of any potential main provider. Specifically, we would redesignate § 413.65(e) as § 413.65(f) and revise it to state that a facility or organization that is not located on the campus of the potential main provider cannot be considered provider-based if the facility or organization is owned by two or more providers engaged in a joint venture. We also are proposing to make minor changes to the second sentence of the redesignated paragraph (f) to clarify its meaning.

g. Clarification of Obligations of Hospital Outpatient Departments and Hospital-Based Entities

Existing regulations impose specific obligations for hospital outpatient departments and hospital-based entities, but do not specify the sanction that applies if the facility or organization does not fulfill its obligations. To clarify policy on this issue and emphasize the importance of compliance with the requirements in this area, we are proposing to revise existing § 413.65(g) to state that to qualify for provider-based status in relation to a hospital, a facility or organization must comply with these requirements. In regard to these obligations, we are proposing to make three changes in existing 413.65(g). First, for reasons explained in section V.J. of this preamble, we are proposing to revise paragraph (g)(1) by deleting the second sentence of that paragraph. In paragraph (g)(2), we are proposing to delete the reference to site-of-service reductions and instead refer to more accurately determined physician payment amounts, in order to more accurately describe how payment under the physician fee schedule is determined. In addition, we are proposing to revise the first sentence of paragraph (g)(7) to clarify that the notice requirements in it do not apply where a beneficiary is examined or treated for a medical condition in compliance with the antidumping rules in § 489.24. This clarification is needed because we believe it would be a violation of the antidumping requirements if examination or treatment required under § 489.24 was delayed in order to permit notification of the beneficiary or the beneficiary's authorized representative. We would further revise § 413.65(g)(7) to state that notice is required once the beneficiary has been appropriately screened and the existence of an emergency has been ruled out or the emergency condition has been stabilized.

h. Management Contracts

Under existing regulations, facilities or organizations operated under management contracts may be considered provider-based only if they meet specific requirements in § 413.65(f) (proposed to be redesignated as § 413.65(h)). In particular, staff of the facility or organization, other than management staff, may not be employed by the management company but must be employed either by the provider or by another organization, other than the main provider, which also employs the staff of the main provider. Under existing regulations, these requirements apply equally to on-campus and off-campus facilities or organizations.

Consistent with our intent to simplify provider-based requirements for on-campus facilities or organizations, we are proposing to restrict the applicability of proposed redesignated paragraph (h) to off-campus facilities or organizations. In addition, we are proposing two additional changes that we believe are needed to respond to questions that are raised frequently about the regulation. First, we would specify that a facility or organization operated under a management contract may be considered provider-based only if the main provider (or an organization that also employs the staff of the main provider and that is not the management company) employs the staff of the facility or organization who are directly involved in the delivery of patient care, except for management staff and staff who furnish patient care services of a type that would be paid for by Medicare under a fee schedule established by regulations at 42 CFR Part 414. We would not specify who may employ other support staff, such as maintenance or security personnel, and who are not directly involved in providing patient care, nor would we require licensed professional caregivers such as physicians, physician assistants, or certified registered nurse anesthetists to become provider employees. We also are proposing to revise the regulations to clarify at § 413.65(h)(2) that so-called "leased" employees (that is personnel who are actually employed by the management company but provide services for the provider under a staff leasing arrangement) are not considered to be employees of the provider for purposes of this provision.

i. Inappropriate Treatment of a Facility or Organization as Provider-Based

Below we describe the steps that we would take if we discover that a facility is billing as provider-based without having requested a determination, or if the facility received a provider-based determination but the main provider did not inform CMS of a subsequent material change that affected the provider-based status of its facility.

(1) Inappropriate Billing

The existing regulations at § 413.65(i) state that if we discover that a provider is billing inappropriately, we will recover the difference between the amount of payments that actually were made and the amount of payments that CMS estimates should have been made in the absence of a determination of provider-based status. Existing § 413.65(j)(2) states that we would adjust future payments to approximate as closely as possible the amounts that would be paid, in the absence of a provider-based determination, if all other requirements for billing are met. In addition, existing § 413.65(j)(5) describes a procedure under which CMS would continue payments to a provider for services of a facility or organization that had been found not to be provider-based, at an adjusted rate calculated as described in existing paragraph (j)(2), for up to 6 months in order to permit the facility or organization adequate time to meet applicable enrollment and other billing requirements. While CMS is not legally obligated to continue payments in this matter, we believe it would be

appropriate to do so, on a time-limited basis, to allow for an orderly transition to either provider-based or freestanding status for the facility and to avoid disruption in the delivery of services to patients, particularly Medicare patients, who may be relying on the facility for their medical care.

We are proposing to adopt a policy concerning recoupment and continuation of payment that closely parallels the policy stated in existing regulations at § 413.65(j). Under proposed § 413.65(j)(1), if CMS learns that a provider has treated a facility or organization as provider-based and the provider did not request an advance determination of provider-based status from CMS under proposed § 413.65(b)(3), and CMS determines that the facility or organization did not meet the requirements for provider-based status under proposed § 413.65(d) through (i), as applicable (or, in any period before the effective date of these regulations, the provider-based requirements in effect under Medicare program regulations or instructions), CMS would take several actions. First, we are proposing to issue notice to the provider, in accordance with proposed paragraph (j)(3), that payments for past cost reporting periods may be reviewed and recovered as described in proposed paragraph (j)(2)(ii), that future payments for services in or at the facility or organization will be adjusted as described in proposed paragraph (j)(4), and that continued payments to the provider for services of the facility or organization will be made only in accordance with proposed paragraph (j)(5). In addition, as detailed in proposed § 413.65(j)(1)(ii), CMS would, except for providers protected under section 404(a) or (c) of BIPA (implemented at § 413.65(b)(2) and (b)(5)) or the exception for good faith effort at existing § 413.65(i)(2) and (i)(3)), recover the difference between the amount of payments that actually was made to that provider for services at the facility or organization and an estimate of the payments that CMS would have made to that provider for services at the facility or organization in the absence of compliance with the requirements for provider-based status. We are proposing to make recovery for all cost reporting periods subject to reopening in accordance with §§ 405.1885 and 405.1889. Also, we are proposing to adjust future payments to approximate the amounts that would be paid for the same services furnished by a freestanding facility.

Recovery of past payments would be limited in certain circumstances. If a provider did not request a provider-based determination for a facility by October 1, 2002, but is included in the grandfathering period under § 413.65(b)(2), we are proposing to recoup all payments subject to the reopening rules at §§ 405.1885 and 405.1889, but not for any period before the provider's cost reporting period beginning on or after July 1, 2003.

(2) Good Faith Effort

We are proposing to retain the existing exception for good faith effort (proposed redesignated § 413.65(j)(2)). Under this exception, we would not recover any payments for any period before the beginning of the hospital's first cost reporting period beginning on or after January 10, 2001 (the effective date of the existing provider-based regulations for providers not grandfathered under § 413.65(b)(2)) if during all of that period—

- The requirements regarding licensure and public awareness at § 413.65(d)(1) and proposed redesignated (d)(4) were met;
- All facility services were billed as if they had been furnished by a department of a provider, a remote location of a hospital, a satellite facility, or a provider-based entity of the main provider; and
- All professional services of physicians and other practitioners were billed with the correct site-of-service indicator, as described at proposed redesignated and revised § 413.65(h)(2).

Under proposed § 413.65(j)(5), CMS would continue payment to a provider for services of a facility or organization for a limited period of time, in order to allow the facility or organization or its practitioners to meet necessary enrollment and other requirements for billing on a freestanding basis. Specifically, the notice of denial of provider-based status sent to the provider would ask the provider to notify CMS in writing, within 30 days of the date the notice is issued, as to whether the provider intends to seek an advance determination of provider-based status for the facility or organization, or whether the facility or organization (or, where applicable, the practitioners who staff the facility or organization) will be seeking to enroll and meet other requirements to bill for services as a freestanding facility. If the provider indicates that it will not be seeking an advance determination or that the facility or organization or its practitioners will not be seeking to enroll, or if CMS does not receive a response within 30 days of the date the notice was issued, all payments under proposed paragraph (j)(5) would end as of the 30th day after the date of notice. If the provider indicates that it will be seeking an advance determination, or that the facility or organization or its practitioners will be seeking to meet enrollment and other requirements for billing for services in a freestanding facility, payment for services of the facility or organization would continue, at the adjusted amount described in proposed paragraph (j)(4) for as long as is required for all billing requirements to be met (but not longer than 6 months). Continued payment would be allowed only if the provider or the facility or organization or its practitioners submits, as applicable, a complete request for an advance provider-based determination or a complete enrollment application and provide all other required information within 90 days after the date of notice; and the facility or organization or its practitioners furnishes all other information needed by CMS to process the request for provider-based status or, as applicable, the enrollment application and verify that other billing requirements are met. If the necessary applications or information are not provided, CMS would terminate all payment to the provider, facility, or organization as of the date CMS issues notice that necessary applications or information have not been submitted.

j. Temporary Treatment as Provider-Based and Correction of Errors

Under proposed revised § 413.65(k), we would specify the procedures for payment for the period between the time a request is submitted until a provider-based determination is made, and the steps we would take if we discover that a facility for which a provider previously received a provider-based determination no longer meets the requirements for provider-based status.

First, we are proposing that, if a provider submits a complete request for a provider-based determination for a facility that has not previously been found by CMS to have been inappropriately treated as provider-based under proposed revised § 413.65(j), the provider may bill and be paid for services at the facility as provider-based from the date of the application until the date that we determine that the facility or organization does not meet the provider-based rules under § 413.65. If CMS determines that the requirements for provider-based status are not met, CMS will recover the difference between the amount of payments that actually was made since the date the complete request for a provider-based determination was submitted and the amount of payments that CMS estimates

should have been made in the absence of compliance with the provider-based requirements. We would consider a request "complete" only if it included all information we need to make an advance determination of provider-based status under § 413.65(b)(3).

Second, similar to what we specify in existing § 413.65(k), if we determine that a facility or organization that previously received a provider-based determination no longer qualifies for provider-based status, and the failure to qualify for provider-based status resulted from a material change in the relationship between the provider and the facility or organization that the provider reported to CMS as is required under § 413.65(c), treatment of the facility or organization as provider-based ceases with the date that CMS determines that the facility or organization no longer qualifies for provider-based status.

Third, if we determine that a facility or organization that had previously received a provider-based determination no longer qualifies for provider-based status, and if the failure to qualify for provider-based status resulted from a material change in the relationship between the provider and the facility or organization that the provider did not report to CMS, as required under § 413.65(c), we are proposing to take the actions with respect to notice to the provider, adjustment of payments, and continuation of payment described in proposed paragraphs (j)(3), (j)(4), and (j)(5). In short, we would treat such cases in the same way as if the provider had never obtained an advance determination. However, with respect to recovery of past payments for providers included in the grandfathering provision at proposed revised § 413.65(b)(2), we would not recover payments for any period before the provider's first cost reporting period beginning on or after July 1, 2003.

Also, we are proposing that the exception for good faith effort concerning recovery of overpayments under proposed revised §§ 413.65(j)(2) described above would apply to any period before the beginning of the hospital's first cost reporting period beginning on or after January 10, 2001.

k. Technical Amendments

We are proposing to correct a typographical error in the heading of paragraph (m) of § 413.65 so that it reads "FQHCs and 'look alikes' ".

In paragraph (n) of § 413.65, we are proposing to add a cross-reference to the requirements for provider-based status described in paragraph (b), for purposes of specifying the effective date of provider-based status.

L. CMS Authority Over Reopening of Intermediary Determinations and Intermediary Hearing Decisions on Provider Reimbursement

Our existing regulations provide various means for the reopening and revision of an intermediary determination or an intermediary hearing decision on provider reimbursement by the fiscal intermediary or the intermediary hearing officer(s) responsible for the determination or the hearing decision, respectively. (In this discussion, we will use the term "intermediary" to refer to, as applicable, the intermediary responsible for an intermediary determination (see §§ 405.1801(a) and 405.1803) or the intermediary hearing officer or panel of intermediary hearing officers responsible for an intermediary hearing decision (see §§ 405.1817 and 405.1831.)) Section 405.1885(a) provides that an intermediary "may" reopen an intermediary determination or an intermediary hearing decision, on its own initiative or at the request of a provider, within 3 years of the date of the notice of the intermediary determination or intermediary hearing decision. However, while § 405.1885(a) provides the intermediary with some discretion about whether to reopen an intermediary determination or an intermediary hearing decision, we have always considered the intermediary's discretion to be limited by any directives that may be issued by CMS. Thus, although § 405.1885(a) provides that the intermediary "may" reopen, that provision neither states nor implies that the Secretary lacks authority to direct the intermediary to reopen or not reopen a specific matter. Furthermore, CMS has prescribed, in Medicare Provider Reimbursement Manual, Part I ("PRM"), section 2931.2, criteria that guide the intermediary's reopening actions under "405.1885(a) in the absence of a particular directive from CMS. Also, given that the intermediaries are CMS' contractors, we have always believed that, under basic principles of agency law, we have inherent authority to direct the actions of our own agents with respect to reopening matters under "405.1885(a), just as for any other aspect of program administration. *See also* 42 U.S.C. 1395h and 1395kk(a); and 42 CFR 421.1(c), 421.5(b), 421.100(f), 421.124(a), and 421.126(b).

Under § 405.1885(b), an intermediary determination or an intermediary hearing decision "shall be reopened and revised by the intermediary if, within the aforementioned 3-year period, the Centers for Medicare & Medicaid Services notifies the intermediary that such determination or decision is inconsistent with the applicable law, regulations, or general instructions issued by the Centers for Medicare & Medicaid Services." We have always considered the CMS notice, which is a precondition of mandatory intermediary reopening under § 405.1885(b), to be one in which we explicitly direct the intermediary to reopen. We have never considered a notice or other document from CMS that only states or implies that an intermediary determination or an intermediary hearing decision is inconsistent with law, regulations, CMS ruling, or CMS general instructions, sufficient to require intermediary reopening under § 405.1885(b). Moreover, our understanding has always been that the phrase "law, regulations, or general instructions" in § 405.1885(b) refers to the legal provisions in effect, as we understand such legal provisions, at the time the intermediary rendered the determination or hearing decision. Conversely, we have never considered changes in, or judicial explications of, "law, regulations, or general instructions," that occur after the intermediary rendered the determination or hearing decision, sufficient to require intermediary reopening under § 405.1885(b). Also, § 405.1885(b) refers to the Secretary's agreement with an intermediary; we believe such agreement requires the intermediary to apply the law, regulations, CMS rulings, and CMS general instructions in effect, as we understand such legal provisions, when the intermediary determination or hearing decision was rendered. Accordingly, we have not instructed intermediaries to reopen and recover reimbursement, or to reopen and award additional reimbursement, due to a subsequent change in law or policy, whether the subsequent change is made in response to judicial precedent or otherwise.

Section 405.1885(c) provides: "Jurisdiction for reopening a determination or decision rests exclusively with that administrative body that rendered the last determination or decision." We have always interpreted § 405.1885(c) to provide that authority to reopen an intermediary determination or an intermediary hearing decision is vested exclusively with the responsible intermediary, as distinct from the Provider Reimbursement Review Board (PRRB) and the Administrator of CMS (in the context of reviewing PRRB

decisions (see § 405.1875)) which may not reopen an intermediary determination or hearing decision and may not review an intermediary's denial of reopening. However, we have never considered the intermediary's authority to reopen an intermediary determination or hearing decision, which is exclusive under § 405.1885(c) only as to the PRRB and the Administrator of CMS (in the context of reviewing PRRB decisions), to limit CMS' authority to direct the actions of its own agents with respect to reopening matters. *See Your Home Visiting Nurse Services, Inc.* v. *Shalala*, 525 U.S. 449, 452–53 (1999). (Section 405.1885(c) divests the PRRB of "appellate jurisdiction to review the intermediary's refusal" to reopen, but does not limit the Secretary's authority to direct an intermediary's "original jurisdiction" in the reopening area). As discussed previously, the regulations do not constrain CMS' authority to direct the intermediary to reopen or not reopen a specific matter; instead, CMS has placed generally applicable limits on the intermediary's discretion through the reopening criteria prescribed in section 2931.2 of the PRM. In addition, we have always believed that, under basic principles of agency law, the intermediary's discretion over a particular reopening matter is no less circumscribed by any directives that may be issued by CMS than would be the case for any other aspect of program administration.

Two recent court decisions conflict with our longstanding interpretation of the forgoing provisions of the reopening regulations. In *Monmouth Medical Center* v. *Thompson*, 257 F.3d 807 (D.C. Cir. 2001), the court found that a statement in a CMS ruling, changing CMS' interpretation of the statute in response to circuit court precedent, constituted a directive to the intermediary under § 405.1885(b) to reopen, notwithstanding an explicit directive in the CMS ruling that the change in interpretation was to be applied only prospectively. The court ordered the intermediary to reopen over the Secretary's objection. We disagree with the court's decision, which we believe does not comport with our settled interpretation (discussed above) of § 405.1885(b). Therefore, we are proposing to revise § 405.1885(b) to make clear that, in order to trigger the intermediary's obligation to reopen, the notice from CMS to the intermediary must explicitly direct the intermediary to reopen based on a finding that an intermediary determination or an intermediary hearing decision is inconsistent with the law, regulations, CMS ruling, or CMS general instructions in effect, and as we understood those legal provisions, at the time the determination or decision was rendered. We are also proposing to clarify § 405.1885 to reflect our longstanding interpretation (discussed above) that a change of legal interpretation or policy by CMS in a regulation, CMS ruling, or CMS general instruction, whether made in response to judicial precedent or otherwise, is not a basis for reopening an intermediary determination or an intermediary hearing decision under this section.

The *Monmouth Medical Center* decision was followed in *Bartlett Memorial Medical Center* v. *Thompson*, 171 F. Supp. 2d 1215 (W.D. Okla. 2001). In a subsequent order in the *Bartlett Memorial Medical Center* case, the court concluded that a CMS ruling, which prohibited intermediary reopening on a particular reimbursement issue, improperly interfered with the intermediary's discretion under § 405.1885(c) over provider requests for reopening under § 405.1885(a). Accordingly, the court ordered the intermediary to act on the provider reopening requests without regard to the CMS ruling or any other involvement of the Secretary. We disagree with the court's decision, which we believe is contrary to our settled interpretation (discussed above) of § 405.1885(a) and (c). We believe the court's decision is also inconsistent with CMS' inherent authority to direct the activities of its own contractor-agents, the fiscal intermediaries, with respect to particular reopening matters, just as with any other aspect of program administration. Therefore, we are proposing, in a new paragraph (e) of § 405.1885 (the existing paragraph is proposed to be redesignated as paragraph (f)), to clarify that, notwithstanding an intermediary's discretion to reopen or not reopen under paragraphs (a) and (c) of § 405.1885, CMS may direct an intermediary to reopen, or not to reopen, an intermediary determination or an intermediary hearing decision in accordance with paragraphs (a) and (c) of this section. To illustrate our proposal, revised § 405.1885(e) would clarify that CMS has full authority to direct an intermediary to reopen, or not to reopen, an intermediary determination or an intermediary hearing decision under § 405.1885(a) and (c) based on the reopening criteria of "new and material evidence" or "clear and obvious error." *See* PRM § 2931.2.

VI. Proposed Changes to the Prospective Payment System for Capital-Related Costs

A. Background

Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of inpatient hospital services "in accordance with a prospective payment system established by the Secretary." Under the statute, the Secretary has broad authority in establishing and implementing the capital prospective payment system. We initially implemented the capital prospective payment system in the August 30, 1991 final rule (56 FR 43358), in which we established a 10-year transition period to change the payment methodology for Medicare inpatient capital-related costs from a reasonable cost-based methodology to a prospective methodology (based fully on the Federal rate).

Federal fiscal year (FY) 2001 was the last year of the 10-year transition period established to phase in the prospective payment system for hospital capital-related costs. Beginning in FY 2001, capital prospective payment system payments were based solely on the Federal rate for the vast majority of hospitals. The basic methodology for determining capital prospective payments based on the Federal rate is set forth in § 412.312. For the purpose of calculating payments for each discharge, the standard Federal rate is adjusted as follows:

(Standard Federal Rate) × (DRG Weight) × (Geographic Adjustment Factor(GAF)) × (Large Urban Add-on, if applicable) × (COLA Adjustment for Hospitals Located in Alaska and Hawaii) × (1 + DSH Adjustment Factor + IME Adjustment Factor)

Hospitals also may receive outlier payments for those cases that qualify under the thresholds established for each fiscal year that are specified in § 412.312(c) of existing regulations. (Refer to the August 1, 2001 final rule (66 FR 39910) for a summary of the statutory basis for the system, the development and evolution of the system, the methodology used to determine capital-related payments to hospitals both during and after the transition period, and the policy for providing special exceptions.)

B. New Hospitals

Under the prospective payment system for capital-related costs, at § 412.300(b), a new hospital is defined as a hospital that is newly participating in the Medicare program (under current or previous ownership) for less than 2 years (see 56 FR 43418, August 30,

1991). During the 10-year transition period, under § 412.324(b), a new hospital was exempt from capital prospective payment system for its first 2 years of operation and was paid 85 percent of its reasonable costs during that period. Effective with its third cost reporting period, a new hospital was paid under the appropriate transition methodology (either hold-harmless or fully prospective) for the remainder of the transition period. (If the hold-harmless methodology was applicable, hold-harmless payments would be made for 8 years, even if they extend beyond the 10-year transition period, which ended beginning with cost reporting periods beginning during FY 2002.)

This payment provision was implemented to provide special protection to new hospitals during the transition period in response to concerns that prospective payments under a DRG system may not be adequate initially to cover the capital costs of newly built hospitals. These hospitals may not have sufficient occupancy in those initial 2 years and may have incurred significant capital startup costs, so that capital prospective payment system payments may not be sufficient. For instance, hospitals newly participating in the Medicare program may not initially have adequate Medicare utilization. Because capital prospective payment system payments are made on a per discharge basis, a hospital only receives payments for its capital-related costs upon discharge of its Medicare patients. In addition, these hospitals did not have an opportunity to reserve previous years' capital prospective payment system payments to finance capital projects.

While the regulations provided for payments based on a percentage of costs for new hospitals for the first 2 years during the 10-year transition period, no provision was made for new hospitals once the 10-year transition was completed. However, we believe that the rationale for the policy applies equally to new hospitals even after the completion of the 10-year transition period. Accordingly, we are proposing, under § 412.304(c)(2), to provide special payment to new hospitals for cost reporting periods beginning on or after October 1, 2002. That is, we would pay new hospitals, as defined under § 412.300(b), 85 percent of their reasonable costs for their first 2 years of operation. Effective with their third year of operation, a new hospital would be paid based on the Federal rate (that is, the same methodology used to pay all other hospitals subject to the capital prospective payment system). We believe this proposal would provide for more appropriate payments to new hospitals for their capital-related costs since initial capital expenditures may reasonably exceed the capital prospective payment system per discharge payment based on the Federal rate. The capital prospective payment Federal rate is based on industry-wide average capital costs rather than the experience of a new hospital. We believe this proposed policy would allow new hospitals to provide efficiency in the delivery of services and still make reasonable payments for their capital expenditures.

As was the case during the 10-year transition period, this proposed new hospital exemption would only be available to those hospitals that have not received reasonable cost-based payments under the Medicare program in the past, and would need special protection during their initial period of operation. This proposed exemption from the capital prospective payment system for the first 2 years of operation would not apply to a hospital that is "new" as an acute care hospital but that has operated in the past (under current or previous ownership) and has an historical Medicare asset base. Furthermore, a hospital that replaces its entire facility (regardless of a change of ownership) would not qualify for the new hospital exemption even though it may experience a significant change in its asset base. Thus, in accordance with § 412.300(b), a new hospital exemption would not apply in the following situations:

- A hospital that builds new or replacement facilities at the same or a new location, even if a change of ownership or a new leasing arrangement is involved;
- A hospital that closes and then reopens under the same or different ownership;
- A hospital that has been in operation for more than 2 years but has been participating in the Medicare program for less than 2 years; or
- A hospital that changes status from a prospective payment system-excluded hospital (paid under the TEFRA methodology) or another hospital prospective payment system (such as the inpatient rehabilitation facility prospective payment system) to a hospital that is subject to the capital prospective payment system for acute care hospitals.

C. Extraordinary Circumstances

When we implemented the capital prospective payment system in FY 1992, a number of commenters requested that we provide for a separate exceptions payment to account for extraordinary circumstances beyond a hospital's control that would require the hospital to make unanticipated major capital expenditures (56 FR 43411, August 30, 1991). In response to the commenters' request, we provided in the regulations at § 412.348(f) that a hospital may request an additional payment if the hospital incurs unanticipated capital expenditures in excess of $5 million due to extraordinary circumstances beyond the hospital's control. Extraordinary circumstances include, but are not limited to, a flood, a fire, or an earthquake. For more detailed information regarding this policy, refer to the August 30, 1991 **Federal Register** (56 FR 43411).

To clarify that this policy regarding additional payments for extraordinary circumstances also applies to periods beginning on or after October 1, 2001, we are proposing to revise § 412.312 by adding a new paragraph (e) to specify that payment is made for extraordinary circumstances as provided for in § 412.348(f) for cost reporting periods after the transition period, that is, on or after October 1, 2001.

D. Restoration of the 2.1 Percent Reduction to the Standard Federal Capital Prospective Payment System Payment Rate

Section 1886(g)(1)(A) of the Act, as amended by section 4402 of Public Law 105–33, requires the Secretary to reduce the unadjusted standard Federal capital prospective payment system payment rate (and the unadjusted hospital-specific rate) by 2.1 percent for discharges on or after October 1, 1997, and through September 30, 2002, in addition to applying the budget neutrality factor used to determine the Federal capital prospective payment system payment rate in effect on September 30, 1995. The budget neutrality factor effective for September 30, 1995, was 0.8432 (59 FR 45416). Therefore, application of the budget neutrality factor (as specified under section 1886(g)(1)(A) of the Act) was equivalent to a 15.68 percent reduction to the unadjusted standard Federal capital prospective payment system payment rate and the unadjusted hospital-specific rate in effect on September 30, 1997. The additional 2.1 reduction to the rates in effect on September 30, 1997 resulted in a total reduction of 17.78 percent. Accordingly, under the statute, the additional 2.1 percent reduction no longer applies to discharges occurring after September 30, 2002 (§ 412.308(b)(5)). Therefore, we are proposing to revise § 412.308(b) to add a new paragraph (b)(6) to restore the 2.1 percent reduction to the unadjusted

standard Federal capital prospective payment system payment rate (as provided under § 412.308(c)) for discharges occurring on or after October 1, 2002, to the level that it would have been without the reduction. (Since FY 2001 was the final year of the 10-year transition period, we no longer update the hospital-specific rate and, therefore, we also no longer restore the 2.1 percent reduction to that rate as provided under § 412.328(e)(1).)

As described in the August 29, 1997 final rule (62 FR 46012), we determined the reduction factor for FY 1998 by deducting both the FY 1995 budget neutrality factor (0.1568) and the 2.1 percent reduction (0.021) from 1 (1 − 0.1568 − 0.021 = 0.8222). We then applied the 0.8222 to the unadjusted standard Federal rate. Therefore, to determine the adjustment factor needed to restore the 2.1 percent reduction, we would divide the amount of the adjustment without the 2.1 percent reduction (1 − 0.1568 = 0.8432) by the amount of the adjustment with the 2.1 percent reduction (0.8222). Accordingly, we are proposing to restore the 2.1 percent reduction for discharges occurring on or after October 1, 2002, under proposed § 413.308(b)(6), by applying a factor of 1.02554 (0.8432/0.8222) to the unadjusted standard Federal capital prospective payment system payment rate under § 412.308(c), that was in effect on September 30, 2002.

E. Clarification of Special Exceptions Policy

Under the special exceptions provisions at § 412.348(g), an additional payment may be made through the 10th year beyond the end of the capital prospective payment system transition period for eligible hospitals that meet (1) a project need requirement as described at § 412.348(g)(2), which, in the case of certain urban hospitals, includes an excess capacity test described at § 412.348(g)(4); and (2) a project size requirement as described at § 412.348(g)(5). In accordance with § 412.348(g)(7), hospitals are eligible to receive special exceptions payments for the 10 years after the cost reporting year in which they complete their project, which can be no later than the hospital's cost reporting period beginning before October 1, 2001.

During the 10-year capital prospective payment system transition period, regular exceptions under §§ 412.348(b) through (e) paid the same as or more (between 70 percent and 90 percent of costs, depending on the type of hospital) than the special exceptions provision under § 412.348(g) (70 percent for all eligible hospitals). Therefore, it was not until cost reporting periods beginning on or after October 1, 2001 (the end of the transition period) that eligible hospitals could actually begin receiving additional payments under the special exceptions provision. As we stated in the July 30, 1999 final rule (64 FR 41528), we believe that, since any substantive changes to this policy could have a significant impact, the appropriate forum for addressing the special exceptions policy is through the legislative process in Congress rather than the regulations process. Since hospitals are beginning to receive additional payments under this provision, we have received several questions regarding current policy at § 412.348(g). Therefore, while we are not proposing any changes to the special exceptions policy, we are providing the following clarifications to the existing regulations.

Under § 412.348(g)(1), to be eligible for special exception payments, a hospital must be either a sole community hospital (SCH), an urban hospital with at least 100 beds that has a disproportionate share (DSH) percentage of at least 20.2 percent or qualify for DSH payments under § 412.106(c)(2), or a hospital with a combined Medicare and Medicaid inpatient utilization of at least 70 percent. Because a hospital's SCH status, DSH patient percentage, and combined utilization may fluctuate from one cost reporting year to the next, the special exceptions eligibility criteria are applied for each cost reporting period throughout the 10-year special exceptions period. A hospital receives special exceptions payments only for those years in the 10-year period in which it meets the eligibility requirements in § 412.348(g)(1). Therefore, a hospital might be eligible for a special exception payment in one year, not be eligible the next year, and then subsequently qualify during the 10-year special exceptions period.

The project need criteria in § 412.348(g)(2) also state that a hospital must obtain any required approval from a State or local planning authority. However, in States where a certificate of need or approval is not required by the State or local planning authority, the hospital must provide the fiscal intermediary with appropriate documentation (such as project plans from the hospital's board of directors) that demonstrates that the requirements of § 412.348(g)(3) concerning the age of assets test and § 412.348(g)(4) concerning the excess capacity test for urban hospitals are met. We understand that a State planning authority and a hospital may define a project differently. Accordingly, we would allow the hospital to use either the definition provided by the project within the certificate of need (in States where a certificate of need is required), or other appropriate documentation provided from the hospital's project plans (such as project plans as specified in the minutes of the meetings of the hospital's board of directors).

In determining a hospital's special exceptions payment amount, as described in § 412.348(g)(8), for each cost reporting period, the cumulative payments made to the hospital under the capital prospective payment system are compared to the cumulative minimum payment levels applicable to the hospital for each cost reporting period subject to the capital prospective payment system. This comparison is offset by any amount by which the hospital's current year Medicare inpatient operating and capital prospective payment system payments (excluding 75 percent of its operating DSH payments) exceed its Medicare inpatient operating and capital costs (or its Medicare inpatient margin). The minimum payment level is 70 percent for all hospitals, regardless of class, as set forth in § 412.348(g)(6), for the duration of the special exceptions provision.

In order to assist our fiscal intermediaries in determining the end of the 10-year period in which an eligible hospital will no longer be entitled to receive special exception payments, § 412.348(g)(9) requires that hospitals eligible for special exception payments submit documentation to the intermediary indicating the completion date of their project (the date the project was put in use for patient care) that meets the project need and project size requirements outlined in §§ 412.348(g)(2) through (g)(5). In order for an eligible hospital to receive special exception payments, this documentation had to be submitted in writing to the intermediary by the later of October 1, 2001, or within 3 months of the end of the hospital's last cost reporting period beginning before October 1, 2001, during which a qualifying project was completed.

VII. Proposed Changes for Hospitals and Hospital Units Excluded From the Acute Care Hospital Inpatient Prospective Payment System

A. Payments to Excluded Hospitals and Hospital Units (§§ 413.40(c), (d), and (f))

1. Payments to Existing Excluded Hospitals and Hospital Units

Section 1886(b)(3)(H) of the Act (as amended by section 4414 of Public Law 105–33) established caps on the target amounts for certain existing hospitals and hospital units excluded from the acute care hospital inpatient prospective payment system for cost reporting periods beginning on or after October 1, 1997 through September 30, 2002. For this period, the caps on the target amounts apply to the following three classes of excluded hospitals or units: psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals.

In accordance with section 1886(b)(3)(H)(i) of the Act and effective for cost reporting periods beginning on or after October 1, 2002, payments to these classes of existing excluded hospitals or hospital units are no longer subject to caps on the target amounts. In accordance with existing §§ 413.40(c)(4)(ii) and (d)(1)(i) and (ii), these excluded hospitals and hospital units continue to be paid on a reasonable cost basis, and payments are based on their Medicare inpatient operating costs, not to exceed the ceiling. The ceiling would be computed using the hospital's or unit's target amount from the previous cost reporting period updated by the rate-of-increase specified in § 413.40(c)(3)(viii) of the regulations.

2. Updated Caps for New Excluded Hospitals and Units

Section 1886(b)(7) of the Act establishes a payment methodology for new psychiatric hospitals and units, new rehabilitation hospitals and units, and new long-term care hospitals. A discussion of how the payment limitation was calculated can be found in the August 29, 1997 final rule with comment period (62 FR 46019); the May 12, 1998 final rule (63 FR 26344); the July 31, 1998 final rule (63 FR 41000); and the July 30, 1999 final rule (64 FR 41529). Under the statutory methodology, a "new" hospital or unit is a hospital or unit that falls within one of the three classes of hospitals or units (psychiatric, rehabilitation or long-term care) that first receives payment as a hospital or unit excluded from the acute care hospital inpatient prospective payment system on or after October 1, 1997. The amount of payment for a "new" hospital or unit would be determined as follows:

- Under existing § 413.40(f)(2)(ii), for the first two 12-month cost reporting periods, the amount of payment is the lesser of: (1) the operating costs per case; or (2) 110 percent of the national median (as estimated by the Secretary) of the target amounts for the same class of hospital or unit for cost reporting periods ending during FY 1996, updated by the hospital market basket increase percentage to the fiscal year in which the hospital or unit first receives payments under section 1886 of the Act, as adjusted for differences in area wage levels.
- Under existing § 413.40(c)(4)(v), for cost reporting periods following the hospital's or unit's first two 12-month cost reporting periods, the target amount is equal to the amount determined under section 1886(b)(7)(A)(i) of the Act for the third period, updated by the applicable hospital market basket increase percentage.

The proposed amounts included in the following table reflect the updated 110 percent of the national median target amounts proposed for each class of new excluded hospitals and hospital units for cost reporting periods beginning during FY 2003. These figures are updated to reflect the proposed projected market basket increase percentage of 3.4 percent. This projected percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient hospital services (as projected by the CMS Office of the Actuary based on its historical experience with the hospital inpatient prospective payment system). For a new provider, the labor-related share of the target amount is multiplied by the appropriate geographic area wage index, without regard to prospective payment system reclassifications, and added to the nonlabor-related share in order to determine the per case limit on payment under the statutory payment methodology for new providers.

Class of excluded hospital or unit	FY 2003 proposed labor-related share	FY 2003 proposed nonlabor-related share
Psychiatric	$7,047	$2,801
Long-Term Care	17,269	6,866

Effective for cost reporting periods beginning on or after October 1, 2002, this payment limitation is no longer applicable to new rehabilitation hospitals and units since they will be paid under the inpatient rehabilitation facility prospective payment system.

3. Establishment of a Prospective Payment System for Inpatient Rehabilitation Hospitals and Units

Section 1886(j) of the Act, as added by section 4421(a) of Public Law 105–33, provided the phase-in of a case-mix adjusted prospective payment system for inpatient hospital services furnished by a rehabilitation hospital or a rehabilitation hospital unit (referred to in the statute as rehabilitation facilities) for cost reporting periods beginning on or after October 1, 2000 and before October 1, 2002, with a fully implemented prospective payment system for cost reporting periods beginning on or after October 1, 2002. Section 1886(j) of the Act was amended by section 125 of Public Law 106–113 to require the Secretary to use a discharge as the payment unit under the prospective payment system for inpatient hospital services furnished by rehabilitation facilities and to establish classes of patient discharges by functional-related groups. Section 305 of Public Law 106–554 further amended section 1886(j) of the Act to allow rehabilitation facilities to elect to be paid the full Federal prospective payment rather than the transitional period payments specified in the Act.

On August 7, 2001, we issued a final rule in the **Federal Register** (66 FR 41316) establishing the prospective payment system for inpatient rehabilitation facilities, effective for cost reporting periods beginning on or after January 1, 2002. Under the inpatient rehabilitation prospective payment system, for cost reporting periods beginning on or after January 1, 2002, and before October 1, 2002, payment will consist of 33⅓ percent of the facility-specific payment amount (based on the reasonable cost-based reimbursement methodology) and 66⅔ percent of the adjusted Federal prospective payment. For cost reporting periods beginning on or after October 1, 2002, payment will be based entirely on the Federal prospective payment rate determined under the inpatient rehabilitation facility prospective payment system.

4. Implementation of a Prospective Payment System for Long-Term Care Hospitals

In accordance with the requirements of section 123 of Public Law 106–113, as modified by section 307(b) of Public Law 106–554, we are proposing (as published in the March 22, 2002 proposed rule (67 FR 13415)) the establishment of a per discharge, DRG-based prospective payment system for long-term care hospitals as described in

section 1886(d)(1)(B)(iv) of the Act for cost reporting periods beginning on or after October 1, 2002. As part of the implementation process, we are proposing a 5-year transition period from reasonable cost-based reimbursement to the long-term care hospital prospective payment system Federal rate. We are also proposing that a long-term care hospital may elect to be paid based on 100 percent of the Federal prospective rate. Under the March 22, 2002 proposed rule, a blend of the reasonable cost-based reimbursement percentage and the prospective payment Federal rate percentage would be used to determine a long-term care hospital's total payment under the prospective payment system during the transition period. We would expect long-term care hospitals to be paid under the full Federal prospective rate for cost reporting periods beginning on or after October 1, 2006.

B. Criteria for Exclusion of Satellite Facilities from the Hospital Inpatient Prospective Payment System

Existing regulations at 42 CFR 412.22(e) define a hospital-within-a-hospital as a hospital that occupies space in the same building as another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital. Section 412.22(h), relating to satellites of hospitals excluded from the acute care hospital inpatient prospective payment system, defines a satellite facility as a part of a hospital that provides inpatient services in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital. Section 412.25(e), relating to satellites of excluded hospital units, defines a satellite facility as a part of a hospital unit that provides inpatient services in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital. Because of the similarities between the definitions of the two types of satellite facilities and the definition of a hospital-within-a-hospital, questions have been raised as to whether satellite facilities must meet the "hospital-within-a-hospital" criteria in § 412.22(e) regarding having a governing body, chief medical officer, medical staff, and chief executive officer that are separate from those of the hospital with which space is shared.

Although the separateness of satellite facilities of excluded hospitals and satellite facilities of excluded units of hospitals is not explicitly required under existing regulations, we believe these two types of satellite facilities are similar enough to hospitals-within-hospitals to warrant application of more closely related criteria to all of them. Specifically, satellite facilities are like hospitals-within-hospitals in that the satellites are physically located in acute care hospitals that are paid for their inpatient services under the acute care hospital inpatient prospective payment system. Moreover, both satellite facilities and hospitals-within-hospitals provide inpatient hospital care that is paid for at higher rates than would apply if the facility were treated by Medicare as a part of the acute care hospital.

In view of these facts, it is important that we establish clear criteria for ensuring that these facilities are not merely units of the hospitals in which they are located, but are, in fact, organizationally and functionally separate from those hospitals. Therefore, we are proposing to revise § 412.22(h)(2) to specify that, effective for cost reporting periods beginning on or after October 1, 2002, a hospital having a satellite facility would qualify for exclusion from the acute care hospital inpatient prospective payment system only if that satellite facility is not under the authority or control of the governing body or chief executive officer of the hospital in which it is located, and it furnishes inpatient care through the use of medical personnel who are not under the authority or control of the medical staff or chief medical officer of the hospital in which it is located. We also are proposing to revise § 412.25(e)(2)(iii) to state that, effective for cost reporting periods beginning on or after October 1, 2002, a hospital unit having a satellite facility would qualify for exclusion from the acute care hospital inpatient prospective payment system only if it is not under the authority or control of the governing body or chief executive officer of the hospital in which it is located, and it furnishes inpatient care through the use of medical personnel who are not under the authority or control of the medical staff or chief medical officer of the hospital in which it is located.

C. Critical Access Hospitals (CAHs)

1. Background

Section 1820 provides for a nationwide Medicare Rural Hospital Flexibility Program (MRHF). (MRHF replaced the 7-State Essential Access Community Hospital/Rural Primary Care Hospital (EACH/RPCH) program.) Under section 1820 of the Act, as amended, certain rural providers may be designated as critical access hospitals (CAHs) under the MRHF program if they meet qualifying criteria and the conditions for designation specified in the statute. Implementing regulations for section 1820 of the Act are located at 42 CFR Part 485, Subpart F.

2. Election of Optional Payment Method

Under existing regulations at 42 CFR 413.70(b), CAHs may elect to be paid for services to their outpatients under an optional method. Facilities making this election are paid an amount for each outpatient visit that is the sum of the reasonable costs of facility services, as determined under applicable regulations, and, for professional services otherwise payable to the physician or other practitioner, 115 percent of the amounts that otherwise would be paid for the services if the CAH had not elected payment under the optional method. To enable intermediaries to make these payments accurately and to avoid possible delays in or duplications of payment, we specify in § 413.70(b)(3) that each CAH electing payment under the optional method must inform the intermediary in writing of that election annually, at least 60 days before the start of the affected cost reporting period (65 FR 47100, August 1, 2000, and 66 FR 31272, June 13, 2001).

Since the publication of this regulation, some CAHs have expressed concern that requiring a 60-day advance notice of the election of the optional payment method limits their flexibility, and have suggested that a shorter advance notice period would be appropriate. We have contacted our fiscal intermediaries to obtain feedback on the feasibility of changing the period of advance notification, since the fiscal intermediaries would need to make appropriate bill processing changes to allow any shorter time for notification of election of the optional method. Some fiscal intermediaries stated that requiring less than 60 days' advance notice is impractical, while others believed that needed changes could be made with as little as 2 weeks' advance notice. Given the diversity of feedback on this issue and our desire to allow CAHs as much flexibility as possible, we are proposing to revise § 412.30(b)(3) to allow the required advance notice period to be determined by each individual fiscal intermediary for the CAHs it services, as long as the required advance notice is not less than 14 days or more than 60 days before the start of each affected cost reporting period.

3. Use of the Resident Assessment Instrument (RAI) by CAHs

Among the existing regulations implementing section 1820 of the Act are specific conditions that a hospital must meet to be designated as a CAH. To help protect the health and safety of Medicare patients who are being furnished post-hospital skilled nursing facility (SNF) level of care in a CAH, our regulations require CAHs to comply with some, but not all, of the Medicare SNF conditions of participation at 42 CFR part 483, subpart B. Specifically, the regulations at § 485.645(d) provide that in order for a CAH to use its beds to provide post-hospital SNF care, the CAH must be in substantial compliance with nine of the SNF requirements contained in part 483, subpart B. Included among the nine requirements are requirements for comprehensive assessments, comprehensive care plans, and discharge planning as specified in § 483.20(b), (k), and (l). (We note that the existing § 485.645(d)(6) incorrectly cites these regulation cross-references as "§ 483.20(b), (d), and (e)." When we revised § 483.20 on December 23, 1997 (63 FR 53307), we inadvertently did not make conforming cross-reference changes in § 485.645(d)(6). In this proposed rule, we are proposing to make these conforming cross-reference changes.) Section 483.20(b) provides that a facility must make a comprehensive assessment of a resident's needs using the resident assessment instrument (RAI), specified by the State, on all its swing-bed patients.

We have received inquiries regarding the need for CAHs to use the RAI for patient assessment and care planning. The inquirers consider the RAI a lengthy and burdensome instrument and pointed out that CMS currently does not require CAHs to report data from the RAI for quality or payment purposes.

We required former RPCHs to use the RAI for the assessment of swing-bed patients to avoid the possibility of negative outcomes that might extend the length of stays in these hospitals, which provided limited services. In addition, we believed that the use of the RAI would help to ensure that patient needs are met when patients are in the facility for an extended period of time. Swing-bed hospitals were not required to use any patient assessment instrument because we believed that the hospital conditions of participation included requirements that were appropriate safeguards to protect the health and safety of Medicare patients. Currently, the regulations at § 483.20(f) require all long-term care facilities to collect and submit assessment data from the RAI to the State for quality and payment purposes. There are no such collection and submission requirements for CAHs.

We have gathered information from the provider community, State surveyors, and staff involved in the development of quality indicators and prospective payment system rates for SNFs to determine the feasibility of continuing to require CAHs to comply with the requirement for use of the RAI for patient assessments. Based on the information received, we have determined that there are no specific patient benefits involved in requiring CAHs to use the RAI for patient assessment purposes.

In the interest of reducing burden, where possible, and based on our analysis of the current significance of the requirement for use of the RAI for patient assessments in CAHs, we believe it is appropriate to propose the elimination of the requirement for CAHs to complete an RAI without jeopardizing patient health and safety. A CAH would still be required to capture assessment data for its SNF patients but would have the flexibility to document the assessment data in the medical record in a manner appropriate for its facility. We believe there are sufficient safeguards in the CAH regulations to ensure the health and safety of each SNF patient in a CAH. The facility would still be required to develop a comprehensive care plan for each SNF patient that includes measurable objectives and a timetable to meet a patient's medical, nursing, and psychosocial needs that are identified in an assessment. Also, a post-discharge plan of care would address post-hospital care needs of the patient. All of this information (assessment, plan of care, and discharge plans) must be maintained in the patient's medical record.

We are proposing to revise § 485.645 to specify that CAHs are required to complete a comprehensive assessment, comprehensive care plan, and discharge planning in accordance with the requirements of § 483.20(b), (k), and (l), except that the CAH is not required to use the RAI specified by the State, and is not required to comply with the requirements for frequency, scope, and number of assessments prescribed in § 413.343(b).

VIII. MedPAC Recommendations

We have reviewed the March 1, 2002 report submitted by MedPAC to Congress and have given it careful consideration in conjunction with the proposals set forth in this document. MedPAC's recommendations for payments for Medicare inpatient hospital services in its March 2002 report focused mainly on accounting for changes in input prices for the hospital market basket (Recommendation 2A) and on increases in the base rate for inpatient hospital services by applying the annual update factors (Recommendations 2B–1 and 2B–2).

In Recommendation 2A, MedPAC recommended that the Secretary should use wage and benefit proxies that most closely match the training and skill requirements of health care occupations in all input price indexes used for updating payments. MedPAC further indicated that, in determining index weights, measures specific to the health sector and to occupation categories in which health care plays a major role should be emphasized. Our proposal to rebase and revise the hospital market basket, including cost category weights and price proxies, that is used in determining the update factors for payments for inpatient hospital services is presented in section IV. of this proposed rule.

Recommendations 2B–1 and 2B–2 concerning the update factor for inpatient hospital operating costs and for hospitals and hospital distinct-part units excluded from the acute care hospital inpatient prospective payment system are discussed in Appendix C to this proposed rule.

IX. Other Required Information

A. Requests for Data From the Public

In order to respond promptly to public requests for data related to the prospective payment system, we have established a process under which commenters can gain access to raw data on an expedited basis. Generally, the data are available in computer tape or cartridge format; however, some files are available on diskette as well as on the Internet at *http://www.hcfa.gov/stats/pufiles.htm*. Data files, and the cost for each, are listed below. Anyone wishing to purchase data tapes, cartridges, or diskettes should submit a written request along with a company check or money order (payable to CMS–PUF) to cover the cost to the following address: Centers for Medicare & Medicaid Services, Public Use Files, Accounting Division, P.O. Box 7520, Baltimore, Maryland 21207–0520, (410) 786–3691. Files on the Internet may be downloaded without charge.

1. Expanded Modified MedPAR-Hospital (National)

The Medicare Provider Analysis and Review (MedPAR) file contains records

for 100 percent of Medicare beneficiaries using hospital inpatient services in the United States. (The file is a Federal fiscal year file, that is, discharges occurring October 1 through September 30 of the requested year.) The records are stripped of most data elements that would permit identification of beneficiaries. The hospital is identified by the 6-position Medicare billing number. The file is available to persons qualifying under the terms of the Notice of Proposed New Routine Uses for an Existing System of Records published in the **Federal Register** on December 24, 1984 (49 FR 49941), and amended by the July 2, 1985 notice (50 FR 27361). The national file consists of approximately 11,420,000 records. Under the requirements of these notices, an agreement for use of CMS Beneficiary Encrypted Files must be signed by the purchaser before release of these data. For all files requiring a signed agreement, please write or call to obtain a blank agreement form before placing an order. Two versions of this file are created each year. They support the following:

- Notice of Proposed Rulemaking (NPRM) published in the **Federal Register**. This file, scheduled to be available by the end of April, is derived from the MedPAR file with a cutoff of 3 months after the end of the fiscal year (December file).
- Final Rule published in the **Federal Register**. The FY 2001 MedPAR file used for the FY 2003 final rule will be cut off 6 months after the end of the fiscal year (March file) and is scheduled to be available by the end of April.

Media: Tape/Cartridge.
File Cost: $3,655.00 per fiscal year.
Periods Available: FY 1988 through FY 2001.

2. Expanded Modified MedPAR-Hospital (State)

The State MedPAR file contains records for 100 percent of Medicare beneficiaries using hospital inpatient services in a particular State. The records are stripped of most data elements that will permit identification of beneficiaries. The hospital is identified by the 6-position Medicare billing number. The file is available to persons qualifying under the terms of the Notice of Proposed New Routine Uses for an Existing System of Records published in the December 24, 1984 **Federal Register** notice, and amended by the July 2, 1985 notice. This file is a subset of the Expanded Modified MedPAR-Hospital (National) as described above. Under the requirements of these notices, an agreement for use of CMS Beneficiary Encrypted Files must be signed by the purchaser before release of these data. Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**. This file, scheduled to be available by the end of April, is derived from the MedPAR file with a cutoff of 3 months after the end of the fiscal year (December file).
- Final Rule published in the **Federal Register**. The FY 2001 MedPAR file used for the FY 2003 final rule will be cut off 6 months after the end of the fiscal year (March file) and is scheduled to be available by the end of April.

Media: Tape/Cartridge.
File Cost: $1,130.00 per State per year.
Periods Available: FY 1988 through FY 2001.

3. CMS Wage Data

This file contains the hospital hours and salaries for FY 1999 used to create the proposed FY 2003 prospective payment system wage index. The file will be available by the beginning of January for the NPRM and the beginning of May for the final rule.

Processing year	Wage data year	PPS fiscal year
2002	1999	2003
2001	1998	2002
2000	1997	2001
1999	1996	2000
1998	1995	1999
1997	1994	1998
1996	1993	1997
1995	1992	1996
1994	1991	1995
1993	1990	1994
1992	1989	1993
1991	1988	1992

These files support the following:

- NPRM published in the **Federal Register**.
- Final Rule published in the **Federal Register**.

Media: Diskette/most recent year on the Internet.
File Cost: $165.00 per year.
Periods Available: FY 2003 PPS Update.

4. CMS Hospital Wages Indices (Formerly: Urban and Rural Wage Index Values Only)

This file contains a history of all wage indices since October 1, 1983.

Media: Diskette/most recent year on the Internet.
File Cost: $165.00 per year.
Periods Available: FY 2003 PPS Update.

5. PPS SSA/FIPS MSA State and County Crosswalk

This file contains a crosswalk of State and county codes used by the Social Security Administration (SSA) and the Federal Information Processing Standards (FIPS), county name, and a historical list of Metropolitan Statistical Area (MSA).

Media: Diskette/Internet.
File Cost: $165.00 per year.
Periods Available: FY 2003 PPS Update.

6. Reclassified Hospitals New Wage Index (Formerly: Reclassified Hospitals by Provider Only)

This file contains a list of hospitals that were reclassified for the purpose of assigning a new wage index. Two versions of these files are created each year. They support the following:

- NPRM published in the **Federal Register**.
- Final Rule published in the **Federal Register**.

Media: Diskette/Internet.
File Cost: $165.00 per year.
Periods Available: FY 2003 PPS Update.

7. PPS–IV to PPS–XII Minimum Data Set

The Minimum Data Set contains cost, statistical, financial, and other information from Medicare hospital cost reports. The data set includes only the most current cost report (as submitted, final settled, or reopened) submitted for a Medicare participating hospital by the Medicare fiscal intermediary to CMS. This data set is updated at the end of each calendar quarter and is available on the last day of the following month.
Media: Tape/Cartridge.
File Cost: $770.00 per year.

	Periods beginning on or after	and before
PPS–IV	10/01/86	10/01/87
PPS–V	10/01/87	10/01/88
PPS–VI	10/01/88	10/01/89
PPS–VII	10/01/89	10/01/90
PPS–VIII	10/01/90	10/01/91
PPS–IX	10/01/91	10/01/92
PPS–X	10/01/92	10/01/93
PPS–XI	10/01/93	10/01/94
PPS–XII	10/01/94	10/01/95

(Note: The PPS–XIII, PPS–XIV, PPS–XV, PPS–XVI, and PPS–XVII Minimum Data Sets are part of the PPS–XIII, PPS–XIV, PPS–XV, PPS–XVI, and PPS–XVII Hospital Data Set Files (refer to item 9 below).)

8. PPS–IX to PPS–XII Capital Data Set

The Capital Data Set contains selected data for capital-related costs, interest expense and related information and complete balance sheet data from the Medicare hospital cost report. The data set includes only the most current cost report (as submitted, final settled or

reopened) submitted for a Medicare certified hospital by the Medicare fiscal intermediary to CMS. This data set is updated at the end of each calendar quarter and is available on the last day of the following month.

Media: Tape/Cartridge.
File Cost: $770.00 per year.

	Periods beginning on or after	and before
PPS–IX	10/01/91	10/01/92
PPS–X	10/01/92	10/01/93
PPS–XI	10/01/93	10/01/94
PPS–XII	10/01/94	10/01/95

(Note: The PPS–XIII, PPS–XIV, PPS–XV, PPS–XVI, and PPS–XVII Capital Data Sets are part of the PPS–XIII, PPS–XIV, PPS–XV, PPS–XVI, and PPS–XVII Hospital Data Set Files (refer to item 9 below).)

9. PPS–XIII to PPS–XVII Hospital Data Set

The file contains cost, statistical, financial, and other data from the Medicare Hospital Cost Report. The data set includes only the most current cost report (as submitted, final settled, or reopened) submitted for a Medicare-certified hospital by the Medicare fiscal intermediary to CMS. The data set are updated at the end of each calendar quarter and is available on the last day of the following month.

Media: Diskette/Internet.
File Cost: $2,500.00.

	Periods beginning on or after	and before
PPS–XIII	10/01/95	10/01/96
PPS–XIV	10/01/96	10/01/97
PPS–XV	10/01/97	10/01/98
PPS–XVI	10/01/98	10/01/99
PPS–XVII	10/01/99	10/01/00

10. Provider-Specific File

This file is a component of the PRICER program used in the fiscal intermediary's system to compute DRG payments for individual bills. The file contains records for all prospective payment system eligible hospitals, including hospitals in waiver States, and data elements used in the prospective payment system recalibration processes and related activities. Beginning with December 1988, the individual records were enlarged to include pass-through per diems and other elements.

Media: Diskette/Internet.
File Cost: $265.00.
Periods Available: FY 2003 PPS Update.

11. CMS Medicare Case-Mix Index File

This file contains the Medicare case-mix index by provider number as published in each year's update of the Medicare hospital inpatient prospective payment system. The case-mix index is a measure of the costliness of cases treated by a hospital relative to the cost of the national average of all Medicare hospital cases, using DRG weights as a measure of relative costliness of cases. Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**.
- Final rule published in the **Federal Register**.

Media: Diskette/most recent year on Internet.
Price: $165.00 per year/per file.
Periods Available: FY 1985 through FY 2001.

12. DRG Relative Weights (Formerly Table 5 DRG)

This file contains a listing of DRGs, DRG narrative description, relative weights, and geometric and arithmetic mean lengths of stay as published in the **Federal Register**. The hard copy image has been copied to diskette. There are two versions of this file as published in the **Federal Register:**

- NPRM.
- Final rule.

Media: Diskette/Internet.
File Cost: $165.00.
Periods Available: FY 2003 PPS Update.

13. PPS Payment Impact File

This file contains data used to estimate payments under Medicare's hospital inpatient prospective payment systems for operating and capital-related costs. The data are taken from various sources, including the Provider-Specific File, Minimum Data Sets, and prior impact files. The data set is abstracted from an internal file used for the impact analysis of the changes to the prospective payment systems published in the **Federal Register**. This file is available for release 1 month after the proposed and final rules are published in the **Federal Register**.

Media: Diskette/Internet.
File Cost: $165.00.
Periods Available: FY 2003 PPS Update.

14. AOR/BOR Tables

This file contains data used to develop the DRG relative weights. It contains mean, maximum, minimum, standard deviation, and coefficient of variation statistics by DRG for length of stay and standardized charges. The BOR tables are "Before Outliers Removed" and the AOR is "After Outliers Removed." (Outliers refers to statistical outliers, not payment outliers.) Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**.
- Final rule published in the **Federal Register**.

Media: Diskette/Internet.
File Cost: $165.00.
Periods Available: FY 2003 PPS Update.

15. Prospective Payment System (PPS) Standardizing File

This file contains information that standardizes the charges used to calculate relative weights to determine payments under the prospective payment system. Variables include wage index, cost-of-living adjustment (COLA), case-mix index, disproportionate share, and the Metropolitan Statistical Area (MSA). The file supports the following:

- NPRM published in the **Federal Register**.
- Final rule published in the **Federal Register**.

Media: Internet.
File cost: No charge.
Periods Available: FY 2003 PPS Update.

For further information concerning these data tapes, contact the CMS Public Use Files Hotline at (410) 786–3691.

Commenters interested in obtaining or discussing any other data used in constructing this rule should contact Stephen Phillips at (410) 786–4548.

B. Information Collection Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

However, the majority of the collection requirements contained in this proposed rule are currently approved.

Section IX.B.1. below lists the OMB approval numbers and the current

expiration dates for the collection requirements, referenced by 42 CFR Part, in this proposed rule that are currently approved. In addition, as summarized below, section IX.B.2. of this proposed rule outlines the proposed collection requirements referenced in this proposed rule for which we are seeking public comment, as required under the PRA of 1995.

1. Currently Approved Requirements

Regulation references in 42 CFR	OMB approval No.	Current expiration date
Part 412	0938–0691	September 30, 2002.
	0938–0050	May 31, 2004.
Part 413	0938–0573	September 30, 2002.
	0938–0050	May 31, 2004.
	0938–0667	October 31, 2002.
Part 489	0938–0477	June 30, 2002.
	0938–0667	October 31, 2002.

2. Proposed Requirements for Public Comment

Section 412.230 Criteria for an Individual Hospital Seeking Redesignation to Another Rural Area or an Urban Area.

Appropriate Wage Data

As specified in this section, a new hospital must accumulate and provide at least 1 year of wage data to CMS for the purposes of applying for reclassification. While this collection requirement is subject to the PRA, we believe the burden associated with this requirement is exempt from the PRA as stipulated under 5 CFR 1320.3(b)(2) and (b)(3).

Section 413.65 Requirements for a Determination That a Facility or an Organization Had Provider-Based Status

Responsibility for Obtaining Provider-Based Determinations

As summarized in this section, a potential main provider seeking an advance determination of provider-based status for a facility that is located on the main campus of the potential main provider would be required to submit an attestation stating that the facility meets the criteria in paragraph (d) of this section and, if it is a hospital, also attest that it will fulfill the obligations of hospital outpatient departments and hospital-based entities described in paragraph (g) of this section. In addition, the provider seeking such an advance determination would be required to maintain documentation of the basis for its attestations and to make that documentation available to CMS upon request.

We believe the burden associated with these requirements is estimated to average 1.5 hours per provider, for approximately 3,000 providers per year, for an annual burden of 4,500 annual burden hours. This estimate is based on fact the providers currently maintain the necessary data and that minimal effort would be required to locate and review the appropriate data.

Clinical Services

The clinical services of the facility or organization seeking provider-based status and the main provider would be required to maintain an unified retrieval system (or cross reference) of the main provider for all patient medical records for those patients treated in the facility or organization.

While this collection requirement is subject to the PRA, we believe the burden associated with this requirement is exempt from the PRA as stipulated under 5 CFR 1320.3(b) (2) and (b)(3).

Section 482.12 Conditions of Participation: Governing Body

Standard: Emergency Services

If emergency services are provided at the hospital but are not provided at one or more off-campus departments of the hospital, the governing body of the hospital would be required to assure that the medical staff have written policies and procedures in effect with respect to the off-campus department(s) for appraisal of emergencies and referral when appropriate.

While this collection requirement is subject to the PRA, we believe the burden associated with this requirement is exempt from the PRA as stipulated under 5 CFR 1320.3(b)(2) and (b)(3).

Section 489.24 Special Responsibilities of Medicare Hospitals in Emergency Cases

Application to Inpatients—Admitted Emergency Patients

If a hospital admits an individual with an unstable emergency medical condition for stabilizing treatment, as an inpatient, and stabilizes that individual's emergency medical condition, the period of stability would be required to be documented by relevant clinical data in the individual's medical record, before the hospital has satisfied its special responsibilities under this section with respect to that individual.

While this collection requirement is subject to the PRA, we believe the burden associated with this requirement is exempt from the PRA as stipulated under 5 CFR 1320.3(b)(2) and (b)(3).

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Information Services, Information Technology Investment Management Group, Attn.: John Burke, Attn: CMS–1203–P, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Eydt, CMS Desk Officer Attn: CMS–1203–P.

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 section 1886(e)(5) of the Act requires the final rule for FY 2003 to be published by August 1, 2002, and we will consider only those comments that deal specifically with the matters discussed in this proposed rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 482

Grant program-health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 485

Grant programs-health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons stated in the preamble of this proposed rule, 42 CFR chapter IV is proposed to be amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Part 405 is amended as follows:

1. The authority citation for Part 405, Subpart R continues to read as follows:

Authority: Secs. 205, 1102, 1814(b), 1815(a), 1833, 1861(v), 1871, 1872, 1878, and 1886 of the Social Security Act (42 U.S.C. 405, 1302, 1395f(b), 1395g(a), 1395l, 1395x(v), 1395hh, 1395ii, 1395oo, and 1395ww).

2. Section 405.1885 is amended by revising paragraph (b), redesignating paragraph (e) as paragraph (f), and adding a new paragraph (e), to read as follows:

§ 405.1885 Reopening a determination or decision.

* * * * *

(b)(1) An intermediary determination or an intermediary hearing decision shall be reopened and revised by the intermediary if, within the aforementioned 3-year period, CMS—

(i) Provides notice to the intermediary that the intermediary determination or the intermediary hearing decision is inconsistent with the applicable law, regulations, CMS ruling, or CMS general instructions in effect, and as CMS understood those legal provisions, at the time the determination or decision was rendered by the intermediary; and

(ii) Explicitly directs the intermediary to reopen and revise the intermediary determination or the intermediary hearing decision.

(2) A change of legal interpretation or policy by CMS in a regulation, CMS ruling, or CMS general instruction, whether made in response to judicial precedent or otherwise, is not a basis for reopening an intermediary determination or an intermediary hearing decision under this section.

* * * * *

(e) Nothwithstanding an intermediary's discretion to reopen or not reopen an intermediary determination or an intermediary hearing decision under paragraphs (a) and (c) of this section, CMS may direct an intermediary to reopen, or not to reopen, an intermediary determination or an intermediary hearing decision in accordance with paragraphs (a) and (c) of this section.

* * * * *

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

B. Part 412 is amended as follows:

1. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 412.4 [Amended]

2. In § 412.4 (f)(1), the reference "paragraph (b) or (c)" is removed and "paragraph (b)(1) or (c)" is added in its place.

3. Section 412.22 is amended by—

a. Revising the introductory text of paragraph (h)(2).

b. Republishing the introductory text of paragraph (h)(2)(iii).

c. Redesignating paragraphs (h)(2)(iii)(A) through (F) as paragraphs (h)(2)(iii)(B) through (G), respectively. d. Adding new paragraph (h)(2)(iii)(A).

§ 412.22 Excluded hospitals and hospital units: General rules.

* * * * *

(h) *Satellite facilities.* * * *

(2) Except as provided in paragraph (h)(3) of this section, effective for cost reporting periods beginning on or after October 1, 1999, a hospital that has a satellite facility must meet the following criteria in order to be excluded from the acute care hospital inpatient prospective payment systems for any period:

* * * * *

(iii) The satellite facility meets all of the following requirements:

(A) Effective for cost reporting periods beginning on or after October 1, 2002, it is not under the authority or control of the governing body or chief executive officer of the hospital in which it is located, and it furnishes inpatient care through the use of medical personnel who are not under the authority or control of the medical staff or chief medical officer of the hospital in which it is located.

* * * * *

4. Section 412.25 is amended by—

a. Revising the introductory text of paragraph (e)(2).

b. Republishing the introductory text of paragraph (e)(2)(iii).

c. Redesignating paragraphs (e)(2)(iii)(A) through (F) as paragraphs (e)(2)(iii)(B) through (G), respectively.

d. Adding new paragraph (e)(2)(iii)(A).

§ 412.25 Excluded hospitals units: Common requirements.

* * * * *

(e) *Satellite facilities.* * * *

(2) Except as provided in paragraph (e)(3) of this section, effective for cost reporting periods beginning on or after October 1, 1999, a hospital that has a satellite facility must meet the following criteria in order to be excluded from the acute care hospital inpatient prospective payment systems for any period:

* * * * *

(iii) The satellite facility meets all of the following requirements:

(A) Effective for cost reporting periods beginning on or after October 1, 2002, it is not under the authority or control of the governing body or chief executive officer of the hospital in which it is located, and it furnishes inpatient care through the use of medical personnel who are not under the authority or control of the medical staff or chief medical officer of the hospital in which it is located.

* * * * *

§ 412.63 [Amended]

5. Section 412.63 is amended by—

a. In paragraph (x)(2)(i)(A), removing the phrase "tabulating the hospital's data" and adding in its place "tabulating its data".

b. Removing paragraphs (x)(3) and (x)(4).

c. Redesignating paragraph (x)(5) as paragraph (x)(3).

6. Section 412.80 is amended by revising paragraph (a)(2) to read as follows:

§ 412.80 Outlier cases: General provisions.

(a) *Basic rule.* * * *

(2) *Discharges occurring on or after October 1, 1997 and before October 1, 2001.* For discharges occurring on or after October 1, 1997 and before October 1, 2001, except as provided in paragraph (b) of this section concerning transfers, CMS provides for additional payment, beyond standard DRG payments, to a

hospital for covered inpatient hospital services furnished to a Medicare beneficiary if the hospital's charges for covered services, adjusted to operating costs and capital costs by applying cost-to-charge ratios, as described in § 412.84(h), exceed the DRG payment for the case, payments for indirect costs of graduate medical education (§ 412.105), and payments for serving disproportionate share of low-income patients (§ 412.106), plus a fixed dollar amount (adjusted for geographic variation in costs) as specified by CMS.

* * * * *

7. Section 412.92 is amended by revising paragraph (c)(2), to read as follows:

§ 412.92 Special treatment: Sole community hospitals.

* * * * *

(c) *Terminology.* * * *

(2) The term *like hospital* means a hospital furnishing short-term, acute care. Effective with cost reporting periods beginning on or after October 1, 2002, if a hospital seeking sole community hospital designation can demonstrate that no more than 3 percent of the services it provides overlap with the services provided by a nearby hospital that would otherwise be considered a like hospital under this definition, CMS will not consider the nearby hospital to be a like hospital.

* * * * *

8. Section 412.105 is amended by—

A. Republishing the introductory text of paragraph (a).

B. Revising paragraph (a)(1).

C. Revising paragraph (b).

D. Revising paragraph (f)(1)(vi).

E. Making the following cross-reference changes in paragraph (f)(1):

i. In paragraph (f)(1)(vii), the reference "§ 413.86(g)(12)" is removed and "§ 413.86(g)(13)" is added in its place.

ii. In paragraph (f)(1)(viii), the reference "§ 413.86(g)(7)" is removed and "§ 413.86(g)(8)" is added in its place.

iii. In paragraph (f)(1)(ix), the reference "§§ 413.86(g)(8)(i) and (g)(8)(ii) of this subchapter" is removed and "§ 413.86(g)(9)(i) and (g)(9)(ii) of this subchapter" is added in its place; the reference "§§ 413.86(g)(8)(i) and (g)(8)(iii)(B) of this subchapter" is removed and "§ 413.86(g)(9)(i) and (g)(9)(iii)(B) of this subchapter" is added in its place; and the reference "§§ 413.86(g)(8)(i) and (g)(8)(iii)(A) of this subchapter" is removed and "§ 413.86(g)(9)(i) and (g)(9)(iii)(A) of this subchapter" is added it its place.

iv. In paragraph (f)(1)(x), the reference "§ 413.86(g)(12)" is removed and "§ 413.86(g)(13)" is added in its place; and the reference "§ 413.86(g)(11)" is removed and "§ 413.86(g)(12)" is added in its place.

v. In paragraph (f)(1)(xi), the reference "§ 413.86(g)(9)" is removed and "§ 413.86(g)(10)" is added in its place.

vi. In paragraph (f)(1)(xii), the reference "§ 413.86(g)(10)" is removed and "§ 413.86(g)(11)" is added in its place.

The revisions read as follows:

§ 412.105 Special treatment: Hospitals that incur indirect costs for graduate medical education programs.

* * * * *

(a) *Basic data.* CMS determines the following for each hospital:

(1) The hospital's ratio of full-time equivalent residents (except as limited under paragraph (f) of this section) to the number of beds (as determined under paragraph (b) of this section).

(i) Except for the special circumstances for affiliated groups and new programs described in paragraphs (f)(1)(vi) and (f)(1)(vii) of this section for cost reporting periods beginning on or after October 1, 1997, and for the special circumstances for closed hospitals or closed programs described in paragraph (f)(1)(ix) of this section for cost reporting periods beginning on or after October 1, 2002, this ratio may not exceed the ratio for the hospital's most recent prior cost reporting period after accounting for the cap on the number of allopathic and osteopathic full-time equivalent residents as described in paragraph (f)(1)(iv) of this section, and adding to the capped numerator any dental and podiatric full-time equivalent residents.

(ii) The exception for new programs described in paragraph (f)(1)(vii) of this section applies to each new program individually for which the full-time equivalent cap may be adjusted based on the period of years equal to the minimum accredited length of each new program.

(iii) The exception for closed hospitals and closed programs described in paragraph (f)(1)(ix) of this section applies only in the first cost reporting period in which the receiving hospital trains the displaced full-time equivalent residents.

(iv) In the cost reporting period following the last year the receiving hospital's full-time equivalent cap is adjusted for the displaced resident(s), the resident-to-bed ratio cap in paragraph (a)(1) of this section is calculated as if the displaced full-time equivalent residents had not trained at the receiving hospital in the prior year.

* * * * *

(b) *Determination of number of beds.* (1) For purposes of this section, subject to the provisions of paragraph (b)(2) of this section, the number of beds in a hospital is determined by counting the number of available bed days during the cost reporting period, not including beds or bassinets in the healthy newborn nursery, custodial care beds, or beds in excluded distinct part hospital units, and dividing that number by the number of days in the cost reporting period.

(2) Effective for discharges occurring on or after October 1, 2002, a hospital's number of beds is equal to the lower of the number of beds as determined under paragraph (b)(1) of this section, or the average daily census (as determined in accordance with § 412.322(a)(2) of this chapter) divided by 35 percent.

* * * * *

(f) *Determining the total number of full-time equivalent residents for cost reporting periods beginning on or after July 1, 1991.*

(1) * * *

(vi) Hospitals that are part of the same affiliated group (as defined in § 413.86(b) of this subchapter) may elect to apply the limit at paragraph (f)(1)(iv) of this section on an aggregate basis, as specified in § 413.86(g)(7) of this chapter.

* * * * *

9. Section 412.108 is amended by revising paragraph (b) to read as follows:

§ 412.108 Special treatment: Medicare-dependent, small rural hospitals.

* * * * *

(b) *Classification procedures.* (1) The fiscal intermediary determines whether a hospital meets the criteria specified in paragraph (a) of this section.

(2) A hospital must submit a written request along with qualifying documentation to its fiscal intermediary to be considered for MDH status based on the criterion under paragraph (a)(1)(iii)(C) of this section.

(3) The fiscal intermediary will make its determination and notify the hospital within 90 days from the date that it receives the hospital's request and all of the required documentation.

(4) A determination of MDH status made by the fiscal intermediary is effective 30 days after the date the fiscal intermediary provides written notification to the hospital. An approved MDH status determination remains in effect unless there is a change in the circumstances under which the status was approved.

(5) The fiscal intermediary will evaluate on an ongoing basis, whether or not a hospital continues to qualify for MDH status. This evaluation includes an ongoing review to ensure that the hospital continues to meet all of the

criteria specified in paragraph (a) of this section.

(6) If the fiscal intermediary determines that a hospital no longer qualifies for MDH status, the change in status will become effective 30 days after the date the fiscal intermediary provides written notification to the hospital.

(7) A hospital may reapply for MDH status following its disqualification only after it has completed another cost reporting period that has been audited and settled. The hospital must reapply for MDH status in writing to its fiscal intermediary and submit the required documentation.

(8) If a hospital disagrees with an intermediary's determination regarding the hospital's initial or ongoing MDH status, the hospital may notify its fiscal intermediary and submit other documentable evidence to support its claim that it meets the MDH qualifying criteria.

(9) The fiscal intermediary's initial and ongoing determination is subject to review under subpart R of Part 405 of this chapter. The time required by the fiscal intermediary to review the request is considered good cause for granting an extension of the time limit for the hospital to apply for that review.

* * * * *

10. Section 412.113 is amended by revising paragraphs (c)(2)(ii) and (c)(2)(iii) to read as follows:

§ 412.113 Other payments.

* * * * *

(c) *Anesthesia services furnished by hospital employed nonphysician anesthetists or obtained under arrangements.* * * *

(2) * * *

(ii) To maintain its eligibility for reasonable cost payment under paragraph (c)(2)(i) of this section in calendar years after 1989, a qualified hospital or CAH must demonstrate prior to January 1 of each respective year that for the prior year its volume of surgical procedures requiring anesthesia service did not exceed 500 procedures; or, effective October 1, 2002, did not exceed 800 procedures.

(iii) A hospital or CAH that did not qualify for reasonable cost payment for nonphysician anesthetist services furnished in calendar year 1989 can qualify in subsequent years if it meets the criteria in paragraphs (c)(2)(i)(A), (B), and (D) of this section, and demonstrates to its intermediary prior to the start of the calendar year that it met these criteria. The hospital or CAH must provide data for its entire patient population to demonstrate that, during calendar year 1987 and the year immediately preceding its election of reasonable cost payment, its volume of surgical procedures (inpatient and outpatient) requiring anesthesia services did not exceed 500 procedures, or, effective October 1, 2002, did not exceed 800 procedures.

* * * * *

11. Section 412.230 is amended by adding a new paragraph (e)(2)(iii) to read as follows:

§ 412.230 Criteria for an individual hospital seeking redesignation to another rural area or an urban area.

* * * * *

(e) *Use of urban or other rural area's wage index.* * * *

(2) *Appropriate wage data.* * * *

(iii) For purposes of this paragraph (e)(2), if a new owner does not accept assignment of the existing hospital's provider agreement in accordance with § 489.18 of this chapter, the hospital will be treated as a new provider with a new provider number. In this case, the wage data associated with the previous owner of the hospital cannot be used in calculating the new hospital's 3-year average hourly wage. Once a new hospital has accumulated at least 1 year of wage data, it is eligible to apply for reclassification on the basis of those data.

* * * * *

12. Section 412.273 is amended by—

A. Revising the section heading.

B. Revising paragraph (b)(2).

C. Redesignating paragraph (d) as paragraph (e).

D. Add a new paragraph (d).

§ 412.273 Withdrawing an application, terminating an approved 3-year reclassification, or canceling a previous withdrawal or termination.

* * * * *

(b) *Request for termination of approved 3-year wage index reclassifications.* * * *

(2) *Reapplication within the approved 3-year period.* (i) If a hospital elects to withdraw its wage index application after the MGCRB has issued its decision, it may cancel its withdrawal in a subsequent year and request the MGCRB to reinstate its wage index reclassification for the remaining fiscal year(s) of the 3-year period.

(ii) A hospital may apply for reclassification for purposes of the wage index to a different area (that is, an area different from the one to which it was originally reclassified for the 3-year period). If the application is approved, the reclassification will be effective for 3 years. Once a 3-year reclassification becomes effective, a hospital may no longer cancel a withdrawal or termination of another 3-year reclassification, regardless of whether the withdrawal or termination request is made within 3 years from the date of the withdrawal or termination.

(iii) In a case in which a hospital with an existing 3-year wage index reclassification applies to be reclassified to another area, its existing 3-year reclassification will be terminated when a second 3-year wage index reclassification goes into effect for payments for discharges on or after the following October 1.

* * * * *

(d) *Process for canceling a previous withdrawal or termination.* A hospital may cancel a previous withdrawal or termination by submitting written notice of its intent to the MGCRB no later than the deadline for submitting reclassification applications for the following fiscal year, as specified in § 412.256(a)(2).

* * * * *

13. Section 412.304 is amended by revising paragraph (c) to read as follows:

§ 412.304 Implementation of the capital prospective payment system.

* * * * *

(c) *Cost reporting periods beginning on or after October 1, 2001.*

(1) *General.* Except as provided in paragraph (c)(2) of this section, for cost reporting periods beginning on or after October 1, 2001, the capital payment amount is based solely on the Federal rate determined under § 412.308(a) and (b) and updated under § 412.308(c).

(2) *Payment to new hospitals.* For cost reporting periods beginning on or after October 1, 2002—

(i) A new hospital, as defined under § 412.300(b), is paid 85 percent of its allowable Medicare inpatient hospital capital-related costs through its cost report ending at least 2 years after the hospital accepts its first patient.

(ii) For the third year and subsequent years, the hospital is paid based on the Federal rate as described under § 412.312.

* * * * *

14. Section 412.308 is amending by adding a new paragraph (b)(6) to read as follows:

§ 412.308 Determining and updating the Federal rate.

* * * * *

(b) *Standard Federal rate.* * * *

(6) For discharges occurring on or after October 1, 2002, the 2.1 percent reduction provided for under paragraph (b)(5) of this section is eliminated from the unadjusted standard Federal rate in effect on September 30, 2002, used to

determine the Federal rate each year under paragraph (c) of this section.

* * * * *

15. Section 412.312 is amended by adding a new paragraph (e) to read as follows:

§ 412.312 Payment based on the Federal rate.

* * * * *

(e) *Payment for extraordinary circumstances.* Payment for extraordinary circumstances is made as provided for in § 412.348(f) for cost reporting periods beginning on or after October 1, 2001.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

C. Part 413 is amended as follows:

1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395hh, 1395rr, 1395tt, and 1395ww).

2. Section 413.65 is amended by—

A. Revising paragraph (a)(1)(ii)(G) and adding a new paragraph (a)(1)(ii)(J).

B. Revising the definition of "Department of a provider", "Provider-based entity", and "Remote location of a hospital" under paragraph (a)(2).

C. Revising paragraphs (b)(2), (b)(3), and (d).

D. Removing paragraph (j).

E. Redesignating paragraphs (h) and (i) as paragraphs (i) and (j), respectively.

F. Redesignating paragraph (f) as paragraph (h).

G. Redesignating paragraph (e) as paragraph (f).

H. Adding a new paragraph (e).

I. Revising redesignated paragraph (f).

J. Revising the introductory text of paragraph (g), and paragraphs (g)(1), (g)(2), and (g)(7).

K. Revising redesignated paragraphs (h), (i), and (j).

L. Revising paragraph (k).

M. Revising the heading of paragraph (m).

N. Revising paragraph (n).

§ 413.65 Requirements for a determination that a facility or an organization had provider-based status.

(a) *Scope and definitions.* (1) *Scope.*

* * *

(ii) This section does not apply to the following facilities:

* * * * *

(G) Independent diagnostic testing facilities furnishing only services paid under a fee schedule, such as facilities that furnish only screening mammography services (as defined in section 1861(jj) of the Act), facilities that furnish only clinical diagnostic laboratory tests, or facilities that furnish only some combination of these services.

* * * * *

(J) Departments of providers that perform functions necessary for the successful operation of the providers but do not furnish services of a type for which separate payment could be claimed under Medicare or Medicaid (for example, laundry or medical records departments).

(2) *Definitions.* * * *

Department of a provider means a facility or organization that is either created by, or acquired by, a main provider for the purpose of furnishing health care services of the same type as those furnished by the main provider under the name, ownership, and financial and administrative control of the main provider, in accordance with the provisions of this section. A department of a provider comprises both the specific physical facility that serves as the site of services of a type for which payment could be claimed under the Medicare or Medicaid program, and the personnel and equipment needed to deliver the services at that facility. A department of a provider may not by itself be qualified to participate in Medicare as a provider under § 489.2 of this chapter, and the Medicare conditions of participation do not apply to a department as an independent entity. For purposes of this part, the term "department of a provider" does not include an RHC or, except as specified in paragraph (m) of this section, an FQHC.

* * * * *

Provider-based entity means a provider of health care services, or an RHC as defined in § 405.2401(b) of this chapter, that is either created by, or acquired by, a main provider for the purpose of furnishing health care services of a different type from those of the main provider under the name, ownership, and administrative and financial control of the main provider, in accordance with the provisions of this section. A provider-based entity comprises both the specific physical facility that serves as the site of services of a type for which payment could be claimed under the Medicare or Medicaid program, and the personnel and equipment needed to deliver the services at that facility. A provider-based entity may, by itself, be qualified to participate in Medicare as a provider under § 489.2 of this chapter, and the Medicare conditions of participation do apply to a provider-based entity as an independent entity.

* * * * *

Remote location of a hospital means a facility or an organization that is either created by, or acquired by, a hospital that is a main provider for the purpose of furnishing inpatient hospital services under the name, ownership, and financial and administrative control of the main provider, in accordance with the provisions of this section. A remote location of a hospital comprises both the specific physical facility that serves as the site of services for which separate payment could be claimed under the Medicare or Medicaid program, and the personnel and equipment needed to deliver the services at that facility. The Medicare conditions of participation do not apply to a remote location of a hospital as an independent entity. For purposes of this part, the term "remote location of a hospital" does not include a satellite facility as defined in § 412.22(h)(1) and § 412.25(e)(1) of this chapter.

(b) *Responsibility for obtaining provider-based determinations.* * * *

(2) If a facility was treated as provider-based in relation to a hospital or CAH on October 1, 2000, it will continue to be considered provider-based in relation to that hospital or CAH until the start of the hospital's first cost reporting period beginning on or after July 1, 2003. The requirements, limitations, and exclusions specified in paragraphs (d), (e), (f), (g), (h), and (i), of this section will not apply to that hospital or CAH until the start of the hospital's first cost reporting period beginning on or after July 1, 2003. For purposes of this paragraph (b)(2), a facility is considered as provider-based on October 1, 2000 if, on that date, it either had a written determination from CMS that it was provider-based, or was billing and being paid as a provider-based department or entity of the hospital.

(3)(i) Except as specified in paragraphs (b)(2) and (b)(5) of this section, if a potential main provider seeks an advance determination of provider-based status for a facility that is located on the main campus of the potential main provider, the provider would be required to submit an attestation stating that the facility meets the criteria in paragraph (d) of this section and if it is a hospital, also attest that it will fulfill the obligations of hospital outpatient departments and

hospital-based entities described in paragraph (g) of this section. The provider seeking such an advance determination would also be required to maintain documentation of the basis for its attestations and to make that documentation available to CMS upon request.

(ii) If the facility is not located on the main campus of the potential main provider, the provider seeking an advance determination would be required to submit an attestation stating that the facility meets the criteria in paragraphs (d) and (e) of this section, and if the facility is operated as a joint venture or under a management contract, the requirements of paragraph (f) or paragraph (h) of this section, as applicable. If the potential main provider is a hospital, the hospital also would be required to attest that it will fulfill the obligations of hospital outpatient departments and hospital-based entities described in paragraph (g) of this section. The provider would be required to supply documentation of the basis for its attestations to CMS at the time it submits its attestations.

* * * * *

(d) *Requirements applicable to all facilities or organizations.* Any facility or organization for which provider-based status is sought, whether located on or off the campus of a potential main provider, must meet all of the following requirements to be determined by CMS to have provider-based status:

(1) *Licensure.* The department of the provider, the remote location of a hospital, or the satellite facility and the main provider are operated under the same license, except in areas where the State requires a separate license for the department of the provider, the remote location of a hospital, or the satellite facility, or in States where State law does not permit licensure of the provider and the prospective department of the provider, the remote location of a hospital, or the satellite facility under a single license. If a State health facilities' cost review commission or other agency that has authority to regulate the rates charged by hospitals or other providers in a State finds that a particular facility or organization is not part of a provider, CMS will determine that the facility or organization does not have provider-based status.

(2) *Clinical services.* The clinical services of the facility or organization seeking provider-based status and the main provider are integrated as evidenced by the following:

(i) Professional staff of the facility or organization have clinical privileges at the main provider.

(ii) The main provider maintains the same monitoring and oversight of the facility or organization as it does for any other department of the provider.

(iii) The medical director of the facility or organization seeking provider-based status maintains a reporting relationship with the chief medical officer or other similar official of the main provider that has the same frequency, intensity, and level of accountability that exists in the relationship between the medical director of a department of the main provider and the chief medical officer or other similar official of the main provider, and is under the same type of supervision and accountability as any other director, medical or otherwise, of the main provider.

(iv) Medical staff committees or other professional committees at the main provider are responsible for medical activities in the facility or organization, including quality assurance, utilization review, and the coordination and integration of services, to the extent practicable, between the facility or organization seeking provider-based status and the main provider.

(v) Medical records for patients treated in the facility or organization are integrated into a unified retrieval system (or cross reference) of the main provider.

(vi) Inpatient and outpatient services of the facility or organization and the main provider are integrated, and patients treated at the facility or organization who require further care have full access to all services of the main provider and are referred where appropriate to the corresponding inpatient or outpatient department or service of the main provider.

(3) *Financial integration.* The financial operations of the facility or organization are fully integrated within the financial system of the main provider, as evidenced by shared income and expenses between the main provider and the facility or organization. The costs of a facility or organization that is a hospital department are reported in a cost center of the provider, costs of a provider-based facility or organization other than a hospital department are reported in the appropriate cost center or cost centers of the main provider, and the financial status of any provider-based facility or organization is incorporated and readily identified in the main provider's trial balance.

(4) *Public awareness.* The facility or organization seeking status as a department of a provider, a remote location of a hospital, or a satellite facility is held out to the public and other payers as part of the main provider. When patients enter the provider-based facility or organization, they are aware that they are entering the main provider and are billed accordingly.

(5) *Obligations of hospital outpatient departments and hospital-based entities.* In the case of a hospital outpatient department or a hospital-based entity, the facility or organization must fulfill the obligations of hospital outpatient departments and hospital-based entities described in paragraph (g) of this section.

(e) *Additional requirements applicable to off-campus facilities or organizations.* Except as described in paragraphs (b)(2) and (b)(5) of this section, any facility or organization for which provider-based status is sought that is not located on the campus of a potential main provider must meet both the requirements in paragraph (d) of this section and all of the following additional requirements, in order to be determined by CMS to have provider-based status.

(1) *Operation under the ownership and control of the main provider.* The facility or organization seeking provider-based status is operated under the ownership and control of the main provider, as evidenced by the following:

(i) The business enterprise that constitutes the facility or organization is 100 percent owned by the provider.

(ii) The main provider and the facility or organization seeking status as a department of the provider, a remote location of a hospital, or a satellite facility have the same governing body.

(iii) The facility or organization is operated under the same organizational documents as the main provider. For example, the facility or organization seeking provider-based status must be subject to common bylaws and operating decisions of the governing body of the provider where it is based.

(iv) The main provider has final responsibility for administrative decisions, final approval for contracts with outside parties, final approval for personnel actions, final responsibility for personnel policies (such as fringe benefits or code of conduct), and final approval for medical staff appointments in the facility or organization.

(2) *Administration and supervision.* The reporting relationship between the facility or organization seeking provider-based status and the main provider must have the same frequency, intensity, and level of accountability that exists in the relationship between the main provider and one of its existing departments, as evidenced by

compliance with all of the following requirements:

(i) The facility or organization is under the direct supervision of the main provider.

(ii) The facility or organization is operated under the same monitoring and oversight by the provider as any other department of the provider, and is operated just as any other department of the provider with regard to supervision and accountability. The facility or organization director or individual responsible for daily operations at the entity—

(A) Maintains a reporting relationship with a manager at the main provider that has the same frequency, intensity, and level of accountability that exists in the relationship between the main provider and its existing departments; and

(B) Is accountable to the governing body of the main provider, in the same manner as any department head of the provider.

(iii) The following administrative functions of the facility or organization are integrated with those of the provider where the facility or organization is based: billing services, records, human resources, payroll, employee benefit package, salary structure, and purchasing services. Either the same employees or group of employees handle these administrative functions for the facility or organization and the main provider, or the administrative functions for both the facility or organization and the entity are—

(A) Contracted out under the same contract agreement; or

(B) Handled under different contract agreements, with the contract of the facility or organization being managed by the main provider.

(3) *Location.* The facility or organization is located within a 35-mile radius of the main campus of the hospital or CAH that is the potential main provider, except when the requirements in paragraph (e)(3)(i), (e)(3)(ii), or (e)(3)(iii) of this section are met:

(i) The facility or organization is owned and operated by a hospital or CAH that has a disproportionate share adjustment (as determined under § 412.106 of this chapter) greater than 11.75 percent or is described in § 412.106(c)(2) of this chapter implementing section 1886(e)(5)(F)(i)(II) of the Act and is—

(A) Owned or operated by a unit of State or local government;

(B) A public or nonprofit corporation that is formally granted governmental powers by a unit of State or local government; or

(C) A private hospital that has a contract with a State or local government that includes the operation of clinics located off the main campus of the hospital to assure access in a well-defined service area to health care services for low-income individuals who are not entitled to benefits under Medicare (or medical assistance under a Medicaid State plan).

(ii) The facility or organization demonstrates a high level of integration with the main provider by showing that it meets all of the other provider-based criteria and demonstrates that it serves the same patient population as the main provider, by submitting records showing that, during the 12-month period immediately preceding the first day of the month in which the application for provider-based status is filed with CMS, and for each subsequent 12-month period—

(A) At least 75 percent of the patients served by the facility or organization reside in the same zip code areas as at least 75 percent of the patients served by the main provider;

(B) At least 75 percent of the patients served by the facility or organization who required the type of care furnished by the main provider received that care from that provider (for example, at least 75 percent of the patients of an RHC seeking provider-based status received inpatient hospital services from the hospital that is the main provider); or

(C) If the facility or organization is unable to meet the criteria in paragraph (e)(3)(ii)(A) or paragraph (e)(3)(ii)(B) of this section because it was not in operation during all of the 12-month period described in paragraph (e)(3)(ii) of this section, the facility or organization is located in a zip code area included among those that, during all of the 12-month period described in paragraph (e)(3)(ii) of this section, accounted for at least 75 percent of the patients served by the main provider.

(iv) A facility or organization may qualify for provider-based status under this section only if the facility or organization and the main provider are located in the same State or, when consistent with the laws of both States, in adjacent States.

(v) An RHC that is otherwise qualified as a provider-based entity of a hospital that is located in a rural area, as defined in § 412.62(f)(1)(iii) of this chapter, and has fewer than 50 beds, as determined under § 412.105(b) of this chapter, is not subject to the criteria in paragraphs (e)(3)(i) through (e)(3)(iii) of this section.

(f) *Provider-based status for joint ventures.* A facility or organization that is not located on the campus of the potential main provider cannot be considered provider-based if the facility or organization is owned by two or more providers engaged in a joint venture. For example, where a hospital has jointly purchased or jointly created a facility under joint venture arrangements with one or more other providers, and the facility is not located on the campus of the hospital or the campus of any other provider engaged in the joint venture arrangement, no party to the joint venture arrangement can claim the facility as provider-based.

(g) *Obligations of hospital outpatient departments and hospital-based entities.* To qualify for provider-based status in relation to a hospital, a facility or organization must comply with the following requirements:

(1) The following departments must comply with the antidumping rules of § 489.20(l), (m), (q), and (r) and § 489.24 of this chapter:

(i) Any facility or organization that is located on the main hospital campus and is treated by Medicare under this section as a department of the hospital; and

(ii) Any facility or organization that is located off the main hospital campus that is treated by Medicare under this section as a department of the hospital and is a dedicated emergency department, as defined in § 489.24(b) of this chapter.

(2) Physician services furnished in hospital outpatient departments or hospital-based entities (other than RHCs) must be billed with the correct site-of-service so that appropriate physician and practitioner payment amounts can be determined under the rules of part 414 of this chapter.

* * * * *

(7) When a Medicare beneficiary is treated in a hospital outpatient department of hospital-based entity (other than an RHC) that is not located on the main provider's campus, and the treatment is not required to be provided by the antidumping rules in § 489.24 of this chapter, the hospital must provide written notice to the beneficiary, before the delivery of services, of the amount of the beneficiary's potential financial liability (that is, that the beneficiary will incur a coinsurance liability for an outpatient visit to the hospital as well as for the physician service, and of the amount of that liability).

(i) The notice must be one that the beneficiary can read and understand.

(ii) If the exact type and extent of care needed is not known, the hospital may furnish a written notice to the patient that explains that the beneficiary will incur a coinsurance liability to the hospital that he or she would not incur if the facility were not provider-based.

(iii) The hospital may furnish an estimate based on typical or average charges for visits to the facility, while stating that the patient's actual liability will depend upon the actual services furnished by the hospital.

(iv) If the beneficiary is unconscious, under great duress, or for any other reason unable to read a written notice and understand and act on his or her own rights, the notice must be provided, before the delivery of services, to the beneficiary's authorized representative.

(v) In cases where a hospital outpatient department provides examination or treatment that is required to be provided by the antidumping rules of § 489.24 of this chapter, notice, as described in this paragraph (g)(7), must be given as soon as possible after the existence of an emergency has been ruled out or the emergency condition has been stabilized.

* * * * *

(h) *Management contracts.* A facility or organization that is not located on the campus of the potential main provider and otherwise meets the requirements of paragraphs (d) and (e) of this section, but is operated under management contracts, must also meet all of the following criteria:

(1) The main provider (or an organization that also employs the staff of the main provider and that is not the management company) employs the staff of the facility or organization who are directly involved in the delivery of patient care, except for management staff and staff who furnish patient care services of a type that would be paid for by Medicare under a fee schedule established by regulations at Part 414 of this chapter. "Leased" employees (that is, personnel who are actually employed by the management company but provide services for the provider under a staff leasing or similar agreement) are not considered to be employees of the provider for purposes of this paragraph.

(2) The administrative functions of the facility or organization are integrated with those of the main provider, as determined under criteria in paragraph (e)(2)(iii) of this section.

(3) The main provider has significant control over the operations of the facility or organization as determined under criteria in paragraph (e)(2)(ii) of this section.

(4) The management contract is held by the main provider itself, not by a parent organization that has control over both the main provider and the facility or organization.

(i) *Furnishing all services under arrangement.* A facility or organization may not qualify for provider-based status if all patient care services furnished at the facility or organization are furnished under arrangements.

(j) *Inappropriate treatment of a facility or organization as provider-based.* (1) *Determination and review.* If CMS learns that a provider has treated a facility or organization as provider-based and the provider did not request an advance determination of provider-based status from CMS under paragraph (b)(3) of this section and CMS determines that the facility or organization did not meet the requirements for provider-based status under paragraphs (d) through (i) of this section, as applicable (or, in any period before the effective date of these regulations, the provider-based requirements in effect under Medicare program regulations or instructions), CMS will—

(i) Issue notice to the provider in accordance with paragraph (j)(3) of this section, adjust the amount of future payments to the provider for services of the facility or organization in accordance with paragraph (j)(4) of this section, and continue payments to the provider for services of the facility or organization only in accordance with paragraph (j)(5) of this section; and

(ii) Except as otherwise provided in paragraphs (b)(2), (b)(5), or (j)(2) of this section, recover the difference between the amount of payments that actually was made and the amount of payments that CMS estimates should have been made, in the absence of compliance with the provider-based requirements, to that provider for services at the facility or organization for all cost reporting periods subject to reopening in accordance with §§ 405.1885 and 405.1889 of this chapter.

(2) *Exception for good faith effort.* CMS will not recover any payments for any period before the beginning of the hospital's first cost reporting period beginning on or after January 10, 2001, if, during all of that period—

(i) The requirements regarding licensure and public awareness in paragraphs (d)(1) and (d)(4) of this section were met;

(ii) All facility services were billed as if they had been furnished by a department of a provider, a remote location of a hospital, a satellite facility, or a provider-based entity of the main provider; and

(iii) All professional services of physicians and other practitioners were billed with the correct site-of-service indicator, as described in paragraph (g)(2) of this section.

(3) *Notice to provider.* CMS will issue written notice to the provider that payments for past cost reporting periods may be reviewed and recovered as described in paragraph (j)(1)(ii) of this section, and that future payments for services in or of the facility or organization will be adjusted as described in paragraph (j)(4) of this section.

(4) *Adjustment of payments.* CMS will adjust future payments to the provider or the facility or organization, or both, to approximate as closely as possible the amounts that would be paid for the same services furnished by a freestanding facility.

(5) *Continuation of payment.* (i) The notice of denial of provider-based status sent to the provider will ask the provider to notify CMS in writing, within 30 days of the date the notice is issued, of whether the provider intends to seek an advance determination of provider-based status for the facility or organization under paragraph (b)(3) of this section or whether the facility or organization (or, where applicable, the practitioners who staff the facility or organization) will be seeking to enroll and meet other requirements to bill for services in a freestanding facility.

(ii) If the provider indicates that it will not be seeking an advance determination for the facility or organization under paragraph (b) of this section or that the facility or organization or its practitioners will not be seeking to enroll, or if CMS does not receive a response within 30 days of the date the notice was issued, all payment under this paragraph (j)(5) will end as of the 30th day after the date of notice.

(iii) If the provider indicates that it will be seeking an advance determination for the facility or organization under paragraph (b) of this section or that the facility or organization or its practitioners will be seeking to meet enrollment and other requirements for billing for services in a freestanding facility, payment for services of the facility or organization will continue, at the adjusted amounts described in paragraph (j)(4) of this section, for as long as is required for all billing requirements to be met (but not longer than 6 months) if the provider or the facility or organization or its practitioners—

(A) Submits, as applicable, a complete request for an advance determination of provider-based status or a complete enrollment application and provide all other required information within 90 days after the date of notice; and

(B) Furnishes all other information needed by CMS to process the request for provider-based status or the enrollment application, as applicable,

and verifies that other billing requirements are met.

(v) If the necessary applications or information are not provided, CMS will terminate all payment to the provider, facility, or organization as of the date CMS issues notice that necessary applications or information have not been submitted.

(k) *Temporary treatment as provider-based and correction of errors.* (1) If a provider submits a complete request for a provider-based determination for a facility or organization that has not previously been found by CMS to have been inappropriately treated as provider-based under paragraph (j) of this section, the provider may bill and be paid for services of the facility or organization as provider-based from the date of the application until the date that CMS determines that the facility or organization does not meet the provider-based rules. If CMS subsequently determines that the requirements for provider-based status are not met, CMS will recover the difference between the amount of payments that actually was made since the date the complete request for a provider-based determination was submitted and the amount of payments that CMS estimates should have been made in the absence of compliance with the provider-based requirements. For purposes of this paragraph (k), a complete request is one that includes all information needed to permit CMS to make an advance determination under paragraph (b)(3) of this section.

(2) If CMS determines that a facility or organization that had previously been determined to be provider-based under paragraph (b) of this section no longer qualifies for provider-based status, and the failure to qualify for provider-based status resulted from a material change in the relationship between the provider and the facility or organization that the provider did report to CMS as required under paragraph (c) of this section, treatment of the facility or organization as provider-based ceases with the date that CMS determines that the facility or organization no longer qualifies for provider-based status.

(3) If CMS determines that a facility or organization that had previously been determined to be provider-based under paragraph (b) of this section no longer qualifies for provider-based status, and if the failure to qualify for provider-based status resulted from a material change in the relationship between the provider and the facility or organization that the provider did not report to CMS, as required under paragraph (c) of this section, CMS will take the actions with respect to notice to the provider, adjustment of payments, and continuation of payment described in paragraphs (j)(3), (j)(4), and (j)(5) of this section, and will recover past payments to the provider to the extent described in paragraph (j)(1)(ii) of this section.

* * * * *

(m) *FQHCs and "look alikes".* * * *

(n) *Effective date of provider-based status.* Provider-based status for a facility or organization is effective on the earliest date on which a request for provider-based status, as described in paragraph (b) of this section, has been made and all of the requirements of this part have been met.

3. Section 413.70 is amended by revising paragraph (b)(3)(i) to read as follows:

§ 413.70 Payment for services of a CAH.

* * * * *

(b) *Payment for outpatient services furnished by CAH.*

* * * * *

(3) *Election to be paid reasonable costs for facility services plus fee schedule for professional services.* (i) A CAH may elect to be paid for outpatient services in any cost reporting period under the method described in paragraphs (b)(3)(ii) and (b)(3)(iii) of this section. This election must be made in writing, made on an annual basis, and delivered to the intermediary servicing the CAH by a date determined by that intermediary, which may be no less than 14 days and no more than 60 days before the start of each affected cost reporting period. An election of this payment method, once made for a cost reporting period, remains in effect for all of that period and applies to all services furnished to outpatients during that period.

* * * * *

4. Section 413.86 is amended by—

A. Adding a definition of "Affiliation agreement" in alphabetical order under paragraph (b).

B. Revising the last sentence of the introductory text of paragraph (e)(5)(i).

C. Revising paragraph (e)(5)(i)(B).

D. Adding a new paragraph (e)(5)(i)(C).

E. Redesignating paragraphs (g)(5)(iv), (g)(5)(v), and (g)(5)(vi) as paragraphs (g)(5)(v), (g)(5)(vi), and (g)(5)(vii), respectively.

F. Republishing the introductory text of paragraph (g)(5) and adding a new paragraph (g)(5)(iv).

G. Redesignating paragraphs (g)(7) through (g)(12) as paragraphs (g)(8) through (g)(13), respectively.

H. Adding a new paragraph (g)(7).

I. Making the following cross-reference changes:

i. In redesignated paragraph (g)(5)(vii), "paragraph (g)(8)" is removed and "paragraph (g)(9)" is added in its place.

ii. In paragraph (g)(6), "paragraph (g)(12)" is removed and "paragraph (g)(13)" is added in its place.

iii. In redesignated paragraphs (g)(8)(iv) and (g)(8)(v), "paragraph (g)(7)" is removed and "paragraph (g)(8)" is added in its place.

iv. In redesignated paragraph (g)(9)(i), "paragraph (g)(8)" is removed and "paragraph (g)(9)" is added in its place.

v. In the introductory text of redesignated paragraph (g)(9)(iii), "paragraph (g)(8)(iii)(B)" is removed and "paragraph (g)(9)(iii)(B)" is added in its place; and "paragraph (g)(8)(iii)(A)" is removed and "paragraph (g)(9)(iii)(A)" is added in its place.

vi. In redesignated paragraph (g)(9)(iii)(A)(*2*), "paragraph (g)(8)(iii)(B)(*2*)" is removed and "paragraph (g)(9)(iii)(B)(*2*)" is added in its place.

vii. In the introductory text of redesignated paragraph (g)(12), "paragraph (g)(11)(i) through (g)(11)(vi)" is removed and "paragraph (g)(12)(i) through (g)(12)(vi)" is added in its place.

The additions and revisions read as follows:

§ 413.86 Direct graduate medical education payments.

* * * * *

(b) *Definitions.* * * *

Affiliation agreement means a written, signed, and dated agreement by responsible representatives of each respective hospital in an affiliated group, as defined in this section, that specifies—

(1) The term of the agreement (which, at a minimum is one year), beginning on July 1 of a year;

(2) Each participating hospital's direct and indirect FTE caps existing at the time of affiliation;

(3) The adjustment to each hospital's FTE caps in each year that the affiliation agreement is in effect, for both direct GME and IME, that reflects a positive adjustment to one hospital's direct and indirect FTE caps that is offset by a negative adjustment to the other hospital's (or hospitals') direct and indirect FTE caps of at least the same amount; and

(4) The names of the participating hospitals and their Medicare provider numbers.

* * * * *

(e) *Determining per resident amounts for the base period.* * * *

(5) *Exceptions*—(i) *Base period for certain hospitals.* * * * The per

resident amount is based on the lower of the amount specified in paragraph (e)(5)(i)(A) or in paragraph (e)(5)(i)(B) of this section, subject to the provisions of paragraph (e)(5)(i)(C) of this section.

* * * * *

(B) Except as specified in paragraph (e)(5)(i)(C) of this section—

(*1*) For base periods that begin before October 1, 2002, the updated weighted mean value of per resident amounts of all hospitals located in the same geographic wage area, as that term is used in the prospective payment system under part 412 of this chapter.

(*2*) For base periods beginning on or after October 1, 2002, the weighted mean value of per resident amounts of all hospitals located in the same geographic wage area is calculated using all per resident amounts (including primary care and obstetrics and gynecology and nonprimary care) and FTE resident counts from the most recently settled cost reports of those teaching hospitals.

(C) If, under paragraph (e)(5)(i)(B)(*1*) or (e)(5)(i)(B)(*2*) of this section, there are fewer than three existing teaching hospitals with per resident amounts that can be used to calculate the weighted mean value per resident amount, for base periods beginning on or after October 1, 1997, the per resident amount equals the updated weighted mean value of per resident amounts of all hospitals located in the same census region as that term is used in § 412.62(f)(1)(i) of this chapter.

* * * * *

(g) *Determining the weighted number of FTE residents.* * * *

(5) For purposes of determining direct graduate medical education payment—

* * * * *

(iv) Hospitals that are part of the same affiliated group (as described under paragraph (b) of this section) may elect to apply the limit on an aggregate basis as described under paragraph (g)(7) of this section.

* * * * *

(7) A hospital may receive a temporary adjustment to its FTE cap, which is subject to the averaging rules under paragraph (g)(5)(iii) of this section, to reflect residents added or subtracted because the hospital is participating in an affiliated group (as defined under paragraph (b) of this section). Under this provision—

(i) Each hospital in the affiliated group must submit the affiliation agreement, as defined under paragraph (b) of this section, to the CMS fiscal intermediary servicing the hospital and send a copy to CMS's Central Office no later than July 1 of the residency program year during which the affiliation agreement will be in effect.

(ii) There must be a rotation of a resident(s) among the hospitals participating in the affiliated group during the term of the affiliation agreement such that more than one of the hospitals count the proportionate amount of the time spent by the resident(s) in their FTE resident counts. No resident may be counted in the aggregate as more than one FTE.

(iii) The net effect of the adjustments (positive or negative) on the affiliated hospitals' aggregate FTE cap for each affiliation agreement must not exceed zero.

(iv) If the affiliation agreement terminates for any reason, the FTE cap of each hospital in the affiliated group will revert to the individual hospital's pre-affiliation FTE cap that is determined under the provisions of paragraph (g)(4) of this section.

* * * * *

PART 482—CONDITIONS FOR PARTICIPATION FOR HOSPITALS

D. Part 482 is amended as follows:

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1320 and 1395hh).

2. Section 482.12 is amended by adding a new paragraph (f)(3), to read as follows:

§ 482.12 Condition of participation: Governing body.

* * * * *

(f) *Standard: Emergency services.*

* * *

(3) If emergency services are provided at the hospital but are not provided at one or more off-campus departments of the hospital, the governing body of the hospital must assure that the medical staff has written policies and procedures in effect with respect to the off-campus department(s) for appraisal of emergencies and referral when appropriate.

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

E. Part 485 is amended as follows:

1. The authority citation for Part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Act (42 U.S.C. 1302 and 1396hh).

2. In § 485.645, the introductory text of paragraph (d) is republished and paragraph (d)(6) is revised, to read as follows.

§ 485.645 Special requirements for CAH providers of long-term care services ("swing-beds").

* * * * *

(d) *SNF services.* The CAH is substantially in compliance with following SNF requirements contained in subpart B of part 483 of this chapter.

* * * * *

(6) Comprehensive assessment, comprehensive care plan, and discharge planning (§ 483.20(b), (k), and (l) of this chapter, except that the CAH is not required to use the resident assessment instrument (RAI) specified by the State that is required under § 483.20(b), or to comply with the requirements for frequency, scope, and number of assessments prescribed in § 413.343(b) of this chapter).

* * * * *

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

F. Part 489 is amended as follows:

1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Act (42 U.S.C. 1302 and 1395hh).

2. Section 489.24 is amended by—

A. Revising paragraph (a).

B. Republishing the introductory text of paragraph (b) and revising the definitions of "Comes to the emergency department" and "Hospital with an emergency department".

C. Adding definitions of "Dedicated emergency department", "Hospital property", and "Patient" in alphabetical order under paragraph (b).

D. Under the definition of "Emergency medical condition" under paragraph (b), redesignating paragraphs (i), (i)(A), (i)(B), (i)(C), (ii), (ii)(A), and (ii)(B) as paragraphs (1), (1)(i), (1)(ii), (1)(iii), (2), (2)(i), and (2)(ii), respectively.

E. Under the definition of "Participating hospital" under paragraph (b), redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively.

F. Under the definitions of "Stabilized" and "To stabilize" under paragraph (b), "paragraph (i)" is removed and "paragraph (1)" is added in its place; and "paragraph (ii)" is removed and "paragraph (2)" is added in its place.

G. Removing paragraph (i); and redesignating paragraph (c) through (h) as paragraphs (d) through (i), respectively.

H. Adding a new paragraph (c).

I. Revising newly redesignated paragraph (d).

J. Adding a new paragraph (j).

K. Making the following cross-reference changes:

i. In redesignated paragraph (e)(1)(i), "paragraph (d)(2)" is removed and "paragraph (e)(2)" is added in its place.

ii. In redesignated paragraph (e)(1)(ii)(C), "paragraph (d)(1)(ii)(B)" is removed and "paragraph (e)(1)(ii)(B)" is added in its place.

iii. In redesignated paragraph (e)(2)(iii), "paragraph (d)(1)(ii)" is removed and "paragraph (e)(1)(ii)" is added in its place.

iv. In redesignated paragraph (e)(2)(iii), "paragraph (f)" is removed and "paragraph (g)" is added in its place.

v. In redesignated paragraph (e)(3), "paragraph (d)(1)(ii)(C)" is removed and "paragraph (e)(1)(ii)(C) is added in its place.

vi. In redesignated paragraph (g), "paragraph (a) through (e)" is removed and "paragraphs (a) through (f)" is added in its place.

vii. In redesignated paragraph (h)(1), "paragraph (g)(3)" is removed and "paragraph (h)(3)" is added in its place; and "paragraph (g)(2)(iv) and (v)" is removed and "paragraphs (h)(2)(iv) and (v)" is added in its place.

viii. In redesignated paragraph (h)(2) introductory text, "paragraph (g)(1)" is removed and "paragraph (h)(1)" is added in its place.

ix. In redesignated paragraph (h)(2)(iii)(B), "paragraph (g)(2)(iii)(A)" is removed and "paragraph (h)(2)(iii)(A)" is added in its place.

x. In redesignated paragraph (h)(2)(vi), "paragraph (g)(2)(v)" is removed and "paragraph (h)(2)(v)" is added in its place.

xi. In redesignated paragraph (h)(4), "paragraph (g)" is removed and "paragraph (h)" is added in its place; and "paragraph (g)(2)(v)" is removed and "paragraph (h)(2)(v)" is added in its place.

The additions and revisions read as follows:

§ 489.24 Special responsibilities of Medicare hospitals in emergency cases.

(a) *Application.* In the case of a hospital that has an emergency department, if an individual (whether or not eligible for Medicare benefits and regardless of ability to pay) "comes to the emergency department", as defined in paragraph (b) of this section, the hospital must—

(1) Provide an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists. The examination must be conducted by an individual(s) determined qualified by hospital bylaws or rules and regulations and who meet the requirements of § 482.55 of this chapter concerning emergency services personnel and direction; and

(2) If an emergency medical condition is determined to exist, provide any necessary stabilizing treatment, as defined in paragraph (d) of this section, or an appropriate transfer as defined in paragraph (e) of this section.

(b) *Definitions.* As used in this subpart—

* * * * *

Comes to the emergency department means, with respect to an individual who is not a patient, the individual—

(1) Has presented at a hospital's dedicated emergency department, as defined in this section, and requests examination or treatment for a medical condition, or has such a request made on his or her behalf. In the absence of such a request by or on behalf of the individual, a request on behalf of the individual will be considered to exist if a prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs examination or treatment for a medical condition;

(2) Has presented on hospital property, as defined in this section, other than the dedicated emergency department, and requests examination or treatment for what may be an emergency medical condition, or has such a request made on his or her behalf (except for certain outpatients as specified in paragraph (d)(3) of this section). In the absence of such a request by or on behalf of the individual, a request on behalf of the individual will be considered to exist if a prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs emergency examination or treatment;

(3) Is in an ambulance owned and operated by the hospital for presentation for examination and treatment for a medical condition at a hospital's dedicated emergency department, even if the ambulance is not on hospital grounds. This provision does not apply if the ambulance is operating under communitywide EMS protocols that direct it to transport the individual to a hospital other than the hospital that owns the ambulance; for example, to the nearest hospital. In this latter case, the individual is considered to have come to the emergency department of the hospital to which the individual is transported, at the time the individual is brought onto hospital property; or

(4) Is in a nonhospital-owned ambulance on hospital property for presentation for examination and treatment for a medical condition at a hospital's dedicated emergency department. An individual in a nonhospital-owned ambulance off hospital property is not considered to have come to the hospital's emergency department, even if a member of the ambulance staff contacts the hospital by telephone or telemetry communications and informs the hospital that they want to transport the individual to the hospital for examination and treatment. In the latter circumstance, the hospital may deny access if it is in "diversionary status," that is, it does not have the staff or facilities to accept any additional emergency patients. If, however, the ambulance staff disregards the hospital's instructions and transports the individual onto hospital property, the individual is considered to have come to the emergency department.

Dedicated emergency department means a specially equipped and staffed area of the hospital that is used a significant portion of the time for the initial evaluation and treatment of outpatients for emergency medical conditions, as defined in this section, and that is located—

(1) On the main hospital campus; or

(2) Off the main hospital campus and is treated by Medicare under § 413.65(b) of this chapter as a department of the hospital.

* * * * *

Hospital property means the entire main hospital campus as defined in § 413.65(b) of this chapter, including the parking lot, sidewalk, and driveway, but excluding other areas or structures that are located within 250 yards of the hospital's main building but are not part of the hospital, such as physician offices, rural health centers, skilled nursing facilities, or other entities that participate separately under Medicare, or restaurants, shops, or other nonmedical facilities.

Hospital with an emergency department means a hospital that offers services for emergency medical conditions (as defined in this paragraph (b)) within its capability to do so, including a hospital that offers these services at locations other than its main hospital campus.

* * * * *

Patient, for purposes of this section, means an individual who is either an outpatient as defined in § 410.2 of this chapter, or is receiving inpatient hospital services as defined in § 409.10(b) of this chapter.

* * * * *

(c) *Use of dedicated emergency department for nonemergency services.* If an individual comes to a hospital's dedicated emergency department and a request is made on his or her behalf for examination or treatment for a medical condition, but the nature of the request makes it clear that the medical condition is not of an emergency nature, the hospital is required only to perform such screening as would be appropriate for any individual presenting in that manner, to determine that the individual does not have an emergency medical condition.

(d) *Necessary stabilizing treatment for emergency medical conditions.*—(1) *General.* If any individual (whether or not eligible for Medicare benefits) comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either—

(i) Within the capabilities of the staff and facilities available at the hospital, for further medical examination and treatment as required to stabilize the medical condition; or

(ii) For transfer of the individual to another medical facility in accordance with paragraph (e) of this section.

(2) *Application to inpatients—admitted emergency patients.*

(i) When an individual has been screened under paragraph (a) of this section and found to have an emergency medical condition, and the individual has not been stabilized as defined in paragraph (b) of this section, the provisions of this section would apply, even if the hospital admits the patient as an inpatient. Admitting an individual whose emergency medical condition has not been stabilized does not relieve the hospital of further responsibility to the individual under this section.

(ii) If a hospital admits an individual with an unstable emergency medical condition for stabilizing treatment, as an inpatient, stabilizes that individual's emergency medical condition, and this period of stability is documented by relevant clinical data in the individual's medical record, the hospital has satisfied its special responsibilities under this section with respect to that individual. If the patient is stable for a transfer of the type usually undertaken with respect to patients having the same medical conditions, the hospital's special responsibilities under this section are satisfied, even if no transfer occurs and the individual remains at the hospital as an inpatient for followup care. If, after stabilization, the individual who was admitted as an inpatient again has an apparent decline of his or her medical condition, either as a result of the injury or illness that created the emergency for which he or she initially came to the dedicated emergency department or as a result of another injury or illness, the hospital must comply with the conditions of participation for hospitals under part 482 of this chapter but has no further responsibility under this section with respect to the individual.

(iii) A hospital has no responsibility under this section with respect to an inpatient who was admitted for elective (nonemergency) diagnosis or treatment. If such an inpatient has an abrupt deterioration of his or her medical condition after admission, the hospital must comply with the conditions of participation for hospitals under part 482 of this chapter and is not required to comply with the special responsibilities of this section.

(3) *Refusal to consent to treatment.* A hospital meets the requirements of paragraph (d)(1)(i) of this section with respect to an individual if the hospital offers the individual the further medical examination and treatment described in that paragraph and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of the examination and treatment, but the individual (or a person acting on the individual's behalf) refuses to consent to the examination and treatment. The medical record must contain a description of the examination, treatment, or both if applicable, that was refused by or on behalf of the individual. The hospital must take all reasonable steps to secure the individual's written informed refusal (or that of the person acting on his or her behalf). The written document should indicate that the person has been informed of the risks and benefits of the examination or treatment, or both.

(4) *Delay in examination or treatment.* (i) A participating hospital may not delay providing an appropriate medical screening examination required under paragraph (a) of this section or further medical examination and treatment required under paragraphs (d)(1) and (d)(2) of this section in order to inquire about the individual's method of payment or insurance status.

(ii) A participating hospital may not seek, or direct a patient to seek, authorization from the individual's insurance company for screening or stabilization services to an individual until after the hospital has provided the appropriate medical screening examination required under paragraph (a) of this section, and initiated any further medical examination and treatment that may be required to stabilize the emergency medical condition under paragraphs (d)(1) and (d)(2) of this section.

(iii) An emergency physician is not precluded from contacting the patient's physician at any time to seek advice regarding the patient's medical history and needs that may be relevant to the medical treatment and screening of the patient, as long as this consultation does not inappropriately delay services required under paragraph (a) or paragraphs (d)(1) and (d)(2) of this section.

(5) *Refusal to consent to transfer.* A hospital meets the requirements of paragraph (d)(1)(ii) of this section with respect to an individual if the hospital offers to transfer the individual to another medical facility in accordance with paragraph (e) of this section and informs the individual (or a person acting on his or her behalf) of the risks and benefits to the individual of the transfer, but the individual (or a person acting on the individual's behalf) refuses to consent to the transfer. The hospital must take all reasonable steps to secure the individual's written informed refusal (or that of a person acting on his or her behalf). The written document must indicate the person has been informed of the risks and benefits of the transfer and state the reasons for the individual's refusal. The medical record must contain a description of the proposed transfer that was refused by or on behalf of the individual.

(6) *Hospital responsibility for communication with Medicare+Choice organizations after stabilization of an emergency medical condition.* When an enrollee of a Medicare+Choice organization who is treated for an emergency medical condition is stabilized and needs further hospital care, the hospital must promptly contact the Medicare+Choice organization to obtain preapproval of the further hospital care, consistent with the provisions of § 422.113 of this chapter.

* * * * *

(j) *Availability of on-call physicians.* Each hospital must maintain an on-call list of physicians on its medical staff in a manner that best meets the needs of the hospital's patients. Physicians, including specialists and subspecialists, are not required to be on call at all times. The hospital must have written policies and procedures in place to respond to situations in which a particular specialty is not available or the on-call physician cannot respond because of circumstances beyond the physician's control.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: April 24, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: April 26, 2002.

Tommy G. Thompson,

Secretary.

[**Editorial Note:** The following Addendum and appendixes will not appear in the Code of Federal Regulations.]

Addendum—Proposed Schedule of Standardized Amounts Effective with Discharges Occurring On or After October 1, 2002 and Update Factors and Rate-of-Increase Percentages Effective With Cost Reporting Periods Beginning On or After October 1, 2002

I. Summary and Background

In this Addendum, we are setting forth the proposed amounts and factors for determining prospective payment rates for Medicare hospital inpatient operating costs and Medicare hospital inpatient capital-related costs. We are also setting forth proposed rate-of-increase percentages for updating the target amounts for hospitals and hospital units excluded from the acute care hospital inpatient prospective payment system.

For discharges occurring on or after October 1, 2002, except for SCHs, MDHs, and hospitals located in Puerto Rico, each hospital's payment per discharge under the acute care hospital inpatient prospective payment system will be based on 100 percent of the Federal national rate.

SCHs are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal national rate; the updated hospital-specific rate based on FY 1982 costs per discharge; the updated hospital-specific rate based on FY 1987 costs per discharge; or 75 percent of the updated hospital-specific rate based on FY 1996 costs per discharge, plus the greater of 25 percent of the updated FY 1982 or FY 1987 hospital-specific rate or 50 percent of the Federal DRG payment rate. Section 213 of Public Law 106–554 amended section 1886(b)(3) of the Act to allow all SCHs to rebase their hospital-specific rate based on their FY 1996 costs per discharge.

Under section 1886(d)(5)(G) of the Act, MDHs are paid based on the Federal national rate or, if higher, the Federal national rate plus 50 percent of the difference between the Federal national rate and the updated hospital-specific rate based on FY 1982 or FY 1987 costs per discharge, whichever is higher.

For hospitals in Puerto Rico, the payment per discharge is based on the sum of 50 percent of a Puerto Rico rate and 50 percent of a Federal national rate. (*See* section II.D.3. of this Addendum for a complete description.)

As discussed below in section II. of this Addendum, we are proposing to make changes in the determination of the prospective payment rates for Medicare inpatient operating costs for FY 2003. The changes, to be applied prospectively effective with discharges occurring on or after October 1, 2002, would affect the calculation of the Federal rates. In section III. of this Addendum, we discuss our proposed changes for determining the prospective payment rates for Medicare inpatient capital-related costs for FY 2003. Section IV. of this Addendum sets forth our proposed changes for determining the rate-of-increase limits for hospitals excluded from the prospective payment system for FY 2003. The tables to which we refer in the preamble to this final rule are presented at the end of this Addendum in section V.

II. Proposed Changes to Prospective Payment Rates for Hospital Inpatient Operating Costs for FY 2003

The basic methodology for determining prospective payment rates for hospital inpatient operating costs is set forth at § 412.63. The basic methodology for determining the prospective payment rates for hospital inpatient operating costs for hospitals located in Puerto Rico is set forth at §§ 412.210 and 412.212. Below, we discuss the factors used for determining the prospective payment rates.

In summary, the proposed standardized amounts set forth in Tables 1A and 1C of section V. of this Addendum reflect—

- Updates of 2.75 percent for all areas (that is, the market basket percentage increase of 3.3 percent minus 0.55 percentage points);
- An adjustment to ensure the proposed DRG recalibration and wage index update and changes are budget neutral, as provided for under sections 1886(d)(4)(C)(iii) and (d)(3)(E) of the Act, by applying new budget neutrality adjustment factors to the large urban and other standardized amounts;
- An adjustment to ensure the effects of geographic reclassification are budget neutral, as provided for in section 1886(d)(8)(D) of the Act, by removing the FY 2002 budget neutrality factor and applying a revised factor;
- An adjustment to apply the new outlier offset by removing the FY 2002 outlier offsets and applying a new offset; and
- An adjustment in the Puerto Rico standardized amounts to reflect the application of a Puerto Rico-specific wage index.

A. Calculation of Adjusted Standardized Amounts

1. Standardization of Base-Year Costs or Target Amounts

Section 1886(d)(2)(A) of the Act required the establishment of base-year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the September 1, 1983 interim final rule (48 FR 39763) contained a detailed explanation of how base-year cost data were established in the initial development of standardized amounts for the acute care hospital inpatient prospective payment system.

Section 1886(d)(9)(B)(i) of the Act required us to determine the Medicare target amounts for each hospital located in Puerto Rico for its cost reporting period beginning in FY 1987. The September 1, 1987 final rule (52 FR 33043, 33066) contains a detailed explanation of how the target amounts were determined and how they are used in computing the Puerto Rico rates.

The standardized amounts are based on per discharge averages of adjusted hospital costs from a base period or, for Puerto Rico, adjusted target amounts from a base period, updated and otherwise adjusted in accordance with the provisions of section 1886(d) of the Act. Sections 1886(d)(2)(B) and (d)(2)(C) of the Act require us to update base-year per discharge costs for FY 1984 and then standardize the cost data in order to remove the effects of certain sources of cost variations among hospitals. These effects include case-mix, differences in area wage levels, cost-of-living adjustments for Alaska and Hawaii, indirect medical education costs, and costs to hospitals serving a disproportionate share of low-income patients.

Under sections 1886(d)(2)(H) and (d)(3)(E) of the Act, in making payments under the acute care hospital inpatient prospective payment system, the Secretary estimates from time to time the proportion of costs that are wages and wage-related costs. Since October 1, 1997, when the market basket was last revised, we have considered 71.1 percent of costs to be labor-related for purposes of the acute care hospital inpatient prospective payment system. As discussed in section IV. of the preamble to this proposed rule, we are proposing to revise the labor share of the standardized amount (the proportion adjusted by the wage index) to be 72.5 percent. The average labor share in Puerto Rico is 71.3 percent. We are proposing to revise the discharge-weighted national standardized amount for Puerto Rico to reflect the proportion of discharges in large urban and other areas from the FY 2001 MedPAR file.

2. Computing Large Urban and Other Area Averages

Sections 1886(d)(2)(D) and (d)(3) of the Act require the Secretary to compute two average standardized amounts for discharges occurring in a fiscal year: one for hospitals located in large urban areas and one for hospitals located in other areas. In addition, under sections 1886(d)(9)(B)(iii) and (d)(9)(C)(i) of the Act, the average standardized amount per discharge must be determined for hospitals located in large urban and other areas in Puerto Rico. Hospitals in Puerto Rico are paid a blend of 50 percent of the applicable Puerto Rico standardized amount and 50 percent of a national standardized payment amount.

Section 1886(d)(2)(D) of the Act defines "urban area" as those areas within a Metropolitan Statistical Area (MSA). A "large urban area" is defined as an urban area with a population of more than 1 million. In addition, section 4009(i) of Public Law 100–203 provides that a New England County Metropolitan Area (NECMA) with a population of more than 970,000 is classified as a large urban area. As required by section 1886(d)(2)(D) of the Act, population size is determined by the Secretary based on the latest population data published by the Bureau of the Census. Urban areas that do not meet the definition of a "large urban area" are referred to as "other urban areas." Areas

that are not included in MSAs are considered "rural areas" under section 1886(d)(2)(D) of the Act. Payment for discharges from hospitals located in large urban areas will be based on the large urban standardized amount. Payment for discharges from hospitals located in other urban and rural areas will be based on the other standardized amount.

Based on the latest available population estimates published by the Bureau of the Census, 63 areas meet the criteria to be defined as large urban areas for FY 2003. These areas are identified in Table 4A.

3. Updating the Average Standardized Amounts

Under section 1886(d)(3)(A) of the Act, we update the average standardized amounts each year. In accordance with section 1886(d)(3)(A)(iv) of the Act, we are proposing to update the large urban areas' and the other areas' average standardized amounts for FY 2003 using the applicable percentage increases specified in section 1886(b)(3)(B)(i) of the Act. Section 1886(b)(3)(B)(i)(XVIII) of the Act specifies that the update factor for the standardized amounts for FY 2003 is equal to the market basket percentage increase minus 0.55 percentage points for hospitals 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 forecast of the hospital market basket increase for FY 2003 is 3.3 percent. Thus, for FY 2003, the update to the average standardized amounts equals 2.75 percent for hospitals in all areas.

As in the past, we are adjusting the FY 2002 standardized amounts to remove the effects of the FY 2002 geographic reclassifications and outlier payments before applying the FY 2003 updates. That is, we are increasing the standardized amounts to restore the reductions that were made for the effects of geographic reclassification and outliers. We then apply the new offsets to the standardized amounts for outliers and geographic reclassifications for FY 2003.

Although the update factors for FY 2003 are set by law, we are required by section 1886(e)(3) of the Act to report to the Congress our initial recommendation of update factors for FY 2003 for both prospective payment hospitals and hospitals excluded from the prospective payment system. For general information purposes, we have included the report to Congress as Appendix B to this proposed rule. Our proposed recommendation on the update factors (which is required by sections 1886(e)(4)(A) and (e)(5)(A) of the Act) is set forth as Appendix C to this proposed rule.

4. Other Adjustments to the Average Standardized Amounts

a. Recalibration of DRG Weights and Updated Wage Index—Budget Neutrality Adjustment

Section 1886(d)(4)(C)(iii) of the Act specifies that, beginning in FY 1991, the annual DRG reclassification and recalibration of the relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. As discussed in section II. of the preamble, we normalized the recalibrated DRG weights by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight prior to recalibration. However, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals because payments to hospitals are affected by factors other than average case weight. Therefore, as we have done in past years, we are proposing to make a budget neutrality adjustment to ensure that the requirement of section 1886(d)(4)(C)(iii) of the Act is met.

Section 1886(d)(3)(E) of the Act requires us to update the hospital wage index on an annual basis beginning October 1, 1993. This provision also requires us to make any updates or adjustments to the wage index in a manner that ensures that aggregate payments to hospitals are not affected by the change in the wage index.

We note, however, that section 4410 of Public Law 105–33 provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is not located in a rural area may not be less than the area wage index applicable to hospitals located in rural areas in that State. This provision is required by section 4410(b) of Public Law 105–33 to be budget neutral.

To comply with the requirement of section 1886(d)(4)(C)(iii) of the Act that DRG reclassification and recalibration of the relative weights be budget neutral, and the requirement in section 1886(d)(3)(E) of the Act that the updated wage index be budget neutral, we used FY 2001 discharge data to simulate payments and compared aggregate payments using the FY 2002 relative weights and wage index to aggregate payments using the proposed FY 2003 relative weights and wage index. The same methodology was used for the FY 2002 budget neutrality adjustment. Based on this comparison, we computed a proposed budget neutrality adjustment factor equal to 1.001026. We also adjust the Puerto Rico-specific standardized amounts for the effect of DRG reclassification and recalibration. We computed a budget neutrality adjustment factor for Puerto Rico-specific standardized amounts equal to 1.002689. These budget neutrality adjustment factors are applied to the standardized amounts without removing the effects of the FY 2002 budget neutrality adjustments. We do not remove the prior budget neutrality adjustment because estimated aggregate payments after the changes in the DRG relative weights and wage index should equal estimated aggregate payments prior to the changes. If we removed the prior year adjustment, we would not satisfy this condition.

In addition, we are proposing to apply these same adjustment factors to the hospital-specific rates that are effective for cost reporting periods beginning on or after October 1, 2002. (See the discussion in the September 4, 1990 final rule (55 FR 36073).)

b. Reclassified Hospitals—Budget Neutrality Adjustment

Section 1886(d)(8)(B) of the Act provides that, effective with discharges occurring on or after October 1, 1988, certain rural hospitals are deemed urban. In addition, section 1886(d)(10) of the Act provides for the reclassification of hospitals based on determinations by the Medicare Geographic Classification Review Board (MGCRB). Under section 1886(d)(10) of the Act, a hospital may be reclassified for purposes of the standardized amount or the wage index, or both.

Under section 1886(d)(8)(D) of the Act, the Secretary is required to adjust the standardized amounts so as to ensure that aggregate payments under the acute care hospital inpatient prospective payment system after implementation of the provisions of sections 1886(d)(8)(B) and (C) and 1886(d)(10) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. To calculate this budget neutrality factor, we used FY 2001 discharge data to simulate payments, and compared total prospective payments (including IME and DSH payments) prior to any reclassifications to total prospective payments after reclassifications. Based on these simulations, we are applying a proposed adjustment factor of 0.990536 to ensure that the effects of reclassification are budget neutral.

The adjustment factor is applied to the standardized amounts after removing the effects of the FY 2002 budget neutrality adjustment factor. We note that the proposed FY 2003 adjustment reflects wage index and standardized amount reclassifications approved by the MGCRB or the Administrator as of February 28, 2002, and the effects of section 304 of Public Law 106–554 to extend wage index reclassifications for 3 years. The effects of any additional reclassification changes that occur as a result of appeals and reviews of the MGCRB decisions for FY 2003 or from a hospital's request for the withdrawal of a reclassification request for FY 2003 will be reflected in the final budget neutrality adjustment required under section 1886(d)(8)(D) of the Act and published in the final rule for FY 2003.

c. Outliers

Section 1886(d)(5)(A) of the Act provides for payments in addition to the basic prospective payments for "outlier" cases, cases involving extraordinarily high costs (cost outliers). To qualify for outlier payments, a case must have costs above a threshold amount. To determine whether the costs of a case exceed the threshold, a hospital's cost-to-charge ratio is applied to the total covered charges for the case to convert the charges to costs. Payments for eligible cases are then made based on a marginal cost factor, which is a percentage of the costs above the threshold.

Under section 1886(d)(5)(A)(iv) of the Act, outlier payments for any year must be projected to be not less than 5 percent nor more than 6 percent of total operating DRG payments plus outlier payments. Section 1886(d)(3)(B) of the Act requires the Secretary to reduce both the large urban and other area national standardized amounts by the same factor to account for the estimated proportion of total DRG payments made to outlier cases. Similarly, section

1886(d)(9)(B)(iv) of the Act requires the Secretary to reduce the large urban and other standardized amounts applicable to hospitals in Puerto Rico to account for the estimated proportion of total DRG payments made to outlier cases.

i. FY 2003 outlier thresholds. For FY 2002, the threshold was equal to the prospective payment rate for the DRG plus any IME and DSH payments plus $21,025. The marginal cost factor for cost outliers (the percent of costs paid after costs for the case exceed the threshold) was 80 percent.

For FY 2003, we are proposing to establish a fixed loss cost outlier threshold equal to the prospective payment rate for the DRG plus any IME and DSH payments, and any add-on payments for new technology, plus $33,450. This single threshold would be applicable to qualify for both operating and capital outlier payments. We are proposing to maintain the marginal cost factor for cost outliers at 80 percent.

To calculate the proposed FY 2003 outlier thresholds, we simulated payments by applying proposed FY 2003 rates and policies to the December 2001 update of the FY 2001 MedPAR file and the December 2001 update of the Provider-Specific File. Therefore, it is necessary to inflate the charges on the MedPAR claims by 2 years.

Previously, inflation factors have been calculated by measuring the percent change in costs using the two most recent available cost report files. For example, the FY 2002 threshold was determined using the rate of cost increase measured using costs from hospitals' FY 1998 and FY 1999 cost reports. However, at the time of this proposed rule, the FY 2000 cost reports are not available to produce an updated cost inflation factor due to processing delays associated with implementing the hospital outpatient prospective payment system.

Rather than use the rate of cost increase from hospitals' FY 1998 and FY 1999 cost reports to project the rate of increase from FY 2001 to FY 2003, we are proposing to use a 3-year moving average of the rate of change in prior years to estimate the annual rates of increase from FY 2001 to FY 2003. The calculation is shown in the table below.

For example, the rate of change in cost per case from 1998 to 1999 was 1.0242 percent. This rate of change is then subtracted by the rate of change from 1997 to 1998 (1.0237) to calculate a difference in change of 0.005. A 3-year average of the annual rates of change was then computed based on the difference in the percent changes from the 3 most recent prior years. The difference in change for 1997 to 1998 is then averaged with the differences for 1996 to 1997, and for 1995 to 1996, to calculate a 3-year average of 0.0180. To project percent changes in costs for FY 2000 through FY 2003, the average of the differences in the percent changes for the 3 most recent years (0.0180) was added to the percent change in cost per case for the previous year (1.0242) to estimate the percent change in costs between fiscal years. This proposed methodology resulted in an estimated change of 1.066 (6.6 percent increase) for FY 2001 to FY 2002 and 1.079 (7.9 percent increase) for FY 2002 to FY 2003.

Cost reports begin in FY	Cost/case	Rate of change in cost per case	Difference in change	3-year moving average of differences in change
1995	5818.50	.....	.....	.....
1996	5644.52	0.9701	.....	.....
1997	5666.03	1.0038	0.0337	.....
1998	5800.34	1.0237	0.0199	.....
1999	5940.85	1.0242	0.0005	.....
2000	.....	1.0423	0.0180	0.0180
2001	.....	1.0551	0.0128	0.0128
2002	.....	1.0655	0.0105	0.0105
2003	.....	1.0793	0.0138	0.0138

Based on this proposed methodology, we are proposing a 2-year cost inflation factor of 15.0 percent to inflate FY 2001 charges to FY 2003, determined by multiplying the annual projected inflation factors for FYs 2002 and 2003 of 1.0655 and 1.0793.

Using FY 2001 cases now available, our analysis indicates that this 3-year moving average methodology would have resulted in FY 2002 outlier payments very close to 5.1 percent of total operating DRG payments and outlier payments (the current projection of FY 2002 outlier payments is 6.8 percent of total DRG and outlier payments—see discussion below). We intend to update our analysis of FY 2002 outlier payments using actual FY 2002 claims available through March 2002 prior to publishing the final rule by August 1.

We want to emphasize that we are making this proposal due to the unavailability of the FY 2000 cost reports. If the proposed methodology is ultimately adopted in the final rule for FY 2003, this would not necessarily mean that we would apply the same methodology in future fiscal years when updated cost report information becomes available.

ii. Other changes concerning outliers. In accordance with section 1886(d)(5)(A)(iv) of the Act, we calculated outlier thresholds so that outlier payments are projected to equal 5.1 percent of total operating DRG payments plus outlier payments. In accordance with section 1886(d)(3)(B), we reduced the proposed FY 2003 standardized amounts by the same percentage to account for the projected proportion of payments paid to outliers.

As stated in the September 1, 1993 final rule (58 FR 46348), we establish outlier thresholds that are applicable to both hospital inpatient operating costs and hospital inpatient capital-related costs. When we modeled the combined operating and capital outlier payments, we found that using a common set of thresholds resulted in a higher percentage of outlier payments for capital-related costs than for operating costs. We project that the proposed thresholds for FY 2003 would result in outlier payments equal to 5.1 percent of operating DRG payments and 5.4 percent of capital payments based on the Federal rate.

The proposed outlier adjustment factors to be applied to the standardized amounts for FY 2003 are as follows:

	Operating standardized amounts	Capital Federal rate
National	0.949004	0.945957
Puerto Rico	0.982910	0.980994

We apply the outlier adjustment factors after removing the effects of the FY 2002 outlier adjustment factors on the standardized amounts.

To determine whether a case qualifies for outlier payments, we apply hospital-specific cost-to-charge ratios to the total covered charges for the case. Operating and capital costs for the case are calculated separately by applying separate operating and capital cost-to-charge ratios, then these costs are combined to compare with the fixed-loss outlier threshold.

For those hospitals for which the fiscal intermediary computes operating cost-to-charge ratios lower than 0.200 or greater than 1.262, or capital cost-to-charge ratios lower than 0.012 or greater than 0.167, statewide average ratios would be used to calculate costs to determine whether a hospital qualifies for outlier payments.[1] Table 8A in section V. of this Addendum contains the proposed statewide average operating cost-to-charge ratios for urban hospitals and for rural hospitals for which the fiscal intermediary is unable to compute a hospital-specific cost-to-charge ratio within the above range. These statewide average ratios would replace the

[1] 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.

ratios published in the August 1, 2001 final rule (66 FR 40083). Table 8B contains comparable statewide average capital cost-to-charge ratios. We note that the cost-to-charge ratios in Tables 8A and 8B would be used during FY 2003 when hospital-specific cost-to-charge ratios based on the latest settled cost report are either not available or are outside the three standard deviations range.

iii. FY 2001 and FY 2002 outlier payments. In the August 1, 2001 final rule (66 FR 39942), we stated that, based on available data, we estimated that actual FY 2001 outlier payments would be approximately 6.2 percent of actual total DRG payments. This was computed based on simulations using the March 2001 update of the Provider-Specific File and the March 2001 update of the FY 2000 MedPAR file (discharge data for FY 2000 bills). That is, the estimate of actual outlier payments did not reflect actual FY 2001 bills but instead reflected the application of FY 2001 rates and policies to available FY 2000 bills.

Our current estimate, using available FY 2001 bills, is that actual outlier payments for FY 2001 were approximately 7.6 percent of actual total DRG payments. Thus, the data indicate that, for FY 2001, the percentage of actual outlier payments relative to actual total payments is higher than we projected before FY 2001 (and thus exceeds the percentage by which we reduced the standardized amounts for FY 2001). Nevertheless, consistent with the policy and statutory interpretation we have maintained since the inception of the acute care hospital inpatient prospective payment system, we do not plan to recoup money and make retroactive adjustments to outlier payments for FY 2001. We note that the MedPAR file for FY 2001 discharges continues to be updated, and we will update our estimate of actual FY 2001 outlier payments as a percentage of total payments in the final rule.

We currently estimate that actual outlier payments for FY 2002 will be approximately 6.8 percent of actual total DRG payments, 1.7 percentage points higher than the 5.1 percent we projected in setting outlier policies for FY 2002. This estimate is based on simulations using the December 2001 update of the Provider-Specific File and the December 2001 update of the FY 2001 MedPAR file (discharge data for FY 2001 bills). We used these data to calculate an estimate of the actual outlier percentage for FY 2002 by applying FY 2002 rates and policies to available FY 2001 bills.

5. FY 2003 Standardized Amounts

The adjusted standardized amounts are divided into labor and nonlabor portions. Table 1A contains the two national standardized amounts that we are proposing to be applicable to all hospitals, except hospitals in Puerto Rico. As described in section II.A.1. of this Addendum, we are proposing to revise the labor share of the national standardized amount from 71.1 percent to 72.5 percent.

Under section 1886(d)(9)(A)(ii) of the Act, the Federal portion of the Puerto Rico payment rate is based on the discharge-weighted average of the national large urban standardized amount and the national other standardized amount (as set forth in Table 1A). The labor and nonlabor portions of the national average standardized amounts for Puerto Rico hospitals are set forth in Table 1C. This table also includes the Puerto Rico standardized amounts. The labor share applied to the Puerto Rico standardized amount is 71.3 percent.

B. Adjustments for Area Wage Levels and Cost of Living

Tables 1A and 1C, as set forth in this Addendum, contain the labor-related and nonlabor-related shares that are proposed to be used to calculate the prospective payment rates for hospitals located in the 50 States, the District of Columbia, and Puerto Rico. This section addresses two types of adjustments to the standardized amounts that are made in determining the proposed prospective payment rates as described in this Addendum.

1. Adjustment for Area Wage Levels

Sections 1886(d)(3)(E) and 1886(d)(9)(C)(iv) of the Act require that we make an adjustment to the labor-related portion of the national and Puerto Rico prospective payment rates, respectively, to account for area differences in hospital wage levels. This adjustment is made by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. In section III. of this preamble, we discuss the data and methodology for the proposed FY 2003 wage index. The proposed wage index is set forth in Tables 4A, 4B, 4C, and 4F of this Addendum. In section IV. of this preamble we discuss our proposed revised estimate of the labor-related portion of the standardized amounts.

2. Adjustment for Cost-of-Living in Alaska and Hawaii

Section 1886(d)(5)(H) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States are taken into account in the adjustment for area wages described above. For FY 2003, we are proposing to adjust the payments for hospitals in Alaska and Hawaii by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below. If the Office of Personnel Management releases revised cost-of-living adjustment factors before July 1, 2002, we will publish them in the final rule and use them in determining FY 2003 payments.

TABLE OF COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

Alaska—All areas	1.25
Hawaii:	
County of Honolulu	1.25
County of Hawaii	1.165
County of Kauai	1.2325
County of Maui	1.2375
County of Kalawao	1.2375

(The above factors are based on data obtained from the U.S. Office of Personnel Management.)

C. DRG Relative Weights

As discussed in section II. of the preamble, we have developed a classification system for all hospital discharges, assigning them into DRGs, and have developed relative weights for each DRG that reflect the resource utilization of cases in each DRG relative to Medicare cases in other DRGs. Table 5 of section V. of this Addendum contains the relative weights that we are proposing to use for discharges occurring in FY 2003. These factors have been recalibrated as explained in section II. of the preamble.

D. Calculation of Prospective Payment Rates for FY 2003

General Formula for Calculation of Prospective Payment Rates for FY 2003

The operating prospective payment rate for all hospitals paid under the acute-care, short-term inpatient prospective payment system located outside of Puerto Rico, except SCHs and MDHs, equals the Federal rate based on the amounts in Table 1A.

For FY 2003, the prospective payment rate for SCHs equals whichever of the following rates yields the greatest aggregate payment: the Federal rate, the updated hospital-specific rate based on FY 1982 cost per discharge, the updated hospital-specific rate based on FY 1987 cost per discharge, or, if qualified, 75 percent of the updated hospital-specific rate based on FY 1996 cost per discharge, plus the greater of 25 percent of the updated FY 1982 or FY 1987 hospital-specific rate, or 25 percent of the Federal rate. Section 1886(b)(3) of the Act, as amended, allows all SCHs to rebase their hospital-specific rate based on their FY 1996 cost per discharge.

The prospective payment rate for MDHs equals 100 percent of the Federal rate, or, if the greater of the updated FY 1982 hospital-specific rate or the updated FY 1987 hospital-specific rate is higher than the Federal rate, 100 percent of the Federal rate plus 50 percent of the difference between the applicable hospital-specific rate and the Federal rate.

The proposed prospective payment rate for Puerto Rico equals 50 percent of the Puerto Rico rate plus 50 percent of the national rate from Table 1C.

1. Federal Rate

For discharges occurring on or after October 1, 2002 and before October 1, 2003, except for SCHs, MDHs, and hospitals in Puerto Rico, payment under the acute-care inpatient prospective payment system is based exclusively on the Federal national rate.

The payment amount is determined as follows:

Step 1—Select the appropriate national standardized amount considering the location of the hospital (large urban or other) (see Table 1A in section V. of this Addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the applicable wage index for the geographic area in which the hospital is located or the area to which the hospital is reclassified (see Tables 4A, 4B, and 4C of section V. of this Addendum).

Step 3—For hospitals in Alaska and Hawaii, multiply the nonlabor-related

portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount (adjusted, if appropriate, under Step 3).

Step 5—Multiply the final amount from Step 4 by the relative weight corresponding to the appropriate DRG (see Table 5 of section V. of this Addendum).

2. Hospital-Specific Rate (Applicable Only to SCHs and MDHs)

a. Calculation of Hospital-Specific Rate

Section 1886(b)(3)(C) of the Act provides that SCHs are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate, the updated hospital-specific rate based on FY 1982 costs per discharge, the updated hospital-specific rate based on FY 1987 costs per discharge, or, for FY 2003, 75 percent of the updated hospital-specific rate based on FY 1996 costs per discharge, plus the greater of 25 percent of the updated FY 1982 or FY 1987 hospital-specific rate or 25 percent of the Federal DRG payment rate.

Section 1886(d)(5)(G) of the Act provides that MDHs are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate or the Federal rate plus 50 percent of the difference between the Federal rate and the greater of the updated hospital-specific rate based on FY 1982 and FY 1987 cost per discharge.

Hospital-specific rates have been determined for each of these hospitals based on either the FY 1982 cost per discharge, the FY 1987 cost per discharge or, for SCHs, the FY 1996 cost per discharge. For a more detailed discussion of the calculation of the hospital-specific rates, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772); the April 20, 1990 final rule with comment (55 FR 15150); the September 4, 1990 final rule (55 FR 35994); and the August 1, 2000 final rule (65 FR 47082). In addition, for both SCHs and MDHs, the hospital-specific rate is adjusted by the budget neutrality adjustment factor (that is, by 1.001026) as discussed in section II.A.4.a. of this Addendum. The resulting rate is used in determining the payment rate an SCH or MDH would be paid for its discharges beginning on or after October 1, 2002.

b. Updating the FY 1982, FY 1987, and FY 1996 Hospital-Specific Rates for FY 2003

We are proposing to increase the hospital-specific rates by 2.75 percent (the hospital market basket percentage increase minus 0.55 percentage points) for SCHs and MDHs for FY 2003. Section 1886(b)(3)(C)(iv) of the Act provides that the update factor applicable to the hospital-specific rates for SCHs equal the update factor provided under section 1886(b)(3)(B)(iv) of the Act, which, for SCHs in FY 2003, is the market basket rate of increase minus 0.55 percentage points. Section 1886(b)(3)(D) of the Act provides that the update factor applicable to the hospital-specific rates for MDHs equals the update factor provided under section 1886(b)(3)(B)(iv) of the Act, which, for FY 2003, is the market basket rate of increase minus 0.55 percentage points.

3. General Formula for Calculation of Prospective Payment Rates for Hospitals Located in Puerto Rico Beginning On or After October 1, 2002 and Before October 1, 2003

a. Puerto Rico Rate

The Puerto Rico prospective payment rate is determined as follows:

Step 1—Select the appropriate adjusted average standardized amount considering the large urban or other designation of the hospital (see Table 1C of section V. of the Addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the appropriate Puerto Rico-specific wage index (see Table 4F of section VI. of the Addendum).

Step 3—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount.

Step 4—Multiply the result in Step 3 by 50 percent.

Step 5—Multiply the amount from Step 4 by the appropriate DRG relative weight (see Table 5 of section V. of the Addendum).

b. National Rate

The national prospective payment rate is determined as follows:

Step 1—Multiply the labor-related portion of the national average standardized amount (see Table 1C of section V. of the Addendum) by the appropriate national wage index (see Tables 4A and 4B of section VI. of the Addendum).

Step 2—Add the amount from Step 1 and the nonlabor-related portion of the national average standardized amount.

Step 3—Multiply the result in Step 2 by 50 percent.

Step 4—Multiply the amount from Step 3 by the appropriate DRG relative weight (see Table 5 of section V. of the Addendum).

The sum of the Puerto Rico rate and the national rate computed above equals the prospective payment for a given discharge for a hospital located in Puerto Rico.

III. Proposed Changes to Payment Rates for Acute Care Hospital Inpatient Capital-Related Costs for FY 2003

The prospective payment system for acute care hospital inpatient capital-related costs was implemented for cost reporting periods beginning on or after October 1, 1991. Effective with that cost reporting period and during a 10-year transition period extending through FY 2001, acute care hospital inpatient capital-related costs were paid on the basis of an increasing proportion of the capital prospective payment system Federal rate and a decreasing proportion of a hospital's historical costs for capital.

The basic methodology for determining Federal capital prospective rates is set forth in regulations at §§ 412.308 through 412.352. Below we discuss the factors that we are proposing to use to determine the capital Federal rate for FY 2003, which will be effective for discharges occurring on or after October 1, 2002. The 10-year transition period ended with hospital cost reporting periods beginning on or after October 1, 2001 (FY 2002). Therefore, for cost reporting periods beginning in FY 2002, all hospitals (except "new" hospitals under § 412.324(b) and under proposed § 412.304(c)(2)) are paid based on 100 percent of the capital Federal rate.

For FY 1992, we computed the standard Federal payment rate for capital-related costs under the prospective payment system by updating the FY 1989 Medicare inpatient capital cost per case by an actuarial estimate of the increase in Medicare inpatient capital costs per case. Each year after FY 1992, we update the standard Federal rate, as provided in § 412.308(c)(1), to account for capital input price increases and other factors. Also, § 412.308(c)(2) provides that the Federal rate is adjusted annually by a factor equal to the estimated proportion of outlier payments under the Federal rate to total capital payments under the Federal rate. In addition, § 412.308(c)(3) requires that the Federal rate be reduced by an adjustment factor equal to the estimated proportion of payments for (regular and special) exceptions under § 412.348. Furthermore, § 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that the annual DRG reclassification and the recalibration of DRG weights and changes in the geographic adjustment factor are budget neutral. For FYs 1992 through 1995, § 412.352 required that the Federal rate also be adjusted by a budget neutrality factor so that aggregate payments for inpatient hospital capital costs were projected to equal 90 percent of the payments that would have been made for capital-related costs on a reasonable cost basis during the fiscal year. That provision expired in FY 1996. Section 412.308(b)(2) describes the 7.4 percent reduction to the rate that was made in FY 1994, and § 412.308(b)(3) describes the 0.28 percent reduction to the rate made in FY 1996 as a result of the revised policy of paying for transfers. In the FY 1998 final rule with comment period (62 FR 45966), we implemented section 4402 of Public Law 105–33, which requires that, for discharges occurring on or after October 1, 1997, and before October 1, 2002, the unadjusted standard Federal rate is reduced by 17.78 percent. As we explained in section VI.D. of the preamble of this proposed rule, a small part of that reduction will be restored effective October 1, 2002.

To determine the appropriate budget neutrality adjustment factor and the regular exceptions payment adjustment during the 10-year transition period, we developed a dynamic model of Medicare inpatient capital-related costs, that is, a model that projected changes in Medicare inpatient capital-related costs over time. With the expiration of the budget neutrality provision, the capital cost model was only used to estimate the regular exceptions payment adjustment and other factors. As we explained in the August 1, 2001 final rule (66 FR 39911), beginning in FY 2003 an adjustment for regular exceptions is no longer necessary because regular exception payments were only made for cost reporting periods beginning on or after October 1, 1991, and before October 1, 2001 (see § 412.348(b)). Since payments are no longer being made under the regular exceptions policy in FY 2003, we are no longer using the capital cost model. The capital cost model and its application during the transition

period are described in Appendix B of the August 1, 2001 final rule (66 FR 40099).

In accordance with section 1886(d)(9)(A) of the Act, under the prospective payment system for acute care hospital inpatient operating costs, hospitals located in Puerto Rico are paid for operating costs under a special payment formula. Prior to FY 1998, hospitals in Puerto Rico were paid a blended rate that consisted of 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. However, effective October 1, 1997, as a result of section 4406 of Public Law 105–33, operating payments to hospitals in Puerto Rico are based on a blend of 50 percent of the applicable standardized amount specific to Puerto Rico hospitals and 50 percent of the applicable national average standardized amount. In conjunction with this change to the operating blend percentage, effective with discharges on or after October 1, 1997, we compute capital payments to hospitals in Puerto Rico based on a blend of 50 percent of the Puerto Rico rate and 50 percent of the Federal rate.

Section 412.374 provides for the use of this blended payment system for payments to Puerto Rico hospitals under the prospective payment system for acute care hospital inpatient capital-related costs. Accordingly, for capital-related costs, we compute a separate payment rate specific to Puerto Rico hospitals using the same methodology used to compute the national Federal rate for capital.

A. Determination of Federal Hospital Inpatient Capital-Related Prospective Payment Rate Update

In the August 1, 2001 final rule (66 FR 39947), we established a Federal rate of $390.74 for FY 2002. As a result of the changes we are proposing to the factors used to establish the Federal rate in this addendum, the proposed FY 2003 Federal rate is $408.90.

In the discussion that follows, we explain the factors that were used to determine the proposed FY 2003 Federal rate. In particular, we explain why the FY 2003 Federal rate has increased 4.6 percent compared to the FY 2002 Federal rate (published in the August 1, 2001 final rule (66 FR 39947)). We also estimate aggregate capital payments will increase by 5.72 percent during this same period. This increase is primarily due to the increase in the number of hospital admissions and the increase in case-mix. This increase in capital payments is slightly more than last year (4.27 percent) mostly due to the restoration of the 2.1 percent reduction to the capital Federal rate (see section VI.D. of the preamble of this proposed rule).

Total payments to hospitals under the prospective payment system are relatively unaffected by changes in the capital prospective payments. Since capital payments constitute about 10 percent of hospital payments, a 1 percent change in the capital Federal rate yields only about 0.1 percent change in actual payments to hospitals. Aggregate payments under the capital prospective payment system are estimated to increase in FY 2003 compared to FY 2002.

1. Standard Federal Rate Update

a. Description of the Update Framework

Under § 412.308(c)(1), the standard Federal rate is updated on the basis of an analytical framework that takes into account changes in a capital input price index (CIPI) and other factors. The update framework consists of a CIPI and several policy adjustment factors. Specifically, we have adjusted the projected CIPI rate of increase as appropriate each year for case-mix index-related changes, for intensity, and for errors in previous CIPI forecasts. The proposed update factor for FY 2003 under that framework is 1.1 percent. This update factor is based on a projected 0.7 percent increase in the CIPI, a 1.0 percent adjustment for intensity, a 0.0 percent adjustment for case-mix, a −-0.3 percent adjustment for the FY 2001 DRG reclassification and recalibration, and a forecast error correction of −0.3 percent. We explain the basis for the FY 2003 CIPI projection in section III.C. of this Addendum. Below we describe the policy adjustments that have been applied.

The case-mix index is the measure of the average DRG weight for cases paid under the acute care hospital inpatient prospective payment system. Because the DRG weight determines the prospective payment for each case, any percentage increase in the case-mix index corresponds to an equal percentage increase in hospital payments.

The case-mix index can change for any of several reasons:

- The average resource use of Medicare patients changes ("real" case-mix change);
- Changes in hospital coding of patient records result in higher weight DRG assignments ("coding effects"); and
- The annual DRG reclassification and recalibration changes may not be budget neutral ("reclassification effect").

We define real case-mix change as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher weighted DRGs but do not reflect higher resource requirements. In the update framework for the prospective payment system for operating costs, we adjust the update upwards to allow for real case-mix change, but remove the effects of coding changes on the case-mix index. We also remove the effect on total payments of prior changes to the DRG classifications and relative weights, in order to retain budget neutrality for all case-mix index-related changes other than patient severity. (For example, we adjusted for the effects of the FY 2001 DRG reclassification and recalibration as part of our FY 2003 update recommendation.) We have adopted this case-mix index adjustment in the capital update framework as well.

For FY 2003, we are projecting a 1.0 percent total increase in the case-mix index. We estimate that real case-mix increase will equal 1.0 percent in FY 2003. Therefore, the net adjustment for case-mix change in FY 2003 is 0.0 percentage points.

We estimate that FY 2001 DRG reclassification and recalibration will result in a 0.3 percent change in the case-mix when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the DRGs. Therefore, we are making a −0.3 percent adjustment for DRG reclassification and recalibration in the update recommendation for FY 2003.

The capital update framework contains an adjustment for forecast error. The input price index forecast is based on historical trends and relationships ascertainable at the time the update factor is established for the upcoming year. In any given year, there may be unanticipated price fluctuations that may result in differences between the actual increase in prices and the forecast used in calculating the update factors. In setting a prospective payment rate under the framework, we make an adjustment for forecast error only if our estimate of the change in the capital input price index for any year is off by 0.25 percentage points or more. There is a 2-year lag between the forecast and the measurement of the forecast error. A forecast error of −0.3 percentage points was calculated for the FY 2001 update. That is, current historical data indicate that the forecasted FY 2001 CIPI used in calculating the FY 2001 update factor (0.9 percent) overstated the actual realized price increases (0.6 percent) by 0.3 percentage points. This over-prediction was due to prices from municipal bond yields declining faster than originally expected. Therefore, we are making a −0.3 percent adjustment for forecast error in the update for FY 2003.

Under the capital prospective payment system framework, we also make an adjustment for changes in intensity. We calculate this adjustment using the same methodology and data as in the framework for the operating prospective payment system. The intensity factor for the operating update framework reflects how hospital services are utilized to produce the final product, that is, the discharge. This component accounts for changes in the use of quality-enhancing services, changes in within-DRG severity, and expected modification of practice patterns to remove cost-ineffective services.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI for hospital and related services), and changes in real case-mix. The use of total charges in the calculation of the proposed intensity factor makes it a total intensity factor, that is, charges for capital services are already built into the calculation of the factor. Therefore, we have incorporated the intensity adjustment from the operating update framework into the capital update framework. Without reliable estimates of the proportions of the overall annual intensity increases that are due, respectively, to ineffective practice patterns and to the combination of quality-enhancing new technologies and within-DRG complexity, we assume, as in the revised operating update framework, that one-half of the annual increase is due to each of these factors. The capital update framework thus provides an add-on to the input price index rate of increase of one-half of the estimated annual

increase in intensity to allow for within-DRG severity increases and the adoption of quality-enhancing technology.

For FY 2003, we have developed a Medicare-specific intensity measure based on a 5-year average, using FY 1997 through 2001 data. In determining case-mix constant intensity, we found that observed case-mix increase was 0.3 percent in FY 1997, −0.4 percent in FY 1998, −0.3 percent in FY 1999, −0.7 in FY 2000, and −0.3 percent in FY 2001. Past studies of case-mix change by the RAND Corporation ("Has DRG Creep Crept Up? Decomposing the Case Mix Index Change Between 1987 and 1988" by G. M. Carter, J. P. Newhouse, and D. A. Relles, R–4098–HCFA/ProPAC (1991)) suggest that real case-mix change was not dependent on total change, but was usually a fairly steady 1.0 to 1.4 percent per year. We use 1.4 percent as the upper bound because the RAND study did not take into account that hospitals may have induced doctors to document medical records more completely in order to improve payment. Following that study, we consider up to 1.4 percent of observed case-mix change as real for FY 1997 through FY 2001. Since we did not find an increase in case-mix outside of the range of 1.0 to 1.4 percent, we believe that all of the observed case-mix increase for FYs 1997 through 2001 is real. Therefore, there was no need to employ the upper bound of 1.0 and 1.4 supported by the RAND study as we have done in the past since we did not find an increase in case-mix that was in excess of our estimate of real case-mix increase.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI for hospital and related services), and changes in real case-mix. We estimate that case-mix constant intensity increased by an average of 1.0 percent during FYs 1997 through 2001, for a cumulative increase of 5.2 percent, given estimates of real case-mix of 0.3 percent for FY 1997, −0.4 percent for FY 1998, −0.3 percent for FY 1998, −0.7 percent for FY 2000, and −0.3 percent for FY 2001. Since we estimate that intensity has increased during that period, we are recommending a 1.0 percent intensity adjustment for FY 2003.

Above we described the basis of the components used to develop the proposed 1.1 percent capital update factor for FY 2003 as shown in Table 1 below.

TABLE 1.—CMS'S PROPOSED FY 2003 UPDATE FACTOR TO THE CAPITAL FEDERAL RATE—

Capital Input Price Index	0.7
Intensity:	1.0
Case-Mix Adjustment Factors:	
Projected Case-Mix Change	−1.0
Real Across DRG Change	1.0
Subtotal	0.0
Effect of FY 2001 Reclassification and Recalibration	−0.3
Forecast Error Correction	−0.3
Total Proposed Update	1.1

b. Comparison of CMS and MedPAC Update Recommendations

In the past, MedPAC has included an update recommendation for capital prospective payment system payments in a Report to Congress. In its March 2001 report, MedPAC presented a combined operating and capital update for hospital inpatient prospective payment systems for FY 2002. Currently, section 1886(b)(3)(B)(i)(XVIII) of the Act sets forth the FY 2003 percentage increase in prospective payment system operating cost standardized amounts. The prospective payment system capital update is set at the discretion of the Secretary under the framework outlined in § 412.308(c)(1). In its March 2002 Report to Congress, MedPAC did not make an update recommendation for capital prospective payment system payments. MedPAC states that, with the two updates (operating and capital) remaining separate, it focused on the operating update since it involves more money (92 percent of hospital's Medicare costs) and it commands the most attention in Congress (page 65).

2. Outlier Payment Adjustment Factor

Section 412.312(c) establishes a unified outlier methodology for inpatient operating and inpatient capital-related costs. A single set of thresholds is used to identify outlier cases for both inpatient operating and inpatient capital-related payments. Section 412.308(c)(2) provides that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated proportion of capital-related outlier payments to total inpatient capital-related prospective payment system payments. The outlier thresholds are set so that operating outlier payments are projected to be 5.1 percent of total operating DRG payments.

In the August 1, 2001 final rule, we estimated that outlier payments for capital in FY 2002 would equal 5.76 percent of inpatient capital-related payments based on the Federal rate (66 FR 39948). Accordingly, we applied an outlier adjustment factor of 0.9424 to the Federal rate. Based on the thresholds as set forth in section II.A.4.c. of this Addendum, we estimate that outlier payments for capital will equal 5.40 percent of inpatient capital-related payments based on the Federal rate in FY 2003. Therefore, we are proposing an outlier adjustment factor of 0.9460 to the Federal rate. Thus, the projected percentage of capital outlier payments to total capital standard payments for FY 2003 is lower than the percentage for FY 2002.

The outlier reduction factors are not built permanently into the rates; that is, they are not applied cumulatively in determining the Federal rate. Therefore, the net proposed change in the outlier adjustment to the Federal rate for FY 2003 is 1.0038 (0.9460/0.9424). The outlier adjustment increases the proposed FY 2003 Federal rate by 0.38 percent compared with the FY 2002 outlier adjustment.

3. Budget Neutrality Adjustment Factor for Changes in DRG Classifications and Weights and the Geographic Adjustment Factor

Section 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that aggregate payments for the fiscal year based on the Federal rate after any changes resulting from the annual DRG reclassification and recalibration and changes in the geographic adjustment factor (GAF) are projected to equal aggregate payments that would have been made on the basis of the Federal rate without such changes.

Since we implemented a separate geographic adjustment factor for Puerto Rico, we apply separate budget neutrality adjustments for the national geographic adjustment factor and the Puerto Rico geographic adjustment factor. We apply the same budget neutrality factor for DRG reclassifications and recalibration nationally and for Puerto Rico. Separate adjustments were unnecessary for FY 1998 and earlier since the geographic adjustment factor for Puerto Rico was implemented in FY 1998.

In the past, we used the actuarial capital cost model (described in Appendix B of the August 1, 2001 final rule (66 FR 40099)) to estimate the aggregate payments that would have been made on the basis of the Federal rate with and without changes in the DRG classifications and weights and in the GAF to compute the adjustment required to maintain budget neutrality for changes in DRG weights and in the GAF. During the transition period, the capital cost model was also used to estimate the regular exceptions payment adjustment factor. As we explain below in section III.A.4. of this Addendum, beginning in FY 2003 an adjustment for regular exceptions is no longer necessary. Therefore, we are no longer using the capital cost model. Instead, we are using historical data based on hospitals' actual cost experiences to determine the exceptions adjustment factor for special exception payments.

To determine the proposed factors for FY 2003, we compared (separately for the national rate and the Puerto Rico rate) estimated aggregate Federal rate payments based on the FY 2002 DRG relative weights and the FY 2002 GAF to estimated aggregate Federal rate payments based on the FY 2003 relative weights and the FY 2003 GAF. For FY 2002, the budget neutrality adjustment factors were 0.9927 for the national rate and 0.9916 for the Puerto Rico rate (see the August 1, 2001 final rule (66 FR 40101)). In making the comparison, we set the regular and special exceptions reduction factors to 1.00.

To achieve budget neutrality for the changes in the national GAF, we propose to apply an incremental budget neutrality adjustment of 0.9990 for FY 2003 to the previous cumulative FY 2002 adjustment of (0.9927), yielding a proposed cumulative adjustment of 0.9917 through FY 2003. For the Puerto Rico GAF, we propose to apply an incremental budget neutrality adjustment of 1.0080 for FY 2003 to the previous cumulative FY 2002 adjustment (0.9916), yielding a proposed cumulative adjustment of 0.9996 through FY 2003.

We then compared estimated aggregate Federal rate payments based on the FY 2002 DRG relative weights and the FY 2002 GAF to estimated aggregate Federal rate payments based on the proposed FY 2003 DRG relative weights and the FY 2003 GAF. The proposed incremental adjustment for DRG

classifications and changes in relative weights is 1.0034 nationally and for Puerto Rico. The proposed cumulative adjustments for DRG classifications and changes in relative weights and for changes in the GAF through FY 2003 are 0.9951 nationally and 1.0030 for Puerto Rico. The following table summarizes the adjustment factors for each fiscal year:

BUDGET NEUTRALITY ADJUSTMENT FOR DRG RECLASSIFICATIONS AND RECALIBRATION AND THE GEOGRAPHIC ADJUSTMENT FACTORS

Fiscal year	National				Puerto Rico			
	Incremental adjustment			Cumulative	Incremental adjustment			
	Geographic adjustment factor	DRG reclassifications and recalibration	Combined		Geographic adjustment factor	DRG reclassifications and recalibration	Combined	Cumulative
1992				1.00000				
1993			0.99800	0.99800				
1994			1.00531	1.00330				
1995			0.99980	1.00310				
1996			0.99940	1.00250				
1997			0.99873	1.00123				
1998			0.99892	1.00015				1.00000
1999	0.99944	1.00335	1.00279	1.00294	0.99898	1.00335	1.00233	1.00233
2000	0.99857	0.99991	0.99848	1.00142	0.99910	0.99991	0.99901	1.00134
2001 [1]	0.99846	1.00019	0.99865	0.99933	1.00365	1.00009	1.00374	1.00508
2001 [2]	[3] 0.99771	[3] 1.00009	[3] 0.99780	0.99922	[3] 1.00365	[3] 1.00009	[3] 1.00374	1.00508
2002	[4] 0.99666	[4] 0.99668	[4] 0.99335	0.99268	[4] 0.98991	[4] 0.99668	[4] 0.99662	0.99164
2003	[5] 0.99902	[5] 1.00342	[5] 1.00244	[5] 0.99510	[5] 1.00804	[5] 1.00342	[5] 1.01149	[5] 1.00303

[1] Factors effective for the first half of FY 2001 (October 2000 through March 2001).
[2] Factors effective for the second half of FY 2001 (April 2001 through September 2001).
[3] Incremental factors are applied to FY 2000 cumulative factors.
[4] Incremental factors are applied to the cumulative factors for the first half of FY 2001.
[5] Proposed factors for FY 2003.

The methodology used to determine the proposed recalibration and geographic (DRG/GAF) budget neutrality adjustment factor for FY 2003 is similar to that used in establishing budget neutrality adjustments under the prospective payment system for operating costs. One difference is that, under the operating prospective payment system, the budget neutrality adjustments for the effect of geographic reclassifications are determined separately from the effects of other changes in the hospital wage index and the DRG relative weights. Under the capital prospective payment system, there is a single DRG/GAF budget neutrality adjustment factor (the national rate and the Puerto Rico rate are determined separately) for changes in the GAF (including geographic reclassification) and the DRG relative weights. In addition, there is no adjustment for the effects that geographic reclassification has on the other payment parameters, such as the payments for serving low-income patients, indirect medical education payments, or the large urban add-on payments.

For FY 2002, we calculated a GAF/DRG budget neutrality factor of 0.9934. For FY 2003, we are proposing a GAF/DRG budget neutrality factor of 1.0024. The GAF/DRG budget neutrality factors are built permanently into the rates; that is, they are applied cumulatively in determining the Federal rate. This follows from the requirement that estimated aggregate payments each year be no more or less than they would have been in the absence of the annual DRG reclassification and recalibration and changes in the GAF. The proposed incremental change in the adjustment from FY 2002 to FY 2003 is 1.0024. The proposed cumulative change in the rate due to this adjustment is 0.9951 (the product of the incremental factors for FY 1993, FY 1994, FY 1995, FY 1996, FY 1997, FY 1998, FY 1999, FY 2000, FY 2001, FY 2002, and the proposed incremental factor for FY 2003: $0.9980 \times 1.0053 \times 0.9998 \times 0.9994 \times 0.9987 \times 0.9989 \times 1.0028 \times 0.9985 \times 0.9979 \times 0.9934 \times 1.0024 = 0.9951$).

This proposed factor accounts for DRG reclassifications and recalibration and for changes in the GAF. It also incorporates the effects on the GAF of FY 2003 geographic reclassification decisions made by the MGCRB compared to FY 2002 decisions. However, it does not account for changes in payments due to changes in the DSH and IME adjustment factors or in the large urban add-on.

4. Exceptions Payment Adjustment Factor

Section 412.308(c)(3) requires that the standard capital Federal rate be reduced by an adjustment factor equal to the estimated proportion of additional payments for both regular exceptions and special exceptions under § 412.348 relative to total capital prospective payment system payments. In estimating the proportion of regular exceptions payments to total capital prospective payment system payments during the transition period, we used the actuarial capital cost model originally developed for determining budget neutrality (described in Appendix B of the August 1, 2001 final rule (66 FR 40099)) to determine the exception adjustment factor, which was applied to both the Federal and hospital-specific rates.

An adjustment for regular exceptions is no longer necessary in determining the proposed FY 2003 capital Federal rate because, in accordance with § 412.348(b), regular exception payments were only made for cost reporting periods beginning on or after October 1, 1991 and before October 1, 2001. Accordingly, as we explained in the August 1, 2001 final rule (66 FR 39949), in FY 2003 and later, no payments will be made under the regular exceptions provision. However, in accordance with § 412.308(c), we still need to compute a budget neutrality adjustment for special exception payments under § 412.348(g). We describe our methodology for determining the special exceptions adjustment used in establishing the FY 2003 proposed capital Federal rate below.

Under the special exceptions provision specified at § 412.348(g)(1), eligible hospitals include SCHs, urban hospitals with at least 100 beds that have a disproportionate share percentage of at least 20.2 percent or qualify for DSH payments under § 412.106(c)(2), and hospitals with a combined Medicare and Medicaid inpatient utilization of at least 70 percent. An eligible hospital may receive special exception payments if it meets (1) a project need requirement as described at § 412.348(g)(2), which, in the case of certain urban hospitals, includes an excess capacity test as described at § 412.348(g)(4); (2) an age of assets test as described at § 412.348(g)(3); and (3) a project size requirement as described at § 412.348(g)(5).

As we explained in the August 1, 2001 final rule (66 FR 39912 through 39914), in order to determine the estimated proportion of special exceptions payments to total capital payments, we attempted to identify the universe of eligible hospitals that may potentially qualify for special exception payments. First, we identified hospitals that

met the eligibility requirements at § 412.348(g)(1). Then we determined each hospital's average fixed asset age in the earliest available cost report starting in FY 1992 and later. For each of those hospitals, we calculated the average fixed asset age by dividing the accumulated depreciation by the current year's depreciation. In accordance with § 412.348(g)(3), a hospital must have an average age of buildings and fixed assets above the 75th percentile of all hospitals in the first year of the capital prospective payment system. In the September 1, 1994 final rule (59 FR 45385), we stated that, based on the June 1994 update of the cost report files in HCRIS, the 75th percentile for buildings and fixed assets for FY 1992 was 16.4 years. However, we noted that we would make a final determination of that value on the basis of more complete cost report information at a later date. In the August 29, 1997 final rule (62 FR 46012), based on the December 1996 update of HCRIS and the removal of outliers, we finalized the 75th percentile for buildings and fixed assets for FY 1992 as 15.4 years. Thus, we eliminated any hospitals from the potential universe of hospitals that may qualify for special exception payments if its average age of fixed assets did not exceed 15.4 years.

For the hospitals remaining in the potential universe, we estimated project-size by using the fixed capital acquisitions shown on Worksheet A7 from the following HCRIS cost reports updated through December 2001.

PPS year	Cost reports periods beginning in * * *
IX	FY 1992
X	FY 1993
XI	FY 1994
XII	FY 1995
XIII	FY 1996
XIV	FY 1997
XV	FY 1998
XVI	FY 1999

Because the project phase-in may overlap 2 cost reporting years, we added together the fixed acquisitions from sequential pairs of cost reports to determine project size. Under § 412.348(g)(5), the hospital's project cost must be at least $200 million or 100 percent of its operating cost during the first 12-month cost reporting period beginning on or after October 1, 1991. We calculated the operating costs from the earliest available cost report starting in FY 1992 and later by subtracting inpatient capital costs from inpatient costs (for all payers). We did not subtract the direct medical education costs as those costs are not available on every update of the HCRIS minimum data set. If the hospital met the project size requirement, we assumed that it also met the project need requirements at § 412.348(g)(2) and the excess capacity test for urban hospitals at § 412.348(g)(4).

Because we estimate that so few hospitals will qualify for special exceptions, projecting costs, payments, and margins would result in high statistical variance. Consequently, we decided to model the effects of special exceptions using historical data based on hospitals' actual cost experiences. If we determined that a hospital may qualify for special exceptions, we modeled special exceptions payments from the project start date through the last available cost report (FY 1999). For purposes of modeling we used the cost and payment data on the cost reports from HCRIS assuming that special exceptions would begin at the start of the qualifying project. In other words, when modeling costs and payment data, we ignored any regular exception payments that these hospitals may otherwise have received as if there had not been regular exceptions during the transition period. In projecting an eligible hospital's special exception payment, we applied the 70-percent minimum payment level, the cumulative comparison of current year capital prospective payment system payments and costs, and the cumulative operating margin offset (excluding 75 percent of operating DSH payments).

Our modeling of special exception payments for FY 2003 produced the following results:

Cost report	Number of hospitals eligible for special exceptions	Special exceptions as a fraction of capital payments to all hospitals
PPS IX	.....	.....
PPS X	.....	.....
PPS XI	2	.....
PPS XII	6	0.0002
PPS XIII	8	0.0001
PPS XIV	16	0.0003
PPS XV	20	0.0011
PPS XVI	28	0.0019

We note that hospitals still have two more cost reporting periods (PPS XVII and PPS XVIII) to complete their projects in order to be eligible for special exceptions, and therefore, we estimate that about 30 additional hospitals could qualify for special exceptions. Thus, we project that special exception payments as a fraction of capital payments to all hospitals could be approximately 0.0040.

Because special exceptions are budget neutral, we propose to offset the proposed Federal capital rate by 0.40 percent for special exceptions for FY 2003. Therefore, the proposed exceptions adjustment factor for special exception payments would equal 0.9960 (1 − 0.0040) to account for special exception payments in FY 2003. We will revise this projection of the special exception adjustment factor in the final rule based on the latest available data.

For FY 2002, we estimated that total (regular and special) exceptions payments would equal 0.71 percent of aggregate payments based on the Federal rate. Therefore, we applied an exceptions reduction factor of 0.9929 (1−0.0071) in determining the Federal rate. As we stated above, we estimate that exceptions payments for FY 2003 will equal 0.40 percent of aggregate payments based on the Federal rate. Therefore, we are proposing an exceptions payment reduction factor of 0.9960 (1−0.0040) to the Federal rate for FY 2003. The proposed exceptions reduction factor for FY 2003 is 0.31 percent higher than the factor for FY 2002 published in the August 1, 2001 final rule. This increase is primarily due to the expiration of the regular exceptions provision and the narrowly defined nature of the special exceptions policy.

The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the Federal rate. Therefore, the proposed net change in the exceptions adjustment to the FY 2003 Federal rate is 0.9960/0.9929, or 1.0031.

5. Special Adjustment To Restore the 2.1 Percent Reduction to the Standard Federal Capital Prospective Payment System Payment Rate

As we explained in section VI.D. of the preamble of this proposed rule, section 1886(g)(1)(A) of the Act, as amended by section 4402 of Public Law 105–33, requires the Secretary to reduce the unadjusted standard Federal capital prospective payment system payment rate by 2.1 percent for discharges on or after October 1, 1997, and through September 30, 2002. Therefore, under the statute the additional 2.1 percent reduction no longer applies to discharges occurring after September 30, 2002. Accordingly, we are proposing to revise § 412.308(b) to restore the 2.1 percent reduction to the unadjusted standard Federal capital prospective payment system payment rate for discharges occurring on or after October 1, 2002 to the level that it would have been without the reduction.

As we state in section VI.D. of the preamble of this proposed rule and in the August 29, 1997 final rule (62 FR 46012), we applied a factor of 0.8222 in FY 1998 to account for both the reduction equal to the FY 1995 budget neutrality factor (0.1568) and the 2.1 percent reduction (0.021) provided for under section 4402 of Public Law 105–33. In order to determine the adjustment factor needed to restore the 2.1 percent reduction, we would divide the amount of the adjustment without the 2.1 percent reduction (1 − 0.1568 = 0.8432) by the amount of the adjustment with the 2.1 percent reduction (0.8222). Therefore, we are proposing to apply a factor of 1.02554 (0.8432/0.8222) to the unadjusted FY 2002 standard Federal capital prospective payment system payment rate to restore the 2.1 percent reduction for discharges occurring on or after October 1, 2002.

6. Standard Capital Federal Rate for FY 2003

For FY 2002, the capital Federal rate was $390.74. For FY 2003, we are proposing a capital Federal rate of $408.90. The proposed Federal rate for FY 2003 was calculated as follows:

- The proposed FY 2003 update factor is 1.0110; that is, the update is 1.10 percent.
- The proposed FY 2003 budget neutrality adjustment factor that is applied to the standard Federal payment rate for changes in the DRG relative weights and in the GAF is 1.0024.
- The proposed FY 2003 outlier adjustment factor is 0.9460.
- The proposed FY 2003 exceptions payments adjustment factor is 0.9960.
- The proposed special adjustment factor for FY 2003 to restore the 2.1 percent reduction to the standard Federal rate is 1.0255.

Since the Federal rate has already been adjusted for differences in case-mix, wages, cost-of-living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, we are proposing to make no additional adjustments in the standard Federal rate for these factors, other than the budget neutrality factor for changes in the DRG relative weights and the GAF.

We are providing a chart that shows how each of the proposed factors and adjustments for FY 2003 affected the computation of the proposed FY 2003 Federal rate in comparison to the FY 2002 Federal rate. The proposed FY 2003 update factor has the effect of increasing the Federal rate by 1.10 percent compared to the FY 2002 Federal rate, while the proposed geographic and DRG budget neutrality factor has the effect of increasing the Federal rate by 0.24 percent. The proposed FY 2003 outlier adjustment factor has the effect of increasing the Federal rate by 0.38 percent compared to the FY 2002 Federal rate. The proposed FY 2003 exceptions reduction factor has the effect of increasing the Federal rate by 0.31 percent compared to the exceptions reduction for FY 2002. The proposed special adjustment factor for FY 2003 to restore the 2.1 percent reduction to the standard Federal rate has the effect of increasing the Federal rate by 2.55 percent compared to the FY 2002 Federal rate. The combined effect of all the proposed changes is to increase the Federal rate by 4.65 percent compared to the FY 2002 Federal rate.

COMPARISON OF FACTORS AND ADJUSTMENTS: FY 2002 FEDERAL RATE AND PROPOSED FY 2003 FEDERAL RATE

	FY 2002	Proposed FY 2003	Change	Percent change
Update factor [1]	1.0130	1.0110	1.0110	1.10
GAF/DRG Adjustment Factor [1]	0.9934	1.0024	1.0024	0.24
Outlier Adjustment Factor [2]	0.9424	0.9460	1.0038	0.38
Exceptions Adjustment Factor [2]	0.9929	0.9960	1.0031	0.31
Special Adjustment [3]	N/A	1.0255	1.0255	2.55
Federal Rate	$390.74	$408.90	1.0465	4.65

[1] The update factor and the GAF/DRG budget neutrality factors are built permanently into the rates. Thus, for example, the incremental change from FY 2002 to FY 2003 resulting from the application of the 1.0024 GAF/DRG budget neutrality factor for FY 2003 is 1.0024.

[2] The outlier reduction factor and the exceptions reduction factor are not built permanently into the rates; that is, these factors are not applied cumulatively in determining the rates. Thus, for example, the net change resulting from the application of the FY 2003 outlier reduction factor is 0.9460/0.9424, or 1.0038.

[3] Section 1886(g)(1)(A) of the Act requires, for discharges on or after October 1, 1997, and through September 30, 2002, the Secretary to reduce the unadjusted standard Federal capital prospective payment system payment rate by 2.1 percent. Thus, the 2.1 percent reduction no longer applies to discharges occurring after September 30, 2002, and we are proposing to restore the 2.1 percent reduction by applying a factor of 1.0255 (see section VI.D. of the preamble of this proposed rule).

7. Special Rate for Puerto Rico Hospitals

As explained at the beginning of section II.D. of this Addendum, hospitals in Puerto Rico are paid based on 50 percent of the Puerto Rico rate and 50 percent of the Federal rate. The Puerto Rico rate is derived from the costs of Puerto Rico hospitals only, while the Federal rate is derived from the costs of all acute care hospitals participating in the prospective payment system (including Puerto Rico). To adjust hospitals' capital payments for geographic variations in capital costs, we apply a GAF to both portions of the blended rate. The GAF is calculated using the operating prospective payment system wage index and varies, depending on the MSA or rural area in which the hospital is located. We use the Puerto Rico wage index to determine the GAF for the Puerto Rico part of the capital-blended rate and the national wage index to determine the GAF for the national part of the blended rate.

Because we implemented a separate GAF for Puerto Rico in FY 1998, we also apply separate budget neutrality adjustments for the national GAF and for the Puerto Rico GAF. However, we apply the same budget neutrality factor for DRG reclassifications and recalibration nationally and for Puerto Rico. As we stated in section III.A.4. of this Addendum, for Puerto Rico the proposed GAF budget neutrality factor is 1.0080, while the proposed DRG adjustment is 1.0034, for a proposed combined cumulative adjustment of 1.0115.

In computing the payment for a particular Puerto Rico hospital, the Puerto Rico portion of the rate (50 percent) is multiplied by the Puerto Rico-specific GAF for the MSA in which the hospital is located, and the national portion of the rate (50 percent) is multiplied by the national GAF for the MSA in which the hospital is located (which is computed from national data for all hospitals in the United States and Puerto Rico). In FY 1998, we implemented a 17.78 percent reduction to the Puerto Rico rate as a result of Public Law 105–33.

For FY 2002, before application of the GAF, the special rate for Puerto Rico hospitals was $187.73. With the changes we are proposing to the factors used to determine the rate, the proposed FY 2003 special rate for Puerto Rico is $199.70.

B. Calculation of Inpatient Capital-Related Prospective Payments for FY 2003

With the end of the capital prospective payment system transition period in FY 2001, all hospitals (except "new" hospitals under § 412.324(b) and under proposed § 412.304(c)(2)) are paid based on 100 percent of the Federal rate in FY 2003. The applicable Federal rate was determined by making adjustments as follows:

- For outliers, by dividing the standard Federal rate by the outlier reduction factor for that fiscal year; and
- For the payment adjustments applicable to the hospital, by multiplying the hospital's GAF, disproportionate share adjustment factor, and IME adjustment factor, when appropriate.

For purposes of calculating payments for each discharge during FY 2003, the standard Federal rate is adjusted as follows: (Standard Federal Rate) × (DRG weight) × (GAF) × (Large Urban Add-on, if applicable) × (COLA adjustment for hospitals located in Alaska and Hawaii) × (1 + Disproportionate Share Adjustment Factor + IME Adjustment Factor, if applicable). The result is the adjusted Federal rate.

Hospitals also may receive outlier payments for those cases that qualify under the thresholds established for each fiscal year. Section 412.312(c) provides for a single set of thresholds to identify outlier cases for both inpatient operating and inpatient capital-related payments. The outlier thresholds for FY 2003 are in section II.A.4.c. of this Addendum. For FY 2003, a case qualifies as a cost outlier if the cost for the case plus the IME and DSH payments is greater than the prospective payment rate for the DRG plus $33,450.

An eligible hospital may also qualify for a special exception payment under § 412.348(g) for up through the 10th year beyond the end of the capital transition period if it meets (1) a project need requirement described at § 412.348(g)(2), which in the case of certain urban hospitals includes an excess capacity test as described at § 412.348(g)(4); and (2) a project size requirement as described at § 412.348(g)(5). Eligible hospitals include sole community hospitals, urban hospitals with at least 100 beds that have a DSH patient percentage of at least 20.2 percent or qualify for DSH payments under § 412.106(c)(2), and hospitals that have a combined Medicare and Medicaid inpatient utilization of at least 70 percent. Under § 412.348(g)(8), the amount of a special exceptions payment is determined by comparing the cumulative payments made to the hospital under the capital prospective payment system to the cumulative minimum payment level. This amount is offset by (1) any amount by which a hospital's cumulative capital payments exceed its cumulative minimum payment levels applicable under

the regular exceptions process for cost reporting periods beginning during which the hospital has been subject to the capital prospective payment system; and (2) any amount by which a hospital's current year operating and capital payments (excluding 75 percent of operating DSH payments) exceed its operating and capital costs. Under § 412.348(g)(6), the minimum payment level is 70 percent for all eligible hospitals.

During the transition period, new hospitals (as defined under § 412.300) were exempt from the capital prospective payment system for their first 2 years of operation and are paid 85 percent of their reasonable costs during that period. Effective with the third year of operation through the remainder of the transition period, under § 412.324(b) we paid the hospital under the appropriate transition methodology. If the hold-harmless methodology was applicable, the hold-harmless payment for assets in use during the base period would extend for 8 years, even if the hold-harmless payments extend beyond the normal transition period. As discussed in section VI.B. of the preamble of this proposed rule, we are proposing under § 412.304(c)(2) to pay new hospitals 85 percent of their reasonable costs during the first 2 years of operation. Effective with the third year of operation through the remainder of the transition period, we would pay the hospital based on 100 percent of the capital Federal (that is, the same methodology used to pay all other hospitals subject to capital prospective payment system).

C. Capital Input Price Index

1. Background

Like the operating input price index, the capital input price index (CIPI) is a fixed-weight price index that measures the price changes associated with costs during a given year. The CIPI differs from the operating input price index in one important aspect—the CIPI reflects the vintage nature of capital, which is the acquisition and use of capital over time. Capital expenses in any given year are determined by the stock of capital in that year (that is, capital that remains on hand from all current and prior capital acquisitions). An index measuring capital price changes needs to reflect this vintage nature of capital. Therefore, the CIPI was developed to capture the vintage nature of capital by using a weighted-average of past capital purchase prices up to and including the current year.

We periodically update the base year for the operating and capital input prices to reflect the changing composition of inputs for operating and capital expenses. The CIPI was last rebased to FY 1992 in the August 30, 1996 final rule (61 FR 46196). In this proposed rule, we are proposing to revise and rebase the CIPI to a FY 1997 base year to reflect the more recent structure of capital costs. For further details on the proposed rebasing and revision of the CIPI, see section IV.B. of this proposed rule.

2. Forecast of the CIPI for Federal Fiscal Year 2003

We are forecasting the proposed CIPI to increase 0.7 percent for FY 2003. This reflects a projected 1.3 percent increase in vintage-weighted depreciation prices (building and fixed equipment, and movable equipment) and a 2.7 percent increase in other capital expense prices in FY 2003, partially offset by a 2.2 percent decline in vintage-weighted interest rates in FY 2003. The weighted average of these three factors produces the 0.7 percent increase for the CIPI as a whole.

IV. Proposed Changes to Payment Rates for Excluded Hospitals and Hospital Units: Rate-of-Increase Percentages

The inpatient operating costs of hospitals and hospital units excluded from the acute care hospital inpatient 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 regulations at § 413.40. Under these limits, a hospital-specific target amount (expressed in terms of the inpatient operating cost per discharge) is set for each hospital, based on the hospital's own historical cost experience trended forward by the applicable rate-of-increase percentages (update factors).

Under existing § 413.40(c)(4)(iii)(B), for cost reporting periods beginning and during FYs 1998 and through 2002, in the case of a psychiatric hospital or hospital unit, a rehabilitation hospital or hospital unit, or a long-term care hospital, the target amount may not exceed the updated figure for the 75th percentile of target amounts adjusted to take into account the differences between average wage-related costs in the area of the hospital and the national average of such costs within the same class of hospitals for hospitals and hospital units in the same class (psychiatric, rehabilitation, and long-term care) for cost reporting periods ending during FY 1996. The target amount is multiplied by the number of Medicare discharges in a hospital's cost reporting period, yielding the ceiling on aggregate Medicare inpatient operating costs for the cost reporting period.

Each hospital-specific target amount is adjusted annually, at the beginning of each hospital's cost reporting period, by an applicable update factor.

Under existing §§ 413.40(c)(4)(ii) and (d)(1)(i) and (ii), effective for cost reporting periods beginning during FY 2003, payments to existing excluded hospitals and hospital units will no longer be subject to a 75th percentile cap. These excluded hospitals and hospital units will be paid based on their aggregate Medicare inpatient operating costs, which may not exceed their ceiling. The ceiling on a hospital's or hospital unit's aggregate Medicare inpatient operating costs would be computed using the hospital's or hospital unit's target amount from the previous cost reporting period updated using the rate-of-increase percentage specified in § 413.40(c)(3)(viii) and multiplied by the total number of Medicare discharges.

Section 1886(b)(3)(B) of the Act, as implemented in regulations at § 413.40(c)(3)(viii), provides that, for cost reporting periods beginning on or after October 1, 2002, the update factor for a hospital or hospital unit is the percentage increase projected by the hospital market basket index. The most recent proposed projected forecast of the market basket percentage increase for FY 2003 for hospitals and hospital units excluded from the acute care hospital inpatient prospective payment system is 3.4 percent. This proposed percentage change is made by CMS" Office of the Actuary and reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient hospital care. Therefore, we are proposing that the update to a hospital's target amount for its cost reporting period beginning in FY 2003 would be 3.4 percent.

As discussed in section VII. of the preamble of this proposed rule, we are proposing to make an adjustment to the updated cap on the target amounts per discharge for each class of new excluded hospitals and hospital units for cost reporting periods beginning during FY 2003, using the prospective payment system wage index without taking into account the reclassifications under sections 1886(d)(8)(B) and (d)(10) of the Act. For a new provider, the labor-related share of the target amount is multiplied by the appropriate geographic area wage index, without regard to prospective payment system reclassifications, and added to the nonlabor-related share in order to determine the per case limit on payment under the statutory payment methodology for new providers.

Regulations at § 413.40(f)(2)(ii) specify the payment methodology for new hospitals and hospital units, effective October 1, 1997.

For cost reporting periods beginning in FY 2003, the proposed caps are as follows:

Class of excluded hospital or unit	FY 2003 proposed labor-related share	FY 2003 proposed nonlabor-related share
Psychiatric	$7,047	$2,801
Long-Term Care	17,269	6,866

Effective for cost reporting periods beginning on or after October 1, 2002, this payment limitation is no longer applicable to new rehabilitation hospitals and units since they will be paid under the inpatient rehabilitation facility prospective payment system.

Regulations at § 413.40(d) specify the formulas for determining bonus and relief payments for excluded hospitals and specify established criteria for an additional bonus payment for continuous improvement.

V. Tables

This section contains the tables referred to throughout the preamble to this proposed rule and in this Addendum. For purposes of this proposed rule, and to avoid confusion, we have retained the designations of Tables 1 through 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1A, 1C, 1D, 2, 3A, 3B, 4A, 4B, 4C, 4F, 4G, 4H, 5, 6A, 6B, 6C, 6D, 6E, 6F, 6G, 6H, 7A, 7B, 8A, 8B, 9, and 10 are presented below. The tables presented below are as follows:

Table 1A—National Adjusted Operating Standardized Amounts, Labor/Nonlabor

Table 1C—Adjusted Operating Standardized Amounts for Puerto Rico, Labor/Nonlabor

Table 1D—Capital Standard Federal Payment Rate
Table 2—Hospital Average Hourly Wage for Federal Fiscal Years 2001 (1997 Wage Data), 2002 (1998 Wage Data), and 2003 (1999 Wage Data) Wage Indexes and 3–Year Average of Hospital Average Hourly Wages
Table 3A—3–Year Average Hourly Wage for Urban Areas
Table 3B—3–Year Average Hourly Wage for Rural Areas
Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas
Table 4B—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas
Table 4C—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals That Are Reclassified
Table 4F—Puerto Rico Wage Index and Capital Geographic Adjustment Factor (GAF)
Table 4G—Pre-Reclassified Wage Index for Urban Areas
Table 4H—Pre-Reclassified Wage Index for Rural Areas
Table 5—List of Diagnosis Related Groups (DRGs), Relative Weighting Factors, Geometric and Arithmetic Mean Length of Stay
Table 6A—New Diagnosis Codes
Table 6B—New Procedure Codes
Table 6C—Invalid Diagnosis Codes
Table 6D—Invalid Procedure Codes
Table 6E—Revised Diagnosis Code Titles
Table 6F—Revised Procedure Code Titles
Table 6G—Additions to the CC Exclusions List
Table 6H—Deletions to the CC Exclusions List
Table 7A—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 2001 MedPAR Update 12/01 GROUPER V19.0
Table 7B—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 2001 MedPAR Update 12/01 GROUPER V20.0
Table 8A—Statewide Average Operating Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted) March 2002
Table 8B—Statewide Average Capital Cost-to-Charge Ratios (Case Weighted) March 2002
Table 9—Hospital Reclassifications and Redesignations by Individual Hospital—FY 2003
Table 10—Mean and Standard Deviations by Diagnosis-Related Groups (DRGs)—FY 2003

TABLE 1A.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

Large urban areas		Other areas	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
$3,099.62	$1,175.71	$3,050.55	$1,157.10

TABLE 1C.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large Urban Areas		Other Areas	
	Labor	Nonlabor	Labor	Nonlabor
National	$3,073.03	$1,165.63	$3,073.03	$1,165.63
Puerto Rico	1,475.56	593.94	1,452.19	584.54

TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE

	Rate
National	$408.90
Puerto Rico	$199.70

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
010001	16.4088	17.4467	17.7070	17.1977
010004	17.9732	19.0010	20.1613	19.0027
010005	17.5985	18.6554	21.5442	19.2074
010006	16.7480	17.6115	18.6118	17.6922
010007	15.4798	15.6788	16.0781	15.7477
010008	14.7443	17.4728	19.0182	17.0908
010009	18.7731	18.4979	19.7272	18.9866
010010	16.4468	16.4664	17.7348	16.9045
010011	20.7972	22.4292	24.7067	22.5297
010012	17.7171	15.8686	20.3948	17.8168
010015	15.4510	19.1178	19.8205	18.1040
010016	17.2473	20.2198	20.4139	19.2448
010018	17.6449	18.9388	19.5519	18.7214
010019	16.3493	17.0856	17.4615	16.9602
010021	16.2919	15.1241	*	15.7091

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
010022	18.5879	17.6435	22.2036	19.2378
010023	16.1025	16.3209	18.4567	16.9929
010024	16.2900	15.9034	17.0372	16.4149
010025	15.1356	15.1548	16.9733	15.7569
010027	11.7900	16.8595	16.5157	14.5941
010029	17.6461	18.3605	19.1001	18.3671
010031	18.7835	18.6402	19.2612	18.9043
010032	12.5995	15.3590	16.3967	14.8530
010033	20.3923	21.2986	21.8375	21.1715
010034	15.0959	15.3639	14.9379	15.1325
010035	20.1853	15.9439	20.8498	18.7765
010036	17.8140	17.7166	18.1325	17.8864
010038	18.2671	19.6098	19.6887	19.2225
010039	20.1045	20.3406	21.1309	20.5522
010040	18.9376	20.0983	20.4032	19.7634
010043	30.7489	18.6640	18.1128	21.1242
010044	22.0091	24.0265	23.4575	23.1128
010045	15.2200	17.0417	18.7569	16.8822
010046	17.3970	18.9737	18.8741	18.4218
010047	13.3521	15.4190	13.4130	14.0833
010049	14.7590	15.5246	16.3349	15.5762
010050	18.5163	17.9830	20.3028	18.9035
010051	11.9275	11.8108	12.3280	12.0151
010052	16.5486	18.0653	19.8289	18.3581
010053	14.6267	15.5649	15.4156	15.2353
010054	18.5103	19.4955	20.9656	19.7134
010055	18.9526	18.8590	19.4959	19.1060
010056	19.2175	19.6577	20.5645	19.7867
010058	16.1702	16.9715	16.1265	16.4288
010059	19.1286	18.8020	19.1270	19.0199
010061	14.9547	14.5003	18.5320	15.9823
010062	14.7732	12.3259	*	13.4892
010064	20.4139	19.5256	20.6628	20.1862
010065	16.4049	16.8752	18.8957	17.4231
010066	15.4317	13.1559	14.8904	14.4355
010068	12.0525	18.6925	23.4322	17.0157
010069	13.8636	14.7211	15.4497	14.6885
010072	14.9526	16.2339	16.5652	15.9117
010073	13.8601	14.1273	13.5594	13.8482
010078	17.9202	18.1363	18.5127	18.1930
010079	16.4421	17.0648	16.8045	16.7705
010081	18.9474	17.2996	*	18.1637
010083	16.8933	18.0312	18.4282	17.8382
010084	18.4965	18.7769	19.8773	19.0310
010085	18.4744	19.9023	21.3593	19.9065
010086	16.6694	16.5711	16.8886	16.7103
010087	19.0033	18.0567	18.6860	18.6208
010089	16.8042	17.7800	19.5697	18.0246
010090	18.3866	18.9445	19.5635	18.9671
010091	13.9405	17.0799	17.1775	15.9756
010092	16.9900	17.8144	18.5703	17.8203
010095	12.4525	12.2597	13.7865	12.8381
010097	13.0413	12.7286	14.2675	13.3206
010098	15.9165	14.0300	15.5763	15.1201
010099	15.9874	15.5619	15.9232	15.8146
010100	17.2011	17.9430	18.3755	17.8826
010101	15.3859	14.4625	18.7988	16.0267
010102	13.7933	13.8136	15.7777	14.4205
010103	17.9358	17.7242	22.2456	19.1327
010104	17.7126	16.8457	22.0038	18.6396
010108	17.9017	19.4617	19.1596	18.8606
010109	15.3107	14.6752	15.9627	15.2873
010110	15.6317	15.8283	15.5817	15.6824

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
010112	15.1401	16.8271	15.6041	15.8270
010113	16.9683	16.8936	18.2706	17.3693
010114	15.2454	17.0760	19.0678	17.1007
010115	14.6268	14.2261	15.3510	14.7053
010118	18.8477	17.0834	17.4620	17.7157
010119	18.8024	19.3942	19.4672	19.3127
010120	17.2336	18.2567	18.9975	18.1726
010121	14.6444	14.5262	15.2345	14.7784
010123	16.7344	19.2140	*	17.9083
010124	16.2846	16.7465	*	16.5122
010125	15.5304	16.0136	16.5117	16.0174
010126	19.5710	19.1065	19.5933	19.4288
010127	19.5190	18.2786	*	18.9233
010128	14.5056	14.4322	15.1184	14.6873
010129	14.7286	16.1733	16.7609	15.8741
010130	16.6809	19.5573	17.4614	17.7942
010131	17.8260	20.1883	19.0492	18.9966
010134	18.8835	19.9856	18.5179	19.1797
010137	12.1217	20.5828	21.3573	17.6481
010138	12.8675	14.5254	14.1369	13.8739
010139	19.0001	20.4331	20.5708	19.9541
010143	16.7911	17.6212	18.8903	17.7663
010144	17.1320	18.2040	18.7743	18.0281
010145	20.8434	20.5895	20.8110	20.7460
010146	18.5198	19.1415	18.3666	18.6687
010148	12.2214	15.8349	16.6251	14.5873
010149	18.6333	18.0156	19.0199	18.5806
010150	17.8951	18.9359	19.4819	18.7907
010152	17.8306	18.7677	19.8695	18.8444
010155	9.0300	15.0689	13.6136	11.6435
010157	*	**	18.0689	18.0689
010158	17.3227	18.3957	18.8358	18.2136
010159	*	*	20.4419	20.4419
020001	28.1747	28.0394	28.6292	28.2864
020002	24.5815	25.1987	28.2759	25.9928
020004	30.5667	25.4679	26.5088	27.6844
020005	30.2920	29.2378	35.0860	31.4575
020006	31.2404	28.1417	33.0843	30.7594
020007	27.8319	32.3852	27.7269	28.9902
020008	29.4146	30.8691	31.8715	30.7301
020009	20.1930	18.4660	18.5594	19.0476
020010	23.6727	22.7559	23.7275	23.3859
020011	30.4727	28.0658	27.5062	28.6155
020012	24.8543	25.5320	26.7586	25.6982
020013	23.8847	28.1557	29.5646	26.9336
020014	27.3823	24.5875	*	25.9860
020017	26.8319	28.0572	28.8752	27.9519
020024	24.0872	25.3205	25.5933	25.0276
020025	21.7557	20.2583	29.4375	23.2312
030001	20.3673	21.7869	22.8996	21.6709
030002	21.5977	21.8375	23.1450	22.2070
030003	23.4833	22.6804	23.9849	23.3723
030004	14.0711	15.5478	13.8452	14.3965
030006	18.2668	20.0273	20.5019	19.5831
030007	19.6708	21.5169	22.2473	21.1843
030008	22.2758	22.2190	*	22.2524
030009	18.1794	18.7557	19.1258	18.6629
030010	19.0907	19.5123	19.8496	19.4665
030011	19.2973	19.4310	19.8141	19.5088
030012	18.9918	20.6585	21.1099	20.2847
030013	20.7458	20.0535	19.9517	20.2223
030014	19.9315	19.7966	20.0568	19.9241
030016	19.3967	19.4785	22.2526	20.4395

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
030017	22.8765	21.7938	23.1702	22.6064
030018	20.2032	20.8980	21.8067	20.9825
030019	21.7005	21.2540	22.0341	21.6682
030022	19.2966	19.5794	22.3351	20.3379
030023	23.6697	24.1678	25.4626	24.5066
030024	22.2541	23.6009	23.5218	23.1550
030025	12.7254	11.9894	20.2690	14.6291
030027	15.7554	17.6555	18.5500	17.3221
030030	20.8303	21.6932	23.1280	21.8856
030033	20.0044	20.2820	20.3034	20.1983
030034	16.8241	20.8689	19.5578	19.0205
030035	19.2781	20.0226	20.5339	19.9127
030036	20.7567	21.6371	22.2690	21.5890
030037	22.8266	23.7615	23.7325	23.4266
030038	22.6776	22.9822	23.4477	23.0337
030040	18.5456	19.7636	19.3706	19.2127
030041	15.8921	18.8717	18.4750	17.5529
030043	20.9341	20.5598	18.7843	19.9580
030044	16.8649	17.6575	18.6781	17.7554
030047	22.6401	21.4412	22.7385	22.2630
030049	19.0881	19.3580	19.7315	19.3525
030054	15.3338	15.0657	15.7973	15.4130
030055	16.3613	20.2991	20.8373	19.1429
030059	24.0465	22.6279	27.3929	24.5505
030060	19.2461	18.6313	19.5021	19.1145
030061	18.9063	19.9047	21.1013	19.9959
030062	17.6738	18.7172	19.2670	18.6035
030064	19.5673	20.3837	21.6435	20.5204
030065	20.5130	20.7838	22.2846	21.2496
030067	14.4446	17.2778	17.6414	16.3935
030068	17.3614	17.7208	18.9718	18.0528
030069	19.0961	21.0936	23.4902	21.1503
030080	20.5144	20.6581	21.2079	20.8105
030083	23.3355	23.5229	23.2965	23.3842
030085	21.0954	20.8690	21.4417	21.1505
030086	19.5436	*	*	19.5436
030087	21.4084	21.9465	23.1339	22.1276
030088	19.8682	20.5340	21.4201	20.6453
030089	20.4019	20.9516	22.0850	21.2122
030092	20.6986	21.8308	19.4627	20.4899
030093	19.7262	20.4314	21.7195	20.6797
030094	21.6218	22.8123	21.8049	22.0984
030095	13.7293	13.7664	20.5222	15.2252
030099	16.1541	18.2263	19.8092	18.2768
030100	*	23.7609	23.5868	23.6643
030101	*	19.2547	21.1029	20.2450
030102	*	18.2413	21.5405	19.8425
030103	*	*	15.0859	15.0859
030104	*	*	32.8668	32.8668
040001	15.1624	16.9178	16.3882	16.1463
040002	13.0592	15.1107	16.1353	14.6990
040003	14.2089	15.5740	15.5186	15.0890
040004	17.8476	17.9034	19.0105	18.2433
040005	13.2597	11.1318	16.5465	13.4890
040007	21.9583	18.6998	*	20.1466
040008	15.3040	14.7985	20.2121	16.6104
040010	18.6023	19.4913	19.8251	19.3459
040011	14.5319	16.0995	17.1337	15.8295
040014	17.6340	18.1434	19.3996	18.3693
040015	16.5891	15.5207	17.4003	16.5312
040016	19.0295	20.2321	19.8087	19.7068
040017	13.5098	15.4736	16.5602	15.1870
040018	17.6027	18.7463	18.8203	18.3807

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
040019	22.6769	23.4163	21.0465	22.2688
040020	16.4827	18.9844	17.6056	17.6157
040021	17.6398	19.6835	21.3321	19.4636
040022	17.0397	20.8281	19.2393	18.9742
040024	14.4541	17.6607	15.0590	15.6850
040025	11.5079	13.4705	14.8071	13.1413
040026	19.5563	19.7924	21.0143	20.1201
040027	16.0975	17.4431	17.7161	17.1113
040028	14.6584	13.9946	15.2850	14.6612
040029	17.8787	21.1370	22.5094	20.5216
040030	13.5428	11.2402	16.5488	13.3388
040032	13.7030	13.2872	13.8013	13.5932
040035	12.8300	10.9569	11.0611	11.5521
040036	18.9757	20.2012	21.1066	20.1370
040037	14.6559	14.0941	15.4984	14.7015
040039	14.3576	14.7177	14.8433	14.6458
040040	18.0895	19.1984	19.6704	18.9937
040041	15.9896	16.4624	17.7783	16.7177
040042	15.2142	15.2057	16.6875	15.6976
040044	12.6275	13.3501	17.1869	14.3743
040045	14.9429	16.2469	16.6648	15.9379
040047	16.8654	17.5336	18.6295	17.6726
040050	13.3818	14.0036	14.2087	13.8730
040051	15.8627	16.6039	18.0487	16.8084
040053	16.3610	15.0219	14.1508	15.1659
040054	15.3219	14.2577	16.5217	15.3669
040055	17.1269	18.0414	16.6283	17.2760
040058	17.6766	16.4278	19.3124	17.6534
040060	12.8148	17.9805	15.4220	15.0376
040062	18.2048	17.8902	19.4255	18.5267
040064	10.7255	11.5029	13.3479	11.7813
040066	18.3377	19.7144	18.7831	18.9326
040067	14.6014	14.4741	15.0081	14.6924
040069	17.5052	17.0026	18.9754	17.8560
040070	16.9027	16.9700	18.6066	17.5468
040071	16.9610	17.6144	18.0874	17.5370
040072	16.0895	17.4960	21.3094	18.1882
040074	18.3224	18.7542	20.8465	19.2921
040075	13.3623	14.0975	14.6681	14.0257
040076	19.0732	20.5840	21.8010	20.4612
040077	12.9211	13.9114	14.7230	13.8164
040078	18.7600	18.5821	*	18.6754
040080	19.2461	19.3707	22.8153	20.3838
040081	11.3169	11.1332	12.4796	11.6373
040082	16.2152	15.1331	16.4840	15.9329
040084	17.2613	17.7295	18.3410	17.7584
040085	16.8957	16.5216	14.1782	15.7843
040088	17.9636	17.1624	18.2831	17.7943
040090	17.8282	19.0824	16.6619	17.8476
040091	19.8700	20.1378	20.2904	20.1018
040093	12.3537	13.9741	14.7132	13.5635
040100	14.7587	15.6833	16.9558	15.9133
040105	15.3319	14.3896	14.8936	14.8814
040106	15.6545	18.1341	19.0936	17.8001
040107	18.8120	17.8628	20.6852	19.1446
040109	14.6266	16.6278	16.2496	15.8538
040114	18.8743	21.1231	21.3826	20.4184
040116	20.2716	*	*	20.2716
040118	19.3720	18.2123	19.6248	19.0444
040119	15.5338	16.9407	18.5876	17.0324
040124	19.1349	19.2889	*	19.2100
040126	12.5368	11.6517	16.3391	13.4177
040132	17.5179	10.3875	*	13.5846

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
040134	18.0787	19.0185	22.1291	19.8434
040135	22.6761	23.0084	*	22.8797
040136	*	*	21.4139	21.4139
050002	37.8295	36.9630	30.2629	34.5243
050006	19.5594	18.2061	22.4890	20.0298
050007	30.7126	30.8676	31.6270	31.0595
050008	26.2458	26.3682	28.2021	26.8667
050009	26.8159	28.4734	28.3021	27.8816
050013	23.2201	28.0569	27.2552	25.9477
050014	22.8478	23.6745	25.1664	23.9039
050015	26.2481	27.7731	28.2204	27.4404
050016	20.5566	21.2045	22.7014	21.5040
050017	23.9625	25.6178	25.7403	25.1023
050018	15.4721	15.2903	16.4211	15.7749
050021	25.8966	*	*	25.8966
050022	24.0318	24.5254	26.2574	24.9836
050024	21.3989	22.4274	21.5230	21.7688
050025	23.3896	24.8245	26.0161	24.7262
050026	27.8736	23.1904	23.4651	24.6800
050028	16.4671	17.6138	17.9421	17.3234
050029	25.1259	24.6839	26.6783	25.4673
050030	20.9812	21.5621	21.8639	21.4881
050032	25.2010	24.3598	24.4176	24.6502
050033	24.9328	32.0179	31.1768	29.1633
050036	21.2420	21.8239	24.1361	22.4423
050038	28.6528	29.9698	32.1757	30.1303
050039	22.7117	22.8288	23.8122	23.1279
050040	32.1287	30.2607	30.1153	30.8697
050042	24.8067	24.5260	25.4903	24.9502
050043	32.9958	33.8255	38.8988	35.0749
050045	19.8831	21.1474	21.0356	20.7131
050046	25.3185	25.2005	25.3067	25.2745
050047	29.9255	29.9580	31.6959	30.5375
050051	17.8945	18.7809	17.9266	18.1624
050054	20.7212	22.0982	19.2395	20.6257
050055	29.3984	29.2730	32.0923	30.2190
050056	27.4321	23.8396	24.7994	25.2478
050057	21.1554	20.7420	21.7403	21.2220
050058	23.1641	23.3009	24.8366	23.7800
050060	20.7747	20.5450	21.9971	21.2660
050061	23.5454	24.5488	23.9906	24.0316
050063	24.8851	25.7593	25.5798	25.3924
050065	24.0420	24.6290	27.6677	25.3130
050066	16.5725	16.1649	26.3920	18.5257
050067	23.1966	25.8857	22.1250	23.5170
050068	20.6851	19.3615	19.2325	19.8460
050069	25.9420	24.6153	25.8560	25.4593
050070	32.5166	34.0721	36.4136	34.4086
050071	33.1850	34.4367	36.4834	34.7318
050072	33.2858	39.7321	36.1146	36.2550
050073	33.3922	32.8555	36.1054	34.1118
050075	33.9095	33.7160	37.8104	35.1272
050076	27.7797	33.9752	37.0415	32.6495
050077	24.1019	24.1404	25.3481	24.5518
050078	23.0736	24.3150	22.6776	23.3158
050079	33.2432	30.0167	36.5455	33.0896
050082	22.1009	23.7617	23.7718	23.2042
050084	23.5866	25.4517	25.1155	24.6796
050088	20.8406	24.9641	25.2282	23.4877
050089	20.9117	22.8450	23.4120	22.3589
050090	23.4097	24.6070	25.4545	24.4799
050091	25.2792	23.7713	*	24.5189
050092	16.7969	17.1211	17.1883	17.0299

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
050093	25.2130	25.6647	27.1820	26.0418
050095	33.6718	30.4847	29.2226	31.0314
050096	20.0487	22.7394	22.5034	21.6293
050097	16.7054	22.5991	24.2548	20.5747
050099	24.8091	25.3722	26.2363	25.4947
050100	29.8758	25.2031	23.9877	26.2195
050101	31.0264	31.8957	32.7594	31.9069
050102	22.2937	24.0014	22.6741	22.9916
050103	24.7932	25.4133	23.5946	24.5653
050104	25.5797	26.9726	25.4575	26.0072
050107	21.2690	22.2019	22.2746	21.9397
050108	23.5564	25.1758	25.6983	24.8127
050110	20.1870	19.9589	21.3399	20.4921
050111	21.5487	20.7897	21.0813	21.1480
050112	25.3015	26.8182	28.3676	26.8364
050113	28.8420	28.5224	32.3967	30.0407
050114	24.7286	26.6757	27.6486	26.3583
050115	21.3291	23.0182	24.3748	22.9340
050116	25.2130	24.9196	27.0331	25.6442
050117	23.3612	22.2123	23.0697	22.8657
050118	23.7698	23.7129	24.9094	24.1342
050121	19.5252	18.7272	18.8430	19.0230
050122	26.3172	26.9546	26.9193	26.7318
050124	22.7736	24.5069	23.9379	23.7017
050125	29.6147	32.0230	33.3290	31.6254
050126	23.9247	24.6752	26.9718	25.2082
050127	22.1937	20.9027	20.5928	21.0815
050128	25.7240	26.6132	26.2519	26.1998
050129	26.5030	24.0108	23.2118	24.4255
050131	31.0732	32.5462	33.0980	32.2202
050132	24.0834	24.0173	24.1583	24.0881
050133	24.9746	23.2093	23.9479	23.9946
050135	23.2361	24.7157	23.2750	23.7026
050136	24.7921	24.7280	28.0754	25.7753
050137	32.6507	32.9192	33.7489	33.1070
050138	37.3286	38.1584	40.8912	38.7884
050139	32.9351	31.4984	35.1492	33.0424
050140	34.1499	32.7609	36.7096	34.4570
050144	27.8751	27.4069	*	27.6480
050145	32.3857	34.5185	37.5003	34.7881
050148	21.9211	20.0971	21.1622	21.0247
050149	24.6078	26.8674	25.8880	25.7652
050150	24.9073	24.6596	25.9494	25.1761
050152	34.0766	33.3305	33.1217	33.4979
050153	30.5714	32.3389	32.1256	31.7026
050155	21.0257	25.3354	23.2118	23.0854
050158	27.5623	28.6071	28.9764	28.3557
050159	23.2912	22.5313	26.6139	23.7086
050167	21.9128	21.8796	21.9596	21.9174
050168	23.3511	25.1937	27.1971	25.2088
050169	22.3888	24.8407	24.7737	23.9439
050170	23.9574	24.3654	27.9459	25.2622
050172	20.1841	19.6120	22.0400	20.6111
050173	24.5545	24.8694	*	24.7049
050174	30.2140	30.2775	31.6888	30.7398
050175	27.2806	24.7548	26.0146	25.8419
050177	21.7943	21.1396	22.5039	21.8034
050179	21.7175	23.8868	22.8941	22.7755
050180	31.8947	33.3257	34.0900	33.1860
050183	20.3638	*	*	20.3638
050186	22.4155	23.6288	25.0791	23.7560
050188	28.0918	28.2364	30.6007	29.0015
050189	22.8687	27.4071	28.3295	26.4046

* Denotes wage data not available for the provider for that year.

** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
050191	20.8321	25.3516	29.2992	25.0950
050192	18.6701	14.1996	19.0400	17.0362
050193	22.6316	24.9444	25.5294	24.3542
050194	29.7371	29.5678	28.5389	29.2648
050195	35.5621	36.9068	39.1617	37.2637
050196	18.5180	18.2411	19.4304	18.7370
050197	35.7449	32.4030	34.6750	34.1639
050204	23.6105	22.7099	23.0192	23.1063
050205	23.6831	24.1691	24.1275	23.9917
050207	21.6214	22.9941	23.4210	22.6876
050211	31.6084	31.7280	33.2481	32.1766
050213	21.4806	21.4951	*	21.4880
050214	21.7335	24.0276	21.1480	22.2422
050215	29.8563	35.0459	31.6895	32.1029
050217	19.6010	20.2042	21.3026	20.3986
050219	21.7444	21.2458	21.7637	21.5978
050222	27.4809	23.3563	23.0670	24.3640
050224	23.5316	23.5101	24.8431	23.9839
050225	23.3480	21.6820	22.0981	22.3835
050226	27.7315	24.4443	26.1959	26.0496
050228	34.0711	34.2596	36.0632	34.7751
050230	27.7357	26.6291	26.7963	27.0820
050231	26.1508	26.7321	26.8977	26.6061
050232	24.3072	24.5245	25.8640	24.8981
050234	25.7035	24.6126	25.0104	25.0823
050235	25.2527	27.0922	26.0323	26.1239
050236	26.9803	25.9458	27.7406	26.8805
050238	24.2922	24.5823	25.1796	24.6748
050239	22.6625	23.2711	24.9463	23.6289
050240	26.3657	26.7620	*	26.5501
050241	26.3740	29.8345	*	27.9992
050242	31.1576	32.0829	32.9875	32.0689
050243	28.9635	26.4627	26.0256	27.1221
050245	23.8124	23.2716	27.5920	24.8781
050248	26.2015	27.6457	28.4413	27.4692
050251	21.6574	23.6360	27.9531	24.2057
050253	16.0701	16.7540	21.0399	17.6028
050254	19.3126	20.1176	22.3414	20.6227
050256	23.6887	23.4835	25.1104	24.1533
050257	15.2306	17.2596	15.6379	16.0441
050260	23.2421	27.4234	30.1623	26.5840
050261	20.0552	20.1040	19.4649	19.8596
050262	28.8785	29.5550	30.8866	29.7520
050264	32.1312	36.0331	32.8689	33.6109
050267	26.2264	26.0401	27.8393	26.6370
050270	24.0439	25.3757	26.4092	25.2781
050272	22.4247	23.0587	23.3443	22.9405
050274	20.0422	*	*	20.0422
050276	29.8624	33.3302	34.0633	32.3736
050277	20.0520	26.0822	23.6065	23.0165
050278	24.7787	23.9289	24.9699	24.5628
050279	20.8444	21.8949	22.2776	21.6332
050280	25.2149	25.6651	26.3392	25.7541
050281	19.6888	24.2251	25.2699	22.9927
050282	28.8261	25.4428	26.4698	26.9213
050283	29.7734	31.7669	32.3270	31.3481
050286	16.5708	19.4241	20.6191	18.4349
050289	34.1393	30.4750	32.2125	32.1522
050290	28.6231	29.6796	31.5000	29.9312
050291	30.2748	29.4029	30.9334	30.2109
050292	21.6243	20.8410	21.4357	21.2903
050293	22.2963	24.1875	*	23.1602
050295	21.2892	21.7883	24.5917	22.5802

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
050296	27.2948	28.3906	30.0984	28.6215
050298	24.4477	23.2006	22.4000	23.3022
050299	26.4543	25.5035	24.6751	25.5099
050300	23.5116	25.9228	26.0298	25.2222
050301	22.5201	21.1403	24.7987	22.7770
050305	34.5185	36.7908	36.6981	36.0318
050307	17.2147	*	*	17.2147
050308	29.3803	28.9284	28.5759	28.9478
050309	23.7884	25.3515	25.5221	24.8819
050312	26.7617	26.0015	26.0172	26.2525
050313	21.7577	25.6827	28.9126	25.5297
050315	24.7086	22.7359	25.8372	24.4689
050317	21.6937	*	*	21.6937
050320	30.4101	32.4809	31.6571	31.4911
050324	26.6049	25.3694	26.8313	26.2820
050325	24.4862	23.6327	22.6353	23.5919
050327	23.9484	25.6450	*	24.7970
050329	19.7455	21.6984	24.2134	21.8073
050331	22.2536	25.0230	25.2110	24.0855
050333	19.4589	19.1449	14.1808	17.2305
050334	34.2330	34.2557	34.3956	34.2968
050335	23.0258	22.9926	22.9335	22.9822
050336	20.7979	21.3402	18.9187	20.3375
050342	20.1841	20.8255	22.4356	21.1404
050343	17.2085	*	*	17.2085
050348	23.8779	25.1085	29.3364	26.0263
050349	14.9754	15.0667	15.4536	15.1663
050350	24.8340	26.4161	27.2368	26.1456
050351	25.4791	24.8121	25.2436	25.1768
050352	26.1380	26.4262	27.7489	26.7934
050353	23.0564	23.2699	24.1009	23.4992
050355	17.2778	21.0969	*	18.6280
050357	22.6545	24.5345	24.3540	23.9188
050359	17.7907	21.7548	19.6236	19.5994
050360	31.3526	31.7583	33.3592	32.1693
050366	23.7528	19.6823	22.0442	21.7233
050367	28.2805	30.7328	31.7487	30.2799
050369	27.0548	26.2234	26.6627	26.6233
050373	26.9776	27.8275	29.9749	28.1900
050376	26.5840	28.0990	28.4026	27.6603
050377	17.1764	17.0012	*	17.1127
050378	25.9810	26.9101	27.8389	26.9067
050379	15.2022	18.4278	*	16.6705
050380	31.4343	31.9578	31.5137	31.6362
050382	26.1398	25.9244	26.3968	26.1598
050385	24.6083	*	27.1692	25.6464
050388	19.1512	22.0122	17.6762	19.5684
050390	25.0426	24.2700	25.8556	25.0345
050391	18.9266	20.0615	19.0832	19.3414
050392	21.6729	22.9430	24.9003	23.1073
050393	25.6964	24.1981	25.4028	25.0965
050394	23.0604	23.1526	23.1641	23.1275
050396	24.0636	25.3729	25.7580	25.0612
050397	20.2601	20.6397	23.3212	21.1533
050401	20.7473	18.4593	*	19.5658
050404	17.3396	15.9839	16.4845	16.6030
050406	17.3016	17.8596	21.5282	18.7226
050407	29.9642	30.8346	32.0753	30.9310
050410	17.6769	19.8508	17.1718	18.1805
050411	34.8899	33.1943	33.1718	33.7076
050414	24.2060	25.9723	24.4936	24.8800
050417	21.5739	23.3005	23.3862	22.7800
050419	23.7584	23.4936	25.1449	24.1188

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
050420	22.3166	23.5438	26.4201	24.1207
050423	17.3771	21.3552	24.8113	20.9574
050424	22.8350	24.0727	25.9378	24.3139
050425	32.8364	35.3712	33.7276	33.9997
050426	25.2453	29.0120	27.4428	27.1541
050427	20.1674	16.4330	*	17.9553
050430	23.8788	21.2275	25.2322	23.4217
050432	24.4133	24.5630	26.0686	25.0170
050433	17.4643	18.9021	17.7980	18.0325
050434	19.7591	*	24.0017	21.7788
050435	25.6676	23.3426	22.2458	23.7166
050436	14.8121	*	*	14.8121
050438	25.0138	23.2583	25.3763	24.5467
050440	23.5167	22.5400	25.4767	23.8254
050441	28.9804	31.8774	33.4696	31.2892
050443	19.9020	17.2875	16.8897	17.9266
050444	21.4533	22.4530	22.6469	22.1781
050446	20.4908	22.3422	20.3611	21.0344
050447	17.9751	18.9851	24.4339	20.7186
050448	19.7046	21.7718	22.6612	21.3755
050449	23.8001	23.4614	*	23.6286
050454	28.7432	30.0792	30.3063	29.7856
050455	20.1643	19.8577	20.5575	20.1952
050456	20.1254	18.1585	17.5846	18.4965
050457	34.4949	32.1910	33.5750	33.4045
050464	25.3292	25.7710	25.8092	25.6421
050468	23.3050	22.2926	22.9771	22.8607
050469	23.8759	24.5205	*	24.1896
050470	16.0292	16.0805	15.7765	15.9567
050471	25.6172	27.1597	29.4705	27.3360
050476	22.4754	24.0253	25.9458	24.2592
050477	27.9595	27.5819	30.8781	28.6932
050478	24.5401	26.3306	28.1829	26.3141
050481	28.9722	27.7973	28.5320	28.4396
050482	18.1217	16.0114	21.6091	18.2297
050483	22.7182	*	*	22.7182
050485	24.1983	24.6906	23.9507	24.2714
050488	34.6939	31.7481	33.8291	33.4344
050491	26.8703	27.4600	27.7412	27.3548
050492	19.5457	20.5030	23.4977	21.2468
050494	29.2621	29.1296	30.2875	29.5621
050496	32.5168	34.9704	32.7474	33.3456
050497	13.8110	15.4115	*	14.5264
050498	24.9677	26.1716	27.6099	26.2387
050502	22.3788	25.3701	27.2724	24.9510
050503	24.4069	23.3745	25.7668	24.5458
050506	25.0845	25.0333	27.1555	25.7636
050510	33.3774	33.7481	36.2548	34.4910
050512	35.3581	34.4368	36.0785	35.2923
050515	35.3419	33.7321	37.3440	35.4231
050516	24.7992	26.1969	25.1778	25.3919
050517	20.9550	22.0985	23.6067	22.1150
050522	35.3784	36.2127	37.0295	36.1638
050523	27.0544	31.2522	32.1272	30.1439
050526	23.8099	26.4014	27.9306	26.0042
050528	19.0611	18.9155	21.1741	19.7510
050531	22.7308	21.3948	*	22.0804
050534	24.0700	24.0001	24.4038	24.1576
050535	25.4215	26.8511	27.7626	26.6201
050537	22.2256	24.0354	26.2342	24.2063
050539	20.7129	23.3846	23.6244	22.6500
050541	34.4573	36.6149	37.0551	36.1147
050542	16.0892	17.7737	21.8129	18.4625

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
050543	22.3994	21.6795	22.4134	22.1708
050545	26.3304	31.7280	33.6302	29.6054
050546	26.1949	38.8087	39.4266	31.5013
050547	26.8305	37.7681	37.7633	31.6990
050548	28.8083	29.8516	30.3336	29.5564
050549	27.2765	28.9615	30.0948	28.8364
050550	24.8048	25.6588	*	25.2235
050551	25.4652	24.8084	25.9619	25.4069
050552	21.5216	20.3239	20.6068	20.8970
050557	21.1243	22.2562	23.8340	22.4197
050559	23.5759	24.7866	26.3799	24.8811
050561	34.5791	33.4423	34.2065	34.0632
050564	23.5922	24.2091	*	23.9025
050565	23.7829	20.8349	*	22.1110
050566	17.4423	22.3448	21.7712	20.6000
050567	24.6454	25.0787	26.2588	25.3566
050568	19.5816	20.5376	21.9313	20.7038
050569	26.5479	27.3429	27.3294	27.0680
050570	25.2294	25.8619	26.8965	26.0357
050571	26.2039	24.0154	24.6237	24.9296
050573	24.9644	25.6589	25.9380	25.5333
050575	19.5611	20.7090	27.8579	22.3375
050577	25.1549	23.5487	25.2861	24.6231
050578	28.5379	28.9009	32.0554	29.7756
050579	30.4952	29.9348	32.0245	30.8151
050580	25.9004	24.6962	22.7522	24.4365
050581	23.8584	24.9807	26.0580	24.9311
050583	24.3987	25.8800	26.2664	25.5050
050584	21.2366	19.5805	24.5294	21.6929
050585	25.9426	24.2824	26.4446	25.5528
050586	23.4079	23.1850	*	23.3000
050588	25.3094	24.5472	27.0506	25.7065
050589	24.8698	23.8880	23.7918	24.1317
050590	22.4480	24.4797	25.7756	24.1986
050591	23.9412	25.0209	26.7662	25.1993
050592	21.1745	22.1174	23.8267	22.4222
050594	27.1584	27.7002	28.7415	27.8366
050597	22.8523	23.3280	23.1209	23.0979
050598	24.3597	23.9202	25.1622	24.5206
050599	29.1221	26.0892	26.3782	27.1542
050601	31.8670	29.7417	29.7734	30.4482
050603	23.3390	21.7031	24.9032	23.2638
050604	34.0461	35.4034	36.4669	35.3805
050608	18.0947	18.1664	20.7987	18.9517
050609	34.9935	33.5028	34.8949	34.4263
050613	23.3835	30.2413	34.9980	28.8691
050615	23.8815	27.5682	25.8698	25.6901
050616	22.7437	24.9843	25.0016	24.2299
050618	21.6509	21.4895	22.3548	21.8584
050623	29.1806	27.5832	28.6475	28.4545
050624	22.7148	26.4659	22.4030	23.6850
050625	26.4849	27.5816	28.1438	27.4404
050630	23.9159	24.2120	25.1453	24.4580
050633	23.1918	25.4283	27.8165	25.4720
050636	21.2618	23.5257	25.0214	23.2191
050638	18.2859	18.2159	15.6375	17.1599
050641	21.8315	17.1258	17.9379	18.6266
050644	22.3456	22.1489	*	22.2474
050661	19.6780	*	*	19.6780
050662	26.9606	35.0989	38.9592	31.5421
050663	30.6591	24.9110	22.7770	25.2271
050667	24.9979	27.5045	26.9236	26.1684
050668	42.0974	61.7751	57.8627	51.0207

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
050670	20.0152	24.6101	24.1626	22.6855
050674	34.7380	32.4807	33.7845	33.5929
050675	15.6794	*	*	15.6794
050676	18.6672	20.2087	16.3948	18.3663
050677	35.6503	33.6070	34.0936	34.4139
050678	26.8741	22.7756	25.2143	24.8560
050680	28.0584	31.4839	31.9166	30.4823
050682	26.2882	17.3566	19.8107	20.5443
050684	22.3398	23.3697	24.2792	23.3071
050685	31.1725	35.1307	30.4194	32.1391
050686	35.2631	33.4420	34.8278	34.4753
050688	30.6635	31.0648	34.9936	32.8691
050689	30.7295	30.9399	34.0571	31.9763
050690	32.8204	34.8112	36.7516	34.8707
050693	26.8265	25.5662	29.1213	27.1699
050694	23.2293	23.5572	25.1964	23.9614
050695	21.1377	24.4301	26.2838	24.0169
050696	28.0015	28.3291	29.6685	28.6563
050697	21.1566	18.2338	24.1116	21.0055
050698	*	*	24.9559	24.9559
050699	25.7843	17.5296	23.4611	21.9391
050701	22.6959	24.3055	26.4901	24.3588
050704	22.8716	22.7618	25.6565	23.8031
050707	26.2732	27.8958	28.2637	27.6356
050708	22.7821	24.8647	24.5606	24.0910
050709	21.9598	19.4977	21.8770	21.0737
050710	26.9060	27.5828	30.5918	28.4895
050713	17.7259	16.8538	18.2822	17.6031
050714	28.9314	30.1925	30.3290	29.7818
050717	25.9534	28.7973	31.5021	28.6924
050718	17.6062	18.0940	22.5989	19.6750
050719	25.5508	23.0833	*	23.8495
050720	*	25.8677	*	25.8677
050723	*	*	32.0291	32.0291
060001	21.3659	21.1819	20.6781	21.0801
060003	19.8023	20.4682	21.9043	20.7102
060004	22.8750	21.4496	22.9265	22.4496
060006	19.3651	20.0213	21.0003	20.1579
060007	17.4682	18.2977	19.3071	18.3452
060008	18.0333	18.4590	18.7097	18.3997
060009	21.4312	22.7164	23.9272	22.7121
060010	24.0872	23.6827	24.7332	24.1778
060011	23.4366	22.3458	22.2058	22.6927
060012	20.1442	19.4932	21.2980	20.3114
060013	22.7346	19.1256	23.5248	21.7755
060014	24.2459	24.3210	25.7689	24.7914
060015	20.9773	23.2469	23.6015	22.5801
060016	16.4707	20.2408	20.2361	18.8056
060018	20.3183	21.5083	21.8478	21.1863
060020	18.3099	18.8985	19.4966	18.9093
060022	21.0558	21.0830	22.6052	21.6192
060023	19.2373	21.5475	22.6480	21.1568
060024	21.9955	22.9185	23.5154	22.8418
060027	20.9846	22.0713	21.7571	21.6190
060028	23.2065	23.1792	24.2985	23.5665
060029	20.8585	18.2938	19.8498	19.6763
060030	20.5002	20.3452	18.0264	19.6163
060031	21.1649	22.5067	23.3995	22.3074
060032	23.4162	22.8123	24.2216	23.4772
060033	15.9085	16.0760	17.8514	16.5805
060034	22.4791	23.2816	23.4859	23.0898
060036	15.0698	18.5988	18.6521	17.3368
060037	15.5611	15.4513	15.7495	15.5902

* Denotes wage data not available for the provider for that year.

** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
060038	14.0791	14.3249	16.6525	15.2260
060041	14.8934	19.1263	19.0282	17.3424
060042	19.1892	20.8597	19.3967	19.6496
060043	13.6717	13.4443	15.4073	14.1048
060044	19.7039	20.8673	21.3102	20.6215
060046	19.4567	22.2699	22.6819	21.4974
060047	15.8770	17.1534	17.9173	16.9143
060049	21.7797	23.0613	25.9592	23.6523
060050	18.2238	19.0832	*	18.6522
060052	13.4210	14.8729	16.0543	14.6462
060053	15.9806	18.0232	19.4746	17.7396
060054	22.8985	20.4160	19.7753	20.9273
060056	18.2831	18.1263	21.9586	19.5606
060057	26.4046	25.4185	24.6599	25.4808
060058	15.4856	13.8539	16.4504	15.2822
060060	15.6469	15.6018	19.4418	16.7387
060062	17.2991	16.8640	17.1032	17.1033
060064	21.2207	22.7797	*	22.0259
060065	21.6305	24.5572	23.7809	23.3223
060066	16.3485	17.2537	17.5556	16.9855
060070	17.3184	18.8960	19.2220	18.4993
060071	17.5987	17.4068	17.6452	17.5489
060073	15.7860	17.0846	18.4971	17.0767
060075	24.1550	23.8724	25.0552	24.3665
060076	24.8732	20.3265	22.9203	22.6621
060085	13.6277	14.3409	10.9724	12.8943
060088	25.2786	13.7174	18.1570	17.7609
060090	22.2974	16.3760	16.5321	18.2600
060096	21.9623	20.8937	21.9951	21.6204
060100	23.5986	23.9305	24.1341	23.8807
060103	24.8151	23.5083	24.4962	24.2301
060104	22.2295	21.1820	24.4248	22.5603
060107	14.2698	21.9221	*	16.3130
060108	*	*	19.1327	19.1327
060109	*	*	27.3180	27.3180
070001	26.0878	26.3596	27.7441	26.7515
070002	26.2801	26.1768	26.6881	26.3761
070003	25.6949	27.5200	28.1721	27.1059
070004	22.4871	24.2567	25.4310	24.0188
070005	26.6483	26.9151	27.6733	27.0706
070006	27.5674	28.6413	33.6291	30.1330
070007	26.9505	26.3313	28.0875	27.1381
070008	23.0227	24.2971	25.1362	24.0979
070009	24.6201	24.1871	24.9408	24.5838
070010	26.2354	29.2194	28.3168	27.8716
070011	23.3638	23.0883	24.8206	23.7802
070012	23.0321	28.8067	*	25.4962
070015	23.8240	28.1204	29.2693	27.0233
070016	24.9148	24.4633	28.4833	25.9349
070017	26.2923	26.0424	27.5515	26.5441
070018	28.0689	30.6864	32.6301	30.4394
070019	25.7283	24.9249	26.2348	25.6326
070020	23.9987	25.9964	26.6203	25.5573
070021	25.2978	26.3043	29.4596	26.9916
070022	26.5691	26.9111	26.9907	26.8202
070024	25.2983	24.8948	26.2173	25.4902
070025	25.1315	25.4345	27.3592	25.9673
070027	23.6412	26.8450	25.8163	25.4005
070028	24.6788	25.7492	26.7286	25.7052
070029	22.0080	23.9682	23.8427	23.2454
070030	28.9117	22.1578	*	25.8929
070031	23.4419	24.1198	25.6347	24.3735
070033	30.4214	31.4736	32.8256	31.5451

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
070034	28.9200	29.4916	30.0480	29.4611
070035	23.0869	24.1423	24.1838	23.7950
070036	28.8400	29.9470	31.2961	29.9831
070038	*	*	26.3126	26.3126
070039	22.9032	22.3356	*	22.7640
080001	25.4836	24.8833	26.8887	25.7287
080002	19.6011	20.1965	20.9385	20.3062
080003	22.1856	23.1275	24.8200	23.2380
080004	21.9391	22.9706	21.7344	22.1849
080006	20.0792	22.6671	20.8203	21.1329
080007	19.6213	21.3746	21.1211	20.7477
090001	21.7526	21.5751	23.0365	22.1027
090002	19.4191	21.5726	20.6550	20.5048
090003	22.1090	23.1268	26.6720	23.7360
090004	24.3367	25.5054	25.9717	25.2072
090005	23.8620	26.3074	26.6217	25.5545
090006	20.8675	22.0957	22.6250	21.8452
090007	22.1973	29.2840	26.7809	26.4132
090008	20.2166	25.2708	*	22.7566
090010	24.1287	23.6616	25.9373	24.5182
090011	27.4781	26.6349	28.0948	27.4100
100001	19.5796	20.2157	21.9071	20.5375
100002	20.7136	21.0222	21.5772	21.1199
100004	14.6283	15.4149	16.1638	15.4361
100006	20.1133	21.2293	20.9190	20.7854
100007	21.7242	22.1590	22.5317	22.1527
100008	20.4980	20.8381	21.6416	21.0118
100009	22.6419	22.1741	21.3298	22.0295
100010	21.9078	23.0637	23.9582	22.9492
100012	19.6177	20.4659	21.7527	20.6367
100014	19.8023	19.5770	21.7358	20.3525
100015	18.4779	18.0654	18.9383	18.4860
100017	19.0608	19.8655	20.0861	19.6893
100018	21.0332	21.6388	22.5429	21.7594
100019	22.6152	23.5462	28.2362	24.8745
100020	21.3848	20.7816	21.7421	21.3134
100022	26.4094	26.5695	27.4235	26.7855
100023	19.9739	19.1787	20.2034	19.7906
100024	21.8791	22.1332	22.9872	22.3458
100025	18.7774	19.4529	20.1360	19.4381
100026	20.5641	20.9461	21.3742	20.9788
100027	19.1481	14.7916	20.5889	17.6926
100028	19.3757	19.3371	19.7475	19.4900
100029	20.8745	20.8950	22.2553	21.3244
100030	22.8204	20.5952	20.4996	21.1231
100032	19.8127	19.7451	20.6543	20.0503
100034	17.8743	19.5282	20.1214	19.1092
100035	20.1540	23.8117	21.2830	21.7761
100038	23.3578	24.5864	24.9548	24.3305
100039	21.5297	21.7861	23.3111	22.2259
100040	19.0449	18.6321	18.7546	18.8065
100043	18.7993	18.8206	20.7414	19.4322
100044	21.4764	22.7236	22.4824	22.2380
100045	20.9216	21.0228	22.8096	21.6136
100046	21.6207	21.3028	23.8909	22.2917
100047	20.0114	20.6068	21.4971	20.7134
100048	15.0584	15.7790	17.3663	16.1388
100049	18.8535	19.1025	20.9490	19.6376
100050	17.2377	17.9039	17.8960	17.6845
100051	23.1273	17.9453	19.3264	19.7334
100052	17.9537	18.1780	17.9957	18.0416
100053	20.1724	19.6800	21.6634	20.4905
100054	23.5491	21.1518	20.8078	21.8397

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
100055	18.0547	18.8760	19.1324	18.6804
100056	25.7863	21.8506	23.1737	23.6729
100057	19.9712	19.5319	22.3406	20.5479
100060	23.2561	23.5997	*	23.4313
100061	22.1133	22.9176	24.4704	23.1202
100062	19.4370	21.4424	21.9054	21.0072
100063	19.2629	18.4642	19.0908	18.9473
100067	18.0877	18.4851	18.5405	18.3328
100068	19.9305	19.8308	19.9648	19.9094
100069	16.8271	17.3666	18.5789	17.6344
100070	18.7408	20.0381	20.9592	19.7991
100071	17.5451	17.7234	20.7461	18.6293
100072	21.0225	20.5968	22.0317	21.2423
100073	21.1898	22.2812	22.2425	21.9197
100075	18.3688	19.4480	20.4664	19.4104
100076	17.8733	17.8612	18.4815	18.0825
100077	22.3438	19.0640	16.8641	17.3061
100078	18.4499	19.2891	14.4191	17.3311
100080	22.1966	22.7153	21.3374	22.0479
100081	14.8313	15.4253	16.5149	15.5681
100082	18.8998	*	*	18.8998
100084	22.3674	22.7009	24.5682	23.2945
100085	22.1231	*	*	22.1231
100086	21.6997	23.3718	24.3067	23.1462
100087	23.6090	23.6562	21.2831	22.8681
100088	20.3693	20.5566	20.0598	20.3349
100090	19.1479	19.7695	21.0431	20.0438
100092	17.9216	20.1760	20.5186	19.5588
100093	16.5128	16.8422	18.7153	17.3704
100098	19.2427	20.8315	21.1723	20.4066
100099	15.7823	15.7591	16.5624	16.0147
100102	18.9701	19.7673	19.0195	19.2464
100103	17.2364	18.7844	20.6957	18.8771
100105	21.6604	21.8268	22.7793	22.1049
100106	17.2527	17.4958	21.4342	18.9189
100107	20.1281	20.0719	21.7553	20.6632
100108	19.9593	20.1125	18.4127	19.5107
100109	20.8440	20.8370	20.5973	20.7560
100110	20.8995	20.1853	22.2354	21.1342
100112	25.2570	15.2128	16.2109	17.7240
100113	23.2020	21.3489	22.7264	22.3351
100114	21.6262	22.8178	22.5326	22.3196
100117	20.7624	20.6962	21.3007	20.9256
100118	22.8702	20.7323	21.4486	21.6456
100121	*	18.5842	18.8073	18.6952
100122	19.8783	19.2643	24.9765	21.2147
100124	17.0713	20.4022	*	18.7024
100125	18.9535	19.6097	20.3232	19.6414
100126	19.5413	19.3103	21.4349	20.0428
100127	19.9860	19.2122	20.4778	19.8925
100128	20.1536	22.8826	23.5835	22.0798
100129	19.1936	*	*	19.1936
100130	18.6751	20.0947	21.0023	19.9341
100131	23.4373	23.1622	24.1745	23.6099
100132	18.1167	18.7863	19.0747	18.6426
100134	15.1764	15.9733	16.9302	15.9832
100135	18.8253	19.1865	19.7675	19.2758
100137	18.6955	19.5562	20.9015	19.8112
100138	17.1373	14.9539	14.9760	15.5324
100139	15.6514	15.2532	15.7378	15.5541
100140	17.1389	19.0584	20.1703	18.8122
100142	19.6815	18.4113	17.7250	18.5714
100144	12.2877	*	*	12.2877

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
100146	18.1267	21.3359	21.9435	20.4800
100147	14.6616	15.2348	17.1566	15.6835
100150	21.2807	21.5057	25.4269	22.5635
100151	21.6087	23.8489	26.6143	24.0945
100154	20.0015	20.4068	21.6715	20.7094
100156	19.4980	18.4779	20.0348	19.3485
100157	22.6744	22.6195	24.2188	23.1792
100159	10.2793	10.7818	15.0633	11.7916
100160	20.5581	23.3121	22.6942	22.2030
100161	22.2994	22.3053	22.6534	22.4189
100162	20.1411	20.3110	20.4188	20.2955
100165	19.0388	22.6622	*	21.0526
100166	20.0250	21.2309	22.2379	21.1128
100167	23.4075	23.2969	25.6873	24.1145
100168	20.1994	20.3167	23.0121	21.2144
100169	20.9506	20.3017	21.6397	20.9720
100170	18.5088	19.3005	21.2469	19.5894
100172	14.3446	14.8826	15.7827	14.9994
100173	18.5662	17.1337	18.3828	18.0289
100174	26.1826	21.9807	*	24.0224
100175	18.1692	20.5442	21.2532	20.0936
100176	22.8604	24.3089	24.6595	23.9677
100177	24.4296	24.4284	26.4489	25.1965
100179	22.3015	23.0849	23.9633	23.1372
100180	20.2130	21.5388	22.6895	21.4521
100181	23.0800	18.9510	17.9048	19.7877
100183	24.6121	23.0654	22.2063	23.2470
100187	20.2533	20.8535	21.4988	20.8818
100189	21.3147	26.5962	27.1295	24.9742
100191	19.9879	21.0647	21.7024	20.8988
100199	21.7193	*	*	21.7193
100200	22.4579	23.8729	24.8878	23.7939
100204	20.8995	20.2193	20.8626	20.6601
100206	19.5710	20.1171	20.3436	20.0192
100208	21.2117	20.7029	20.4678	20.8077
100209	22.4577	23.3903	22.5915	22.8006
100210	21.3575	21.8545	23.0431	22.0260
100211	20.6427	20.7516	21.6367	21.0021
100212	21.1187	21.1263	*	21.1225
100213	20.6558	21.1818	21.9371	21.2709
100217	20.5909	22.7335	22.7116	21.9737
100220	21.2796	21.8246	22.3283	21.7592
100221	17.3965	21.2321	23.2263	20.3743
100223	20.6302	20.2233	21.3859	20.7713
100224	20.0251	21.8628	21.9515	21.2530
100225	20.6802	21.5059	22.4619	21.5424
100226	20.6858	21.8808	22.4084	21.7019
100228	21.3168	20.8810	23.4697	21.8662
100229	19.6908	18.2350	19.7259	19.2271
100230	20.5051	22.5650	23.4169	22.2637
100231	17.9226	18.7526	21.1128	19.1318
100232	19.3491	19.8002	19.9125	19.6887
100234	20.9104	21.6360	23.4761	21.9136
100235	17.1622	*	*	17.1622
100236	20.3766	20.6942	21.5316	20.8545
100237	22.0865	23.2408	23.2712	22.8481
100238	19.6367	20.8252	22.8488	21.0709
100239	21.3193	19.4481	23.0048	21.1692
100240	20.4340	21.0606	21.3495	20.9700
100241	14.7224	17.1063	14.1059	15.3322
100242	17.9260	18.6938	18.9062	18.5149
100243	21.2644	20.8041	22.4644	21.5426
100244	18.6227	20.5352	21.2521	20.2154

* Denotes wage data not available for the provider for that year.

** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
100246	19.6376	21.9247	23.5171	21.5681
100248	20.7007	21.2988	21.8086	21.2951
100249	19.2808	18.1397	18.4932	18.6366
100252	17.7778	19.8079	22.0976	19.8858
100253	21.3232	22.4778	22.6517	22.1811
100254	19.6598	19.5523	19.5050	19.5721
100255	25.2119	21.0284	20.7228	22.1421
100256	20.9356	21.2786	22.0528	21.4173
100258	21.3501	20.0300	22.0790	21.1494
100259	20.3815	21.1160	21.4991	21.0228
100260	21.0506	24.9183	21.1292	22.2409
100262	20.0433	21.0927	22.7137	21.2022
100264	19.1556	19.9491	21.5104	20.1857
100265	18.8301	18.2291	20.2365	19.1431
100266	18.2993	19.3623	20.2821	19.3534
100267	20.1141	21.7430	21.7446	21.2105
100268	23.9249	24.0538	23.6367	23.8643
100269	21.6724	22.5114	26.0271	23.4143
100270	15.1462	16.7148	20.8217	17.5380
100271	20.4824	20.8695	21.9823	21.1576
100275	20.9188	21.4904	23.2088	21.8580
100276	22.3646	24.1022	24.8251	23.8061
100277	16.6255	19.7241	14.9157	16.6327
100279	22.9095	22.5879	21.1094	22.2253
100280	17.3676	18.1972	19.0157	18.2076
100281	22.4392	23.0142	23.4729	23.0255
100282	19.1978	18.4884	20.9256	19.5516
100284	*	18.9448	18.4204	18.6867
110001	19.1971	20.1150	22.3072	20.5112
110002	17.1406	19.5158	20.2149	18.9927
110003	18.1168	17.1450	18.2792	17.8514
110004	19.5591	19.7733	20.6096	19.9776
110005	17.7348	22.4568	21.8105	20.9768
110006	20.7820	21.0601	21.9525	21.2769
110007	21.9505	25.2523	26.3143	24.5085
110008	22.0081	18.5265	19.9606	20.1468
110009	16.3069	17.4306	16.6452	16.8052
110010	23.3213	23.9104	25.1930	24.1454
110011	18.6144	18.9823	20.4028	19.3209
110013	16.2811	18.9160	16.7833	17.3444
110014	16.0658	18.1787	18.4463	17.4976
110015	21.2146	20.9926	21.2600	21.1563
110016	22.5321	14.2398	14.7571	16.4041
110017	13.1960	22.2537	21.2970	19.1377
110018	19.6064	22.1480	22.3933	21.3958
110020	18.3147	19.4617	20.9687	19.5535
110023	21.1994	22.0546	*	21.6186
110024	20.7297	20.7345	21.3945	20.9529
110025	19.5749	20.4232	20.2493	20.0573
110026	17.2977	16.2484	16.6320	16.7325
110027	16.0642	14.7081	19.8976	16.6619
110028	20.1547	29.1670	28.1695	25.3235
110029	20.2906	21.2150	21.3492	20.9560
110030	18.8105	19.6412	20.4656	19.6568
110031	19.9482	20.0553	20.9219	20.3082
110032	15.7349	18.2014	19.2685	17.6324
110033	22.1879	25.6335	23.1939	23.6010
110034	19.6055	19.5554	23.0724	20.6505
110035	19.3795	22.7950	21.8646	21.4160
110036	22.2498	24.9234	25.1127	24.0254
110038	17.7060	17.7396	18.4508	17.9715
110039	20.6011	20.4998	18.9817	19.9578
110040	17.0743	16.8083	17.7798	17.2164

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
110041	18.8035	20.2755	20.1398	19.7378
110042	24.0153	25.2331	25.0535	24.7832
110043	20.1016	20.6150	21.2714	20.6367
110044	16.3624	17.2087	17.5905	17.0642
110045	20.2498	21.3049	20.6934	20.7294
110046	19.7377	21.4905	22.8820	21.3991
110048	16.3148	15.6113	18.8751	16.8775
110049	16.1817	16.8639	17.1396	16.7155
110050	20.7619	19.2291	18.9048	19.6044
110051	17.0070	17.2292	17.2050	17.1503
110054	*	20.0549	20.5698	20.3256
110056	15.6202	17.7959	16.0362	16.5039
110059	16.6678	16.7990	17.8076	17.0958
110061	15.0367	16.3557	17.4601	16.2796
110062	18.8019	17.0053	17.9421	17.8940
110063	16.9612	18.5071	18.0256	17.8146
110064	18.9515	19.1203	18.8578	18.9772
110065	15.6771	16.3546	16.9829	16.3529
110066	21.0207	22.4189	23.4554	22.2503
110069	19.3109	20.9575	21.1513	20.4832
110070	21.0227	17.3438	19.6361	19.3058
110071	14.5984	18.8321	21.5042	17.7757
110072	12.7877	12.7625	13.6626	13.0734
110073	15.4261	16.4658	17.9372	16.5696
110074	21.3945	22.3769	24.4924	22.7969
110075	18.5199	20.1757	20.1604	19.6679
110076	21.2867	21.9798	23.6127	22.2999
110078	22.3718	24.0893	25.9119	24.1213
110079	21.0593	22.1070	22.3641	21.8325
110080	18.4768	19.1839	19.4635	19.0419
110082	23.8768	24.3140	22.7015	23.5986
110083	23.1219	23.1463	22.2609	22.8147
110086	18.2815	16.6374	19.0164	17.9653
110087	21.7773	22.7069	24.0994	22.9041
110089	18.5587	19.3855	19.0453	18.9917
110091	19.5114	21.5328	23.7110	21.5509
110092	17.3479	16.9725	15.9178	16.7054
110093	*	16.9827	*	16.9827
110094	14.5641	16.9503	16.8890	16.0918
110095	16.4670	17.1195	17.4302	17.0118
110096	16.8541	17.4157	18.0418	17.4444
110097	15.5811	17.4558	17.8454	16.7969
110098	16.3532	16.0597	16.7800	16.4135
110100	18.6978	19.0764	18.6822	18.8175
110101	10.8187	18.8491	13.8787	13.5799
110103	13.6842	21.1837	21.5683	17.7316
110104	15.7781	15.9431	16.6322	16.1150
110105	16.8909	16.7775	18.1306	17.2936
110107	19.3609	19.3897	21.0863	19.9482
110108	19.7938	25.2161	20.1140	21.3451
110109	15.9359	16.4031	16.5977	16.3157
110111	18.5108	18.3951	18.4274	18.4433
110112	19.0619	19.8986	18.9574	19.2821
110113	16.8179	15.9532	16.0942	16.2556
110114	14.6888	16.4812	16.8297	16.0087
110115	43.9427	22.5049	26.5759	28.7027
110118	20.5368	19.7509	17.5714	19.1118
110120	15.2589	17.7452	18.4738	17.1958
110121	16.2711	19.3643	18.8744	18.1723
110122	21.1385	21.1469	20.4922	20.9166
110124	17.5732	18.3366	19.4093	18.3953
110125	19.1311	18.0090	19.4207	18.8387
110127	14.6143	20.3765	16.1107	17.0392

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
110128	18.1845	18.0835	19.5450	18.6049
110129	18.9388	19.0001	20.8935	19.6183
110130	16.0580	14.6011	16.6915	15.7591
110132	16.0419	16.3943	17.1820	16.5355
110134	12.5723	19.8639	19.0305	17.6901
110135	17.4380	17.3504	15.6668	16.7018
110136	18.0639	16.9629	20.7827	18.4333
110140	17.8870	17.7915	*	17.8447
110141	13.2501	14.4935	13.2710	13.6692
110142	14.6144	13.9525	14.1203	14.2070
110143	20.1603	22.5926	22.4254	21.8082
110144	16.8685	17.5112	17.5678	17.2876
110146	16.1316	17.1835	17.5940	17.0117
110149	17.7535	32.1975	25.2525	24.0956
110150	20.2644	21.2909	22.4899	21.3508
110152	15.3996	15.1324	16.3837	15.6496
110153	19.2744	20.5068	20.6972	20.1497
110154	14.9636	17.3761	16.5286	16.2471
110155	15.5306	16.5146	16.4756	16.1555
110156	14.7477	16.3876	16.0759	15.7007
110161	21.7153	22.2861	24.5776	22.9656
110163	20.4202	18.6637	20.0673	19.6918
110164	20.2074	21.2160	22.5865	21.3587
110165	21.2577	20.8030	22.5604	21.5831
110166	20.5882	20.5049	22.3657	21.1057
110168	20.6646	21.8058	22.2537	21.6267
110169	20.6385	22.6648	23.3750	21.9474
110171	23.7893	25.5296	24.5313	24.5760
110172	23.3730	23.6803	24.7005	23.9332
110174	13.7339	14.6199	*	14.1346
110177	20.7187	21.2796	22.7831	21.6138
110178	18.8306	*	*	18.8306
110179	22.7841	22.0767	24.3673	23.0370
110181	14.0941	12.9798	13.9591	13.6986
110183	23.3826	22.5148	24.2899	23.3905
110184	22.1970	22.1920	22.2761	22.2235
110185	16.7246	17.7925	17.3330	17.2705
110186	17.4287	18.3178	19.7172	18.4775
110187	20.1154	19.8419	22.8248	20.9454
110188	24.8376	23.7032	21.9945	23.3633
110189	22.2715	20.8786	19.3335	20.7205
110190	18.5728	18.3649	20.7292	19.1518
110191	20.2033	21.4033	21.3404	21.0040
110192	21.4951	21.0486	22.9684	21.8761
110193	20.6380	20.7867	22.1392	21.1880
110194	15.1480	14.8115	15.8129	15.2645
110195	13.9135	12.7261	10.9444	12.3540
110198	24.1999	24.8646	24.8275	24.6410
110200	18.1862	17.7744	17.9631	17.9701
110201	20.4699	20.9497	21.9313	21.1039
110203	26.8148	22.7453	24.2062	24.5686
110204	19.7317	30.7342	35.3699	24.8432
110205	21.1435	21.3617	20.1405	20.8862
110207	12.9727	14.7154	14.6045	14.1130
110208	15.1742	15.6161	15.0350	15.2676
110209	17.9190	18.6404	20.0629	18.7585
110211	20.9372	26.9151	20.1024	22.3126
110212	11.8545	14.3790	15.8420	13.8932
110213	14.3651	*	*	14.3651
110215	20.1928	18.1539	21.0263	19.7770
110216	*	27.1878	*	27.1878
120001	27.9213	29.0427	29.4126	28.7754
120002	25.0744	25.2021	23.5667	24.5781

* Denotes wage data not available for the provider for that year.

** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
120003	25.9059	23.9115	24.6238	24.8142
120004	23.9208	24.8632	26.1398	24.8838
120005	23.3975	24.1662	22.3213	23.2601
120006	25.0895	25.8943	26.0904	25.6667
120007	22.7200	22.8772	22.7179	22.7718
120009	17.4693	16.4485	16.7630	16.8820
120010	25.1480	24.1923	24.9089	24.7414
120011	35.0582	37.2759	35.2051	35.8314
120012	23.1144	21.8507	22.0371	22.3824
120014	22.8866	24.1208	25.3557	24.0761
120015	32.9906	42.6465	*	37.0469
120016	27.9127	45.1899	43.5083	34.2774
120018	24.5031	31.1879	*	26.7466
120019	22.9341	25.5659	23.8535	24.0876
120021	23.4508	23.1839	*	23.3291
120022	21.7868	19.2614	17.3744	19.4456
120024	29.4808	32.2514	*	30.1443
120025	20.1065	50.6376	40.1332	25.3493
120026	26.0787	25.1314	25.7023	25.6323
120027	24.7255	24.4535	23.1434	24.0841
120028	27.5023	27.0897	27.5365	27.3898
130001	18.8471	17.6306	19.6328	18.7161
130002	16.6620	16.9867	18.5746	17.4270
130003	21.7313	22.3430	23.0994	22.4005
130005	20.7169	21.2386	22.6364	21.5043
130006	19.3392	20.4614	21.4640	20.4603
130007	20.8338	21.8107	22.0894	21.5806
130008	12.5506	13.6018	19.3392	14.7112
130009	19.1837	15.9701	16.8563	17.2592
130010	17.6795	17.5119	17.7826	17.6635
130011	20.5031	20.1147	22.1125	20.9248
130012	22.9813	24.9976	24.2451	24.1243
130013	17.4038	15.1129	22.6624	18.2887
130014	18.9769	19.2107	19.7560	19.3379
130015	15.7233	18.5913	16.4136	16.7965
130016	17.3942	19.0516	20.1220	18.8309
130017	17.1710	19.6875	19.9511	18.7336
130018	19.7368	19.8425	20.1934	19.9339
130019	18.6648	19.1711	19.5147	19.0953
130021	12.8588	15.6155	14.3089	14.2489
130022	16.5270	18.9127	19.7814	18.3410
130024	19.3634	19.0703	19.9934	19.4905
130025	17.5213	16.4627	17.5989	17.2009
130026	21.5934	21.8106	23.2093	22.2042
130027	21.4279	20.5344	19.0911	20.3739
130028	19.1093	20.9674	18.1205	19.2837
130029	18.4263	18.7694	22.9243	19.6491
130030	17.8440	17.5759	18.5827	17.9732
130031	16.2397	16.7766	20.4146	17.4242
130034	16.9873	18.9483	20.5802	18.9102
130035	19.3478	20.7770	16.9671	19.1314
130036	13.7933	13.6362	15.1590	14.2304
130037	18.8071	18.6856	19.2108	18.9127
130043	16.5102	16.7904	17.6920	16.9853
130044	17.8160	13.4513	16.7797	15.8094
130045	16.0990	19.0208	17.5152	17.4280
130048	16.0899	16.7900	*	16.4201
130049	20.3129	22.4440	22.0520	21.6192
130054	17.2729	17.7085	16.4675	17.1120
130056	14.6862	20.9476	28.8008	19.9051
130060	21.8662	22.7399	23.2512	22.6187
130061	15.4006	14.7394	*	15.1267
130062	16.5672	19.8157	19.8264	18.8380

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
130063	15.9441	18.8024	18.4797	18.1425
140001	16.3372	17.7990	17.7421	17.2408
140002	19.0248	19.9284	20.9959	19.9709
140003	21.2886	17.8595	18.0163	18.9220
140004	15.7042	17.4574	19.0486	17.4249
140005	11.6127	12.3002	12.4144	12.1009
140007	22.9799	23.8585	25.0105	23.9811
140008	21.6548	22.1111	24.2779	22.6707
140010	31.8207	28.5635	26.6836	28.8200
140011	17.8676	18.6164	18.4052	18.3022
140012	23.0653	21.4374	22.5885	22.3529
140013	18.3060	19.6722	20.3147	19.4284
140014	22.4737	21.4042	22.2944	22.0537
140015	16.6735	17.6805	20.3540	18.1726
140016	13.1278	14.4938	15.4454	14.3266
140018	22.3070	22.4132	23.4595	22.7307
140019	16.6548	16.4254	16.1180	16.3909
140024	16.8271	15.3782	16.1032	16.1040
140025	16.9462	18.5135	21.7775	18.9319
140026	16.6612	18.3220	19.7839	18.2263
140027	18.7553	19.2149	20.5980	19.5140
140029	22.8322	26.0833	28.0683	25.6669
140030	21.9475	23.1760	25.2828	23.5549
140031	19.5731	17.6067	16.9650	17.9987
140032	18.1058	19.0383	19.8033	18.9961
140033	24.1722	25.1639	22.8705	24.0049
140034	19.5278	19.8792	19.7711	19.7256
140035	15.2649	15.5040	17.4514	16.0631
140036	18.5771	19.1076	21.2366	19.6677
140037	13.0764	14.1083	14.3082	13.8255
140038	18.3035	18.4948	19.8197	18.8624
140040	19.9267	16.7450	18.0342	18.2044
140041	17.6582	18.5952	18.8042	18.3411
140042	15.4095	15.8892	16.1157	15.8051
140043	19.4683	20.1176	21.7356	20.4389
140045	15.5807	17.7799	17.4261	16.8835
140046	18.9763	18.6371	20.0859	19.2505
140047	17.1539	13.3610	16.6672	15.5612
140048	24.0913	23.9545	22.5870	23.5490
140049	28.4958	26.9483	27.0250	27.5281
140051	23.8264	24.0796	24.6964	24.2137
140052	19.6409	17.9571	21.0450	19.4727
140053	19.1892	19.9620	20.5244	19.8722
140054	22.1921	23.1576	23.9416	23.0858
140055	16.3404	14.3603	15.8756	15.4931
140058	17.4927	18.6861	19.1199	18.4367
140059	15.0195	*	18.2593	16.6820
140061	17.3012	18.2039	18.4264	17.9767
140062	28.0877	28.5304	28.6390	28.4255
140063	25.3641	29.1453	25.8203	26.5945
140064	19.1023	18.9379	19.6954	19.2477
140065	24.1128	25.3336	25.5939	25.0012
140066	17.3902	13.6491	15.4818	15.3710
140067	19.3267	19.5292	20.7511	19.8509
140068	19.9691	21.6188	21.6089	21.0342
140069	16.7544	17.3879	17.7785	17.3221
140070	22.9678	22.7153	25.2646	23.5870
140074	19.3504	21.6052	22.2604	20.9581
140075	21.6313	21.6434	21.0968	21.4950
140077	17.5305	17.3647	17.3236	17.4081
140079	23.3020	23.6928	22.7046	23.2149
140080	21.0739	22.1968	22.0682	21.7613
140081	16.2247	16.9808	18.1746	17.0842

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
140082	23.8960	29.7262	26.5960	26.4591
140083	19.3145	21.0330	18.0664	19.5127
140084	20.9709	22.3467	22.0706	21.7924
140086	18.3803	19.1613	19.1815	18.9175
140087	16.1009	17.1147	21.4593	18.0959
140088	25.2369	25.4176	26.5258	25.7146
140089	17.6366	18.3157	19.3230	18.4019
140090	26.4325	26.9364	28.0530	26.9854
140091	20.9018	21.9322	22.9565	21.9272
140093	18.2899	20.1528	20.7564	19.6330
140094	21.4709	21.9383	22.8892	22.0901
140095	24.0549	24.2859	23.8834	24.0755
140097	17.5081	21.1719	21.8418	20.1374
140100	21.3581	23.1399	23.8226	22.7460
140101	21.5473	21.4211	23.1418	22.0459
140102	17.1500	17.5729	18.6328	17.7567
140103	19.2783	18.1303	16.2009	17.8612
140105	22.6573	22.8944	23.8258	23.1227
140107	13.7533	11.8383	11.5827	12.2495
140108	25.4742	26.9971	27.9140	26.8421
140109	15.7465	14.5498	15.9178	15.3965
140110	19.1822	19.2888	20.9631	19.8004
140112	17.6856	17.6974	18.1119	17.8311
140113	19.0592	19.5584	*	19.3069
140114	21.1639	21.0976	22.9844	21.7634
140115	21.1926	21.0433	20.7660	21.0012
140116	23.1177	23.8993	27.8888	25.1841
140117	21.5671	21.4876	22.0889	21.7249
140118	23.5952	24.3260	25.3249	24.4123
140119	29.1419	27.9145	30.6468	29.2072
140120	18.0743	17.9716	18.5685	18.2090
140121	16.0397	16.6993	16.2607	16.3273
140122	24.6470	26.1270	26.7344	25.7959
140124	27.1906	27.9813	30.2658	28.3904
140125	17.6759	16.9516	17.8190	17.4826
140127	19.8973	20.0489	20.8397	20.2623
140128	19.4955	23.1327	23.5481	22.1101
140129	18.2639	20.2868	21.6252	19.9926
140130	22.2285	23.4298	26.0464	23.9518
140132	23.5475	23.3054	23.7046	23.5171
140133	21.4090	21.4166	20.1740	21.0117
140135	17.8100	17.3985	18.2479	17.8298
140137	16.8969	18.6330	19.2594	18.2334
140138	16.7420	17.1968	14.5771	16.0861
140139	14.0619	11.0397	*	12.4249
140140	17.8243	17.6845	18.8185	18.1076
140141	17.5204	19.1097	20.2606	18.9480
140143	19.1862	19.0810	19.9885	19.4222
140144	21.3245	22.2864	24.8854	22.7447
140145	17.5471	18.1788	19.4509	18.3977
140146	21.9573	19.9704	19.4272	20.3714
140147	16.1336	18.8049	17.1013	17.2344
140148	18.6598	18.7730	19.7630	19.0696
140150	27.3378	24.7976	28.1723	26.6696
140151	21.3896	20.0310	20.8820	20.7518
140152	24.6333	25.6011	27.9615	26.0086
140155	19.9738	20.2778	23.9957	21.3787
140158	22.7639	22.7988	23.7428	23.1140
140160	17.7691	17.7921	19.8825	18.5234
140161	20.0948	20.3799	21.2045	20.5610
140162	19.6464	20.3452	21.6901	20.5431
140164	18.7806	18.6589	19.8246	19.1100
140165	14.9156	14.7223	16.3700	15.3419

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
140166	17.5496	18.3833	18.9513	18.2817
140167	17.1479	17.6525	18.8532	17.9029
140168	16.6770	17.7453	18.2896	17.5820
140170	16.1621	16.4107	17.6901	16.7412
140171	14.1637	15.0237	15.2617	14.8002
140172	23.8431	23.6262	26.2314	24.4761
140173	15.1487	16.3924	16.0030	15.8459
140174	20.5339	35.9320	21.8272	23.9333
140176	23.2866	24.5338	26.2821	24.7364
140177	18.2648	15.0827	20.3142	17.5964
140179	21.1948	21.9859	22.6795	21.9485
140180	22.4548	22.7996	22.7508	22.6646
140181	20.8709	21.9864	22.6089	21.8164
140182	22.0170	28.9515	25.1352	24.9085
140184	17.8155	17.2401	17.9169	17.6582
140185	17.6514	18.2867	18.8573	18.2635
140186	22.7890	23.5034	20.7389	22.2767
140187	17.9201	18.3331	19.4049	18.5535
140188	15.2479	16.1907	*	15.6443
140189	21.0616	20.6627	21.1515	20.9599
140190	16.3366	17.5263	16.6673	16.8245
140191	25.8835	25.2628	27.4166	26.1852
140193	15.8022	17.4057	18.5651	17.2695
140197	18.6394	19.3774	19.9406	19.3426
140199	18.3507	18.0450	18.5409	18.3150
140200	21.5220	21.7680	22.5226	21.9573
140202	22.1939	23.7955	25.2777	23.7942
140203	19.9194	21.0848	24.8870	21.9324
140205	17.4751	20.0784	*	18.5139
140206	21.3295	22.5109	23.0603	22.2974
140207	21.9779	22.3905	25.4539	23.1447
140208	25.9900	26.2527	28.0890	26.7814
140209	18.1206	20.1557	20.2433	19.4720
140210	15.6899	14.8248	15.5345	15.3479
140211	21.8891	22.6265	22.8852	22.4887
140213	27.0645	24.9892	25.6839	25.9086
140215	15.9949	15.2893	18.5502	16.5949
140217	24.8229	25.7329	25.6584	25.3935
140218	14.9459	14.9851	17.4171	15.7345
140220	17.6370	17.8450	19.3915	18.3036
140223	24.9249	24.9017	26.2168	25.3383
140224	25.8668	32.8292	24.7882	27.5872
140228	19.6988	20.1688	21.2764	20.3895
140230	18.0918	18.2983	*	18.1984
140231	23.9176	24.5019	26.0439	24.9346
140233	19.4542	21.2333	23.5331	21.4436
140234	18.9945	*	19.7266	19.3554
140236	*	12.9253	*	12.9253
140239	18.8127	20.3745	20.9926	20.0958
140240	23.6860	24.6949	25.1418	24.5193
140242	24.5428	25.2317	26.1850	25.3655
140245	13.4839	14.2481	15.1320	14.2800
140246	13.4639	11.6267	15.0650	13.2908
140250	25.0876	23.6449	25.3410	24.6985
140251	21.4385	21.9435	23.3971	22.2702
140252	25.2246	25.0220	26.0869	25.4562
140253	18.5511	19.5858	18.4567	18.8447
140258	23.2973	25.3622	24.3731	24.3357
140271	15.5079	12.0079	16.0350	14.2915
140275	20.1699	23.8171	21.8908	21.8947
140276	26.6777	25.3134	26.1713	26.0267
140280	20.2360	18.8300	20.0763	19.6936
140281	24.0192	25.2719	26.5197	25.2957

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
140285	18.1181	18.5916	15.7435	17.3779
140286	20.3735	26.1290	24.0947	23.4832
140288	25.2327	24.4331	25.8717	25.1876
140289	17.1388	18.1747	15.9356	16.9462
140290	21.1784	22.8590	26.8449	23.6369
140291	25.0911	24.9537	26.8628	25.6578
140292	20.8560	21.9950	26.8610	23.2005
140294	17.7226	17.7301	19.4218	18.2830
140300	25.3662	27.8436	28.5457	27.2635
150001	22.8109	24.0620	22.1398	22.9956
150002	19.3401	20.7651	20.7353	20.3004
150003	19.7661	20.8636	22.3835	21.0177
150004	20.3685	21.2449	22.8060	21.4609
150005	20.6260	21.6806	22.5280	21.6427
150006	20.8158	20.6523	21.8435	21.1085
150007	20.1826	20.6635	21.2811	20.6934
150008	21.4545	21.8457	22.9042	22.0745
150009	18.7073	19.0030	19.4599	19.0578
150010	21.7125	20.5570	20.8213	21.0317
150011	18.3742	18.3275	19.8823	18.8436
150012	22.4751	22.1402	21.7903	22.1209
150013	17.0352	16.9327	17.5531	17.1857
150014	22.0143	21.5168	22.8402	22.1055
150015	22.5409	21.9037	24.2370	22.8616
150017	18.7664	19.5339	20.4814	19.6077
150018	20.4947	21.0496	23.0257	21.5245
150019	16.6327	17.8585	19.8341	18.0075
150020	15.1120	16.6600	15.9405	15.8686
150021	19.5096	21.5944	23.2077	21.4598
150022	19.1555	17.9222	18.7751	18.6044
150023	18.3598	19.3412	20.3015	19.3319
150024	18.4140	19.2295	19.8368	19.1528
150025	17.7007	20.2750	*	18.8948
150026	18.8417	22.4978	21.9448	21.0269
150027	17.3284	18.0335	19.4238	18.2383
150029	23.0546	23.2454	24.8939	23.7166
150030	17.9992	19.2406	20.5272	19.2757
150031	17.2429	18.3463	18.9672	18.2134
150033	21.8768	22.6741	23.0163	22.5338
150034	22.1317	23.1533	23.3718	22.8966
150035	20.4477	21.2374	22.3779	21.3734
150036	20.8692	21.4567	22.1464	21.5046
150037	21.7109	24.4611	22.3699	22.8076
150038	21.2193	22.0572	20.3454	21.1795
150039	18.4729	19.6215	16.0227	17.8696
150042	18.1632	20.2221	17.5614	18.5653
150043	19.0120	20.1741	20.5266	19.8572
150044	18.4381	19.1309	19.8951	19.1600
150045	16.8121	18.1670	21.3723	18.7127
150046	17.6342	18.2543	19.4146	18.4518
150047	19.7441	22.0145	21.9824	21.1814
150048	19.3329	19.1648	21.1441	19.9048
150049	17.0141	18.6451	21.6309	18.9803
150050	16.8354	17.7354	18.0411	17.5369
150051	19.0130	19.7257	20.6895	19.8190
150052	15.8590	17.3750	18.7783	17.3644
150053	19.1421	18.8632	17.8949	18.6402
150054	17.3825	18.3916	19.3424	18.3843
150056	22.4087	21.5774	23.0603	22.3391
150057	16.5882	16.9736	*	16.7800
150058	20.8178	22.1409	23.0273	22.0105
150059	21.2535	22.7360	22.9822	22.3129
150060	17.0743	18.6159	19.5011	18.4069

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
150061	17.3887	19.7968	19.4014	18.8242
150062	20.5415	20.8274	21.2608	20.9059
150063	22.0925	22.6525	24.8587	23.1574
150064	18.1400	20.3865	20.6232	19.7087
150065	19.8913	21.2153	21.4572	20.8676
150066	15.3373	19.5313	19.6845	18.2239
150067	18.2926	18.8862	19.8632	19.0434
150069	21.5310	23.3969	23.5510	22.9021
150070	17.9260	18.0827	18.9332	18.3136
150071	13.4760	13.5111	16.4179	14.3733
150072	16.2054	15.0765	18.5813	16.5238
150073	22.2968	*	19.7285	21.0407
150074	20.4175	20.2305	21.3821	20.6660
150075	15.5603	16.7532	17.1709	16.4680
150076	22.9382	22.6424	23.3724	22.9988
150078	19.2718	19.9668	20.2068	19.8183
150079	17.2436	18.2051	18.3668	17.9396
150082	17.5265	17.8381	19.6881	18.3251
150084	23.2506	24.3107	24.9054	24.1870
150086	18.9735	18.3838	19.7763	19.0552
150088	18.9869	20.3366	22.3055	20.5100
150089	23.8791	22.1725	21.0399	22.2998
150090	20.7726	21.0945	21.9803	21.2765
150091	20.4053	22.4640	26.2176	22.8558
150092	16.7434	16.9179	18.2592	17.3164
150094	16.5788	17.5244	16.7680	16.9454
150095	17.1324	19.2749	22.3214	19.5343
150096	23.2764	20.8204	*	21.9551
150097	19.3802	19.7751	21.0944	20.1363
150098	15.0943	15.2829	16.4763	15.6011
150099	22.4229	*	*	22.4229
150100	18.4148	19.8066	18.7289	18.9950
150101	16.4604	20.6209	20.9635	19.3121
150102	19.7426	23.7180	20.8818	21.3162
150103	18.4781	18.7036	19.2881	18.8849
150104	17.6981	20.0765	21.3141	19.7260
150105	20.0431	22.4412	21.6975	21.3454
150106	16.1510	16.8714	18.7088	17.2750
150109	18.8077	19.9066	21.6285	20.0890
150110	18.6627	21.9336	*	20.0654
150111	18.4556	19.2355	24.0256	20.3967
150112	20.4109	20.5253	22.1939	21.0672
150113	20.3780	19.6603	20.5871	20.2207
150114	19.5183	17.9877	18.3097	18.6233
150115	17.4315	18.4844	18.1308	18.0117
150122	18.7139	17.7867	20.7540	19.0652
150123	14.1105	14.0508	16.2898	14.8865
150124	14.6245	15.9487	16.2104	15.6060
150125	20.6735	21.3311	22.0021	21.3476
150126	21.3697	20.6857	24.0000	22.0092
150127	17.1994	17.0052	17.7858	17.3321
150128	18.5100	19.5576	20.3880	19.4584
150129	24.7711	28.6211	29.9888	27.3320
150130	18.1971	18.4846	18.3852	18.3505
150132	20.1684	20.9443	21.2747	20.8045
150133	17.3966	18.4250	19.0871	18.2346
150134	19.2526	19.3632	20.2764	19.6091
150136	20.1245	21.8097	22.9091	21.6195
150145	16.6851	*	*	16.6851
150146	*	19.0204	*	19.0204
160001	18.6035	19.0085	20.1699	19.2573
160002	15.9534	16.6003	17.6600	16.7287
160003	16.0862	16.2208	17.5429	16.6099

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
160005	17.6153	17.9405	19.3348	18.3156
160007	13.2101	15.1738	14.9137	14.4341
160008	15.9742	16.6193	16.7484	16.4416
160009	16.8391	17.9886	19.0664	17.9375
160012	16.4827	16.7112	17.9236	17.0145
160013	18.3996	18.6304	20.3023	19.1017
160014	15.9086	16.7146	18.7253	17.0747
160016	19.6322	19.9747	21.6050	20.4119
160018	14.5946	15.6141	16.0793	15.4308
160020	15.4712	15.5384	15.7960	15.6015
160021	16.5049	16.7617	16.7920	16.6812
160023	15.0665	15.0099	15.3854	15.1530
160024	19.7050	19.4764	20.5622	19.9066
160026	18.8379	19.5260	20.4567	19.6047
160027	16.3477	16.9417	18.2081	17.1431
160028	19.9595	21.0000	*	20.4650
160029	20.4678	21.3457	22.2106	21.3395
160030	19.9508	19.6182	21.6899	20.4018
160031	15.2448	16.1267	16.8957	16.0812
160032	17.3202	18.3168	19.2464	18.2782
160033	18.8673	18.8859	20.1916	19.3159
160034	15.0019	16.5957	17.3644	16.3397
160035	15.2211	16.3991	17.0165	16.0816
160036	17.8849	17.4558	20.2598	18.5977
160037	19.0532	19.5045	19.5067	19.3582
160039	17.4758	17.8647	19.1998	18.1868
160040	18.1949	18.0667	19.6339	18.6033
160041	16.7850	17.4435	18.7943	17.7638
160043	15.6909	14.8564	16.7841	15.7684
160044	16.7439	17.8323	19.5552	18.0882
160045	20.1236	20.0611	21.4757	20.5590
160046	14.5655	16.2737	16.8665	15.8592
160047	18.3593	19.0787	20.4259	19.2869
160048	14.6144	15.6856	17.2709	15.7797
160049	14.5457	15.5673	15.3233	15.1526
160050	17.4912	17.7878	21.1184	18.6885
160051	14.6400	16.4261	15.8213	15.6207
160052	18.0941	21.7647	22.1933	20.7461
160054	16.1753	16.1981	16.5258	16.3024
160055	14.7600	15.1674	17.6177	15.8187
160056	16.1575	17.0172	17.9534	17.0042
160057	18.1776	19.1378	19.6802	19.0270
160058	21.1159	22.1061	23.2042	22.1074
160060	16.0436	17.2825	17.7489	16.9862
160061	17.3215	17.0938	17.2064	17.2123
160062	17.8086	17.4388	18.8163	18.0222
160063	16.8834	16.3583	17.3771	16.8779
160064	20.5496	22.2131	25.1546	22.5347
160065	16.9373	17.1043	17.0609	17.0424
160066	17.1875	17.9971	19.3202	18.1697
160067	17.8514	16.7833	17.6602	17.4022
160068	17.9892	19.0572	20.5995	19.2056
160069	19.7280	19.1640	20.4556	19.7835
160070	16.7017	18.4588	17.7855	17.6458
160072	14.9536	14.4141	15.3384	14.9054
160073	11.8261	11.4997	15.5946	12.7126
160074	19.5092	17.9513	18.4624	18.6658
160075	19.4948	18.4613	20.7842	19.5335
160076	17.9381	17.8824	19.1590	18.2977
160077	12.8826	13.6658	15.0468	13.8624
160079	17.6187	18.6333	20.5010	18.9292
160080	18.6687	19.4925	19.6680	19.2860
160081	17.0052	17.4466	19.1442	17.8781

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
160082	19.6499	19.5322	20.6425	19.9343
160083	20.6189	19.7542	21.3221	20.5512
160085	18.0063	21.2557	19.1929	19.4359
160086	17.3271	17.5308	19.0477	17.9338
160088	20.2331	22.3655	23.8098	22.1152
160089	16.9538	17.3449	18.3526	17.5556
160090	17.1090	17.9614	18.4210	17.8146
160091	12.8516	14.2573	14.8904	13.9759
160092	15.5011	17.0633	17.9251	16.7839
160093	17.7457	18.5675	19.5732	18.6194
160094	18.7653	17.6094	18.7835	18.3744
160095	15.1895	15.2722	16.4927	15.6525
160097	15.9263	16.6790	17.7860	16.8002
160098	16.3135	16.8670	16.8997	16.6946
160099	13.9053	15.0880	16.0710	15.0169
160101	18.3705	18.9788	19.6314	18.9647
160102	18.8765	20.1161	14.4837	17.6011
160103	17.0973	18.2741	19.6168	18.2567
160104	18.8301	17.4829	21.0060	19.1043
160106	16.9639	17.3474	19.4385	17.8892
160107	18.0634	18.0097	18.8936	18.3269
160108	16.0529	16.7779	17.7577	16.8631
160109	16.5593	17.9873	18.2938	17.5854
160110	19.1420	20.6215	20.9346	20.2607
160111	14.1644	14.9965	15.1104	14.7432
160112	16.8332	17.2450	19.6950	17.9037
160113	14.7097	15.4834	14.9449	15.0474
160114	16.1423	16.5006	18.0532	16.8768
160115	15.8995	16.5654	16.9991	16.4863
160116	16.9534	16.6993	18.4261	17.3468
160117	17.9410	18.7615	19.9040	18.8566
160118	17.2523	19.4472	17.1480	17.8721
160120	10.5992	15.6789	15.0577	13.1432
160122	18.9252	18.1469	18.8469	18.6451
160124	18.0908	19.1600	19.9144	19.0634
160126	17.8142	19.4903	17.6813	18.2418
160129	16.7131	17.2112	18.0113	17.3098
160130	16.0528	15.6666	16.2628	15.9955
160131	15.4898	16.0424	16.5397	16.0265
160134	13.4743	15.3012	14.6396	14.4558
160135	18.2682	18.7711	18.3973	18.4829
160138	16.8699	17.1491	18.3957	17.4264
160140	18.4007	18.5630	19.6155	18.8655
160142	16.2875	18.1467	17.2792	17.2139
160143	16.6154	17.4497	18.1287	17.4014
160145	13.9152	16.9092	17.8887	16.1391
160146	16.6024	17.7010	19.0576	17.7319
160147	17.4880	19.4041	21.6062	19.3700
160151	16.8257	17.2177	18.3398	17.4331
160152	15.6170	15.9500	17.0750	16.1956
160153	20.2316	21.2085	22.7004	21.3705
170001	17.9304	17.9218	18.3934	18.0897
170004	15.0636	16.1442	17.2262	16.1274
170006	17.2192	17.5982	19.1802	18.0107
170008	14.9124	16.8412	17.7061	16.4380
170009	20.7795	23.1349	25.0155	23.0594
170010	18.7384	19.4584	19.5990	19.2633
170012	17.8719	18.4432	20.2281	18.8642
170013	18.6454	19.4667	20.1123	19.4285
170014	17.9349	18.4931	19.3973	18.6216
170015	16.5750	17.1302	17.2443	16.9768
170016	19.2130	20.0675	20.9301	20.0460
170017	17.7958	19.5994	19.7908	19.0428

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
170018	15.2984	15.3237	14.8794	15.1619
170019	15.2094	16.9362	17.3043	16.4640
170020	17.3400	18.1325	18.9345	18.1573
170022	18.5309	19.1888	20.3269	19.3395
170023	19.1351	19.2441	19.6533	19.3514
170024	13.6803	14.3604	15.0081	14.3388
170025	17.8667	18.7182	19.1720	18.5412
170026	15.0470	14.8974	16.6547	15.5216
170027	17.3604	17.8690	18.4466	17.8805
170030	14.6530	15.9282	12.9413	14.4010
170031	13.9601	14.2151	16.4660	14.7972
170032	15.6093	16.3449	15.2207	15.7224
170033	16.4059	19.1952	21.2104	18.9788
170034	15.8202	16.9586	17.8239	16.8326
170035	18.5885	17.0945	19.8334	18.5082
170038	14.7776	13.8582	15.2505	14.6401
170039	15.8635	17.0774	18.5780	17.1811
170040	21.6440	21.0617	23.1014	21.8449
170041	11.7566	12.4488	9.9263	11.2790
170044	15.3011	17.3254	*	16.3356
170045	14.0875	25.8331	20.5454	19.8078
170049	19.9415	20.7921	21.2917	20.7035
170051	15.0889	16.4851	16.9003	16.1546
170052	15.0108	15.2283	16.0948	15.4803
170053	16.5102	14.6133	14.3628	15.2080
170054	14.4353	14.6354	15.1330	14.7339
170055	16.9800	18.2607	18.1783	17.7932
170056	17.0442	18.3550	19.7369	18.3732
170057	13.0007	*	*	13.0007
170058	18.6983	19.5415	20.1090	19.4664
170060	17.3482	18.9853	17.5290	17.8991
170061	15.6527	15.0258	15.2924	15.3392
170063	12.8082	14.1185	13.7611	13.4911
170066	15.5322	16.2891	16.8009	16.1505
170067	14.7492	14.9921	20.7945	16.7328
170068	15.1790	17.0022	19.2629	17.0101
170070	14.2445	14.0627	14.8348	14.3652
170072	12.6329	12.7709	*	12.7037
170073	17.5368	17.7056	17.7586	17.6632
170074	17.5537	17.3699	17.2800	17.4035
170075	12.4212	13.6816	14.4939	13.5832
170076	14.5866	14.6109	14.9392	14.7111
170077	13.5235	13.9104	14.1376	13.8508
170079	13.5261	11.5902	16.7227	13.6766
170080	12.6014	14.8293	13.6794	13.6471
170081	13.8077	14.6823	15.0840	14.5566
170082	12.8563	13.7462	14.8154	13.7610
170084	12.5410	13.0519	13.5927	13.0488
170085	15.4518	17.5422	21.8907	18.4877
170086	20.4068	19.7182	20.2892	20.1437
170088	13.4542	13.4860	*	13.4703
170089	18.8136	15.4860	20.2263	18.3293
170090	11.9147	10.9444	*	11.4573
170093	13.5490	14.0276	14.7803	14.0852
170094	20.1985	21.2035	21.2484	20.8944
170095	15.5463	15.3532	16.1078	15.6715
170097	16.4608	17.7540	18.6805	17.6242
170098	15.5259	16.6210	17.3480	16.4881
170099	13.6033	14.3370	16.5247	14.7568
170101	14.5629	18.0143	17.3381	16.4637
170102	13.6321	14.2447	14.4499	14.1084
170103	17.2844	17.9530	18.6172	17.9709
170104	20.6182	21.0049	21.9487	21.1996

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
170105	16.5408	16.7403	18.2788	17.1877
170106	18.5479	17.7467	*	18.0680
170109	17.2629	16.9782	18.3483	17.5682
170110	16.9823	18.5731	21.0637	18.8359
170112	14.3855	15.4049	15.8097	15.1873
170113	13.9038	14.6486	16.4938	15.0142
170114	14.4545	16.2645	13.8347	14.7519
170115	12.6997	12.9216	13.0253	12.8848
170116	16.8714	18.1830	19.4278	18.1442
170117	15.7875	16.8237	16.8301	16.4481
170119	15.1990	15.2708	15.1982	15.2222
170120	17.6748	17.4917	18.2061	17.7788
170122	20.0615	21.1769	21.4205	20.8657
170123	23.1697	23.6534	25.2071	23.9580
170124	11.1249	15.0596	16.3925	13.8286
170126	12.8096	13.5736	14.5527	13.6140
170128	14.8891	14.1676	17.6259	15.4144
170131	10.1000	*	*	10.1000
170133	18.0243	18.8119	19.9778	18.9214
170134	14.1085	14.6799	15.1932	14.6538
170137	17.8290	19.3118	19.3344	18.8395
170139	14.1967	14.3001	14.8157	14.4193
170142	*	17.7134	18.9169	18.3246
170143	15.6509	16.0415	16.3258	16.0049
170144	19.0929	20.4392	20.7583	20.0727
170145	17.1837	19.0142	18.1398	18.1031
170146	20.9075	21.7919	25.4405	22.7798
170147	22.3017	17.6717	17.4968	19.0192
170148	16.9183	19.1942	24.4828	19.5145
170150	15.5651	15.9072	14.9718	15.4692
170151	13.8934	14.3668	14.5002	14.2317
170152	14.9139	15.6423	16.0930	15.5503
170160	13.7108	14.4732	17.0629	15.0179
170164	16.6542	17.4072	17.0791	17.0445
170166	27.5567	12.7507	16.5113	18.0323
170171	12.5200	13.1792	14.7051	13.3708
170175	19.0232	20.1907	19.9712	19.7266
170176	21.3400	23.5043	23.5743	22.8029
170180	16.6921	8.6352	*	11.8552
170182	22.2164	21.3454	21.9797	21.8339
170183	20.3505	19.5182	16.6577	18.5979
170185	*	*	26.6814	26.6814
170186	*	*	32.9088	32.9088
180001	17.9906	20.4885	20.8419	19.8481
180002	17.9669	17.5798	19.7742	18.4114
180004	17.2581	17.7149	18.0494	17.6734
180005	21.1390	22.4634	23.4941	22.1458
180006	11.4398	10.3400	11.2872	11.0389
180007	17.6776	17.9491	18.6823	18.0973
180009	21.4730	21.0608	21.7746	21.4458
180010	19.1100	19.6311	19.4210	19.3847
180011	17.1050	19.0526	22.6798	19.8513
180012	18.7223	19.0646	19.6614	19.1485
180013	18.2354	19.7418	19.9690	19.3345
180014	21.4856	21.3361	22.9674	21.8678
180016	19.8892	21.1458	19.7132	20.2640
180017	15.4140	15.6583	16.7649	15.9422
180018	17.1692	15.4892	17.2357	16.6084
180019	17.3970	17.8285	19.0883	18.1044
180020	17.7288	18.0111	19.3978	18.3483
180021	15.4580	17.0618	16.5376	16.3552
180023	15.8803	17.4717	19.0574	17.4610
180024	16.1731	16.5040	19.6313	17.2961

* Denotes wage data not available for the provider for that year.

** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
180025	14.1841	15.4180	17.1875	15.5888
180026	14.6804	15.0118	13.9959	14.5545
180027	16.4116	17.5286	19.6928	17.8399
180028	19.5276	15.7005	26.1723	19.5534
180029	17.7729	17.7248	20.0357	18.4826
180030	17.3430	17.9543	17.5043	17.5959
180031	13.9844	13.1848	17.1003	14.4541
180032	16.8318	17.2784	17.2362	17.1383
180033	17.7344	15.4131	17.0498	16.6984
180034	15.3369	16.3991	17.0349	16.2188
180035	20.1305	21.3666	22.6728	21.3628
180036	19.8398	20.1860	20.6951	20.2522
180037	19.9737	21.2184	21.0177	20.7450
180038	17.7626	18.5923	19.0457	18.4790
180040	19.5337	21.2229	22.1332	20.9525
180041	15.0785	16.3699	17.5950	16.3724
180042	16.7691	17.1519	15.5660	16.4438
180043	16.8027	14.6526	17.0419	16.0656
180044	18.5571	19.4984	21.1057	19.7654
180045	17.7130	20.8455	20.7850	19.9661
180046	19.2523	21.2080	20.8544	20.4279
180047	16.2304	18.6938	17.8625	17.5927
180048	18.3442	17.7816	18.3151	18.1431
180049	16.4319	16.5459	17.0422	16.6742
180050	17.8540	17.1493	19.4583	18.1528
180051	16.3960	17.5441	17.7358	17.2163
180053	15.9284	15.8994	17.3167	16.3733
180054	19.4858	20.0946	17.4354	19.0288
180055	15.2663	15.8422	16.6072	15.8890
180056	17.0056	17.5881	18.6075	17.7242
180058	15.9685	14.5355	14.7900	15.0323
180059	13.3955	14.7032	17.2542	14.9522
180063	13.1036	12.4448	14.7338	13.4418
180064	15.2424	15.5066	16.3894	15.6781
180065	12.0629	11.1934	11.0966	11.4164
180066	19.2981	19.8956	19.4875	19.5598
180067	20.6322	20.1712	20.2762	20.3589
180069	17.7911	16.2916	19.0443	17.6808
180070	13.1923	15.9362	15.4643	14.7849
180072	16.9021	17.2347	17.0576	17.0759
180078	21.1170	21.7116	22.2802	21.7169
180079	15.1636	15.9048	18.1683	16.3817
180080	16.4989	16.6428	17.5659	16.9072
180087	14.9167	15.6089	16.2378	15.5798
180088	22.0374	22.1774	22.8908	22.3519
180092	18.2405	18.3597	18.8964	18.5113
180093	17.0132	17.8492	17.6961	17.5099
180094	13.5490	13.6233	14.3306	13.8326
180095	13.8021	13.9050	15.4478	14.3114
180099	13.3631	13.2991	14.0464	13.5559
180101	18.4883	*	20.2958	19.4148
180102	17.9618	18.5240	16.6998	17.7006
180103	19.8965	20.3490	20.8866	20.3712
180104	18.9281	19.3922	20.3023	19.5481
180105	15.2394	16.6997	18.2976	16.6579
180106	14.3505	15.2895	15.5278	15.0462
180108	14.8187	14.4740	14.8720	14.7266
180115	16.7003	16.9096	18.0951	17.2235
180116	18.0392	18.6077	18.1923	18.2836
180117	17.7857	23.0192	20.7961	20.3977
180118	15.8597	16.9250	17.9017	16.8657
180120	16.1591	15.3115	16.4226	15.9318
180121	15.0983	20.0494	16.9570	17.2427

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
180122	18.5094	18.1930	18.7549	18.4922
180123	21.0613	21.1067	21.8227	21.3332
180124	17.4994	18.8487	19.7138	18.6761
180125	19.6416	14.9314	22.6161	18.1828
180126	12.9228	14.3551	14.8501	14.0804
180127	19.2581	17.6365	18.0498	18.2667
180128	17.6385	18.2817	18.7194	18.2299
180129	16.8378	22.3536	15.6637	17.9690
180130	19.8192	20.6450	21.9268	20.8000
180132	17.7744	19.5884	19.4233	18.9093
180133	21.6794	21.7800	23.2679	22.2101
180134	13.1935	14.5387	16.5901	14.7149
180136	17.3542	*	*	17.3542
180138	19.3692	20.2102	19.8524	19.8199
180139	18.7198	20.5350	20.3816	19.9038
180140	16.8152	15.2719	14.6466	15.5892
180141	20.9820	23.8930	23.0957	22.5668
180142	*	20.751	*	20.7510
180143	*	*	21.3197	21.3197
190001	17.6832	18.1514	18.8583	18.2414
190002	19.1924	19.8834	20.6057	19.8935
190003	19.7749	19.9121	19.5115	19.7281
190004	17.7710	18.3620	19.6755	18.6227
190005	17.2422	17.5161	18.6994	17.8286
190006	17.8036	17.5911	17.7333	17.7115
190007	13.8189	14.4720	15.8753	14.7770
190008	18.6664	19.2456	22.4797	20.0804
190009	15.3555	15.9731	16.0395	15.7936
190010	16.2505	16.5020	17.7616	16.8604
190011	15.9534	15.6351	15.7319	15.7701
190013	16.8181	15.5019	16.7770	16.3476
190014	17.0959	17.8015	18.6929	17.8513
190015	18.6266	18.9896	19.7673	19.1223
190017	16.2393	17.5381	19.8449	17.8836
190018	15.0668	11.1898	13.1355	13.0348
190019	18.5257	18.3788	18.6473	18.5189
190020	17.5256	17.6840	18.7252	17.9732
190025	18.6369	16.8686	18.1892	17.9111
190026	18.1622	18.5015	18.8895	18.5256
190027	17.0827	17.4761	18.3203	17.6149
190029	16.5239	19.1967	18.7344	18.0923
190034	16.8503	18.0754	19.2007	18.0146
190036	20.1780	20.0300	21.1870	20.4494
190037	17.6945	19.9878	14.1323	17.4581
190039	19.4713	19.0376	17.8217	18.7156
190040	21.4634	21.7376	23.0537	22.0787
190041	17.6646	17.9535	17.2344	17.5871
190043	15.5580	15.5618	15.5645	15.5614
190044	17.2892	17.4471	17.6788	17.4765
190045	21.6107	21.2853	22.0065	21.6574
190046	19.7964	20.4458	20.2414	20.1666
190048	16.6683	16.8136	16.6848	16.7218
190049	17.2280	17.7417	18.5902	17.8611
190050	16.1980	16.2854	16.9053	16.4718
190053	13.2159	13.0080	13.4768	13.2412
190054	19.1738	18.9059	17.7269	18.6351
190059	15.6942	15.8373	17.8651	16.5018
190060	14.7186	17.8443	19.9121	17.2297
190064	20.4482	18.2466	19.9873	19.5473
190065	20.9927	18.3091	18.3050	19.0764
190071	14.4827	16.4138	16.3822	15.7772
190077	15.7805	16.5536	16.8829	16.4072
190078	14.8826	16.9383	19.5879	16.9873

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
190079	17.7120	17.9403	18.1929	17.9449
190081	15.3198	14.9707	14.7919	15.0273
190083	18.8895	18.4951	16.2970	17.9487
190086	15.8694	16.5074	17.6237	16.6689
190088	20.5531	19.9362	20.4725	20.3095
190089	13.0503	15.0395	15.2055	14.4221
190090	16.6664	16.2351	19.8201	17.5803
190095	16.2287	17.3258	17.3637	16.9543
190098	20.4897	21.0847	22.5793	21.3421
190099	19.9018	19.0635	19.0545	19.3385
190102	20.0300	20.7870	21.0423	20.6389
190103	12.1389	14.4158	15.6415	14.0050
190106	18.5813	18.5908	19.9117	19.0267
190109	15.5767	15.8187	16.3641	15.9327
190110	15.8052	15.7313	15.2652	15.5956
190111	19.7514	20.6508	20.2253	20.2164
190112	21.0232	22.0741	24.2806	22.3499
190113	12.5777	*	19.0411	16.0667
190114	12.6366	13.9209	13.4402	13.3357
190115	20.2473	22.7583	23.7462	22.1782
190116	15.5481	17.3757	18.3223	17.0452
190118	14.7876	16.3776	17.8543	16.2736
190120	13.9591	17.2309	17.6708	16.2867
190122	15.4793	15.3742	16.7189	15.8764
190124	20.6222	20.1206	22.8245	21.2142
190125	20.4517	19.8298	20.1401	20.1511
190128	20.4688	20.8770	21.1465	20.8466
190130	15.1467	14.0379	14.5586	14.5812
190131	20.7565	18.8958	19.7483	19.8133
190133	13.5383	15.1393	15.7834	14.7342
190134	12.1749	12.4507	*	12.3182
190135	21.6875	21.3454	23.1434	22.0401
190136	12.4091	15.1662	15.6286	14.4513
190140	14.2256	14.6829	14.8738	14.5954
190142	15.4861	16.2280	19.0464	16.8845
190144	16.2068	18.4405	18.3513	17.6419
190145	15.2345	16.2505	16.4402	15.9754
190146	21.2825	21.9607	20.6776	21.3057
190147	14.4345	14.7202	15.2732	14.8106
190148	16.6337	15.5338	19.4518	17.1031
190149	17.5997	16.4722	16.5153	16.8165
190151	14.7333	15.5210	16.2783	15.5127
190152	22.2070	22.0319	22.7142	22.3160
190156	15.7478	16.0442	17.6573	16.4812
190158	20.4637	20.4078	21.6307	20.8104
190160	17.1003	18.4662	19.3139	18.3349
190161	15.5737	15.9280	15.7807	15.7581
190162	20.6143	20.1962	20.9645	20.5966
190164	15.1783	18.2379	19.0473	17.3930
190167	16.6681	17.7611	15.5795	16.5709
190170	14.1750	14.5222	16.2045	15.0173
190173	23.6398	23.0934	*	23.4298
190175	19.3625	20.4580	22.2470	20.7017
190176	24.0574	22.2316	21.7051	22.5987
190177	18.6715	19.7794	20.3679	19.5997
190178	11.0657	12.0372	*	11.5413
190182	20.2855	20.7102	23.1997	21.3232
190183	16.7671	16.0752	16.7402	16.5275
190184	17.2044	19.8436	18.6583	18.5582
190185	20.1444	20.5852	20.5454	20.4315
190186	18.7568	17.4078	16.7272	17.7093
190190	17.4642	15.8985	13.7951	15.8564
190191	20.4975	19.6911	19.7218	19.9785

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
190196	17.9225	18.6138	19.1961	18.6202
190197	19.5569	20.2082	20.5377	20.1371
190199	16.0637	15.3522	17.8288	16.5088
190200	22.0391	21.6852	22.3510	22.0311
190201	18.7079	19.7421	21.5656	20.0412
190202	*	*	22.4701	22.4701
190203	21.7350	21.7931	23.0636	22.1708
190204	21.4624	20.5784	22.9134	21.6176
190205	19.6587	19.3737	18.8750	19.3122
190206	21.7012	21.3307	21.7867	21.6067
190207	20.5082	19.0216	20.7024	20.0851
190208	20.0065	16.9641	17.6834	18.1192
190218	19.7518	19.2992	20.7290	19.9128
190231	15.8287	17.7247	*	16.7208
190236	19.3395	21.1982	22.5796	21.1124
190238	*	20.6799	*	20.6799
190239	*	19.7601	*	19.7601
190240	*	14.3579	16.0112	15.2482
200001	18.0527	18.2513	19.9438	18.7634
200002	19.3629	22.3035	22.3272	21.3905
200003	16.9566	18.4141	18.8570	18.0991
200006	17.6586	21.0922	24.1167	20.8621
200007	18.7992	18.1681	19.4177	18.7699
200008	21.7489	21.5556	24.2833	22.5897
200009	22.2280	21.4763	23.2456	22.3157
200012	18.3484	19.1047	20.9187	19.4746
200013	18.0566	17.9378	20.2192	18.8221
200016	18.0866	17.1187	16.2939	17.1580
200017	17.2930	*	*	17.2930
200018	18.5397	17.8675	20.6104	19.0069
200019	19.2348	19.9245	21.3003	20.1669
200020	22.4526	22.3355	24.8195	23.2627
200021	19.9133	20.7361	22.4038	21.0287
200023	16.1707	20.2063	*	18.0379
200024	19.4329	20.8336	21.2346	20.5158
200025	20.2259	20.4165	21.6002	20.7762
200026	18.1194	17.9021	21.4758	18.9050
200027	18.5659	19.4220	20.2146	19.4316
200028	19.5708	18.8763	19.9926	19.4914
200031	16.2217	16.1641	17.3915	16.5880
200032	18.9315	19.4613	20.8973	19.7659
200033	21.8634	22.4685	23.6538	22.6396
200034	20.1519	20.4941	21.3303	20.6756
200037	18.6713	20.3015	19.7768	19.6048
200038	23.3851	21.2632	22.9629	22.5227
200039	19.8589	20.1508	21.0884	20.3830
200040	19.5503	18.9580	19.5917	19.3665
200041	19.3563	18.8131	20.3761	19.5462
200043	16.7224	19.4295	19.8833	18.5621
200050	20.1214	20.2014	14.6387	17.8681
200051	22.1525	22.0712	*	22.1031
200052	17.2099	17.6271	19.9239	18.2260
200055	18.8422	18.5983	19.4998	18.9700
200062	17.2273	18.4279	18.4038	18.0038
200063	19.9331	21.2121	22.5278	21.2360
200066	17.0289	17.0570	18.7143	17.6294
210001	20.4841	18.6617	21.5280	20.1745
210002	19.9219	23.5132	21.1426	21.7024
210003	20.3446	26.0447	21.6625	22.4257
210004	24.2909	24.9760	*	24.6345
210005	21.4929	21.3829	23.8670	22.2506
210006	18.9436	19.3682	20.8607	19.7283
210007	23.1007	23.8840	23.4582	23.4837

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
210008	21.1768	21.2895	21.0767	21.1826
210009	20.5447	20.7479	20.8476	20.7179
210010	18.7197	19.5908	19.7917	19.3735
210011	21.4862	21.4043	20.0662	20.9726
210012	20.7203	21.3977	24.0745	21.9907
210013	19.7288	19.4505	23.1649	20.7921
210015	16.1912	18.7448	23.9651	19.4078
210016	23.8739	26.5193	*	25.1634
210017	18.8928	18.5079	18.2963	18.5724
210018	22.2135	22.8553	23.6442	22.8975
210019	19.3046	20.6025	21.5429	20.4724
210022	22.6389	24.5744	25.6728	24.3137
210023	23.1950	22.9989	24.4815	23.5799
210024	20.6011	24.4280	24.7858	23.2181
210025	19.5876	21.2769	21.4910	20.6428
210026	12.1348	13.8668	20.7986	14.8993
210027	17.6855	17.1060	16.2219	17.0429
210028	19.6408	19.4157	20.4027	19.8293
210029	21.2167	25.4939	24.7605	23.8903
210030	21.7403	20.9574	21.9547	21.5644
210031	16.2299	*	*	16.2299
210032	17.7228	20.1955	20.0825	19.3625
210033	20.8053	23.7588	22.8303	22.4103
210034	15.7322	19.4144	22.6812	19.1023
210035	20.2731	20.8317	21.6662	20.9231
210037	18.3072	20.5528	19.2811	19.3731
210038	23.4971	24.9762	25.9701	24.7755
210039	19.9901	21.3559	23.3583	21.5884
210040	21.5014	23.4252	23.1960	22.7040
210043	19.6474	22.4000	22.9504	21.5561
210044	22.5781	23.0917	22.9540	22.8695
210045	11.6086	12.1467	13.5654	12.4021
210048	23.0537	24.6921	24.9381	24.2387
210049	19.0821	19.3022	21.1056	19.8459
210051	22.4335	23.6476	24.8949	23.6510
210054	22.3559	23.2730	25.1694	23.5831
210055	29.2539	26.5272	23.8025	26.3168
210056	19.2662	22.9593	23.8915	21.9932
210057	23.8289	26.0076	*	24.8719
210058	22.0753	16.3191	17.4250	18.5418
210059	22.6766	25.6052	*	23.8855
210060	*	26.5846	26.4566	26.5245
210061	17.2240	16.1931	20.8975	18.1853
220001	21.9369	22.9064	23.4091	22.7509
220002	24.1285	24.5840	25.3171	24.6486
220003	16.9246	17.9319	17.6069	17.4814
220006	22.3085	22.6337	23.5624	22.8309
220008	24.4691	22.0796	23.0806	23.1592
220010	21.8582	22.0067	23.8256	22.5598
220011	26.1827	29.5290	24.8039	26.6476
220012	32.0829	31.2303	30.4104	31.2159
220015	22.5773	23.1893	24.1348	23.2890
220016	23.3750	23.0951	24.5411	23.6644
220017	22.4605	25.1568	25.9000	24.3877
220019	19.5613	19.8551	19.9268	19.7870
220020	21.4152	22.4295	22.5375	22.1352
220023	16.1885	*	*	16.1885
220024	21.5363	21.9316	23.8620	22.4506
220025	20.7882	22.8593	22.8936	22.1783
220028	22.8036	21.0630	24.0441	22.5673
220029	23.1509	25.6560	26.3117	25.0100
220030	18.5441	18.7429	19.3387	18.8705
220031	30.2430	29.3091	28.3832	29.0231

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
220033	20.0695	20.3609*	22.3195	20.8616
220035	21.6396	23.1892	24.5685	23.0612
220036	24.6470	24.4091	24.9637	24.6635
220038	22.6518	22.3162	22.4302	22.4673
220041	23.4720	27.5034	28.6303	26.3941
220042	25.0779	26.0473	28.4675	26.3871
220046	22.7068	23.3149	23.8578	23.2791
220049	26.0025	27.2689	25.2174	26.1330
220050	22.0144	22.5265	23.3330	22.6222
220051	21.1033	21.7357	22.4826	21.7398
220052	23.7650	23.5225	24.4403	23.8995
220053	19.1280	*	*	19.1280
220055	21.3743	*	*	21.3743
220057	25.3902	25.8064	26.2945	25.8083
220058	19.9369	26.8345	21.6814	22.7654
220060	28.0843	28.0794	28.1888	28.1190
220062	20.4685	20.2254	16.0585	19.0019
220063	20.3951	20.8079	21.7336	21.0041
220064	22.3260	22.7497	23.8859	22.7342
220065	20.1364	20.1424	21.5556	20.6267
220066	20.7826	23.4477	24.5463	22.8901
220067	26.4443	27.5405	27.9807	27.2636
220070	19.7528	20.9128	21.0606	20.5677
220071	25.6184	27.4151	27.4906	26.8301
220073	25.6025	26.1328	27.4458	26.3872
220074	25.6390	24.3057	24.8908	24.8286
220075	22.8057	22.5329	24.5769	23.3112
220076	22.6668	23.2795	24.1224	23.3492
220077	25.2646	26.1545	27.1503	26.1736
220079	22.6256	22.0769	25.7305	22.9418
220080	21.5238	22.1971	22.9911	22.2508
220081	29.1726	29.6682	29.6399	29.4983
220082	21.6726	22.1453	22.9171	22.2513
220083	23.9156	22.5815	27.2605	24.4264
220084	23.6641	25.3761	25.8300	24.9680
220086	23.8705	26.7778	28.7276	26.2967
220088	22.9067	23.4258	25.0671	23.8081
220089	23.0965	25.4106	25.3521	24.5662
220090	22.0041	23.3049	25.0628	23.4549
220092	18.5239	24.7905	*	20.9405
220095	21.4831	21.7851	22.4924	21.9294
220098	21.5906	23.1547	24.7180	23.1447
220100	25.7077	27.5841	26.8001	26.6854
220101	25.9204	27.0711	27.9184	26.9502
220104	28.0021	28.7258	*	28.3658
220105	21.4129	21.9185	23.2210	22.2352
220106	25.6577	25.9277	28.1034	26.6044
220108	21.9115	23.4975	24.5939	23.3257
220110	28.7071	29.1648	30.2500	29.3820
220111	23.8066	24.7510	26.7336	25.0953
220116	26.1662	32.0049	28.4236	28.6928
220119	23.3216	23.8785	24.4507	23.8686
220123	25.8994	32.4678	28.8325	29.1153
220126	22.5218	23.6045	23.8123	23.3172
220133	25.4596	29.3911	29.8366	28.1948
220135	25.6522	28.3648	29.6837	27.9677
220153	22.9592	*	*	22.9592
220154	22.4770	21.1563	23.3590	22.3695
220163	29.1143	29.2299	29.3552	29.2328
220171	24.5553	24.9261	26.9048	25.5207
230001	19.8020	20.0438	23.3051	20.9963
230002	22.7991	23.0439	24.3115	23.3442
230003	19.8420	21.2215	21.6493	20.9088

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
230004	23.1036	20.5005	22.4538	21.9617
230005	18.5644	17.0943	20.5596	18.6769
230006	19.1041	20.4978	21.1974	20.2494
230007	15.5538	*	*	15.5538
230012	15.0803	*	*	15.0803
230013	20.8018	22.2211	20.0954	21.0266
230015	20.1104	20.6464	21.9499	20.8811
230017	22.2822	22.9755	25.7900	23.6501
230019	22.2622	23.6674	23.8779	23.3381
230020	22.1280	21.8526	28.8386	23.8749
230021	18.9636	19.8256	20.5690	19.8347
230022	18.8006	21.9129	21.7265	20.8153
230024	23.7326	24.9664	26.2155	24.8592
230027	14.6950	19.6393	22.5114	18.5396
230029	19.4911	22.1782	25.2459	22.2502
230030	18.3916	18.6406	19.1742	18.7416
230031	19.3162	19.9465	19.4676	19.5690
230032	21.8845	24.8930	22.5952	23.1148
230034	19.0473	19.4366	17.9276	18.7511
230035	17.5109	17.7490	20.5906	18.5317
230036	23.2119	23.8398	25.2015	24.1096
230037	20.4747	23.2751	22.7382	22.1469
230038	23.5251	21.9692	21.4546	22.2952
230040	21.4393	20.7841	20.2451	20.8039
230041	20.3131	21.7364	23.2870	21.7251
230042	22.1043	21.3870	19.8523	21.0979
230046	25.5696	25.3206	26.1787	25.6837
230047	21.5381	22.3595	23.7737	22.5475
230053	25.4968	26.8917	23.3066	25.2933
230054	20.6963	20.8014	17.6968	19.8741
230055	20.7932	20.8492	20.8930	20.8452
230056	16.0766	17.8091	17.3516	17.0331
230058	20.4165	21.0303	21.6619	21.0283
230059	19.9240	20.7092	20.5651	20.3916
230060	19.8021	19.8987	21.0368	20.2439
230062	17.1540	18.8039	18.2283	18.0500
230063	20.4171	*	*	20.4171
230065	22.3459	22.7416	23.3414	22.8607
230066	22.1768	23.0475	23.2790	22.8376
230069	23.2076	24.2470	25.0212	24.1384
230070	20.2505	21.5666	21.1658	21.1081
230071	22.9052	23.1337	23.6398	23.2244
230072	20.6944	20.4456	22.6533	21.2484
230075	20.0545	22.5866	22.3632	21.5991
230076	24.4547	24.7010	26.7244	25.2068
230077	21.0178	20.2823	22.6153	21.3059
230078	17.5577	17.9868	19.1638	18.2565
230080	19.7687	20.2104	19.1810	19.7086
230081	19.0345	19.0199	20.0464	19.3283
230082	18.2992	19.0419	18.2165	18.5095
230085	20.2096	23.4996	24.5765	22.7898
230086	18.9420	20.1730	20.1060	19.7404
230087	18.9034	19.9700	20.6619	19.7714
230089	23.9100	22.6994	22.7774	23.0814
230092	20.0145	20.7738	22.2629	21.0588
230093	20.4655	20.6314	21.0274	20.7091
230095	17.3313	17.6444	18.0582	17.6864
230096	22.8410	22.7785	24.3004	23.2947
230097	21.2854	21.1254	22.5006	21.6504
230099	21.1933	21.7513	21.7402	21.5696
230100	17.1336	17.3842	18.1823	17.5576
230101	20.0932	20.5315	22.5159	20.9964
230103	22.7696	11.3429	18.5254	17.4039

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
230104	23.1457	24.1238	25.5606	24.3812
230105	21.5210	22.6098	23.0086	22.4180
230106	20.7997	21.6825	22.9909	21.8109
230107	16.5966	17.1386	18.9985	17.6147
230108	18.8631	20.3437	21.4592	20.2385
230110	18.9825	19.7262	20.0544	19.5843
230113	14.9411	*	*	14.9411
230115	18.4050	19.6281	21.0361	19.6522
230116	16.5419	14.5692	15.6064	15.5368
230117	25.9318	25.6797	25.4341	25.6737
230118	21.3028	20.6797	20.2770	20.7229
230119	21.1918	22.6555	23.9898	22.6112
230120	18.5264	20.3306	20.6105	19.6370
230121	20.3158	21.3342	21.0568	20.9014
230122	20.9078	*	*	20.9078
230124	20.3608	18.9981	20.9641	20.0945
230128	24.9081	24.0724	24.4952	24.4850
230130	23.5170	22.1775	23.5123	23.0660
230132	26.6386	26.1946	27.3497	26.7222
230133	17.6894	17.1058	19.0770	17.9441
230135	22.5258	20.5637	18.4193	20.8744
230137	19.1813	*	*	19.1813
230141	22.1299	22.4570	24.4560	22.9910
230142	22.2940	23.5621	24.9830	23.5261
230143	16.3043	16.7948	18.2700	17.1074
230144	22.1108	23.4237	23.3295	22.9371
230145	20.2542	19.2638	17.9811	19.0315
230146	20.5044	21.2260	22.3838	21.3821
230147	21.8496	23.2755	*	22.5377
230149	20.7691	18.8005	19.9577	19.8029
230151	22.1713	23.3967	24.1404	23.2068
230153	19.5633	18.7403	20.0098	19.4472
230154	15.4456	15.4362	16.7152	15.8739
230155	17.2076	20.5409	20.9053	19.4860
230156	24.7587	25.6228	27.2254	25.8423
230157	20.3667	17.3571	*	18.9586
230159	20.0749	*	*	20.0749
230162	21.4636	21.7148	22.7984	21.9769
230165	23.0106	23.8881	24.5193	23.7930
230167	21.5048	22.9745	24.1064	22.8649
230169	23.0652	24.3874	28.1039	25.0117
230171	13.3863	17.1282	16.1129	15.4610
230172	20.6417	21.4675	22.1709	21.4477
230174	23.0272	22.7304	23.5025	23.0851
230175	16.8909	*	14.4932	15.4643
230176	22.7772	23.8204	24.6518	23.7400
230178	16.9156	17.3030	17.3428	17.1968
230180	15.8769	18.5744	19.6062	17.9856
230184	19.0604	19.7717	20.4831	19.7582
230186	19.5337	15.7837	19.1289	18.1131
230188	15.7112	16.2975	16.8687	16.3031
230189	16.6838	17.9218	19.1990	17.9352
230190	26.8196	26.4687	24.4643	25.9234
230191	19.0013	18.4861	20.6633	19.3446
230193	19.7066	19.8287	21.5358	20.3443
230195	21.7775	22.9228	23.4647	22.7456
230197	24.0184	24.0854	25.4494	24.4929
230199	19.4451	20.6580	22.4592	20.8791
230201	17.2141	18.0787	18.2486	17.8664
230204	25.4181	23.4966	24.5127	24.4525
230205	14.3788	15.9314	18.1551	16.1081
230207	20.6375	21.2483	20.9059	20.9181
230208	16.0733	16.7454	17.4925	16.7635

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
230211	18.6744	21.8581	21.1245	20.4277
230212	23.3021	24.2611	24.6420	24.0563
230213	15.1908	15.5469	17.1062	15.9226
230216	20.3359	21.0710	22.2137	21.1969
230217	21.2707	22.2698	24.1455	22.5496
230219	19.1549	20.0442	18.1277	19.1400
230222	22.1785	21.9711	23.2545	22.4802
230223	21.1528	22.6887	25.2666	22.9884
230227	23.7259	22.3155	25.8826	23.9496
230230	22.2385	22.3097	22.1703	22.2333
230235	16.8684	17.7197	18.3341	17.6456
230236	24.3835	25.9676	25.2273	25.2169
230239	18.0942	17.8168	18.9790	18.2974
230241	19.1000	20.7297	20.4217	20.0924
230244	21.7413	22.2697	23.1175	22.3742
230253	20.5945	21.0433	22.7706	21.4304
230254	21.9402	22.6335	23.3714	22.6370
230257	19.6982	21.3880	23.1794	21.3083
230259	22.2393	22.3969	23.1768	22.6077
230264	17.1319	17.4864	18.4075	17.6504
230269	23.3105	24.0992	24.3772	23.9435
230270	22.6187	22.5985	24.8925	23.3219
230273	22.9199	22.8715	24.1278	23.2898
230275	17.7487	20.8985	*	18.8231
230276	21.3722	25.8709	22.3313	22.8959
230277	23.1456	23.9771	24.2319	23.8212
230278	18.2110	*	*	18.2110
230279	17.6973	17.8074	18.3256	17.9471
230280	15.6654	18.3497	*	16.7057
230283	27.9480	22.5082	*	24.9202
230287	*	*	22.5420	22.5420
240001	24.6207	25.6936	26.6372	25.6759
240002	22.7981	23.2307	24.1694	23.4122
240004	25.1908	24.4030	25.6238	25.0604
240005	17.9563	20.3193	20.2389	19.4808
240006	25.1602	23.0715	25.7288	24.6342
240007	17.7625	19.0850	20.7189	19.1593
240008	20.2158	23.3783	22.7437	21.9832
240009	16.8965	17.1187	17.4518	17.1699
240010	23.6477	25.4752	28.3796	25.8852
240011	20.5192	21.5875	22.5188	21.5240
240013	20.3282	21.7544	25.1560	22.2201
240014	23.0025	24.2610	25.2306	24.1808
240016	20.4017	22.2011	23.3772	21.9959
240017	18.3585	18.9272	19.3431	18.8677
240018	20.8501	18.4268	23.6092	20.7339
240019	22.1501	23.1477	24.0613	23.1411
240020	21.1937	20.8849	20.6378	20.8948
240021	18.7515	20.1457	19.0469	19.2586
240022	21.7889	21.3234	23.0394	22.0529
240023	21.5087	22.8224	22.3002	22.1691
240025	18.8345	20.0308	20.7672	19.8809
240027	19.1017	16.7758	18.3837	18.0732
240028	19.7918	25.1934	*	22.5025
240029	21.1329	20.0164	23.0440	21.3549
240030	18.8547	20.1653	20.9799	20.0254
240031	18.1566	19.3983	21.7620	19.6652
240036	22.2460	22.1721	22.5423	22.3294
240037	19.2345	20.1195	21.4275	20.2550
240038	25.3061	24.3957	26.3886	25.3874
240040	20.4813	23.1352	22.8191	22.1112
240041	19.2864	21.8655	21.9054	20.9373
240043	17.7335	16.9859	18.2388	17.6591

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
240044	18.8411	20.3339	22.5750	20.4995
240045	21.1396	24.1557	24.2936	23.2125
240047	22.6152	23.8098	25.3136	23.8879
240050	25.2983	21.6499	23.1719	22.7044
240051	19.9195	22.5855	23.2612	21.9129
240052	20.7749	*	22.3485	21.5706
240053	22.9611	23.8693	24.2783	23.7568
240056	23.4226	23.7139	24.8549	24.0398
240057	24.2159	24.8686	25.4292	24.8727
240058	14.9697	18.4009	19.0506	17.2677
240059	23.6215	23.7808	25.3847	24.2488
240061	27.2603	25.9951	27.9151	27.0571
240063	23.7866	24.4031	25.4760	24.5591
240064	23.2860	22.8578	24.6785	23.6296
240065	12.7867	14.8734	14.4623	14.0357
240066	23.0698	24.1143	25.5163	24.2946
240069	19.8282	21.7991	23.3241	21.6103
240071	20.2101	21.2463	22.5319	21.3438
240072	21.1824	20.9529	21.5455	21.2291
240073	16.0840	17.3559	17.9013	17.1144
240075	21.2654	21.3357	21.9160	21.5185
240076	21.8795	22.3280	23.6130	22.6447
240077	15.3794	20.3445	22.1509	19.1544
240078	23.9150	25.1082	25.9495	25.0087
240079	18.4338	18.8345	18.2929	18.5204
240080	24.3399	25.5619	26.0031	25.2885
240082	18.3555	18.7995	20.2018	19.1212
240083	19.7637	21.0317	22.3289	20.9906
240084	19.4739	21.7421	23.1951	21.4482
240085	22.5736	20.9778	20.7535	21.3852
240086	16.9392	18.1401	18.1497	17.7863
240087	18.8352	21.3323	21.2116	20.4135
240088	21.6858	23.1056	24.6260	23.0939
240089	20.7239	21.1989	21.3949	21.1104
240090	19.2968	19.2166	21.0856	19.8725
240093	18.7092	20.2400	20.7138	19.9194
240094	20.9446	22.0247	22.5923	21.8995
240096	20.1644	21.0417	20.2992	20.4825
240097	24.2662	27.9496	29.7597	27.1621
240098	21.3467	24.2296	23.9626	23.2314
240099	14.4649	15.4964	18.8139	15.9924
240100	20.8302	20.8325	24.1875	21.9081
240101	19.2120	19.9837	22.1329	20.4409
240102	14.6067	16.3659	15.5114	15.4871
240103	19.1540	18.7510	21.0182	19.5968
240104	23.2178	23.5351	25.2485	24.0080
240105	14.3965	*	*	14.3965
240106	23.5148	23.5005	23.9677	23.6780
240107	20.3983	20.9004	21.2163	20.8360
240108	15.3547	18.2427	17.6500	16.9347
240109	13.5537	16.3216	15.1369	14.9110
240110	19.4828	21.0277	21.7340	20.7301
240111	17.2100	17.8617	19.9712	18.3046
240112	15.8350	16.6244	17.2437	16.5628
240114	16.2505	17.3682	18.3415	17.5274
240115	23.7765	23.8675	24.6174	24.0872
240116	16.6731	18.3520	17.3460	17.3960
240117	18.0636	17.9941	18.7656	18.2986
240119	20.6126	21.8289	23.0230	21.7338
240121	23.4018	22.2266	22.4858	22.6970
240122	19.1811	21.2876	20.7795	20.4095
240123	16.5098	18.3941	18.9494	17.8731
240124	19.4400	20.4728	21.2023	20.3644

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
240125	12.3627	14.9708	17.3846	15.0136
240127	15.8966	17.9724	16.4294	16.7198
240128	17.2513	16.3608	17.5611	17.0478
240129	14.4212	16.5209	17.7242	16.1756
240130	14.9399	16.4271	17.7634	16.3549
240132	23.0669	23.1452	24.4301	23.5642
240133	19.2126	19.5293	20.8958	19.9049
240135	14.3069	15.7015	15.6298	15.1560
240137	20.3750	21.5073	21.6644	21.1797
240138	15.2062	16.7332	18.9731	16.7753
240139	20.8053	20.5496	21.8580	21.0743
240141	23.8066	23.1009	23.6622	23.5109
240142	25.2770	29.2238	24.0719	25.9878
240143	16.6172	20.4266	20.7307	19.0810
240144	18.2604	21.4469	23.1661	20.7059
240145	17.2778	19.0689	17.6747	18.0668
240146	16.0652	16.5412	17.3275	16.6788
240148	18.8779	19.5204	19.5372	19.2785
240150	13.8786	20.8331	23.3857	18.4647
240152	21.1678	22.4744	24.1818	22.6586
240153	16.5412	19.3336	17.7399	17.7721
240154	17.5769	21.5052	21.5859	20.1583
240155	19.8762	20.9385	23.6944	21.5112
240157	17.4168	13.7309	*	15.5390
240160	15.9492	15.9014	16.4990	16.1163
240161	15.7996	16.8809	18.0542	16.8888
240162	16.6292	19.1542	19.3296	18.3301
240163	18.8320	20.4760	22.2009	20.3835
240166	17.3233	19.4131	19.4496	18.7799
240169	16.6725	16.3958	*	16.5195
240170	18.8762	20.3779	21.5994	20.2122
240171	17.2886	18.5172	19.6732	18.5083
240172	18.2852	20.8606	20.3699	19.7027
240173	17.2655	18.5187	18.3183	18.0300
240179	17.5116	20.4004	17.7557	18.4699
240184	15.3793	16.8917	17.6979	16.5493
240187	19.9230	21.2736	23.2471	21.4869
240193	17.8226	18.4664	*	18.1403
240196	24.3472	25.3479	26.1827	25.3447
240200	14.3415	14.9076	18.7517	15.8336
240207	24.1127	25.2814	26.1748	25.2384
240210	24.2218	24.5664	25.3031	24.7274
240211	19.7399	30.6260	34.7849	25.7741
250001	18.4233	19.2756	20.2019	19.2920
250002	17.2501	18.6938	19.6081	18.5060
250003	17.6539	16.7570	18.7331	17.7215
250004	17.8868	18.3860	19.2913	18.5189
250005	12.5993	12.5834	13.7341	13.0041
250006	16.9048	17.5192	19.6894	17.9911
250007	19.2913	19.7562	20.9757	19.9959
250008	14.1760	15.8506	15.8096	15.2607
250009	18.5610	17.7283	17.1686	17.8180
250010	13.3905	14.6101	16.0233	14.5948
250012	14.1623	16.7579	17.4032	16.1420
250015	13.5274	11.7249	16.6522	13.7345
250017	17.9410	20.5976	18.8850	19.0991
250018	11.9311	13.1687	14.7291	13.0932
250019	16.7425	18.0956	19.9070	18.3382
250020	13.4476	16.2698	19.6575	16.1595
250021	9.4318	10.5844	12.7242	10.6438
250023	13.9116	12.3434	13.8210	13.3756
250024	12.7127	12.9899	14.8394	13.4135
250025	19.0390	20.3625	21.9075	20.5374

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
250027	14.9519	14.5445	15.1790	14.8945
250029	16.4834	16.0682	14.8216	15.7783
250030	17.3636	26.6173	25.5089	23.0726
250031	17.9715	18.3825	19.8779	19.1622
250032	17.1339	17.5957	*	17.3669
250033	17.8257	15.0941	16.9132	16.6524
250034	16.6988	17.0399	19.1875	17.6568
250035	15.2353	16.8349	18.3861	16.7093
250036	15.8445	16.1913	17.6247	16.6012
250037	15.4325	12.7156	14.3994	14.0734
250038	16.8454	17.7019	18.8434	17.7665
250039	14.1556	15.1409	16.4502	15.2329
250040	17.3430	18.3364	19.6513	18.4442
250042	16.3867	17.6531	18.3858	17.4884
250043	16.0729	16.6500	18.4025	16.9554
250044	16.1218	16.7321	19.1860	17.3262
250045	22.0839	21.8988	22.7225	22.2606
250047	13.3706	14.7461	*	13.9984
250048	16.8932	17.6649	19.4976	18.0474
250049	11.6715	12.1635	12.8275	12.2266
250050	14.3949	15.1159	16.0234	15.1991
250051	9.3464	10.4900	10.1212	9.9666
250057	15.9237	16.1838	16.3204	16.1462
250058	15.5327	15.7197	16.2623	15.8399
250059	16.2845	16.6494	17.7592	16.8861
250060	13.0301	16.1804	12.6893	13.8440
250061	11.0308	11.5108	12.0186	11.5214
250063	13.2540	13.3092	15.0894	13.8432
250065	12.8853	13.6904	15.0507	13.8065
250066	15.6760	16.1742	17.2711	16.3375
250067	16.4120	16.8522	18.3773	17.2393
250068	13.6768	13.4127	13.2644	13.4415
250069	17.8960	16.8980	18.2097	17.6479
250071	14.3781	12.3488	13.1934	13.2742
250072	18.2218	18.9487	21.0602	19.2655
250076	10.5098	*	*	10.5098
250077	12.2564	13.7404	13.9479	13.2870
250078	15.6336	15.9739	17.1972	16.2928
250079	16.2712	16.5835	16.1483	16.3337
250081	17.3325	19.0358	18.1848	18.1653
250082	16.0975	17.1427	17.3096	16.8599
250083	14.2634	16.6065	16.3054	15.6454
250084	17.0189	20.6429	21.0870	19.3827
250085	14.3797	15.4477	16.7377	15.5314
250088	17.8674	18.2736	19.3976	18.4880
250089	13.4238	14.3027	15.0238	14.2301
250093	15.2044	16.1506	16.8647	16.0778
250094	18.0852	18.5063	18.9681	18.5063
250095	17.0039	17.4217	18.4944	17.6334
250096	19.0688	19.0584	19.3630	19.1609
250097	16.9905	15.5741	16.3328	16.3172
250098	13.1341	18.3874	17.9180	16.1645
250099	14.8528	15.1265	15.9867	15.3437
250100	17.1682	17.8688	19.8795	18.3539
250101	18.4685	17.7194	17.6704	17.9924
250102	23.9329	18.9348	*	21.2970
250104	18.2502	18.7651	19.0165	18.6823
250105	14.5401	15.5133	16.1480	15.4020
250107	15.1496	15.0737	16.5635	15.5581
250109	22.1551	21.3867	24.5760	22.6981
250112	15.5610	16.3640	16.6447	16.1593
250117	16.1225	16.9787	15.9335	16.3432
250119	15.2199	16.1218	16.5700	15.9756

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average * hourly** wage (3 yrs)
250120	15.3433	16.7182	18.1428	16.6322
250122	18.9417	19.2990	19.8033	19.3541
250123	18.8690	18.7863	22.1376	19.9106
250124	13.1823	13.2490	14.3551	13.5956
250125	20.8895	21.2660	21.3711	21.1778
250126	18.2355	21.9101	19.0168	19.6297
250128	14.0048	16.1418	15.9958	15.4423
250131	12.6056	12.4557	11.2470	12.0464
250134	17.0671	18.5142	21.4489	18.9054
250136	18.9689	21.3497	20.0333	20.0576
250138	18.4028	20.4550	19.3446	19.3211
250141	19.0113	19.6692	21.6835	20.2708
250145	10.2507	11.2120	11.2021	10.8489
250146	14.4924	14.7781	15.4061	14.8913
250148	18.0980	19.4233	23.1459	20.1203
250149	12.9569	15.2318	15.7537	14.6277
250150	*	21.8599	*	21.8599
260001	18.0971	20.1560	20.9602	19.7021
260002	22.1183	21.6597	23.4259	22.4118
260003	14.6553	15.4482	16.0721	15.3980
260004	13.0133	13.7035	15.2735	13.9164
260005	19.5554	23.9681	22.2119	21.8900
260006	19.7467	20.0994	22.1692	20.6408
260008	13.8495	16.8893	18.2114	15.8498
260009	18.5080	18.2863	19.0654	18.6237
260011	19.1027	19.5059	20.3279	19.6368
260012	14.3645	17.1662	17.3810	16.3363
260013	15.9884	16.1825	17.3772	16.4946
260015	16.5822	17.8817	18.0070	17.4241
260017	16.7916	16.9914	17.9796	17.2888
260018	12.0060	12.5301	13.6120	12.7676
260019	18.6113	*	18.3629	18.4928
260020	20.5142	20.2241	21.0314	20.5884
260021	22.1017	21.6237	23.3527	22.2918
260022	17.2462	17.7772	18.7707	17.9082
260023	16.4705	17.8649	18.5665	17.6119
260024	15.2356	15.7815	15.6095	15.5379
260025	15.4935	17.0965	18.2804	16.9786
260027	21.2977	22.0362	23.1505	22.1110
260029	19.7484	21.1858	20.1832	20.3332
260030	12.5118	11.9215	12.8349	12.4289
260031	19.4921	19.7249	22.5379	20.4276
260032	20.1988	19.6728	20.1817	20.0177
260034	17.4233	20.4902	20.5439	19.5050
260035	13.1065	13.0071	15.1611	13.8141
260036	16.7430	18.8104	19.9593	18.5490
260039	14.1866	14.6644	15.9689	14.9611
260040	17.3099	18.0140	18.5132	17.9641
260042	18.7567	18.7514	20.8821	19.5084
260044	15.9927	15.9206	16.7879	16.2332
260047	19.0112	19.2247	19.8178	19.3380
260048	20.0885	21.0602	22.4800	21.2299
260050	15.6908	16.8520	17.6687	16.7168
260052	18.0553	18.0914	19.1044	18.4413
260053	15.2236	16.5166	17.4110	16.3851
260054	20.0199	20.6242	23.0188	21.1083
260055	12.0118	15.4214	17.9547	14.9547
260057	17.4636	19.7144	16.5704	17.9947
260059	16.1000	17.0546	16.2074	16.4474
260061	14.7175	15.7112	17.1343	15.8685
260062	20.1477	21.3138	21.9287	21.1699
260063	18.2309	18.8973	19.7231	18.9234
260064	16.5934	17.8033	18.3749	17.5653

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
260065	19.4382	20.0975	20.6671	20.0563
260066	14.9640	15.3460	15.3139	15.2114
260067	14.2249	15.1837	14.5499	14.6334
260068	20.2418	19.4240	20.7947	20.1541
260070	*	13.9510	18.7384	16.1582
260073	14.2550	15.9182	16.9496	15.7508
260074	19.0350	19.8915	20.4033	19.8192
260077	18.6473	19.4482	20.5830	19.5877
260078	15.6381	14.9463	16.0586	15.5564
260079	14.2985	16.1453	16.4816	15.5347
260080	13.5384	14.6832	13.1617	13.7147
260081	21.0151	20.3053	20.2471	20.5212
260082	15.9407	15.9858	18.2853	16.7287
260085	20.4669	20.7051	21.5137	20.8993
260086	14.3164	15.2927	16.7579	15.4677
260091	19.9987	21.5464	22.0772	21.4012
260094	18.0085	18.5395	19.7308	18.8006
260095	19.6944	20.7292	21.6999	20.6994
260096	23.0282	22.5972	22.8259	22.8155
260097	16.5582	19.0632	18.6965	18.1123
260100	15.7047	16.6523	16.5439	16.3025
260102	20.1264	20.6361	21.2133	20.6454
260103	18.5957	19.7146	19.9144	19.3556
260104	21.0138	20.3176	21.6624	21.0040
260105	24.7223	24.8181	22.8005	24.0843
260107	19.8422	20.4269	22.5214	20.7581
260108	19.4609	20.0034	20.9029	20.1514
260109	13.9129	14.8181	15.9724	14.8936
260110	17.8375	18.3227	19.5633	18.5673
260113	14.6756	16.2223	16.1346	15.6436
260115	19.2259	17.4698	19.3873	18.6920
260116	16.2774	14.9812	16.0187	15.7314
260119	16.8836	17.2942	18.0725	17.4218
260120	16.3755	16.4904	17.6811	16.8504
260122	14.9697	16.0931	16.3700	15.8295
260123	14.6444	14.6822	15.2926	14.8761
260127	18.3572	18.4026	18.1342	18.2957
260128	13.0481	12.6414	13.2942	12.9961
260131	17.7686	18.4154	18.0395	18.0595
260134	16.2832	17.5127	17.1341	16.9643
260137	17.9531	19.4697	19.5976	19.0342
260138	22.6491	23.2364	23.1213	22.9952
260141	19.1580	19.1893	19.6237	19.3180
260142	17.1248	17.3084	18.2023	17.5590
260143	12.7867	13.9040	15.4688	13.9600
260147	14.0778	14.7769	15.8522	14.8908
260148	11.8674	11.3524	12.6651	11.9425
260158	12.3005	12.7699	13.9790	13.0499
260159	20.3177	19.7951	20.9636	20.3519
260160	15.8394	16.5792	18.4007	16.9325
260162	19.5655	21.4099	20.7331	20.5870
260163	16.4245	15.8593	16.8300	16.3731
260164	14.9372	15.1211	16.7279	15.6074
260166	20.1025	21.1224	22.4071	21.2079
260172	15.4163	16.0772	16.4854	15.9816
260173	12.8523	14.2090	15.5733	14.3947
260175	16.9023	17.5625	18.3632	17.6144
260176	26.8712	21.6044	23.2414	23.9990
260177	21.2578	21.9014	22.9091	22.0689
260178	19.6638	20.2796	20.8189	20.2016
260179	21.4906	22.7185	21.4470	21.8753
260180	19.5819	18.9881	19.5983	19.3863
260183	20.0712	21.3175	23.7057	21.6731

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
260186	19.3238	19.6026	21.0675	20.0580
260188	20.6388	22.5060	23.7475	22.1881
260189	11.3004	16.4233	*	13.8239
260190	18.5168	19.3419	21.6994	19.8001
260191	17.9812	18.1604	19.6784	18.6471
260193	21.1588	20.2577	22.2030	21.2172
260195	17.7237	19.7068	*	18.7154
260197	19.2840	20.5453	*	19.7846
260198	11.9751	19.7552	21.7926	16.7576
260200	20.5339	20.6888	21.7031	21.0210
260205	17.6210	*	*	17.6210
270002	28.9959	19.2387	19.0221	21.4738
270003	22.0995	22.5019	20.7277	21.7202
270004	19.6292	19.4834	20.1821	19.8074
270006	16.0238	17.0715	15.1006	15.9252
270007	11.3143	13.8824	15.5780	13.1858
270009	17.2292	20.8238	20.7031	19.5097
270011	20.2669	21.1653	21.8086	21.0508
270012	19.7346	19.7878	20.7913	20.0975
270014	19.0872	19.9859	20.4321	19.8518
270016	19.6717	18.6149	17.9984	18.9093
270017	21.0800	20.0152	22.1046	21.0660
270019	18.1099	15.4128	18.5111	17.2358
270021	17.1787	16.9457	18.0515	17.3782
270023	22.2639	22.7181	22.7162	22.5721
270026	17.5102	18.0568	20.1673	18.5919
270027	13.1392	17.2091	17.2005	15.5928
270028	21.1492	19.1177	19.6212	19.9204
270029	16.5666	17.3710	18.2097	17.3728
270032	17.7393	18.7811	19.3937	18.6694
270033	16.9602	18.4876	20.7060	18.6303
270035	16.8295	16.4302	17.9822	17.0833
270036	14.2537	16.8552	16.1031	15.5470
270039	15.9368	19.6796	20.3800	18.4120
270040	18.8145	20.1242	20.1887	19.6792
270041	19.0327	25.8153	*	21.5554
270044	16.7710	17.5137	19.2939	17.7721
270048	17.0154	18.0666	17.4506	17.4823
270049	22.2444	22.2540	22.0263	22.1740
270050	16.7110	19.9356	19.6317	18.7001
270051	20.2735	20.1950	20.0386	20.1652
270052	14.4773	14.7009	17.1932	15.3511
270057	21.1317	20.6714	20.1507	20.6215
270058	14.7481	16.1412	18.4780	16.2593
270059	14.7530	19.1808	16.9303	16.8245
270060	15.2727	20.4148	21.3776	18.5305
270063	12.6108	15.1049	16.4553	14.5559
270073	14.4569	16.1937	16.6083	15.6741
270079	15.6873	16.7048	19.5493	17.1331
270080	16.3171	15.0705	16.6010	15.9696
270081	15.6262	16.7389	18.0543	16.7908
270082	17.3443	23.1245	23.3209	21.2882
270083	18.4432	17.8554	16.8420	17.6939
270084	16.6243	16.2958	15.7062	16.1694
280001	17.3541	18.1831	18.7137	18.0270
280003	22.3179	23.0213	20.0498	21.6193
280005	19.2405	23.6949	20.1943	21.0207
280009	19.8145	20.9643	23.2300	21.3319
280010	17.4859	20.0462	*	18.1962
280011	15.8573	15.9614	16.2281	16.0212
280013	22.8063	22.5163	24.0852	23.1972
280014	15.9596	16.8368	16.7109	16.5080
280015	17.0281	16.6939	18.0207	17.2299

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
280017	14.2059	13.9939	16.9884	15.1266
280018	15.1328	15.4496	16.6439	15.7480
280020	19.9667	21.2467	21.9587	21.0976
280021	17.1048	17.6345	19.1263	17.9823
280022	16.7179	16.8184	15.3785	16.3083
280023	25.8494	22.3433	21.5761	23.0011
280024	14.2186	15.0380	15.8747	15.0019
280025	15.5850	21.4764	22.2214	19.5445
280026	16.6861	16.5851	18.7258	17.3359
280028	17.3176	18.0793	19.1080	18.1555
280029	23.1292	24.4359	17.1351	21.6012
280030	24.5366	24.7723	26.3542	25.1586
280031	13.5654	9.6321	9.6951	11.0351
280032	18.8964	19.1191	20.5246	19.5206
280033	15.7583	17.4745	17.9841	17.1215
280035	15.9170	16.6872	18.6089	16.9364
280037	16.7952	17.1064	14.8049	16.2282
280038	17.0878	18.2503	18.9305	18.0758
280039	16.0442	16.1587	17.0153	16.4148
280040	19.5333	20.9896	21.5426	20.7346
280041	16.4083	16.5503	16.6889	16.5558
280042	16.1191	16.6239	16.4684	16.3973
280043	16.6570	17.5937	16.8186	17.0314
280045	16.9048	15.7630	17.7408	16.7631
280046	17.9221	17.3214	17.9752	17.7358
280047	18.3407	17.4735	21.3143	18.9885
280048	15.8723	15.8100	17.9319	16.5389
280049	18.3605	18.4365	19.4589	18.7530
280050	16.6432	20.0379	*	18.4507
280051	15.6336	17.1942	19.6206	17.2054
280052	14.0819	14.1201	14.9903	14.4198
280054	18.7992	18.7575	19.4049	18.9732
280055	13.5667	13.8129	14.2046	13.8644
280056	12.6475	15.6135	15.6442	14.4971
280057	18.0454	20.0686	21.4754	19.8186
280058	19.6752	21.4868	22.8105	21.3952
280060	19.7527	20.7022	22.4677	20.9351
280061	17.1629	18.6370	20.2066	18.7084
280062	14.4896	15.6018	16.1708	15.4336
280064	16.2977	16.8330	18.2196	17.1053
280065	19.2932	20.7370	21.6999	20.6166
280066	11.6621	11.7207	12.2225	11.8688
280068	9.4943	10.5987	10.5103	10.1786
280070	17.7400	22.6201	18.7211	19.4766
280073	17.4244	17.7698	18.3496	17.8530
280074	16.4310	17.3143	13.6025	15.4955
280075	15.5327	13.2230	13.3154	13.8859
280076	14.8469	16.7488	16.1939	15.8857
280077	19.2068	20.0148	21.1883	20.1246
280079	10.4540	16.6117	17.1519	13.6519
280080	15.3308	16.9487	16.1902	16.1919
280081	21.0771	20.9606	23.3805	21.7809
280082	14.3399	14.6173	15.4420	14.8136
280083	18.2992	21.5336	20.8995	20.2370
280084	12.5836	13.6536	13.2158	13.1411
280085	20.4302	20.4825	20.8532	20.5742
280088	20.2961	*	*	20.2961
280089	18.1668	18.9567	19.9003	18.9565
280090	14.1362	15.1274	*	14.6858
280091	15.8436	16.1866	16.3456	16.1284
280092	14.1945	14.7912	13.3032	14.1038
280094	17.6873	16.3474	16.9180	16.9734
280097	14.1734	13.8223	14.1870	14.0603

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
280098	13.0029	12.5875	12.4995	12.6927
280101	13.5261	16.9973	10.5153	13.1647
280102	14.0102	*	*	14.0102
280104	13.2819	16.2167	15.5949	14.8930
280105	18.6575	21.0735	23.7103	21.1232
280106	16.1247	16.0679	16.3564	16.1791
280107	13.3311	14.4679	*	13.8480
280108	17.5625	17.1961	18.5134	17.7698
280109	12.6803	12.4408	*	12.5540
280110	12.7546	14.2136	13.0278	13.3282
280111	21.8773	19.6283	19.3508	20.2354
280114	15.7160	17.3076	17.1154	16.7114
280115	16.7041	18.1480	18.3464	17.7487
280117	17.7276	18.8279	20.3819	18.9864
280118	16.8687	18.6524	17.8891	17.8029
280123	14.0637	11.8582	23.6682	15.2035
280125	16.1332	16.3944	17.2718	16.5861
290001	22.8226	22.7450	24.1873	23.2686
290002	17.2554	16.5419	16.7948	16.8714
290003	22.8840	24.2175	24.4237	23.8452
290005	19.4888	21.9814	22.7804	21.4325
290006	21.8070	22.4063	19.9226	21.3745
290007	29.7706	30.9075	30.2824	30.3297
290008	20.6190	24.1255	26.9216	23.3785
290009	23.3620	23.9373	24.5919	23.9575
290010	15.6423	16.4476	20.8387	17.4968
290011	20.1564	21.1234	19.7410	20.3076
290012	21.8275	25.0430	25.3963	24.1843
290013	18.2713	15.7932	20.2914	17.8815
290014	18.9743	18.7829	20.2762	19.3806
290015	22.3487	19.4504	20.2336	20.6208
290016	14.3542	23.8656	21.8030	19.3661
290019	21.2509	22.2045	22.5584	22.0258
290020	20.8733	21.2380	19.5039	20.6806
290021	21.5806	22.9488	23.4950	22.6778
290022	24.5468	25.5011	24.8144	24.9547
290027	16.7786	13.3769	13.1463	14.2467
290032	22.8447	23.9504	26.8557	24.6837
290036	*	12.9074	*	12.9074
290038	20.6753	27.7030	26.0836	23.3519
290039	25.3864	25.5024	26.2466	25.7352
290041	*	25.9905	27.0613	26.6211
290042	*	18.7527	18.7669	18.7611
290043	*	27.9053	*	27.9053
300001	22.0909	23.8567	25.7142	23.9386
300003	22.9111	24.1297	25.3252	24.1024
300005	20.7545	22.2858	22.0518	21.6894
300006	23.7793	18.9745	22.2642	21.6739
300007	20.2372	20.6325	21.3633	20.7580
300008	20.7702	19.6149	20.9207	20.4237
300009	18.0602	20.0938	20.1193	19.3850
300010	19.3940	20.2130	21.0316	20.1973
300011	22.4325	23.0279	23.8390	23.0923
300012	24.5673	24.5619	25.8581	25.0347
300013	19.1247	20.1669	20.0983	19.8032
300014	20.3292	20.1774	21.6705	20.7353
300015	20.4916	19.6627	22.8966	21.0797
300016	21.8659	17.8148	15.1311	18.1853
300017	21.6563	22.7191	23.9651	22.8162
300018	21.2381	21.6385	22.9623	21.9864
300019	20.9753	19.6728	20.5801	20.4037
300020	21.9165	22.6627	23.0806	22.5724
300021	18.6211	19.3101	20.2585	19.4039

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
300022	18.3507	19.1875	20.1635	19.2197
300023	22.1210	22.7649	22.1896	22.3579
300024	19.9116	21.5842	22.2235	21.2127
300028	17.4075	20.0778	21.4207	19.6713
300029	22.5748	22.6013	23.8415	23.0427
300033	17.1869	17.1632	17.4836	17.2725
300034	25.5182	24.4975	25.2355	25.1020
310001	28.1329	27.4730	28.6540	28.0966
310002	28.3434	27.9728	28.5941	28.3065
310003	29.1096	27.5624	28.8314	28.5051
310005	22.1146	22.9712	22.9664	22.6779
310006	21.5957	22.0894	24.1538	22.5976
310008	23.5084	24.7618	26.4989	24.9206
310009	23.6371	21.7094	23.2420	22.8675
310010	22.5682	23.1060	24.5471	23.4312
310011	23.1977	24.2885	25.4900	24.3173
310012	26.5242	26.6772	28.0541	27.1062
310013	21.2251	22.5603	23.0073	22.2711
310014	27.4614	23.1956	31.0374	27.0132
310015	27.4331	27.9684	*	27.7058
310016	24.3838	24.5206	25.4844	24.7602
310017	25.7902	24.5976	25.1634	25.1866
310018	22.8428	22.4779	24.1496	23.1662
310019	24.0542	24.9914	28.5952	25.8565
310020	24.1848	24.4152	25.0803	24.5523
310021	23.9369	25.4393	29.9117	26.2679
310022	21.2706	20.8258	21.2563	21.1130
310024	24.2353	24.9521	27.2475	25.4630
310025	24.3513	24.1812	25.5227	24.6926
310026	23.5491	22.1997	23.2895	22.9937
310027	21.8846	22.5696	24.4437	22.9152
310028	23.4577	23.9428	26.1931	24.5392
310029	22.6629	23.6610	25.2587	23.8421
310031	26.1567	26.6831	26.7174	26.5090
310032	24.3528	24.7404	25.4768	24.8830
310034	23.2729	24.1150	27.1303	24.7884
310036	20.1905	21.7187	23.0320	21.6137
310037	27.7823	28.1289	29.0864	28.3334
310038	26.7209	28.4893	28.4732	27.9039
310039	22.1754	22.7317	23.6605	22.8221
310040	26.1492	26.3573	26.5964	26.3696
310041	24.8960	23.5559	24.9733	24.4816
310042	23.2472	24.7678	25.7747	24.5600
310043	21.9022	21.6128	24.0238	22.3478
310044	21.6677	23.1549	23.3801	22.7473
310045	28.4854	28.9274	29.5452	28.9708
310047	25.1101	26.1921	25.9777	25.7489
310048	23.6118	25.2870	23.4189	24.0965
310049	24.8299	27.0842	25.6732	25.8686
310050	25.1752	24.7988	23.7735	24.5800
310051	27.1265	27.5378	28.5946	27.7258
310052	22.9326	23.3973	27.0616	24.3173
310054	26.1726	27.7376	26.9352	26.9153
310057	21.1686	22.2572	22.2630	21.9057
310058	26.5308	26.3765	25.9389	26.3360
310060	19.1992	20.0997	21.6211	20.2716
310061	23.2646	33.9582	23.4283	26.0987
310062	22.9073	*	*	22.9073
310063	21.9045	22.1080	23.5217	22.4712
310064	24.8567	25.4822	25.3339	25.2160
310067	25.0888	23.9278	24.1943	24.4277
310069	23.7531	24.2329	25.4373	24.4865
310070	26.0903	28.2220	30.1143	28.0038

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
310072	21.7605	22.5611	25.0708	23.0824
310073	28.5149	26.2937	29.2805	27.9813
310074	23.8340	22.3588	24.1313	23.4934
310075	23.3266	24.4788	23.9771	23.9276
310076	30.0797	27.9918	31.4866	29.8824
310077	25.2500	26.1251	26.7227	26.0109
310078	23.8841	24.0587	24.5862	24.1519
310081	22.0762	22.4086	23.2059	22.5650
310083	23.8852	24.8204	25.0191	24.5773
310084	26.6753	24.6049	25.5110	25.5914
310086	22.1674	23.1719	23.5820	22.9629
310087	20.7243	21.1215	20.7434	20.8650
310088	22.3160	23.1722	24.2150	23.2258
310090	23.8284	24.8986	24.4746	24.3899
310091	22.7978	23.2969	24.5357	23.5110
310092	20.5165	21.6964	23.1341	21.7772
310093	22.4291	23.7251	24.0037	23.3380
310096	25.1572	24.5759	26.6982	25.4341
310105	25.5891	26.2537	25.1559	25.6770
310108	22.4756	23.8308	26.2036	24.1336
310110	21.8341	23.2146	23.1789	22.7903
310111	21.1066	22.1151	24.1731	22.4723
310112	23.6701	24.7914	24.2999	24.2528
310113	23.6841	23.1961	24.0930	23.6671
310115	21.7320	21.1645	23.4249	22.1167
310116	22.9812	23.6366	*	23.3055
310118	26.4625	26.1315	26.5619	26.3869
310119	33.6686	32.7858	29.1045	31.7976
310120	23.9681	23.3200	22.6526	23.3189
320001	19.1150	20.6225	21.0689	20.2496
320002	22.6175	23.0983	25.5144	23.6846
320003	15.9504	16.4642	16.4961	16.3037
320004	18.5824	19.6642	21.3681	19.9888
320005	21.6103	21.0411	22.4178	21.7283
320006	18.9019	20.3863	19.8672	19.6917
320009	18.2883	19.3500	20.3783	19.2661
320011	20.0601	18.5222	18.7099	19.0944
320012	16.4355	17.1764	14.3961	16.0417
320013	22.9573	24.5543	24.4795	24.0591
320014	16.3598	16.8412	21.7784	18.0981
320016	20.5398	18.8519	18.8763	19.4121
320017	18.6388	19.4498	20.4390	19.4898
320018	18.8479	19.2336	20.4375	19.5136
320019	24.4707	26.9637	24.4394	25.3985
320021	17.8705	19.1265	19.6950	18.8702
320022	16.1777	18.0606	19.9587	18.1477
320023	18.0548	17.8419	*	17.9685
320030	16.5495	18.6859	18.1556	17.7555
320031	19.6768	25.1715	18.2244	20.7137
320032	18.8097	20.6871	21.1628	20.1426
320033	25.0777	21.0621	21.9804	22.5777
320035	21.5186	15.0612	17.8058	17.7193
320037	17.0305	17.8280	17.6619	17.5121
320038	16.8117	22.2664	*	19.6948
320046	18.3190	18.9607	22.6251	20.0803
320048	19.9642	16.8769	*	18.3467
320063	18.3237	17.9089	14.4611	17.0236
320065	16.7933	18.6525	22.1138	18.8982
320067	33.8654	15.3228	16.8015	18.3132
320068	17.4785	18.5103	15.6681	17.1335
320069	13.0094	14.4212	15.7350	14.3622
320074	19.3406	20.2290	22.3403	20.2679
320079	18.2828	19.8555	19.9049	19.3010

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
330001	26.5533	27.3996	28.4974	27.5189
330002	26.5370	26.9341	26.6966	26.7185
330003	19.4102	18.9211	19.3972	19.2414
330004	22.5298	20.9501	22.5082	22.0002
330005	24.8338	22.1957	22.6137	22.8232
330006	25.0576	25.8006	26.2970	25.7013
330007	18.9024	*	*	18.9024
330008	19.0045	19.2341	19.6770	19.3060
330009	30.6918	31.3435	30.9087	30.9793
330010	17.4512	16.6508	17.8935	17.3146
330011	18.2986	18.6748	18.7995	18.5936
330012	32.7624	*	*	32.7624
330013	19.0856	19.6269	19.0995	19.2697
330014	32.3370	36.8669	32.4496	33.8020
330016	16.9717	16.8016	18.7194	17.4483
330019	35.9822	33.5369	31.5927	33.4812
330020	15.5527	15.1142	16.6952	15.7780
330023	24.4006	25.6512	26.6997	25.5866
330024	34.1682	37.3316	35.7485	35.6717
330025	16.2033	16.8687	17.6169	16.8903
330027	33.4738	35.5255	35.1046	34.6601
330028	28.2089	29.5294	31.7699	29.9762
330029	18.1567	17.0016	19.4377	18.2068
330030	17.4977	19.1085	18.0866	18.1511
330033	18.5353	17.4444	19.4402	18.4646
330034	31.3997	27.7738	38.2451	31.3373
330036	23.9874	25.2820	25.5888	24.9782
330037	16.1140	16.4866	18.3260	16.9831
330038	16.2549	17.3429	16.2997	16.6434
330041	24.5215	31.4871	29.5305	28.1630
330043	28.7467	27.4661	28.9622	28.3990
330044	20.0238	19.5219	19.9808	19.8437
330045	28.0758	27.9919	28.5267	28.2011
330046	32.4189	35.2703	38.1184	35.1742
330047	18.1815	18.5536	19.5561	18.7655
330048	17.8787	19.1093	19.6129	18.8634
330049	19.4993	20.5731	22.1523	20.7576
330053	17.4430	17.8082	17.8308	17.6930
330055	36.1109	32.8910	32.6387	33.8113
330056	30.4525	30.0945	29.8377	30.1337
330057	18.7478	19.3643	20.0995	19.4010
330058	17.0014	17.7672	18.1007	17.6091
330059	34.1705	34.2426	35.0121	34.4519
330061	25.7331	25.4082	26.8580	25.9786
330062	17.6067	18.1318	18.4662	18.0774
330064	33.1269	33.6447	35.1422	33.9496
330065	19.8940	19.9305	20.2835	20.0284
330066	19.5611	18.8707	19.5272	19.3115
330067	20.9443	22.1065	23.6836	22.2657
330072	30.8019	30.4171	30.3737	30.5362
330073	16.2898	16.4518	16.5166	16.4181
330074	18.0005	17.7308	18.7081	18.1472
330075	17.2298	17.6385	18.9699	17.9293
330078	16.7949	18.7884	18.0362	17.8405
330079	17.4555	18.7622	18.9398	18.3917
330080	29.2686	31.4424	28.3401	29.6840
330084	18.0435	19.3216	19.0261	18.8002
330085	20.2926	20.6203	22.8312	21.2658
330086	31.2980	23.6496	26.2979	27.1579
330088	25.6626	25.7940	26.7583	26.0739
330090	19.3954	19.2112	20.4314	19.6779
330091	19.0953	19.7776	21.6004	20.1526
330092	14.0671	13.3723	17.2083	14.8861

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
330094	17.5585	18.1582	18.7259	18.1488
330095	20.1073	21.1096	21.1809	20.7563
330096	17.9641	18.5149	20.0370	18.8403
330097	16.2169	16.4433	15.8232	16.1519
330100	27.0661	29.0916	28.9956	28.3021
330101	32.4105	31.5914	34.7119	32.9505
330102	17.5755	19.0058	21.0057	19.0881
330103	15.7197	16.8110	17.8864	16.8159
330104	31.6471	31.2074	31.9154	31.5867
330106	40.2686	35.3775	35.1434	36.7949
330107	28.5580	27.7797	28.9225	28.4199
330108	17.3605	18.0786	18.5194	17.9737
330111	19.5314	15.9321	13.3352	15.9787
330114	17.3522	17.0581	19.1162	17.8316
330115	17.4430	17.4684	13.0722	15.4701
330116	24.4622	14.9610	16.8567	18.1237
330118	20.6936	*	*	20.6936
330119	34.8385	33.1179	33.5653	33.8391
330121	16.1052	16.3385	17.1869	16.5359
330122	20.8204	20.2417	23.0384	21.3559
330125	19.8494	19.7638	20.3093	19.9745
330126	23.7938	23.8957	24.8787	24.2123
330127	31.9046	30.7356	33.9627	32.2469
330128	29.0222	30.8242	27.7350	29.2603
330132	15.7633	14.3673	14.8704	15.0313
330133	37.2494	35.3576	37.5192	36.5906
330135	18.7120	22.2670	23.5662	21.3289
330136	18.2422	20.1043	20.0552	19.4517
330140	19.1438	19.3615	20.2951	19.5989
330141	26.4956	26.7096	27.5960	26.9363
330144	14.0566	16.2517	17.1513	15.7880
330148	16.8151	16.2782	16.7251	16.6024
330151	16.0714	15.7594	15.2233	15.6663
330152	30.5409	30.8314	33.4288	31.5069
330153	18.9689	18.1776	19.4417	18.8671
330157	22.0792	22.3804	23.1743	22.5628
330158	25.7569	27.1228	29.3163	27.3406
330159	19.1536	19.4998	20.2601	19.6219
330160	32.7840	29.5885	30.7893	30.9997
330162	27.1166	27.6010	27.9705	27.5570
330163	18.7816	20.7456	21.4143	20.2444
330164	19.8647	20.9003	20.5006	20.4195
330166	15.0954	15.4420	17.0637	15.8309
330167	29.3634	30.2346	32.0728	30.4495
330169	37.2655	35.4794	36.3690	36.3400
330171	25.5307	24.8035	24.8515	25.0649
330175	17.3290	18.3116	18.8201	18.1260
330177	17.2907	16.3704	16.6059	16.7542
330179	13.4999	13.8953	15.8620	14.3577
330180	16.8787	17.9877	19.2670	17.9995
330181	32.5192	33.0908	34.2919	33.2777
330182	32.9371	33.6531	33.3363	33.3137
330183	19.9207	20.6164	19.6980	20.0807
330184	30.0400	31.3706	28.4726	30.0103
330185	25.6112	26.8612	27.8585	26.7622
330188	20.9587	18.8000	20.2849	20.0186
330189	15.1253	18.4498	23.5589	18.7634
330191	18.6206	19.0348	19.4168	19.0266
330193	36.5481	30.2260	32.5496	32.9872
330194	34.6785	35.2036	35.6486	35.1819
330195	33.3254	34.8966	29.8157	32.7136
330196	30.8165	30.5799	25.9671	29.2151
330197	17.6646	18.3527	19.2237	18.4045

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
330198	24.6038	24.8590	25.4472	24.9692
330199	28.7609	30.5409	26.0228	28.5436
330201	32.1149	28.7861	27.6320	29.6019
330202	31.4435	31.2575	31.9777	31.5574
330203	20.7575	25.0345	25.7916	23.7288
330204	29.4418	32.2005	28.4140	30.0233
330205	20.5793	22.3490	24.9040	22.5611
330208	26.1822	26.6682	27.3170	26.7219
330209	23.9924	25.1281	26.8546	25.3803
330211	19.5064	19.5405	20.0006	19.6855
330212	21.7705	24.7681	24.4902	23.6390
330213	18.7722	19.6796	20.1166	19.4878
330214	36.4447	32.4292	32.2640	33.3003
330215	19.6926	17.9863	19.0726	18.8818
330218	21.4796	21.1890	21.4747	21.3812
330219	23.9908	23.4310	25.1792	24.1748
330221	27.8485	33.3796	29.5535	30.2856
330222	18.3666	18.5571	19.3148	18.7515
330223	17.6199	17.8306	19.0773	18.1866
330224	19.6410	20.4309	20.7773	20.2793
330225	25.5823	27.0379	28.0523	26.7760
330226	16.6711	23.1859	16.9198	18.3930
330229	16.8026	17.5326	18.2554	17.5103
330230	29.7626	29.6283	30.6937	29.9984
330231	30.0923	32.7200	25.2793	29.5345
330232	17.9083	19.1787	19.6181	18.8942
330233	30.9241	44.1265	42.3510	37.9819
330234	35.1777	35.0720	35.8927	35.3813
330235	21.0842	19.5880	20.1255	20.2820
330236	29.5913	31.3463	30.9816	30.6263
330238	15.6245	17.3976	17.5807	16.8401
330239	17.4462	18.5079	18.9953	18.2764
330240	29.7082	30.7321	32.0049	30.7179
330241	24.6076	23.8638	24.7545	24.4065
330242	28.2612	27.6384	28.3561	28.0883
330245	17.6767	18.5161	20.7167	19.0400
330246	28.1090	28.1205	29.8777	28.6473
330247	28.5310	27.3937	32.5858	29.3555
330249	16.2687	17.1320	17.6846	17.0482
330250	19.5823	19.9619	20.7381	20.1092
330254	18.4057	15.9123	15.7864	16.7695
330258	29.7426	31.8910	32.6745	31.4411
330259	26.2661	25.9994	26.3620	26.2118
330261	25.7244	27.9766	30.0489	27.8583
330263	20.4149	18.7378	19.5057	19.6112
330264	22.8672	22.8099	24.6387	23.4672
330265	18.0193	17.6301	21.1215	18.8985
330267	24.5183	24.5939	27.8255	25.6678
330268	13.0595	15.9060	16.8358	15.2987
330270	34.4254	36.0824	31.3908	33.9198
330273	23.1511	26.0565	27.0454	25.3482
330275	19.0548	18.7268	*	18.9109
330276	18.2870	19.0228	19.2611	18.8572
330277	18.3169	19.1761	20.7851	19.4340
330279	19.5983	20.7107	21.7827	20.6371
330285	23.5264	24.0491	25.9154	24.4664
330286	26.7633	27.7762	28.0994	27.5677
330290	33.5056	30.4706	34.3439	32.7503
330293	16.2158	16.9238	17.2262	16.7522
330304	26.7683	27.3562	29.2207	27.7999
330306	27.3798	29.5937	25.6970	27.5466
330307	21.0673	21.7257	23.1148	21.9912
330314	24.5444	25.9937	25.5405	25.3155

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
330316	27.6102	27.9543	27.9277	27.8310
330327	16.4611	20.3874	20.1705	18.8688
330331	31.6216	33.1276	31.0718	31.9586
330332	27.6914	25.3689	27.6955	26.9473
330333	29.1931	*	28.8841	29.0179
330336	29.7689	29.8294	29.1415	29.5860
330338	22.4581	21.2670	23.6142	22.4472
330339	20.0111	20.1028	20.2382	20.1121
330340	28.8419	28.4129	29.4512	28.8934
330350	30.8889	30.9763	33.5493	31.7771
330353	32.1984	34.2431	34.2260	33.5106
330357	36.5928	34.1846	36.8598	35.8981
330372	28.8482	33.3771	27.8854	29.8144
330381	31.0091	31.8602	*	31.4219
330385	35.6722	33.2246	33.4159	34.1965
330386	17.6383	20.4231	21.4363	19.4104
330389	30.2505	37.3749	27.6223	31.1985
330390	31.1577	30.8744	33.4372	31.7841
330393	26.4958	27.8352	33.6061	29.1012
330394	19.2392	18.9343	19.6892	19.2847
330395	32.8749	32.7494	30.2846	32.0161
330396	34.8648	30.7961	29.1753	31.7581
330397	33.9061	32.6068	38.3281	34.7790
330398	28.7707	29.2872	*	28.9084
330399	32.9100	33.3012	32.7149	32.9707
330400	*	16.2707	16.8168	16.5566
340001	18.1814	19.7093	21.8572	19.9040
340002	20.8858	20.5253	22.2638	21.3163
340003	20.2540	19.5145	19.6545	19.8018
340004	19.0695	20.9863	23.0890	21.0811
340005	15.8205	16.7176	16.3073	16.2815
340006	16.9818	16.5709	16.1379	16.5756
340007	17.2356	18.3399	18.3760	17.9959
340008	21.2889	20.4157	22.0774	21.2828
340009	20.5023	20.9178	20.6155	20.6734
340010	18.3380	19.4302	20.6547	19.5049
340011	13.6554	14.4798	17.4534	15.1697
340012	18.8701	17.5112	19.3651	18.5479
340013	20.1747	19.4613	21.5130	20.3981
340014	20.5748	27.7888	21.9804	22.9126
340015	20.1562	19.4676	20.3493	19.9875
340016	17.5404	18.8958	19.4160	18.6049
340017	19.4192	20.2775	20.6263	20.1119
340018	14.0930	18.1751	16.4611	16.0927
340019	14.8980	15.2887	15.9037	15.3369
340020	18.6334	18.0897	19.2392	18.6598
340021	19.8020	20.5813	22.0220	20.7507
340022	17.8178	18.7714	20.6484	19.0742
340023	18.5414	19.3146	19.2617	19.0575
340024	17.3824	17.9130	19.1430	18.1515
340025	17.2648	18.4628	19.1770	18.3029
340027	18.0816	19.4548	19.4907	19.0172
340028	18.4787	19.9403	20.6496	19.7560
340030	21.1420	22.4709	24.0238	22.4825
340031	14.6951	14.6370	15.4935	14.9011
340032	20.0049	20.7444	21.7127	20.8112
340035	20.2312	18.9930	18.5883	19.2823
340036	18.2190	17.7619	18.4203	18.1226
340037	16.6576	17.5829	18.3655	17.5271
340038	17.3762	18.1493	20.3091	18.5547
340039	20.5876	21.3711	22.2939	21.4440
340040	20.4282	20.7237	21.1020	20.7582
340041	15.1419	15.5873	16.3200	15.6803

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
340042	16.9298	17.0034	19.1386	17.6977
340044	18.8687	18.0863	18.9562	18.6425
340045	13.0538	13.6182	20.2641	14.9554
340047	20.0602	20.0744	20.7061	20.2776
340049	19.2050	19.5127	17.2986	18.6550
340050	20.0090	19.6726	20.6831	20.1383
340051	16.5617	19.3627	19.0282	18.2702
340052	22.8173	23.2134	26.2243	23.8462
340053	20.9495	19.9915	22.6020	21.1247
340054	15.5993	15.5090	16.6208	15.8560
340055	19.6056	19.4035	20.2936	19.7761
340060	18.7137	19.3410	20.8570	19.6422
340061	21.5385	22.1175	23.7173	22.4390
340063	17.0249	16.7377	26.4132	19.5650
340064	20.7125	18.5069	17.7395	18.9394
340065	17.5414	17.3530	18.3610	17.7341
340067	19.3785	19.7187	22.4054	20.2943
340068	16.6305	17.8065	18.8758	17.7729
340069	21.0840	21.6728	22.5664	21.7942
340070	19.7796	20.6829	21.5793	20.6882
340071	17.1424	18.0767	19.3679	18.2275
340072	16.7400	17.7129	18.7920	17.7544
340073	21.9761	23.5832	23.4906	23.0367
340075	18.7090	20.0081	19.9451	19.5511
340080	22.2533	18.2061	*	20.1809
340084	17.1532	19.0103	19.6087	18.5190
340085	17.3462	18.3179	20.3684	18.6708
340087	17.3884	18.2255	20.2445	18.6743
340088	21.0226	22.2322	22.6462	21.9702
340089	13.8535	15.4760	16.1321	15.1566
340090	17.0584	18.5287	18.7701	18.1576
340091	20.5923	20.3861	21.1892	20.7475
340093	16.3276	16.8903	16.5452	16.5873
340094	19.0406	*	20.8816	19.9881
340096	17.8189	19.4696	20.9686	19.4268
340097	18.8412	18.2399	20.0302	19.0440
340098	21.4135	21.9578	23.5280	22.3354
340099	16.8305	15.3752	16.9979	16.3421
340101	13.9994	15.6509	20.7841	16.3562
340104	13.0462	11.5169	12.1845	12.2454
340105	20.2954	*	*	20.2954
340106	17.7220	18.1211	19.1147	18.3112
340107	18.0205	19.3197	20.7601	19.3267
340109	18.7746	19.0532	19.3357	19.0640
340111	16.3344	16.5976	17.2127	16.7260
340112	14.7562	15.5142	16.9592	15.7587
340113	21.2906	21.9883	24.0277	22.4262
340114	21.2166	20.7261	21.7750	21.2327
340115	19.7578	21.7586	24.7924	21.8733
340116	20.4255	20.6800	21.6616	20.9285
340119	18.8507	19.5827	20.5394	19.6919
340120	15.0410	15.8240	16.9847	15.9742
340121	16.3295	17.8771	19.0420	17.7638
340123	16.9114	18.9078	21.5041	19.1720
340124	15.5779	17.4185	17.5411	16.8707
340125	19.7164	20.2748	*	19.9923
340126	18.8100	19.3734	20.7395	19.6489
340127	19.3925	19.3842	21.4797	20.0982
340129	20.4605	20.6521	21.0773	20.7569
340130	19.7422	19.8707	20.5851	20.0891
340131	19.7908	21.3849	23.2478	21.4650
340132	17.3448	17.5711	17.7110	17.5495
340133	16.4766	17.2138	16.9829	16.8955

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
340137	21.0249	31.7702	*	23.8273
340138	20.7618	*	*	20.7618
340141	21.3754	21.4986	22.4525	21.7877
340142	17.1525	18.0766	18.1824	17.8038
340143	21.3604	24.4098	21.9304	22.5287
340144	20.9113	22.9183	22.8634	22.2296
340145	20.1081	19.9233	21.5958	20.6005
340146	15.9203	17.3051	19.1306	17.3989
340147	19.6827	20.5520	21.5912	20.6397
340148	18.5875	18.9912	20.6790	19.3782
340151	16.7275	18.4733	19.0779	18.0943
340153	20.6420	20.7533	21.7375	21.0743
340155	20.5792	23.1021	24.8963	22.8382
340158	18.1439	19.0843	20.0921	19.1509
340159	17.3893	19.0338	18.3028	18.2386
340160	16.1778	16.7170	17.1963	16.7262
340162	14.3472	*	*	14.3472
340164	21.2523	21.5769	*	21.4120
340166	20 0434	20.8270	22.0519	21.0278
340168	15.2919	15.6071	15.4250	15.4443
340171	21.5973	22.4779	22.7304	22.3095
340173	19.3353	21.0898	23.3690	21.3475
350001	14.9080	16.6551	15.6193	15.7235
350002	17.5259	18.3459	19.1931	18.3399
350003	18.2470	19.2840	20.0663	19.1912
350004	20.6518	23.7016	25.1976	23.1394
350005	18.3792	19.9156	20.7467	19.6757
350006	18.4107	19.0343	19.1257	18.8317
350007	13.3292	13.8824	13.9966	13.7234
350008	20.4777	22.3783	23.1361	21.9692
350009	19.1611	18.3688	19.3668	18.9603
350010	16.2808	16.6272	16.7774	16.5574
350011	18.2008	19.1944	20.6809	19.2312
350012	15.7033	18.2524	16.0990	16.7533
350013	16.4579	17.2596	17.5935	17.0893
350014	16.8403	18.0999	18.2003	17.6546
350015	16.3397	17.1071	16.5368	16.6512
350016	11.6524	*	*	11.6524
350017	17.6278	17.5124	18.0840	17.7360
350018	14.4928	16.4939	16.3210	15.7222
350019	19.3063	20.1608	20.6743	20.0169
350021	16.2898	17.7123	16.3394	16.7592
350023	17.9048	17.4983	18.3253	17.9187
350024	14.7529	15.4788	15.7510	15.3010
350025	17.1199	15.0469	14.6099	15.5234
350027	15.0835	15.5178	17.5882	15.9431
350029	13.5219	14.6173	*	14.0747
350030	17.7209	18.1131	18.7182	18.1761
350033	14.9012	16.0870	16.0903	15.6588
350034	18.7245	19.6445	*	19.1773
350035	10.4570	11.7675	12.6496	11.6111
350038	17.6666	19.6854	19.0500	18.7554
350039	17.0361	16.6278	14.8599	16.1842
350041	14.6680	19.1341	23.1150	18.5427
350042	16.7402	19.3309	19.3370	18.2440
350043	16.8876	16.7433	17.6722	17.1008
350044	10.2154	11.0601	10.9690	10.7163
350047	14.4628	18.0094	19.9749	17.4882
350049	14.8019	18.1993	16.7131	16.4253
350050	11.4921	12.2183	*	11.8525
350051	17.7279	17.0653	16.4587	17.0939
350053	14.6398	15.9160	16.5484	15.6473
350055	14.5691	15.7916	15.8572	15.3943

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
350056	14.8293	15.0995	15.7752	15.2147
350058	15.9378	16.7034	15.8171	16.1663
350060	10.3666	10.3076	10.5325	10.3988
350061	15.7269	18.8790	19.3748	18.0353
360001	17.0791	19.6655	18.5766	18.4186
360002	18.0139	18.2613	19.6145	18.5918
360003	22.7471	22.7521	23.2905	22.9196
360006	21.8048	22.4436	22.8554	22.3622
360007	18.0941	14.8213	15.3656	16.0665
360008	18.5439	18.7961	19.8034	19.0500
360009	18.9322	18.9935	19.6087	19.1932
360010	19.2288	19.1852	20.4671	19.6517
360011	19.3835	21.3659	19.4581	19.9957
360012	19.9881	20.0525	21.8759	20.5910
360013	20.6021	21.3690	22.3407	21.4314
360014	20.2390	20.7419	22.9930	21.3333
360016	17.8065	21.2505	21.4202	20.0256
360017	21.7543	22.2740	22.6535	22.2073
360018	23.5219	24.6686	24.6694	24.2429
360019	18.7147	20.6480	21.4708	20.1693
360020	21.7806	22.1751	21.7288	21.8938
360024	19.8508	20.1352	20.9408	20.3040
360025	20.3638	20.2531	20.9266	20.5175
360026	18.2222	17.9523	18.6739	18.2838
360027	21.0406	21.7650	22.6915	21.8330
360028	17.0177	18.7174	*	17.7935
360029	18.7622	19.2928	19.7246	19.2680
360030	17.5748	17.6058	19.0313	18.0839
360031	19.3858	21.0687	21.0481	20.5037
360032	18.6559	19.8020	19.8367	19.4058
360034	14.9534	17.9594	19.1248	17.3380
360035	20.5557	21.0674	21.0533	20.8877
360036	20.2107	20.9916	21.4665	20.8874
360037	23.5094	23.1674	23.8620	23.5454
360038	21.2467	19.9415	20.9651	20.7274
360039	18.7791	19.0013	19.1934	18.9931
360040	18.1618	18.7425	19.9750	18.9827
360041	19.5744	19.7968	21.2727	20.2776
360042	17.4306	17.1952	19.3774	17.9518
360044	17.0612	17.6882	17.8417	17.5521
360045	22.1471	22.4018	22.8112	22.4244
360046	20.4755	20.4607	21.4292	20.8030
360047	17.1871	15.2922	15.8279	16.0315
360048	22.5857	22.4890	25.6259	23.4295
360049	20.4564	20.8393	*	20.6400
360050	12.9873	15.0568	15.6847	14.5392
360051	20.8338	20.8757	21.2225	20.9792
360052	19.6233	18.7931	19.8278	19.4110
360054	17.2574	17.4911	17.5714	17.4428
360055	21.5585	21.4112	22.8755	21.9415
360056	19.0474	20.6968	23.2385	21.0356
360057	15.0146	15.8569	16.0395	15.6552
360058	18.6992	19.3306	19.0440	19.0197
360059	20.5618	19.9304	23.2129	21.1909
360062	20.7588	21.9195	24.4898	22.4391
360063	18.4512	17.5108	20.2671	18.6964
360064	20.4846	20.0615	20.9202	20.4850
360065	20.0532	19.6199	22.0853	20.5895
360066	21.6015	22.8175	23.8834	22.7933
360067	15.3157	14.2745	17.3024	15.5854
360068	21.2789	22.6227	22.2094	22.0456
360069	16.6982	14.6597	18.5382	16.4901
360070	17.3758	18.8406	19.4700	18.5552

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
360071	17.9756	19.0302	19.6873	18.9152
360072	18.1467	19.0166	20.8819	19.3874
360074	20.8275	18.5889	19.9876	19.7904
360075	22.4523	26.0663	27.6992	24.6791
360076	20.0700	20.3317	21.0402	20.4919
360077	21.1053	21.5517	22.2964	21.6371
360078	21.4392	22.6490	22.6075	22.2329
360079	22.1096	21.6644	23.9491	22.5122
360080	17.3892	17.6369	18.0392	17.6871
360081	21.7342	20.4614	20.7477	20.9963
360082	22.9460	20.7610	22.9390	22.1817
360084	20.4894	22.0492	22.1699	21.5674
360085	21.9051	21.5151	24.8010	22.5708
360086	19.5378	19.3701	20.5858	19.8561
360087	20.1684	20.7969	21.1621	20.7100
360088	24.0097	24.0822	20.5703	22.7567
360089	18.3881	18.1941	19.5260	18.6947
360090	21.0376	20.8971	21.2072	21.0517
360091	21.3126	21.8447	22.6510	21.9522
360092	20.4534	21.5073	20.9588	20.9684
360093	19.3292	19.0261	21.0134	19.7919
360094	18.8780	20.1227	21.1952	20.0119
360095	20.4149	19.8521	21.3505	20.5395
360096	18.2215	19.6726	20.9838	19.6144
360098	19.5314	19.8178	20.7942	20.0486
360099	18.5855	19.6241	20.8801	19.7171
360100	17.8989	18.0442	20.0683	18.5932
360101	21.3914	20.2635	24.1551	21.8064
360102	19.4345	18.5367	*	19.0252
360106	18.9752	19.1778	18.9779	19.0463
360107	19.7599	22.1359	*	20.9636
360108	17.5832	20.0681	19.0870	18.9015
360109	20.1032	19.9237	17.3564	18.9331
360112	22.5589	24.6335	25.7920	24.1917
360113	24.2654	20.8154	18.4832	21.0469
360114	17.8761	18.7509	19.4212	18.7051
360115	18.8059	20.7652	21.0104	20.2115
360116	18.8882	18.8319	20.1408	19.2675
360118	19.3732	19.9141	21.0235	20.1425
360121	22.1093	22.2175	21.9111	22.0788
360123	20.3236	20.9792	21.9985	21.1330
360125	19.0774	20.5508	21.6675	20.3325
360126	19.0036	24.5387	*	21.4419
360127	17.5882	16.5559	18.2150	17.4610
360128	16.1243	17.0515	17.5495	16.8959
360129	15.5002	16.6114	17.2309	16.4330
360130	17.2009	18.4539	19.8906	18.4639
360131	19.2241	18.4688	20.4123	19.3509
360132	19.9171	21.3493	21.0162	20.7647
360133	19.4316	20.2857	22.1957	20.5231
360134	20.6876	20.9564	21.4024	21.0100
360136	17.7827	18.2194	18.5687	18.1837
360137	20.1756	22.3648	23.1642	21.8556
360140	20.2791	21.2881	18.3463	19.9463
360141	23.0016	23.5343	23.5006	23.3475
360142	17.0059	18.3188	19.6189	18.3226
360143	20.1989	21.0336	20.9158	20.7118
360144	23.2191	20.9033	20.9386	21.6583
360145	19.6413	20.0513	21.2931	20.3252
360147	16.6616	17.6779	18.7258	17.7129
360148	19.2816	19.1393	20.3120	19.5918
360149	19.9808	*	*	19.9808
360150	21.1327	22.3620	23.1858	22.2110

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
360151	16.6019	19.2788	20.5594	18.6756
360152	20.8328	21.6005	20.8782	21.1044
360153	15.4132	16.7399	16.1021	16.0822
360154	14.3270	14.3593	14.8550	14.5038
360155	22.5347	22.2112	22.2805	22.3386
360156	17.8787	18.9095	19.9382	18.8811
360159	20.2841	21.5695	22.7992	21.5782
360161	19.1983	20.6160	19.9054	19.9030
360163	20.7275	21.2689	22.1012	21.3886
360165	18.2571	18.2417	19.6205	18.6959
360166	18.7321	*	*	18.7321
360170	16.4653	20.4407	19.3099	18.5975
360172	18.6720	19.8909	22.3294	20.3872
360174	19.9725	20.5399	20.5874	20.4239
360175	21.1685	21.5450	22.0274	21.5958
360176	15.9430	16.6228	17.6291	16.7269
360177	18.7898	18.9576	19.6992	19.1509
360178	18.8704	16.7962	18.0773	17.9514
360179	21.1309	20.7069	21.9617	21.2476
360180	21.3826	21.0146	18.0143	20.0375
360184	19.1224	*	*	19.1224
360185	18.7291	19.4858	20.0848	19.4376
360186	18.3246	20.7572	18.1254	19.0367
360187	18.5109	19.6535	20.8423	19.6414
360188	17.1044	18.3057	16.4329	17.3292
360189	17.8981	18.5940	19.0481	18.4968
360192	21.6365	22.7846	23.9969	22.7928
360194	17.1884	17.6140	19.3901	18.0653
360195	19.9302	20.5828	21.2083	20.5836
360197	20.0603	20.5062	21.6110	20.7240
360200	16.2306	17.9623	19.5866	17.8050
360203	16.3181	15.9609	17.9698	16.7236
360204	22.2494	*	*	22.2494
360210	20.9955	21.8629	21.5961	21.4839
360211	19.9895	20.6081	22.0011	20.8512
360212	21.1123	20.6987	21.0632	20.9556
360213	19.4765	19.0584	20.5448	19.6749
360218	18.9469	18.8204	20.7709	19.5181
360230	21.9763	20.8042	21.2417	21.3193
360231	12.9588	14.4168	12.7388	13.3090
360234	23.2588	20.6131	17.6716	20.3070
360236	17.8426	21.4628	20.5998	19.8666
360239	20.1854	19.2375	20.9440	20.0997
360241	23.5318	25.3741	23.7679	24.1749
360243	14.8694	*	*	14.8694
360245	16.4622	15.9782	16.7956	16.4127
360247	16.3092	17.0776	*	16.6743
360249	*	25.4331	*	25.4331
360251	*	*	21.3149	21.3149
360252	*	*	27.1728	27.1728
370001	22.5214	24.1929	21.8743	22.8253
370002	14.7315	15.4333	16.1853	15.4106
370004	19.3236	18.5233	22.0173	19.9087
370005	15.1654	15.3881	*	15.2760
370006	16.6484	16.4995	15.7367	16.2765
370007	15.2905	15.8312	14.4961	15.2449
370008	16.6566	17.5553	18.5253	17.5877
370011	14.9701	15.6178	16.1757	15.5584
370012	11.7265	12.4942	13.3824	12.5268
370013	19.3398	18.9584	19.3237	19.2083
370014	20.6512	20.2858	22.7976	21.2589
370015	17.0319	20.8765	18.6446	18.7763
370016	19.1191	19.1613	19.7706	19.3517

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
370017	12.6400	13.6531	*	13.1855
370018	18.5107	17.7054	18.7928	18.3360
370019	14.2277	14 6216	16.1367	14.9616
370020	14.3798	15 1035	15.6057	15.0288
370021	12.0474	12.9030	*	12.4760
370022	17.2344	17.3724	18.2109	17.5986
370023	17.7630	17.5148	18.1255	17.8019
370025	17.4988	18.4815	19.1013	18.3736
370026	18.3371	18.0412	18.6982	18.3516
370028	18.4445	21.1292	22.1765	20.5544
370029	16.4924	18.2580	19.3285	17.9453
370030	16.3269	16.5803	18.1779	17.0344
370032	18.2821	18.1538	18.9050	18.4517
370033	13.5216	11.3210	15.3857	13.3051
370034	15.6386	15.6288	16.2204	15.8253
370035	25.5764	*	*	25.5764
370036	12.4026	12.4070	11.7667	12.1865
370037	16.7012	18.9556	20.6493	18.6793
370038	13.3084	13.0210	15.4551	13.8393
370039	15.5206	19.4498	22.3915	18.9462
370040	14.4672	15.5109	16.8127	15.5746
370041	16.7356	16.2316	14.7346	15.7346
370042	14.9175	15.2764	15.9005	15.3820
370043	15.9534	17.0892	19.8318	17.5204
370045	10.1994	11.3560	11.6163	10.9883
370046	18.8334	*	*	18.8334
370047	16.7554	17.8769	18.4743	17.6862
370048	18.2150	15.6803	17.0785	16.9957
370049	20.7176	19.4868	20.3405	20.1537
370051	11.6736	12.5171	11.4943	11.8576
370054	16.9049	18.0787	19.2294	17.9957
370056	18.4558	18.1432	18.9395	18.5020
370057	16.7261	15.1228	16.0301	15.9579
370059	18.1386	18.3314	20.1182	18.8407
370060	16.5403	19.3051	17.5989	17.7984
370063	14.4132	16.7342	*	15.4260
370064	10.9676	11.9954	11.6347	11.5257
370065	16.6898	18.1349	18.2406	17.6615
370071	16.1439	16.4567	*	16.2906
370072	14.4742	13.6519	12.5765	13.5464
370076	13.5694	14.3555	15.4067	14.4469
370078	18.4086	19.2412	15.2513	17.4148
370079	16.6861	16.9201	17.5915	17.0209
370080	13.9239	14.7323	14.3546	14.3090
370082	13.9634	15.0669	16.9715	15.2230
370083	13.1510	13.1810	15.6824	14.0210
370084	22.0545	13.1197	15.6184	16.0638
370085	11.2842	48.1271	*	16.2341
370086	15.4404	11.1900	*	13.0199
370089	16.0966	17.2638	17.9243	17.0970
370091	19.1698	20.1822	20.8553	20.0806
370092	14.9802	15.7678	16.8432	15.8798
370093	18.4600	19.7008	22.1966	20.1375
370094	18.0002	19.5462	19.5565	19.0506
370095	12.6383	13.4202	14.5909	13.5521
370097	22.9714	23.2056	19.0437	21.4568
370099	15.4549	19.4646	18.1467	17.5179
370100	14.0168	18.8274	12.9784	15.1185
370103	19.2353	18.2685	23.1347	19.9596
370105	21.3352	20.7890	25.1252	22.1529
370106	18.5485	20.3651	21.5826	20.1129
370108	12.3279	12.7470	14.0190	13.0228
370112	14.8539	15.3039	14.3384	14.8216

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
370113	16.1046	17.6107	19.9767	17.8205
370114	16.5268	17.8941	17.9757	17.4836
370121	22.5611	21.3099	19.3414	20.9750
370122	15.0645	15.4375	*	15.2280
370123	18.9159	19.0313	19.7958	19.2564
370125	15.6284	13.9436	14.4664	14.6695
370126	23.9654	15.8020	*	19.5933
370131	17.5689	15.7261	*	16.5772
370133	10.9575	12.9545	16.1855	13.3276
370138	16.4005	17.5551	17.4574	17.1263
370139	14.8612	14.9964	16.0898	15.3115
370140	16.0721	17.1393	17.4950	16.9403
370141	18.4101	20.7798	19.8606	19.6250
370146	12.6402	13.0399	13.9900	13.2166
370148	20.6458	20.6612	26.6722	22.4333
370149	16.1850	17.0929	18.0699	17.1239
370153	17.8352	16.4669	16.5267	16.9839
370154	15.5127	15.6093	16.6687	15.9283
370156	13.9255	14.5696	15.4303	14.6173
370158	15.6917	15.6994	16.3637	15.9128
370159	28.0536	21.1267	25.3240	24.1146
370163	17.6361	20.4217	*	18.9027
370165	13.0910	13.0375	12.9569	13.0294
370166	17.2849	21.0797	19.4219	19.1747
370169	12.5243	12.7138	14.8384	13.3173
370176	15.9476	18.9951	19.6537	18.1230
370177	11.2536	14.6481	14.1304	13.3001
370178	10.5726	11.6200	9.8655	10.5383
370179	17.2829	21.3002	23.8404	20.1287
370183	10.2945	16.9318	16.6061	14.0419
370186	13.6192	15.4533	16.3671	15.1316
370190	14.1397	19.3570	20.6398	17.5727
370192	18.4614	19.6967	21.8343	20.0562
370198	21.3136	*	*	21.3136
370200	*	22.5299	18.3941	20.2627
370201	*	*	18.2548	18.2548
370202	*	*	16.4919	16.4919
370203	*	*	23.5454	23.5454
380001	20.3127	26.4822	25.1542	23.6052
380002	24.0241	21.9185	23.2479	22.9299
380003	21.7826	20.9007	23.8074	22.1844
380004	23.1451	23.3609	24.5418	23.6963
380005	24.0838	25.0750	24.7476	24.6467
380006	21.2731	21.3520	20.5914	21.0574
380007	25.2995	32.2678	25.9239	27.5188
380008	20.7063	22.3004	21.6133	21.5417
380009	23.8104	24.3851	25.1040	24.4366
380010	23.7488	22.7276	24.1931	23.5774
380011	21.1151	20.3357	20.6759	20.7167
380013	18.6818	19.8180	20.3705	19.6316
380014	24.6574	25.9828	26.6038	25.7705
380017	26.0578	25.3954	21.9236	24.5037
380018	22.3525	22.9822	24.8661	23.4431
380019	22.1215	20.8176	21.1743	21.3400
380020	20.1464	22.9568	23.9978	22.4898
380021	21.1590	23.8499	24.4365	23.1615
380022	22.6408	24.5974	25.6255	24.2510
380023	20.5462	21.3831	23.4328	21.9485
380025	26.3652	26.9346	26.9398	26.7561
380026	20.4706	20.6972	22.7561	21.3218
380027	20.8647	21.5490	22.2573	21.6028
380029	19.4246	20.1471	22.0371	20.5671
380031	23.3181	20.3396	23.7634	22.5126

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
380033	25.2454	27.1343	26.6899	26.3003
380035	22.4099	23.9719	25.6016	23.9444
380036	27.1587	27.2157	*	27.1858
380037	21.9158	22.1774	23.4798	22.5697
380038	26.0869	26.7759	28.1436	26.9990
380039	23.1746	22.8048	25.7614	23.8428
380040	26.2717	22.5477	22.6412	23.5906
380042	21.1176	24.4172	21.6793	22.3496
380047	23.0718	24.2524	25.2591	24.2189
380048	17.5885	18.3005	18.2773	18.0623
380050	20.3934	20.3205	22.1089	20.9066
380051	22.3568	22.3207	24.4081	23.0351
380052	19.4570	18.6299	20.7431	19.6320
380056	19.5185	18.4961	20.7895	19.6447
380060	24.2670	24.2059	23.0106	23.8515
380061	22.3736	22.8781	24.1121	23.0785
380062	20.7716	18.2148	25.9782	21.7912
380063	20.4077	*	*	20.4077
380064	19.9826	22.9160	27.0627	23.2721
380065	26.1404	22.9608	23.3146	24.0398
380066	22.0349	23.2794	23.1175	22.8287
380068	22.3178	*	*	22.3178
380069	19.8300	20.4882	21.2057	20.5172
380070	27.2541	27.7790	29.9706	28.3711
380071	22.6386	25.1808	25.7299	24.5669
380072	19.1553	19.4346	20.6568	19.7391
380075	22.3625	22.4139	23.1910	22.6625
380078	20.2507	21.0903	22.6996	21.3468
380081	20.9882	20.4082	22.9805	21.4341
380082	22.2275	22.9606	23.7927	23.0290
380083	21.3859	21.7431	22.4058	21.8126
380084	24.2844	27.1689	31.0111	27.0317
380087	16.5309	17.0380	21.3119	18.4448
380088	21.5225	19.5346	24.8158	21.8578
380089	19.5255	25.2908	26.1967	23.9671
380090	29.2702	24.9351	30.4223	28.0439
380091	27.5560	25.3062	28.7846	27.2892
390001	19.2989	19.6732	20.3350	19.7868
390002	21.8353	19.7833	21.0159	20.9278
390003	17.1371	18.1025	18.0436	17.7426
390004	19.2277	20.3204	20.0557	19.8647
390005	17.3506	16.9472	19.0218	17.7359
390006	20.2959	21.1786	21.8940	21.0893
390007	21.7506	21.3839	*	21.5715
390008	17.8297	18.2743	19.3496	18.4745
390009	20.6507	20.6241	22.5580	21.2847
390010	17.5127	17.3335	18.1275	17.6598
390011	18.1717	18.3257	18.2751	18.2595
390012	20.6523	21.0610	22.1912	21.3051
390013	19.2698	19.6562	20.2186	19.7244
390015	13.1337	13.7352	14.3138	13.7169
390016	16.9892	17.1133	17.3854	17.1611
390017	16.7493	18.6113	18.5869	17.9293
390018	21.3626	19.0279	20.0672	20.1854
390019	16.7848	17.7258	18.7609	17.7608
390022	21.5064	24.8468	24.7121	23.6803
390023	21.8270	22.1044	23.5236	22.6164
390024	24.9437	25.4606	27.7643	26.0343
390025	15.6155	15.5523	14.5309	15.2361
390026	22.3902	22.9718	*	22.6895
390027	26.8878	29.5940	*	28.2192
390028	22.7700	23.6571	22.7820	23.0704
390029	21.5729	21.2661	24.4753	22.2475

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
390030	17.9580	18.6887	18.9093	18.5094
390031	19.2755	18.8162	19.1781	19.0917
390032	17.8041	21.5105	18.7616	19.2843
390035	20.2029	22.3591	21.9021	21.4643
390036	19.9880	19.7671	20.1769	19.9773
390037	21.0616	20.4263	19.9175	20.4619
390039	17.1046	17.5300	17.6176	17.4167
390040	15.9612	16.6876	17.4451	16.6853
390041	19.8080	20.4397	19.6159	19.9368
390042	22.7693	22.5775	21.7857	22.3776
390043	17.2607	17.4764	17.9549	17.5603
390044	20.2813	20.9831	21.3382	20.8726
390045	18.5574	19.4677	*	19.0190
390046	20.7303	21.7445	21.8760	21.4470
390047	27.6661	26.9709	*	27.3457
390048	19.0920	19.7992	18.8322	19.2254
390049	21.1217	22.1586	22.7306	21.9927
390050	22.8808	22.2639	24.7169	23.2216
390051	25.7910	28.1385	*	26.8617
390052	20.9306	20.1195	21.2367	20.7439
390054	17.8852	18.4975	19.5598	18.6230
390055	24.2211	23.4017	25.7327	24.4723
390056	17.7858	19.3901	21.4121	19.5072
390057	20.2059	20.2395	21.6693	20.6975
390058	19.7379	20.3520	20.7930	20.2983
390061	21.2392	23.8722	22.8728	22.6127
390062	16.6721	17.3750	17.4710	17.1692
390063	20.0125	19.4965	20.1696	19.9019
390065	19.9361	20.0473	20.2930	20.0884
390066	19.8539	18.9296	18.9776	19.2407
390067	20.9688	20.8162	21.9905	21.2535
390068	18.3158	19.1109	21.6408	19.5148
390069	19.6466	*	*	19.6466
390070	16.1988	21.8549	22.7909	20.2250
390071	15.7165	16.0100	18.9416	16.7655
390072	16.3133	16.9232	15.1402	16.1159
390073	20.5581	21.2623	22.2009	21.3579
390074	18.4806	18.3093	19.5799	18.7617
390075	17.9840	18.7695	19.5744	18.6643
390076	20.2475	21.3290	19.7719	20.4342
390078	19.2089	19.0156	20.5750	19.5586
390079	18.3312	18.9269	19.2984	18.8525
390080	18.8028	21.4707	22.2449	20.7685
390081	24.8351	24.7461	25.6575	25.0775
390083	*	*	26.1660	26.1660
390084	16.4026	20.2529	17.0197	17.7133
390086	18.5265	18.3563	*	18.4381
390088	23.6173	23.9506	*	23.7777
390090	21.6437	21.3759	20.5444	21.2031
390091	18.1569	18.3770	18.8545	18.4554
390093	17.7171	18.4442	20.0135	18.7217
390095	16.3357	16.6930	17.9697	16.9815
390096	19.1171	22.4382	21.5922	20.9351
390097	23.5963	25.2845	24.8005	24.5139
390100	20.7859	20.9263	21.1186	20.9469
390101	17.9499	18.5039	17.0447	17.8109
390102	19.0461	21.5496	18.0199	19.5593
390103	18.4312	18.8667	20.4422	19.2092
390104	15.9008	16.3255	16.2440	16.1553
390106	16.6666	16.8439	*	16.7557
390107	19.5178	20.9841	20.6024	20.3811
390108	21.0899	21.3142	21.2602	21.2184
390109	16.4597	16.5299	17.4540	16.8127

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
390110	21.5282	21.6464	21.6005	21.5915
390111	27.5193	33.3971	27.0087	29.3495
390112	14.9427	15.0065	14.8634	14.9388
390113	19.1945	19.3634	19.9496	19.4908
390114	19.6295	20.9533	19.8004	20.1209
390115	23.3461	21.4287	21.9789	22.1926
390116	21.4877	21.3671	22.6783	21.8481
390117	17.9393	18.0769	18.2543	18.0888
390118	18.3440	18.9507	16.9990	18.1121
390119	18.2951	18.8815	19.3946	18.8604
390121	20.8780	19.1315	20.6253	20.2089
390122	17.1902	17.7734	15.5438	16.7430
390123	20.8344	21.3974	21.8434	21.3548
390125	16.7983	17.5446	17.0975	17.1374
390126	20.6498	*	*	20.6498
390127	21.7724	22.4555	22.8787	22.3758
390128	19.6792	19.3165	19.9764	19.6532
390130	17.7049	18.3695	18.5519	18.2059
390131	16.0986	19.2096	18.7142	17.9603
390132	21.1931	22.8414	24.1878	22.7048
390133	23.3489	24.7561	24.1814	24.0439
390135	21.5782	22.1905	21.8152	21.8560
390136	16.9737	20.6286	16.8505	18.1580
390137	17.5687	18.5397	19.1432	18.3744
390138	19.6212	20.6936	20.7726	20.3703
390139	24.4515	23.9757	23.8019	24.0822
390142	26.8086	28.8877	28.3448	28.0760
390145	20.3731	20.4228	20.4964	20.4300
390146	18.7922	18.6505	20.1788	19.1967
390147	20.9651	21.2492	21.7600	21.3199
390150	20.7294	20.3155	20.8970	20.6500
390151	21.6000	22.5206	23.6072	22.6096
390152	20.3353	19.4017	20.2581	19.9941
390153	23.7013	22.9707	23.3587	23.3403
390154	17.4036	16.7052	17.8774	17.3537
390156	21.8498	22.6398	*	22.2353
390157	19.6578	19.1783	20.2647	19.6975
390160	21.4810	19.4463	18.8676	19.8186
390161	16.4799	*	*	16.4799
390162	21.4095	21.9188	21.4600	21.5967
390163	16.8013	17.7564	18.1415	17.5746
390164	24.6765	24.9750	25.0347	24.8814
390166	19.0405	19.7978	19.8899	19.5577
390167	19.8973	*	*	19.8973
390168	18.7400	18.8863	19.6875	19.1127
390169	20.2382	22.0547	22.7920	21.7176
390170	26.5891	24.7973	*	25.6898
390173	18.5370	18.6613	18.7403	18.6472
390174	25.4189	25.3307	25.7174	25.4826
390176	17.8740	20.8368	21.7650	20.0495
390178	16.6993	17.0534	17.1142	16.9526
390179	21.6901	21.8593	21.6191	21.7220
390180	25.7074	26.5541	26.7743	26.3551
390181	19.4654	19.3832	18.8681	19.2465
390183	17.8306	17.9848	17.4535	17.7535
390184	20.8060	20.9349	21.1941	20.9693
390185	18.8798	20.3877	20.3301	19.8556
390189	20.0889	20.3338	19.0797	19.7997
390191	16.3240	17.2270	17.1919	16.8998
390192	17.4537	17.6597	17.1875	17.4275
390193	16.7874	18.1209	17.3804	17.3866
390194	20.7953	21.2689	21.0549	21.0283
390195	24.6855	24.1793	23.4250	24.1067

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
390197	19.2690	20.7998	22.1769	20.7816
390198	15.9721	15.8833	16.6803	16.1535
390199	17.0515	17.3865	17.7763	17.3987
390200	15.1399	15.4012	18.2456	16.2785
390201	20.6296	20.3533	21.3291	20.7767
390203	20.9432	21.4989	22.4685	21.6448
390204	20.1779	22.9616	22.1541	21.7608
390206	18.4027	*	*	18.4027
390209	17.4792	18.7059	16.8200	17.6370
390211	17.8638	18.4213	19.4552	18.6187
390213	18.8555	19.1553	19.3776	19.1155
390215	20.7084	21.2032	23.5953	21.7981
390217	19.1406	19.9837	19.9665	19.6808
390219	18.8292	19.6226	20.1311	19.5227
390220	18.7178	17.7916	*	18.2413
390222	21.5739	22.1548	22.7491	22.1668
390223	23.6482	22.1775	18.9493	21.4503
390224	15.3015	13.7518	17.2173	15.1752
390225	18.6125	18.7290	19.0364	18.7963
390226	21.8268	21.8481	22.7772	22.1197
390228	19.4083	19.8180	20.2703	19.8379
390231	22.7544	19.4798	21.3811	21.0947
390233	19.4887	20.2309	20.6673	20.1413
390235	25.0857	21.4200	19.9925	22.7713
390236	16.2397	17.8735	19.1427	17.7118
390237	19.5230	22.3011	*	20.8354
390238	17.8211	17.1055	18.1956	17.6820
390244	15.4611	15.6402	13.8845	14.9996
390245	26.0194	24.5076	*	25.2650
390246	18.9733	25.0556	22.3892	21.9107
390247	20.9526	21.2151	*	21.0479
390249	12.7920	13.1657	14.1062	13.3677
390256	23.2734	22.2773	22.3540	22.6670
390258	21.9207	22.6852	23.8318	22.8365
390260	21.9509	21.5982	*	21.7740
390262	18.2379	*	18.8942	18.5346
390263	20.6855	20.3796	20.6348	20.5647
390265	20.3580	20.4950	20.4760	20.4411
390266	17.1666	17.1966	17.5653	17.3117
390267	21.2974	19.2665	19.9578	20.2867
390268	21.3486	22.0909	22.2046	21.8827
390270	19.0925	19.2074	20.6793	19.6201
390278	18.2865	17.7176	18.5776	18.2038
390279	14.3241	14.8655	15.8080	14.9814
390283	*	22.5490	*	22.5490
390284	*	34.3904	*	34.3904
390285	*	*	29.1270	29.1270
390286	*	*	22.9746	22.9746
390287	*	*	30.3252	30.3252
390288	*	*	26.9662	26.9662
390289	*	*	22.8963	22.8963
390290	*	*	30.5037	30.5037
390291	*	*	20.0272	20.0272
390293	*	*	23.5285	23.5285
400001	9.9463	10.5757	10.7531	10.4326
400002	10.1417	13.0494	13.3684	12.2030
400003	10.8821	12.4078	11.2726	11.5031
400004	8.9864	8.5648	9.0781	8.8776
400005	9.5632	7.7432	9.7802	8.9053
400006	10.3444	10.1048	10.4988	10.3215
400007	6.4490	8.0174	8.1974	7.5138
400009	8.4207	8.8650	8.7341	8.6758
400010	10.6518	10.8011	9.1359	10.1542

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
400011	7.4979	8.5426	8.6252	8.2277
400012	8.2412	8.4728	8.6538	8.4546
400013	8.4579	9.2624	9.8197	9.2598
400014	9.5235	9.4798	10.2712	9.7458
400015	10.9505	14.4076	15.5827	13.3370
400016	13.2756	13.3922	13.7001	13.4570
400017	8.6421	9.2577	9.9167	9.2527
400018	10.4557	10.6208	10.5583	10.5484
400019	10.4332	10.8940	11.5139	11.0095
400021	10.6988	12.1434	12.7462	11.9145
400022	11.5861	12.2199	13.0411	12.2767
400024	7.8984	9.2409	9.0826	8.6750
400026	5.6454	5.8335	7.4280	6.2931
400027	9.5899	*	*	9.5899
400028	8.8597	19.1794	8.9567	8.9909
400031	8.2660	*	*	8.2660
400032	10.5498	10.0448	10.1898	10.2599
400044	11.9704	11.9486	12.8671	12.2011
400048	9.1701	15.1405	11.5104	11.4186
400061	12.4493	13.0988	10.3664	11.9076
400079	*	9.7203	8.7218	9.1657
400087	9.5097	9.8534	8.6480	9.3956
400094	8.9116	7.9187	8.8387	8.5180
400098	9.3308	9.7791	10.4312	9.8607
400102	9.8536	9.9903	8.5290	9.4812
400103	11.2069	11.5359	11.8454	11.4791
400104	11.0672	10.7292	7.9552	10.3151
400105	9.3049	9.0556	10.6028	9.5117
400106	9.3123	9.2187	9.8694	9.4766
400109	10.9826	11.8760	*	11.4480
400110	10.3326	10.5277	10.7228	10.5456
400111	9.5583	10.9665	12.3311	11.0412
400112	10.1755	10.8694	11.0634	10.7058
400113	9.2238	8.3168	9.3955	8.9859
400114	9.0496	7.0510	9.9477	8.5888
400115	9.8244	8.5487	7.2203	8.5322
400117	10.2295	10.8756	11.3351	10.8116
400118	9.4398	11.4051	11.4317	10.7997
400120	9.5274	10.6584	10.9315	10.3832
400121	7.8052	9.8322	8.7584	8.8340
400122	8.1911	7.6413	9.1638	8.3405
400123	7.8099	10.2367	10.3955	9.4702
400124	12.0999	12.2452	12.7323	12.3713
400125	*	10.2056	10.5997	10.3924
410001	23.2808	23.1738	22.4972	22.9875
410004	22.4801	21.0638	22.8898	22.1691
410005	23.1444	22.7170	23.8848	23.2434
410006	23.3968	23.8700	22.7636	23.3233
410007	22.1452	23.1325	22.4988	22.5921
410008	23.0662	24.9726	24.4170	24.1518
410009	24.4899	24.3895	24.3760	24.4190
410010	26.9813	28.4589	29.0876	28.1660
410011	25.2926	26.1183	27.1700	26.1594
410012	24.5811	24.1695	26.4570	25.0414
410013	24.5122	24.8800	24.8429	24.7494
420002	19.4845	20.7804	22.6182	20.9552
420004	19.7968	20.9588	16.3147	18.8438
420005	17.3510	17.9694	17.8103	17.7120
420006	18.3439	19.1760	18.7168	18.7347
420007	18.2096	18.6456	18.9047	18.5717
420009	18.5456	19.9586	21.2566	19.9500
420010	17.1184	18.0252	19.3267	18.2127
420011	16.5664	18.0970	16.7523	17.1112

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
420014	16.6065	18.0519	19.0455	17.8775
420015	18.8411	20.1164	20.8736	19.8858
420016	15.6241	15.5485	15.4358	15.5337
420018	19.7367	21.8775	18.7117	19.9976
420019	16.9990	17.1726	19.0199	17.6834
420020	20.9449	20.3193	20.5801	20.5993
420023	19.4855	20.4053	20.4978	20.1490
420026	20.3476	21.8749	23.3274	21.9111
420027	18.8457	19.2594	19.6743	19.2679
420030	19.1453	20.6448	22.5159	20.8443
420031	14.1855	8.2516	15.2208	11.5692
420033	21.7279	23.1303	23.7974	22.8884
420036	17.6136	21.3222	19.8080	19.4992
420037	21.7908	22.7099	23.5244	22.7289
420038	17.6726	18.6568	20.0181	18.7610
420039	15.8385	18.3017	17.7880	17.2992
420043	19.4521	19.7570	19.6834	19.6347
420048	18.4367	18.8070	20.4905	19.2520
420049	17.5854	19.4049	20.6238	19.1796
420051	19.5001	19.1555	19.8549	19.5061
420053	16.9599	18.1657	19.0780	18.0364
420054	18.2702	20.2574	20.2275	19.5600
420055	19.2048	16.8717	18.6782	18.0932
420056	14.8695	15.1835	16.5491	15.4839
420057	15.9849	20.5266	22.1312	19.6895
420059	15.8160	17.1483	18.2093	17.0936
420061	16.5555	17.3543	17.7047	17.2228
420062	17.8205	21.7469	20.9032	20.1974
420064	16.7227	16.0794	19.7067	17.5583
420065	19.6902	19.9435	19.2150	19.5969
420066	15.1804	18.0042	19.5366	17.5193
420067	18.8610	19.7824	20.7769	19.8307
420068	18.5030	18.5481	20.2580	19.1326
420069	17.0788	18.1298	18.9003	18.0124
420070	18.0057	17.3876	18.8535	18.0764
420071	19.4482	20.3902	20.1145	19.9887
420072	13.8550	15.0158	18.2531	15.7212
420073	19.1604	19.9986	20.2697	19.8499
420074	16.9292	18.0967	18.1839	17.6249
420075	14.2931	12.8158	15.0132	14.0442
420078	20.7317	21.9082	22.7156	21.7962
420079	20.8639	21.0874	21.3177	21.0994
420080	22.3443	21.9968	*	22.1649
420082	20.4653	21.7210	22.7391	21.6447
420083	20.1472	22.6376	24.0994	22.2410
420085	19.9603	21.6791	22.0071	21.2571
420086	25.7179	20.2878	23.7341	23.0645
420087	19.1403	19.8388	20.8217	19.9506
420088	17.1938	19.9919	21.8979	19.5872
420089	20.2537	20.5360	21.3954	20.7386
420091	18.8687	20.3092	21.8367	20.2654
420093	17.4689	18.3902	19.1299	18.3060
420095	*	*	33.4632	33.4632
420096	*	*	26.4863	26.4863
430004	18.5438	19.6344	19.2737	19.1454
430005	16.3059	16.4560	17.3400	16.6979
430007	14.1078	14.6331	15.1494	14.6319
430008	17.6640	18.1323	18.5234	18.0977
430010	17.1766	19.8191	16.5750	17.7180
430011	16.9848	17.4750	18.3648	17.6074
430012	17.2775	17.6997	19.2921	18.0907
430013	18.1338	18.4817	18.8978	18.5085
430014	16.8925	20.2387	20.9118	19.1361

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
430015	18.0019	18.2875	18.8998	18.3871
430016	19.4759	20.8850	21.2191	20.5077
430018	14.8854	16.2244	15.9424	15.6759
430022	13.4905	14.5118	14.0661	13.9980
430023	12.2331	16.2164	16.7850	14.8010
430024	15.4709	16.1801	17.4816	16.3448
430027	19.1461	20.2591	20.8666	20.0818
430028	18.2312	17.1577	18.2829	17.8947
430029	16.6500	17.6986	17.4932	17.2971
430031	13.1258	12.4660	13.2105	12.9278
430033	15.3003	17.3652	18.3978	16.9036
430034	15.4064	14.2491	13.8535	14.4964
430036	13.6967	15.6258	16.7827	15.2466
430037	16.5368	18.1293	18.7009	17.7855
430038	13.7167	18.4078	*	15.7522
430040	13.6745	14.4509	14.7860	14.2554
430041	13.1936	14.8816	*	14.0079
430043	13.6908	14.9949	17.0193	15.1103
430044	18.4970	21.0823	*	19.6187
430047	17.4956	17.9823	17.5377	17.6691
430048	18.3524	18.7602	19.0261	18.7260
430049	15.5381	15.2237	14.9025	15.2275
430051	17.0574	18.8070	18.8697	18.2650
430054	14.7251	14.8003	15.0101	14.8472
430056	11.7627	10.3697	14.1914	11.9246
430057	15.4390	17.2805	18.8777	17.1911
430060	9.0358	10.0176	9.7678	9.6151
430064	14.4367	14.2184	13.8666	14.1634
430066	14.3557	15.6660	14.5957	14.8566
430073	16.1133	15.3776	16.5112	15.9989
430076	12.7608	13.9883	15.2453	13.9494
430077	19.3012	19.8558	20.4361	19.8699
430079	13.6836	14.1815	14.4154	14.0719
430089	17.8908	17.9790	17.5100	17.7870
430090	21.5239	21.5974	23.5180	22.2918
430091	19.2146	18.1567	21.6239	20.0217
430092	*	21.3807	19.7644	20.5428
430093	*	19.5013	23.3009	21.3125
440001	14.8713	15.5897	17.2282	15.8569
440002	19.1498	20.3740	21.4299	20.3167
440003	18.3658	19.3042	20.3756	19.3464
440006	19.6021	21.4055	23.1483	21.3134
440007	12.1230	14.8959	14.0612	13.6386
440008	17.2848	18.8994	20.3303	18.7894
440009	17.8424	17.4831	18.4068	17.9080
440010	19.9829	16.3283	13.3692	16.2699
440011	17.6948	18.3375	19.3165	18.4706
440012	15.9837	19.5739	19.6437	18.4174
440014	15.9195	16.1143	15.0656	15.7064
440015	18.2632	22.0659	21.6106	20.5435
440016	15.4097	16.2964	14.6142	15.3378
440017	19.6215	20.4563	20.2241	20.0945
440018	16.4115	17.4995	18.1059	17.3355
440019	20.0416	21.5402	23.2963	21.6131
440020	18.1154	17.8879	19.0396	18.3371
440022	15.8459	*	*	15.8459
440023	15.4721	16.7837	15.6603	15.9134
440024	18.4432	18.4046	18.4276	18.4251
440025	15.8784	16.3140	17.0997	16.4428
440026	23.0550	23.2566	25.6490	23.8993
440029	19.4326	20.7050	22.2889	20.8403
440030	16.2941	16.9925	17.6297	17.0242
440031	15.5432	17.0211	17.2555	16.5726

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY•2003	Average hourly** wage (3 yrs)
440032	13.9775	13.8140	13.9784	13.9249
440033	14.5304	13.7328	16.4679	14.8744
440034	19.5470	20.0309	20.9470	20.1907
440035	18.9026	19.3034	20.4168	19.5344
440039	19.9439	21.6536	22.4158	21.3378
440040	16.3740	16.9275	17.6781	16.9632
440041	14.6621	14.9545	14.6684	14.7645
440046	18.1654	19.3229	20.5562	19.3415
440047	16.6646	17.8092	18.7469	17.7021
440048	19.4498	21.4993	19.6052	20.1565
440049	17.9292	18.7967	19.3000	18.6741
440050	19.1328	18.2511	19.7915	19.0510
440051	13.1901	16.0421	17.7067	15.5027
440052	16.6541	19.8075	18.1377	18.1083
440053	18.5515	19.6494	21.5253	19.8982
440054	13.8716	13.3967	15.2154	14.1791
440056	15.9821	16.2742	20.4903	17.3863
440057	12.7925	13.7257	14.4363	13.6135
440058	18.8118	19.1878	17.1548	18.4084
440059	18.5418	19.6018	20.8882	19.6895
440060	18.0586	19.7916	20.7628	19.4260
440061	14.9708	22.5525	16.9234	17.8112
440063	19.3222	19.8371	18.8061	19.2994
440064	17.7652	18.9809	18.2678	18.2991
440065	18.5825	18.8296	19.2282	18.8924
440067	16.2811	17.2397	18.2973	17.2997
440068	19.4695	19.3668	19.4392	19.4232
440070	13.7035	14.0437	18.0064	15.1918
440071	17.0186	19.7836	*	18.2110
440072	17.5995	19.1522	20.0691	18.8963
440073	19.1714	19.5554	19.6290	19.4550
440078	15.0849	16.0188	17.1645	15.9789
440081	18.3587	19.3454	20.7215	19.5016
440082	22.2857	22.6855	22.5590	22.5073
440083	14.8525	13.7423	13.7630	14.1806
440084	13.4378	13.7731	13.8085	13.6799
440091	19.6114	20.1065	20.1359	19.9669
440100	13.8437	14.7113	15.9969	14.8524
440102	14.3510	14.5500	16.0783	14.9840
440103	20.3052	18.6990	*	19.4877
440104	22.4403	22.6754	21.7135	22.2610
440105	16.7131	17.1172	18.1375	17.2950
440109	16.0446	17.7443	17.6399	17.0830
440110	21.1716	17.4816	18.4998	18.8996
440111	23.2425	23.2254	23.2111	23.2266
440114	14.4997	15.0036	18.5327	16.0830
440115	17.4514	18.5457	18.7054	18.2287
440120	17.2384	16.3115	19.8997	17.7817
440125	15.6588	19.4115	19.6848	18.2807
440130	17.8223	17.4857	19.0905	18.1589
440131	15.5048	16.1214	19.9883	17.1760
440132	16.6553	16.8871	17.9186	17.1418
440133	21.5313	23.0891	18.7556	21.1283
440135	19.2010	22.2005	22.5452	21.4251
440137	14.5632	15.0070	15.3530	14.9670
440141	13.5308	15.9429	17.6819	15.3875
440142	15.7287	16.8855	17.1483	16.5303
440143	17.7821	18.2061	18.6844	18.2206
440144	17.6415	18.3859	18.8127	18.2853
440145	17.0608	18.3948	18.3832	17.9140
440147	21.4304	26.1464	25.3766	24.0818
440148	19.2435	19.4598	19.3769	19.3574
440149	16.6923	18.4281	18.4869	17.8895

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
440150	20.1411	20.3006	21.2942	20.5974
440151	17.4248	18.3928	19.8977	18.5439
440152	21.0287	22.7664	26.2972	22.9356
440153	16.7769	16.5716	18.1975	17.1720
440156	29.5557	21.7577	21.9374	23.7510
440157	16.9265	18.4249	15.5316	17.0209
440159	17.7158	20.9371	21.4914	19.6375
440161	21.8013	22.8816	23.3891	22.6977
440162	14.7637	15.5534	19.8075	16.5656
440166	19.6684	19.2159	19.6632	19.5183
440168	18.6535	19.1509	21.1947	19.6498
440173	18.6402	19.1812	21.0284	19.6315
440174	17.3294	18.0865	19.3966	18.2367
440175	20.0802	18.5186	19.9065	19.4762
440176	18.0294	19.2208	19.8448	19.0126
440180	19.7773	20.2184	17.8427	19.2624
440181	16.4878	17.7709	19.0915	17.6551
440182	17.7487	19.7094	18.1953	18.4985
440183	22.7067	21.3465	22.2401	22.0840
440184	17.2037	16.8880	18.6890	17.3933
440185	19.3870	21.2188	21.1226	20.6133
440186	19.3948	19.7983	18.0450	19.1060
440187	18.9713	17.5872	16.0274	17.5444
440189	*	18.5252	22.2555	20.3772
440192	19.0839	19.1705	19.1976	19.1524
440193	19.0811	18.6999	19.9078	19.2111
440194	19.8682	22.4562	21.9609	21.4700
440197	21.9618	21.8503	22.5282	22.1263
440200	17.9575	19.8078	17.8595	18.5432
440203	18.3400	16.2861	16.9819	17.1896
440206	16.4429	*	*	16.4429
440210	11.0218	11.9815	12.3270	11.8072
440211	14.8972	*	*	14.8972
440212	17.0685	*	*	17.0685
440213	19.5760	*	*	19.5760
440214	*	28.0285	*	28.0285
440215	*	22.2928	*	22.2928
440217	*	*	19.2834	19.2834
450002	21.3749	21.4836	21.5141	21.4583
450004	16.6723	16.7850	15.9549	16.5100
450005	18.3600	16.6396	16.6354	17.2368
450007	16.9681	19.1910	17.7721	17.9505
450008	17.0832	17.6582	19.3637	18.0034
450010	16.5001	17.6677	18.5058	17.7858
450011	17.1942	20.8102	18.9490	18.9450
450014	17.9495	17.5815	18.4937	17.9967
450015	18.9895	21.6773	23.3972	21.2507
450016	18.4463	18.3456	18.9063	18.5621
450018	21.4788	23.2293	*	22.2764
450020	17.8415	19.1153	18.4454	18.4795
450021	23.0843	23.3630	22.5937	23.0174
450023	16.0831	17.6360	19.2810	17.6838
450024	17.3518	18.5985	19.5584	18.5411
450025	17.0004	*	*	17.0004
450028	18.8764	19.1658	19.5905	19.2141
450029	17.4716	17.7425	19.7835	18.3585
450031	22.2222	29.6945	29.6772	27.1869
450032	17.3317	14.6530	20.8525	17.3455
450033	19.7437	21.0222	21.4646	20.7635
450034	19.6721	18.8823	19.4439	19.3269
450035	20.0951	20.3599	20.2269	20.2257
450037	19.5411	19.9140	19.3682	19.6099
450039	19.8143	19.7176	18.4497	19.3230

*Denotes wage data not available for the provider for that year.
**Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
450040	16.8534	19.6370	*	18.3093
450042	19.8921	18.8357	20.2402	19.6613
450044	24.7961	21.0909	23.4476	22.9976
450046	18.6536	17.3631	18.1393	18.0789
450047	13.4486	16.9028	15.9525	15.2979
450050	14.7669	17.7209	19.1390	17.0907
450051	21.0236	21.1008	22.4159	21.4934
450052	13.8881	15.5890	16.3064	15.2550
450053	17.0467	17.2781	15.6962	16.7365
450054	22.8960	19.2431	*	21.4583
450055	15.0433	15.8526	16.4789	15.8195
450056	21.8436	21.8605	21.6890	21.7982
450058	18.0967	18.6172	20.0081	18.9393
450059	15.2168	19.8240	21.4873	18.7159
450063	14.3815	12.7211	15.1779	13.9190
450064	17.4093	19.7682	21.3929	19.5099
450065	21.4934	23.3797	23.8471	22.8509
450068	22.8998	23.3495	22.8227	23.0189
450072	19.0111	18.0307	20.0134	19.0500
450073	17.1002	16.5942	23.7700	19.3382
450078	11.7265	13.2820	13.9324	12.9289
450079	21.0518	20.6483	22.0609	21.2553
450080	17.4553	18.6212	19.7834	18.5898
450081	16.3448	17.5737	19.0276	17.6152
450082	16.1585	16.8677	*	16.5390
450083	21.5884	23 3754	20.9315	21.9323
450085	18.3602	20.0085	15.7805	17.8575
450087	22.0273	21.9320	23.4141	22.4951
450090	15.0939	15.5796	19.9180	16.7400
450092	16.8260	17.9520	15.7252	16.8197
450094	21.3158	23.2863	25.2158	23.1854
450096	17.8813	18.6802	19.3681	18.6265
450097	19.5723	19.7187	20.4932	19.9373
450098	20.5754	19.0454	19.3458	19.6276
450099	19.2258	20.4181	19.0079	19.5047
450101	17.1330	17.7928	*	17.4479
450102	18.6707	19.8793	21.4361	19.9466
450104	16.6744	17.0821	17.6834	17.1430
450107	25.1986	24.1094	20.9852	23.2733
450108	15.6324	15.2797	16.9845	15.9966
450109	13.8127	10.5973	17.7226	13.4301
450110	19.5821	*	*	19.5821
450111	19.6350	21.4908	*	20.6248
450112	16.0441	18.1026	17.3725	17.2066
450113	20.9777	20.8306	20.7782	20.8679
450118	17.9053	*	*	17.9053
450119	20.2853	20.2030	20.1335	20.2023
450121	20.4641	21.9198	22.0485	21.4762
450123	15.7618	14.1755	17.5051	15.6216
450124	22.7480	22.5208	22.6668	22.6449
450126	21.7233	21.4789	22.5290	21.9115
450128	18.2184	18.1446	18.4178	18.2629
450130	20.4156	18.9211	19.3882	19.5769
450131	19.2589	17.4168	17.7234	18.0882
450132	18.1713	21.8089	19.7672	19.9308
450133	23.6366	26.0763	24.4799	24.6993
450135	21.0306	20.4068	25.8775	22.4267
450137	22.4590	23.4346	21.3644	22.3582
450140	20.2280	17.3370	19.6205	19.0889
450143	14.5270	15.0871	16.7371	15.4651
450144	18.1121	17.4309	20.6880	18.7404
450145	15.6078	16.1895	16.4087	16.0604
450146	17.8572	15.5030	17.4391	16.8224

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
450147	18.9363	19.0477	20.0805	19.3489
450148	18.6758	20.4923	20.9373	20.1433
450149	19.7521	21.7219	22.6138	21.3072
450150	16.3719	17.8612	18.3079	17.5184
450151	15.2906	16.4209	16.3279	16.0117
450152	18.0061	17.7265	19.6105	18.4659
450153	19.4419	18.6514	18.8000	18.9747
450154	13.8731	13.9119	16.8748	14.8870
450155	11.5841	13.3456	20.0872	14.3751
450157	15.6371	15.3083	16.8569	15.9683
450160	16.6533	10.6852	18.7780	14.2553
450162	20.9560	21.9218	20.5032	21.1178
450163	17.5403	17.8028	19.0727	18.1175
450164	16.9741	17.7180	18.7101	17.7835
450165	13.9218	17.3283	14.9478	15.3028
450166	11.4772	11.0541	11.3813	11.3012
450169	13.1990	*	*	13.1990
450170	14.2997	14.3234	15.8525	14.8194
450176	16.9674	17.2576	18.2050	17.4802
450177	14.9241	15.2419	14.8306	14.9994
450178	17.8508	16.0280	15.8729	16.5762
450181	15.5622	18.6936	18.3600	17.5713
450184	21.1263	20.0821	20.3941	20.5023
450185	14.0714	11.5228	13.2613	12.8423
450187	16.6945	18.5053	20.6388	18.5641
450188	14.3938	15.1954	16.9407	15.5553
450191	20.1222	20.9512	20.5883	20.5559
450192	20.3795	21.2497	20.1419	20.5690
450193	23.1963	23.1639	24.9007	23.7654
450194	20.5187	20.7745	20.5396	20.6114
450196	17.1955	17.8993	20.2663	18.3910
450200	18.7387	19.2228	19.6496	19.1969
450201	16.9908	17.1463	17.7763	17.3128
450203	20.6712	19.3978	19.6050	19.8895
450209	19.0811	20.0140	21.0205	19.9890
450210	13.9758	16.3470	16.7204	15.7370
450211	17.9857	18.8114	18.7305	18.5258
450213	17.7631	19.0651	18.5334	18.4589
450214	19.0475	20.5070	21.0485	20.1729
450217	12.8457	12.7647	13.1840	12.9276
450219	15.3976	17.6884	18.3602	17.1605
450221	16.3700	15.2120	16.1398	15.8866
450222	20.3129	19.8967	23.2779	21.1824
450224	24.9046	20.1579	16.2433	19.9276
450229	16.4503	16.7853	*	16.6236
450231	19.1564	19.1746	20.7709	19.7438
450234	16.1945	16.3003	16.5793	16.3818
450235	15.2332	16.3115	17.5349	16.3996
450236	16.6703	16.4957	17.0092	16.7226
450237	20.7930	19.0325	*	19.8837
450239	17.1308	17.8401	18.8416	17.9241
450241	12.5675	16.4240	16.6046	14.9426
450243	11.9099	13.6416	11.2035	12.2464
450246	16.5478	16.7959	22.7940	18.4445
450249	12.0302	11.7658	10.6467	11.4953
450250	10.2844	13.6787	*	11.6004
450253	12.2402	13.2177	14.5492	13.3367
450258	16.0466	16.7337	17.0724	16.6100
450264	13.8929	14.5956	17.2825	15.2193
450269	12.3594	12.7717	12.9555	12.7319
450270	12.8381	14.4792	13.6733	13.6110
450271	16.6319	16.7831	17.9808	17.1692
450272	19.9331	18.4344	20.5888	19.6562

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
450276	13.1155	14.0745	14.0779	13.7681
450278	14.8291	15.2950	14.4871	14.8427
450280	22.2984	22.2936	20.3286	21.5973
450283	14.5664	15.1950	15.8684	15.2590
450288	16.2502	18.8935	13.5248	16.2231
450289	20.3104	20.3460	20.8745	20.5057
450292	16.9693	20.5335	17.7154	18.2921
450293	16.0132	16.2721	16.4077	16.2364
450296	21.6000	22.3430	*	21.9845
450299	21.5672	*	21.0398	21.2895
450303	12.4582	12.8996	14.3353	13.2442
450306	13.8216	14.2047	13.6333	13.8808
450307	16.4622	17.0691	17.6757	17.0817
450309	13.1480	13.3771	14.8823	13.8094
450315	22.8140	21.4684	23.8151	22.6579
450320	20.0946	20.6596	24.6129	21.4772
450321	13.1752	14.7344	14.4710	14.1070
450322	22.7667	29.1884	28.9834	26.4969
450324	17.7886	19.1692	20.9081	19.2343
450327	11.7511	13.3639	10.9732	11.8932
450330	18.9425	19.8066	20.8820	19.9093
450334	12.8051	13.8392	13.9839	13.5301
450337	17.1073	25.5708	*	20.0638
450340	17.6914	*	15.2368	16.4876
450341	18.9429	*	20.8814	19.8654
450346	17.5367	18.9475	19.2769	18.6527
450347	17.1099	19.3475	19.9109	18.7748
450348	13.9535	13.3585	15.0069	14.1063
450351	18.4116	19.3159	20.4537	19.4007
450352	18.7480	20.1871	21.2035	20.1227
450353	17.7539	16.0003	16.9105	16.8643
450355	11.9473	11.8933	12.8876	12.2285
450358	22.3235	23.0206	24.9765	23.4327
450362	15.8847	18.1983	18.1247	17.3786
450369	15.2233	15.3122	16.0667	15.5405
450370	12.6061	16.1369	18.7539	15.9177
450371	24.6339	16.0236	17.7591	19.2388
450372	20.0924	22.0746	21.4050	21.1434
450373	17.4183	17.9554	17.5600	17.6501
450374	13.6099	15.1750	15.0146	14.5995
450378	23.5789	23.4599	24.4143	23.8974
450379	22.7632	22.8756	25.1931	23.6182
450381	16.4166	16.7112	16.6476	16.5958
450388	19.2499	19.7408	20.6670	19.9390
450389	18.1797	18.8448	19.3156	18.7899
450393	20.2784	22.4992	21.1805	21.2450
450395	18.3768	18.0024	17.5236	17.9433
450399	15.7845	15.3491	16.3333	15.8319
450400	19.5379	18.6668	18.8375	18.9844
450403	20.1989	22.8430	24.7645	22.7028
450411	14.4832	15.1121	15.9178	15.1698
450417	13.4983	15.3591	15.2713	14.6933
450418	21.9161	21.9690	22.2511	22.0447
450419	20.6325	23.2551	22.4552	22.1296
450422	26.4848	28.0257	28.0395	27.5279
450423	22.7132	*	*	22.7132
450424	18.9741	18.7895	*	18.8834
450429	13.8723	*	*	13.8723
450431	19.6304	22.0361	21.7369	21.1141
450438	19.5028	15.4553	20.7791	18.3025
450446	13.0986	20.7592	*	16.2045
450447	18.0376	18.0377	19.3864	18.4641
450451	18.8948	18.2988	17.7525	18.2807

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
450457	24.7880	19.6569	*	21.9578
450460	15.1765	14.6523	15.8434	15.2180
450462	22.6212	22.1144	18.6080	21.0035
450464	13.2931	15.5908	15.8121	14.8193
450465	15.5650	15.4731	19.3928	16.5297
450467	10.6184	17.0004	18.9388	14.4801
450469	19.6269	22.1930	22.0389	21.2453
450473	19.9761	19.7148	18.3813	19.2637
450475	16.3404	16.9269	19.0010	17.4228
450484	16.8131	18.9825	19.2310	18.3714
450488	19.3457	19.2173	21.5440	20.0301
450489	9.9326	16.3584	17.8779	13.9861
450497	15.0886	16.2997	15.9325	15.7828
450498	13.8551	14.4713	15.9479	14.7991
450508	18.8069	19.0991	19.2176	19.0434
450514	21.3243	20.0144	20.7064	20.6957
450517	27.8815	14.3191	17.6011	18.7482
450518	19.8116	21.4873	20.7355	20.6380
450523	20.0792	21.0393	20.8469	20.6355
450530	22.8623	21.1634	22.0810	22.0042
450534	19.9376	20.1520	19.7227	19.9301
450535	19.6645	21.0513	21.5449	20.7286
450537	20.8438	20.1161	20.6100	20.5223
450539	16.4921	18.7559	19.3681	18.2066
450544	23.9283	23.6652	22.7282	23.5339
450545	19.5558	20.2823	21.0792	20.2860
450547	14.8248	18.1524	19.3002	17.4255
450551	16.9439	16.6237	16.1437	16.5621
450558	22.2574	20.7404	21.3116	21.4292
450563	19.9218	22.0708	21.8171	21.3374
450565	16.2652	17.3803	17.8058	17.1566
450570	18.9532	19.0336	*	18.9910
450571	17.5598	18.2784	19.5325	18.4467
450573	12.2502	17.3518	17.5455	15.5608
450574	14.5965	14.6128	14.8549	14.6891
450575	19.3925	22.5621	24.0386	22.1410
450578	15.4783	18.0925	17.2863	16.9084
450580	15.8321	16.7374	17.8552	16.8065
450583	15.6580	14.4411	15.1202	15.0631
450584	14.2321	14.6735	14.9237	14.6266
450586	14.3773	13.8248	15.2831	14.4737
450587	17.0230	18.0219	17.6291	17.5412
450591	17.8981	17.7795	18.6275	18.1113
450596	22.5420	21.6729	21.9445	22.0245
450597	17.0776	17.6179	19.0641	17.9259
450603	11.6442	23.5572	23.4924	18.9348
450604	16.4535	17.6582	18.6241	17.5848
450605	21.1400	19.4580	19.7400	20.0918
450609	15.9753	17.0986	14.1776	15.7466
450610	18.9924	21.5191	22.1792	21.1877
450614	17.9853	16.5754	*	17.2230
450615	14.8562	15.2956	14.9323	15.0244
450617	20.3387	20.8919	21.5004	20.9383
450620	15.8380	16.0987	16.1315	16.0378
450623	22.1950	23.1270	25.1122	23.4424
450626	18.1673	18.4349	20.5225	19.1158
450628	20.5611	18.6093	19.9760	19.7367
450630	21.6876	20.9605	23.1840	21.9334
450631	20.0417	21.6736	21.7853	21.1405
450632	11.7587	13.9147	15.1416	13.5343
450633	19.5183	19.4949	*	19.5064
450634	23.5333	22.9877	23.0470	23.1838
450638	23.1437	22.1704	23.8335	23.0423

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
450639	23.1936	21.6421	22.5182	22.4301
450641	16.5125	15.7578	15.1716	15.8348
450643	18.7054	16.8152	18.9088	18.1638
450644	23.6587	22.7721	24.5834	23.7084
450646	19.8274	19.1433	22.5667	20.4055
450647	24.7981	24.2763	25.0549	24.7111
450648	14.8488	15.0305	14.1565	14.6469
450649	16.4496	16.6577	16.7303	16.6187
450651	22.7664	22.7112	25.4679	23.6985
450652	13.4389	17.2445	*	14.7103
450653	18.1834	19.2349	19.5306	18.9413
450654	14.5258	14.5423	15.5858	14.8899
450656	17.6723	18.2606	18.5874	18.1828
450658	16.2657	17.2630	*	16.7212
450659	22.2550	23.0108	22.9344	22.7256
450661	19.7160	18.9071	19.5504	19.3935
450662	18.2284	19.3152	20.7973	19.5367
450665	15.2015	16.1319	14.2377	15.2093
450666	20.3248	20.2549	*	20.2912
450668	20.6965	21.0972	21.2002	20.9938
450669	21.7632	21.6746	22.5150	22.0051
450670	16.8893	20.2632	26.0785	20.9643
450672	21.8559	21.4927	23.2623	22.2025
450673	13.9620	13.7005	14.5310	14.0919
450674	22.2796	22.2426	21.9624	22.1483
450675	22.4961	21.4479	23.3954	22.4703
450677	22.6839	20.6556	21.3718	21.5395
450678	23.2617	24.1301	25.1841	24.1797
450683	20.9143	22.8699	21.9705	21.8695
450684	19.7005	21.9962	22.2380	21.3152
450686	16.5661	16.4632	17.4746	16.8354
450688	19.6250	20.1831	21.7691	20.5644
450690	21.6578	22.4707	27.2399	23.4791
450694	17.4758	18.1872	18.5520	18.0935
450696	24.9636	*	*	24.9636
450697	18.8405	19.4949	19.4424	19.2742
450698	14.6680	15.4750	16.5111	15.5420
450700	14.6421	15.9050	13.9129	14.8191
450702	20.8223	21.3739	19.3495	20.4688
450704	20.9821	20.7987	18.1835	19.7101
450705	30.0116	22.1809	18.7138	22.5666
450706	21.2072	22.0884	22.4329	21.9400
450709	20.8889	22.1490	21.9270	21.6715
450711	19.8126	19.8581	21.0779	20.2689
450712	13.6240	15.9298	11.7861	13.6660
450713	20.8065	22.6986	23.6017	22.4678
450715	22.0413	22.5988	24.8068	23.2060
450716	20.5544	20.9074	20.8913	20.7944
450717	20.7192	20.6551	22.0243	21.1286
450718	19.6886	22.1765	22.9582	21.6590
450723	19.7563	20.8213	22.1695	20.9457
450724	20.3235	20.3706	23.4039	21.3348
450727	13.5458	17.9172	24.7672	17.9685
450728	17.5284	19.8879	14.8030	17.2831
450730	22.0819	23.0054	24.5952	23.2900
450733	20.7693	20.2199	21.6162	20.8632
450735	13.8767	*	*	13.8767
450742	22.7655	21.8392	22.8135	22.4714
450743	18.8937	19.6015	20.5017	19.6892
450746	12.7904	30.2657	*	19.3854
450747	19.2585	20.3914	19.9818	19.8850
450749	16.2130	19.1678	17.2391	17.6065
450750	14.6914	13.8098	*	14.2686

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
450751	21.2198	19.9995	19.8170	20.4240
450754	16.0860	16.7145	16.7688	16.5644
450755	17.9904	19.8743	19.5916	19.1939
450757	13.8675	14.9434	15.5327	14.7530
450758	21.8669	19.0221	22.6196	21.1578
450760	17.4852	19.2225	20.4209	19.0477
450761	13.6152	15.7681	14.6511	14.6112
450763	18.2123	18.6092	18.9713	18.6032
450766	22.4348	23.3879	25.4057	23.7704
450769	14.5858	18.4163	17.3037	16.4629
450770	16.5458	19.0183	19.2518	18.2668
450771	22.4542	21.8268	21.4199	21.8514
450774	17.9964	16.2948	*	17.1404
450775	19.8897	21.3504	22.6526	21.2920
450776	15.7750	14.1720	13.4287	14.1843
450777	21.0682	19.0380	18.3119	19.5171
450779	21.4546	21.6642	22.1453	21.7809
450780	19.1498	19.0914	20.0824	19.4503
450785	18.4976	*	*	18.4976
450788	19.1463	19.6469	19.9597	19.6478
450794	18.2229	*	*	18.2229
450795	16.6494	22.5753	27.0250	21.6046
450796	16.5362	19.2059	*	17.7667
450797	15.9188	16.4923	20.2356	17.4420
450798	9.4634	*	*	9.4634
450801	17.5669	17.9548	17.9759	17.8371
450802	19.9168	17.1435	18.2460	18.3472
450803	18.3767	21.6653	*	20.6031
450804	19.4846	19.0893	20.5225	19.7061
450806	*	*	18.8211	18.8211
450807	11.3192	13.4306	18.4410	13.7054
450808	16.9915	17.4917	18.1728	17.5602
450809	20.0202	19.7899	21.8610	20.5411
450811	19.0961	19.9168	21.6115	20.3503
450813	15.9166	14.5392	15.3780	15.2272
450815	*	21.2741	*	21.2741
450819	*	16.5521	*	16.5521
450820	*	26.8348	24.6742	25.7177
450822	*	22.8556	24.8702	23.9136
450823	*	*	17.9756	17.9756
450824	*	*	25.7488	25.7488
450825	*	*	15.3546	15.3546
450827	*	*	20.1310	20.1310
450828	*	*	17.7667	17.7667
450829	*	*	14.7121	14.7121
460001	21.7996	22.2735	23.5485	22.5533
460003	20.0452	22.6289	*	21.2787
460004	21.3744	21.7234	23.1289	22.0969
460005	19.7069	22.5252	23.0189	21.6769
460006	20.6252	21.0700	22.1648	21.3374
460007	20.8026	21.1922	22.0409	21.4007
460008	18.8661	19.1153	22.6808	20.2069
460009	21.9016	22.5295	23.1146	22.5111
460010	21.9830	22.4948	23.8996	22.8204
460011	18.8660	19.7674	24.6789	20.7963
460013	20.7326	20.1936	*	20.4776
460014	18.3865	18.5370	*	18.4531
460015	20.6593	21.0470	22.4872	21.4209
460016	18.2408	21.9105	19.0910	19.6368
460017	17.7103	18.9929	*	18.3294
460018	17.6235	17.0063	17.0385	17.1969
460019	16.2671	17.8690	19.3442	17.7589
460020	17.3467	17.2663	18.1542	17.5580

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
460021	21.0470	21.5174	23.1368	21.9697
460022	20.1534	21.3614	20.7539	20.7266
460023	22.3535	22.9265	24.1825	23.1937
460025	19.4247	17.3494	17.4070	17.9267
460026	19.9241	20.2576	21.1759	20.4671
460027	21.8868	22.2955	21.4833	21.8607
460029	20.5154	20.8366	22.7658	21.3471
460030	17.6071	17.1383	18.1423	17.6207
460032	21.1006	21.4832	21.0286	21.1954
460033	19.5372	19.2664	20.2389	19.6949
460035	16.0021	16.1685	15.6979	15.9450
460036	23.5893	23.4573	24.2651	23.7927
460037	18.6850	17.7399	19.0115	18.4898
460039	24.9134	24.4808	24.5134	24.6186
460041	21.0623	20.2035	21.6676	20.9770
460042	18.8814	19.5662	20.9858	19.8725
460043	24.4779	23.2819	25.1366	24.2896
460044	21.4696	21.8485	23.6604	22.3504
460046	18.2224	*	*	18.2224
460047	23.0433	22.7524	23.4965	23.0972
460049	19.6483	20.8283	21.5241	20.8906
460051	19.4761	22.1758	21.8595	21.1765
460052	*	19.8961	20.1989	20.0325
470001	20.2299	21.3817	21.7774	21.1523
470003	23.6949	22.0563	23.4163	23.0458
470004	16.8842	18.1879	17.3576	17.4706
470005	21.9191	23.1808	22.6589	22.5826
470006	17.8699	20.2829	21.0835	19.7003
470008	19.6069	20.1969	20.3833	20.0728
470010	20.2961	21.0616	22.3913	21.2927
470011	21.7675	22.2415	24.1306	22.7075
470012	18.5339	18.9444	19.8831	19.1162
470015	19.5366	20.2125	21.8204	20.4728
470018	21.5426	21.2406	23.1159	21.9638
470020	20.6643	21.5688	21.9911	21.4308
470023	20.4511	21.7139	22.5334	21.5811
470024	20.8510	21.9807	23.2738	22.0567
490001	21.9755	20.0570	21.4952	21.1603
490002	15.2287	15.7365	16.5198	15.8281
490003	19.1040	20.3237	20.7688	20.0621
490004	19.2126	19.7074	20.7390	19.8866
490005	20.5517	21.3318	22.9490	21.6702
490006	15.9537	12.3253	19.8977	16.1242
490007	18.7740	19.8938	20.5265	19.7370
490009	23.9344	23.7659	24.7602	24.1271
490010	21.7424	*	*	21.7424
490011	18.6071	19.8042	19.8179	19.3919
490012	15.9973	15.2965	16.0994	15.7867
490013	17.3318	18.2396	18.3901	17.9911
490014	25.8315	23.5266	27.8907	25.6619
490015	19.6363	20.0667	21.4500	20.3969
490017	18.4361	19.3854	*	18.9126
490018	18.3435	18.5508	19.7456	18.8862
490019	19.6178	21.0124	21.6790	20.8153
490020	18.5691	19.3424	20.9212	19.6001
490021	19.3945	20.0496	21.2263	20.2509
490022	21.2183	22.3380	24.3008	22.6504
490023	20.6694	21.5683	22.8400	21.7338
490024	17.7221	18.4314	19.7501	18.7524
490027	16.2761	16.7556	17.5178	16.8693
490030	9.1789	8.6446	*	8.9749
490031	14.9539	16.0003	17.4262	16.1268
490032	22.4262	21.4037	22.2041	22.0055

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
490033	21.1723	19.2908	24.3589	21.5324
490037	16.3759	17.0113	16.7752	16.7116
490038	21.0218	17.6324	18.6012	18.9881
490040	22.7061	24.1266	24.8808	23.9273
490041	18.3589	18.7987	17.9942	18.3695
490042	16.4666	17.0972	18.1733	17.2802
490043	22.1574	22.1068	24.0198	22.7114
490044	18.3137	19.7842	18.4845	18.8757
490045	20.5468	20.5558	21.8453	21.0100
490046	18.4825	19.9102	19.7466	19.3960
490047	25.0438	18.7614	20.0837	20.6715
490048	18.4361	19.5417	20.9110	19.5970
490050	23.0729	23.3668	23.8519	23.4357
490052	16.8600	16.4787	17.6096	16.9745
490053	15.6996	16.8410	17.7363	16.7991
490054	15.4734	19.5780	22.5136	19.1813
490057	19.9210	20.3160	20.7806	20.3441
490059	20.8662	21.4801	24.1516	22.0719
490060	17.6308	18.5917	19.3525	18.5249
490063	28.6536	26.1930	*	27.3515
490066	20.6972	19.8352	21.5920	20.7067
490067	17.0195	17.8487	18.6469	17.8519
490069	17.3297	20.7582	21.5228	19.7588
490071	21.8879	23.3511	23.9246	23.0331
490073	20.7960	26.0957	*	23.1759
490075	18.6983	19.2156	20.2001	19.3654
490077	21.3670	22.6504	22.4133	22.1262
490079	17.0815	17.7016	17.5839	17.4571
490084	16.7834	18.0555	18.9679	17.9259
490085	17.4584	17.6158	19.2494	18.1150
490088	16.4362	17.9141	19.1415	17.7397
490089	17.7692	18.2290	19.6501	18.5835
490090	17.0199	17.5799	19.2094	17.9357
490091	20.8734	25.0272	23.6634	22.9282
490092	16.9533	16.4360	*	16.7160
490093	17.3711	17.8275	18.9442	18.0549
490094	18.9204	22.3033	20.2020	20.4445
490097	15.5780	16.9518	16.1076	16.1614
490098	15.1403	16.0488	18.5355	16.5130
490099	17.9665	18.3985	19.2604	18.5294
490100	22.5010	*	*	22.5010
490101	24.7616	23.5553	25.7804	24.7017
490104	25.6889	40.2529	*	29.6601
490105	18.5765	21.4428	*	19.7749
490106	17.6596	26.3821	31.8566	22.3213
490107	23.5240	22.9283	23.9962	23.5071
490108	20.2112	24.1232	24.8596	22.6562
490109	23.6620	25.9475	23.0609	24.1978
490110	16.5131	18.1561	18.8042	17.8380
490111	17.1768	17.8510	19.6489	18.2093
490112	21.4532	22.1162	23.2843	22.3013
490113	23.2235	23.9043	26.1840	24.4577
490114	17.3047	18.0359	18.8920	18.0825
490115	16.5203	16.8537	18.4499	17.2731
490116	16.6170	17.2040	18.2935	17.3997
490117	14.0104	14.7944	15.9284	14.9234
490118	21.4674	23.2022	24.2668	22.9444
490119	17.9147	18.6046	18.9640	18.4840
490120	19.3707	20.5777	20.4547	20.1460
490122	23.8801	23.8198	26.6681	24.7636
490123	17.7461	19.3056	20.0920	19.0902
490124	22.0884	21.3818	23.6526	22.4301
490126	18.6844	20.4294	19.0782	19.3248

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
490127	16.0516	16.5993	17.6437	16.7293
490129	22.5885	28.6868	*	23.5799
490130	16.4322	17.6943	18.6406	17.5834
490132	18.6570	18.4671	19.1742	18.7508
500001	22.1896	24.4829	25.2411	23.9385
500002	21.6332	19.8476	22.9942	21.4749
500003	24.2814	24.4333	25.1200	24.6216
500005	22.3955	24.3870	26.6971	24.3513
500007	26.0599	21.9911	24.7889	24.1708
500008	25.3064	26.1737	27.2852	26.2556
500011	24.0162	24.6554	25.7263	24.7924
500012	20.7032	24.2799	24.5450	23.0771
500014	24.3419	24.0990	25.0490	24.4936
500015	23.9297	24.9923	25.8775	24.9616
500016	24.3938	24.9439	25.1227	24.8306
500019	22.4213	23.2054	23.5730	23.0604
500021	25.9198	27.6490	25.9403	26.4613
500023	26.6535	27.1025	32.3079	28.0325
500024	23.7472	26.6452	26.2113	25.5094
500025	26.4810	24.4825	27.2601	26.0674
500026	23.8005	26.9884	26.6108	25.7916
500027	22.2158	25.1125	27.5909	24.9753
500028	19.2675	18.9556	19.0261	19.0887
500029	17.9237	18.5042	19.3130	18.5707
500030	24.9039	26.3828	28.5297	26.6182
500031	29.2707	23.6099	25.8542	26.0586
500033	22.3527	22.5462	23.8994	22.9522
500036	22.1096	23.6333	25.1255	23.5838
500037	20.7139	21.4059	22.1774	21.4194
500039	23.8918	24.0007	25.4225	24.4379
500041	23.9608	25.4376	24.7070	24.7067
500042	22.9125	*	*	22.9125
500043	20.9459	22.0466	24.1745	22.4162
500044	23.3364	24.2212	24.7816	24.1154
500045	20.8881	24.0526	24.6265	23.0766
500048	22.1906	20.3207	20.6333	21.0462
500049	24.0489	24.5997	26.5857	25.0314
500050	22.0065	22.6563	23.0804	22.6053
500051	24.8203	25.9447	26.7628	25.8820
500053	23.9397	22.8399	24.2492	23.6675
500054	22.8829	23.8089	25.7815	24.1708
500055	23.7446	23.8622	23.7988	23.8022
500057	18.2737	19.0479	20.5812	19.3310
500058	24.7882	24.1106	26.5679	25.1920
500059	23.3506	26.6270	25.3528	25.0566
500060	25.0233	28.3655	29.6030	27.5162
500061	21.7013	20.8624	24.5908	22.4271
500062	18.6329	19.0557	19.1685	18.9583
500064	25.5748	26.7000	27.5791	26.6387
500065	21.9308	23.5671	24.0966	23.2140
500068	19.6574	19.2638	20.9278	19.9560
500069	21.3592	21.4542	22.4158	21.7566
500071	19.1906	19.1428	22.3253	20.1059
500072	25.3928	25.2001	25.7734	25.4637
500073	21.2469	21.7698	22.5222	21.8777
500074	18.9679	19.5981	20.6120	19.7482
500077	22.8536	23.9410	24.5407	23.7721
500079	24.2036	23.1041	24.7946	24.0303
500080	15.6630	18.3883	18.8188	17.4053
500084	23.4032	24.4044	24.5678	24.1531
500085	21.4403	20.4517	20.7422	20.8523
500086	23.3288	22.8829	24.2556	23.4907
500088	23.2701	25.2478	25.2774	24.5589

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
500089	18.7080	19.7166	20.3478	19.5281
500090	16.1576	20.4429	21.7716	18.7859
500092	16.7913	19.2028	20.3058	18.6898
500094	18.5835	15.7866	17.6625	17.4874
500096	21.0151	23.3564	25.1135	23.2107
500097	19.7706	20.8774	21.4423	20.6699
500098	16.3511	15.2040	13.5203	15.0572
500101	19.7337	15.8000	19.8614	18.4197
500102	20.9389	21.8963	23.1307	22.0050
500104	22.8154	24.9389	24.7875	24.1421
500106	18.6041	19.1465	17.1066	18.3020
500107	18.1201	17.9489	17.4641	17.8401
500108	26.2939	28.6229	26.1609	27.0259
500110	21.4553	22.9775	23.5941	22.6736
500118	23.8397	24.8034	24.7875	24.4924
500119	22.4373	22.1192	23.9939	22.8469
500122	22.4268	23.5264	24.4462	23.5112
500123	20.3181	19.6646	21.7133	20.7526
500124	23.2836	23.7742	24.6591	23.9700
500125	15.1112	14.7910	15.6304	15.1911
500129	26.1575	25.4685	25.2082	25.5438
500132	15.6717	23.1822	21.9915	20.2081
500134	17.7457	17.2430	15.9791	16.9729
500139	22.2297	22.3053	23.7993	22.7606
500141	23.8838	29.9695	28.1014	27.3199
500143	18.0343	18.2570	18.7523	18.3736
500146	21.6003	*	*	21.6003
510001	19.1492	20.0429	20.2514	19.8050
510002	20.1527	17.6392	19.1517	18.9313
510005	14.2503	13.8621	13.8641	13.9934
510006	18.7313	19.9609	19.9760	19.5653
510007	21.2729	21.6761	23.0072	22.0021
510008	18.3296	19.0513	20.1039	19.1754
510012	15.8390	15.6089	15.8596	15.7743
510013	17.8527	19.5798	18.3486	18.5734
510015	14.9039	16.7311	17.1595	16.3249
510018	18.5269	18.5358	18.3023	18.4548
510020	13.1837	14.1211	15.7512	14.3266
510022	20.1763	21.5770	21.4336	21.0418
510023	16.0129	16.7777	17.6516	16.8122
510024	19.0941	18.7461	19.6521	19.1601
510026	13.6888	13.7952	14.8785	14.0865
510027	17.2900	18.5945	20.5222	18.7968
510028	20.0628	19.9208	22.4826	20.8230
510029	17.7124	18.4668	16.3204	17.4181
510030	17.4198	17.7603	19.2558	18.1712
510031	28.6673	18.6341	19.3049	21.2106
510033	18.4082	18.4718	19.6900	18.8637
510035	16.5007	18.3164	21.7818	18.6703
510036	13.4559	13.8786	15.0266	14.0903
510038	15.8132	15.5576	15.9821	15.7873
510039	16.9398	17.1461	17.4002	17.1582
510043	14.0662	13.1308	14.4202	13.8751
510046	17.3821	18.5896	18.7424	18.2568
510047	19.8963	20.8101	21.2375	20.6123
510048	21.0407	17.1647	15.2886	17.8240
510050	16.9136	18.4036	18.3964	17.9380
510053	16.1036	17.5798	18.1046	17.2603
510055	23.7248	24.2133	25.6333	24.5104
510058	18.4156	18.4501	18.6025	18.4938
510059	16.5854	16.1044	17.3844	16.6208
510060	17.5594	*	*	17.5594
510061	13.8204	14.1968	14.6774	14.2360

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
510062	19.3881	18.1588	19.7964	19.0922
510066	12.2943	*	*	12.2943
510067	16.7161	17.3067	17.8816	17.3091
510068	18.7938	23.0452	19.4299	20.2577
510070	18.5146	18.7091	18.6226	18.6195
510071	17.2148	18.0278	18.8766	18.0317
510072	15.6262	15.9257	16.5279	16.0216
510077	18.0668	18.2947	20.4521	18.9028
510080	17.4485	16.3453	18.5318	17.3501
510081	13.6359	11.9701	10.4972	11.9879
510082	17.4538	13.5946	16.0014	15.5120
510084	17.2395	13.5339	14.9683	15.2567
510085	17.5624	18.6227	19.0175	18.4360
510086	13.4763	14.2241	16.3413	14.6710
510088	*	14.8854	16.2850	15.6272
520002	19.7447	19.6755	19.3159	19.5604
520003	17 1248	18.7956	18.7507	18.2896
520004	19.6512	20.4591	18.8843	19.6231
520006	21.5313	21.4884	22.4099	21.7879
520007	16.2001	18.4629	18.3959	17.6275
520008	22.8024	24.9395	24.4927	24.0917
520009	18.6002	21.4638	19.8142	19.9388
520010	22.7703	22.3311	25.4845	23.5468
520011	20.7410	21.5223	21.6945	21.3155
520013	20.3965	20.5944	22.1009	21.0588
520014	17.1646	18.0841	19.2760	18.1480
520015	18.6078	19.7672	21.0428	19.8323
520016	17.3018	18.4320	19.5656	18.4077
520017	19.6008	19.4780	21.1409	20.0934
520018	21.1941	21.5279	22.1929	21.6736
520019	19.5440	20.9164	21.8870	20.7980
520021	21.3471	21.9531	22.8484	22.1016
520024	14.0175	14.4750	16.4879	15.0572
520025	18.2430	20.3838	21.9529	20.1629
520026	21.5453	20.8546	22.7429	21.7237
520027	19.9324	21.5868	22.0947	21.2079
520028	21.2852	22.5941	22.0333	21.9368
520029	19.5750	21.4197	21.6729	20.8760
520030	20.5039	21.6311	22.7239	21.6241
520031	20.4814	20.9875	21.2809	20.8937
520032	19.5697	21.1069	24.1092	21.5816
520033	19.2954	20.2520	21.0088	20.1750
520034	17.1282	20.4307	21.2944	19.6400
520035	18.9452	18.7135	19.7990	19.1719
520037	20.6686	21.6017	23.0801	21.8015
520038	19.6294	20.6130	21.2769	20.4835
520039	20.7641	23.3687	21.8688	21.9128
520040	20.4677	21.2023	23.0710	21.5679
520041	17.1959	18.4117	17.6529	17.7461
520042	18.5843	19.5466	20.6354	19.6057
520044	18.4014	19.1877	21.4913	19.6621
520045	20.5917	21.2427	21.9812	21.2870
520047	18.3048	20.3487	21.0370	19.8304
520048	20.6583	19.8926	20.3488	20.2938
520049	20.3559	20.1667	21.8271	20.7868
520051	21.6497	24.0460	23.4366	23.0036
520053	17.3945	18.0851	18.7234	18.0684
520054	15.1747	16.8363	16.6278	16.1750
520057	19.0872	19.8492	20.6959	19.9036
520058	19.7283	21.2500	23.6794	21.5351
520059	20.9913	21.5796	21.9452	21.5150
520060	17.9258	18.8232	20.3357	19.0291
520062	19.1482	19.7038	21.5525	20.1564

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
520063	19.6136	20.5262	21.2774	20.4843
520064	22.7423	22.0917	23.7144	22.8379
520066	22.8837	24.0087	24.1733	23.6290
520068	18.9943	19.6855	19.9595	19.5384
520069	20.2934	20.1770	21.7233	20.5221
520070	18.5938	19.4261	20.0096	19.3562
520071	18.7304	19.9866	22.0066	20.1801
520074	20.4601	20.9007	21.6636	20.9770
520075	19.8457	20.7301	22.1894	20.9388
520076	17.6088	19.5878	20.6155	19.2421
520077	17.7830	18.7119	18.1077	18.2004
520078	21.3380	21.7545	20.5734	21.2201
520082	17.7405	*	*	17.7405
520083	23.8849	23.5787	24.2131	23.8898
520084	20.8427	23.5446	21.8102	22.0208
520087	20.3624	20.7821	22.2579	21.1364
520088	20.6312	21.8931	22.3921	21.5920
520089	21.5456	22.1055	23.1221	22.2509
520090	18.9343	20.3645	20.9069	20.0854
520091	20.9927	20.9440	22.2218	21.3884
520092	17.6500	18.6248	19.7870	18.7181
520094	20.3611	20.6179	21.3082	20.7652
520095	20.3269	18.6425	21.8172	20.1804
520096	19.7757	20.6668	21.6803	20.7358
520097	20.2354	20.8016	22.2375	21.1096
520098	22.3348	23.4707	23.4273	23.0928
520100	18.3832	19.4788	20.5366	19.4712
520101	19.5186	19.9875	20.0164	19.8451
520102	20.1898	21.0138	22.1413	21.1139
520103	19.4809	20.1092	22.2765	20.6137
520107	20.3747	21.7907	23.8421	21.9354
520109	19.1303	19.7609	20.3208	19.7432
520110	20.4494	21.0055	22.3923	21.3276
520111	17.7834	17.7673	18.2744	17.9282
520112	19.1797	18.9577	17.6226	18.3876
520113	21.1485	21.8852	23.1852	22.0983
520114	16.6616	17.8476	18.5767	17.6415
520115	18.2980	19.2248	21.4279	19.6231
520116	19.8509	20.6922	22.2741	20.9026
520117	18.5414	18.3963	19.3653	18.7838
520118	14.2326	14.8626	13.9920	14.3519
520120	18.7437	*	*	18.7437
520121	19.7305	20.8492	20.9422	20.5799
520122	16.2436	16.9335	16.9905	16.7143
520123	17.3980	17.7986	19.8134	18.4575
520124	17.2619	17.9205	19.2621	18.1369
520130	15.6845	16.6873	18.8845	17.0161
520131	18.7295	20.2591	21.0400	20.0321
520132	15.6379	18.1630	18.2634	17.2681
520134	18.0953	18.8150	19.6881	18.8725
520135	15.8246	17.3476	18.1026	17.0799
520136	19.8480	20.9050	21.3966	20.7380
520138	21.2260	22.5599	22.5773	22.1218
520139	20.9988	21.4042	22.8070	21.7325
520140	21.5207	22.3671	22.5459	22.1346
520142	20.5858	21.9432	21.4120	21.2420
520144	18.5701	19.9120	20.5864	19.6719
520145	18.2654	18.7958	20.3461	19.0923
520146	17.9585	18.2370	18.6337	18.2882
520148	17.2421	19.1502	20.5075	19.0048
520149	14.1901	12.8928	13.8614	13.6192
520151	17.3267	18.7070	19.3362	18.4627
520152	19.5858	22.5980	26.2402	22.5080

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
520153	15.9753	17.0863	18.3447	17.1026
520154	18.5403	19.5994	21.0486	19.7479
520156	21.3377	20.9638	20.7806	21.0121
520157	17.1974	19.6008	21.6821	19.4299
520159	18.6760	17.7649	21.8783	19.4305
520160	19.4173	20.5154	21.5266	20.5092
520161	19.4905	20.1102	21.4038	20.3456
520170	21.5233	21.9857	23.0867	22.2181
520171	17.4560	18.0785	18.1844	17.8993
520173	21.3016	20.9209	23.2955	21.8315
520177	22.7221	24.0139	25.1080	23.8746
520178	18.6936	20.9010	23.1509	20.7167
520188	13.9135	*	*	13.9135
520189	*	*	21.6813	21.6813
530002	19.3273	21.0560	23.0582	21.0877
530003	16.2139	15.9523	17.1646	16.4518
530004	15.0497	13.3788	17.4672	15.2335
530005	13.3529	15.3255	18.3704	15.7393
530006	18.5894	19.1305	20.7661	19.4956
530007	18.5161	17.7897	18.5286	18.3005
530008	18.8349	19.0113	19.0016	18.9483
530009	22.5009	21.7795	23.5839	22.6178
530010	21.6092	13.9536	12.3695	15.3501
530011	18.7354	19.4606	19.9212	19.3808
530012	18.9923	21.1854	22.5084	20.9252
530014	18.0869	18.4900	20.0422	18.9065
530015	22.4568	23.4040	24.6527	23.4897
530016	18.1562	19.3205	20.3647	19.2610
530017	16.3478	17.7736	20.9408	18.2556
530018	18.3783	19.5986	20.1226	19.3605
530019	18.5430	20.1097	18.1492	18.8643
530022	18.5002	19.6136	19.7902	19.3159
530023	20.1948	20.0677	21.6352	20.6416
530025	21.2598	22.0300	22.4816	21.9309
530026	17.0118	19.8969	20.9919	19.1178
530027	18.1664	25.5067	*	20.8124
530029	16.5092	19.3361	20.3046	18.6145
530031	18.3322	20.1734	23.2766	20.4477
530032	21.0361	20.0132	20.9856	20.6817

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 3A.—FY 2003 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS

[*Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2002]

Urban area	FY 2003 average hourly wage	3-Year average hourly wage
Abilene, TX	21.3116	18.2370
Aguadilla, PR	10.6548	10.3692
Akron, OH	22.2695	21.8175
Albany, GA	24.9139	23.4370
Albany-Schenectady-Troy, NY	19.4516	19.0017
Albuquerque, NM	21.3374	20.9862
Alexandria, LA	18.1736	17.9283
Allentown-Bethlehem-Easton, PA	22.6105	22.2137

TABLE 3A.—FY 2003 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2002]

Urban area	FY 2003 average hourly wage	3-Year average hourly wage
Altoona, PA	21.3848	20.7048
Amarillo, TX	20.8120	19.7427
Anchorage, AK	28.6899	28.2057
Ann Arbor, MI	25.7925	25.0051
Anniston, AL	18.6862	18.3987
Appleton-Oshkosh-Neenah, WI	20.8773	20.4112
Arecibo, PR	10.0744	10.0865
Asheville, NC	22.2638	21.2069
Athens, GA	23.7041	22.3198
Atlanta, GA	23.2034	22.5565

TABLE 3A.—FY 2003 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2002]

Urban area	FY 2003 average hourly wage	3-Year average hourly wage
Atlantic-Cape May, NJ	25.4286	24.9782
Auburn-Opelika, AL	19.1001	18.3671
Augusta-Aiken, GA-SC	23.8329	21.9394
Austin-San Marcos, TX	21.9115	21.4039
Bakersfield, CA	23.4741	21.9163
Baltimore, MD	22.4354	21.6104
Bangor, ME	22.5137	21.5643
Barnstable-Yarmouth, MA	30.1848	30.2355

TABLE 3A.—FY 2003 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2002]

Urban area	FY 2003 average hourly wage	3-Year average hourly wage
Baton Rouge, LA	19.2871	18.9071
Beaumont-Port Arthur, TX	19.2896	19.0451
Bellingham, WA	28.5297	26.6182
Benton Harbor, MI	20.6766	19.7627
Bergen-Passaic, NJ	27.8231	26.5455
Billings, MT	20.9586	20.9004
Biloxi-Gulfport-Pascagoula, MS	20.3045	19.0487
Binghamton, NY	19.3760	19.0441
Birmingham, AL	21.3884	19.7545
Bismarck, ND	18.0466	17.5136
Bloomington,IN	20.6895	19.8190
Bloomington-Normal, IL	21.1609	20.3703
Boise City, ID	21.6225	20.5010
Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	25.9941	25.2200
Boulder-Longmont, CO	22.2777	21.7937
Brazoria, TX	19.8139	19.0124
Bremerton, WA	25.4225	24.4379
Brownsville-Harlingen-San Benito, TX	20.6770	19.9443
Bryan-College Station, TX	19.3399	19.2454
Buffalo-Niagara Falls, NY	21.7624	21.2368
Burlington, VT	23.3989	22.9310
Caguas, PR	10.1529	10.1915
Canton-Massillon, OH	20.7556	19.7901
Casper, WY	22.5084	20.9252
Cedar Rapids, IA	21.0377	19.8268
Champaign-Urbana, IL	22.9565	20.9245
Charleston-North Charleston, SC	18.6257	19.5755
Charleston, WV	20.1558	20.3125
Charlotte-Gastonia-Rock Hill, NC-SC	22.6242	21.3014
Charlottesville, VA	24.3357	23.7751
Chattanooga, TN-GA	20.8534	21.0504
Cheyenne, WY	20.0422	18.9065
Chicago, IL	25.4960	24.8000
Chico-Paradise, CA	22.6186	22.0636
Cincinnati, OH-KY-IN	21.4375	21.0209
Clarksville-Hopkinsville, TN-KY	19.2844	18.5774
Cleveland-Lorain-Elyria, OH	21.3730	21.1174
Colorado Springs, CO	22.9223	21.9346
Columbia, MO	20.0916	19.6531
Columbia, SC	20.6722	20.8728
Columbus, GA-AL	19.4319	18.9760
Columbus, OH	22.3157	21.5032
Corpus Christi, TX	18.7495	18.7846
Corvallis, OR	26.6038	25.7705
Cumberland, MD-WV	18.2292	18.3160
Dallas, TX	22.6072	22.1220
Danville, VA	20.2001	19.3654
Davenport-Moline-Rock Island, IA-IL	20.4000	19.6921
Dayton-Springfield, OH	21.5652	20.8876
Daytona Beach, FL	21.0017	20.3557
Decatur, AL	20.8473	19.7262
Decatur, IL	18.5380	18.0259
Denver, CO	23.9179	23.0032
Des Moines, IA	20.3902	19.9395
Detroit, MI	24.1574	23.4668
Dothan, AL	18.3729	17.7890
Dover, DE	21.7344	22.1849
Dubuque, IA	20.2381	19.4209
Duluth-Superior, MN-WI	24.0567	22.9550
Dutchess County, NY	24.8186	23.5537
Eau Claire, WI	20.7890	19.9433
El Paso, TX	21.0095	20.6428
Elkhart-Goshen, IN	22.6528	21.3565
Elmira, NY	19.7114	19.0237
Enid, OK	19.2869	18.8881
Erie, PA	20.7316	19.9094
Eugene-Springfield, OR	25.4725	24.9448
Evansville, Henderson, IN-KY	18.9808	18.5894
Fargo-Moorhead, ND-MN	22.4962	20.6192
Fayetteville, NC	20.6496	19.8938
Fayetteville-Springdale-Rogers, AR	18.8149	18.2982
Flagstaff, AZ-UT	24.8141	23.9367
Flint, MI	25.8296	24.8385
Florence, AL	18.2288	17.4228
Florence, SC	20.3953	19.6524
Fort Collins-Loveland, CO	22.8171	22.8018
Fort Lauderdale, FL	23.8406	22.9502
Fort Myers-Cape Coral, FL	21.7431	20.9253
Fort Pierce-Port St. Lucie, FL	22.5387	22.0206
Fort Smith, AR-OK	17.9611	17.8193
Fort Walton Beach, FL	22.1915	21.0734
Fort Wayne, IN	21.8421	20.4123
Fort Worth-Arlington, TX	22.1218	21.2887
Fresno, CA	23.7765	22.6843
Gadsden, AL	19.7302	19.2011
Gainesville, FL	22.3748	21.8054
Galveston-Texas City, TX	22.0810	22.2390
Gary, IN	22.2500	21.3750
Glens Falls, NY	19.1071	18.6348
Goldsboro, NC	20.6547	19.5049
Grand Forks, ND-MN	20.6675	19.9946
Grand Junction, CO	22.1097	21.1165
Grand Rapids-Muskegon-Holland, MI	22.1795	22.3013
Great Falls, MT	20.7913	20.0975
Greeley, CO	20.6781	21.0801
Green Bay, WI	22.0738	20.9151
Greensboro-Winston-Salem-High Point, NC	21.3171	20.8100
Greenville, NC	21.1020	20.7582
Greenville-Spartanburg-Anderson, SC	21.1013	20.4227
Hagerstown, MD	21.5280	20.1745
Hamilton-Middletown, OH	21.8081	20.7774
Harrisburg-Lebanon-Carlisle, PA	21.4204	21.2190
Hartford, CT	26.5589	25.6600
Hattiesburg, MS	17.6308	16.8808
Hickory-Morganton-Lenoir, NC	20.5993	20.3564
Honolulu, HI	25.5733	25.7139
Houma, LA	19.4770	18.2833
Houston, TX	22.4099	21.6980
Huntington-Ashland, WV-KY-OH	22.4054	21.7937
Huntsville, AL	20.4686	19.9112
Indianapolis, IN	22.6001	21.8532
Iowa City, IA	23.0524	21.9952
Jackson, MI	22.0543	20.8972
Jackson, MS	20.0348	19.3281
Jackson, TN	21.5461	20.3227
Jacksonville, FL	21.4789	20.7080
Jacksonville, NC	19.1386	17.6977
Jamestown, NY	18.5184	17.7951
Janesville-Beloit, WI	22.2956	21.6016
Jersey City, NJ	25.7550	25.2422
Johnson City-Kingsport-Bristol, TN-VA	19.1020	18.7739
Johnstown, PA	19.3481	19.3567
Jonesboro, AR	18.0006	17.9165
Joplin, MO	20.0064	19.0676
Kalamazoo-Battlecreek, MI	24.5797	23.6868
Kankakee, IL	22.0535	21.8916
Kansas City, KS-MO	22.5556	21.5044
Kenosha, WI	22.3994	21.6107
Killeen-Temple, TX	19.4230	20.6248
Knoxville, TN	20.9030	19.6266
Kokomo, IN	20.5813	20.5547
La Crosse, WI-MN	20.9920	20.5609
Lafayette, LA	19.6610	19.0691
Lafayette, IN	21.8803	20.4752
Lake Charles, LA	18.4643	17.2545
Lakeland-Winter Haven, FL	21.0679	20.4786
Lancaster, PA	21.0878	20.6617
Lansing-East Lansing, MI	22.5979	21.9294
Laredo, TX	19.5558	18.3090
Las Cruces, NM	20.4375	19.5136
Las Vegas, NV-AZ	25.3348	24.6305
[1] Lawrence, KS	.....	17.8290
Lawton, OK	18.9728	19.3040
Lewiston-Auburn, ME	21.2671	20.5697
Lexington, KY	19.8413	19.5837
Lima, OH	21.8791	21.1154
Lincoln, NE	20.5292	21.3398

TABLE 3A.—FY 2003 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2002]

Urban area	FY 2003 average hourly wage	3-Year average hourly wage
Little Rock-North Little Rock, AR	20.7992	19.9953
Longview-Marshall, TX	19.7471	19.4279
Los Angeles-Long Beach, CA	27.6569	26.7968
Louisville, KY-IN	21.8834	21.1577
Lubbock, TX	17.7930	18.8697
Lynchburg, VA	21.4112	20.3454
Macon, GA	21.2905	20.2752
Madison, WI	23.4267	22.9567
Mansfield, OH	20.6712	19.6802
Mayaguez, PR	11.3157	10.6879
McAllen-Edinburg-Mission, TX	19.3599	18.9086
Medford-Ashland, OR	24.3865	23.3354
Melbourne-Titusville-Palm Bay, FL	24.7923	22.7180
Memphis, TN-AR-MS	20.3251	19.7569
Merced, CA	22.8511	21.9541
Miami, FL	22.6833	22.2549
Middlesex-Somerset-Hunterdon, NJ	26.3374	25.3182
Milwaukee-Waukesha, WI	22.7676	22.0856
Minneapolis-St. Paul, MN-WI	25.2239	24.5477
Missoula, MT	21.2713	20.8023
Mobile, AL	18.8082	18.2018
Modesto, CA	24.3874	23.6713
Monmouth-Ocean, NJ	25.9158	24.8978
Monroe, LA	18.8342	18.4736
Montgomery, AL	17.8451	16.9642
Muncie, IN	21.0399	22.2998
Myrtle Beach, SC	21.0194	19.6847
Naples, FL	22.5429	21.7594
Nashville, TN	21.7439	21.3869
Nassau-Suffolk, NY	30.9070	30.5534
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	28.6474	27.5560
New London-Norwich, CT	27.2742	26.4332
New Orleans, LA	20.8098	20.4020
New York, NY	32.3513	32.1379
Newark, NJ	26.4531	26.0261
Newburgh, NY-PA	26.2921	24.9278
Norfolk-Virginia Beach-Newport News, VA-NC	19.6667	19.0225
Oakland, CA	35.0027	33.9458
Ocala, FL	21.9054	21.0412
Odessa-Midland, TX	21.2320	21.2696
Oklahoma City, OK	20.6894	19.7355
Olympia, WA	25.4588	24.6677
Omaha, NE-IA	23.1988	21.8834
Orange County, CA	26.6831	25.4624
Orlando, FL	21.9294	21.4758
Owensboro, KY	19.0457	18.4790
Panama City, FL	20.5244	20.1345
Parkersburg-Marietta, WV-OH	18.8778	18.3560
Pensacola, FL	19.9673	18.7468
Peoria-Pekin, IL	20.3592	19.5705
Philadelphia, PA-NJ	24.5469	24.2416
Phoenix-Mesa, AZ	21.9868	21.5339
Pine Bluff, AR	18.0874	17.5370
Pittsburgh, PA	21.6212	21.3813
Pittsfield, MA	23.4852	22.9215
Pocatello, ID	19.6333	20.1279
Ponce, PR	12.0062	11.5028
Portland, ME	22.8379	21.6951
Portland-Vancouver, OR-WA	24.7759	24.4428
Providence-Warwick, RI	24.2778	24.0071
Provo-Orem, UT	23.4308	22.3948
Pueblo, CO	20.3670	19.5929
Punta Gorda, FL	17.3909	18.1956
Racine, WI	21.6444	20.8817
Raleigh-Durham-Chapel Hill, NC	23.1852	22.0116
Rapid City, SD	20.5485	19.8947
Reading, PA	21.4029	20.8900
Redding, CA	25.8663	25.3801
Reno, NV	24.5213	23.5887
Richland-Kennewick-Pasco, WA	26.6936	25.3323
Richmond-Petersburg, VA	22.3862	21.6142
Riverside-San Bernardino, CA	25.8718	24.9920
Roanoke, VA	20.0117	19.2433
Rochester, MN	28.1983	26.1811
Rochester, NY	21.0003	20.5991
Rockford, IL	21.7440	20.5098
Rocky Mount, NC	21.4359	20.3593
Sacramento, CA	26.7257	26.3878
Saginaw-Bay City-Midland, MI	22.3260	21.5138
St. Cloud, MN	22.4364	22.0902
[1] St. Joseph, MO	.....	19.7467
St. Louis, MO-IL	20.4806	20.0376
Salem, OR	24.0818	22.8500
Salinas, CA	33.9674	32.7871
Salt Lake City-Ogden, UT	23.0757	22.1425
San Angelo, TX	18.2955	18.0306
San Antonio, TX	19.8888	19.2241
San Diego, CA	25.8535	25.5476
San Francisco, CA	32.8557	31.7475
San Jose, CA	32.5657	31.2857
San Juan-Bayamon, PR	10.8224	10.5408
San Luis Obispo-Atascadero-Paso Robles, CA	26.1821	24.6268
Santa Barbara-Santa Maria-Lompoc, CA	24.3466	23.8325
Santa Cruz-Watsonville, CA	31.3417	31.0243
Santa Fe, NM	24.8842	23.5075
Santa Rosa, CA	30.3046	28.9555
Sarasota-Bradenton, FL	21.4760	21.7771
Savannah, GA	22.9060	22.0969
Scranton-Wilkes Barre-Hazleton, PA	19.5725	19.0594
Seattle-Bellevue-Everett, WA	26.6067	25.2916
Sharon, PA	18.2710	17.7451
Sheboygan, WI	20.1510	19.0711
Sherman-Denison, TX	21.4636	20.3959
Shreveport-Bossier City, LA	20.2644	19.8410
Sioux City, IA-NE	21.0135	19.6404
Sioux Falls, SD	20.9214	20.1349
South Bend, IN	22.7694	22.2819
Spokane, WA	25.2044	23.9682
Springfield, IL	19.9008	19.3840
Springfield, MO	19.5680	19.0448
Springfield, MA	25.4001	24.2504
State College, PA	20.7690	20.2726
Steubenville-Weirton, OH-WV	20.4503	19.4333
Stockton-Lodi, CA	24.0178	23.7561
Sumter, SC	18.8535	18.0764
Syracuse, NY	21.8886	21.3766
Tacoma, WA	25.4131	25.5054
Tallahassee, FL	19.6007	19.0869
Tampa-St. Petersburg-Clearwater, FL	20.9878	20.1427
Terre Haute, IN	19.9743	19.0303
Texarkana, AR-Texarkana, TX	18.7416	18.5107
Toledo, OH	22.6790	21.9714
Topeka, KS	20.5859	20.0981
Trenton, NJ	24.6268	23.3224
Tucson, AZ	20.6783	19.9418
Tulsa, OK	19.3121	19.1851
Tuscaloosa, AL	18.9045	18.2544
Tyler, TX	22.1901	21.3538
Utica-Rome, NY	19.6508	18.9705
Vallejo-Fairfield-Napa, CA	30.9785	29.7068
Ventura, CA	25.7748	24.7503
Victoria, TX	20.2675	18.8655
Vineland-Millville-Bridgeton, NJ	23.6746	23.2888
Visalia-Tulare-Porterville, CA	21.6029	21.2747
Waco, TX	20.2402	18.4397
Washington, DC-MD-VA-WV	24.9537	24.2243
Waterloo-Cedar Falls, IA	18.7281	18.3305
Wausau, WI	22.7239	21.6241
West Palm Beach-Boca Raton, FL	22.8320	21.9092
Wheeling, OH-WV	17.8084	17.4900
Wichita, KS	22.0087	21.3928
Wichita Falls, TX	18.4488	17.5804
Williamsport, PA	19.8310	18.8540
Wilmington-Newark, DE-MD	25.9552	24.8359
Wilmington, NC	21.7789	21.1031
Yakima, WA	24.5502	23.1867
Yolo, CA	21.9147	21.8929

TABLE 3A.—FY 2003 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2002]

Urban area	FY 2003 average hourly wage	3-Year average hourly wage
York, PA	21.0167	20.7492
Youngstown-Warren, OH	21.8109	21.2943
Yuba City, CA	23.7087	23.3825
Yuma, AZ	19.9517	20.2223

[1] The MSA is empty for FY 2003. The hospital(s) in the MSA received rural status under Section 401 of the Balanced Budget Refinement Act of 1999 (P.L. 106-113). The MSA is assigned the statewide rural wage index (see Table 4B).

TABLE 3B.—FY 2003 AND 3-YEAR* AVERAGE HOURLY WAGE FOR RURAL AREAS

[*Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003]

Nonurban area	FY 2003 average hourly wage	3-Year average hourly wage
Alabama	17.9036	16.8484
Alaska	28.3370	27.2338
Arizona	19.5067	19.0116
Arkansas	17.6380	16.8439
California	22.8280	21.9650
Colorado	20.9354	20.0304
Connecticut	28.7896	27.0512
Delaware	20.9850	20.7345
Florida	20.4812	19.8506
Georgia	18.9804	18.5484
Hawaii	23.7802	24.2085
Idaho	20.2336	19.5324
Illinois	19.0881	18.2692
Indiana	20.2273	19.4705
Iowa	19.3039	18.3140
Kansas	18.3139	17.4523
Kentucky	18.5767	17.8667
Louisiana	17.5606	17.0801
Maine	20.1286	19.5633
Maryland	20.3626	19.6588
Massachusetts	25.8847	25.2714
Michigan	20.5663	20.0744
Minnesota	21.2683	20.2498
Mississippi	17.8117	16.9666
Missouri	18.6096	17.6847
Montana	19.7008	19.3096
Nebraska	19.0466	18.2894
Nevada	21.8882	21.2045
New Hampshire	22.7236	21.9972
New Jersey [1]	.....	.....
New Mexico	19.8780	19.2303
New York	19.8523	19.1400
North Carolina	20.0381	19.1521
North Dakota	18.0060	17.4398
Ohio	19.9481	19.3896
Oklahoma	17.6227	16.9222
Oregon	23.9321	22.8031
Pennsylvania	19.6030	19.1490
Puerto Rico	10.1187	10.0248

TABLE 3B.—FY 2003 AND 3-YEAR* AVERAGE HOURLY WAGE FOR RURAL AREAS—Continued

[*Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003]

Nonurban area	FY 2003 average hourly wage	3-Year average hourly wage
Rhode Island [1]	.....	.....
South Carolina	19.7928	19.0083
South Dakota	18.1545	17.3648
Tennessee	18.1050	17.6144
Texas	17.8263	17.1186
Utah	21.6749	20.5059
Vermont	21.6208	20.9793
Virginia	19.5315	18.5749
Washington	23.6253	23.0484
West Virginia	18.5169	18.1434
Wisconsin	21.2222	20.2660
Wyoming	20.4416	19.7159

[1] All counties within the State are classified as urban.

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS

Urban area (constituent counties)	Wage index	GAF
0040 Abilene, TX	0.9268	0.9493
Taylor, TX		
0060 Aguadilla, PR	0.4634	0.5905
Aguada, PR		
Aguadilla, PR		
Moca, PR		
0080 Akron, OH	0.9685	0.9783
Portage, OH		
Summit, OH		
0120 Albany, GA	1.0835	1.0565
Dougherty, GA		
Lee, GA		
0160 [2] Albany-Schenectady-Troy, NY	0.8633	0.9042
Albany, NY		
Montgomery, NY		
Rensselaer, NY		
Saratoga, NY		
Schenectady, NY		
Schoharie, NY		
0200 Albuquerque, NM	0.9372	0.9566
Bernalillo, NM		
Sandoval, NM		
Valencia, NM		
0220 Alexandria, LA	0.7929	0.8531
Rapides, LA		
0240 Allentown-Bethlehem-Easton, PA	0.9833	0.9885
Carbon, PA		
Lehigh, PA		
Northampton, PA		
0280 Altoona, PA	0.9300	0.9515
Blair, PA		
0320 Amarillo, TX Potter, TX	0.9051	0.9340
Randall, TX		
0380 Anchorage, AK	1.2610	1.1721
Anchorage, AK		
0440 Ann Arbor, MI	1.1217	1.0818
Lenawee, MI		
Livingston, MI		
Washtenaw, MI		
0450 Anniston, AL	0.8126	0.8675
Calhoun, AL		
0460 [2] Appleton-Oshkosh-Neenah, WI	0.9229	0.9465
Calumet, WI		
Outagamie, WI		
Winnebago, WI		
0470 [2] Arecibo, PR	0.4400	0.5699
Arecibo, PR		
Camuy, PR		
Hatillo, PR		
0480 Asheville, NC	0.9682	0.9781
Buncombe, NC		
Madison, NC		
0500 Athens, GA	1.0308	1.0210
Clarke, GA		
Madison, GA		
Oconee, GA		
0520 [1] Atlanta, GA	1.0091	1.0062
Barrow, GA		
Bartow, GA		
Carroll, GA		
Cherokee, GA		
Clayton, GA		
Cobb, GA		
Coweta, GA		
DeKalb, GA		
Douglas, GA		
Fayette, GA		
Forsyth, GA		
Fulton, GA		
Gwinnett, GA		
Henry, GA		
Newton, GA		
Paulding, GA		
Pickens, GA		
Rockdale, GA		
Spalding, GA		
Walton, GA		
0560 Atlantic-Cape May, NJ	1.1058	1.0713
Atlantic, NJ		
Cape May, NJ		
0580 Auburn-Opelika, AL	0.8306	0.8806
Lee, AL		
0600 Augusta-Aiken, GA-SC	1.0364	1.0248
Columbia, GA		
McDuffie, GA		
Richmond, GA		
Aiken, SC		
Edgefield, SC		
0640 [1] Austin-San Marcos, TX	0.9529	0.9675
Bastrop, TX		
Caldwell, TX		
Hays, TX		
Travis, TX		
Williamson, TX		
0680 Bakersfield, CA	1.0186	1.0127
Kern, CA		
0720 [1] Baltimore, MD	0.9757	0.9833
Anne Arundel, MD		
Baltimore, MD		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Baltimore City, MD		
Carroll, MD		
Harford, MD		
Howard, MD		
Queen Anne's, MD		
0733 Bangor, ME	0.9791	0.9856
Penobscot, ME		
0743 Barnstable-Yarmouth, MA	1.3127	1.2048
Barnstable, MA		
0760 Baton Rouge, LA	0.8388	0.8866
Ascension, LA		
East Baton Rouge, LA		
Livingston, LA		
West Baton Rouge, LA		
0840 Beaumont-Port Arthur, TX	0.8389	0.8867
Hardin, TX		
Jefferson, TX		
Orange, TX		
0860 Bellingham, WA	1.2407	1.1592
Whatcom, WA		
0870 Benton Harbor, MI	0.9072	0.9355
Berrien, MI		
0875 [1] Bergen-Passaic, NJ	1.2100	1.1394
Bergen, NJ		
Passaic, NJ		
0880 Billings, MT	0.9114	0.9384
Yellowstone, MT		
0920 Biloxi-Gulfport-Pascagoula, MS	0.8830	0.9183
Hancock, MS		
Harrison, MS		
Jackson, MS		
0960 [2] Binghamton, NY	0.8633	0.9042
Broome, NY		
Tioga, NY		
1000 Birmingham, AL	0.9301	0.9516
Blount, AL		
Jefferson, AL		
St. Clair, AL		
Shelby, AL		
1010 Bismarck, ND	0.7881	0.8495
Burleigh, ND		
Morton, ND		
1020 Bloomington, IN	0.8997	0.9302
Monroe, IN		
1040 Bloomington-Normal, IL	0.9202	0.9446
McLean, IL		
1080 Boise City, ID	0.9403	0.9587
Ada, ID		
Canyon, ID		
1123 [1] Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	1.1304	1.0876
Bristol, MA		
Essex, MA		
Middlesex, MA		
Norfolk, MA		
Plymouth, MA		
Suffolk, MA		
Worcester, MA		
Hillsborough, NH		
Merrimack, NH		
Rockingham, NH		
Strafford, NH		
1125 Boulder-Longmont, CO	0.9688	0.9785
Boulder, CO		
1145 Brazoria, TX	0.8617	0.9031
Brazoria, TX		
1150 Bremerton, WA	1.1056	1.0712
Kitsap, WA		
1240 Brownsville-Harlingen-San Benito, TX	0.8992	0.9298
Cameron, TX		
1260 Bryan-College Station, TX	0.8410	0.8882
Brazos, TX		
1280 [1] Buffalo-Niagara Falls, NY	0.9464	0.9630
Erie, NY		
Niagara, NY		
1303 Burlington, VT	1.0176	1.0120
Chittenden, VT		
Franklin, VT		
Grand Isle, VT		
1310 Caguas, PR	0.4453	0.5746
Caguas, PR		
Cayey, PR		
Cidra, PR		
Gurabo, PR		
San Lorenzo, PR		
1320 Canton-Massillon, OH	0.9026	0.9322
Carroll, OH		
Stark, OH		
1350 Casper, WY	0.9788	0.9854
Natrona, WY		
1360 Cedar Rapids, IA	0.9149	0.9409
Linn, IA		
1400 Champaign-Urbana, IL	0.9983	0.9988
Champaign, IL		
1440 [2] Charleston-North Charleston, SC	0.8607	0.9024
Berkeley, SC		
Charleston, SC		
Dorchester, SC		
1480 Charleston, WV	0.8765	0.9137
Kanawha, WV		
Putnam, WV		
1520 [1] Charlotte-Gastonia-Rock Hill, NC-SC	0.9839	0.9889
Cabarrus, NC		
Gaston, NC		
Lincoln, NC		
Mecklenburg, NC		
Rowan, NC		
Stanly, NC		
Union, NC		
York, SC		
1540 Charlottesville, VA	1.0583	1.0396
Albemarle, VA		
Charlottesville City, VA		
Fluvanna, VA		
Greene, VA		
1560 Chattanooga, TN-GA	0.9069	0.9353
Catoosa, GA		
Dade, GA		
Walker, GA		
Hamilton, TN		
Marion, TN		
1580 [2] Cheyenne, WY	0.8890	0.9226
Laramie, WY		
1600 [1] Chicago, IL	1.1088	1.0733
Cook, IL		
DeKalb, IL		
DuPage, IL		
Grundy, IL		
Kane, IL		
Kendall, IL		
Lake, IL		
McHenry, IL		
Will, IL		
1620 [2] Chico-Paradise, CA	0.9934	0.9955
Butte, CA		
1640 [1] Cincinnati, OH-KY-IN	0.9354	0.9553
Dearborn, IN		
Ohio, IN		
Boone, KY		
Campbell, KY		
Gallatin, KY		
Grant, KY		
Kenton, KY		
Pendleton, KY		
Brown, OH		
Clermont, OH		
Hamilton, OH		
Warren, OH		
1660 Clarksville-Hopkinsville, TN-KY	0.8386	0.8864
Christian, KY		
Montgomery, TN		
1680 [1] Cleveland-Lorain-Elyria, OH	0.9295	0.9512
Ashtabula, OH		
Cuyahoga, OH		
Geauga, OH		
Lake, OH		
Lorain, OH		
Medina, OH		
1720 Colorado Springs, CO	0.9968	0.9978
El Paso, CO		
1740 Columbia, MO	0.8737	0.9117
Boone, MO		
1760 Columbia, SC	0.8990	0.9297
Lexington, SC		
Richland, SC		
1800 Columbus, GA-AL	0.8450	0.8911
Russell, AL		
Chattahoochee, GA		
Harris, GA		
Muscogee, GA		
1840 [1] Columbus, OH	0.9705	0.9797
Delaware, OH		
Fairfield, OH		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Franklin, OH		
Licking, OH		
Madison, OH		
Pickaway, OH		
1880 Corpus Christi, TX	0.8154	0.8696
Nueces, TX		
San Patricio, TX		
1890 Corvallis, OR	1.1569	1.1050
Benton, OR		
1900 [2]Cumberland, MD-WV (MD Hospitals)	0.8855	0.9201
Allegany, MD		
Mineral, WV		
1900 [2]Cumberland, MD-WV (WV Hospitals)	0.8053	0.8622
Allegany, MD		
Mineral, WV		
1920 [1]Dallas, TX	0.9831	0.9884
Collin, TX		
Dallas, TX		
Denton, TX		
Ellis, TX		
Henderson, TX		
Hunt, TX		
Kaufman, TX		
Rockwall, TX		
1950 Danville, VA	0.8785	0.9151
Danville City, VA		
Pittsylvania, VA		
1960 Davenport-Moline-Rock Island, IA-IL	0.8872	0.9213
Scott, IA		
Henry, IL		
Rock Island, IL		
2000 Dayton-Springfield, OH	0.9378	0.9570
Clark, OH		
Greene, OH		
Miami, OH		
Montgomery, OH		
2020 Daytona Beach, FL	0.9133	0.9398
Flagler, FL		
Volusia, FL		
2030 Decatur, AL	0.9066	0.9351
Lawrence, AL		
Morgan, AL		
2040 [2]Decatur, IL	0.8301	0.8803
Macon, IL		
2080 [1]Denver, CO	1.0401	1.0273
Adams, CO		
Arapahoe, CO		
Denver, CO		
Douglas, CO		
Jefferson, CO		
2120 Des Moines, IA	0.8908	0.9239
Dallas, IA		
Polk, IA		
Warren, IA		
2160 [1]Detroit, MI	1.0506	1.0344
Lapeer, MI		
Macomb, MI		
Monroe, MI		
Oakland, MI		
St. Clair, MI		
Wayne, MI		
2180 Dothan, AL	0.8028	0.8603
Dale, AL		
Houston, AL		
2190 Dover, DE	0.9452	0.9621
Kent, DE		
2200 Dubuque, IA	0.8801	0.9163
Dubuque, IA		
2240 Duluth-Superior, MN-WI	1.0462	1.0314
St. Louis, MN		
Douglas, WI		
2281 Dutchess County, NY	1.0793	1.0536
Dutchess, NY		
2290 [2]Eau Claire, WI	0.9229	0.9465
Chippewa, WI		
Eau Claire, WI		
2320 El Paso, TX	0.9137	0.9401
El Paso, TX		
2330 Elkhart-Goshen, IN	0.9851	0.9898
Elkhart, IN		
2335 [2]Elmira, NY	0.8633	0.9042
Chemung, NY		
2340 Enid, OK	0.8387	0.8865
Garfield, OK		
2360 Erie, PA	0.9016	0.9315
Erie, PA		
2400 Eugene-Springfield, OR	1.1077	1.0726
Lane, OR		
2440 [2]Evansville-Henderson, IN-KY (IN Hospitals)	0.8796	0.9159
Posey, IN		
Vanderburgh, IN		
Warrick, IN		
Henderson, KY		
2440 Evansville-Henderson, IN-KY (KY Hospitals)	0.8254	0.8769
Posey, IN		
Vanderburgh, IN		
Warrick, IN		
Henderson, KY		
2520 Fargo-Moorhead, ND-MN	0.9783	0.9851
Clay, MN		
Cass, ND		
2560 Fayetteville, NC	0.9055	0.9343
Cumberland, NC		
2580 Fayetteville-Springdale-Rogers, AR	0.8182	0.8716
Benton, AR		
Washington, AR		
2620 Flagstaff, AZ-UT	1.0791	1.0535
Coconino, AZ		
Kane, UT		
2640 Flint, MI	1.1233	1.0829
Genesee, MI		
2650 Florence, AL	0.7960	0.8554
Colbert, AL		
Lauderdale, AL		
2655 Florence, SC	0.8869	0.9211
Florence, SC		
2670 Fort Collins-Loveland, CO	0.9923	0.9947
Larimer, CO		
2680 [1]Ft. Lauderdale, FL	1.0792	1.0536
Broward, FL		
2700 Fort Myers-Cape Coral, FL	0.9456	0.9624
Lee, FL		
2710 Fort Pierce-Port St. Lucie, FL	0.9959	0.9972
Martin, FL		
St. Lucie, FL		
2720 Fort Smith, AR-OK	0.7811	0.8444
Crawford, AR		
Sebastian, AR		
Sequoyah, OK		
2750 Fort Walton Beach, FL	0.9651	0.9760
Okaloosa, FL		
2760 Fort Wayne, IN	0.9499	0.9654
Adams, IN		
Allen, IN		
De Kalb, IN		
Huntington, IN		
Wells, IN		
Whitley, IN		
2800 [1]Forth Worth-Arlington, TX	0.9620	0.9738
Hood, TX		
Johnson, TX		
Parker, TX		
Tarrant, TX		
2840 Fresno, CA	1.0340	1.0232
Fresno, CA		
Madera, CA		
2880 Gadsden, AL	0.8684	0.9079
Etowah, AL		
2900 Gainesville, FL	0.9730	0.9814
Alachua, FL		
2920 Galveston-Texas City, TX	0.9603	0.9726
Galveston, TX		
2960 Gary, IN	0.9676	0.9777
Lake, IN		
Porter, IN		
2975 [2]Glens Falls, NY	0.8633	0.9042
Warren, NY		
Washington, NY		
2980 Goldsboro, NC	0.8982	0.9291
Wayne, NC		
2985 Grand Forks, ND-MN	0.9338	0.9542
Polk, MN		
Grand Forks, ND		
2995 Grand Junction, CO	0.9824	0.9879
Mesa, CO		
3000 [1]Grand Rapids-Muskegon-Holland, MI	0.9664	0.9769
Allegan, MI		
Kent, MI		
Muskegon, MI		
Ottawa, MI		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
3040 Great Falls, MT	0.9057	0.9344
Cascade, MT		
3060 Greeley, CO	0.9219	0.9458
Weld, CO		
3080 Green Bay, WI	0.9599	0.9724
Brown, WI		
3120 [1] Greensboro-Winston-Salem-High Point, NC	0.9270	0.9494
Alamance, NC		
Davidson, NC		
Davie, NC		
Forsyth, NC		
Guilford, NC		
Randolph, NC		
Stokes, NC		
Yadkin, NC		
3150 Greenville, NC	0.9257	0.9485
Pitt, NC		
3160 Greenville-Spartanburg-Anderson, SC	0.9177	0.9429
Anderson, SC		
Cherokee, SC		
Greenville, SC		
Pickens, SC		
Spartanburg, SC		
3180 Hagerstown, MD	0.9362	0.9559
Washington, MD		
3200 Hamilton-Middletown, OH	0.9484	0.9644
Butler, OH		
3240 Harrisburg-Lebanon-Carlisle, PA	0.9315	0.9526
Cumberland, PA		
Dauphin, PA		
Lebanon, PA		
Perry, PA		
3283 [1 2] Hartford, CT	1.2520	1.1664
Hartford, CT		
Litchfield, CT		
Middlesex, CT		
Tolland, CT		
3285 [2] Hattiesburg, MS	0.7759	0.8405
Forrest, MS		
Lamar, MS		
3290 Hickory-Morganton-Lenoir, NC	0.8958	0.9274
Alexander, NC		
Burke, NC		
Caldwell, NC		
Catawba, NC		
3320 Honolulu, HI	1.1121	1.0755
Honolulu, HI		
3350 Houma, LA	0.8470	0.8925
Lafourche, LA		
Terrebonne, LA		
3360 [1] Houston, TX	0.9746	0.9825
Chambers, TX		
Fort Bend, TX		
Harris, TX		
Liberty, TX		
Montgomery, TX		
Waller, TX		
3400 Huntington-Ashland, WV-KY-OH	0.9744	0.9824
Boyd, KY		
Carter, KY		
Greenup, KY		
Lawrence, OH		
Cabell, WV		
Wayne, WV		
3440 Huntsville, AL	0.8901	0.9234
Limestone, AL		
Madison, AL		
3480 [1] Indianapolis, IN	0.9828	0.9882
Boone, IN		
Hamilton, IN		
Hancock, IN		
Hendricks, IN		
Johnson, IN		
Madison, IN		
Marion, IN		
Morgan, IN		
Shelby, IN		
3500 Iowa City, IA	1.0025	1.0017
Johnson, IA		
3520 Jackson, MI	0.9591	0.9718
Jackson, MI		
3560 Jackson, MS	0.8713	0.9100
Hinds, MS		
Madison, MS		
Rankin, MS		
3580 Jackson, TN	0.9370	0.9564
Madison, TN		
Chester, TN		
3600 [1] Jacksonville, FL	0.9341	0.9544
Clay, FL		
Duval, FL		
Nassau, FL		
St. Johns, FL		
3605 [2] Jacksonville, NC	0.8714	0.9100
Onslow, NC		
3610 [2] Jamestown, NY	0.8633	0.9042
Chautauqua, NY		
3620 Janesville-Beloit, WI	0.9696	0.9791
Rock, WI		
3640 Jersey City, NJ	1.1200	1.0807
Hudson, NJ		
3660 Johnson City-Kingsport-Bristol, TN-VA (TN Hospitals)	0.8384	0.8863
Carter, TN		
Hawkins, TN		
Sullivan, TN		
Unicoi, TN		
Washington, TN		
Bristol City, VA		
Scott, VA		
Washington, VA		
3660 [2] Johnson City-Kingsport-Bristol, TN-VA (VA Hospitals)	0.8494	0.8942
Carter, TN		
Hawkins, TN		
Sullivan, TN		
Unicoi, TN		
Washington, TN		
Bristol City, VA		
Scott, VA		
Washington, VA		
3680 [2] Johnstown, PA	0.8525	0.8965
Cambria, PA		
Somerset, PA		
3700 Jonesboro, AR	0.7906	0.8514
Craighead, AR		
3710 Joplin, MO	0.8700	0.9090
Jasper, MO		
Newton, MO		
3720 Kalamazoo-Battlecreek, MI	1.0689	1.0467
Calhoun, MI		
Kalamazoo, MI		
Van Buren, MI		
3740 Kankakee, IL	0.9591	0.9718
Kankakee, IL		
3760 [1] Kansas City, KS-MO	0.9809	0.9869
Johnson, KS		
Leavenworth, KS		
Miami, KS		
Wyandotte, KS		
Cass, MO		
Clay, MO		
Clinton, MO		
Jackson, MO		
Lafayette, MO		
Platte, MO		
Ray, MO		
3800 Kenosha, WI	0.9741	0.9822
Kenosha, WI		
3810 Killeen-Temple, TX	0.8447	0.8909
Bell, TX		
Coryell, TX		
3840 Knoxville, TN	0.9090	0.9368
Anderson, TN		
Blount, TN		
Knox, TN		
Loudon, TN		
Sevier, TN		
Union, TN		
3850 Kokomo, IN	0.9031	0.9326
Howard, IN		
Tipton, IN		
3870 [2] La Crosse, WI-MN (WI Hospitals)	0.9229	0.9465
Houston, MN		
La Crosse, WI		
3870 [2] La Crosse, WI-MN (MN Hospitals)	0.9249	0.9479
Houston, MN		
La Crosse, WI		
3880 Lafayette, LA	0.8550	0.8983
Acadia, LA		
Lafayette, LA		
St. Landry, LA		
St. Martin, LA		
3920 Lafayette, IN	0.9515	0.9665
Clinton, IN		
Tippecanoe, IN		
3960 Lake Charles, LA	0.8030	0.8605
Calcasieu, LA		
3980 Lakeland-Winter Haven, FL	0.9170	0.9424
Polk, FL		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
4000 Lancaster, PA ...	0.9171	0.9425
Lancaster, PA		
4040 Lansing-East Lansing, MI	0.9827	0.9881
Clinton, MI		
Eaton, MI		
Ingham, MI		
4080 Laredo, TX	0.8504	0.8950
Webb, TX		
4100 Las Cruces, NM	0.8888	0.9224
Dona Ana, NM		
4120 [1] Las Vegas, NV-AZ	1.1018	1.0686
Mohave, AZ		
Clark, NV		
Nye, NV		
4150 Lawrence, KS	0.7964	0.8556
Douglas, KS		
4200 Lawton, OK	0.8251	0.8766
Comanche, OK		
4243 Lewiston-Auburn, ME	0.9249	0.9479
Androscoggin, ME		
4280 Lexington, KY	0.8629	0.9040
Bourbon, KY		
Clark, KY		
Fayette, KY		
Jessamine, KY		
Madison, KY		
Scott, KY		
Woodford, KY		
4320 Lima, OH	0.9515	0.9665
Allen, OH		
Auglaize, OH		
4360 Lincoln, NE	0.9133	0.9398
Lancaster, NE		
4400 Little Rock-North Little Rock, AR	0.9045	0.9336
Faulkner, AR		
Lonoke, AR		
Pulaski, AR		
Saline, AR		
4420 Longview-Marshall, TX	0.8588	0.9010
Gregg, TX		
Harrison, TX		
Upshur, TX		
4480 [1] Los Angeles-Long Beach, CA	1.2044	1.1358
Los Angeles, CA		
4520 [1] Louisville, KY-IN	0.9517	0.9667
Clark, IN		
Floyd, IN		
Harrison, IN		
Scott, IN		
Bullitt, KY		
Jefferson, KY		
Oldham, KY		
4600 Lubbock, TX	0.7809	0.8442
Lubbock, TX		
4640 Lynchburg, VA ..	0.9311	0.9523
Amherst, VA		
Bedford, VA		
Bedford City, VA		
Campbell, VA		
Lynchburg City, VA		
4680 Macon, GA	0.9296	0.9512
Bibb, GA		
Houston, GA		
Jones, GA		
Peach, GA		
Twiggs, GA		
4720 Madison, WI	1.0188	1.0128
Dane, WI		
4800 Mansfield, OH ...	0.8989	0.9296
Crawford, OH		
Richland, OH		
4840 Mayaguez, PR ..	0.4921	0.6153
Anasco, PR		
Cabo Rojo, PR		
Hormigueros, PR		
Mayaguez, PR		
Sabana Grande, PR		
San German, PR		
4880 McAllen-Edinburg-Mission, TX	0.8419	0.8888
Hidalgo, TX		
4890 Medford-Ashland, OR	1.0605	1.0410
Jackson, OR		
4900 Melbourne-Titusville-Palm Bay, FL	1.0782	1.0529
Brevard, Fl		
4920 [1] Memphis, TN-AR-MS	0.8839	0.9190
Crittenden, AR		
DeSoto, MS		
Fayette, TN		
Shelby, TN		
Tipton, TN		
4940 Merced, CA	0.9937	0.9957
Merced, CA		
5000 [1] Miami, FL	0.9878	0.9916
Dade, FL		
5015 [1] Middlesex-Somerset-Hunterdon, NJ	1.1454	1.0974
Hunterdon, NJ		
Middlesex, NJ		
Somerset, NJ		
5080 [1] Milwaukee-Waukesha, WI	0.9901	0.9932
Milwaukee, WI		
Ozaukee, WI		
Washington, WI		
Waukesha, WI		
5120 [1] Minneapolis-St. Paul, MN-WI	1.0969	1.0654
Anoka, MN		
Carver, MN		
Chisago, MN		
Dakota, MN		
Hennepin, MN		
Isanti, MN		
Ramsey, MN		
Scott, MN		
Sherburne, MN		
Washington, MN		
Wright, MN		
Pierce, WI		
St. Croix, WI		
5140 Missoula, MT	0.9250	0.9480
Missoula, MT		
5160 Mobile, AL	0.8181	0.8715
Baldwin, AL		
Mobile, AL		
5170 Modesto, CA	1.0606	1.0411
Stanislaus, CA		
5190 [1] Monmouth-Ocean, NJ	1.1290	1.0866
Monmouth, NJ		
Ocean, NJ		
5200 Monroe, LA	0.8191	0.8723
Ouachita, LA		
5240 [2] Montgomery, AL	0.7853	0.8475
Autauga, AL		
Elmore, AL		
Montgomery, AL		
5280 Muncie, IN	0.9150	0.9410
Delaware, IN		
5330 Myrtle Beach, SC	0.9141	0.9403
Horry, SC		
5345 Naples, FL	0.9803	0.9865
Collier, FL		
5360 [1] Nashville, TN ..	0.9456	0.9624
Cheatham, TN		
Davidson, TN		
Dickson, TN		
Robertson, TN		
Rutherford TN		
Sumner, TN		
Williamson, TN		
Wilson, TN		
5380 [1] Nassau-Suffolk, NY	1.3441	1.2245
Nassau, NY		
Suffolk, NY		
5483 [1 2] New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2520	1.1664
Fairfield, CT		
New Haven, CT		
5523 [2] New London-Norwich, CT	1.2520	1.1664
New London, CT		
5560 [1] New Orleans, LA	0.9050	0.9339
Jefferson, LA		
Orleans, LA		
Plaquemines, LA		
St. Bernard, LA		
St. Charles, LA		
St. James, LA		
St. John The Baptist, LA		
St. Tammany, LA		
5600 [1] New York, NY	1.4069	1.2634
Bronx, NY		
Kings, NY		
New York, NY		
Putnam, NY		
Queens, NY		
Richmond, NY		
Rockland, NY		
Westchester, NY		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
5640 [1] Newark, NJ	1.1546	1.1035
Essex, NJ		
Morris, NJ		
Sussex, NJ		
Union, NJ		
Warren, NJ		
5660 Newburgh, NY-PA	1.1434	1.0961
Orange, NY		
Pike, PA		
5720 [1] Norfolk-Virginia Beach-Newport News, VA-NC	0.8553	0.8985
Currituck, NC		
Chesapeake City, VA		
Gloucester, VA		
Hampton City, VA		
Isle of Wight, VA		
James City, VA		
Mathews, VA		
Newport News City, VA		
Norfolk City, VA		
Poquoson City, VA		
Portsmouth City, VA		
Suffolk City, VA		
Virginia Beach City VA		
Williamsburg City, VA		
York, VA		
5775 [1] Oakland, CA	1.5324	1.3395
Alameda, CA		
Contra Costa, CA		
5790 Ocala, FL	0.9526	0.9673
Marion, FL		
5800 Odessa-Midland, TX	0.9233	0.9468
Ector, TX		
Midland, TX		
5880 [1] Oklahoma City, OK	0.8997	0.9302
Canadian, OK		
Cleveland, OK		
Logan, OK		
McClain, OK		
Oklahoma, OK		
Pottawatomie, OK		
5910 Olympia, WA	1.1071	1.0722
Thurston, WA		
5920 Omaha, NE-IA	1.0089	1.0061
Pottawattamie, IA		
Cass, NE		
Douglas, NE		
Sarpy, NE		
Washington, NE		
5945 [1] Orange County, CA	1.1726	1.1152
Orange, CA		
5960 [1] Orlando, FL	0.9537	0.9681
Lake, FL		
Orange, FL		
Osceola, FL		
Seminole, FL		
5990 Owensboro, KY	0.8283	0.8790
Daviess, KY		
6015 Panama City, FL	0.8926	0.9251
Bay, FL		
6020 Parkersburg-Marietta, WV-OH (WV Hospitals)	0.8210	0.8737
Washington, OH		
Wood, WV		
6020 [2] Parkersburg-Marietta, WV-OH (OH Hospitals)	0.8675	0.9072
Washington, OH		
Wood, WV		
6080 [2] Pensacola, FL	0.8907	0.9238
Escambia, FL		
Santa Rosa, FL		
6120 Peoria-Pekin, IL	0.8854	0.9200
Peoria, IL		
Tazewell, IL		
Woodford, IL		
6160 [1] Philadelphia, PA-NJ	1.0675	1.0457
Burlington, NJ		
Camden, NJ		
Gloucester, NJ		
Salem, NJ		
Bucks, PA		
Chester, PA		
Delaware, PA		
Montgomery, PA		
Philadelphia, PA		
6200 [1] Phoenix-Mesa, AZ	0.9562	0.9698
Maricopa, AZ		
Pinal, AZ		
6240 Pine Bluff, AR	0.7866	0.8484
Jefferson, AR		
6280 [1] Pittsburgh, PA	0.9403	0.9587
Allegheny, PA		
Beaver, PA		
Butler, PA		
Fayette, PA		
Washington, PA		
Westmoreland, PA		
6323 [2] Pittsfield, MA	1.1257	1.0845
Berkshire, MA		
6340 Pocatello, ID	0.9013	0.9313
Bannock, ID		
6360 Ponce, PR	0.5221	0.6408
Guayanilla, PR		
Juana Diaz, PR		
Penuelas, PR		
Ponce, PR		
Villalba, PR		
Yauco, PR		
6403 Portland, ME	0.9932	0.9953
Cumberland, ME		
Sagadahoc, ME		
York, ME		
6440 [1] Portland-Vancouver, OR-WA	1.0792	1.0536
Clackamas, OR		
Columbia, OR		
Multnomah, OR		
Washington, OR		
Yamhill, OR		
Clark, WA		
6483 [1] Providence-Warwick-Pawtucket, RI	1.0558	1.0379
Bristol, RI		
Kent, RI		
Newport, RI		
Providence, RI		
Washington, RI		
6520 Provo-Orem, UT	1.0190	1.0130
Utah, UT		
6560 [2] Pueblo, CO	0.9104	0.9377
Pueblo, CO		
6580 [2] Punta Gorda, FL	0.8907	0.9238
Charlotte, FL		
6600 Racine, WI	0.9413	0.9594
Racine, WI		
6640 [1] Raleigh-Durham-Chapel Hill, NC	1.0083	1.0057
Chatham, NC		
Durham, NC		
Franklin, NC		
Johnston, NC		
Orange, NC		
Wake, NC		
6660 Rapid City, SD	0.8936	0.9259
Pennington, SD		
6680 Reading, PA	0.9308	0.9521
Berks, PA		
6690 Redding, CA	1.1249	1.0839
Shasta, CA		
6720 Reno, NV	1.0664	1.0450
Washoe, NV		
6740 Richland-Kennewick-Pasco, WA	1.1608	1.1075
Benton, WA		
Franklin, WA		
6760 Richmond-Petersburg, VA	0.9735	0.9818
Charles City County, VA		
Chesterfield, VA		
Colonial Heights City, VA		
Dinwiddie, VA		
Goochland, VA		
Hanover, VA		
Henrico, VA		
Hopewell City, VA		
New Kent, VA		
Petersburg City, VA		
Powhatan, VA		
Prince George, VA		
Richmond City, VA		
6780 [1] Riverside-San Bernardino, CA	1.1251	1.0841
Riverside, CA		
San Bernardino, CA		
6800 Roanoke, VA	0.8703	0.9093
Botetourt, VA		
Roanoke, VA		
Roanoke City, VA		
Salem City, VA		
6820 Rochester, MN	1.2263	1.1499
Olmsted, MN		
6840 [1] Rochester, NY	0.9133	0.9398
Genesee, NY		
Livingston, NY		
Monroe, NY		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Ontario, NY		
Orleans, NY		
Wayne, NY		
6880 Rockford, IL	0.9456	0.9624
Boone, IL		
Ogle, IL		
Winnebago, IL		
6895 Rocky Mount, NC	0.9322	0.9531
Edgecombe, NC		
Nash, NC		
6920 [1] Sacramento, CA	1.1636	1.1093
El Dorado, CA		
Placer, CA		
Sacramento, CA		
6960 Saginaw-Bay City-Midland, MI	0.9709	0.9800
Bay, MI		
Midland, MI		
Saginaw, MI		
6980 St. Cloud, MN	0.9858	0.9903
Benton, MN		
Stearns, MN		
7000 [2] St. Joseph, MO	0.8099	0.8656
Andrew, MO		
Buchanan, MO		
7040 [1] St. Louis, MO-IL	0.8907	0.9238
Clinton, IL		
Jersey, IL		
Madison, IL		
Monroe, IL		
St. Clair, IL		
Franklin, MO		
Jefferson, MO		
Lincoln, MO		
St. Charles, MO		
St. Louis, MO		
St. Louis City, MO		
Warren, MO		
7080 Salem, OR	1.0473	1.0322
Marion, OR		
Polk, OR		
7120 Salinas, CA	1.4772	1.3063
Monterey, CA		
7160 [1] Salt Lake City-Ogden, UT	1.0035	1.0024
Davis, UT		
Salt Lake, UT		
Weber, UT		
7200 San Angelo, TX	0.7956	0.8551
Tom Green, TX		
7240 [1] San Antonio, TX	0.8649	0.9054
Bexar, TX		
Comal, TX		
Guadalupe, TX		
Wilson, TX		
7320 [1] San Diego, CA	1.1247	1.0838
San Diego, CA		
7360 [1] San Francisco, CA	1.4288	1.2768
Marin, CA		
San Francisco, CA		
San Mateo, CA		
7400 [1] San Jose, CA	1.4162	1.2691
Santa Clara, CA		
7440 [1] San Juan-Bayamon, PR	0.4706	0.5968
Aguas Buenas, PR		
Barceloneta, PR		
Bayamon, PR		
Canovanas, PR		
Carolina, PR		
Catano, PR		
Ceiba, PR		
Comerio, PR		
Corozal, PR		
Dorado, PR		
Fajardo, PR		
Florida, PR		
Guaynabo, PR		
Humacao, PR		
Juncos, PR		
Los Piedras, PR		
Loiza, PR		
Luguillo, PR		
Manati, PR		
Morovis, PR		
Naguabo, PR		
Naranjito, PR		
Rio Grande, PR		
San Juan, PR		
Toa Alta, PR		
Toa Baja, PR		
Trujillo Alto, PR		
Vega Alta, PR		
Vega Baja, PR		
Yabucoa, PR		
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1386	1.0930
San Luis Obispo, CA		
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0588	1.0399
Santa Barbara, CA		
7485 Santa Cruz-Watsonville, CA	1.3630	1.2362
Santa Cruz, CA		
7490 Santa Fe, NM	1.0822	1.0556
Los Alamos, NM		
Santa Fe, NM		
7500 Santa Rosa, CA	1.3179	1.2081
Sonoma, CA		
7510 Sarasota-Bradenton, FL	0.9367	0.9562
Manatee, FL		
Sarasota, FL		
7520 Savannah, GA	0.9961	0.9973
Bryan, GA		
Chatham, GA		
Effingham, GA		
7560 [2] Scranton--Wilkes-Barre--Hazleton, PA	0.8525	0.8965
Columbia, PA		
Lackawanna, PA		
Luzerne, PA		
Wyoming, PA		
7600 [1] Seattle-Bellevue-Everett, WA	1.1571	1.1051
Island, WA		
King, WA		
Snohomish, WA		
7610 [2] Sharon, PA	0.8525	0.8965
Mercer, PA		
7620 [2] Sheboygan, WI	0.9229	0.9465
Sheboygan, WI		
7640 Sherman-Denison, TX	0.9334	0.9539
Grayson, TX		
7680 Shreveport-Bossier City, LA	0.8813	0.9171
Bossier, LA		
Caddo, LA		
Webster, LA		
7720 Sioux City, IA-NE	0.9138	0.9401
Woodbury, IA		
Dakota, NE		
7760 Sioux Falls, SD	0.9098	0.9373
Lincoln, SD		
Minnehaha, SD		
7800 South Bend, IN	0.9902	0.9933
St. Joseph, IN		
7840 Spokane, WA	1.0961	1.0649
Spokane, WA		
7880 Springfield, IL	0.8654	0.9057
Menard, IL		
Sangamon, IL		
7920 Springfield, MO	0.8510	0.8954
Christian, MO		
Greene, MO		
Webster, MO		
8003 [2] Springfield, MA	1.1257	1.0845
Hampden, MA		
Hampshire, MA		
8050 State College, PA	0.9032	0.9327
Centre, PA		
8080 Steubenville-Weirton, OH-WV	0.8893	0.9228
Jefferson, OH		
Brooke, WV		
Hancock, WV		
8120 Stockton-Lodi, CA	1.0630	1.0427
San Joaquin, CA		
8140 [2] Sumter, SC	0.8607	0.9024
Sumter, SC		
8160 Syracuse, NY	0.9519	0.9668
Cayuga, NY		
Madison, NY		
Onondaga, NY		
Oswego, NY		
8200 Tacoma, WA	1.1052	1.0709
Pierce, WA		
8240 [2] Tallahassee, FL	0.8907	0.9238
Gadsden, FL		
Leon, FL		
8280 [1] Tampa-St. Petersburg-Clearwater, FL	0.9238	0.9472
Hernando, FL		
Hillsborough, FL		
Pasco, FL		
Pinellas, FL		
8320 [2] Terre Haute, IN	0.8796	0.9159

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Clay, IN		
Vermillion, IN		
Vigo, IN		
8360 Texarkana,AR-Texarkana, TX	0.8193	0.8724
Miller, AR		
Bowie, TX		
8400 Toledo, OH	0.9863	0.9906
Fulton, OH		
Lucas, OH		
Wood, OH		
8440 Topeka, KS	0.8952	0.9270
Shawnee, KS		
8480 Trenton, NJ	1.0710	1.0481
Mercer, NJ		
8520 Tucson, AZ	0.8993	0.9299
Pima, AZ		
8560 Tulsa, OK	0.8398	0.8873
Creek, OK		
Osage, OK		
Rogers, OK		
Tulsa, OK		
Wagoner, OK		
8600 Tuscaloosa, AL	0.8303	0.8804
Tuscaloosa, AL		
8640 Tyler, TX	0.9650	0.9759
Smith, TX		
8680 [2] Utica-Rome, NY	0.8633	0.9042
Herkimer, NY		
Oneida, NY		
8720 Vallejo-Fairfield-Napa, CA	1.3544	1.2309
Napa, CA		
Solano, CA		
8735 Ventura, CA	1.1209	1.0813
Ventura, CA		
8750 Victoria, TX	0.8814	0.9172
Victoria, TX		
8760 Vineland-Millville-Bridgeton, NJ	1.0296	1.0202
Cumberland, NJ		
8780 [2] Visalia-Tulare-Porterville, CA	0.9934	0.9955
Tulare, CA		
8800 Waco, TX	0.8802	0.9163
McLennan, TX		
8840 [1] Washington, DC-MD-VA-WV	1.0852	1.0576
District of Columbia, DC		
Calvert, MD		
Charles, MD		
Frederick, MD		
Montgomery, MD		
Prince Georges, MD		
Alexandria City, VA		
Arlington, VA		
Clarke, VA		
Culpeper, VA		
Fairfax, VA		
Fairfax City, VA		
Falls Church City, VA		
Fauquier, VA		
Fredericksburg City, VA		
King George, VA		
Loudoun, VA		
Manassas City, VA		
Manassas Park City, VA		
Prince William, VA		
Spotsylvania, VA		
Stafford, VA		
Warren, VA		
Berkeley, WV		
Jefferson, WV		
8920 Waterloo-Cedar Falls, IA	0.8970	0.9283
Black Hawk, IA		
8940 Wausau, WI	0.9882	0.9919
Marathon, WI		
8960 [1] West Palm Beach-Boca Raton, FL	0.9929	0.9951
Palm Beach, FL		
9000 [2] Wheeling, WV-OH (WV Hospitals)	0.8053	0.8622
Belmont, OH		
Marshall, WV		
Ohio, WV		
9000 [2] Wheeling, WV-OH (OH Hospitals)	0.8675	0.9072
Belmont, OH		
Marshall, WV		
Ohio, WV		
9040 Wichita, KS	0.9571	0.9704
Butler, KS		
Harvey, KS		
Sedgwick, KS		
9080 Wichita Falls, TX	0.8023	0.8600
Archer, TX		
Wichita, TX		
9140 Williamsport, PA	0.8624	0.9036
Lycoming, PA		
9160 Wilmington-Newark, DE-MD	1.1287	1.0864
New Castle, DE		
Cecil, MD		
9200 Wilmington, NC	0.9471	0.9635
New Hanover, NC		
Brunswick, NC		
9260 Yakima, WA	1.0676	1.0458
Yakima, WA		
9270 [2] Yolo, CA	0.9934	0.9955
Yolo, CA		
9280 York, PA	0.9140	0.9403
York, PA		
9320 Youngstown-Warren, OH	0.9485	0.9644
Columbiana, OH		
Mahoning, OH		
Trumbull, OH		
9340 Yuba City, CA	1.0310	1.0211
Sutter, CA		
Yuba, CA		
9360 Yuma, AZ	0.8677	0.9074
Yuma, AZ		

[1] Large Urban Area

[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 2003.

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS

Nonurban area	Wage index	GAF
Alabama	0.7853	0.8475
Alaska	1.2323	1.1538
Arizona	0.8483	0.8935
Arkansas	0.7670	0.8339
California	0.9934	0.9988
Colorado	0.9104	0.9377
Connecticut	1.2520	1.1664
Delaware	0.9126	0.9393
Florida	0.8907	0.9238
Georgia	0.8254	0.8769
Hawaii	1.0342	1.0233
Idaho	0.8799	0.9161
Illinois	0.8301	0.8803
Indiana	0.8796	0.9159
Iowa	0.8395	0.8871
Kansas	0.7964	0.8556
Kentucky	0.8079	0.8641
Louisiana	0.7719	0.8375
Maine	0.8754	0.9129
Maryland	0.8855	0.9201
Massachusetts	1.1257	1.0845
Michigan	0.8961	0.9276
Minnesota	0.9249	0.9479
Mississippi	0.7759	0.8405
Missouri	0.8099	0.8656
Montana	0.8567	0.8995
Nebraska	0.8283	0.8790
Nevada	0.9519	0.9668
New Hampshire	0.9882	0.9919
New Jersey [1]	.....	.....
New Mexico	0.8645	0.9051
New York	0.8633	0.9042
North Carolina	0.8714	0.9100
North Dakota	0.7830	0.8458
Ohio	0.8675	0.9072
Oklahoma	0.7664	0.8334
Oregon	1.0408	1.0278
Pennsylvania	0.8525	0.8965
Puerto Rico	0.4400	0.5699
Rhode Island [1]	.....	.....
South Carolina	0.8607	0.9024
South Dakota	0.7895	0.8506
Tennessee	0.7873	0.8489
Texas	0.7759	0.8405
Utah	0.9426	0.9603
Vermont	0.9402	0.9587
Virginia	0.8494	0.8942
Washington	1.0274	1.0187
West Virginia	0.8053	0.8622
Wisconsin	0.9229	0.9465
Wyoming	0.8890	0.9226

[1] All counties within the State are classified as urban.

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED

Area	Wage index	GAF
Abilene, TX	0.8534	0.8971
Akron, OH	0.9685	0.9783
Albany, GA	1.0658	1.0446
Albuquerque, NM	0.9372	0.9566
Alexandria, LA	0.7929	0.8531

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index	GAF
Allentown-Bethlehem-Easton, PA	0.9833	0.9885
Altoona, PA	0.9300	0.9515
Amarillo, TX	0.8900	0.9233
Anchorage, AK	1.2610	1.1721
Ann Arbor, MI	1.1217	1.0818
Anniston, AL	0.7983	0.8570
Asheville, NC	0.9448	0.9619
Athens, GA	1.0161	1.0110
Atlanta, GA	0.9985	0.9990
Augusta-Aiken, GA-SC	0.9981	0.9987
Austin-San Marcos, TX	0.9529	0.9675
Barnstable-Yarmouth, MA	1.2894	1.1901
Baton Rouge, LA	0.8281	0.8788
Bellingham, WA	1.2139	1.1420
Benton Harbor, MI	0.9072	0.9355
Bergen-Passaic, NJ	1.2100	1.1394
Billings, MT	0.9114	0.9384
Biloxi-Gulfport-Pascagoula, MS	0.8417	0.8887
Binghamton, NY	0.8525	0.8965
Birmingham, AL	0.9301	0.9516
Bismarck, ND	0.7881	0.8495
Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	1.1304	1.0876
Burlington, VT	0.9667	0.9771
Caguas, PR	0.4453	0.5746
Casper, WY	0.9655	0.9762
Champaign-Urbana, IL	0.9334	0.9539
Charleston-North Charleston, SC	0.8607	0.9024
Charleston, WV	0.8602	0.9020
Charlotte-Gastonia-Rock Hill, NC-SC	0.9839	0.9889
Charlottesville, VA	1.0252	1.0172
Chattanooga, TN-GA	0.8878	0.9217
Chicago, IL	1.0953	1.0643
Cincinnati, OH-KY-IN	0.9354	0.9553
Clarksville-Hopkinsville, TN-KY	0.8239	0.8758
Cleveland-Lorain-Elyria, OH	0.9295	0.9512
Columbia, MO	0.8737	0.9117
Columbia, SC	0.8990	0.9297
Columbus, GA-AL (GA Hospitals)	0.8254	0.8769
Columbus, GA-AL (AL Hospitals)	0.8041	0.8613
Columbus, OH	0.9521	0.9669
Corpus Christi, TX	0.8154	0.8696
Dallas, TX	0.9831	0.9884
Danville, VA	0.8530	0.8968
Davenport-Moline-Rock Island, IA-IL	0.8872	0.9213
Dayton-Springfield, OH	0.9378	0.9570
Denver, CO	1.0401	1.0273
Des Moines, IA	0.8908	0.9239
Detroit, MI	1.0506	1.0344
Dothan, AL	0.8028	0.8603
Dover, DE	0.9274	0.9497
Duluth-Superior, MN-WI	1.0462	1.0314
Eau Claire, WI	0.9229	0.9465
Elkhart-Goshen, IN	0.9484	0.9643
Erie, PA	0.8850	0.9197
Eugene-Springfield, OR	1.1077	1.0726
Fargo-Moorhead, ND-MN	0.9564	0.9699
Fayetteville, NC	0.9055	0.9343
Flagstaff, AZ-UT	1.0234	1.0160
Flint, MI	1.1041	1.0702
Florence, AL	0.7960	0.8554
Florence, SC	0.8869	0.9211
Fort Collins-Loveland, CO	0.9923	0.9947
Ft. Lauderdale, FL	1.0792	1.0536
Fort Pierce-Port St. Lucie, FL	0.9959	0.9972
Fort Smith, AR-OK	0.7681	0.8347
Fort Walton Beach, FL	0.9365	0.9561
Forth Worth-Arlington, TX	0.9620	0.9738
Gadsden, AL	0.8684	0.9079
Grand Forks, ND-MN	0.9338	0.9542
Grand Junction, CO	0.9824	0.9879
Grand Rapids-Muskegon-Holland, MI	0.9664	0.9769
Great Falls, MT	0.9057	0.9344
Greeley, CO	0.9219	0.9458
Green Bay, WI	0.9347	0.9548
Greensboro-Winston-Salem-High Point, NC	0.9131	0.9396
Greenville, NC	0.9257	0.9485
Harrisburg-Lebanon-Carlisle, PA	0.9315	0.9526
Hartford, CT	1.1550	1.1037
Hattiesburg, MS	0.7759	0.8405
Hickory-Morganton-Lenoir, NC	0.8958	0.9274
Houston, TX	0.9746	0.9825
Huntington-Ashland, WV-KY-OH	0.9251	0.9481
Huntsville, AL	0.8901	0.9234
Indianapolis, IN	0.9828	0.9882
Iowa City, IA	0.9828	0.9882
Jackson, MS	0.8587	0.9009
Jackson, TN	0.9032	0.9327
Jacksonville, FL	0.9225	0.9463
Johnson City-Kingsport-Bristol, TN-VA (VA Hospitals)	0.8494	0.8942
Johnson City-Kingsport-Bristol, TN-VA (KY Hospitals)	0.8384	0.8863
Jonesboro, AR (AR Hospitals)	0.7906	0.8514
Jonesboro, AR (MO Hospitals)	0.8099	0.8656
Joplin, MO	0.8700	0.9090
Kalamazoo-Battlecreek, MI	1.0490	1.0333
Kansas City, KS-MO	0.9809	0.9869
Knoxville, TN	0.9090	0.9368
Kokomo, IN	0.9031	0.9326
Lafayette, LA	0.8392	0.8869
Lakeland-Winter Haven, FL	0.9170	0.9424
Las Vegas, NV-AZ	1.1018	1.0686
Lawton, OK	0.8073	0.8636
Lexington, KY	0.8629	0.9040
Lima, OH	0.9515	0.9665
Lincoln, NE	0.9133	0.9398
Little Rock-North Little Rock, AR	0.8926	0.9251
Longview-Marshall, TX	0.8588	0.9010
Los Angeles-Long Beach, CA	1.2044	1.1358
Louisville, KY-IN	0.9382	0.9573
Lubbock, TX	0.7809	0.8442
Lynchburg, VA	0.9114	0.9384
Macon, GA	0.9296	0.9512
Madison, WI	1.0188	1.0128
Mansfield, OH	0.8989	0.9296
Medford-Ashland, OR	1.0408	1.0278
Memphis, TN-AR-MS	0.8667	0.9067
Miami, FL	0.9878	0.9916
Milwaukee-Waukesha, WI	0.9901	0.9932
Minneapolis-St. Paul, MN-WI	1.0969	1.0654
Missoula, MT	0.9139	0.9402
Mobile, AL	0.8181	0.8715
Modesto, CA	1.0606	1.0411
Monmouth-Ocean, NJ	1.1290	1.0866
Monroe, LA	0.8191	0.8723
Montgomery, AL	0.7853	0.8475
Nashville, TN	0.9283	0.9503
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2520	1.1664
New London-Norwich, CT	1.1683	1.1124
New Orleans, LA	0.9050	0.9339
New York, NY	1.3936	1.2552
Newark, NJ	1.1546	1.1035
Newburgh, NY-PA	1.0820	1.0555
Norfolk-Virginia Beach-Newport News, VA-NC	0.8714	0.9100
Oakland, CA	1.5324	1.3395
Ocala, FL	0.9343	0.9545
Odessa-Midland, TX	0.8910	0.9240
Oklahoma City, OK	0.8997	0.9302
Omaha, NE-IA	1.0089	1.0061
Orange County, CA	1.1726	1.1152
Orlando, FL	0.9537	0.9681
Peoria-Pekin, IL	0.8854	0.9200
Philadelphia, PA-NJ	1.0675	1.0457
Phoenix-Mesa, AZ	0.9562	0.9698
Pine Bluff, AR	0.7760	0.8406
Pittsburgh, PA	0.9268	0.9493
Pittsfield, MA	0.9869	0.9910
Pocatello, ID	0.9013	0.9313
Portland, ME	0.9698	0.9792
Portland-Vancouver, OR-WA	1.0792	1.0536
Provo-Orem, UT	1.0088	1.0060
Raleigh-Durham-Chapel Hill, NC	0.9978	0.9985
Rapid City, SD	0.8936	0.9259
Reading, PA	0.9126	0.9393
Redding, CA	1.1249	1.0839
Reno, NV	1.0445	1.0303
Richland-Kennewick-Pasco, WA	1.1209	1.0813
Richmond-Petersburg, VA	0.9735	0.9818

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index	GAF
Roanoke, VA	0.8703	0.9093
Rochester, MN	1.2263	1.1499
Rockford, IL	0.9456	0.9624
Sacramento, CA	1.1636	1.1093
Saginaw-Bay City-Midland, MI	0.9709	0.9800
St. Cloud, MN	0.9858	0.9903
St. Joseph, MO	0.8300	0.8802
St. Louis, MO-IL	0.8907	0.9238
Salinas, CA	1.4772	1.3063
Salt Lake City-Ogden, UT	1.0035	1.0024
San Antonio, TX	0.8649	0.9054
San Diego, CA	1.1247	1.0838
Santa Fe, NM	0.9927	0.9950
Santa Rosa, CA	1.2891	1.1899
Sarasota-Bradenton, FL	0.9367	0.9562
Savannah, GA	0.9841	0.9891
Seattle-Bellevue-Everett, WA	1.1571	1.1051
Sherman-Denison, TX	0.9090	0.9368
Shreveport-Bossier City, LA	0.8813	0.9171
Sioux City, IA-NE	0.8736	0.9116
Sioux Falls, SD	0.8950	0.9268
South Bend, IN	0.9902	0.9933
Spokane, WA	1.0770	1.0521
Springfield, IL	0.8654	0.9057
Springfield, MO	0.8236	0.8756
Stockton-Lodi, CA	1.0630	1.0427
Syracuse, NY	0.9519	0.9668
Tampa-St. Petersburg-Clearwater, FL	0.9238	0.9472
Texarkana,AR-Texarkana, TX	0.8193	0.8724
Toledo, OH	0.9863	0.9906
Topeka, KS	0.8840	0.9190
Tucson, AZ	0.8993	0.9299
Tulsa, OK	0.8398	0.8873
Tuscaloosa, AL	0.8303	0.8804
Tyler, TX	0.9249	0.9479
Vallejo-Fairfield-Napa, CA	1.3544	1.2309
Victoria, TX	0.8668	0.9067
Waco, TX	0.8671	0.9070
Washington, DC-MD-VA-WV	1.0852	1.0576
Waterloo-Cedar Falls, IA	0.8970	0.9283
Wausau, WI	0.9710	0.9800
West Palm Beach-Boca Raton, FL	0.9929	0.9951
Wichita, KS	0.9235	0.9470
Wichita Falls, TX	0.7918	0.8523
Wilmington-Newark, DE-MD	1.0973	1.0657
Wilmington, NC	0.9336	0.9540
York, PA	0.9140	0.9403
Youngstown-Warren, OH	0.9485	0.9644
Rural Alabama	0.7853	0.8475
Rural Florida	0.8907	0.9238
Rural Illinois (IA Hospitals)	0.8395	0.8871
Rural Illinois (MO Hospitals)	0.8301	0.8803
Rural Kentucky	0.8079	0.8641
Rural Louisiana	0.7719	0.8375
Rural Massachusetts	1.0417	1.0284
Rural Michigan	0.8961	0.9276
Rural Minnesota	0.9249	0.9479
Rural Mississippi	0.7759	0.8405
Rural Missouri	0.8099	0.8656
Rural Montana	0.8567	0.8995
Rural Nebraska	0.8283	0.8790
Rural Nevada	0.9097	0.9372
Rural Texas	0.7759	0.8405
Rural Washington	1.0274	1.0187
Rural Wyoming	0.8890	0.9226

TABLE 4F.—PUERTO RICO WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF)

Area	Wage index	GAF	Wage index—reclass. hospitals	GAF—reclass. hospitals
Aguadilla, PR	0.9781	0.9850		
[1] Arecibo, PR	0.9289	0.9507		
Caguas, PR	0.9400	0.9585	0.9400	0.9585
Mayaguez, PR	1.0388	1.0264		
Ponce, PR	1.1021	1.0688		
San Juan-Bayamon, PR	0.9935	0.9955		
Rural Puerto Rico	0.9289	0.9507		

[1] Hospitals geographically located in the area are assigned the Rural Puerto Rico wage index for FY 2003.

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties)	Wage index
0040 Abilene, TX	0.9268
Taylor, TX	
0060 Aguadilla, PR	0.4634
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9685
Portage, OH	
Summit, OH	
0120 Albany, GA	1.0835
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8633
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9279
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.7903
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	0.9833
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.9300
Blair, PA	
0320 Amarillo, TX	0.9051
Potter, TX	
Randall, TX	
0380 Anchorage, AK	1.2477
Anchorage, AK	
0440 Ann Arbor, MI	1.1217
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8126
Calhoun, AL	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
0460 Appleton-Oshkosh-Neenah, WI	0.9229
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4400
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9682
Buncombe, NC	
Madison, NC	
0500 Athens, GA	1.0308
Clarke. GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA	1.0091
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
DeKalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic-Cape May, NJ	1.1058
Atlantic, NJ	
Cape May, NJ	
0580 Auburn-Opelika, AL	0.8306
Lee, AL	
0600 Augusta-Aiken, GA-SC	1.0364
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9529
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	1.0186
Kern, CA	
0720 Baltimore, MD	0.9757
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Anne's, MD	
0733 Bangor, ME	0.9791
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.3127
Barnstable, MA	
0760 Baton Rouge, LA	0.8388
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8389
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.2407
Whatcom, WA	
0870 Benton Harbor, MI	0.8992
Berrien, MI	
0875 Bergen-Passaic, NJ	1.2100
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.9114
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8830
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.8633
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.9301
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7848
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8997
Monroe, IN	
1040 Bloomington-Normal, IL	0.9202
McLean, IL	
1080 Boise City, ID	0.9403
Ada, ID	
Canyon, ID	
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH (NH Hospitals)	1.1304
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	0.9688
Boulder, CO	
1145 Brazoria, TX	0.8617
Brazoria, TX	
1150 Bremerton, WA	1.1056
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.8992
Cameron, TX	
1260 Bryan-College Station, TX	0.8410
Brazos, TX	
1280 Buffalo-Niagara Falls, NY	0.9464
Erie, NY	
Niagara, NY	
1303 Burlington, VT	1.0176
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4415
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.9026
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.9788
Natrona, WY	
1360 Cedar Rapids, IA	0.9149
Linn, IA	
1400 Champaign-Urbana, IL	0.9983
Champaign, IL	
1440 Charleston-North Charleston, SC	0.8607
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.8765
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC-SC	0.9839
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Stanly, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	1.0583
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN-GA	0.9069
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.8890
Laramie, WY	
1600 Chicago, IL	1.1088
Cook, IL	
DeKalb, IL	
DuPage, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	0.9934
Butte, CA	
1640 Cincinnati, OH-KY-IN	0.9323
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN-KY	0.8386
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH	0.9295
Ashtabula, OH	
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9968
El Paso, CO	
1740 Columbia, MO	0.8737
Boone, MO	
1760 Columbia, SC	0.8990
Lexington, SC	
Richland, SC	
1800 Columbus, GA-AL	0.8450
Russell, AL	
Chattahoochee, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH	0.9705
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8154
Nueces, TX	
San Patricio, TX	
1890 Corvallis, OR	1.1569
Benton, OR	
1900 Cumberland, MD-WV (WV Hospital)	0.8053
Allegany, MD	
Mineral, WV	
1920 Dallas, TX	0.9831
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	
1950 Danville, VA	0.8785
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Moline-Rock Island, IA-IL	0.8872
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9378
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.9133
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.9066
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.8301
Macon, IL	
2080 Denver, CO	1.0401
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.8867
Dallas, IA	
Polk, IA	
Warren, IA	
2160 Detroit, MI	1.0506
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.7990
Dale, AL	
Houston, AL	
2190 Dover, DE	0.9452
Kent, DE	
2200 Dubuque, IA	0.8801
Dubuque, IA	
2240 Duluth-Superior, MN-WI	1.0462
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0793
Dutchess, NY	
2290 Eau Claire, WI	0.9229
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	0.9137
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9851
Elkhart, IN	
2335 Elmira, NY	0.8633
Chemung, NY	
2340 Enid, OK	0.8387
Garfield, OK	
2360 Erie, PA	0.9016
Erie, PA	
2400 Eugene-Springfield, OR	1.1077
Lane, OR	
2440 Evansville-Henderson, IN-KY (IN Hospitals)	0.8796
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND-MN	0.9783
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8980
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.8182
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ-UT	1.0791
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.1233
Genesee, MI	
2650 Florence, AL	0.7927
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8869
Florence, SC	
2670 Fort Collins-Loveland, CO	0.9923
Larimer, CO	
2680 Ft. Lauderdale, FL	1.0368
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.9456
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	0.9802
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR-OK	0.7811
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.9651
Okaloosa, FL	
2760 Fort Wayne, IN	0.9499
Adams, IN	
Allen, IN	
De Kalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Forth Worth-Arlington, TX	0.9620
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0340
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8580
Etowah, AL	
2900 Gainesville, FL	0.9730
Alachua, FL	
2920 Galveston-Texas City, TX	0.9603
Galveston, TX	
2960 Gary, IN	0.9676
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.8633
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8982
Wayne, NC	
2985 Grand Forks, ND-MN	0.8988
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.9615
Mesa, CO	
3000 Grand Rapids-Muskegon-Holland, MI	0.9645
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.9042
Cascade, MT	
3060 Greeley, CO	0.9104
Weld, CO	
3080 Green Bay, WI	0.9599
Brown, WI	
3120 Greensboro-Winston-Salem-High Point, NC	0.9270
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9177
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9177
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9362
Washington, MD	
3200 Hamilton-Middletown, OH	0.9484
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	0.9315
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT	1.2520
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 [2] Hattiesburg, MS	0.7746
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.8958
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1121
Honolulu, HI	
3350 Houma, LA	0.8470
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX	0.9746
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
3400 Huntington-Ashland, WV-KY-OH	0.9744
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.8901
Limestone, AL	
Madison, AL	
3480 Indianapolis, IN	0.9828
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	1.0025
Johnson, IA	
3520 Jackson, MI	0.9591
Jackson, MI	
3560 Jackson, MS	0.8713
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.9370
Madison, TN	
Chester, TN	
3600 Jacksonville, FL	0.9341
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC	0.8714
Onslow, NC	
3610 Jamestown, NY	0.8633
Chautauqua, NY	
3620 Janesville-Beloit, WI	0.9696
Rock, WI	
3640 Jersey City, NJ	1.1200
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN-VA	0.8307
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8525
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7828
Craighead, AR	
3710 Joplin, MO	0.8700
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battlecreek, MI	1.0689
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	0.9591
Kankakee, IL	
3760 Kansas City, KS-MO	0.9809
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9741
Kenosha, WI	
3810 Killeen-Temple, TX	0.8447
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.9090
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.8950
Howard, IN	
Tipton, IN	
3870 La Crosse, WI-MN	0.9229
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8550
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.9515
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.8030
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.9162
Polk, FL	
4000 Lancaster, PA	0.9171
Lancaster, PA	
4040 Lansing-East Lansing, MI	0.9827
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.8504
Webb, TX	
4100 Las Cruces, NM	0.8888
Dona Ana, NM	
4120 Las Vegas, NV-AZ	1.1018
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.7964
Douglas, KS	
4200 Lawton, OK	0.8251
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9249
Androscoggin, ME	
4280 Lexington, KY	0.8629
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.9515
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	0.8928
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.9045
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.8588
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA	1.2027
Los Angeles, CA	
4520 [1] Louisville, KY-IN	0.9517
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.7752
Lubbock, TX	
4640 Lynchburg, VA	0.9311
Amherst, VA	
Bedford, VA	
Bedford City, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.9259
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0188
Dane, WI	
4800 Mansfield, OH	0.8989
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4921
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8419
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0605
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	1.0782
Brevard, Fl	
4920 Memphis, TN-AR-MS	0.8839
Crittenden, AR	
DeSoto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	0.9937
Merced, CA	
5000 Miami, FL	0.9864
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ	1.1454
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 Milwaukee-Waukesha, WI	0.9901
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 Minneapolis-St. Paul, MN-WI	1.0969
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5140 Missoula, MT	0.9250
Missoula, MT	
5160 Mobile, AL	0.8179
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.0606
Stanislaus, CA	
5190 Monmouth-Ocean, NJ	1.1270
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.8191
Ouachita, LA	
5240 Montgomery, AL	0.7786
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	0.9150
Delaware, IN	
5330 Myrtle Beach, SC	0.9141
Horry, SC	
5345 Naples, FL	0.9803
Collier, FL	
5360 Nashville, TN	0.9456
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 Nassau-Suffolk, NY	1.3441
Nassau, NY	
Suffolk, NY	
5483 New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2520
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT	1.2520
New London, CT	
5560 New Orleans, LA	0.9050
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John The Baptist, LA	
St. Tammany, LA	
5600 New York, NY	1.4069
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 Newark, NJ	1.1504
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY-PA	1.1434
Orange, NY	
Pike, PA	
5720 Norfolk-Virginia Beach-Newport News, VA-NC	0.8553
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City VA	
Williamsburg City, VA	
York, VA	
5775 Oakland, CA	1.5222
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.9526
Marion, FL	
5800 Odessa-Midland, TX	0.9233
Ector, TX	
Midland, TX	
5880 Oklahoma City, OK	0.8997
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.1071
Thurston, WA	
5920 Omaha, NE-IA	1.0089
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 Orange County, CA	1.1604
Orange, CA	
5960 Orlando, FL	0.9537
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.8283
Daviess, KY	
6015 Panama City, FL	0.8926
Bay, FL	
6020 Parkersburg-Marietta, WV-OH	0.8210
Washington, OH	
Wood, WV	
6080 Pensacola, FL	0.8907
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8854
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 Philadelphia, PA-NJ	1.0675
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ	0.9562
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7866
Jefferson, AR	
6280 Pittsburgh, PA	0.9403
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.1257
Berkshire, MA	
6340 Pocatello, ID	0.8799
Bannock, ID	
6360 Ponce, PR	0.5221
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9932
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver, OR-WA	1.0774
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI	1.0558
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	1.0190
Utah, UT	
6560 Pueblo, CO	0.9104
Pueblo, CO	
6580 Punta Gorda, FL	0.8907
Charlotte, FL	
6600 Racine, WI	0.9413
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	1.0083
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8936
Pennington, SD	
6680 Reading, PA	0.9308
Berks, PA	
6690 Redding, CA	1.1249
Shasta, CA	
6720 Reno, NV	1.0664
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	1.1608
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9735
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 Riverside-San Bernardino, CA	1.1251
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8703
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.2263
Olmsted, MN	
6840 Rochester, NY	0.9133
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.9456
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.9322
Edgecombe, NC	
Nash, NC	
6920 Sacramento, CA	1.1622
El Dorado, CA	
Placer, CA	
Sacramento, CA	
6960 Saginaw-Bay City-Midland, MI	0.9709
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	0.9757
Benton, MN	
Stearns, MN	
7000 St. Joseph, MO	0.8093
Andrew, MO	
Buchanan, MO	
7040 St. Louis, MO-IL	0.8907
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
7080 Salem, OR	1.0473
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4772
Monterey, CA	
7160 Salt Lake City-Ogden, UT	1.0035
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.7956
Tom Green, TX	
7240 San Antonio, TX	0.8649
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA	1.1243
San Diego, CA	
7360 San Francisco, CA	1.4288
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 San Jose, CA	1.4162
Santa Clara, CA	
7440 San Juan-Bayamon, PR	0.4706
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1386
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0588
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.3630
Santa Cruz, CA	
7490 Santa Fe, NM	1.0822
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.3179
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9339
Manatee, FL	
Sarasota, FL	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
7520 Savannah, GA	0.9961
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton--Wilkes-Barre--Hazleton, PA	0.8525
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA	1.1571
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA	0.8525
Mercer, PA	
7620 Sheboygan, WI	0.9229
Sheboygan, WI	
7640 Sherman-Denison, TX	0.9334
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.8813
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA-NE	0.9138
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.9098
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	0.9902
St. Joseph, IN	
7840 Spokane, WA	1.0961
Spokane, WA	
7880 Springfield, IL	0.8654
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.8510
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.1257
Hampden, MA	
Hampshire, MA	
8050 State College, PA	0.9032
Centre, PA	
8080 Steubenville-Weirton, OH-WV (WV Hospitals)	0.8893
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.0445
San Joaquin, CA	
8140 Sumter, SC	0.8607
Sumter, SC	
8160 Syracuse, NY	0.9519
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.1052
Pierce, WA	
8240 Tallahassee, FL	0.8907
Gadsden, FL	
Leon, FL	
8280 Tampa-St. Petersburg-Clearwater, FL	0.9127
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8796
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana,AR-Texarkana, TX	0.8150
Miller, AR	
Bowie, TX	
8400 Toledo, OH	0.9863
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.8952
Shawnee, KS	
8480 Trenton, NJ	1.0710
Mercer, NJ	
8520 Tucson, AZ	0.8993
Pima, AZ	
8560 Tulsa, OK	0.8398
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8221
Tuscaloosa, AL	
8640 Tyler, TX	0.9650
Smith, TX	
8680 Utica-Rome, NY	0.8633
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.3472
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.1209
Ventura, CA	
8750 Victoria, TX	0.8814
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0296
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA	0.9934
Tulare, CA	
8800 Waco, TX	0.8802
McLennan, TX	
8840 Washington, DC-MD-VA-WV	1.0852
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpeper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8395
Black Hawk, IA	
8940 Wausau, WI	0.9882
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL	0.9929
Palm Beach, FL	
9000 Wheeling, WV-OH	0.8053
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9571
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.8023
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8624
Lycoming, PA	
9160 Wilmington-Newark, DE-MD	1.1287
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9471
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	1.0676
Yakima, WA	
9270 Yolo, CA	0.9934
Yolo, CA	
9280 York, PA	0.9140
York, PA	
9320 Youngstown-Warren, OH	0.9485
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0310
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.8677
Yuma, AZ	

TABLE 4H.—PRE-RECLASSIFIED WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7786
Alaska	1.2323
Arizona	0.8483
Arkansas	0.7670
California	0.9934
Colorado	0.9104
Connecticut	1.2520
Delaware	0.9126
Florida	0.8907
Georgia	0.8254
Hawaii	1.0342
Idaho	0.8799
Illinois	0.8301
Indiana	0.8796
Iowa	0.8395
Kansas	0.7964

TABLE 4H.—PRE-RECLASSIFIED WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Kentucky	0.8079
Louisiana	0.7637
Maine	0.8754
Maryland	0.8855
Massachusetts	1.1257
Michigan	0.8944
Minnesota	0.9249
Mississippi	0.7746
Missouri	0.8093
Montana	0.8567
Nebraska	0.8283
Nevada	0.9519
New Hampshire	0.9882

TABLE 4H.—PRE-RECLASSIFIED WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
New Jersey [1]	.....
New Mexico	0.8645
New York	0.8633
North Carolina	0.8714
North Dakota	0.7830
Ohio	0.8675
Oklahoma	0.7664
Oregon	1.0408
Pennsylvania	0.8525
Puerto Rico	0.4400
Rhode Island [1]	.....
South Carolina	0.8607
South Dakota	0.7895

TABLE 4H.—PRE-RECLASSIFIED WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Tennessee	0.7873
Texas	0.7752
Utah	0.9426
Vermont	0.9402
Virginia	0.8494
Washington	1.0274
West Virginia	0.8053
Wisconsin	0.9229
Wyoming	0.8890

[1] All counties within the State are classified as urban.

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY

DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
1	01	SURG	CRANIOTOMY AGE >17 W CC	3.7174	8.1	11.2
2	01	SURG	CRANIOTOMY AGE >17 W/O CC	1.9613	4.0	5.2
3	01	SURG	*CRANIOTOMY AGE 0-17	1.9441	12.7	12.7
4	01	SURG	SPINAL PROCEDURES	2.2960	4.5	7.2
5	01	SURG	EXTRACRANIAL VASCULAR PROCEDURES	1.3846	2.1	3.1
6	01	SURG	CARPAL TUNNEL RELEASE	.8237	2.1	2.9
7	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	2.5718	6.5	9.8
8	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	1.4925	1.9	2.8
9	01	MED	SPINAL DISORDERS & INJURIES	1.3592	4.6	6.6
10	01	MED	NERVOUS SYSTEM NEOPLASMS W CC	1.2507	4.9	6.6
11	01	MED	NERVOUS SYSTEM NEOPLASMS W/O CC	.8629	3.0	4.0
12	01	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	.8881	4.4	5.9
13	01	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	.7928	4.1	5.0
14	01	MED	INTRACRANIAL HEMORRHAGE & STROKE W INFARCT	1.2742	4.8	6.2
15	01	MED	NONSPECIFIC CVA & PRECEREBRAL OCCLUSION W/O INFARCT	.9844	4.0	5.0
16	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.2389	4.7	6.2
17	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	.6651	2.5	3.1
18	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	.9712	4.2	5.4
19	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	.6939	2.8	3.5
20	01	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	2.7921	8.0	10.8
21	01	MED	VIRAL MENINGITIS	1.5323	5.0	6.6
22	01	MED	HYPERTENSIVE ENCEPHALOPATHY	1.0334	3.9	5.0
23	01	MED	NONTRAUMATIC STUPOR & COMA	.8214	3.1	4.3
24	01	MED	SEIZURE & HEADACHE AGE >17 W CC	.9953	3.6	4.9
25	01	MED	SEIZURE & HEADACHE AGE >17 W/O CC	.6061	2.5	3.2
26	01	MED	SEIZURE & HEADACHE AGE 0-17	.7854	2.5	4.7
27	01	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.3045	3.2	5.0
28	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	1.3318	4.5	6.3
29	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	.7069	2.7	3.6
30	01	MED	*TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	.3288	2.0	2.0
31	01	MED	CONCUSSION AGE >17 W CC	.8787	3.0	4.1
32	01	MED	CONCUSSION AGE >17 W/O CC	.5318	1.9	2.4
33	01	MED	*CONCUSSION AGE 0-17	.2066	1.6	1.6
34	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W CC	.9962	3.7	5.1
35	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	.6353	2.5	3.2
36	02	SURG	RETINAL PROCEDURES	.6814	1.2	1.5
37	02	SURG	ORBITAL PROCEDURES	1.0534	2.6	3.8
38	02	SURG	PRIMARY IRIS PROCEDURES	.5412	1.9	2.5
39	02	SURG	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.5924	1.5	1.9
40	02	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.8647	2.5	3.6
41	02	SURG	*EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	.3348	1.6	1.6
42	02	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	.6552	1.7	2.4
43	02	MED	HYPHEMA	.4951	2.4	3.0
44	02	MED	ACUTE MAJOR EYE INFECTIONS	.6374	4.1	5.1
45	02	MED	NEUROLOGICAL EYE DISORDERS	.7064	2.6	3.2

*MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM 19 STATES FOR LOW VOLUME DRGS.
**DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR TRANSFER CASES.
ARITHMETIC MEAN IS PRESENTED FOR INFORMATIONAL PURPOSES ONLY.
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 AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
46	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W CC	.7810	3.4	4.6
47	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	.5193	2.5	3.2
48	02	MED	*OTHER DISORDERS OF THE EYE AGE 0-17	.2949	2.9	2.9
49	03	SURG	MAJOR HEAD & NECK PROCEDURES	1.7706	3.3	4.6
50	03	SURG	SIALOADENECTOMY	.8318	1.5	1.8
51	03	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	.9325	1.9	3.1
52	03	SURG	CLEFT LIP & PALATE REPAIR	.8003	1.5	1.9
53	03	SURG	SINUS & MASTOID PROCEDURES AGE >17	1.1968	2.1	3.4
54	03	SURG	*SINUS & MASTOID PROCEDURES AGE 0-17	.4779	3.2	3.2
55	03	SURG	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	.9492	1.9	3.0
56	03	SURG	RHINOPLASTY	.9678	2.0	3.0
57	03	SURG	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17.	.9849	2.4	3.7
58	03	SURG	*T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17.	.2714	1.5	1.5
59	03	SURG	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.7530	1.8	2.6
60	03	SURG	*TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.2067	1.5	1.5
61	03	SURG	MYRINGOTOMY W TUBE INSERTION AGE >17	1.3030	2.9	4.8
62	03	SURG	*MYRINGOTOMY W TUBE INSERTION AGE 0-17	.2927	1.3	1.3
63	03	SURG	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.4279	3.0	4.5
64	03	MED	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.3100	4.4	6.6
65	03	MED	DYSEQUILIBRIUM	.5487	2.3	2.8
66	03	MED	EPISTAXIS	.5626	2.4	3.1
67	03	MED	EPIGLOTTITIS	.7763	2.8	3.6
68	03	MED	OTITIS MEDIA & URI AGE >17 W CC	.6690	3.1	3.8
69	03	MED	OTITIS MEDIA & URI AGE >17 W/O CC	.5033	2.4	3.0
70	03	MED	OTITIS MEDIA & URI AGE 0-17	.4570	2.8	3.5
71	03	MED	LARYNGOTRACHEITIS	.6933	2.8	3.4
72	03	MED	NASAL TRAUMA & DEFORMITY	.7159	2.6	3.6
73	03	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	.7961	3.2	4.4
74	03	MED	*OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	.3326	2.1	2.1
75	04	SURG	MAJOR CHEST PROCEDURES	3.0978	7.7	10.1
76	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.8553	8.5	11.4
77	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.2070	3.5	4.9
78	04	MED	PULMONARY EMBOLISM	1.2980	5.7	6.7
79	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	1.6199	6.7	8.5
80	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	.8747	4.4	5.5
81	04	MED	*RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	1.5059	6.1	6.1
82	04	MED	RESPIRATORY NEOPLASMS	1.3926	5.2	7.0
83	04	MED	MAJOR CHEST TRAUMA W CC	.9653	4.3	5.5
84	04	MED	MAJOR CHEST TRAUMA W/O CC	.5109	2.6	3.2
85	04	MED	PLEURAL EFFUSION W CC	1.2119	4.8	6.4
86	04	MED	PLEURAL EFFUSION W/O CC	.6963	2.9	3.8
87	04	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.3625	4.8	6.3
88	04	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	.9039	4.1	5.1
89	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.0431	4.8	5.9
90	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	.6270	3.4	4.0
91	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	.6854	3.2	4.0
92	04	MED	INTERSTITIAL LUNG DISEASE W CC	1.2255	5.0	6.4
93	04	MED	INTERSTITIAL LUNG DISEASE W/O CC	.7331	3.3	4.1
94	04	MED	PNEUMOTHORAX W CC	1.1575	4.7	6.4
95	04	MED	PNEUMOTHORAX W/O CC	.5895	2.9	3.7
96	04	MED	BRONCHITIS & ASTHMA AGE >17 W CC	.7541	3.7	4.6
97	04	MED	BRONCHITIS & ASTHMA AGE >17 W/O CC	.5602	2.9	3.5
98	04	MED	BRONCHITIS & ASTHMA AGE 0-17	.9319	3.7	5.1
99	04	MED	RESPIRATORY SIGNS & SYMPTOMS W CC	.7022	2.4	3.2
100	04	MED	RESPIRATORY SIGNS & SYMPTOMS W/O CC	.5347	1.7	2.1
101	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	.8567	3.3	4.4
102	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	.5447	2.0	2.6
103	PRE	SURG	HEART TRANSPLANT	19.5361	29.7	49.4
104	05	SURG	CARDIAC VALVE & OTH MAJOR CARDIOTHORACIC PROC W CARD CATH.	7.9615	12.3	14.4
105	05	SURG	CARDIAC VALVE & OTH MAJOR CARDIOTHORACIC PROC W/O CARD CATH.	5.7856	8.3	10.0
106	05	SURG	CORONARY BYPASS W PTCA	7.4493	9.6	11.4
107	05	SURG	CORONARY BYPASS W CARDIAC CATH	5.3894	9.2	10.5

*MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM 19 STATES FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR TRANSFER CASES.
ARITHMETIC MEAN IS PRESENTED FOR INFORMATIONAL PURPOSES ONLY.
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 AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type	DRG Title*	Relative weights	Geometric mean LOS	Arithmetic mean LOS
108	05	SURG	OTHER CARDIOTHORACIC PROCEDURES	5.4585	7.8	10.3
109	05	SURG	CORONARY BYPASS W/O PTCA OR CARDIAC CATH	3.9756	6.8	7.7
110	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W CC	4.0985	6.5	9.1
111	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.4445	3.5	4.4
112	05	SURG	NO LONGER VALID	.0000	.0	.0
113	05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE.	2.9028	10.4	13.4
114	05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.6530	6.2	8.5
115	05	SURG	PRM CARD PACEM IMPL W AMI,HRT FAIL OR SHK,OR AICD LEAD OR GN.	3.4452	5.9	8.3
116	05	SURG	OTHER PERMANENT CARDIAC PACEMAKER IMPLANT	2.3075	3.2	4.5
117	05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	1.3312	2.6	4.2
118	05	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.5696	1.9	2.9
119	05	SURG	VEIN LIGATION & STRIPPING	1.3027	3.0	5.1
120	05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	2.2337	5.3	8.8
121	05	MED	CIRCULATORY DISORDERS W AMI & MAJOR COMP, DISCHARGED ALIVE.	1.5813	5.3	6.6
122	05	MED	CIRCULATORY DISORDERS W AMI W/O MAJOR COMP, DISCHARGED ALIVE.	1.0393	3.0	3.8
123	05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.5526	2.8	4.7
124	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG.	1.4301	3.3	4.4
125	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG.	1.0846	2.1	2.7
126	05	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.6971	9.5	12.2
127	05	MED	HEART FAILURE & SHOCK	1.0027	4.1	5.3
128	05	MED	DEEP VEIN THROMBOPHLEBITIS	.7241	4.7	5.5
129	05	MED	CARDIAC ARREST, UNEXPLAINED	1.0803	1.8	2.8
130	05	MED	PERIPHERAL VASCULAR DISORDERS W CC	.9384	4.5	5.7
131	05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	.5683	3.3	4.1
132	05	MED	ATHEROSCLEROSIS W CC	.6540	2.3	3.0
133	05	MED	ATHEROSCLEROSIS W/O CC	.5359	1.8	2.3
134	05	MED	HYPERTENSION	.5884	2.5	3.2
135	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	.8961	3.3	4.5
136	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC.	.5709	2.1	2.6
137	05	MED	*CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	.8113	3.3	3.3
138	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	.8249	3.1	4.0
139	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	.5128	2.0	2.5
140	05	MED	ANGINA PECTORIS	.5384	2.1	2.6
141	05	MED	SYNCOPE & COLLAPSE W CC	.7284	2.8	3.6
142	05	MED	SYNCOPE & COLLAPSE W/O CC	.5605	2.1	2.6
143	05	MED	CHEST PAIN	.5394	1.7	2.1
144	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.1931	3.8	5.5
145	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	.5881	2.1	2.7
146	06	SURG	RECTAL RESECTION W CC	2.7193	8.8	10.2
147	06	SURG	RECTAL RESECTION W/O CC	1.5566	5.8	6.4
148	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.4444	10.2	12.3
149	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.5247	5.9	6.5
150	06	SURG	PERITONEAL ADHESIOLYSIS W CC	2.8477	9.1	11.2
151	06	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.3334	4.5	5.7
152	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.9467	6.9	8.3
153	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.1736	4.8	5.4
154	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC.	4.1397	9.8	13.2
155	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC.	1.3054	3.0	4.0
156	06	SURG	*STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	.8355	6.0	6.0
157	06	SURG	ANAL & STOMAL PROCEDURES W CC	1.2618	3.9	5.6
158	06	SURG	ANAL & STOMAL PROCEDURES W/O CC	.6504	2.0	2.5
159	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC.	1.3593	3.7	5.1
160	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC.	.8070	2.2	2.7
161	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	1.1278	2.8	4.2
162	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	.6337	1.6	1.9

*MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM 19 STATES FOR LOW VOLUME DRGS.
**DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR TRANSFER CASES.
ARITHMETIC MEAN IS PRESENTED.FOR INFORMATIONAL PURPOSES ONLY.
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 AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
163	06	SURG	*HERNIA PROCEDURES AGE 0-17	.6855	2.1	2.1
164	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	2.2964	7.0	8.3
165	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.2622	4.0	4.7
166	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.4680	3.7	4.9
167	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	.9104	2.1	2.5
168	03	SURG	MOUTH PROCEDURES W CC	1.2974	3.3	4.9
169	03	SURG	MOUTH PROCEDURES W/O CC	.7397	1.8	2.3
170	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	2.8017	7.4	11.0
171	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.1651	3.1	4.3
172	06	MED	DIGESTIVE MALIGNANCY W CC	1.3567	5.1	7.0
173	06	MED	DIGESTIVE MALIGNANCY W/O CC	.7531	2.7	3.8
174	06	MED	G.I. HEMORRHAGE W CC	.9937	3.9	4.8
175	06	MED	G.I. HEMORRHAGE W/O CC	.5553	2.5	2.9
176	06	MED	COMPLICATED PEPTIC ULCER	1.0832	4.1	5.3
177	06	MED	UNCOMPLICATED PEPTIC ULCER W CC	.9193	3.7	4.5
178	06	MED	UNCOMPLICATED PEPTIC ULCER W/O CC	.6843	2.6	3.1
179	06	MED	INFLAMMATORY BOWEL DISEASE	1.0778	4.6	6.0
180	06	MED	G.I. OBSTRUCTION W CC	.9429	4.2	5.4
181	06	MED	G.I. OBSTRUCTION W/O CC	.5322	2.8	3.4
182	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC.	.7982	3.3	4.4
183	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC.	.5722	2.3	2.9
184	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	.4806	2.3	2.8
185	03	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17.	.8998	3.3	4.7
186	03	MED	*DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17.	.3185	2.9	2.9
187	03	MED	DENTAL EXTRACTIONS & RESTORATIONS	.8564	3.0	4.1
188	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	1.0955	4.1	5.6
189	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	.5821	2.4	3.1
190	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	.6986	3.3	4.8
191	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W CC	4.2962	9.8	13.8
192	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.6932	4.7	6.1
193	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC.	3.4015	10.4	12.8
194	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC.	1.6023	5.5	6.9
195	07	SURG	CHOLECYSTECTOMY W C.D.E. W CC	3.0046	8.6	10.4
196	07	SURG	CHOLECYSTECTOMY W C.D.E. W/O CC	1.6036	4.6	5.4
197	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC.	2.4858	7.3	9.0
198	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC.	1.2276	3.8	4.4
199	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.4260	7.0	9.9
200	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY.	2.9570	6.5	10.5
201	07	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	3.7421	10.3	14.5
202	07	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.2879	4.8	6.4
203	07	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.3499	5.0	6.8
204	07	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.1826	4.4	5.8
205	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	1.1933	4.6	6.2
206	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	.7038	3.0	3.9
207	07	MED	DISORDERS OF THE BILIARY TRACT W CC	1.1338	4.0	5.3
208	07	MED	DISORDERS OF THE BILIARY TRACT W/O CC	.6526	2.3	2.9
209	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY.	2.0531	4.5	5.0
210	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC.	1.8289	6.1	7.0
211	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC.	1.2715	4.6	5.0
212	08	SURG	*HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	.8391	11.1	11.1
213	08	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS.	1.8664	6.6	9.2
214	08	SURG	NO LONGER VALID	.0000	.0	.0
215	08	SURG	NO LONGER VALID	.0000	.0	.0

*MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM 19 STATES FOR LOW VOLUME DRGS.
**DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR TRANSFER CASES.
ARITHMETIC MEAN IS PRESENTED FOR INFORMATIONAL PURPOSES ONLY.
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 AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
216	08	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	2.2151	6.6	9.6
217	08	SURG	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS.	3.0062	9.1	13.4
218	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W CC.	1.5404	4.3	5.4
219	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC.	1.0244	2.7	3.2
220	08	SURG	*LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17.	.5789	5.3	5.3
221	08	SURG	NO LONGER VALID	.0000	.0	.0
222	08	SURG	NO LONGER VALID	.0000	.0	.0
223	08	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC.	1.0248	2.1	2.9
224	08	SURG	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC.	.7868	1.6	1.9
225	08	SURG	FOOT PROCEDURES	1.1460	3.4	5.0
226	08	SURG	SOFT TISSUE PROCEDURES W CC	1.5663	4.6	6.7
227	08	SURG	SOFT TISSUE PROCEDURES W/O CC	.8129	2.1	2.7
228	08	SURG	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC.	1.1339	2.6	4.1
229	08	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	.6984	1.7	2.2
230	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR.	1.2657	3.3	5.1
231	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR.	1.3977	3.1	4.9
232	08	SURG	ARTHROSCOPY	1.0021	1.8	2.7
233	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	1.9862	4.8	7.2
234	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	1.2329	2.3	3.2
235	08	MED	FRACTURES OF FEMUR	.7648	3.8	5.1
236	08	MED	FRACTURES OF HIP & PELVIS	.7233	4.0	4.9
237	08	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	.5797	2.9	3.6
238	08	MED	OSTEOMYELITIS	1.3934	6.6	8.9
239	08	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY.	1.0031	4.9	6.3
240	08	MED	CONNECTIVE TISSUE DISORDERS W CC	1.3301	5.0	6.7
241	08	MED	CONNECTIVE TISSUE DISORDERS W/O CC	.6493	3.1	3.9
242	08	MED	SEPTIC ARTHRITIS	1.1093	5.1	6.7
243	08	MED	MEDICAL BACK PROBLEMS	.7407	3.7	4.7
244	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	.7056	3.7	4.7
245	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	.4686	2.7	3.4
246	08	MED	NON-SPECIFIC ARTHROPATHIES	.5658	2.9	3.8
247	08	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE.	.5725	2.6	3.4
248	08	MED	TENDONITIS, MYOSITIS & BURSITIS	.8317	3.8	4.9
249	08	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	.6895	2.5	3.7
250	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC.	.6886	3.3	4.2
251	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC.	.4624	2.2	2.8
252	08	MED	*FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	.2513	1.8	1.8
253	08	MED	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W CC.	.7384	3.7	4.7
254	08	MED	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC.	.4433	2.6	3.1
255	08	MED	*FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	.2928	2.9	2.9
256	08	MED	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES.	.8038	3.8	5.1
257	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W CC	.8995	2.1	2.7
258	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.7107	1.6	1.8
259	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	.9130	1.7	2.7
260	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.6821	1.2	1.4
261	09	SURG	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION.	.9773	1.6	2.2
262	09	SURG	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	.9324	2.9	4.3

*MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM 19 STATES FOR LOW VOLUME DRGS.
**DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR TRANSFER CASES.
ARITHMETIC MEAN IS PRESENTED FOR INFORMATIONAL PURPOSES ONLY.
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 AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
263	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	2.2113	9.3	12.5
264	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC.	1.1350	5.5	7.1
265	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC.	1.5906	4.2	6.7
266	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC.	.8540	2.2	3.1
267	09	SURG	PERIANAL & PILONIDAL PROCEDURES	.9343	2.5	4.3
268	09	SURG	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	1.1068	2.4	3.6
269	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.6798	5.7	8.2
270	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	.7495	2.3	3.3
271	09	MED	SKIN ULCERS	1.0266	5.6	7.3
272	09	MED	MAJOR SKIN DISORDERS W CC	1.0013	4.6	6.1
273	09	MED	MAJOR SKIN DISORDERS W/O CC	.5578	3.0	3.9
274	09	MED	MALIGNANT BREAST DISORDERS W CC	1.1936	4.8	6.8
275	09	MED	MALIGNANT BREAST DISORDERS W/O CC	.5469	2.2	3.0
276	09	MED	NON-MALIGANT BREAST DISORDERS	.6781	3.5	4.5
277	09	MED	CELLULITIS AGE >17 W CC	.8580	4.7	5.8
278	09	MED	CELLULITIS AGE >17 W/O CC	.5497	3.6	4.3
279	09	MED	*CELLULITIS AGE 0-17	.6580	4.2	4.2
280	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	.6972	3.2	4.2
281	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	.4634	2.3	2.9
282	09	MED	*TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	.2545	2.2	2.2
283	09	MED	MINOR SKIN DISORDERS W CC	.7211	3.5	4.7
284	09	MED	MINOR SKIN DISORDERS W/O CC	.4300	2.4	3.1
285	10	SURG	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS.	2.0391	8.0	10.6
286	10	SURG	ADRENAL & PITUITARY PROCEDURES	2.0831	4.5	5.9
287	10	SURG	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS.	1.8701	7.7	10.6
288	10	SURG	O.R. PROCEDURES FOR OBESITY	2.2124	4.3	5.4
289	10	SURG	PARATHYROID PROCEDURES	.9697	1.8	2.8
290	10	SURG	THYROID PROCEDURES	.8955	1.7	2.2
291	10	SURG	THYROGLOSSAL PROCEDURES	.6333	1.4	1.6
292	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	2.4623	6.8	10.0
293	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.2998	3.3	4.9
294	10	MED	DIABETES AGE >35	.7573	3.4	4.5
295	10	MED	DIABETES AGE 0-35	.7854	3.0	4.0
296	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	.8469	3.9	5.1
297	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	.5046	2.7	3.4
298	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	.5879	2.9	4.4
299	10	MED	INBORN ERRORS OF METABOLISM	.9367	3.8	5.4
300	10	MED	ENDOCRINE DISORDERS W CC	1.0930	4.7	6.2
301	10	MED	ENDOCRINE DISORDERS W/O CC	.6308	2.8	3.7
302	11	SURG	KIDNEY TRANSPLANT	3.2671	7.4	8.7
303	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM.	2.4195	6.7	8.3
304	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC.	2.3243	6.2	8.7
305	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC.	1.1946	2.9	3.6
306	11	SURG	PROSTATECTOMY W CC	1.2725	3.6	5.5
307	11	SURG	PROSTATECTOMY W/O CC	.6329	1.8	2.2
308	11	SURG	MINOR BLADDER PROCEDURES W CC	1.6399	4.0	6.3
309	11	SURG	MINOR BLADDER PROCEDURES W/O CC	.8980	1.7	2.2
310	11	SURG	TRANSURETHRAL PROCEDURES W CC	1.1281	2.9	4.3
311	11	SURG	TRANSURETHRAL PROCEDURES W/O CC	.6270	1.5	1.8
312	11	SURG	URETHRAL PROCEDURES, AGE >17 W CC	1.0583	3.0	4.5
313	11	SURG	URETHRAL PROCEDURES, AGE >17 W/O CC	.6693	1.7	2.1
314	11	SURG	*URETHRAL PROCEDURES, AGE 0-17	.4905	2.3	2.3
315	11	SURG	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.0954	3.8	7.2
316	11	MED	RENAL FAILURE	1.3241	4.9	6.6
317	11	MED	ADMIT FOR RENAL DIALYSIS	.6603	2.0	3.1
318	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.1819	4.4	6.1
319	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	.6051	2.1	2.9
320	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	.8555	4.3	5.3

*MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM 19 STATES FOR LOW VOLUME DRGS.
**DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR TRANSFER CASES.
ARITHMETIC MEAN IS PRESENTED FOR INFORMATIONAL PURPOSES ONLY.
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 AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
321	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	.5645	3.1	3.8
322	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	.4769	3.1	3.7
323	11	MED	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	.8049	2.4	3.1
324	11	MED	URINARY STONES W/O CC	.4643	1.5	1.8
325	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC ...	.6508	2.9	3.8
326	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	.4441	2.2	2.7
327	11	MED	*KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	.3668	3.1	3.1
328	11	MED	URETHRAL STRICTURE AGE >17 W CC	.7339	2.8	3.8
329	11	MED	URETHRAL STRICTURE AGE >17 W/O CC	.4891	1.7	2.2
330	11	MED	*URETHRAL STRICTURE AGE 0-17	.3160	1.6	1.6
331	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	1.0553	4.2	5.6
332	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	.5998	2.4	3.2
333	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	.7662	3.3	4.7
334	12	SURG	MAJOR MALE PELVIC PROCEDURES W CC	1.5217	4.0	4.8
335	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O CC	1.1249	2.9	3.2
336	12	SURG	TRANSURETHRAL PROSTATECTOMY W CC	.8721	2.6	3.4
337	12	SURG	TRANSURETHRAL PROSTATECTOMY W/O CC	.6046	1.8	2.1
338	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	1.2297	3.5	5.6
339	12	SURG	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	1.1006	2.9	4.6
340	12	SURG	*TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	.2808	2.4	2.4
341	12	SURG	PENIS PROCEDURES	1.2148	1.9	3.1
342	12	SURG	CIRCUMCISION AGE >17	.7897	2.3	3.1
343	12	SURG	*CIRCUMCISION AGE 0-17	.1526	1.7	1.7
344	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY.	1.2631	1.6	2.4
345	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY.	1.1839	2.9	4.8
346	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	1.0453	4.5	6.0
347	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	.5654	2.0	2.7
348	12	MED	BENIGN PROSTATIC HYPERTROPHY W CC	.7111	3.2	4.2
349	12	MED	BENIGN PROSTATIC HYPERTROPHY W/O CC	.3943	1.9	2.5
350	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	.7192	3.6	4.5
351	12	MED	*STERILIZATION, MALE	.2342	1.3	1.3
352	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.7227	2.8	4.0
353	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY.	1.8746	5.0	6.5
354	13	SURG	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC.	1.5439	4.8	5.8
355	13	SURG	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC.	.9119	3.0	3.2
356	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES.	.7675	1.9	2.2
357	13	SURG	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY.	2.3212	6.7	8.4
358	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.2295	3.5	4.3
359	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	.8356	2.4	2.6
360	13	SURG	VAGINA, CERVIX & VULVA PROCEDURES	.8857	2.3	2.8
361	13	SURG	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	1.1215	2.3	3.7
362	13	SURG	*ENDOSCOPIC TUBAL INTERRUPTION	.2993	1.4	1.4
363	13	SURG	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	.8801	2.6	3.6
364	13	SURG	D&C, CONIZATION EXCEPT FOR MALIGNANCY	.8399	2.7	3.9
365	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.9401	5.2	7.7
366	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	1.2804	4.9	6.9
367	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	.5388	2.3	3.0
368	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	1.2019	5.2	6.7
369	13	MED	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS.	.5941	2.4	3.2
370	14	SURG	CESAREAN SECTION W CC	.9721	4.4	5.7
371	14	SURG	CESAREAN SECTION W/O CC	.6742	3.3	3.6
372	14	MED	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	.6053	2.6	3.7
373	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.3931	2.0	2.3
374	14	SURG	VAGINAL DELIVERY W STERILIZATION &/OR D&C	.7855	2.5	2.9
375	14	SURG	*VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	.5714	4.4	4.4
376	14	MED	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE.	.4827	2.6	3.5

*MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM 19 STATES FOR LOW VOLUME DRGS.
**DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR TRANSFER CASES.
ARITHMETIC MEAN IS PRESENTED FOR INFORMATIONAL PURPOSES ONLY.
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 AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
377	14	SURG	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE.	1.4673	3.2	4.4
378	14	MED	ECTOPIC PREGNANCY	.8385	2.0	2.5
379	14	MED	THREATENED ABORTION	.3944	2.1	3.0
380	14	MED	ABORTION W/O D&C	.3662	1.6	2.0
381	14	SURG	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	.5859	1.6	2.1
382	14	MED	FALSE LABOR	.1588	1.2	1.4
383	14	MED	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	.5475	2.7	4.0
384	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS.	.4188	1.8	2.7
385	15	MED	*NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY.	1.3636	1.8	1.8
386	15	MED	*EXTREME IMMATURITY	4.4966	17.9	17.9
387	15	MED	*PREMATURITY W MAJOR PROBLEMS	3.0711	13.3	13.3
388	15	MED	*PREMATURITY W/O MAJOR PROBLEMS	1.8531	8.6	8.6
389	15	MED	*FULL TERM NEONATE W MAJOR PROBLEMS	3.1546	4.7	4.7
390	15	MED	*NEONATE W OTHER SIGNIFICANT PROBLEMS	1.1165	3.4	3.4
391	15	MED	*NORMAL NEWBORN	.1512	3.1	3.1
392	16	SURG	SPLENECTOMY AGE >17	3.1530	6.9	9.5
393	16	SURG	*SPLENECTOMY AGE 0-17	1.3357	9.1	9.1
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS.	1.7961	4.3	7.0
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	.8141	3.2	4.4
396	16	MED	RED BLOOD CELL DISORDERS AGE 0-17	.6515	2.4	3.8
397	16	MED	COAGULATION DISORDERS	1.2348	3.7	5.2
398	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	1.2646	4.6	5.9
399	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	.6883	2.8	3.6
400	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.6627	5.5	9.0
401	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	2.7815	8.0	11.3
402	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC.	1.1184	2.7	3.9
403	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.7630	5.7	8.0
404	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	.8543	3.0	4.2
405	17	MED	*ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	1.8937	4.9	4.9
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC.	2.7896	6.9	9.7
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC.	1.2754	3.3	4.1
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC.	2.0472	4.7	7.9
409	17	MED	RADIOTHERAPY	1.2026	4.5	6.1
410	17	MED	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	1.0423	3.1	4.0
411	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.3885	2.2	2.9
412	17	MED	HISTORY OF MALIGNANCY W ENDOSCOPY	.2791	1.6	2.0
413	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	1.3594	5.3	7.3
414	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	.6897	3.0	4.0
415	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.6521	10.4	14.5
416	18	MED	SEPTICEMIA AGE >17	1.5936	5.6	7.5
417	18	MED	SEPTICEMIA AGE 0-17	1.1657	4.5	6.1
418	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	1.0377	4.8	6.2
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	.8636	3.6	4.7
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	.5907	2.8	3.4
421	18	MED	VIRAL ILLNESS AGE >17	.7028	2.9	3.8
422	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	.4351	2.3	2.9
423	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.7883	5.9	8.3
424	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.2964	8.1	13.0
425	19	MED	ACUTE ADJUSTMENT REACTION & PSYCHOSOCIAL DYSFUNCTION.	.6796	2.9	3.9
426	19	MED	DEPRESSIVE NEUROSES	.5177	3.2	4.5
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	.5199	3.1	4.4
428	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	.7376	4.4	7.4
429	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	.8268	4.7	6.3
430	19	MED	PSYCHOSES	.7128	5.7	8.0
431	19	MED	CHILDHOOD MENTAL DISORDERS	.5925	4.2	5.9
432	19	MED	OTHER MENTAL DISORDER DIAGNOSES	.6333	2.9	4.6

*MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM 19 STATES FOR LOW VOLUME DRGS.
**DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR TRANSFER CASES.
ARITHMETIC MEAN IS PRESENTED FOR INFORMATIONAL PURPOSES ONLY.
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 AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
433	20	MED	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	.2752	2.2	3.0
434	20	MED	NO LONGER VALID	.0000	.0	.0
435	20	MED	NO LONGER VALID	.0000	.0	.0
436	20	MED	NO LONGER VALID	.0000	.0	.0
437	20	MED	NO LONGER VALID	.0000	.0	.0
438	20		NO LONGER VALID	.0000	.0	.0
439	21	SURG	SKIN GRAFTS FOR INJURIES	1.6840	5.4	8.5
440	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	1.9031	5.7	9.0
441	21	SURG	HAND PROCEDURES FOR INJURIES	.9231	2.1	3.1
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W CC	2.4078	5.6	8.6
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	1.0670	2.6	3.5
444	21	MED	TRAUMATIC INJURY AGE >17 W CC	.7577	3.2	4.3
445	21	MED	TRAUMATIC INJURY AGE >17 W/O CC	.4857	2.3	2.9
446	21	MED	* TRAUMATIC INJURY AGE 0-17	.2936	2.4	2.4
447	21	MED	ALLERGIC REACTIONS AGE >17	.5000	1.8	2.4
448	21	MED	* ALLERGIC REACTIONS AGE 0-17	.0965	2.9	2.9
449	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	.8233	2.6	3.7
450	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	.4272	1.6	2.0
451	21	MED	* POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	.2607	2.1	2.1
452	21	MED	COMPLICATIONS OF TREATMENT W CC	1.0378	3.5	5.0
453	21	MED	COMPLICATIONS OF TREATMENT W/O CC	.5133	2.1	2.8
454	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	.8272	3.0	4.4
455	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	.4542	1.8	2.4
456	22		NO LONGER VALID	.0000	.0	.0
457	22	MED	NO LONGER VALID	.0000	.0	.0
458	22	SURG	NO LONGER VALID	.0000	.0	.0
459	22	SURG	NO LONGER VALID	.0000	.0	.0
460	22	MED	NO LONGER VALID	.0000	.0	.0
461	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES.	1.1927	2.2	4.1
462	23	MED	REHABILITATION	1.1251	9.3	11.5
463	23	MED	SIGNS & SYMPTOMS W CC	.6930	3.2	4.2
464	23	MED	SIGNS & SYMPTOMS W/O CC	.4957	2.4	3.0
465	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	.6785	1.8	2.9
466	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	.7305	2.1	3.9
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.6095	2.1	8.4
468	.....		EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	3.6658	9.2	13.0
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.	3.0990	4.8	5.5
472	22	SURG	NO LONGER VALID	.0000	.0	.0
473	17	SURG	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	3.5075	7.3	12.6
474	04	SURG	NO LONGER VALID	.0000	.0	.0
475	04	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3.6408	8.0	11.3
476	.....	SURG	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	2.2587	8.0	11.3
477	.....	SURG	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	1.8605	5.3	8.2
478	05	SURG	OTHER VASCULAR PROCEDURES W CC	2.3660	4.9	7.4
479	05	SURG	OTHER VASCULAR PROCEDURES W/O CC	1.4314	2.5	3.3
480	PRE	SURG	LIVER TRANSPLANT	10.1911	15.7	21.5
481	PRE	SURG	BONE MARROW TRANSPLANT	6.9570	19.3	22.0
482	PRE	SURG	TRACHEOSTOMY FOR FACE,MOUTH & NECK DIAGNOSES	3.4938	9.7	12.5
483	PRE	SURG	TRACHEOSTOMY/MECH VENT 96+HRS EXCEPT FACE,MOUTH & NECK DIAGNOSES.	16.2670	34.6	42.0
484	24	SURG	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	5.5512	8.9	13.2
485	24	SURG	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TRA.	2.9897	7.6	9.5
486	24	SURG	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA	4.8066	8.4	12.4
487	24	MED	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.9538	5.5	7.8
488	25	SURG	HIV W EXTENSIVE O.R. PROCEDURE	4.6394	11.5	16.9
489	25	MED	HIV W MAJOR RELATED CONDITION	1.7885	6.0	8.6

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM 19 STATES FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR TRANSFER CASES.
ARITHMETIC MEAN IS PRESENTED FOR INFORMATIONAL PURPOSES ONLY.
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 AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
490	25	MED	HIV W OR W/O OTHER RELATED CONDITION	1.0200	3.7	5.3
491	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY.	1.7021	2.9	3.5
492	17	MED	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	3.9117	9.2	15.0
493	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC	1.8188	4.3	5.9
494	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC	1.0128	1.9	2.5
495	PRE	SURG	LUNG TRANSPLANT	8.9713	14.3	17.2
496	08	SURG	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION	5.7699	7.1	9.5
497	08	SURG	SPINAL FUSION EXCEPT CERVICAL W CC	3.3834	5.4	6.5
498	08	SURG	SPINAL FUSION EXCEPT CERVICAL W/O CC	2.4714	3.7	4.1
499	08	SURG	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC	1.4381	3.4	4.6
500	08	SURG	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC	.9487	2.0	2.5
501	08	SURG	KNEE PROCEDURES W PDX OF INFECTION W CC	2.5940	8.4	10.7
502	08	SURG	KNEE PROCEDURES W PDX OF INFECTION W/O CC	1.5391	5.3	6.4
503	08	SURG	KNEE PROCEDURES W/O PDX OF INFECTION	1.2111	2.9	3.9
504	22	SURG	EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT	14.4707	26.9	35.1
505	22	MED	EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT	1.9872	2.2	3.7
506	22	SURG	FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA.	4.6264	12.7	17.3
507	22	SURG	FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA.	1.7118	6.5	9.0
508	22	MED	FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA.	1.4160	5.8	8.4
509	22	MED	FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA.	.9410	4.1	5.5
510	22	MED	NON-EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA	1.2161	4.6	6.7
511	22	MED	NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA	.6968	3.0	4.4
512	PRE	SURG	SIMULTANEOUS PANCREAS/KIDNEY TRANSPLANT	5.7000	11.7	14.2
513	PRE	SURG	PANCREAS TRANSPLANT	6.1951	9.4	10.7
514	05	SURG	CARDIAC DEFIBRILLATOR IMPLANT W CARDIAC CATH	6.3288	5.0	7.3
515	05	SURG	CARDIAC DEFIBRILLATOR IMPLANT W/O CARDIAC CATH	5.0380	3.3	5.5
516	05	SURG	PERCUTANEOUS CARDIOVASC PROC W AMI	2.7295	3.7	4.7
517	05	SURG	PERC CARDIO PROC W CORONARY ARTERY STENT W/O AMI	2.1793	1.9	2.6
518	05	SURG	PERC CARDIO PROC W/O CORONARY ARTERY STENT OR AMI	1.7267	2.3	3.4
519	08	SURG	CERVICAL SPINAL FUSION W CC	2.3467	3.2	5.2
520	08	SURG	CERVICAL SPINAL FUSION W/O CC	1.5390	1.7	2.1
521	20	MED	ALCOHOL/DRUG ABUSE OR DEPENDENCE W CC	.7267	4.3	5.8
522	20	MED	ALC/DRUG ABUSE OR DEPEND W REHABILITATION THERAPY W/O CC.	.5829	7.5	9.5
523	20	MED	ALC/DRUG ABUSE OR DEPEND W/O REHABILITATION THERAPY W/O CC.	.4007	3.3	4.1
524	01	MED	TRANSIENT ISCHEMIA	.7236	2.7	3.4
525	05	SURG	HEART ASSIST SYSTEM IMPLANT	11.3787	9.3	16.2

*MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM 19 STATES FOR LOW VOLUME DRGS.
**DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR TRANSFER CASES.
ARITHMETIC MEAN IS PRESENTED FOR INFORMATIONAL PURPOSES ONLY.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 6A.—NEW DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
040.82	Toxic shock syndrome	Y	18	423
066.4	West Nile fever	N	18	421, 422
277.02	Cystic fibrosis with pulmonary manifestations	Y	4	79, 80, 81
277.03	Cystic fibrosis with gastrointestinal manifestations	Y	6	188, 189, 190
277.09	Cystic fibrosis with other manifestations	Y	10	296, 297, 298
357.81	Chronic inflammatory demyelinating polyneuritis	N	1	18, 19
357.82	Critical illness polyneuropathy	N	1	18, 19
357.89	Other inflammatory and toxic neuropathy	N	1	18, 19
359.81	Critical illness myopathy	N	1	34, 35
359.89	Other myopathies	N	1	34, 35
365.83	Aqueous misdirection	N	2	46, 47, 48
414.06	Coronary atherosclerosis of coronary artery of transplanted heart	N	5	132, 133

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
414.12	Dissection of coronary artery	N	5	121, 144, 145
428.20	Unspecified systolic heart failure	Y	5	115, 121, 124, 127
428.21	Acute systolic heart failure	Y	5	115, 121, 124, 127
428.22	Chronic systolic heart failure	Y	5	115, 121, 124, 127
428.23	Acute on chronic systolic heart failure	Y	5	115, 121, 124, 127
428.30	Unspecified diastolic heart failure	Y	5	115, 121, 124, 127
428.31	Acute diastolic heart failure	Y	5	115, 121, 124, 127
428.32	Chronic diastolic heart failure	Y	5	115, 121, 124, 127
428.33	Acute on chronic diastolic heart failure	Y	5	115, 121, 124, 127
428.40	Unspecified combined systolic and diastolic heart failure	Y	5	115, 121, 124, 127
428.41	Acute combined systolic and diastolic heart failure	Y	5	115, 121, 124, 127
428.42	Chronic combined systolic and diastolic heart failure	Y	5	115, 121, 124, 127
428.43	Acute on chronic combined systolic and diastolic heart failure	Y	5	115, 121, 124, 127
438.6	Alterations of sensations	N	1	12
438.7	Disturbances of vision	N	1	12
438.83	Facial weakness	N	1	12
438.84	Ataxia	N	1	12
438.85	Vertigo	N	1	12
443.21	Dissection of carotid artery	N	5	130, 131
443.22	Dissection of iliac artery	N	5	130, 131
443.23	Dissection of renal artery	N	11	331, 332, 333
443.24	Dissection of vertebral artery	N	5	130, 131
443.29	Dissection of other artery	N	5	130, 131
445.01	Atheroembolism, upper extremity	Y	5	130, 131
445.02	Atheroembolism, lower extremity	Y	5	130, 131
445.81	Atheroembolism, kidney	Y	11	331, 332, 333
445.89	Atheroembolism, other site	Y	5	130, 131
454.8	Varicose veins of the lower extremities, with other complications	N	5	130, 131
459.10	Postphlebetic syndrome without complications	N	5	130, 131
459.11	Postphlebetic syndrome with ulcer	N	5	130, 131
459.12	Postphlebetic syndrome with inflammation	N	5	130, 131
459.13	Postphlebetic syndrome with ulcer and inflammation	N	5	130, 131
459.19	Postphlebetic syndrome with other complication	N	5	130, 131
459.30	Chronic venous hypertension without complications	N	5	130, 131
459.31	Chronic venous hypertension with ulcer	N	5	130, 131
459.32	Chronic venous hypertension with inflammation	N	5	130, 131
459.33	Chronic venous hypertension with ulcer and inflammation	N	5	130, 131
459.39	Chronic venous hypertension with other complication	N	5	130, 131
537.84	Dieulafoy lesion (hemorrhagic) of stomach and duodenum	Y	6	174, 175
569.86	Dieulafoy lesion (hemorrhagic) of intestine	Y	6	188, 189, 190
633.00	Abdominal pregnancy without intrauterine pregnancy	N	14	378
633.01	Abdominal pregnancy with intrauterine pregnancy	N	14	378
633.10	Tubal pregnancy without intrauterine pregnancy	N	14	378
633.11	Tubal pregnancy with intrauterine pregnancy	N	14	378
633.20	Ovarian pregnancy without intrauterine pregnancy	N	14	378
633.21	Ovarian pregnancy with intrauterine pregnancy	N	14	378
633.80	Other ectopic pregnancy without intrauterine pregnancy	N	14	378
633.81	Other ectopic pregnancy with intrauterine pregnancy	N	14	378
633.90	Unspecified ectopic pregnancy without intrauterine pregnancy	N	14	378
633.91	Unspecified ectopic pregnancy with intrauterine pregnancy	N	14	378
747.83	Persistent fetal circulation	N	15	387, 389
765.20	Unspecified weeks of gestation	N	15	391
765.21	Less than 24 completed weeks of gestation	N	15	386
765.22	24 completed weeks of gestation	N	15	386
765.23	25-26 completed weeks of gestation	N	15	386
765.24	27-28 completed weeks of gestation	N	15	387, 388
765.25	29-30 completed weeks of gestation	N	15	387, 388
765.26	31-32 completed weeks of gestation	N	15	387, 388
765.27	33-34 completed weeks of gestation	N	15	387, 388
765.28	35-36 completed weeks of gestation	N	15	387, 388
765.29	37 or more completed weeks of gestation	N	15	391
770.81	Primary apnea of newborn	N	15	390
770.82	Other apnea of newborn	N	15	390
770.83	Cyanotic attacks of newborn	N	15	390
770.84	Respiratory failure of newborn	Y	15	387, 389
770.89	Other respiratory problems after birth	N	15	390
771.81	Septicemia [sepsis] of newborn	Y	15	387, 389
771.82	Urinary tract infection of newborn	N	15	387, 389
771.83	Bacteremia of newborn	Y	15	387, 389
771.89	Other infections specific to the perinatal period	N	15	387, 389
779.81	Neonatal bradycardia	N	15	390

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
779.82	Neonatal tachycardia	N	15	390
779.89	Other specified conditions originating in the perinatal period	N	15	390
780.91	Fussy infant (baby)	N	23	463,464
780.92	Excessive crying of infant (baby)	N	23	463,464
780.99	Other general symptoms	N	23	463,464
781.93	Ocular torticollis	N	8	243
795.00	Nonspecific abnormal Papanicolaou smear of cervix, unspecified	N	13	358, 359, 369
795.01	Atypical squamous cell changes of undetermined significance favor benign (ASCUS favor benign)	N	13	358, 359, 369
795.02	Atypical squamous cell changes of undetermined significance favor dysplasia (ASCUS favor dysplasia)	N	13	358, 359, 369
795.09	Other nonspecific abnormal Papanicolaou smear of cervix	N	13	358, 359, 369
795.31	Nonspecific positive findings for anthrax	N	18	423
795.39	Other nonspecific positive culture findings	N	18	423
813.45	Torus fracture of radius	N	8	250, 251, 252
			24	487
823.40	Torus fracture, tibia alone	N	8	253, 254, 255
			24	487
823.41	Torus fracture, fibula alone	N	8	253, 254, 255
			24	487
823.42	Torus fracture, fibula with tibia	N	8	253, 254, 255
			24	487
995.90	Systemic inflammatory response syndrome, unspecified	Y	18	416, 417
995.91	Systemic inflammatory response syndrome due to infectious process without organ dysfunction	Y	18	416, 417
995.92	Systemic inflammatory response syndrome due to infectious process with organ dysfunction	Y	18	416, 417
995.93	Systemic inflammatory response syndrome due to non-infectious process without organ dysfunction	Y	18	416, 417
995.94	Systemic inflammatory response syndrome due to non-infectious process with organ dysfunction	Y	18	416, 417
998.31	Disruption of internal operation wound	Y	21	452, 453
998.32	Disruption of external operation wound	Y	21	452, 453
V01.81	Contact with or exposure to communicable diseases, anthrax	N	15	391 [1]
			23	467
V01.89	Contact with or exposure to communicable diseases, other communicable diseases	N	15	391 [1]
			23	467
V13.21	Personal history of pre-term labor	N	23	467
V13.29	Personal history of other genital system and obstetric disorders	N	23	467
V23.41	Pregnancy with history of pre-term labor	N	14	469
V23.49	Pregnancy with other poor obstetric history	N	14	469
V46.2	Other dependence on machines, supplemental oxygen	N	23	467
V54.10	Aftercare for healing traumatic fracture of arm, unspecified	N	8	249
V54.11	Aftercare for healing traumatic fracture of upper arm	N	8	249
V54.12	Aftercare for healing traumatic fracture of lower arm	N	8	249
V54.13	Aftercare for healing traumatic fracture of hip	N	8	249
V54.14	Aftercare for healing traumatic fracture of leg, unspecified	N	8	249
V54.15	Aftercare for healing traumatic fracture of upper leg	N	8	249
V54.16	Aftercare for healing traumatic fracture of lower leg	N	8	249
V54.17	Aftercare for healing traumatic fracture of vertebrae	N	8	249
V54.19	Aftercare for healing traumatic fracture of other bone	N	8	249
V54.20	Aftercare for healing pathologic fracture of arm, unspecified	N	8	249
V54.21	Aftercare for healing pathologic fracture of upper arm	N	8	249
V54.22	Aftercare for healing pathologic fracture of lower arm	N	8	249
V54.23	Aftercare for healing pathologic fracture of hip	N	8	249
V54.24	Aftercare for healing pathologic fracture of leg, unspecified	N	8	249
V54.25	Aftercare for healing pathologic fracture of upper leg	N	8	249
V54.26	Aftercare for healing pathologic fracture of lower leg	N	8	249
V54.27	Aftercare for healing pathologic fracture of vertebrae	N	8	249
V54.29	Aftercare for healing pathologic fracture of other bone	N	8	249
V54.81	Aftercare following joint replacement	N	8	249
V54.89	Other orthopedic aftercare	N	8	249
V58.42	Aftercare following surgery for neoplasm	N	23	465,466
V58.43	Aftercare following surgery for injury and trauma	N	23	465,466
V58.71	Aftercare following surgery of the sense organs, NEC	N	23	465,466
V58.72	Aftercare following surgery of the nervous system, NEC	N	23	465,466
V58.73	Aftercare following surgery of the circulatory system, NEC	N	23	465,466
V58.74	Aftercare following surgery of the respiratory system, NEC	N	23	465,466
V58.75	Aftercare following surgery of the teeth, oral cavity and digestive system, NEC	N	23	465,466

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
V58.76	Aftercare following surgery of the genitourinary system, NEC	N	23	465,466
V58.77	Aftercare following surgery of the skin and subcutaneous tissue, NEC	N	23	465,466
V58.78	Aftercare following surgery of the musculoskeletal system, NEC	N	23	465,466
V71.82	Observation and evaluation for suspected exposure to anthrax	N	23	467
V71.83	Observation and evaluation for suspected exposure to other biological agent	N	23	467
V83.81	Cystic fibrosis gene carrier	N	23	467
V83.89	Other genetic carrier status	N	23	467

[1] Classified as an "only secondary diagnosis" in this DRG.

TABLE 6B.—NEW PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
00.01	Therapeutic ultrasound of vessels of head and neck	N		
00.02	Therapeutic ultrasound of heart	N		
00.03	Therapeutic ultrasound of peripheral vascular vessels	N		
00.09	Other therapeutic ultrasound	N		
00.10	Implantation of chemotherapeutic agent	N		
00.11	Infusion of drotrecogin alfa (activated)	N		
00.12	Administration of inhaled nitric oxide	N		
00.13	Injection or infusion of nesiritide	N		
00.14	Injection or infusion of oxazolidinone class of antibiotics	N		
00.50	Implantation of cardiac resynchronization pacemaker without mention of defibrillation, total system [CRT-P]	Y	5	115[1], 116[1]
00.51	Implantation of cardiac resynchronization defibrillator, total system [CRT-D]	Y	5	514[1], 515[1]
00.52	Implantation or replacement of transvenous lead (electrode) into left ventricular coronary venous system	Y	5	115[2], 116[3], 514[4], 515[4]
00.53	Implantation or replacement of cardiac resynchronization pacemaker pulse generator only [CRT-P]	Y	5	115[2], 116[3], 118
00.54	Implantation or replacement of cardiac resynchronization defibrillator pulse generator only [CRT-D]	Y	5	115[1], 514[4], 515[4]
00.55	Insertion of drug-eluting noncoronary artery stent(s)	N		
36.07	Insertion of drug-eluting coronary artery stents(s)	N*	5	517
39.72	Endovascular repair or occlusion of head and neck vessels	Y	1	1,2,3
			5	110, 111
			11	315
			21	442, 443
			24	486
49.75	Implantation or revision of artificial anal sphincter	Y	6	157, 158
			9	267
			21	442, 443
			24	486
49.76	Removal of artificial anal sphincter	Y	6	157, 158
			9	267
			21	442, 443
			24	486
81.61	360 degree spinal fusion, single incision approach	Y	1	4
			8	496
			21	442, 443
			24	486
84.51	Insertion of interbody spinal fusion device	N		
84.52	Insertion of recombinant bone morphogenetic protein	N		
88.96	Other intraoperative magnetic resonance imaging	N		
99.76	Extracorporeal immunoadsorption	N		
99.77	Application or administration of an adhesion barrier substance	N		

*Non-operating room procedure, but affects DRG.
[1] Classified under "operating room procedures".
[2] Classified under "operating room procedure" and under "as any of the following procedure combinations" as 00.52 and 00.53.
[3] Classified under "any of the following procedure combinations" as 00.52 and 00.53.
[4] Classified under "any of the following procedure combinations" as 00.52 and 00.54.

TABLE 6C.—INVALID DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
357.8	Other inflammatory and toxic neuropathy	N	1	18, 19
359.8	Other myopathies	N	1	34, 35

TABLE 6C.—INVALID DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
459.1	Postphlebetic syndrome	N	5	130, 131
633.0	Abdominal pregnancy	N	14	378
633.1	Tubal pregnancy	N	14	378
633.2	Ovarian pregnancy	N	14	378
633.8	Other ectopic pregnancy	N	14	378
633.9	Unspecified ectopic pregnancy	N	14	378
770.8	Other respiratory problems after birth	N	15	387, 389
771.8	Other infections specific to the perinatal period	Y	15	387, 389
779.8	Other specified conditions originating in the perinatal period	N	15	390
780.9	Other general symptoms	N	23	463, 464
795.0	Nonspecific abnormal Papanicolaou smear of cervix	N	13	358, 359, 369
795.3	Nonspecific positive culture findings	N	18	423
998.3	Disruption of operation wound	Y	21	452, 453
V01.8	Other communicable diseases	N	23	467
V13.2	Other genital system and obstetric disorders	N	23	467
V23.4	Pregnancy with other poor obstetric history	N	14	469
V54.8	Other orthopedic aftercare	N	8	249

TABLE 6D.—INVALID PROCEDURE CODES

Note: There are no invalid procedure codes for FY 2003.

TABLE 6E.—REVISED DIAGNOSIS CODE TITLES

Diagnosis code	Description	CC	MDC	DRG
402.00	Hypertensive heart disease, malignant, without heart failure	Y	5	134
402.01	Hypertensive heart disease, malignant, with heart failure	Y	5	115, 121, 124, 127
402.10	Hypertensive heart disease, benign, without heart failure	N	5	134
402.11	Hypertensive heart disease, benign, with heart failure	Y	5	115, 121, 124, 127
402.90	Hypertensive heart disease, unspecified, without heart failure	N	5	134
402.91	Hypertensive heart disease, unspecified, with heart failure	Y	5	115, 121, 124, 127
404.00	Hypertensive heart and renal disease, malignant, without mention of heart failure or renal failure	Y	5	134
404.01	Hypertensive heart and renal disease, malignant, with heart failure	Y	5	115, 121, 124, 127
404.03	Hypertensive heart and renal disease, malignant, with heart failure and renal failure	Y	5	115, 121, 124, 127
404.10	Hypertensive heart and renal disease, benign, without mention of heart failure or renal failure	N	5	134
404.11	Hypertensive heart and renal disease, benign, with heart failure	Y	5	115, 121, 124, 127
404.13	Hypertensive heart and renal disease, benign, with heart failure and renal failure	Y	5	115, 121, 124, 127
404.90	Hypertensive heart and renal disease, unspecified, without mention of heart failure or renal failure	N	5	134
404.91	Hypertensive heart and renal disease, unspecified, with heart failure	Y	5	115, 121, 124, 127
404.93	Hypertensive heart and renal disease, unspecified, with heart failure and renal failure	Y	5	115, 121, 124, 127
414.10	Aneurysm of heart	N	5	121, 144, 145
414.11	Aneurysm of coronary vessels	N	5	121, 144, 145
414.19	Other aneurysm of heart	N	5	121, 144, 145
428.0	Congestive heart failure, unspecified	Y	5	115, 121, 124, 127
454.9	Asymptomatic varicose veins	N	5	130, 131
627.2	Symptomatic menopausal or female climacteric states	N	13	358, 359, 369
627.4	Symptomatic states associated with artificial menopause	N	13	358, 359, 369
V49.81	Asymptomatic postmenopausal status (age-related) (natural)	N	23	467

TABLE 6F.—REVISED PROCEDURE CODE TITLES

Procedure code	Description	OR	MDC	DRG
36.06	Insertion of nondrug-eluting coronary artery stents(s)	N*	5	517
39.79	Other endovascular repair of aneurysm of other vessels	Y	1	1, 2, 3
			5	110, 111
			11	315
			21	442, 443

TABLE 6F.—REVISED PROCEDURE CODE TITLES—Continued

Procedure code	Description	OR	MDC	DRG
39.90	Insertion of nondrug-eluting, noncoronary artery stent(s)	N	24	486

*Nonoperating room procedure, but affects DRG.

TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST

[CCs that are added to the list are in Table 6G-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.]

*0031	99591	6829	99591	99593	44501	42821	4280
99590	99592	99590	99592	99594	44502	42822	4281
99591	99593	99591	99593	*04186	44581	42823	42820
99592	99594	99592	99594	99590	44589	42830	42821
99593	*03843	99593	*0412	99591	*25090	42831	42822
99594	99590	99594	99590	99592	44501	42832	42823
*0202	99591	*04089	99591	99593	44502	42833	42830
99590	99592	99590	99592	99594	44581	42840	42831
99591	99593	99591	99593	*04189	44589	42841	42832
99592	99594	99592	99594	99590	*25091	42842	42833
99593	*03844	99593	*0413	99591	44501	42843	42840
99594	99590	99594	99590	99592	44502	*40211	42841
*0362	99591	*04100	99591	99593	44581	42820	42842
99590	99592	99590	99592	99594	44589	42821	42843
99591	99593	99591	99593	*0419	*25092	42822	4289
99592	99594	99592	99594	99590	44501	42823	5184
99593	*03849	99593	*0414	99591	44502	42830	*42821
99594	99590	99594	99590	99592	44581	42831	39891
*0380	99591	*04101	99591	99593	44589	42832	40201
99590	99592	99590	99592	99594	*25093	42833	40211
99591	99593	99591	99593	*0545	44501	42840	40291
99592	99594	99592	99594	99590	44502	42841	4280
99593	*0388	99593	*0415	99591	44581	42842	4281
99594	99590	99594	99590	99592	44589	42843	42820
*03810	99591	*04102	99591	99593	*2515	*40291	42821
99590	99592	99590	99592	99594	53784	42820	42822
99591	99593	99591	99593	*1398	56986	42821	42823
99592	99594	99592	99594	99590	*27700	42822	42830
99593	*0389	99593	*0416	99591	27702	42823	42831
99594	99590	99594	99590	99592	27703	42830	42832
*03811	99591	*04103	99591	99593	27709	42831	42833
99590	99592	99590	99592	99594	*27701	42832	42840
99591	99593	99591	99593	*25070	27702	42833	42841
99592	99594	99592	99594	44501	27703	42840	42842
99593	*04082	99593	*0417	44502	27709	42841	42843
99594	0380	99594	99590	44581	*27702	42842	4289
*03819	03810	*04104	99591	44589	27700	42843	5184
99590	03811	99590	99592	*25071	27701	*4280	*42822
99591	03819	99591	99593	44501	27702	42820	39891
99592	0382	99592	99594	44502	27703	42821	40201
99593	0383	99593	*04181	44581	27709	42822	40211
99594	03840	99594	99590	44589	*27703	42823	40291
*0382	03841	*04105	99591	*25072	27700	42830	4280
99590	03842	99590	99592	44501	27701	42831	4281
99591	03843	99591	99593	44502	27702	42832	42820
99592	03844	99592	99594	44581	27703	42833	42821
99593	03849	99593	*04182	44589	27709	42840	42822
99594	0388	99594	99590	*25073	*27709	42841	42823
*0383	0389	*04109	99591	44501	27700	42842	42830
99590	04082	99590	99592	44502	27701	42843	42831
99591	6800	99591	99593	44581	27702	*4281	42832
99592	6801	99592	99594	44589	27703	42820	42833
99593	6802	99593	*04183	*25080	27709	42821	42840
99594	6803	99594	99590	44501	*39891	42822	42841
*03840	6804	*04110	99591	44502	42820	42823	42842
99590	6805	99590	99592	44581	42821	42830	42843
99591	6806	99591	99593	44589	42822	42831	4289
99592	6807	99592	99594	*25081	42823	42832	5184
99593	6808	99593	*04184	44501	42830	42833	*42823
99594	6809	99594	99590	44502	42831	42840	39891
*03841	6820	*04111	99591	44581	42832	42841	40201
99590	6821	99590	99592	44589	42833	42842	40211
99591	6822	99591	99593	*25082	42840	42843	40291
99592	6823	99592	99594	44501	42841	*42820	4280
99593	6825	99593	*04185	44502	42842	39891	4281
99594	6826	99594	99590	44581	42843	40201	42820
*03842	6827	*04119	99591	44589	*40201	40211	42821
99590	6828	99590	99592	*25083	42820	40291	42822

TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST—Continued

[CCs that are added to the list are in Table 6G-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.]

42823	5184	42822	42831	56986	*53270	53784	*56202
42830	*42833	42823	42832	*53140	53784	56986	53784
42831	39891	42830	42833	53784	56986	*53411	56986
42832	40201	42831	42840	56986	*53271	53784	*56203
42833	40211	42832	42841	*53141	53784	56986	53784
42840	40291	42833	42842	53784	56986	*53420	56986
42841	4280	42840	42843	56986	*53290	53784	*56212
42842	4281	42841	44501	*53150	53784	56986	53784
42843	42820	42842	44502	53784	56986	*53421	56986
4289	42821	42843	44581	56986	*53291	53784	*56213
5184	42822	4289	44589	*53151	53784	56986	53784
*42830	42823	5184	*4599	53784	56986	*53430	56986
39891	42830	*42843	42820	56986	*53300	53784	*5693
40201	42831	39891	42821	*53160	53784	56986	53784
40211	42832	40201	42822	53784	56986	*53431	56986
40291	42833	40211	42823	56986	*53301	53784	*56985
4280	42840	40291	42830	*53161	53784	56986	53784
4281	42841	4280	42831	53784	56986	*53440	56986
42820	42842	4281	42832	56986	*53310	53784	*56986
42821	42843	42820	42833	*53170	53784	56986	56986
42822	4289	42821	42840	53784	56986	*53441	*5780
42823	5184	42822	42841	56986	*53311	53784	53784
42830	*42840	42823	42842	*53171	53784	56986	56986
42831	39891	42830	42843	53784	56986	*53450	*5781
42832	40201	42831	44501	56986	*53320	53784	53784
42833	40211	42832	44502	*53190	53784	56986	56986
42840	40291	42833	44581	53784	56986	*53451	*5789
42841	4280	42840	44589	56986	*53321	53784	53784
42842	4281	42841	*5184	*53191	53784	56986	56986
42843	42820	42842	42820	53784	56986	*53460	*74783
4289	42821	42843	42821	56986	*53330	53784	42971
5184	42822	4289	42822	*53200	53784	56986	42979
*42831	42823	5184	42823	53784	56986	*53461	7450
39891	42830	*4289	42830	56986	*53331	53784	74510
40201	42831	42820	42831	*53201	53784	56986	74511
40211	42832	42821	42832	53784	56986	*53470	74512
40291	42833	42822	42833	56986	*53340	53784	74519
4280	42840	42823	42840	*53210	53784	56986	7452
4281	42841	42830	42841	53784	56986	*53471	7453
42820	42842	42831	42842	56986	*53341	53784	7454
42821	42843	42832	42843	*53211	53784	56986	74560
42822	4289	42833	*5302	53784	56986	*53490	74569
42823	5184	42840	53784	56986	*53350	53784	7457
42830	*42841	42841	56986	*53220	53784	56986	74601
42831	39891	42842	*5307	53784	56986	*53491	74602
42832	40201	42843	53784	56986	*53351	53784	7461
42833	40211	*44489	56986	*53221	53784	56986	7462
42840	40291	44501	*53082	53784	56986	*53501	7463
42841	4280	44502	53784	56986	*53360	53784	7464
42842	4281	44581	56986	*53230	53784	56986	7465
42843	42820	44589	*53100	53784	56986	*53511	7466
4289	42821	*4449	53784	56986	*53361	53784	7467
5184	42822	44501	56986	*53231	53784	56986	74681
*42832	42823	44502	*53101	53784	56986	*53521	74682
39891	42830	44581	53784	56986	*53370	53784	74683
40201	42831	44589	56986	*53240	53784	56986	74684
40211	42832	*44501	*53110	53784	56986	*53531	74686
40291	42833	44501	53784	56986	*53371	53784	74711
4280	42840	*44502	56986	*53241	53784	56986	74722
4281	42841	44502	*53111	53784	56986	*53541	*76520
42820	42842	*44581	53784	56986	*53390	53784	76501
42821	42843	44581	56986	*53250	53784	56986	76502
42822	4289	*44589	*53120	53784	56986	*53551	76503
42823	5184	44589	53784	56986	*53391	53784	76504
42830	*42842	*4560	56986	*53251	53784	56986	76505
42831	39891	53784	*53121	53784	56986	*53561	76506
42832	40201	56986	53784	56986	*53400	53784	76507
42833	40211	*45989	56986	*53260	53784	56986	76508
42840	40291	42820	*53130	53784	56986	*53783	*76521
42841	4280	42821	53784	56986	*53401	53784	76501
42842	4281	42822	56986	*53261	53784	56986	76502
42843	42820	42823	*53131	53784	56986	*53784	76503
4289	42821	42830	53784	56986	*53410	53784	76504

TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST—Continued

[CCs that are added to the list are in Table 6G-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.]

76505	76506	769	76508	7703	7713	78039	03811
76506	76507	7700	7670	7704	77181	7817	03819
76507	76508	7701	7685	7705	77183	7854	0382
76508	*7685	7702	769	7707	77210	78550	0383
*76522	77084	7703	7700	77084	77211	78551	03840
76501	*7686	7704	7701	7710	77212	78559	03841
76502	77084	7705	7702	7711	77213	7863	03842
76503	*7689	7707	7703	7713	77214	78820	03843
76504	77084	77084	7704	77181	7722	78829	03844
76505	*769	*7709	7705	77183	7724	7895	03849
76506	77084	77084	7707	77210	7725	7907	0388
76507	*7700	*7714	77084	77211	7730	7911	0389
76508	77084	77181	7710	77212	7731	7913	0545
*76523	*7701	77183	7711	77213	7732	7991	99590
76501	77084	*7715	7713	77214	7733	7994	99591
76502	*7702	77181	77181	7722	7734	*78099	99592
76503	77084	77183	77183	7724	7740	04082	99593
76504	*7703	*7716	77210	7725	7741	44024	99594
76505	77084	77181	77211	7730	7742	78001	*99592
76506	*7704	77183	77212	7731	77430	78003	0362
76507	77084	*7717	77213	7732	77431	7801	0380
76508	*7705	77181	77214	7733	77439	78031	03810
*76524	77084	77183	7722	7734	7744	78039	03811
76501	*7706	*77181	7724	7740	7745	7817	03819
76502	77084	77181	7725	7741	7747	7854	0382
76503	*7707	77183	7730	7742	7751	78550	0383
76504	77084	*77182	7731	77430	7752	78551	03840
76505	*77081	77181	7732	77431	7753	78559	03841
76506	7685	77183	7733	77439	7754	7863	03842
76507	769	*77183	7734	7744	7755	78820	03843
76508	7700	77181	7740	7745	7756	78829	03844
*76525	7701	77183	7741	7747	7757	7895	03849
76501	7702	*77189	7742	7751	7760	7907	0388
76502	7703	77181	77430	7752	7761	7911	0389
76503	7704	77183	77431	7753	7762	7913	0545
76504	7705	*7760	77439	7754	7763	7991	99590
76505	7707	77181	7744	7755	7771	7994	99591
76506	77084	77183	7745	7756	7772	*78550	99592
76507	*77082	*7761	7747	7757	7775	04082	99593
76508	7685	77181	7751	7760	7776	*78551	99594
*76526	769	77183	7752	7761	7780	04082	*99593
76501	7700	*7762	7753	7762	7790	*78559	0362
76502	7701	77181	7754	7763	7791	04082	0380
76503	7702	77183	7755	7771	7797	*7859	03810
76504	7703	*7763	7756	7772	*78091	04082	03811
76505	7704	77181	7757	7775	04082	*7998	03819
76506	7705	77183	7760	7776	44024	04082	0382
76507	7707	*7764	7761	7780	78001	*99590	0383
76508	77084	77181	7762	7790	78003	0362	03840
*76527	*77083	77183	7763	7791	7801	0380	03841
76501	7685	*7765	7771	7797	78031	03810	03842
76502	769	77181	7772	*77989	78039	03811	03843
76503	7700	77183	7775	76501	7817	03819	03844
76504	7701	*7766	7776	76502	7854	0382	03849
76505	7702	77181	7780	76503	78550	0383	0388
76506	7703	77183	7790	76504	78551	03840	0389
76507	7704	*7767	7791	76505	78559	03841	0545
76508	7705	77181	7797	76506	7863	03842	99590
*76528	7707	77183	*77982	76507	78820	03843	99591
76501	77084	*7768	76501	76508	78829	03844	99592
76502	*77084	77181	76502	7670	7895	03849	99593
76503	7685	77183	76503	7685	7907	0388	99594
76504	769	*7769	76504	769	7911	0389	*99594
76505	7700	77181	76505	7700	7913	0545	0362
76506	7701	77183	76506	7701	7991	99590	0380
76507	7702	*77981	76507	7702	7994	99591	03810
76508	7703	76501	76508	7703	*78092	99592	03811
*76529	7704	76502	7670	7704	04082	99593	03819
76501	7705	76503	7685	7705	44024	99594	0382
76502	7707	76504	769	7707	78001	*99591	0383
76503	77084	76505	7700	77084	78003	0362	03840
76504	*77089	76506	7701	7710	7801	0380	03841
76505	7685	76507	7702	7711	78031	03810	03842

TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST—Continued

[CCs that are added to the list are in Table 6G-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.]

03843	99591
03844	99592
03849	99593
0388	99594
0389	*V096
0545	99590
99590	99591
99591	99592
99592	99593
99593	99594
99594	*V0970
*99791	99590
99831	99591
99832	99592
*99799	99593
99831	99594
99832	*V0971
*99831	99590
99831	99591
99832	99592
*99832	99593
99831	99594
99832	*V0980
*99881	99590
99831	99591
99832	99592
*99883	99593
99831	99594
99832	*V0981
*99889	99590
99831	99591
99832	99592
*9989	99593
99831	99594
99832	*V0990
*V090	99590
99590	99591
99591	99592
99592	99593
99593	99594
99594	*V0991
*V091	99590
99590	99591
99591	99592
99592	99593
99593	99594
99594	*V2341
*V092	V237
99590	V2381
99591	V2382
99592	V2383
99593	V2384
99594	V2389
*V093	V239
99590	*V2349
99591	V237
99592	V2381
99593	V2382
99594	V2383
*V094	V2384
99590	V2389
99591	V239
99592	*V462
99593	V461
99594	
*V0950	
99590	
99591	
99592	
99593	
99594	
*V0951	
99590	

TABLE 6H.—DELETIONS TO THE CC EXCLUSIONS LIST

[CCs that are deleted from the list are in Table 6H-Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

*7708	7722	9983
7685	7724	*9989
769	7725	9983
7700	7730	*V234
7701	7731	V237
7702	7732	V2381
7703	7733	V2382
7704	7734	V2383
7705	7740	V2384
7707	7741	V2389
*7714	7742	V239
7718	77430	
*7715	77431	
7718	77439	
*7716	7744	
7718	7745	
*7717	7747	
7718	7751	
*7718	7752	
7718	7753	
*7760	7754	
7718	7755	
*7761	7756	
7718	7757	
*7762	7760	
7718	7761	
*7763	7762	
7718	7763	
*7764	7771	
7718	7772	
*7765	7775	
7718	7776	
*7766	7780	
7718	7790	
*7767	7791	
7718	7797	
*7768	*7809	
7718	44024	
*7769	78001	
7718	78003	
*7798	7801	
76501	78031	
76502	78039	
76503	7817	
76504	7854	
76505	78550	
76506	78551	
76507	78559	
76508	7863	
7670	78820	
7685	78829	
769	7895	
7700	7907	
7701	7911	
7702	7913	
7703	7991	
7704	7994	
7705	*99791	
7707	9983	
7710	*99799	
7711	9983	
7713	*9983	
7718	9983	
77210	*99881	
77211	9983	
77212	*99883	
77213	9983	
77214	*99889	

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY

[FY 2001 MEDPAR Update 12/01 Grouper V19.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	34667	8.9765	2	3	6	12	19
2	7122	9.9083	3	5	8	13	20
3	7	7.4286	1	1	3	4	10
4	6414	7.1743	1	2	5	9	16
5	93169	3.0674	1	1	2	3	7
6	398	2.9196	1	1	2	4	6
7	14187	9.7565	1	4	7	12	20
8	4350	2.7572	1	1	1	3	6
9	1738	6.4689	1	3	5	8	13
10	18019	6.5224	2	3	5	8	13
11	3400	4.0044	1	2	3	5	8
12	49655	5.8699	2	3	4	7	11
13	6646	5.0141	2	3	4	6	9
14	320358	5.8150	2	3	5	7	11
15	152285	3.4737	1	2	3	4	6
16	11455	6.0111	2	3	5	7	12
17	3729	3.2773	1	2	3	4	6
18	28016	5.4234	2	3	4	7	10
19	8679	3.5369	1	2	3	5	7
20	5618	10.4676	3	5	8	13	20
21	1429	6.5850	2	3	5	8	13
22	2723	5.0165	2	2	4	6	10
23	11192	4.2429	1	2	3	5	8
24	55364	4.8878	1	2	4	6	10
25	27208	3.2250	1	2	3	4	6
26	34	4.6765	1	1	2	4	6
27	3839	5.0253	1	1	3	6	11
28	12344	6.2286	1	3	5	8	13
29	4930	3.5613	1	2	3	5	7
31	3815	4.0765	1	2	3	5	8
32	1893	2.4464	1	1	2	3	5
34	21788	5.0453	1	2	4	6	9
35	6839	3.2388	1	1	3	4	6
36	2493	1.4705	1	1	1	1	2
37	1419	3.8182	1	1	2	4	9
38	93	2.4946	1	1	1	3	6
39	667	1.9340	1	1	1	2	4
40	1524	3.6037	1	1	2	5	8
42	1938	2.3710	1	1	1	3	5
43	110	3.0455	1	1	2	4	6
44	1295	5.0347	2	3	4	6	9
45	2600	3.2423	1	2	3	4	6
46	3374	4.5871	1	2	4	6	9
47	1350	3.1719	1	1	3	4	6
48	1	2.0000	2	2	2	2	2
49	2335	4.6188	1	2	3	5	9
50	2483	1.8212	1	1	1	2	3
51	251	3.1195	1	1	1	3	7
52	239	1.9205	1	1	1	2	3
53	2516	3.3792	1	1	2	4	8
54	1	4.0000	4	4	4	4	4
55	1566	3.0556	1	1	1	3	6
56	528	2.9848	1	1	2	3	6
57	692	3.6893	1	1	2	4	8
59	128	2.6641	1	1	1	3	6
60	6	3.3333	1	1	2	5	5
61	243	4.8354	1	1	3	7	10
62	3	1.6667	1	1	1	3	3
63	2887	4.4891	1	1	3	6	9
64	3132	6.6028	1	2	4	8	14
65	39024	2.7977	1	1	2	3	5
66	7671	3.1068	1	1	2	4	6
67	440	3.5955	1	2	3	4	6
68	8648	3.8274	1	2	3	5	7
69	2973	3.0054	1	2	2	4	6
70	25	3.4800	1	2	3	4	8
71	87	3.4368	1	2	3	4	6
72	926	3.5659	1	1	3	4	7
73	7073	4.3867	1	2	3	6	9
75	39878	10.0489	3	5	7	12	20

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY 2001 MEDPAR Update 12/01 Grouper V19.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
76	41691	11.4166	3	5	9	14	22
77	2445	4.8634	1	2	4	7	10
78	35316	6.6636	3	4	6	8	11
79	166404	8.5040	3	4	7	11	16
80	8320	5.4954	2	3	5	7	10
81	2	8.0000	3	3	13	13	13
82	63426	6.9938	2	3	6	9	14
83	6394	5.4759	2	3	4	7	10
84	1559	3.2290	1	2	3	4	6
85	21268	6.3168	2	3	5	8	12
86	2180	3.8138	1	2	3	5	8
87	59482	6.3070	1	3	5	8	12
88	396842	5.1059	2	3	4	6	9
89	502709	5.8920	2	3	5	7	11
90	46817	4.0322	2	2	3	5	7
91	57	4.0000	2	2	3	5	8
92	14816	6.3579	2	3	5	8	12
93	1710	4.1076	1	2	3	5	8
94	12574	6.3304	2	3	5	8	13
95	1679	3.7123	1	2	3	5	7
96	53729	4.5526	2	2	4	6	8
97	28601	3.5208	1	2	3	4	6
98	15	5.0000	1	2	3	4	13
99	21279	3.1677	1	1	2	4	6
100	8950	2.1349	1	1	2	3	4
101	21127	4.3832	1	2	3	6	9
102	5559	2.5690	1	1	2	3	5
103	428	49.2103	9	14	26	61	116
104	19836	14.4245	6	8	12	17	25
105	27462	9.9935	5	6	8	11	18
106	3308	11.3987	5	7	10	14	20
107	85791	10.4560	5	7	9	12	17
108	6205	10.2743	3	5	8	13	20
109	59572	7.7288	4	5	6	9	13
110	53172	9.0340	2	4	7	11	18
111	9394	4.4159	1	2	4	6	8
113	41424	12.4557	4	6	9	15	24
114	8852	8.5204	2	4	7	11	17
115	15271	8.2839	1	4	7	11	16
116	109277	4.4721	1	2	3	6	9
117	4177	4.1611	1	1	2	5	9
118	8112	2.8930	1	1	1	3	7
119	1316	5.1117	1	1	3	6	12
120	37220	8.7981	1	2	6	12	20
121	167308	6.3297	2	3	5	8	12
122	81710	3.6163	1	2	3	5	7
123	41163	4.7016	1	1	3	6	11
124	137232	4.3524	1	2	3	5	8
125	91133	2.7831	1	1	2	4	5
126	5016	11.8909	4	6	9	15	22
127	682134	5.2700	2	3	4	7	10
128	8254	5.4723	2	3	5	7	9
129	4105	2.8378	1	1	1	3	6
130	88700	5.6615	2	3	5	7	10
131	27798	4.0539	1	2	4	5	7
132	152312	2.9301	1	1	2	4	5
133	8929	2.2655	1	1	2	3	4
134	39623	3.1770	1	2	2	4	6
135	7554	4.4298	1	2	3	5	8
136	1237	2.5594	1	1	2	3	5
138	203378	3.9834	1	2	3	5	8
139	90000	2.4829	1	1	2	3	5
140	66435	2.5585	1	1	2	3	5
141	102391	3.5917	1	2	3	4	7
142	51719	2.5539	1	1	2	3	5
143	250133	2.0827	1	1	2	3	4
144	88510	5.4530	1	2	4	7	11
145	7598	2.6481	1	1	2	3	5
146	10799	10.2146	5	7	8	12	17
147	2798	6.4010	3	5	6	8	10

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY 2001 MEDPAR Update 12/01 Grouper V19.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
148	129350	12.2861	5	7	10	15	22
149	19313	6.4669	4	5	6	8	10
150	20328	11.2319	4	7	10	14	20
151	4963	5.6756	1	3	5	8	10
152	4425	8.3250	3	5	7	10	14
153	2014	5.3803	3	4	5	7	8
154	29001	13.2057	3	7	10	16	26
155	7262	3.9898	1	2	3	6	8
156	3	15.0000	11	11	13	21	21
157	8154	5.5581	1	2	4	7	11
158	4562	2.5184	1	1	2	3	5
159	17114	5.0598	1	2	4	6	10
160	12169	2.6492	1	1	2	3	5
161	11152	4.1588	1	1	3	5	9
162	7288	1.9175	1	1	1	2	4
163	3	3.0000	1	1	3	5	5
164	5118	8.2651	3	5	7	10	14
165	2185	4.6499	2	3	4	6	8
166	3903	4.8737	1	2	4	6	9
167	3800	2.5132	1	1	2	3	4
168	1279	5.0023	1	2	3	6	11
169	827	2.2866	1	1	2	3	5
170	12108	10.9853	2	4	8	14	22
171	1355	4.3107	1	2	3	6	9
172	30622	6.9624	2	3	5	9	14
173	2711	3.7444	1	1	3	5	8
174	247222	4.8059	2	3	4	6	9
175	35165	2.9201	1	2	3	4	5
176	15219	5.2481	2	3	4	6	10
177	9429	4.5038	2	2	4	6	8
178	3758	3.0780	1	2	3	4	6
179	12541	5.9632	2	3	5	7	11
180	88300	5.3709	2	3	4	7	10
181	27097	3.3767	1	2	3	4	6
182	248889	4.4042	1	2	3	5	8
183	87342	2.8973	1	1	2	4	5
184	90	2.9000	1	1	2	4	6
185	5021	4.7104	1	2	3	6	9
186	3	4.6667	2	2	3	9	9
187	446	4.3565	1	2	3	6	8
188	79403	5.5558	1	2	4	7	11
189	13113	3.0563	1	1	2	4	6
190	74	4.7838	1	2	3	5	9
191	9222	13.7304	3	6	10	17	28
192	1257	6.0963	1	3	5	8	11
193	4865	12.7394	5	7	10	16	23
194	733	6.8759	2	4	6	8	12
195	4157	10.3560	4	6	9	12	18
196	1051	5.4186	2	3	5	7	9
197	18569	8.9827	3	5	7	11	16
198	5672	4.4381	2	3	4	6	8
199	1644	9.9179	2	4	7	13	21
200	1042	10.4539	1	3	7	14	22
201	1466	14.4734	3	6	11	18	29
202	26156	6.3731	2	3	5	8	13
203	29310	6.7403	2	3	5	9	13
204	61544	5.8119	2	3	4	7	11
205	24459	6.1537	2	3	5	8	12
206	2049	3.9204	1	2	3	5	8
207	32107	5.1834	1	2	4	7	10
208	10745	2.8598	1	1	2	4	5
209	371105	4.9903	3	3	4	6	8
210	121541	6.8894	3	4	6	8	11
211	32567	4.9284	3	4	5	6	7
212	7	3.2857	1	2	2	2	4
213	9878	9.1432	2	4	7	11	18
216	6916	9.5448	2	4	7	12	19
217	17029	13.4060	3	5	9	16	28
218	22745	5.4427	2	3	4	7	10
219	20867	3.2086	1	2	3	4	5

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY 2001 MEDPAR Update 12/01 Grouper V19.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
220	1	2.0000	2	2	2	2	2
223	13667	2.8776	1	1	2	3	6
224	12467	1.8627	1	1	1	2	3
225	6124	5.0144	1	2	3	7	11
226	5702	6.6733	1	3	5	8	14
227	4923	2.6669	1	1	2	3	5
228	2481	4.0806	1	1	2	5	9
229	1176	2.2168	1	1	2	3	4
230	2407	5.0586	1	2	3	6	11
231	13540	4.8875	1	1	3	6	10
232	882	2.7426	1	1	1	3	7
233	7199	7.2148	1	3	5	9	15
234	4623	3.1573	1	1	2	4	7
235	5091	5.0304	1	2	4	6	9
236	39785	4.7450	1	3	4	6	9
237	1744	3.5740	1	2	3	4	7
238	8625	8.8420	3	4	7	11	17
239	48235	6.2846	2	3	5	8	12
240	11808	6.7199	2	3	5	8	13
241	3223	3.8849	1	2	3	5	7
242	2516	6.5568	2	3	5	8	13
243	93807	4.6804	1	2	4	6	9
244	13584	4.7331	1	2	4	6	9
245	5733	3.3630	1	2	3	4	6
246	1347	3.7647	1	2	3	5	7
247	19620	3.3687	1	1	3	4	6
248	12067	4.8652	1	2	4	6	9
249	12912	3.6678	1	1	2	4	8
250	3795	4.1686	1	2	3	5	7
251	2489	2.7814	1	1	2	4	5
253	20861	4.6779	1	3	4	6	9
254	10809	3.1314	1	2	3	4	6
255	1	2.0000	2	2	2	2	2
256	6422	5.1110	1	2	4	6	10
257	16706	2.6651	1	1	2	3	5
258	16972	1.8186	1	1	2	2	3
259	3813	2.6693	1	1	1	2	6
260	5087	1.3666	1	1	1	1	2
261	1889	2.1615	1	1	1	2	4
262	683	4.2958	1	1	3	5	10
263	24569	11.8050	3	5	8	14	23
264	3982	6.9006	2	3	5	8	14
265	4052	6.7347	1	2	4	8	14
266	2676	3.1371	1	1	2	4	6
267	267	4.2584	1	1	2	4	8
268	899	3.6274	1	1	2	4	8
269	9064	8.2177	2	3	6	10	17
270	2746	3.2618	1	1	2	4	7
271	19612	7.2767	2	4	6	9	13
272	5471	6.1349	2	3	5	7	12
273	1387	3.9250	1	2	3	5	7
274	2344	6.7675	1	3	5	8	14
275	247	3.0202	1	1	2	4	6
276	1315	4.5384	1	2	4	6	8
277	93957	5.7577	2	3	5	7	10
278	31764	4.2755	2	3	4	5	7
279	3	7.0000	3	3	8	10	10
280	17047	4.1686	1	2	3	5	8
281	7834	2.9183	1	1	2	4	5
283	5638	4.6568	1	2	4	6	9
284	1950	3.0569	1	1	2	4	6
285	6574	10.6492	3	5	8	13	20
286	2183	5.9464	2	3	4	7	11
287	6460	10.5718	3	5	8	12	20
288	3675	5.3897	2	3	4	6	8
289	6423	2.8026	1	1	1	3	6
290	9500	2.2281	1	1	1	2	4
291	78	1.6026	1	1	1	2	3
292	5423	9.9458	2	4	8	13	20
293	345	4.9246	1	2	3	7	10

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY 2001 MEDPAR Update 12/01 Grouper V19.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
294	95391	4.5356	1	2	3	6	9
295	3359	3.9690	1	2	3	5	7
296	250941	5.1144	1	2	4	6	10
297	47743	3.3559	1	2	3	4	6
298	103	4.3495	1	2	3	5	8
299	1218	5.3760	1	2	4	6	10
300	17546	6.1581	2	3	5	8	12
301	3644	3.6509	1	2	3	5	7
302	7896	8.6990	4	5	7	10	15
303	20694	8.2722	3	4	6	9	15
304	11944	8.6761	2	4	6	11	18
305	2972	3.5697	1	2	3	4	6
306	7213	5.4883	1	2	3	7	13
307	2168	2.2002	1	1	2	3	4
308	7359	6.3367	1	2	4	8	14
309	4375	2.1913	1	1	2	3	4
310	24597	4.3470	1	1	3	5	9
311	8323	1.8264	1	1	1	2	3
312	1547	4.4945	1	1	3	6	10
313	644	2.1289	1	1	1	2	4
314	1	5.0000	5	5	5	5	5
315	31230	6.8866	1	1	4	9	16
316	116645	6.6308	2	3	5	8	13
317	1890	3.0899	1	1	2	3	7
318	5739	6.0294	1	3	4	8	12
319	494	2.8543	1	1	2	4	6
320	193283	5.3020	2	3	4	7	10
321	30745	3.7500	1	2	3	5	7
322	64	3.6563	1	2	3	4	7
323	18622	3.1423	1	1	2	4	6
324	7455	1.8437	1	1	1	2	3
325	8938	3.7880	1	2	3	5	7
326	2803	2.6718	1	1	2	3	5
327	2	2.5000	1	1	4	4	4
328	685	3.7883	1	1	3	5	7
329	105	2.2000	1	1	1	2	5
331	49140	5.5819	1	3	4	7	11
332	5119	3.1686	1	1	2	4	6
333	311	4.6849	1	2	3	6	10
334	10271	4.7684	2	3	4	5	8
335	12383	3.1779	2	2	3	4	5
336	36334	3.4249	1	2	2	4	7
337	29524	2.0688	1	1	2	2	3
338	1055	5.5526	1	2	3	8	13
339	1505	4.6186	1	1	3	6	10
340	1	1.0000	1	1	1	1	1
341	3670	3.0695	1	1	2	3	6
342	723	3.1355	1	1	2	4	6
343	1	5.0000	5	5	5	5	5
344	3810	2.2850	1	1	1	2	4
345	1180	3.8542	1	1	2	4	8
346	4562	6.0342	1	3	5	8	12
347	373	2.6971	1	1	2	3	6
348	3281	4.1591	1	2	3	5	8
349	597	2.4623	1	1	2	3	5
350	6497	4.5045	2	2	4	6	8
351	1	1.0000	1	1	1	1	1
352	768	3.9557	1	2	3	5	8
353	2659	6.4772	2	3	5	7	12
354	7491	5.8265	3	3	4	7	10
355	5680	3.2347	2	2	3	4	5
356	25943	2.1725	1	1	2	3	4
357	5715	8.4126	3	4	6	10	16
358	20616	4.3038	2	3	3	5	7
359	31095	2.6372	1	2	3	3	4
360	15579	2.8185	1	2	2	3	5
361	369	3.6694	1	1	2	4	8
362	2	1.0000	1	1	1	1	1
363	2684	3.6256	1	2	2	4	7
364	1632	3.8762	1	1	3	5	8

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY 2001 MEDPAR Update 12/01 Grouper V19.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
365	1770	7.3989	1	3	5	9	16
366	4436	6.8537	2	3	5	9	14
367	521	3.0115	1	1	2	4	6
368	3288	6.7318	2	3	5	8	13
369	3280	3.1976	1	1	2	4	6
370	1244	5.6937	3	3	4	5	9
371	1416	3.6031	2	3	3	4	5
372	919	3.6529	1	2	2	3	5
373	3878	2.2935	1	2	2	3	3
374	116	2.8793	1	2	2	3	5
375	8	5.2500	1	3	5	5	9
376	263	3.5095	1	2	2	4	6
377	29	4.3793	1	2	3	4	7
378	169	2.4615	1	1	2	3	4
379	408	3.0000	1	1	2	3	6
380	76	1.9605	1	1	1	2	4
381	181	2.0829	1	1	1	2	4
382	25	1.3600	1	1	1	1	3
383	1841	3.9620	1	1	3	4	8
384	149	2.7315	1	1	1	3	6
389	5	3.4000	1	1	2	4	8
390	8	2.7500	1	1	1	4	5
392	2247	9.5167	2	4	7	12	19
393	1	2.0000	2	2	2	2	2
394	1959	6.2950	1	2	4	8	14
395	100668	4.3478	1	2	3	5	9
396	11	3.8182	1	1	2	4	6
397	17952	5.1683	1	2	4	7	10
398	17121	5.8897	2	3	5	7	11
399	1788	3.5520	1	2	3	5	7
400	6488	8.9578	1	3	6	11	20
401	5837	11.2479	2	5	9	15	23
402	1598	3.8899	1	1	3	5	8
403	32013	8.0033	2	3	6	10	17
404	4593	4.1916	1	2	3	5	9
406	2495	9.6970	2	4	7	12	20
407	702	4.1140	1	2	3	5	8
408	2122	7.8591	1	2	5	10	18
409	2517	6.1339	2	3	4	6	13
410	30770	4.0138	1	2	4	5	6
411	14	2.9286	1	1	2	4	6
412	18	2.0000	1	1	1	2	4
413	5767	7.2917	2	3	6	9	14
414	763	4.0170	1	2	3	5	8
415	39920	14.4391	4	6	11	18	29
416	181162	7.4625	2	4	6	9	14
417	37	6.1351	2	2	4	8	13
418	23410	6.1742	2	3	5	8	12
419	15730	4.6490	1	2	4	6	9
420	2958	3.4324	1	2	3	4	6
421	9274	3.7804	1	2	3	4	7
422	69	2.9130	1	1	2	3	6
423	7273	8.2391	2	3	6	10	17
424	1292	12.9690	2	5	9	16	26
425	16309	3.8956	1	2	3	5	8
426	4483	4.4716	1	2	3	5	9
427	1576	4.4143	1	2	3	5	9
428	745	7.3732	1	2	4	8	15
429	27035	6.1425	2	3	4	7	12
430	63072	7.9697	2	3	6	10	16
431	321	5.9470	1	2	4	7	13
432	411	4.5645	1	1	3	5	9
433	5523	2.9714	1	1	2	3	6
439	1457	8.5003	1	3	6	10	17
440	5440	9.0241	2	3	6	11	20
441	612	3.0735	1	1	2	4	7
442	16697	8.5604	1	3	6	10	18
443	3806	3.5365	1	1	3	4	7
444	5676	4.3175	1	2	3	5	8
445	2726	2.8995	1	1	2	4	5

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY 2001 MEDPAR Update 12/01 Grouper V19.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
447	6278	2.4462	1	1	2	3	5
448	1	1.0000	1	1	1	1	1
449	30479	3.6797	1	1	3	4	8
450	7369	1.9900	1	1	1	2	4
451	5	1.6000	1	1	2	2	2
452	25229	5.0164	1	2	3	6	10
453	5648	2.7665	1	1	2	3	5
454	4624	4.3575	1	2	3	5	9
455	1098	2.3752	1	1	2	3	5
461	4563	4.0690	1	1	2	4	10
462	11994	11.3643	4	6	10	14	21
463	25215	4.1639	1	2	3	5	8
464	7115	3.0145	1	1	2	4	6
465	224	2.8973	1	1	1	3	5
466	1797	3.9321	1	1	2	4	7
467	1043	8.3931	1	1	2	3	6
468	57090	12.8803	3	6	10	16	25
471	12468	5.4931	3	3	4	6	9
473	8236	12.3409	1	3	7	17	32
475	104072	11.1941	2	5	9	15	22
476	3803	11.2611	2	5	10	15	21
477	25564	8.1456	1	3	6	11	17
478	108638	7.3817	1	3	5	9	16
479	24179	3.3012	1	1	3	4	7
480	622	21.5354	7	9	14	28	49
481	726	21.9353	13	17	20	25	33
482	5562	13.2251	4	7	10	16	25
483	43028	39.7169	15	22	33	49	71
484	317	13.0820	2	5	10	18	27
485	3029	9.4262	4	5	7	11	18
486	1867	12.3214	1	5	10	16	25
487	3536	7.6683	1	3	6	10	16
488	776	16.9162	3	6	13	22	35
489	13557	8.5376	2	3	6	10	18
490	5252	5.2582	1	2	4	6	10
491	13607	3.4664	1	2	3	4	6
492	2875	15.0104	2	5	7	25	34
493	58106	5.8777	1	3	5	7	11
494	30972	2.4751	1	1	2	3	5
495	211	17.1659	8	10	13	20	31
496	1842	9.4870	3	4	7	11	19
497	18414	6.5560	3	4	5	7	11
498	13584	4.1477	2	3	4	5	6
499	33300	4.6629	1	2	3	6	9
500	49827	2.4760	1	1	2	3	5
501	2356	10.6341	4	5	8	13	20
502	637	6.4066	2	4	5	8	11
503	5894	3.8884	1	2	3	5	7
504	123	34.9756	9	15	27	44	66
505	147	3.6667	1	1	1	5	9
506	937	17.2604	4	8	14	22	36
507	288	8.9549	2	4	7	12	18
508	667	8.2219	2	3	6	10	17
509	177	5.4350	1	2	4	7	10
510	1671	6.6092	1	3	5	8	13
511	616	4.3766	1	1	3	5	9
512	450	14.2244	6	8	11	15	24
513	142	10.7042	5	7	9	11	20
514	19261	7.2615	1	3	6	9	15
515	4570	5.4897	1	1	3	7	13
516	76256	4.7308	2	2	4	6	9
517	191586	2.6138	1	1	2	3	6
518	51638	3.3905	1	1	2	4	7
519	7316	5.1875	1	2	3	6	12
520	11118	2.1205	1	1	2	2	4
521	28568	5.7752	2	3	4	7	12
522	6141	9.4402	3	4	8	12	20
523	14812	4.0927	1	2	3	5	7
	11403341						

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY

[FY 2001 MEDPAR Update 12/01 Grouper V20.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	27708	11.1212	3	5	8	14	22
2	14081	5.2277	1	3	4	7	10
3	7	7.4286	1	1	3	4	10
4	6426	7.1748	1	2	5	9	16
5	93169	3.0674	1	1	2	3	7
6	398	2.9196	1	1	2	4	6
7	14187	9.7565	1	4	7	12	20
8	4350	2.7572	1	1	1	3	6
9	1737	6.4669	1	3	5	8	13
10	18019	6.5224	2	3	5	8	13
11	3400	4.0044	1	2	3	5	8
12	49655	5.8699	2	3	4	7	11
13	6646	5.0141	2	3	4	6	9
14	236067	6.0768	2	3	5	7	12
15	101726	4.9503	2	3	4	6	9
16	9257	6.1391	2	3	5	8	12
17	2871	3.1379	1	1	2	4	6
18	28016	5.4234	2	3	4	7	10
19	8679	3.5369	1	2	3	5	7
20	5618	10.4676	3	5	8	13	20
21	1429	6.5850	2	3	5	8	13
22	2723	5.0165	2	2	4	6	10
23	11192	4.2429	1	2	3	5	8
24	55364	4.8878	1	2	4	6	10
25	27208	3.2250	1	2	3	4	6
26	34	4.6765	1	1	2	4	6
27	3839	5.0253	1	1	3	6	11
28	12344	6.2286	1	3	5	8	13
29	4930	3.5613	1	2	3	5	7
31	3815	4.0765	1	2	3	5	8
32	1893	2.4464	1	1	2	3	5
34	22342	5.0412	1	2	4	6	9
35	7331	3.2195	1	1	3	4	6
36	2493	1.4705	1	1	1	1	2
37	1419	3.8182	1	1	2	4	9
38	93	2.4946	1	1	1	3	6
39	667	1.9340	1	1	1	2	4
40	1524	3.6037	1	1	2	5	8
42	1938	2.3710	1	1	1	3	5
43	110	3.0455	1	1	2	4	6
44	1295	5.0347	2	3	4	6	9
45	2600	3.2423	1	2	3	4	6
46	3374	4.5871	1	2	4	6	9
47	1350	3.1719	1	1	3	4	6
48	1	2.0000	2	2	2	2	2
49	2337	4.6166	1	2	3	5	9
50	2483	1.8212	1	1	1	2	3
51	251	3.1195	1	1	1	3	7
52	239	1.9205	1	1	1	2	3
53	2518	3.3777	1	1	2	4	8
54	1	4.0000	4	4	4	4	4
55	1566	3.0556	1	1	1	3	6
56	528	2.9848	1	1	2	3	6
57	692	3.6893	1	1	2	4	8
59	128	2.6641	1	1	1	3	6
60	6	3.3333	1	1	2	5	5
61	243	4.8354	1	1	3	7	10
62	3	1.6667	1	1	1	3	3
63	2900	4.4831	1	1	3	6	9
64	3132	6.6028	1	2	4	8	14
65	39024	2.7977	1	1	2	3	5
66	7671	3.1068	1	1	2	4	6
67	440	3.5955	1	2	3	4	6
68	8754	3.8284	1	2	3	5	7
69	3035	2.9997	1	2	2	4	5
70	25	3.4800	1	2	3	4	8
71	87	3.4368	1	2	3	4	6
72	926	3.5659	1	1	3	4	7
73	7073	4.3867	1	2	3	6	9
75	39878	10.0489	3	5	7	12	20

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY 2001 MEDPAR Update 12/01 Grouper V20.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
76	41691	11.4166	3	5	9	14	22
77	2445	4.8634	1	2	4	7	10
78	35316	6.6636	3	4	6	8	11
79	166404	8.5040	3	4	7	11	16
80	8320	5.4954	2	3	5	7	10
81	2	8.0000	3	3	13	13	13
82	63426	6.9938	2	3	6	9	14
83	6394	5.4759	2	3	4	7	10
84	1559	3.2290	1	2	3	4	6
85	21268	6.3168	2	3	5	8	12
86	2180	3.8138	1	2	3	5	8
87	59482	6.3070	1	3	5	8	12
88	396842	5.1059	2	3	4	6	9
89	502709	5.8920	2	3	5	7	11
90	46817	4.0322	2	2	3	5	7
91	57	4.0000	2	2	3	5	8
92	14816	6.3579	2	3	5	8	12
93	1710	4.1076	1	2	3	5	8
94	12574	6.3304	2	3	5	8	13
95	1679	3.7123	1	2	3	5	7
96	53729	4.5526	2	2	4	6	8
97	28601	3.5208	1	2	3	4	6
98	15	5.0000	1	2	3	4	13
99	21279	3.1677	1	1	2	4	6
100	8950	2.1349	1	1	2	3	4
101	21127	4.3832	1	2	3	6	9
102	5559	2.5690	1	1	2	3	5
103	428	49.2103	9	14	26	61	116
104	19517	14.4041	6	8	12	17	25
105	27289	9.9529	5	6	8	11	18
106	3308	11.3987	5	7	10	14	20
107	85791	10.4560	5	7	9	12	17
108	6205	10.2743	3	5	8	13	20
109	59572	7.7288	4	5	6	9	13
110	53172	9.0340	2	4	7	11	18
111	9394	4.4159	1	2	4	6	8
113	41424	12.4557	4	6	9	15	24
114	8852	8.5204	2	4	7	11	17
115	15271	8.2839	1	4	7	11	16
116	109277	4.4721	1	2	3	6	9
117	4177	4.1611	1	1	2	5	9
118	8112	2.8930	1	1	1	3	7
119	1316	5.1117	1	1	3	6	12
120	37308	8.7872	1	2	6	12	20
121	167308	6.3297	2	3	5	8	12
122	81710	3.6163	1	2	3	5	7
123	41163	4.7016	1	1	3	6	11
124	138287	4.3673	1	2	3	6	8
125	90077	2.7417	1	1	2	4	5
126	5016	11.8909	4	6	9	15	22
127	682134	5.2700	2	3	4	7	10
128	8254	5.4723	2	3	5	7	9
129	4105	2.8378	1	1	1	3	6
130	88700	5.6615	2	3	5	7	10
131	27798	4.0539	1	2	4	5	7
132	152311	2.9301	1	1	2	4	5
133	8929	2.2655	1	1	2	3	4
134	39623	3.1770	1	2	2	4	6
135	7554	4.4298	1	2	3	5	8
136	1237	2.5594	1	1	2	3	5
138	203378	3.9834	1	2	3	5	8
139	90000	2.4829	1	1	2	3	5
140	66435	2.5585	1	1	2	3	5
141	102391	3.5917	1	2	3	4	7
142	51719	2.5539	1	1	2	3	5
143	250133	2.0827	1	1	2	3	4
144	88510	5.4530	1	2	4	7	11
145	7598	2.6481	1	1	2	3	5
146	10800	10.2147	5	7	8	12	17
147	2799	6.4012	3	5	6	8	10

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY 2001 MEDPAR Update 12/01 Grouper V20.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	- 90th percentile
148	129450	12.2855	5	7	10	15	22
149	19342	6.4670	4	5	6	8	10
150	20334	11.2329	4	7	10	14	20
151	4963	5.6756	1	3	5	8	10
152	4425	8.3250	3	5	7	10	14
153	2015	5.3782	3	4	5	7	8
154	29004	13.2062	3	7	10	16	26
155	7262	3.9898	1	2	3	6	8
156	3	15.0000	11	11	13	21	21
157	8155	5.5579	1	2	4	7	11
158	4564	2.5184	1	1	2	3	5
159	17115	5.0602	1	2	4	6	10
160	12172	2.6489	1	1	2	3	5
161	11155	4.1600	1	1	3	5	9
162	7290	1.9177	1	1	1	2	4
163	3	3.0000	1	1	3	5	5
164	5118	8.2651	3	5	7	10	14
165	2185	4.6499	2	3	4	6	8
166	3903	4.8737	1	2	4	6	9
167	3800	2.5132	1	1	2	3	4
168	1382	4.8705	1	2	3	6	10
169	869	2.2842	1	1	2	3	5
170	12156	10.9845	2	4	8	14	22
171	1359	4.3061	1	2	3	6	9
172	30622	6.9624	2	3	5	9	14
173	2711	3.7444	1	1	3	5	8
174	247222	4.8059	2	3	4	6	9
175	35165	2.9201	1	2	3	4	5
176	15219	5.2481	2	3	4	6	10
177	9429	4.5038	2	2	4	6	8
178	3758	3.0780	1	2	3	4	6
179	12541	5.9632	2	3	5	7	11
180	88300	5.3709	2	3	4	7	10
181	27097	3.3767	1	2	3	4	6
182	260686	4.3600	1	2	3	5	8
183	91243	2.8817	1	1	2	4	5
184	93	2.8387	1	1	2	4	6
185	5070	4.6984	1	2	3	6	9
186	3	4.6667	2	2	3	9	9
187	668	4.1153	1	2	3	6	8
188	79403	5.5558	1	2	4	7	11
189	13113	3.0563	1	1	2	4	6
190	74	4.7838	1	2	3	5	9
191	9222	13.7304	3	6	10	17	28
192	1257	6.0963	1	3	5	8	11
193	4865	12.7394	5	7	10	16	23
194	733	6.8759	2	4	6	8	12
195	4157	10.3560	4	6	9	12	18
196	1051	5.4186	2	3	5	7	9
197	18569	8.9827	3	5	7	11	16
198	5672	4.4381	2	3	4	6	8
199	1644	9.9179	2	4	7	13	21
200	1042	10.4539	1	3	7	14	22
201	2013	14.4287	4	6	11	18	28
202	26156	6.3731	2	3	5	8	13
203	29310	6.7403	2	3	5	9	13
204	61544	5.8119	2	3	4	7	11
205	24459	6.1537	2	3	5	8	12
206	2049	3.9204	1	2	3	5	8
207	32107	5.1834	1	2	4	7	10
208	10745	2.8598	1	1	2	4	5
209	371105	4.9903	3	3	4	6	8
210	121541	6.8894	3	4	6	8	11
211	32567	4.9284	3	4	5	6	7
212	7	3.2857	1	2	2	2	4
213	9878	9.1432	2	4	7	11	18
216	6916	9.5448	2	4	7	12	19
217	17029	13.4060	3	5	9	16	28
218	22744	5.4422	2	3	4	7	10
219	20866	3.2085	1	2	3	4	5

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY 2001 MEDPAR Update 12/01 Grouper V20.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
220	1	2.0000	2	2	2	2	2
223	13666	2.8724	1	1	2	3	6
224	12467	1.8627	1	1	1	2	3
225	6124	5.0144	1	2	3	7	11
226	5699	6.6699	1	3	5	8	14
227	4921	2.6651	1	1	2	3	5
228	2481	4.0806	1	1	2	5	9
229	1175	2.2179	1	1	2	3	4
230	2406	5.0590	1	2	3	6	11
231	12533	4.8810	1	1	3	6	11
232	882	2.7426	1	1	1	3	7
233	7179	7.2117	1	3	5	9	15
234	4607	3.1532	1	1	2	4	7
235	5091	5.0304	1	2	4	6	9
236	39785	4.7450	1	3	4	6	9
237	1744	3.5740	1	2	3	4	7
238	8625	8.8420	3	4	7	11	17
239	48230	6.2846	2	3	5	8	12
240	11807	6.7199	2	3	5	8	13
241	3223	3.8849	1	2	3	5	7
242	2516	6.5568	2	3	5	8	13
243	93654	4.6808	1	2	4	6	9
244	13584	4.7331	1	2	4	6	9
245	5732	3.3627	1	2	3	4	6
246	1346	3.7645	1	2	3	5	7
247	19620	3.3687	1	1	3	4	6
248	12067	4.8652	1	2	4	6	9
249	12651	3.6505	1	1	2	4	7
250	3795	4.1686	1	2	3	5	7
251	2489	2.7814	1	1	2	4	5
253	20861	4.6779	1	3	4	6	9
254	10809	3.1314	1	2	3	4	6
255	1	2.0000	2	2	2	2	2
256	6404	5.1084	1	2	4	6	10
257	16706	2.6651	1	1	2	3	5
258	16974	1.8185	1	1	2	2	3
259	3813	2.6693	1	1	1	2	6
260	5087	1.3666	1	1	1	1	2
261	1893	2.1590	1	1	1	2	4
262	686	4.2886	1	1	3	5	10
263	24569	11.8050	3	5	8	14	23
264	3982	6.9006	2	3	5	8	14
265	4052	6.7347	1	2	4	8	14
266	2676	3.1371	1	1	2	4	6
267	267	4.2584	1	1	2	4	8
268	899	3.6274	1	1	2	4	8
269	9064	8.2177	2	3	6	10	17
270	2746	3.2618	1	1	2	4	7
271	19612	7.2767	2	4	6	9	13
272	5471	6.1349	2	3	5	7	12
273	1387	3.9250	1	2	3	5	7
274	2344	6.7675	1	3	5	8	14
275	247	3.0202	1	1	2	4	6
276	1326	4.5181	1	2	4	6	8
277	93957	5.7577	2	3	5	7	10
278	31764	4.2755	2	3	4	5	7
279	3	7.0000	3	3	8	10	10
280	17047	4.1686	1	2	3	5	8
281	7834	2.9183	1	1	2	4	5
283	5638	4.6568	1	2	4	6	9
284	1950	3.0569	1	1	2	4	6
285	6574	10.6492	3	5	8	13	20
286	2183	5.9464	2	3	4	7	11
287	6460	10.5718	3	5	8	12	20
288	3675	5.3897	2	3	4	6	8
289	6423	2.8026	1	1	1	3	6
290	9500	2.2281	1	1	1	2	4
291	78	1.6026	1	1	1	2	3
292	5423	9.9458	2	4	8	13	20
293	345	4.9246	1	2	3	7	10

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY 2001 MEDPAR Update 12/01 Grouper V20.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
294	95391	4.5356	1	2	3	6	9
295	3359	3.9690	1	2	3	5	7
296	250941	5.1144	1	2	4	6	10
297	47743	3.3559	1	2	3	4	6
298	103	4.3495	1	2	3	5	8
299	1218	5.3760	1	2	4	6	10
300	17546	6.1581	2	3	5	8	12
301	3643	3.6508	1	2	3	5	7
302	7896	8.6990	4	5	7	10	15
303	20709	8.2736	3	4	6	9	15
304	12044	8.6857	2	4	6	11	18
305	3008	3.6051	1	2	3	5	6
306	7213	5.4883	1	2	3	7	13
307	2168	2.2002	1	1	2	3	4
308	7245	6.2803	1	2	4	8	14
309	4338	2.1547	1	1	2	3	4
310	24597	4.3470	1	1	3	5	9
311	8323	1.8264	1	1	1	2	3
312	1547	4.4945	1	1	3	6	10
313	644	2.1289	1	1	1	2	4
314	1	5.0000	5	5	5	5	5
315	33711	7.1835	1	1	4	9	17
316	115329	6.5892	2	3	5	8	13
317	1890	3.0899	1	1	2	3	7
318	5739	6.0294	1	3	4	8	12
319	494	2.8543	1	1	2	4	6
320	193283	5.3020	2	3	4	7	10
321	30745	3.7500	1	2	3	5	7
322	64	3.6563	1	2	3	4	7
323	18622	3.1423	1	1	2	4	6
324	7455	1.8437	1	1	1	2	3
325	8938	3.7880	1	2	3	5	7
326	2803	2.6718	1	1	2	3	5
327	2	2.5000	1	1	4	4	4
328	685	3.7883	1	1	3	5	7
329	105	2.2000	1	1	1	2	5
331	49140	5.5819	1	3	4	7	11
332	5119	3.1686	1	1	2	4	6
333	311	4.6849	1	2	3	6	10
334	10271	4.7684	2	3	4	5	8
335	12383	3.1779	2	2	3	4	5
336	36334	3.4249	1	2	2	4	7
337	29524	2.0688	1	1	2	2	3
338	1055	5.5526	1	2	3	8	13
339	1505	4.6186	1	1	3	6	10
340	1	1.0000	1	1	1	1	1
341	3670	3.0695	1	1	2	3	6
342	723	3.1355	1	1	2	4	6
343	1	5.0000	5	5	5	5	5
344	3840	2.3802	1	1	1	2	5
345	1336	4.7859	1	1	3	6	10
346	4562	6.0342	1	3	5	8	12
347	373	2.6971	1	1	2	3	6
348	3281	4.1591	1	2	3	5	8
349	597	2.4623	1	1	2	3	5
350	6497	4.5045	2	2	4	6	8
351	1	1.0000	1	1	1	1	1
352	768	3.9557	1	2	3	5	8
353	2659	6.4772	2	3	5	7	12
354	7491	5.8265	3	3	4	7	10
355	5680	3.2347	2	2	3	4	5
356	25943	2.1725	1	1	2	3	4
357	5715	8.4126	3	4	6	10	16
358	20617	4.3038	2	3	3	5	7
359	31095	2.6372	1	2	3	3	4
360	15583	2.8183	1	2	2	3	5
361	369	3.6694	1	1	2	4	8
362	2	1.0000	1	1	1	1	1
363	2683	3.6254	1	2	2	4	7
364	1631	3.8780	1	1	3	5	8

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY 2001 MEDPAR Update 12/01 Grouper V20.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
365	1834	7.6930	2	3	5	10	17
366	4436	6.8537	2	3	5	9	14
367	521	3.0115	1	1	2	4	6
368	3288	6.7318	2	3	5	8	13
369	3281	3.1987	1	1	2	4	6
370	1244	5.6937	3	3	4	5	9
371	1416	3.6031	2	3	3	4	5
372	919	3.6529	1	2	2	3	5
373	3878	2.2935	1	2	2	3	3
374	116	2.8793	1	2	2	3	5
375	8	5.2500	1	3	5	5	9
376	263	3.5095	1	2	2	4	6
377	29	4.3793	1	2	3	4	7
378	169	2.4615	1	1	2	3	4
379	408	3.0000	1	1	2	3	6
380	76	1.9605	1	1	1	2	4
381	181	2.0829	1	1	1	2	4
382	25	1.3600	1	1	1	1	3
383	1841	3.9620	1	1	3	4	8
384	149	2.7315	1	1	1	3	6
389	5	3.4000	1	1	2	4	8
390	1	4.0000	4	4	4	4	4
392	2247	9.5167	2	4	7	12	19
393	1	2.0000	2	2	2	2	2
394	2329	7.0575	1	2	5	9	15
395	100668	4.3478	1	2	3	5	9
396	11	3.8182	1	1	2	4	6
397	17952	5.1683	1	2	4	7	10
398	17121	5.8897	2	3	5	7	11
399	1788	3.5520	1	2	3	5	7
400	6488	8.9578	1	3	6	11	20
401	5837	11.2479	2	5	9	15	23
402	1599	3.8899	1	1	3	5	8
403	32013	8.0033	2	3	6	10	17
404	4592	4.1916	1	2	3	5	9
406	2495	9.6970	2	4	7	12	20
407	702	4.1140	1	2	3	5	8
408	2122	7.8591	1	2	5	10	18
409	2517	6.1339	2	3	4	6	13
410	30770	4.0138	1	2	4	5	6
411	14	2.9286	1	1	2	4	6
412	18	2.0000	1	1	1	2	4
413	5767	7.2917	2	3	6	9	14
414	763	4.0170	1	2	3	5	8
415	39922	14.4392	4	6	11	18	29
416	181162	7.4625	2	4	6	9	14
417	37	6.1351	2	2	4	8	13
418	23408	6.1732	2	3	5	8	12
419	15730	4.6490	1	2	4	6	9
420	2958	3.4324	1	2	3	4	6
421	9274	3.7804	1	2	3	4	7
422	69	2.9130	1	1	2	3	6
423	7273	8.2391	2	3	6	10	17
424	1292	12.9690	2	5	9	16	26
425	16309	3.8956	1	2	3	5	8
426	4483	4.4716	1	2	3	5	9
427	1576	4.4143	1	2	3	5	9
428	745	7.3732	1	2	4	8	15
429	27035	6.1425	2	3	4	7	12
430	63072	7.9697	2	3	6	10	16
431	321	5.9470	1	2	4	7	13
432	411	4.5645	1	1	3	5	9
433	5523	2.9714	1	1	2	3	6
439	1457	8.5003	1	3	6	10	17
440	5440	9.0241	2	3	6	11	20
441	612	3.0735	1	1	2	4	7
442	16700	8.5598	1	3	6	10	18
443	3808	3.5355	1	1	3	4	7
444	5676	4.3175	1	2	3	5	8
445	2726	2.8995	1	1	2	4	5

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY 2001 MEDPAR Update 12/01 Grouper V20.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
447	6278	2.4462	1	1	2	3	5
448	1	1.0000	1	1	1	1	1
449	30478	3.6796	1	1	3	4	8
450	7369	1.9900	1	1	1	2	4
451	5	1.6000	1	1	2	2	2
452	25229	5.0164	1	2	3	6	10
453	5646	2.7669	1	1	2	3	5
454	4624	4.3575	1	2	3	5	9
455	1098	2.3752	1	1	2	3	5
461	4563	4.0690	1	1	2	4	10
462	11994	11.3643	4	6	10	14	21
463	25215	4.1639	1	2	3	5	8
464	7115	3.0145	1	1	2	4	6
465	224	2.8973	1	1	1	3	5
466	1797	3.9321	1	1	2	4	7
467	1043	8.3931	1	1	2	3	6
468	54726	12.9153	3	6	10	16	25
471	12468	5.4931	3	3	4	6	9
473	8236	12.3409	1	3	7	17	32
475	104072	11.1941	2	5	9	15	22
476	3814	11.2651	2	5	10	15	21
477	25602	8.1413	1	3	6	11	17
478	108638	7.3817	1	3	5	9	16
479	24179	3.3012	1	1	3	4	7
480	622	21.5354	7	9	14	28	49
481	726	21.9353	13	17	20	25	33
482	5300	12.4930	4	7	9	15	23
483	43301	39.6393	14	22	33	49	71
484	317	13.0820	2	5	10	18	27
485	3029	9.4262	4	5	7	11	18
486	1867	12.3214	1	5	10	16	25
487	3536	7.6683	1	3	6	10	16
488	776	16.9162	3	6	13	22	35
489	13557	8.5376	2	3	6	10	18
490	5252	5.2582	1	2	4	6	10
491	13607	3.4664	1	2	3	4	6
492	2875	15.0104	2	5	7	25	34
493	58106	5.8777	1	3	5	7	11
494	30972	2.4751	1	1	2	3	5
495	211	17.1659	8	10	13	20	31
496	1842	9.4870	3	4	7	11	19
497	19927	6.5368	3	4	5	7	11
498	14665	4.1305	2	3	4	5	6
499	32668	4.6299	1	2	3	6	9
500	49512	2.4657	1	1	2	3	5
501	2356	10.6341	4	5	8	13	20
502	637	6.4066	2	4	5	8	11
503	5894	3.8884	1	2	3	5	7
504	123	34.9756	9	15	27	44	66
505	147	3.6667	1	1	1	5	9
506	937	17.2604	4	8	14	22	36
507	288	8.9549	2	4	7	12	18
508	667	8.2219	2	3	6	10	17
509	177	5.4350	1	2	4	7	10
510	1671	6.6092	1	3	5	8	13
511	616	4.3766	1	1	3	5	9
512	450	14.2244	6	8	11	15	24
513	142	10.7042	5	7	9	11	20
514	19261	7.2615	1	3	6	9	15
515	4570	5.4897	1	1	3	7	13
516	76256	4.7308	2	2	4	6	9
517	191586	2.6138	1	1	2	3	6
518	51638	3.3905	1	1	2	4	7
519	7220	5.1497	1	2	3	6	12
520	11073	2.1137	1	1	2	2	4
521	28568	5.7752	2	3	4	7	12
522	6141	9.4402	3	4	8	12	20
523	14812	4.0927	1	2	3	5	7
524	136857	3.3964	1	2	3	4	6

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY 2001 MEDPAR Update 12/01 Grouper V20.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
525	492	15.9309	2	5	9	18	35
	11420001						

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) MARCH 2002

State	Urban	Rural
ALABAMA	0.337	0.394
ALASKA	0.407	0.675
ARIZONA	0.349	0.478
ARKANSAS	0.456	0.438
CALIFORNIA	0.335	0.419
COLORADO	0.463	0.538
CONNECTICUT	0.494	0.509
DELAWARE	0.516	0.484
DISTRICT OF COLUMBIA	0.413	.....
FLORIDA	0.349	0.365
GEORGIA	0.446	0.456
HAWAII	0.403	0.519
IDAHO	0.558	0.599
ILLINOIS	0.398	0.492
INDIANA	0.522	0.529
IOWA	0.484	0.594
KANSAS	0.380	0.591
KENTUCKY	0.478	0.490
LOUISIANA	0.390	0.482
MAINE	0.585	0.523
MARYLAND	0.759	0.821
MASSACHUSETTS	0.550	0.568
MICHIGAN	0.460	0.562
MINNESOTA	0.470	0.581
MISSISSIPPI	0.444	0.434
MISSOURI	0.399	0.473
MONTANA	0.504	0.544
NEBRASKA	0.428	0.550
NEVADA	0.284	0.473
NEW HAMPSHIRE	0.524	0.579
NEW JERSEY	0.393	.....
NEW MEXICO	0.471	0.516
NEW YORK	0.500	0.595
NORTH CAROLINA	0.511	0.465
NORTH DAKOTA	0.611	0.611
OHIO	0.492	0.568
OKLAHOMA	0.405	0.485
OREGON	0.545	0.579

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) MARCH 2002—Continued

State	Urban	Rural
PENNSYLVANIA	0.376	0.500
PUERTO RICO	0.467	0.561
RHODE ISLAND	0.486	.....
SOUTH CAROLINA	0.438	0.455
SOUTH DAKOTA	0.498	0.546
TENNESSEE	0.432	0.457
TEXAS	0.380	0.484
UTAH	0.495	0.570
VERMONT	0.572	0.595
VIRGINIA	0.452	0.546
WASHINGTON	0.580	0.598
WEST VIRGINIA	0.563	0.534
WISCONSIN	0.524	0.599
WYOMING	0.524	0.707

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) MARCH 2002

State	Ratio
ALABAMA	0.041
ALASKA	0.053
ARIZONA	0.038
ARKANSAS	0.049
CALIFORNIA	0.033
COLORADO	0.045
CONNECTICUT	0.036
DELAWARE	0.048
DISTRICT OF COLUMBIA	0.032
FLORIDA	0.043
GEORGIA	0.049
HAWAII	0.038
IDAHO	0.048
ILLINOIS	0.039
INDIANA	0.056

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) MARCH 2002—Continued

State	Ratio
IOWA	0.049
KANSAS	0.047
KENTUCKY	0.046
LOUISIANA	0.046
MAINE	0.038
MARYLAND	0.013
MASSACHUSETTS	0.050
MICHIGAN	0.044
MINNESOTA	0.043
MISSISSIPPI	0.043
MISSOURI	0.043
MONTANA	0.051
NEBRASKA	0.047
NEVADA	0.032
NEW HAMPSHIRE	0.058
NEW JERSEY	0.035
NEW MEXICO	0.045
NEW YORK	0.049
NORTH CAROLINA	0.047
NORTH DAKOTA	0.073
OHIO	0.047
OKLAHOMA	0.045
OREGON	0.042
PENNSYLVANIA	0.037
PUERTO RICO	0.041
RHODE ISLAND	0.031
SOUTH CAROLINA	0.046
SOUTH DAKOTA	0.050
TENNESSEE	0.049
TEXAS	0.043
UTAH	0.045
VERMONT	0.049
VIRGINIA	0.057
WASHINGTON	0.068
WEST VIRGINIA	0.044
WISCONSIN	0.050
WYOMING	0.062

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY—2003

Provider number	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
010005	01	3440	3440
010008	01	5240	.....
010010	01	3440	3440
010012	01	2880	.....
010022	01	2880	.....
010029	0580	1800	.....
010035	01	1000	.....
010036	01	2750	.....
010043	01	1000	1000
010044	01	25	.....
010072	01	0450	0450
010101	01	0450	0450

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY—2003—Continued

Provider number	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
010118	01	5240	
010120	01	5160	
010121	01	5240	
010126	01	2180	
010150	01	5240	
010158	01	2650	
020008	02	0380	
030007	03	2620	
030012	03	6200	
030033	03	2620	
030043	03	8520	
040014	04	4400	
040017	04	7920	
040019	04	4920	
040020	3700	4920	
040026	04	4400	
040027	04	7920	
040041	04	4400	
040045	04	26	
040066	04	4400	
040069	04	4920	
040076	04	4400	
040078	04	4400	
040080	04	3700	
040088	04	7680	
040091	04	8360	
040107	04	8360	
040119	04	4400	
050042	05	6690	
050045	05		7320
050069	5945	4480	
050071	7400	5775	
050073	8720	5775	
050076	7360	5775	
050101	8720	5775	
050150	05	6920	
050174	7500	8720	
050192	2840	05	
050228	7360	5775	
050230	5945	4480	
050236	8735	4480	
050286	8780	05	
050296	05	7120	
050301	05	7500	
050325	05	5170	
050335	05	5170	
050419	05	6690	
050446	0680	05	
050457	7360	5775	
050464	5170	8120	
050469	6780	05	
050494	05	6920	
050510	7360	5775	
050528	4940	05	
050541	7360	5775	
050549	8735	4480	
050569	05	7500	
050594	5945	4480	
050609	5945	4480	
050686	6780	5945	
050701	6780	7320	
060003	1125	2080	2080
060013	06	0200	
060018	06	2995	
060023	2995	6520	
060027	1125	2080	2080
060044	06	2080	
060049	06	2670	
060075	06	2995	
060076	06	3060	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY—2003—Continued

Provider number	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
060096	06	2080	
060103	1125	2080	2080
070006	5483	5600	
070018	5483	5600	
070033	5483	5600	
070034	5483	5600	
070036	3283	5483	
080002	08		0720
080004	2190	9160	
080006	08	2190	
080007	08	2190	
100022	5000	2680	
100023	10	5960	
100024	10	5000	
100045	2020	5960	
100048	6080	10	
100049	10	3980	
100098	10	8960	8960
100103	10	3600	3600
100105	10	2710	
100109	10	5960	
100118	2020	10	
100150	10	5000	
100157	3980	8280	
100176	8960	2710	
100211	8280	3980	
100217	10	2710	
100232	10	5790	2900
100239	8280	7510	
100249	10	8280	
100268	8960	2680	
110001	11	0520	
110002	11	0520	
110003	11	3600	
110016	11	1800	
110023	11	0520	
110025	11	3600	
110029	11	0520	
110038	11	10	
110040	11	0500	0500
110050	11	0520	
110054	11	0520	
110075	11	7520	
110100	11	0600	
110118	11	0120	
110122	11	10	
110150	11	4680	
110168	11	0520	
110187	11	0520	
110188	11	0520	
110189	11	0520	
110190	11	4680	
110205	11	0520	
120015	12	3320	
130002	13	29	
130003	13	50	
130011	13	50	
130018	13	6340	
130049	13	7840	
130060	13	1080	
140012	14	1600	
140015	14	7040	
140031	14	1400	
140032	14	7040	
140034	14	7040	
140040	14	6120	
140043	14	6880	
140046	14	7040	
140058	14	7880	
140064	14	6120	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY—2003—Continued

Provider number	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
140086	14		7040
140093	14	1400	
140102	14	7880	7880
140110	14	6120	
140141	14	7040	7040
140143	14	6120	
140155	3740		1600
140160	14	6880	
140161	14	1600	
140164	14	7040	
140189	14	1400	
140199	14	7040	
140230	14		1400
140234	14	6120	
140245	14		7040
140271	14	7800	7800
150002	2960	1600	
150004	2960	1600	
150006	15	7800	
150008	2960	1600	
150011	15	3480	3480
150015	15	1600	
150027	15		3480
150030	15	3480	3480
150034	2960	1600	
150036	15	3850	
150048	15	2000	
150051	1020		3480
150062	15	3480	3480
150065	15	3480	
150067	15		3480
150069	15	1640	1640
150076	15	7800	
150090	2960	1600	
150096	15	2330	
150105	15	3480	3480
150112	15	3480	3480
150122	15	3480	
150125	2960	1600	1600
150126	2960	1600	1600
150132	2960	1600	
150133	15	2330	
150146	15	2330	
160001	16	2120	
160016	16	2120	
160026	16	2120	
160030	16	2120	
160037	16	24	
160057	16	3500	
160064	16	8920	
160080	16	1960	
160089	16	2120	
160094	16	8920	
160122	16	14	
160147	16	2120	
170001	17	9040	
170006	17	3710	
170010	17	8560	
170012	17	9040	
170013	17	9040	
170014	17	3760	
170020	17	9040	
170022	17	7000	
170023	17	9040	
170025	17	9040	
170033	17	9040	
170058	17	26	
170060	17	28	
170094	17	8440	
170120	17	3710	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY—2003—Continued

Provider number	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
170131	17		8440
170137	4150	17	
170142	17	8440	
170145	17	8560	
170166	17	0320	
170175	17	9040	
180005	18	3400	
180011	18	4280	
180012	18	4520	
180013	18	5360	
180016	18	4520	
180018	18	4280	
180027	18	1660	
180028	18	3400	
180029	18	3660	
180044	18	3400	
180048	18	4280	
180054	18	1660	
180065	18	1640	
180066	18	5360	
180069	18	3400	
180078	18	3400	
180102	18	1660	
180104	18	1660	
180116	18	1660	
180124	18	5360	
180127	18	4520	
180132	18	4280	
180139	18	4280	
190001	19	5560	5560
190003	19	3880	
190010	19	5560	5560
190014	19	3880	
190015	19	5560	
190018	19	3880	
190025	19	3880	
190048	3350	19	
190054	19	3880	
190083	19	5200	
190086	19	5200	
190099	19	3880	
190106	19	3880	
190110	3880	19	
190131	19	5560	
190218	19	0220	
200020	6403	1123	1123
200024	4243	6403	
200034	4243	6403	
200039	20	6403	
200040	6403		1123
200063	20	6403	
220060	1123	0743	
220077	8003	3283	
230015	23	3720	
230022	23	3720	
230027	23	3000	3000
230030	23	6960	
230036	23	6960	
230037	23	0440	
230040	23	3720	3720
230054	23	3080	
230078	0870	23	
230080	23	6960	
230093	23	3000	
230096	23	3720	
230097	23	3000	
230105	23	6960	
230106	23	3000	
230121	23	2640	2640
230188	23	6960	6960

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY—2003—Continued

Provider number	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
230199	23	0870	0870
230235	23	6960	6960
230253	23	2160	
240008	24	6820	
240011	24	5120	
240014	24	5120	
240016	24	2520	
240018	24		5120
240023	24	5120	
240045	24	2240	
240064	24	2240	
240075	24	6980	
240088	24	6980	
240089	24	5120	
240100	24	2985	
240121	24	2240	
240139	24	5120	
240142	24	6980	
240152	24	5120	
250004	25	4920	
250009	25	3580	
250012	25	4920	
250025	25	1	
250030	25	3560	
250031	25	3560	
250034	25	4920	
250042	25	4920	
250058	25	3285	
250069	25	3560	
250078	3285	0920	
250079	25	3560	
250081	25	3560	
250082	25	6240	
250084	25	19	
250088	25	0760	
250094	3285	0920	
250097	25	0760	
250100	25	8600	
250101	25	3560	
250104	25	3560	
250122	25	19	
250126	25	4920	
260006	7000	26	
260009	26	3760	
260011	26	1740	
260015	26	3700	
260017	26	7040	
260022	26	1740	
260025	26	14	
260034	26	3760	
260047	26	1740	
260050	26	7000	
260064	26	1740	
260074	26	1740	
260078	26	7920	
260094	26	7920	
260110	26	7040	7040
260113	26	14	
260116	26	7040	
260119	26	3700	
260120	26	3700	
260127	26	7040	
260131	26	1740	
260183	26	7040	
260186	26	1740	
270002	27	0880	
270003	27	3040	
270011	27	3040	
270016	27	0880	
270017	27	5140	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY—2003—Continued

Provider number	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
270051	27	5140	
270057	27	0880	
270083	27	5140	
280009	28	4360	
280023	28	4360	
280032	28	4360	
280054	28	4360	
280061	28	53	
280065	28	3060	
280077	28	5920	
280111	28	5920	
280125	28	7720	
290006	29	6720	
290019	29	6720	
300003	30	1123	
300005	30	1123	1123
300009	1123	30	
300019	30	22	
300024	30		1123
310001	0875	5600	
310002	5640	5600	
310003	3640	5600	
310015	5640	0875	
310021	8480	5190	
310031	6160	5190	
310038	5015	5600	
310039	5015	5190	
310045	0875	5600	
310048	5015	5640	
310049	3640		5640
310070	5015	5640	
310076	5640	5600	
310087	8760	6160	
310108	5015	5190	
310118	3640		0875
310119	5640	5600	
320005	32	0200	
320006	32	7490	
320011	32	7490	
320013	32	7490	
320063	32	5800	
320065	32	5800	
330001	5660	5600	
330004	33	5660	
330023	2281	5660	
330027	5380	5600	
330084	33	1303	
330085	33	8160	
330103	33		1280
330106	5380	5600	
330126	5660	5600	
330135	5660	5600	
330136	33	8160	
330157	33	8160	
330181	5380	5600	
330182	5380	5600	
330205	5660	5600	
330209	5660	5600	
330224	33	3283	
330235	8160		6840
330239	3610	2360	
330250	33	1303	
330264	5660	5600	
330307	33	8160	
330386	33	5660	
340003	34	3120	
340008	34	2560	
340013	34	1520	
340017	34	0480	
340021	34	1520	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY—2003—Continued

Provider number	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
340023	34	0480	.....
340027	34	3150	.....
340039	34	1520	1520
340050	34	2560	.....
340051	34	3290	.....
340052	3120	1520	.....
340064	34	3120	.....
340068	34	9200	.....
340071	34	6640	6640
340084	34	1520	.....
340088	34	0480	.....
340097	34	3120	.....
340109	34	5720	5720
340115	34	6640	.....
340124	34	6640	6640
340126	34	6640	6640
340129	34	1520	.....
340131	34	3150	.....
340143	3290	1520	.....
340144	34	1520	.....
340147	6895	6640	.....
350005	35	2985	.....
350006	35	1010	.....
350009	35	2520	.....
350017	35	27	.....
350043	35	1010	.....
360002	36	.....	1680
360008	36	3400	.....
360010	36	0080	.....
360011	36	1840	.....
360013	36	2000	.....
360014	36	1840	.....
360024	36	1680	1680
360025	36	1680	1680
360036	36	0080	.....
360037	1680	0080	.....
360039	36	1840	.....
360046	3200	1640	1640
360056	3200	1640	1640
360063	36	1680	1680
360065	36	1680	1680
360071	36	4320	4320
360076	3200	1640	1640
360078	0080	.....	1680
360084	1320	0080	.....
360088	36	1840	.....
360089	36	8400	.....
360090	8400	.....	2160
360092	36	1840	1840
360095	36	8400	.....
360101	1680	0080	.....
360107	36	8400	.....
360108	36	4800	.....
360109	36	1840	.....
360112	8400	0440	.....
360121	36	0440	.....
360132	3200	1640	1640
360142	36	.....	1640
360144	1680	0080	.....
360159	36	1840	.....
360175	36	1840	1640
360197	36	1840	1840
360211	8080	.....	6280
370004	37	3710	.....
370006	37	8560	.....
370014	37	7640	.....
370015	37	8560	.....
370018	37	8560	.....
370022	37	4200	.....
370023	37	4200	.....

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY—2003—Continued

Provider number	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
370025	37	8560	
370034	37	2720	
370047	37	7640	
370048	37	8360	
370049	37	5880	
370054	37	5880	
370084	37	2720	
370103	37	45	
370153	37	4200	
370200	37	5880	
380001	38	6440	
380002	38	4890	
380003	38	2400	
380006	38		6440
380027	38	2400	
380040	38	2400	
380047	38	2400	
380050	38	4890	
380051	7080		6440
380065	38	2400	
380070	38	6440	
380084	7080	38	
380090	38	2400	
390006	39	3240	
390008	39	6280	6280
390013	39	3240	
390016	39	6280	6280
390017	39	6280	6280
390030	39	0240	6680
390031	39	0240	6680
390048	39	3240	
390052	39	0280	
390065	39	8840	9280
390079	39	0960	
390091	39	6280	
390093	39	6280	
390110	3680	6280	
390113	39	9320	
390133	0240	6160	
390138	39	8840	
390150	39	6280	
390151	39	8840	
390181	39	6680	6680
390183	39	6680	6680
390189	39	3240	
390197	0240	6160	
390201	39	5660	5640
390263	0240	6160	
400018	40	1310	
410010	6483	1123	
410013	6483	5523	
420020	42	1440	
420036	42	1520	
420059	42	2655	
420062	42	1520	
420068	42	0600	
420070	8140	1760	
420071	42	0600	
420080	42	7520	
420085	5330	9200	
430008	43	24	
430012	43	7760	
430013	43	7760	
430014	43	2520	
430015	43	6660	
430047	43	28	
430048	43	53	
430089	43	7720	
440020	44	3440	
440024	44	1560	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY—2003—Continued

Provider number	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
440050	44	0480	
440058	44	1560	
440059	44	5360	
440067	44	3840	
440068	44	1560	
440073	44	5360	
440083	44	3840	
440143	44	5360	
440148	44	5360	
440175	44	3440	
440180	44	3840	
440182	44	3580	
440185	44	1560	
440186	44	5360	
440187	44	18	
440192	44	5360	
440200	44	5360	
440203	44	1560	
450007	45	7240	
450014	45	8750	
450053	45	8750	
450072	1145	3360	
450080	45	4420	
450085	45	9080	
450098	45	4420	
450099	45	0320	
450113	45	1920	
450140	45	5800	
450144	45	5800	
450146	45	0320	
450155	45	0320	
450163	45	1880	
450178	45	5800	
450187	45	3360	
450192	45	1920	
450194	45	1920	
450196	45		1920
450211	45	3360	
450214	45	3360	
450224	45	8640	
450246	45	8750	
450347	45	3360	
450351	45	2800	
450353	45	1880	
450373	45	4420	
450395	45	3360	
450400	45	8800	
450438	45	0640	
450447	45	1920	
450451	45	2800	
450484	45	3360	
450508	45	8640	
450534	45	0320	
450587	45	40	
450591	1145	3360	
450623	45	1920	
450626	45	8750	
450653	45	5800	
450656	45	8640	
450694	45	3360	
450747	45	1920	
450755	45	4600	
450763	45	320	
460007	46	2620	
460011	46	6520	
460021	46	4120	
460027	46	6520	
460032	46	6520	
460036	46	6520	
460039	46	7160	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY—2003—Continued

Provider number	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
470001	47	1303	
470003	1303	1123	
470011	47	1123	1123
470012	47	6323	
470018	47	1123	
490001	49	3660	
490004	49	1540	
490005	49	8840	
490013	49	1950	
490018	49	4640	
490038	49	3660	
490047	49	8840	
490060	49	3660	
490066	5720	6760	
490079	49	3120	
490126	49	6800	
500002	50	6740	
500003	50	7600	
500007	50	0860	
500016	50	7600	
500041	50	6440	
500059	50	7600	
500072	50	7600	
500079	8200		7600
510001	51	6280	
510002	51	6800	
510006	51	6280	
510024	51	6280	6280
510028	51	1480	
510046	51	1480	
510047	51	6280	
510048	51	3400	
510062	51	1480	
510070	51	1480	
510071	51	1480	
520002	52	8940	
520006	52	8940	
520011	52	2290	
520021	3800	1600	1600
520028	52	4720	
520037	52	8940	
520059	6600	5080	5080
520066	3620	4720	
520071	52	5080	5080
520076	52	5080	
520084	52	4720	
520088	52	5080	
520091	52	23	
520094	6600	5080	5080
520096	6600	5080	5080
520102	52	5080	5080
520107	52	3080	
520113	52	3080	
520116	52	5080	5080
520152	52	3080	
520173	52	2240	
520189	3800	1600	1600
530008	53	1350	
530009	53	1350	
530015	53	6340	
530025	53	2670	
530032	53	7160	

TABLE 10.—MEANS AND STANDARD DEVIATIONS, BY DIAGNOSIS RELATED GROUPS (DRGS) [1]

DRG	Cases	Mean + 1 standard deviation
1	27,704	$66,748
2	14,078	$34,337
3	7	$55,030
4	6,426	$41,870
5	93,104	$23,280
6	398	$14,095
7	14,187	$46,968
8	4,349	$28,253
9	1,737	$24,223
10	18,015	$22,246
11	3,398	$15,519
12	49,619	$15,429
13	6,637	$13,922
14	235,975	$21,928
15	101,681	$16,969
16	9,257	$21,632
17	2,870	$11,541
18	28,000	$17,036
19	8,672	$12,308
20	5,616	$51,920
21	1,429	$27,335
22	2,722	$18,422
23	11,189	$14,276
24	55,342	$17,340
25	27,205	$10,640
26	34	$13,463
27	3,839	$23,063
28	12,339	$23,674
29	4,928	$12,505
31	3,814	$15,329
32	1,891	$9,174
34	22,336	$17,368
35	7,323	$11,138
36	2,481	$10,985
37	1,418	$18,071
38	93	$9,775
39	666	$10,551
40	1,524	$14,863
42	1,936	$11,289
43	110	$8,855
44	1,295	$11,245
45	2,598	$12,352
46	3,373	$13,685
47	1,350	$9,302
49	2,337	$31,134
50	2,477	$13,972
51	251	$16,197
52	238	$13,055
53	2,517	$20,530
55	1,564	$16,073
56	526	$16,460
57	692	$17,299
59	127	$13,165
60	6	$10,986
61	243	$21,950
62	3	$6,623
63	2,900	$25,070
64	3,131	$23,886
65	39,014	$9,512
66	7,668	$9,851
67	439	$13,316
68	8,752	$11,567
69	3,034	$8,666
70	25	$8,029
71	87	$12,279
72	926	$12,429
73	7,070	$13,912
75	39,852	$53,451

TABLE 10.—MEANS AND STANDARD DEVIATIONS, BY DIAGNOSIS RELATED GROUPS (DRGS) [1]—Continued

DRG	Cases	Mean + 1 standard deviation
76	41,676	$50,324
77	2,444	$21,281
78	35,270	$22,207
79	166,273	$29,036
80	8,304	$15,356
81	2	$17,479
82	63,407	$25,645
83	6,390	$16,990
84	1,558	$8,753
85	21,262	$21,607
86	2,179	$12,312
87	59,447	$24,541
88	396,490	$15,658
89	502,217	$18,132
90	46,781	$10,653
91	57	$12,409
92	14,806	$21,600
93	1,710	$13,018
94	12,571	$20,639
95	1,679	$10,242
96	53,684	$13,018
97	28,583	$9,626
98	15	$16,431
99	21,274	$12,269
100	8,941	$9,245
101	21,119	$14,939
102	5,557	$9,489
103	428	$349,756
104	19,511	$130,539
105	27,278	$94,418
106	3,307	$121,657
107	85,660	$86,239
108	6,200	$95,309
109	59,511	$64,065
110	53,164	$71,438
111	9,392	$42,529
113	41,401	$49,111
114	8,849	$29,028
115	15,270	$58,727
116	109,194	$38,515
117	4,176	$23,091
118	8,104	$27,103
119	1,316	$22,646
120	37,306	$39,416
121	167,277	$27,051
122	81,670	$17,860
123	41,145	$28,071
124	138,236	$23,982
125	89,996	$18,048
126	5,015	$48,094
127	681,606	$17,412
128	8,240	$12,365
129	4,100	$19,186
130	88,663	$16,401
131	27,776	$9,821
132	152,256	$11,138
133	8,915	$9,314
134	39,612	$10,344
135	7,552	$15,416
136	1,237	$10,011
138	203,304	$14,336
139	89,960	$8,832
140	66,409	$9,140
141	102,377	$12,604
142	51,706	$9,672
143	250,001	$9,216
144	88,480	$21,330
145	7,594	$10,378

TABLE 10.—MEANS AND STANDARD DEVIATIONS, BY DIAGNOSIS RELATED GROUPS (DRGS) [1]—Continued

DRG	Cases	Mean + 1 standard deviation
146	10,796	$45,993
147	2,797	$25,903
148	129,351	$59,354
149	19,315	$24,710
150	20,330	$49,351
151	4,962	$22,681
152	4,424	$33,239
153	2,013	$19,418
154	28,996	$73,715
155	7,260	$21,846
156	3	$32,596
157	8,151	$22,041
158	4,560	$10,941
159	17,109	$23,315
160	12,156	$13,554
161	11,153	$19,125
162	7,270	$10,677
163	3	$7,876
164	5,116	$39,084
165	2,184	$20,580
166	3,902	$24,579
167	3,799	$14,801
168	1,381	$22,419
169	869	$12,657
170	12,155	$49,736
171	1,359	$19,892
172	30,603	$24,475
173	2,709	$13,824
174	247,084	$17,229
175	35,141	$9,564
176	15,215	$18,581
177	9,422	$15,760
178	3,756	$11,718
179	12,540	$18,881
180	88,253	$16,534
181	27,085	$9,241
182	260,632	$13,956
183	91,215	$9,962
184	93	$8,646
185	5,069	$15,675
186	3	$17,560
187	666	$14,847
188	79,377	$19,332
189	13,104	$10,335
190	74	$12,681
191	9,220	$77,337
192	1,257	$30,601
193	4,862	$59,463
194	733	$27,612
195	4,151	$50,509
196	1,050	$26,194
197	18,557	$42,811
198	5,667	$20,952
199	1,644	$42,977
200	1,042	$53,497
201	2,013	$67,182
202	26,142	$23,012
203	29,301	$24,716
204	61,516	$20,412
205	24,447	$21,124
206	2,048	$12,455
207	32,101	$19,874
208	10,740	$11,426
209	370,349	$31,852
210	121,438	$29,326
211	32,517	$19,885
212	7	$11,988
213	9,875	$32,709

TABLE 10.—MEANS AND STANDARD DEVIATIONS, BY DIAGNOSIS RELATED GROUPS (DRGs) [1]—Continued

DRG	Cases	Mean + 1 standard deviation
216	6,916	$38,905
217	17,022	$53,503
218	22,732	$25,771
219	20,855	$16,751
223	13,650	$17,145
224	12,431	$12,855
225	6,124	$19,539
226	5,698	$26,964
227	4,915	$13,522
228	2,481	$19,438
229	1,175	$11,756
230	2,406	$21,932
231	12,530	$24,031
232	880	$16,464
233	7,178	$34,665
234	4,607	$21,908
235	5,089	$13,039
236	39,744	$12,220
237	1,743	$9,880
238	8,617	$24,817
239	48,197	$17,565
240	11,800	$23,191
241	3,218	$11,428
242	2,515	$19,784
243	93,611	$12,959
244	13,570	$12,429
245	5,726	$8,349
246	1,346	$9,926
247	19,616	$10,001
248	12,060	$14,559
249	12,649	$11,805
250	3,793	$11,824
251	2,489	$8,063
253	20,842	$12,750
254	10,802	$7,656
256	6,400	$14,186
257	16,692	$14,784
258	16,950	$11,403
259	3,812	$15,230
260	5,072	$11,046
261	1,888	$16,770
262	686	$15,951
263	24,560	$37,753
264	3,982	$19,495
265	4,052	$27,077
266	2,676	$14,584
267	267	$15,879
268	899	$19,361
269	9,060	$29,801
270	2,746	$12,961
271	19,594	$18,154
272	5,470	$17,426
273	1,387	$10,047
274	2,343	$22,054
275	247	$10,261
276	1,326	$11,997
277	93,843	$14,927
278	31,720	$9,470
279	3	$19,964
280	17,038	$12,041
281	7,827	$8,003
283	5,635	$12,585
284	1,950	$7,589
285	6,568	$35,890
286	2,183	$35,565
287	6,457	$32,850
288	3,675	$36,854
289	6,414	$16,097

TABLE 10.—MEANS AND STANDARD DEVIATIONS, BY DIAGNOSIS RELATED GROUPS (DRGs) [1]—Continued

DRG	Cases	Mean + 1 standard deviation
290	9,482	$14,860
291	78	$10,570
292	5,422	$44,164
293	345	$24,530
294	95,355	$13,252
295	3,358	$13,707
296	250,808	$14,775
297	47,716	$8,713
298	103	$10,114
299	1,218	$16,149
300	17,532	$19,436
301	3,639	$11,261
302	7,896	$54,753
303	20,698	$41,205
304	12,041	$40,662
305	3,006	$20,536
306	7,210	$21,938
307	2,164	$10,268
308	7,244	$28,300
309	4,331	$15,304
310	24,587	$19,325
311	8,309	$10,483
312	1,547	$18,439
313	644	$11,749
315	33,708	$36,795
316	115,275	$23,727
317	1,889	$12,419
318	5,736	$21,305
319	494	$11,322
320	193,134	$14,735
321	30,723	$9,566
322	64	$8,657
323	18,621	$14,311
324	7,451	$8,122
325	8,937	$11,466
326	2,802	$7,872
327	2	$10,679
328	685	$13,051
329	105	$8,650
331	49,123	$18,734
332	5,117	$10,727
333	311	$13,719
334	10,262	$24,961
335	12,370	$18,084
336	36,313	$14,365
337	29,498	$9,686
338	1,055	$21,430
339	1,505	$18,435
341	3,670	$21,442
342	723	$13,001
344	3,838	$22,438
345	1,335	$19,558
346	4,559	$18,995
347	373	$10,844
348	3,280	$12,862
349	597	$7,194
350	6,493	$12,462
352	768	$12,805
353	2,655	$31,864
354	7,485	$25,534
355	5,670	$14,447
356	25,920	$12,488
357	5,710	$39,602
358	20,605	$20,138
359	31,042	$13,346
360	15,575	$14,638
361	369	$18,778
362	2	$9,180

TABLE 10.—MEANS AND STANDARD DEVIATIONS, BY DIAGNOSIS RELATED GROUPS (DRGs) [1]—Continued

DRG	Cases	Mean + 1 standard deviation
363	2,683	$15,573
364	1,629	$14,738
365	1,834	$34,245
366	4,432	$23,297
367	520	$10,108
368	3,285	$21,162
369	3,279	$10,693
370	1,242	$16,029
371	1,413	$10,589
372	919	$9,639
373	3,876	$6,330
374	116	$12,936
375	8	$21,289
376	262	$8,664
377	29	$24,590
378	169	$15,095
379	408	$6,916
380	76	$6,684
381	181	$10,112
382	25	$2,798
383	1,841	$9,336
384	149	$7,372
389	5	$11,692
392	2,246	$55,515
394	2,326	$31,257
395	100,607	$14,330
396	11	$12,749
397	17,906	$21,719
398	17,113	$22,322
399	1,788	$12,303
400	6,486	$47,400
401	5,836	$50,173
402	1,599	$19,649
403	31,999	$32,078
404	4,588	$15,824
406	2,494	$48,934
407	701	$21,576
408	2,122	$36,343
409	2,515	$21,666
410	30,760	$18,311
411	14	$7,688
412	18	$4,980
413	5,766	$24,842
414	763	$12,866
415	39,905	$66,206
416	181,072	$28,177
417	37	$21,802
418	23,398	$18,311
419	15,719	$15,131
420	2,957	$10,195
421	9,270	$11,869
422	69	$7,590
423	7,269	$31,897
424	1,292	$41,189
425	16,304	$11,890
426	4,481	$9,206
427	1,576	$9,291
428	744	$12,949
429	27,018	$14,174
430	63,051	$12,703
431	320	$10,737
432	411	$11,105
433	5,520	$4,883
439	1,457	$29,345
440	5,435	$32,696
441	612	$15,577
442	16,693	$42,597
443	3,807	$17,673

TABLE 10.—MEANS AND STANDARD DEVIATIONS, BY DIAGNOSIS RELATED GROUPS (DRGS) [1]—Continued

DRG	Cases	Mean + 1 standard deviation
444	5,675	$13,003
445	2,724	$8,465
447	6,278	$8,499
449	30,470	$14,241
450	7,366	$7,229
451	5	$4,039
452	25,215	$18,340
453	5,643	$9,105
454	4,623	$14,423
455	1,096	$8,019
461	4,563	$21,124
462	11,981	$19,956
463	25,204	$12,097
464	7,101	$8,636
465	224	$10,305
466	1,795	$11,397
467	1,043	$9,854
468	54,705	$66,153
470	49	$302,446
471	12,391	$47,581
473	8,235	$63,556
475	104,025	$67,384
476	3,812	$40,882
477	25,600	$32,847
478	108,611	$42,010
479	24,176	$24,354
480	622	$176,423
481	726	$123,849
482	5,299	$61,539
483	43,282	$288,420
484	317	$100,224
485	3,028	$50,619
486	1,867	$85,814
487	3,533	$35,194
488	776	$88,052
489	13,548	$32,178
490	5,247	$18,195
491	13,575	$26,985
492	2,874	$74,770
493	58,081	$30,868
494	30,883	$16,784
495	211	$155,662
496	1,841	$98,777
497	19,917	$57,641
498	14,635	$41,713
499	32,659	$24,252
500	49,444	$15,562
501	2,352	$44,432
502	636	$25,677
503	5,888	$20,546
504	123	$281,048
505	147	$31,985
506	937	$84,055
507	288	$30,296
508	667	$24,629
509	177	$16,475
510	1,671	$20,337
511	616	$11,613
512	450	$95,226
513	142	$99,439
514	19,241	$104,112
515	4,568	$87,754
516	76,169	$45,006
517	190,940	$36,508
518	51,620	$30,281
519	7,216	$39,899
520	11,045	$25,111
521	28,562	$12,663
522	6,139	$10,035
523	14,802	$6,921
524	136,805	$12,350
525	492	$209,675

[1] Cases are taken from the FY 2001 MedPAR file; DRGs are from GROUPER V20.0.

Appendix A—Regulatory Impact Analysis

I. Introduction

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Public Law 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandate Reform Act of 1995 (Public Law 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We have determined that this proposed rule is a major rule as defined in 5 U.S.C. 804(2). We estimate that the total impact of these changes for FY 2003 payments compared to FY 2002 payments to be approximately a $0.3 billion increase.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million to $25 million in any 1 year. For purposes of the RFA, all hospitals and other providers and suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Public Law 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the hospital inpatient prospective payment systems, we classify these hospitals as urban hospitals.

It is clear that the changes being proposed in this document would affect both a substantial number of small rural hospitals as well as other classes of hospitals, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this proposed rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

Section 202 of the Unfunded Mandate Reform Act of 1995 (Public Law 104–4) also requires that agencies assess anticipated costs and benefits before issuing any proposed rule (or a final rule that has been preceded by a proposed rule) that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This proposed rule would not mandate any requirements for State, local, or tribal governments.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule in light of Executive Order 13132 and have determined that it will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

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

II. Objectives

The primary objective of the acute care hospital inpatient prospective payment system is to create incentives for hospitals to operate efficiently and minimize unnecessary costs while at the same time ensuring that payments are sufficient to adequately compensate hospitals for their legitimate costs. In addition, we share national goals of preserving the Medicare Trust Fund.

We believe the proposed changes would further each of these goals while maintaining the financial viability of the hospital industry and ensuring access to high quality health care for Medicare beneficiaries. We expect that these proposed changes would ensure that the outcomes of this payment system are reasonable and equitable while avoiding or minimizing unintended adverse consequences.

III. Limitations of Our Analysis

The following quantitative analysis presents the projected effects of our proposed policy changes, as well as statutory changes effective for FY 2003, on various hospital groups. We estimate the effects of individual policy changes by estimating payments per case while holding all other payment policies constant. We use the best data available, but we do not attempt to predict behavioral responses to our policy changes, and we do not make adjustments for future changes in such variables as admissions, lengths of stay, or case-mix. As we have done in previous proposed rules, we are soliciting comments and information about the anticipated effects of these changes on hospitals and our methodology for estimating them.

IV. Hospitals Included In and Excluded From the Acute Care Hospital Inpatient Prospective Payment System

The prospective payment systems for hospital inpatient operating and capital-related costs encompass nearly all general, short-term, acute care hospitals that participate in the Medicare program. There were 44 Indian Health Service hospitals in our database, which we excluded from the analysis due to the special characteristics of the prospective payment method for these hospitals. Among other short-term, acute care hospitals, only the 67 such hospitals in Maryland remain excluded from the hospital inpatient prospective payment system under the waiver at section 1814(b)(3) of the Act.

There are approximately 515 critical access hospitals (CAHs). These small, limited service hospitals are paid on the basis of reasonable costs rather than under the acute care hospital inpatient prospective payment system. The remaining 20 percent are specialty hospitals that are excluded from the acute-care, short-term prospective payment system. These hospitals include psychiatric hospitals and units, rehabilitation hospitals and units, long-term care hospitals, children's hospitals, and cancer hospitals. The impacts of our final policy changes on these hospitals are discussed below.

Thus, as of February 2002, we have included 4,301 hospitals in our analysis. This represents about 80 percent of all Medicare-participating hospitals. The majority of this impact analysis focuses on this set of hospitals.

V. Impact on Excluded Hospitals and Hospital Units

As of February 2002, there were 1,065 specialty hospitals excluded from the

acute care hospital inpatient prospective payment system and instead paid on a reasonable cost basis subject to the rate-of-increase ceiling under § 413.40. Broken down by specialty, there were 493 psychiatric, 216 rehabilitation, 270 long-term care, 75 children's, and 11 cancer hospitals. In addition, there were 1,436 psychiatric units and 936 rehabilitation units in hospitals otherwise subject to the acute care hospital inpatient prospective payment system. Under § 413.40(a)(2)(i)(A), the rate-of-increase ceiling is not applicable to the 67 specialty hospitals and units in Maryland that are paid in accordance with the waiver at section 1814(b)(3) of the Act.

In the past, hospitals and units excluded from the acute care hospital inpatient prospective payment system have been paid based on their reasonable costs subject to limits as established by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). Hospitals that continue to be paid based on their reasonable costs are subject to TEFRA limits for FY 2003. For these hospitals, the proposed update is the percentage increase in the excluded hospital market basket (currently estimated at 3.4 percent).

Inpatient rehabilitation facilities (IRFs) are paid under the IRF prospective payment system for cost reporting periods beginning on or after January 1, 2002. For cost reporting periods beginning during FY 2003, the IRF prospective payment is based on 100 percent of the adjusted Federal IRF prospective payment amount, updated annually (see the August 7, 2001 final rule (66 FR 41316 through 41430)). Therefore, these hospitals are not impacted by this proposed rule.

Effective for cost reporting periods beginning during FY 2003, we have proposed that long-term care hospitals would be paid under a long-term care hospital prospective payment system, where long-term care hospitals receive payment based on a 5-year transition period (see the March 22, 2002 proposed rule (67 FR 13416 through 13494)). However, under this proposed payment system, a long-term care hospital may also elect to be paid at 100 percent of the Federal prospective rate at the beginning of any of its cost reporting periods during the 5-year transition period. For purposes of the update factor, the portion of the proposed prospective payment system transition blend payment based on reasonable costs for inpatient operating services would be determined by updating the long-term care hospital's TEFRA limit by the proposed estimate of the excluded hospital market basket (or 3.4 percent).

The impact on excluded hospitals and hospital units of the update in the rate-of-increase limit depends on the cumulative cost increases experienced by each excluded hospital or unit since its applicable base period. For excluded hospitals and units that have maintained their cost increases at a level below the rate-of-increase limits since their base period, the major effect will be on the level of incentive payments these hospitals and hospital units receive. Conversely, for excluded hospitals and hospital units with per-case cost increases above the cumulative update in their rate-of-increase limits, the major effect will be the amount of excess costs that would not be reimbursed.

We note that, under § 413.40(d)(3), an excluded hospital or unit whose costs exceed 110 percent of its rate-of-increase limit receives its rate-of-increase limit plus 50 percent of the difference between its reasonable costs and 110 percent of the limit, not to exceed 110 percent of its limit. In addition, under the various provisions set forth in § 413.40, certain excluded hospitals and hospital units can obtain payment adjustments for justifiable increases in operating costs that exceed the limit. At the same time, however, by generally limiting payment increases, we continue to provide an incentive for excluded hospitals and hospital units to restrain the growth in their spending for patient services.

VI. Quantitative Impact Analysis of the Proposed Policy Changes Under the Hospital Inpatient Prospective Payment System for Operating Costs

A. Basis and Methodology of Estimates

In this proposed rule, we are announcing policy changes and payment rate updates for the hospital inpatient prospective payment systems for operating and capital-related costs. We estimate the total impact of these changes for FY 2003 payments compared to FY 2002 payments to be approximately a $0.3 billion increase. We have prepared separate impact analyses of the proposed changes to each system. This section deals with changes to the operating prospective payment system.

The data used in developing the quantitative analyses presented below are taken from the FY 2001 MedPAR file and the most current provider-specific file that is used for payment purposes. Although the analyses of the changes to the operating prospective payment system do not incorporate cost data, the most recently available hospital cost report data were used to categorize hospitals. Our analysis has several qualifications. First, we do not make adjustments for behavioral changes that hospitals may adopt in response to these proposed policy changes. Second, due to the interdependent nature of the hospital inpatient prospective payment system, it is very difficult to precisely quantify the impact associated with each proposed change. Third, we draw upon various sources for the data used to categorize hospitals in the tables. In some cases, particularly the number of beds, there is a fair degree of variation in the data from different sources. We have attempted to construct these variables with the best available source overall. For individual hospitals, however, some miscategorizations are possible.

Using cases in the FY 2001 MedPAR file, we simulated payments under the operating prospective payment system given various combinations of payment parameters. Any short-term, acute care hospitals not paid under the short-term acute-care hospital inpatient prospective payment systems (Indian Health Service hospitals and hospitals in Maryland) are excluded from the simulations. The impact of payments under the capital prospective payment system, or the impact of payments for costs other than inpatient operating costs, are not analyzed in this section. Estimated payment impacts of proposed FY 2003 changes to the capital prospective payment system are discussed in section IX. of this Appendix.

The proposed changes discussed separately below are the following:

- The effects of the proposed change to the labor portion of the standardized amounts from 71.1 percent to 72.5 percent.
- The effects of the proposed changes in hospitals' wage index values reflecting wage data from hospitals' cost reporting periods beginning during FY 1999, compared to the FY 1998 wage data, and the effects of removing from the wage data the costs and hours associated with graduate medical education (GME) and certified registered nurse anesthetists (CRNAs).
- The effects of the proposed annual reclassification of diagnoses and procedures and the recalibration of the diagnosis-related group (DRG) relative weights required by section 1886(d)(4)(C) of the Act.
- The effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB) that will be effective in FY 2003.

• The total change in payments based on FY 2003 policies relative to payments based on FY 2002 policies.

To illustrate the impacts of the FY 2003 proposed changes, our analysis begins with a FY 2003 baseline simulation model using: the FY 2002 DRG GROUPER (version 19.0); the FY 2002 wage index; and no MGCRB reclassifications. Outlier payments are set at 5.1 percent of total DRG plus outlier payments.

Each proposed and statutory policy change is then added incrementally to this baseline model, finally arriving at an FY 2003 model incorporating all of the changes. This allows us to isolate the effects of each change.

Our final comparison illustrates the percent change in payments per case from FY 2002 to FY 2003. Six factors have significant impacts here. The first is the update to the standardized amounts. In accordance with section 1886(d)(3)(A)(iv) of the Act, as amended by section 301 of Public Law 106–554, we are proposing to update the large urban and the other areas average standardized amounts for FY 2003 using the most recently forecasted hospital market basket increase for FY 2003 of 3.3 percent minus 0.55 percentage points (for an update of 2.75 percent). Under section 1886(b)(3) of the Act, the updates to the hospital-specific amounts for sole community hospitals (SCHs) and for Medicare-dependent small rural hospitals (MDHs) is also equal to the market basket increase of 3.3 percent minus 0.55 percentage points (for an update of 2.75 percent).

A second significant factor that impacts changes in hospitals' payments per case from FY 2002 to FY 2003 is the change in MGCRB status from one year to the next. That is, hospitals reclassified in FY 2002 that are no longer reclassified in FY 2003 may have a negative payment impact going from FY 2002 to FY 2003; conversely, hospitals not reclassified in FY 2002 that are reclassified in FY 2003 may have a positive impact. In some cases, these impacts can be quite substantial, so if a relatively small number of hospitals in a particular category lose their reclassification status, the percentage change in payments for the category may be below the national mean. This effect is alleviated, however, by section 304(a) of Public Law 106–554, which provided that reclassifications for purposes of the wage index are for a 3-year period.

A third significant factor is that we currently estimate that actual outlier payments during FY 2002 will be 6.7 percent of total DRG payments. When the FY 2002 final rule was published, we projected FY 2002 outlier payments would be 5.1 percent of total DRG plus outlier payments; the standardized amounts were offset correspondingly. The effects of the higher than expected outlier payments during FY 2002 (as discussed in the Addendum to this proposed rule) are reflected in the analyses below comparing our current estimates of FY 2002 payments per case to estimated FY 2003 payments per case.

Fourth, section 213 of Public Law 106–554 provided that all SCHs may receive payment on the basis of their costs per case during their cost reporting period that began during 1996. This option was to be phased in over 4 years. For FY 2003, the proportion of payments based on affected SCHs' FY 1996 hospital-specific amount increases from 50 percent to 75 percent.

Fifth, under section 1886(d)(5)(B)(ii) of the Act, the formula for indirect medical education (IME) is reduced beginning in FY 2003. The reduction is from approximately a 6.5 percent increase for every 10 percent increase in the resident-to-bed ratio during FY 2002 to approximately a 5.5 percent increase.

Sixth, the disproportionate share hospital (DSH) adjustment increases in FY 2003 compared with FY 2002. In accordance with section 1886(d)(5)(F)(ix) of the Act, during FY 2002, DSH payments that the hospital would otherwise receive were reduced by 3 percent. This reduction is no longer applicable beginning with FY 2003.

Table I demonstrates the results of our analysis. The table categorizes hospitals by various geographic and special payment consideration groups to illustrate the varying impacts on different types of hospitals. The top row of the table shows the overall impact on the 4,301 hospitals included in the analysis. This number is 494 fewer hospitals than were included in the impact analysis in the FY 2002 final rule (66 FR 40087). Of this number, 437 are now CAHs and are excluded from our analysis.

The next four rows of Table I contain hospitals categorized according to their geographic location: all urban, which is further divided into large urban and other urban; and rural. There are 2,613 hospitals located in urban areas (MSAs or NECMAs) included in our analysis. Among these, there are 1,511 hospitals located in large urban areas (populations over 1 million), and 1,102 hospitals in other urban areas (populations of 1 million or fewer). In addition, there are 1,688 hospitals in rural areas. The next two groupings are by bed-size categories, shown separately for urban and rural hospitals. The final groupings by geographic location are by census divisions, also shown separately for urban and rural hospitals.

The second part of Table I shows hospital groups based on hospitals' FY 2003 payment classifications, including any reclassifications under section 1886(d)(10) of the Act. For example, the rows labeled urban, large urban, other urban, and rural show that the number of hospitals paid based on these categorizations after consideration of geographic reclassifications are 2,645, 1,570, 1,075, and 1,656, respectively.

The next three groupings examine the impacts of the proposed changes on hospitals grouped by whether or not they have GME residency programs (teaching hospitals that receive an IME adjustment) or receive DSH payments, or some combination of these two adjustments. There are 3,195 nonteaching hospitals in our analysis, 872 teaching hospitals with fewer than 100 residents, and 234 teaching hospitals with 100 or more residents.

In the DSH categories, hospitals are grouped according to their DSH payment status, and whether they are considered urban or rural after MGCRB reclassifications. Hospitals in the rural DSH categories, therefore, represent hospitals that were not reclassified for purposes of the standardized amount or for purposes of the DSH adjustment. (They may, however, have been reclassified for purposes of the wage index.)

The next category groups hospitals considered urban after geographic reclassification, in terms of whether they receive the IME adjustment, the DSH adjustment, both, or neither.

The next five rows examine the impacts of the proposed changes on rural hospitals by special payment groups (SCHs, rural referral centers (RRCs), and MDHs), as well as rural hospitals not receiving a special payment designation. The RRCs (159), SCHs (540), MDHs (216), and hospitals that are both SCH and RRC (75) shown here were not reclassified for purposes of the standardized amount. There are 4 RRCs and 1 SCH and RRC that will be reclassified as urban for the standardized amount in FY 2003 and, therefore, are not included in these rows.

The next two groupings are based on type of ownership and the hospital's Medicare utilization expressed as a percent of total patient days. These data are taken primarily from the FY 1999 Medicare cost report files, if available (otherwise FY 1998 data are used). Data needed to determine ownership status were unavailable for 213 hospitals. Similarly, the data needed to determine

Medicare utilization were unavailable for 109 hospitals.

The next series of groupings concern the geographic reclassification status of hospitals. The first grouping displays all hospitals that were reclassified by the MGCRB for FY 2003. The next two groupings separate the hospitals in the first group by urban and rural status.

The final row in Table I contains hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act.

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 2003 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Percent changes in payments per case]

	Number of hosps.[1] (0)	New labor share[2] (1)	DRG changes.[3] (2)	New wage data[4] (3)	Remove GME & CRNA 80/20[5] (4)	Remove GME & CRNA 100 percent[6] (5)	DRG & WI changes[7] (6)	MCGRB reclassification[8] (7)	All FY 2003 changes[9] (8)
By Geographic Location:									
All hospitals	4,301	0.0	−0.2	0.0	0.0	0.0	0.0	0.0	0.4
Urban hospitals	2,613	0.0	−0.2	−0.1	0.0	0.0	0.0	−0.5	0.1
Large urban areas (populations over 1 million)	1,511	0.1	−0.2	−0.2	0.0	0.0	−0.2	−0.5	−0.3
Other urban areas (populations of 1 million of fewer)	1,102	−0.1	−0.1	0.1	0.0	0.0	0.3	−0.4	0.8
Rural hospitals	1,688	−0.2	−0.4	0.5	0.1	0.1	0.3	2.5	2.1
Bed Size (Urban):									
0–99 beds	647	0.0	−0.2	0.0	0.1	0.1	0.3	−0.6	1.5
100–199 beds	904	0.0	−0.3	−0.1	0.0	0.1	0.0	−0.5	1.0
200–299 beds	528	0.0	−0.3	0.0	0.0	0.1	0.1	−0.4	0.5
300–499 beds	387	0.0	−0.1	−0.2	0.0	0.0	0.0	−0.4	0.1
500 or more beds	147	0.1	−0.2	−0.1	0.0	0.0	−0.1	−0.5	−1.1
Bed Size (Rural):									
0–49 beds	819	−0.2	−0.6	0.6	0.1	0.1	0.2	0.5	2.6
50–99 beds	507	−0.2	−0.5	0.4	0.1	0.1	0.2	1.0	2.4
100–149 beds	216	−0.2	−0.4	0.6	0.1	0.1	0.5	2.9	2.0
150–199 beds	78	−0.2	−0.4	0.5	0.1	0.1	0.5	4.8	1.9
200 or more beds	68	−0.2	−0.3	0.4	0.1	0.1	0.4	4.1	1.4
Urban by Region:									
New England	134	0.2	−0.3	0.1	0.0	0.1	0.9	−0.2	0.0
Middle Atlantic	402	0.2	−0.1	−0.8	0.0	0.0	−0.8	−0.1	−1.8
South Atlantic	380	−0.1	−0.2	0.1	0.1	0.1	0.2	−0.5	0.9
East North Central	431	0.0	−0.2	0.1	0.0	0.0	0.2	−0.5	0.4
East South Central	158	−0.2	−0.2	0.2	0.0	0.0	0.1	−0.7	0.9
West North Central	180	−0.1	−0.3	0.5	0.1	0.1	0.6	−0.7	0.9
West South Central	334	−0.2	−0.2	−0.2	0.1	0.1	−0.1	−0.7	0.4
Mountain	132	0.0	0.0	−0.3	0.1	0.1	0.0	−0.6	0.6
Pacific	416	0.2	−0.4	0.0	0.1	0.1	0.1	−0.5	0.7
Puerto Rico	46	−0.7	−0.4	−0.8	0.0	0.0	−0.7	−0.8	0.0
Rural by Region:									
New England	40	0.0	−0.4	0.2	0.0	0.0	0.0	2.8	1.0
Middle Atlantic	68	−0.1	−0.4	−0.1	0.0	0.0	−0.3	2.5	1.6
South Atlantic	239	−0.2	−0.5	0.4	0.1	0.1	0.2	3.0	1.9
East North Central	225	−0.1	−0.3	0.4	0.1	0.1	0.4	2.1	2.5
East South Central	243	−0.3	−0.6	1.0	0.1	0.1	0.8	2.4	2.0
West North Central	311	−0.2	−0.4	0.8	0.0	0.0	0.7	1.5	2.4
West South Central	294	−0.3	−0.6	0.3	0.1	0.1	0.0	3.4	1.8
Mountain	151	−0.1	−0.4	0.2	0.0	0.0	0.1	1.6	2.0
Pacific	112	0.0	−0.4	0.8	0.1	0.1	0.6	2.3	2.7
Puerto Rico	5	−0.7	−0.5	−4.9	0.1	0.1	−5.0	−0.5	−2.8
By Payment Classification:									
Urban hospitals	2,645	0.0	−0.2	−0.1	0.0	0.0	0.0	−0.4	0.2
Large urban areas (populations over 1 million)	1,570	0.1	−0.2	−0.2	0.0	0.0	−0.2	−0.4	−0.2
Other urban areas (populations of 1 million of fewer)	1,075	−0.1	−0.1	0.1	0.0	0.0	0.3	−0.4	0.8
Rural areas	1,656	−0.2	−0.5	0.5	0.1	0.1	0.3	2.4	2.1
Teaching Status:									
Non-teaching	3,195	−0.1	−0.4	0.2	0.1	0.1	0.2	0.3	1.5
Fewer than 100 Residents	872	0.0	−0.1	−0.1	0.0	0.0	0.0	−0.3	0.5
100 or more Residents	234	0.1	−0.2	−0.3	0.0	0.0	−0.3	−0.3	−1.7
Urban DSH:									
Non-DSH	1,565	0.0	−0.1	0.0	0.0	0.0	0.2	0.1	0.7
100 or more beds	1,354	0.0	−0.2	−0.2	0.0	0.0	−0.1	−0.5	0.0
Less than 100 beds	295	0.0	−0.4	0.1	0.1	0.1	0.1	−0.3	1.5

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 2003 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Percent changes in payments per case]

	Number of hosps.[1] (0)	New labor share[2] (1)	DRG changes.[3] (2)	New wage data[4] (3)	Remove GME & CRNA 80/20[5] (4)	Remove GME & CRNA 100 percent[6] (5)	DRG & WI changes[7] (6)	MCGRB reclassification[8] (7)	All FY 2003 changes[9] (8)
Rural DSH:									
Sole Community (SCH)	470	−0.1	−0.7	0.4	0.0	0.0	−0.1	0.1	2.3
Referral Center (RRC) ...	156	−0.2	−0.4	0.5	0.1	0.1	0.5	5.1	1.6
Other Rural:									
100 or more beds	78	−0.3	−0.5	0.6	0.1	0.1	0.6	1.2	2.0
Less than 100 beds ...	383	−0.3	−0.6	0.7	0.1	0.1	0.5	0.8	2.5
Urban teaching and DSH:									
Both teaching and DSH	758	0.0	−0.2	−0.3	0.0	0.0	−0.2	−0.5	−0.6
Teaching and no DSH ...	278	0.0	0.0	0.0	0.0	0.0	0.2	−0.1	−0.1
No teaching and DSH ...	891	0.0	−0.4	0.1	0.1	0.1	0.2	−0.4	1.4
No teaching and no DSH	718	0.0	−0.2	0.0	0.0	0.1	0.2	−0.4	1.0
Rural Hospital Types:									
Non special status hospitals	666	−0.3	−0.5	0.7	0.1	0.1	0.6	1.2	2.3
RRC	159	−0.3	−0.3	0.6	0.1	0.1	0.6	6.0	1.2
SCH	540	−0.1	−0.6	0.2	0.0	0.0	−0.2	0.3	2.3
Medicare-dependent hospitals (MDH)	216	−0.2	−0.6	0.7	0.1	0.1	0.3	0.5	2.7
SCH and RRC	75	−0.1	−0.3	0.3	0.0	0.0	0.1	1.8	2.5
Type of Ownership:									
Voluntary	2,473	0.0	−0.2	−0.1	0.0	0.0	0.0	−0.1	0.4
Proprietary	705	0.0	−0.2	−0.2	0.1	0.1	−0.1	−0.1	0.3
Government	910	−0.1	−0.5	0.3	0.1	0.1	0.2	0.2	0.8
Unknown	213	−0.1	−0.3	0.2	0.1	0.1	0.2	−0.4	0.6
Medicare Utilization as a Percent of Inpatient Days:									
0–25	319	0.1	−0.4	−0.3	0.1	0.1	−0.4	−0.3	−0.7
25–50	1,650	0.0	−0.2	−0.1	0.0	0.0	0.0	−0.3	0.0
50–65	1,706	−0.1	−0.2	0.1	0.0	0.0	0.2	0.3	1.1
Over 65	517	−0.1	−0.4	−0.1	0.0	0.0	−0.1	0.5	0.6
Unknown	109	0.2	0.1	−1.1	0.0	0.0	−0.8	−0.7	−0.4
Hospitals Reclassified by the Medicare Geographic Classification Review Board: FY 2003 Reclassifications:									
All Reclassified Hospitals	620	−0.1	−0.3	0.3	0.0	0.1	0.4	4.4	1.0
Standardized Amount Only	29	0.0	−0.4	0.6	0.1	0.1	0.6	0.3	1.6
Wage Index Only	527	−0.1	−0.3	0.3	0.0	0.1	0.3	4.5	0.8
Both	41	−0.2	−0.2	0.4	0.1	0.1	0.6	5.1	1.1
Nonreclassified Hospitals	3,666	0.0	−0.2	−0.1	0.0	0.0	0.0	−0.7	0.3
All Reclassified Urban Hospitals	108	0.1	−0.1	0.1	0.0	0.0	0.4	4.0	−0.4
Standardized Amount Only	1	0.0	−0.1	0.4	−0.1	−0.1	0.4	−0.9	1.6
Wage Index Only	95	0.1	−0.1	0.1	0.0	0.0	0.4	4.1	0.6
Both	12	−0.1	−0.2	0.6	0.1	0.1	0.9	2.9	4.1
Urban Nonreclassified Hospitals	2,471	0.0	−0.2	−0.1	0.0	0.0	0.0	−0.7	0.2
All Reclassified Rural Hospitals	512	−0.2	−0.4	0.4	0.1	0.1	0.4	4.6	1.8
Standardized Amount Only	1	−0.4	0.1	0.1	0.1	0.1	0.6	0.9	3.7
Wage Index Only	502	−0.2	−0.4	0.5	0.1	0.1	0.4	4.6	1.8
Both	9	−0.2	−0.2	0.2	0.1	0.1	0.2	4.7	0.7
Rural Nonreclassified Hospitals	1,175	−0.2	−0.6	0.5	0.1	0.1	0.3	−0.4	2.4
Other Reclassified Hospitals (Section 1886(D)(8)(B))	35	−0.1	−0.6	−0.1	0.0	0.0	−0.5	−1.4	2.8

[1] Because data necessary to classify some hospitals by category were missing, the total number of hospitals in each category may not equal the national total. Discharge data are from FY 2001, and hospital cost report data are from reporting periods beginning in FY 1999 and FY 1998.

[2] This column displays impact of the proposed change to the labor share from 71.1 percent to 72.5 percent.

[3] This column displays the payment impact of the recalibration of the DRG weights based on FY 2001 MedPAR data and the DRG reclassification changes, in accordance with section 1886(d)(4)(C) of the Act.

[4] This column displays the impact of updating the wage index with wage data from hospitals' FY 1999 cost reports.

[5] This column displays the impact of an 80/20 percent blend of removing the labor costs and hours associated with graduate medical education and for the Part A costs of certified registered nurse anesthetists.

[6] This column displays the impact of completely removing the labor costs and hours associated with graduate medical education (GME) and for the Part A costs of certified registered nurse anesthetists (CRNAs).

[7] This column displays the combined impact of the reclassification and recalibration of the DRGs, the updated and revised wage data used to calculate the wage index, the phase-out of GME and CRNA costs and hours, and the budget neutrality adjustment factor for DRG and wage index changes, in accordance with sections 1886(d)(4)(C)(iii) and 1886(d)(3)(E) of the Act. Thus, it represents the combined impacts shown in columns 2, 3, 4 and 5, and the FY 2003 budget neutrality factor of 1.001026.

[8] Shown here are the effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB). The effects demonstrate the FY 2003 payment impact of going from no reclassifications to the reclassifications scheduled to be in effect for FY 2003. Reclassification for prior years has no bearing on the payment impacts shown here.

[9] This column shows changes in payments from FY 2002 to FY 2003. It incorporates all of the changes displayed in columns 1, 6 and 7 (the changes displayed in columns 2, 3, 4, and 5 are included in column 6). It also displays the impact of the FY 2003 update, changes in hospitals' reclassification status in FY 2003 compared to FY 2002, and the difference in outlier payments from FY 2002 to FY 2003. It also reflects the gradual phase-in for some SCHs of the full 1996 hospital-specific rate. Finally, the impacts of the reduction in IME adjustment payments, and the increase in the DSH adjustment are shown in this column. The sum of these impacts may be different from the percentage changes shown here due to rounding and interactive effect.

B. Impact of the Proposed Changes to the Labor Share (Column 1)

In Column 1 of Table 1, we present the effects of our proposal to update the labor share from 71.10 percent to 72.49 percent. We estimate the impact of this change by calculating payments using payment rates updated to FY 2003, but using the FY 2002 DRG GROUPER and wage index. The change in this column represents the impact upon various hospital categories of the proposed change to the labor share. This proposed change negatively impacts hospitals with wage indexes less than 1.0, and positively affects those with wage indexes greater than 1.0.

This proposed change has no impact on overall hospital payments. However, there are redistributive impacts generally in the range of plus or minus 0.1 percent or 0.2 percent. The net redistributive impact from those positively and negatively affected is approximately $65 million. Hospitals in large urban areas would experience an increase of 0.1 percent. Hospitals in both "other" urban and rural areas would experience −0.1 and −0.2 percent decreases, respectively.

Under the urban by region category, New England, Middle Atlantic and Pacific regions would experience a 0.2 percent increase. The urban East South Central and West South Central regions would experience −0.2 percent decreases. Puerto Rico has a projected decrease of −0.7 percent, due to the low wage indexes in the Puerto Rico MSAs.

All rural regions would experience a negative percent decrease except New England and Pacific regions (at 0.0 percent change). The South Atlantic and West North Central regions would experience a decrease of −0.2 percent. The East South Central and West South Central regions each would experience a −0.3 percent decrease, while Puerto Rico would experience a −0.7 percent decrease. Rural nonspecial status hospitals and RRCs would decline by −0.3. SCH and MDHs also would experience decreases of −0.1 and −0.2 percent, respectively. The relatively smaller negative impact for these hospitals is due to the fact that the hospital-specific rate is not adjusted by the wage index. Therefore, this proposed change would have no effect on hospitals paid on that basis (other than SCHs receiving a blended of their FY 1996 hospital-specific rate and the Federal rate).

C. Impact of the Proposed Changes to the DRG Reclassifications and Recalibration of Relative Weights (Column 3)

In column 3 of Table I, we present the combined effects of the DRG reclassifications and recalibration, as discussed in section II. of the preamble to this proposed rule. Section 1886(d)(4)(C)(i) of the Act requires us to annually make appropriate classification changes and to recalibrate the DRG weights in order to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources.

We compared aggregate payments using the FY 2002 DRG relative weights (GROUPER version 19.0) to aggregate payments using the proposed FY 2003 DRG relative weights (GROUPER version 20.0). Overall payments decrease −0.2 percent due to the DRG reclassification and recalibration. We note that, consistent with section 1886(d)(4)(C)(iii) of the Act, we have applied a budget neutrality factor to ensure that the overall payment impact of the DRG changes (combined with the wage index changes) is budget neutral. This budget neutrality factor of 1.001026 is applied to payments in Column 6. Because this is a combined DRG reclassification and recalibration and wage index budget neutrality factor, it is not applied to payments in this column.

The DRG changes we are proposing would result in 0.2 percent lower payments to hospitals overall. This is the reason the budget neutrality factor is greater than 1.0. This change is largely related to the proposed changes we are making to DRGs 14 (proposed to be retitled, Intracranial Hemorrhage and Stroke with Infarction) and 15 (proposed to be retitled, Nonspecific Cerebrovascular and Precerebral Occlusion without Infarction), and new DRG 524 (Transient Ischemia). With the new configuration of these DRGs, over 80,000 cases that previously would have been assigned to DRG 14 (with a FY 2003 proposed relative weight of 1.2742) would now be assigned to DRG 15 (with a FY 2003 proposed relative weight of 0.9844).

This change is evident most dramatically in small and rural hospitals. Rural hospitals with fewer than 50 beds would experience a 0.6 percent decrease, and rural hospitals with between 50 and 99 beds would experience a 0.5 percent decrease. Among rural hospitals categorized by region, the East South Central and West South Central would experience a 0.6 percent decrease in payments. Among special rural hospital categories, SCHs and MDHs both would experience 0.6 percent decreases.

D. Impact of Wage Index Changes (Columns 3, 4, and 5)

Section 1886(d)(3)(E) of the Act requires that, beginning October 1, 1993, we annually update the wage data used to calculate the wage index. In accordance with this requirement, the proposed wage index for FY 2003 is based on data submitted for hospital cost reporting periods beginning on or after October 1, 1998 and before October 1, 1999. As with column 2, the impact of the new data on hospital payments is isolated in columns 3, 4 and 5 by holding the other payment parameters constant in the three simulations. That is, columns 3, 4, and 5 show the percentage changes in payments when going from a model using the FY 2002 wage index (based on FY 1997 wage data before geographic reclassifications to a model using the FY 2003 pre-

reclassification wage index based on FY 1998 wage data).

The wage data collected on the FY 1999 cost reports are similar to the data used in the calculation of the FY 2002 wage index. Also, as described in section III.B of this preamble, the proposed FY 2003 wage index is calculated by removing 100 percent of hospitals' GME and CRNA costs (and hours). The FY 2002 wage index was calculated by blending 60 percent of hospitals' average hourly wages, excluding GME and CRNA data, with 40 percent of average hourly wages including these data.

Column 3 shows the impacts of updating the wage data using FY 1999 cost reports. This column maintains the same 60/40 phase-out of GME and CRNA costs as the FY 2002 wage index, which is the baseline for comparison. Among regions, the largest impact of updating the wage data is seen in rural Puerto Rico (a 4.9 percent decrease). Rural hospitals in the East South Central region experience the next largest impact, a 1.0 percent increase. This is primarily due to a 6 percent increase in the rural Alabama wage index, and a little under a 3 percent increase in the rural Mississippi wage index. Among urban hospitals, the Middle Atlantic region would experience a 0.8 percent decrease, largely due to a 2.4 percent decrease in the New York City wage index and a 2.3 percent decrease in the Philadelphia wage index.

The next two columns show the impacts of removing the GME and CRNA data from the wage index calculation. Under the 5-year phaseout of these data, FY 2003 would be the fourth year of the phaseout. This means that, under the phaseout, the FY 2003 wage index would be calculated with 20 percent of the GME and CRNA data included and 80 percent with these data removed, and FY 2004 would begin the calculation with 100 percent of these data removed. However, we are proposing to remove 100 percent of GME and CRNA costs from the FY 2003 wage index. To demonstrate the impacts of this proposal, we first show the impacts of moving to a wage index with 80 percent of these data removed (Column 4), then show a wage index with 100 percent of these data removed (Column 5). As expected, the impacts in the two columns are similar, with some differences due to rounding. Generally, no group of hospitals is impacted by more than 0.1 percent by this change. Even among the hospital group most likely to be negatively impacted by this change, teaching hospitals with 100 or more residents, the net effect of removing 100 percent of GME and CRNA data is 0.0 percent change in payments.

We note that the wage data used for the proposed wage index are based upon the data available as of February 22, 2001 and, therefore, do not reflect revision requests received and processed by the fiscal intermediaries after that date. To the extent these requests are granted by hospitals' fiscal intermediaries, these revisions will be reflected in the final rule. In addition, we continue to verify the accuracy of the data for hospitals with extraordinary changes in their data from the prior year.

The following chart compares the shifts in wage index values for labor market areas for FY 2002 relative to FY 2003. This chart demonstrates the impact of the proposed changes for the FY 2003 wage index, including updating to FY 1999 wage data and removing 100 percent of GME and CRNA data. The majority of labor market areas (324) experience less than a 5 percent change. A total of 19 labor market areas experience an increase of more than 5 percent and less than 10 percent. One area experiences an increase greater than 10 percent. A total of 26 areas experience decreases of more than 5 percent and less-than 10 percent. Finally, 2 areas experience declines of 10 percent or more.

Percentage change in area wage index values	Number of labor market areas	
	FY 2002	FY 2003
Increase more than 10 percent	2	1
Increase more than 5 percent and less than 10 percent	26	19
Increase or decrease less than 5 percent	335	320
Decrease more than 5 percent and less than 10 percent	10	26
Decrease more than 10 percent	1	2

Among urban hospitals, 24 would experience an increase of between 5 and 10 percent and 2 more than 10 percent. A total of 53 rural hospitals have increases greater than 5 percent, but none greater than 10 percent. On the negative side, 75 urban hospitals have decreases in their wage index values of at least 5 percent but less than 10 percent. Six urban hospitals have decreases in their wage index values greater than 10 percent. There are 19 rural hospitals with decreases in their wage index values greater than 5 percent or with increases of more than 10 percent. The following chart shows the projected impact for urban and rural hospitals.

Percentage change in area wage index values	Number of hospitals	
	Urban	Rural
Increase more than 10 percent	2	0
Increase more than 5 percent and less than 10 percent	24	53
Increase or decrease less than 5 percent	2506	1616
Decrease more than 5 percent and less than 10 percent	75	19
Decrease more than 10 percent	6	0

E. Combined Impact of DRG and Wage Index Changes—Including Budget Neutrality Adjustment (Column 6)

The impact of DRG reclassifications and recalibration on aggregate payments is required by section 1886(d)(4)(C)(iii) of the Act to be budget neutral. In addition, section 1886(d)(3)(E) of the Act specifies that any updates or adjustments to the wage index are to be budget neutral. As noted in the Addendum to this proposed rule, we compared simulated aggregate payments using the FY 2002 DRG relative weights and wage index to simulated aggregate payments using the proposed FY 2003 DRG relative weights and blended wage index. Based on this comparison, we computed a wage and recalibration budget neutrality factor of 1.001026. In Table I, the combined overall impacts of the effects of both the DRG reclassifications and recalibration and the updated wage index are shown in column 6. The 0.0 percent impact for all hospitals demonstrates that these changes, in combination with the budget neutrality factor, are budget neutral.

For the most part, the changes in this column are the sum of the changes in columns 2, 3, 4, and 5, plus approximately 0.1 percent attributable to the budget neutrality factor. In addition, section 4410 of Public Law 105–33 provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is not located in a rural area may not be less than the area wage index applicable to hospitals located in rural areas in that State. This provision is required to be budget neutral. The impact of this provision, which is to increase overall payments by 0.1 percent, is not shown in columns 2, 3, 4, and 5. It is included in the impacts shown in column 6. There also may be some variation of plus or minus 0.1 percent due to rounding.

F. Impact of MGCRB Reclassifications (Column 7)

Our impact analysis to this point has assumed hospitals are paid on the basis of their actual geographic location (with the exception of ongoing policies that provide that certain hospitals receive payments on bases other than where they are geographically located, such as hospitals in rural counties that are deemed urban under section 1886(d)(8)(B) of the Act). The changes in column 6 reflect the per case payment impact of moving from this baseline to a simulation incorporating the MGCRB decisions for FY 2003. These decisions affect hospitals' standardized amount and wage index area assignments.

By February 28 of each year, the MGCRB makes reclassification determinations that will be effective for the next fiscal year, which begins on October 1. The MGCRB may approve a hospital's reclassification request for the purpose of using another area's standardized amount, wage index value, or both.

The proposed FY 2003 wage index values incorporate all of the MGCRB's reclassification decisions for FY 2003. The wage index values also reflect any decisions made by the CMS Administrator through the appeals and review process for MGCRB decisions as of February 28, 2002. Additional changes that result from the Administrator's review of MGCRB decisions or a request by a hospital to withdraw its application will be reflected in the final rule for FY 2003.

The overall effect of geographic reclassification is required by section 1886(d)(8)(D) of the Act to be budget neutral. Therefore, we applied an adjustment of 0.990536 to ensure that the effects of reclassification are budget neutral. (See section II.A.4.b. of the Addendum to this proposed rule.)

As a group, rural hospitals benefit from geographic reclassification. Their payments rise 2.5 percent in column 6. Payments to urban hospitals decline 0.5 percent. Hospitals in other urban areas see a decrease in payments of 0.5 percent, while large urban hospitals lose 0.5 percent. Among urban hospital groups (that is, bed size, census division, and special payment status), payments generally decline.

A positive impact is evident among most of the rural hospital groups. The smallest increases among the rural census divisions are 1.5 and 1.6 percent for West North Central and Mountain regions, respectively. The largest increases are in rural South Atlantic and West South Central regions. These regions receive increases of 3.0 and 3.4 percent, respectively.

Among all the hospitals that were reclassified for FY 2003 (including hospitals that received wage index reclassification in a FY 2001 or FY 2002 that extend for 3-years), the MGCRB changes are estimated to provide a 4.4 percent increase in payments. Urban hospitals reclassified for FY 2003 are expected to receive an increase of 4.0 percent, while rural reclassified hospitals are expected to benefit from the MGCRB changes with a 4.6 percent increase in payments. Overall, among hospitals that were reclassified for purposes of the standardized amount only, a payment increase of 0.3 percent is expected, while those reclassified for purposes of the wage index only show a 4.5 percent increase in payments. Payments to urban and rural hospitals that did not reclassify are expected to decrease slightly due to the MGCRB changes, decreasing by 0.7 for urban hospitals and 0.4 for rural hospitals. Those hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act are expected to receive a decrease in payments of 1.4 percent.

The foregoing analysis was based on MGCRB and CMS Administrator decisions made by February 28, 2002. As previously noted, there may be changes to some MGCRB decisions through the appeals, review, and applicant withdrawal process. The outcome of these cases will be reflected in the analysis presented in the final rule.

G. All Changes (Column 8)

Column 8 compares our estimate of payments per case, incorporating all changes reflected in this proposed rule for FY 2003 (including statutory changes), to our estimate of payments per case in FY 2002. This column includes all of the policy changes to date, including the proposed new labor share shown in column 1, and the combined DRG and wage index changes from column 6. Because the reclassifications shown in column 7 do not reflect FY 2002 reclassifications, the impacts of FY 2003 reclassifications only affect the impacts from FY 2002 to FY 2003 if the reclassification impacts for any group of hospitals are different in FY 2003 compared to FY 2002.

It includes the effects of the 2.75 percent update to the standardized amounts and the hospital-specific rates for MDHs and SCHs. It also reflects the 1.7 percentage point difference between the projected outlier payments in FY 2002 (5.1 percent of total DRG payments) and the current estimate of the percentage of actual outlier payments in FY 2002 (6.8 percent), as described in the introduction to this Appendix and the Addendum to this proposed rule.

Section 213 of Public Law 106–554 provided that all SCHs may receive payment on the basis of their costs per case during their cost reporting period that began during 1996. For FY 2003, eligible SCHs that rebase receive a hospital-specific rate comprised of 25 percent of the higher of their FY 1982 or FY 1987 hospital-specific rate or their Federal rate, and 75 percent of their 1996 hospital-specific rate. The impact of this provision is modeled in column 8 as well.

Under section 1886(d)(5)(B)(ii) of the Act, the formula for IME is reduced beginning in FY 2003. The reduction is from approximately a 6.5 percent increase for every 10 percent increase in the resident-to-bed ratio during FY 2002 to approximately a 5.5 percent increase. We estimate the impact of this change to be a 0.9 percent reduction in hospitals' overall FY 2003 payments. The impact upon teaching hospitals would be larger.

Finally, the DSH adjustment increases in FY 2003 compared with FY 2002. In accordance with section 1886(d)(5)(F)(ix) of the Act, during FY 2002, DSH payments that the hospital would otherwise receive were reduced by 3 percent. This reduction is no longer applicable beginning with FY 2003. The estimated impact of this change is to increase overall hospital payments by 0.2 percent.

There might also be interactive effects among the various factors comprising the payment system that we are not able to isolate. For these reasons, the values in column 8 may not equal the sum of the changes in columns 6 and 7, plus the other impacts that we are able to identify.

The overall change in payments per case for hospitals in FY 2003 increases by 0.4 percent. This reflects the update of 2.75 percent, the 1.7 percent higher outlier payments in FY 2002 than projected for FY 2003, a 0.9 percent reduction in payments for IME, and a 0.2 percent increase in payments due to higher DSH payments in FY 2003. Hospitals in urban areas experience a 0.1 percent increase in payments per case compared to FY 2002, although hospitals in large urban areas experience a 0.3 percent decline in payments, largely due to reduction in IME payments. The impact of the reduction in IME payments is most evident among teaching hospitals with 100 or more residents, who would experience a decrease in payments per case of 1.7 percent. Hospitals in rural areas, meanwhile, experience a 2.1 percent payment increase.

Among urban census divisions, the largest payment increase was 0.9 percent in South Atlantic, East South Central, and West North Central. Hospitals in urban Middle Atlantic would experience an overall decrease of 1.8 percent. This is primarily due to the combination of the negative impact on these hospitals of reducing IME and the lower outlier payments during FY 2003. The rural census division experiencing the smallest increase in payments were New England and the Middle Atlantic regions (1.0 and 1.6 percent, respectively). The only decreases by rural hospitals are in Puerto Rico, where payments appear to decrease by 2.8 percent, largely due to the updated wage data. In the Pacific, payments appear to increase by 2.7 percent. Rural East and West North Central regions also benefited, with 2.5 and 2.4 percent increases, respectively.

Among special categories of rural hospitals, those hospitals receiving payment under the hospital-specific methodology (SCHs, MDHs, and SCH/RRCs) experience payment increases of 2.3 percent, 2.7 percent, and 2.5 percent, respectively. This outcome is primarily related to the fact that, for hospitals receiving payments under the hospital-specific methodology, there are no outlier payments. Therefore, these hospitals do not experience negative payment impacts from the decline in outlier payments from FY 2002 to FY 2003 (from 6.8 percent of total DRG plus outlier payments to 5.1 percent) as do hospitals paid based on the national standardized amounts.

Among hospitals that were reclassified for FY 2003, hospitals overall are estimated to receive a 1.0 percent increase in payments. Urban hospitals reclassified for FY 2003 are anticipated to receive a decrease of −0.4 percent, while rural reclassified hospitals are expected to benefit from reclassification with a 1.8 percent increase in payments. Overall, among hospitals reclassified for purposes of the standardized amount, a payment increase of 1.6 percent is expected, while those hospitals reclassified for purposes of the wage index only show an expected 0.8 percent increase in payments. Those hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act are expected to receive an increase in payments of 2.8 percent.

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 2003 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Payments per Case]

	Number of hosps. (1)	Average FY 2002 payment per case [1] (2)	Average FY 2003 payment per case [1] (3)	All FY 2003 changes (4)
By Geographic Location:				
All hospitals	4,301	7,194	7,224	0.4
Urban hospitals	2,613	7,707	7,718	0.1
Large urban areas (populations over 1 million)	1,511	8,269	8,245	–0.3
Other urban areas (populations of 1 million of fewer)	1,102	6,977	7,034	0.8
Rural hospitals	1,688	5,108	5,213	2.1
Bed Size (Urban):				
0–99 beds	647	5,299	5,380	1.5
100–199 beds	904	6,436	6,498	1.0
200–299 beds	528	7,391	7,425	0.5
300–499 beds	387	8,276	8,280	0.1
500 or more beds	147	10,046	9,932	–1.1
Bed Size (Rural):				
0–49 beds	819	4,204	4,313	2.6
50–99 beds	507	4,754	4,866	2.4
100–149 beds	216	5,052	5,154	2.0
150–199 beds	78	5,494	5,600	1.9
200 or more beds	68	6,651	6,742	1.4
Urban by Region:				
New England	134	8,228	8,225	0.0
Middle Atlantic	402	8,832	8,675	–1.8
South Atlantic	380	7,287	7,353	0.9
East North Central	431	7,269	7,296	0.4

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 2003 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Payments per Case]

	Number of hosps. (1)	Average FY 2002 payment per case [1] (2)	Average FY 2003 payment per case [1] (3)	All FY 2003 changes (4)
East South Central	158	6,919	6,984	0.9
West North Central	180	7,330	7,399	0.9
West South Central	334	7,089	7,121	0.4
Mountain	132	7,505	7,553	0.6
Pacific	416	9,319	9,383	0.7
Puerto Rico	46	3,310	3,311	0.0
Rural by Region:				
New England	40	6,227	6,290	1.0
Middle Atlantic	68	5,345	5,430	1.6
South Atlantic	239	5,221	5,319	1.9
East North Central	225	5,059	5,185	2.5
East South Central	243	4,723	4,819	2.0
West North Central	311	5,093	5,214	2.4
West South Central	294	4,547	4,627	1.8
Mountain	151	5,424	5,531	2.0
Pacific	112	6,592	6,772	2.7
Puerto Rico	5	2,754	2,677	–2.8
By Payment Classification:				
Urban hospitals	2,645	7,691	7,703	0.2
Large urban areas (populations over 1 million)	1,570	8,194	8,175	–0.2
Other urban areas (populations of 1 million of fewer)	1,075	7,003	7,057	0.8
Rural areas	1,656	5,094	5,199	2.1
Teaching Status:				
Non-teaching	3,195	5,866	5,952	1.5
Fewer than 100 Residents	872	7,479	7,515	0.5
100 or more Residents	234	11,431	11,239	–1.7
Urban DSH:				
Non-DSH	1,565	6,538	6,581	0.7
100 or more beds	1,354	8,299	8,299	0.0
Less than 100 beds	295	5,235	5,312	1.5
Rural DSH:	470	4,938	5,053	2.3
Sole Community (SCH).				
Referral Center (RRC)	156	5,906	6,001	1.6
Other Rural:				
100 or more beds	78	4,509	4,598	2.0
Less than 100 beds	383	4,076	4,179	2.5
Urban teaching and DSH:				
Both teaching and DSH	758	9,185	9,134	–0.6
Teaching and no DSH	278	7,724	7,717	–0.1
No teaching and DSH	891	6,510	6,600	1.4
No teaching and no DSH	718	6,066	6,124	1.0
Rural Hospital Types:				
Non special status hospitals	666	4,247	4,345	2.3
RRC	159	5,667	5,737	1.2
SCH	540	5,223	5,344	2.3
Medicare-dependent hospitals (MDH)	216	4,032	4,142	2.7
SCH and RRC	75	6,429	6,589	2.5
Type of Ownership:				
Voluntary	2,473	7,322	7,349	0.4
Proprietary	705	6,907	6,929	0.3
Government	910	6,764	6,815	0.8
Unknown	213	7,281	7,326	0.6
Medicare Utilization as a Percent of Inpatient Days:				
0–25	319	9,820	9,755	–0.7
25–50	1,650	8,252	8,252	0.0
50–65	1,706	6,225	6,293	1.1
Over 65	517	5,645	5,679	0.6
Unknown	109	8,871	8,832	–0.4
Hospitals Reclassified by the Medicare Geographic Classification Review Board:				
FY 2002 Reclassifications:				
All Reclassified Hospitals	620	6,513	6,579	1.0
Standardized Amount Only	29	5,918	6,016	1.6
Wage Index Only	527	6,678	6,728	0.8
Both	41	5,874	5,936	1.1
All Nonreclassified Hospitals	3,666	7,310	7,335	0.3
All Urban Reclassified Hospitals	108	8,752	8,720	–0.4

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 2003 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Payments per Case]

	Number of hosps. (1)	Average FY 2002 payment per case [1] (2)	Average FY 2003 payment per case [1] (3)	All FY 2003 changes (4)
Urban Nonreclassified Hospitals	1	5,484	5,569	1.6
Standardized Amount Only	95	9,003	8,951	–0.6
Wage Index Only	12	5,680	5,911	4.1
Both	2,471	7,672	7,685	0.2
All Reclassified Rural Hospitals	512	5,666	5,768	1.8
Standardized Amount Only	1	5,408	5,605	3.7
Wage Index Only	502	5,650	5,754	1.8
Both	9	6,370	6,415	0.7
Rural Nonreclassified Hospitals	1,175	4,478	4,585	2.4
Other Reclassified Hospitals (Section 1886(D)(8)(B))	35	4,892	5,031	2.8

[1] These payment amounts per case do not reflect any estimates of annual case-mix increase.

Table II presents the projected impact of the proposed changes for FY 2003 for urban and rural hospitals and for the different categories of hospitals shown in Table I. It compares the estimated payments per case for FY 2002 with the average estimated per case payments for FY 2003, as calculated under our models. Thus, this table presents, in terms of the average dollar amounts paid per discharge, the combined effects of the changes presented in Table I. The percentage changes shown in the last column of Table II equal the percentage changes in average payments from column 8 of Table I.

VII. Impact of Specific Proposed Policy Changes

A. Impact of Proposed Policy Changes Relating to Hospital Bed Counts

As discussed in section V.E.3. of the preamble of this proposed rule, we are proposing that if a hospital's reported bed count results in an occupancy rate below 35 percent, the applicable bed count for that hospital would be the number of beds that would result in an occupancy rate of 35 percent.

We have calculated an estimated impact on the Medicare program for FY 2003 as a result of this policy. We first identified urban hospitals receiving DSH with bed counts above 100, but with occupancy rates below 35 percent. Then, we determined the amount of DSH payments made to these hospitals in FY 1999. Next, we simulated what these hospitals' DSH payments would have been had their bed counts been less than 100. We compared the difference between actual DSH payments using 100 or more beds to simulated DSH payments using fewer than 100 beds, and determined that the reductions in DSH payments to these hospitals, inflated to FY 2003 using the update to the average standardized amount, would be approximately $38.9 million.

B. Impact of Proposed Changes Relating to EMTALA Provisions

In section V.J. of the preamble to this proposed rule, we discuss our proposed changes to our policies relating to the responsibilities of Medicare-participating hospitals under the patient antidumping statute (EMTALA) to medically screen all patients seeking emergency services and provide stabilizing medical treatment as necessary to patients whose conditions warrant it. In summary, to help promote consistent application of our regulations concerning EMTALA, we are proposing to clarify certain policies in areas where issues have arisen and at the same time address concerns about EMTALA raised by the Secretary's Regulatory Reform Task Force, including the following:

- We are proposing to change the requirements relating to emergency patients presenting at those off-campus outpatient clinics that do not routinely provide emergency services. We believe these changes would enhance the quality and promptness of emergency care by permitting individuals to be referred to appropriately equipped emergency facilities close to such clinics.
- We are proposing to clarify when EMTALA applies to both inpatients and outpatients. We believe these clarifications would enhance overall patient access to emergency services by helping to relieve administrative burdens on frequently overcrowded emergency departments.
- We are proposing to clarify the circumstances in which physicians, particularly specialty physicians, must serve on hospital medical staff "on-call" lists. We expect these clarifications would help improve access to physician services for all hospital patients by permitting hospitals local flexibility to determine how best to maximize their available physician resources. We are currently aware of reports of physicians, particularly specialty physicians, severing their relationships with hospitals, especially when those physicians belong to more than one hospital medical staff. Physician attrition from these medical staffs could result in hospitals having no specialty physician service coverage for their patients. Our proposed clarification of the on-call list requirement would permit hospitals to continue to attract physicians to serve on their medical staffs and thereby continue to provide services to emergency room patients.
- We are proposing to clarify the responsibilities of hospital-owned ambulances so that these ambulances can be more fully integrated with citywide and local community EMS procedures for responding to medical emergencies and thus use these resources more efficiently for the benefit of these communities.

We believe it would be difficult to quantify the impact of these changes and are soliciting comments on these issues.

C. Impact of Proposed Policy Changes Relating to Provider-Based Entity

In section V.K. of the preamble of this proposed rule, we discuss our proposed Medicare payment policy changes relating to determinations of provider-based status for entities of main providers. These changes are intended to focus mainly on issues raised by the hospital industry surrounding the provider-based regulations and to allow for a orderly and uniform implementation strategy once the

grandfathering provision for these entities expires on September 30, 2002.

We believe it would be difficult to quantify the impact of these changes and are soliciting comments on these issues.

VIII. Impact of Proposed Policies Affecting Rural Hospitals

A. Raising the Threshold To Qualify for the CRNA Pass-Through Payments

In section V. of the preamble of this proposed rule, we are proposing to raise the maximum number of surgical procedures (including inpatient and outpatient procedures) requiring anesthesia services that a rural hospital may perform to qualify for pass-through payments for the costs of CRNAs to 800 from 500. Currently, we have identified 622 hospitals that qualify under this provision.

To measure the impact of this provision, we determined that approximately half of the hospitals that would appear to be eligible based on the current number of procedures appear to receive this adjustment. In order to be eligible, hospitals must employ the CRNA and the CRNA must agree not to bill for services under Part B. We estimate approximately 90 rural hospitals would qualify under the increased maximum volume threshold. If one-half of these hospitals then met the other criteria, 45 additional hospitals would be eligible for these pass-through payments under this proposed change.

B. Removal of Requirement for CAHs To Use State Resident Assessment Instrument

In section VII. of the preamble of this proposed rule, we are proposing to eliminate the requirement that CAHs use the State resident assessment instrument (RAI) to conduct patient assessments. There are approximately 600 CAHs. The overwhelming majority of CAHs, 95 percent, provide SNF level care. The elimination of the requirement to use the State RAI would greatly reduce the burden on CAHs because facilities would no longer be required to complete an RAI document for each SNF patient (which would involve approximately 12,000 admissions based on the most recent claims data). Facilities would have the flexibility to document the assessment data in the medical record in a manner appropriate for their facility. The elimination of the requirement for use of the State RAI would reduce the amount of time required to perform patient assessments and allow more time for direct patient care.

IX. Impact of Proposed Changes in the Capital Prospective Payment System

A. General Considerations

Fiscal year 2001 was the last year of the 10-year transition period established to phase in the prospective payment system for hospital capital-related costs. During the transition period, hospitals were paid under one of two payment methodologies: fully prospective or hold harmless. Under the fully prospective methodology, hospitals were paid a blend of the Federal rate and their hospital-specific rate (see § 412.340). Under the hold-harmless methodology, unless a hospital elected payment based on 100 percent of the Federal rate, hospitals were paid 85 percent of reasonable costs for old capital costs (100 percent for SCHs) plus an amount for new capital costs based on a proportion of the Federal rate (see § 412.344). As we state in section VI.A. of the preamble of this proposed rule, the end of the 10-year transition period ending with hospital cost reporting periods beginning on or after October 1, 2001 (FY 2002), capital prospective payment system payments for most hospitals are based solely on the Federal rate in FY 2003. Therefore, we no longer include information on obligated capital costs or projections of old capital costs and new capital costs, which were factors needed to calculate payments during the transition period, for our impact analysis.

In accordance with section § 412.312, the basic methodology for determining a capital prospective payment system payment is:

(Standard Federal Rate) × (DRG weight) × (Geographic Adjustment Factor(GAF)) × (Large Urban Add-on, if applicable) × (COLA adjustment for hospitals located in Alaska and Hawaii) × (1 + Disproportionate Share (DSH) Adjustment Factor + Indirect Medical Education (IME) Adjustment Factor, if applicable).

In addition, hospitals may also receive outlier payments for those cases that qualify under the proposed threshold established for each fiscal year.

The data used in developing the impact analysis presented below are taken from the December 2001 update of the FY 2001 MedPAR file and the December 2001 update of the Provider Specific File that is used for payment purposes. Although the analyses of the changes to the capital prospective payment system do not incorporate cost data, we used the December 2001 update of the most recently available hospital cost report data (FY 1999) to categorize hospitals. Our analysis has several qualifications. First, we do not make adjustments for behavioral changes that hospitals may adopt in response to policy changes. Second, due to the interdependent nature of the prospective payment system, it is very difficult to precisely quantify the impact associated with each proposed change. Third, we draw upon various sources for the data used to categorize hospitals in the tables. In some cases (for instance, the number of beds), there is a fair degree of variation in the data from different sources. We have attempted to construct these variables with the best available sources overall. However, for individual hospitals, some miscategorizations are possible.

Using cases from the December 2001 update of the FY 2001 MedPAR file, we simulated payments under the capital prospective payment system for FY 2002 and FY 2003 for a comparison of total payments per case. Any short-term, acute care hospitals not paid under the general hospital inpatient prospective payment systems (Indian Health Service Hospitals and hospitals in Maryland) are excluded from the simulations.

As we explain in section III.A.4. of the Addendum of this proposed rule, payments will no longer be made under the regular exceptions provision under §§ 412.348(b) through (e). Therefore, we are no longer using the actuarial capital cost model (described in Appendix B of August 1, 2001 final rule (66 FR 40099)). We modeled payments for each hospital by multiplying the Federal rate by the GAF and the hospital's case-mix. We then added estimated payments for indirect medical education, disproportionate share, large urban add-on, and outliers, if applicable. For purposes of this impact analysis, the model includes the following assumptions:

- We estimate that the Medicare case-mix index will increase by 0.99800 percent in FY 2002 and will increase by 1.01505 percent in FY 2003.
- We estimate that the Medicare discharges will be 13,398,000 in FY 2002 and 13,658,000 in FY 2003 for a 1.9 percent increase from FY 2002 to FY 2003.
- The Federal capital rate was updated beginning in FY 1996 by an analytical framework that considers changes in the prices associated with capital-related costs and adjustments to account for forecast error, changes in the case-mix index, allowable changes in intensity, and other factors. The proposed FY 2003 update is 1.1 percent (see section III.A.1.a. of the Addendum to this proposed rule).

• In addition to the proposed FY 2003 update factor, the proposed FY 2003 Federal rate was calculated based on a proposed GAF/DRG budget neutrality factor of 1.0224, a proposed outlier adjustment factor of 0.9460, a proposed exceptions adjustment factor of 0.9960, and a proposed special adjustment for FY 2003 of 1.0255 (see section III.A. of the Addendum of this proposed rule).

2. Results

In the past, in this impact section we presented the redistributive effects that were expected to occur between "hold-harmless" hospitals and "fully prospective" hospitals and a cross-sectional summary of hospital groupings by the capital prospective payment system transition period payment methodology. We are no longer including this information since all hospitals (except new hospitals under § 412.324(b) and under proposed § 412.32(c)(2)) are paid 100 percent of the Federal rate in FY 2003.

We used the actuarial model described above to estimate the potential impact of our proposed changes for FY 2003 on total capital payments per case, using a universe of 4,300 hospitals. As described above, the individual hospital payment parameters are taken from the best available data, including the December 2001 update of the MedPAR file, the December 2001 update to the Provider-Specific File, and the most recent cost report data. In Table III, we present a comparison of total payments per case for FY 2002 compared to FY 2003 based on proposed FY 2003 payment policies. Column 3 shows estimates of payments per case under our model for FY 2002. Column 4 shows estimates of payments per case under our model for FY 2003. Column 5 shows the total percentage change in payments from FY 2002 to FY 2003. The change represented in Column 5 includes the 1.1 percent increase in the Federal rate, a 1.01505 percent increase in case-mix, changes in the adjustments to the Federal rate (for example, the effect of the new hospital wage index on the geographic adjustment factor), and reclassifications by the MGCRB, as well as changes in special exception payments. The comparisons are provided by: (1) Geographic location; (2) region; and (3) payment classification.

The simulation results show that, on average, capital payments per case can be expected to increase 3.7 percent in FY 2003. Our comparison by geographic location shows an overall increase in payments to hospitals in all areas. This comparison also shows that urban and rural hospitals will experience slightly different rates of increase in capital payments per case (3.5 percent and 5.1 percent, respectively). This difference is due to a projection that urban hospitals will experience a larger decrease in outlier payments from FY 2002 to FY 2003 compared to rural hospitals.

All regions are estimated to receive an increase in total capital payments per case, partly due to the elimination of the 2.1 percent reduction to the Federal rate for FY 2003 (see section VI.D. of the preamble of this proposed rule). Changes by region vary from a minimum increase of 2.1 percent (Middle Atlantic urban region) to a maximum increase of 5.7 percent (West North Central rural region). Hospitals located in Puerto Rico are expected to experience an increase in total capital payments per case of 4.3 percent.

By type of ownership, government hospitals are projected to have the largest rate of increase of total payment changes (4.4 percent). Similarly, payments to voluntary hospitals will increase 3.9 percent, while payments to proprietary hospitals will increase 2.0 percent.

Section 1886(d)(10) of the Act established the MGCRB. Hospitals may apply for reclassification for purposes of the standardized amount, wage index, or both. Although the Federal capital rate is not affected, a hospital's geographic classification for purposes of the operating standardized amount does affect a hospital's capital payments as a result of the large urban adjustment factor and the disproportionate share adjustment for urban hospitals with 100 or more beds. Reclassification for wage index purposes also affects the geographic adjustment factor, since that factor is constructed from the hospital wage index.

To present the effects of the hospitals being reclassified for FY 2003 compared to the effects of reclassification for FY 2002, we show the average payment percentage increase for hospitals reclassified in each fiscal year and in total. For FY 2003 reclassifications, we indicate those hospitals reclassified for standardized amount purposes only, for wage index purposes only, and for both purposes. The reclassified groups are compared to all other nonreclassified hospitals. These categories are further identified by urban and rural designation.

Hospitals reclassified for FY 2003 as a whole are projected to experience a 4.2 percent increase in payments. Payments to nonreclassified hospitals will increase slightly less (3.6 percent) than reclassified hospitals, overall. Hospitals reclassified during both FY 2002 and FY 2003 are projected to receive an increase in payments of 3.9 percent. Hospitals reclassified during FY 2003 only are projected to receive an increase in payments of 9.0 percent. This increase is primarily due to changes in the GAF (wage index).

TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE

[FY 2002 Payments Compared To FY 2003 Payments]

	Number of hospitals	Average FY 2002 payments/ case	Average FY 2003 payments/ case	Change
By Geographic Location:				
All hospitals	4,300	667	692	3.7
Large urban areas (populations over 1 million)	1,511	773	798	3.1
Other urban areas (populations of 1 million of fewer)	1,102	652	678	4.0
Rural areas	1,687	448	471	5.1
Urban hospitals	2,613	721	746	3.5
0–99 beds	647	511	533	4.3
100–199 beds	904	611	634	3.7
200–299 beds	528	692	717	3.6
300–499 beds	387	762	790	3.7
500 or more beds	147	935	961	2.8
Rural hospitals	1,687	448	471	5.1
0–49 beds	818	370	393	6.0

TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE—Continued

[FY 2002 Payments Compared To FY 2003 Payments]

	Number of hospitals	Average FY 2002 payments/ case	Average FY 2003 payments/ case	Change
50–99 beds	507	412	435	5.6
100–149 beds	216	454	477	5.1
150–199 beds	78	493	517	4.9
200 or more beds	68	566	589	4.1
By Region:				
Urban by Region	2,613	721	746	3.5
New England	134	771	804	4.3
Middle Atlantic	402	817	834	2.1
South Atlantic	380	690	716	3.7
East North Central	431	687	718	4.5
East South Central	158	649	675	4.0
West North Central	180	703	735	4.6
West South Central	334	666	685	2.9
Mountain	132	695	724	4.2
Pacific	416	841	866	2.9
Puerto Rico	46	305	319	4.3
Rural by Region	1,687	448	471	5.1
New England	40	549	575	4.6
Middle Atlantic	68	472	497	5.4
South Atlantic	239	467	489	4.8
East North Central	225	456	481	5.5
East South Central	243	414	435	5.0
West North Central	311	440	465	5.7
West South Central	294	403	423	5.0
Mountain	150	460	483	5.0
Pacific	112	528	557	5.5
By Payment Classification:				
All hospitals	4,300	667	692	3.7
Large urban areas (populations over 1 million)	1,570	767	791	3.2
Other urban areas (populations of 1 million of fewer)	1,075	654	680	4.0
Rural areas	1,655	447	469	5.1
Teaching Status:				
Non-teaching	3,194	545	568	4.2
Fewer than 100 Residents	872	699	726	3.8
100 or more Residents	234	1,041	1,069	2.7
Urban DSH:				
100 or more beds	1,354	759	784	3.3
Less than 100 beds	295	492	512	4.2
Rural DSH:				
Sole Community (SCH/EACH)	469	392	414	5.6
Referral Center (RRC/EACH)	156	518	540	4.3
Other Rural:				
100 or more beds	78	418	439	5.0
Less than 100 beds	383	378	400	5.8
Urban teaching and DSH:				
Both teaching and DSH	758	838	864	3.1
Teaching and no DSH	278	746	776	4.0
No teaching and DSH	891	600	623	3.8
No teaching and no DSH	718	600	623	3.8
Rural Hospital Types:				
Non special status hospitals	666	398	420	5.5
RRC/EACH	159	526	548	4.2
SCH/EACH	539	415	438	5.5
Medicare-dependent hospitals (MDH)	216	368	391	6.3
SCH, RRC and EACH	75	503	530	5.3
Hospitals Reclassified by the Medicare Geographic Classification Review Board:				
Reclassification Status During FY2002 and FY2003:				
Reclassified During Both FY2002 and FY2003	567	588	611	3.9
Reclassified During FY2003 Only	53	516	563	9.0
Reclassified During FY2002 Only	77	623	651	4.4
FY2003 Reclassifications:				
All Reclassified Hospitals	620	583	607	4.2
All Nonreclassified Hospitals	3,645	683	708	3.6
All Urban Reclassified Hospitals	108	799	826	3.4
Urban Nonreclassified Hospitals	2,471	718	743	3.5
All Reclassified Rural Hospitals	512	500	524	4.7
Rural Nonreclassified Hospitals	1,174	389	411	5.7
Other Reclassified Hospitals (Section 1886(D)(8)(B))	35	454	484	6.4

TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE—Continued

[FY 2002 Payments Compared To FY 2003 Payments]

	Number of hospitals	Average FY 2002 payments/ case	Average FY 2003 payments/ case	Change
Type of Ownership:				
Voluntary	2,473	680	707	3.9
Proprietary	705	658	671	2.0
Government	909	600	627	4.4
Medicare Utilization as a Percent of Inpatient Days:				
0–25	318	859	885	3.0
25–50	1,650	767	792	3.3
50–65	1,706	582	606	4.2
Over 65	517	525	547	4.3

BILLING CODE 4120–01–P

Appendix B—Report to Congress

THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

MAR 2 2 2002

The Honorable Richard B. Cheney
President of the Senate
Washington, DC 20510

Dear Mr. President:

I am pleased to submit to Congress this letter containing my recommendation for the applicable percentage increase in Medicare's hospital inpatient prospective payment system (IPPS) rates for Federal fiscal year (FY) 2003. Also included are my recommendations for updates to the payment limits for hospitals and hospital units excluded from IPPS, and for adjustments to the diagnosis-related group (DRG) weighting factors.

Section 1886(e)(3) of the Social Security Act (the Act) directs the Secretary of the Department of Health and Human Services to report to the Congress his initial estimate of his recommendation (required by section 1886(e)(4) of the Act) of an appropriate payment update for inpatient hospital services for the upcoming FY. Consistent with current law, the President's FY 2003 budget includes an update to the standardized amounts (the base dollar amounts for IPPS payments) equal to the market basket (an index of inflation in goods and services used by hospitals) minus 0.55 percentage points. The President's FY 2003 budget estimated the IPPS market basket rate of increase for FY 2003 to be 2.8 percent. Based on this estimate, I am recommending an update to the standardized amounts for hospitals in both large urban and other areas of 2.25 percent. Payments to hospitals under IPPS are projected to increase by $2.1 billion, from $86.0 billion in FY 2002 to $88.1 billion in FY 2003.

Although payments for most hospitals under the IPPS are made on the basis of the standardized amounts, some categories of hospitals are paid the higher of a hospital-specific rate based on their costs in a base year (the higher of either 1982, 1987, or 1996) or the IPPS rate based on the standardized amount. Consistent with current law and the President's FY 2003 budget, I am recommending an update equal to 2.25 percent to the hospital-specific rate for both sole community hospitals and Medicare-dependent, small rural hospitals.

I am also submitting, consistent with Section 1886(e)(3) of the Act, my recommendation for updating payments for hospitals and distinct-part hospital units that are excluded from IPPS.

The excluded hospital types are: psychiatric hospitals; rehabilitation hospitals; children's hospitals; long-term care hospitals; and cancer hospitals. The types of excluded distinct-part hospital units are psychiatric and rehabilitation. Hospitals and units excluded from the IPPS have in the past been paid based on their reasonable costs subject to limits as established by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

Page 2 — The Honorable Richard B. Cheney

Psychiatric hospitals and units, and children's and cancer hospitals continue to be paid based on their reasonable costs subject to TEFRA limits. For these hospitals, the President's FY 2003 budget incorporates an increase to the TEFRA limit using 2.8 percent for the excluded hospital market basket increase.

Inpatient rehabilitation facilities (IRF) are paid under the IRF PPS for cost reporting periods beginning on or after January 1, 2002. For cost reporting periods beginning on or after October 1, 2002, the IRF prospective payment is based on 100 percent of the adjusted Federal IRF PPS amount, updated annually.

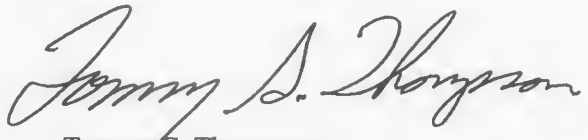
Effective for cost reporting periods beginning on or after October 1, 2002, we are proposing that long-term care hospitals will be paid under a PPS based on a 5-year transition period (hospitals may elect to receive full PPS rather than transition payments.) For purposes of the update factor, the portion of the proposed PPS transition blend payment based on reasonable costs for inpatient operating services would be determined by updating the long term care hospital's TEFRA limit by 2.8 percent.

My recommendation for the updates is based on cost projections used in the President's FY 2003 budget. A final recommendation on the appropriate percentage increases for FY 2003 will be made nearer the beginning of the new Federal fiscal year based on the most current market basket projection available at that time. The final recommendation will incorporate our analysis of the latest estimates of all relevant factors, including recommendations by the Medicare Payment Advisory Commission (MedPAC).

Section 1886(d)(4)(C)(iv) of the Act also requires that I include in my report recommendations with respect to adjustments to the diagnosis-related group (DRG) weighting factors. At this time I do not anticipate recommending any across-the-board adjustment to the DRG weighting factors for FY 2003.

I am pleased to provide this recommendation to you. I am also sending a copy of this letter to the Speaker of the House of Representatives.

Sincerely,



Tommy G. Thompson

THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

MAR 2 2 2002

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

I am pleased to submit to Congress this letter containing my recommendation for the applicable percentage increase in Medicare's hospital inpatient prospective payment system (IPPS) rates for Federal fiscal year (FY) 2003. Also included are my recommendations for updates to the payment limits for hospitals and hospital units excluded from IPPS, and for adjustments to the diagnosis-related group (DRG) weighting factors.

Section 1886(e)(3) of the Social Security Act (the Act) directs the Secretary of the Department of Health and Human Services to report to the Congress his initial estimate of his recommendation (required by section 1886(e)(4) of the Act) of an appropriate payment update for inpatient hospital services for the upcoming FY. Consistent with current law, the President's FY 2003 budget includes an update to the standardized amounts (the base dollar amounts for IPPS payments) equal to the market basket (an index of inflation in goods and services used by hospitals) minus 0.55 percentage points. The President's FY 2003 budget estimated the IPPS market basket rate of increase for FY 2003 to be 2.8 percent. Based on this estimate, I am recommending an update to the standardized amounts for hospitals in both large urban and other areas of 2.25 percent. Payments to hospitals under IPPS are projected to increase by $2.1 billion, from $86.0 billion in FY 2002 to $88.1 billion in FY 2003.

Although payments for most hospitals under the IPPS are made on the basis of the standardized amounts, some categories of hospitals are paid the higher of a hospital-specific rate based on their costs in a base year (the higher of either 1982, 1987, or 1996) or the IPPS rate based on the standardized amount. Consistent with current law and the President's FY 2003 budget, I am recommending an update equal to 2.25 percent to the hospital-specific rate for both sole community hospitals and Medicare-dependent, small rural hospitals.

I am also submitting, consistent with Section 1886(e)(3) of the Act, my recommendation for updating payments for hospitals and distinct-part hospital units that are excluded from IPPS.

The excluded hospital types are: psychiatric hospitals; rehabilitation hospitals; children's hospitals; long-term care hospitals; and cancer hospitals. The types of excluded distinct-part hospital units are psychiatric and rehabilitation. Hospitals and units excluded from the IPPS have in the past been paid based on their reasonable costs subject to limits as established by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

Psychiatric hospitals and units, and children's' and cancer hospitals continue to be paid based on their reasonable costs subject to TEFRA limits. For these hospitals, the President's FY 2003 budget incorporates an increase to the TEFRA limit using 2.8 percent for the excluded hospital market basket increase.

Inpatient rehabilitation facilities (IRF) are paid under the IRF PPS for cost reporting periods beginning on or after January 1, 2002. For cost reporting periods beginning on or after October 1, 2002, the IRF prospective payment is based on 100 percent of the adjusted Federal IRF PPS amount, updated annually.

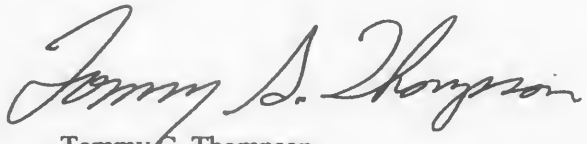
Effective for cost reporting periods beginning on or after October 1, 2002, we are proposing that long-term care hospitals will be paid under a PPS based on a 5-year transition period (hospitals may elect to receive full PPS rather than transition payments.) For purposes of the update factor, the portion of the proposed PPS transition blend payment based on reasonable costs for inpatient operating services would be determined by updating the long term care hospital's TEFRA limit by 2.8 percent.

My recommendation for the updates is based on cost projections used in the President's FY 2003 budget. A final recommendation on the appropriate percentage increases for FY 2003 will be made nearer the beginning of the new Federal fiscal year based on the most current market basket projection available at that time. The final recommendation will incorporate our analysis of the latest estimates of all relevant factors, including recommendations by the Medicare Payment Advisory Commission (MedPAC).

Section 1886(d)(4)(C)(iv) of the Act also requires that I include in my report recommendations with respect to adjustments to the diagnosis-related group (DRG) weighting factors. At this time I do not anticipate recommending any across-the-board adjustment to the DRG weighting factors for FY 2003.

I am pleased to provide this recommendation to you. I am also sending a copy of this letter to the President of the Senate.

Sincerely,



Tommy G. Thompson

ATTACHMENT

Discussion of Two Market Basket Estimates

Section 1886(b)(3)(B)(iii) of the Act defines the "market basket percentage increase" as "the percentage, estimated by the Secretary" by which the cost of goods and services comprising inpatient hospital services "will exceed the cost of such goods and services for the preceding period. The estimate is based on an index of appropriately weighted indicators of changes in wages and prices which are representative of the mix of goods and services included in such inpatient hospital services."

With the implementation of the Inpatient Prospective Payment System in Fiscal Year 1984, the Office of the Actuary (OACT) developed the market basket methodology and determined the official input price index from which the update percentage is calculated. OACT also forecasts the percentage increases for all of the Medicare payment categories that are updated by health-specific market baskets and other price indexes, including skilled nursing facility PPS, home health care PPS, and noninpatient hospital PPSs (capital, outpatient, rehabilitation facility, and hospice). To help ensure consistency among the many economic and price factors comprising the market baskets and other indexes, OACT contracts with a well-known and widely-respected independent forecasting firm, Global Insights/*DRI-WEFA*, to assist in making their forecasts.

In addition, each year for the President's Budget, the Office of Management and Budget forecasts the market basket by applying future assumptions of economy-wide wage and Consumer Price Index growth to the historical relationship between these factors and the market basket. This forecast does not attempt to capture the interrelationships among market basket factors that should be reflected in the actual update. OACT is in a stronger position to forecast the percentage increase in the market basket to be used in the actual update because they possess the detailed knowledge of the factors that affect the market basket, having developed these indexes for nearly two decades.

BILLING CODE 4120–01–C

Appendix C: Recommendation of Update Factors for Operating Cost Rates of Payment for Inpatient Hospital Services

I. Background

Section 1886(e)(4) of the Act requires that the Secretary, taking into consideration the recommendations of the Medicare Payment Advisory Commission (MedPAC), recommend update factors for inpatient hospital services for each fiscal year that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Under section 1886(e)(5) of the Act, we are required to publish the update factors recommended under section 1886(e)(4) of the Act. Accordingly, this Appendix provides the recommendations of appropriate update factors and the analysis underlying our recommendations. We also respond to MedPAC's recommendations concerning the update factors.

Section 1886(b)(3)(B)(i)(XVIII) of the Act, as amended by Section 301 Public Law 106–554, sets the FY 2003 percentage increase in the operating cost standardized amounts equal to the rate of increase in the hospital market basket minus 0.55 percent for prospective payment hospitals in all areas. Section 1886(b)(3)(B)(iv) of the Act sets the FY 2003 percentage increase in the hospital-specific rates applicable to SCHs and MDHs equal to the rate set forth in section 1886(b)(3)(B)(i) of the Act, that is, the same update factor as all other hospitals subject to the acute care hospital inpatient prospective payment system, or the rate of increase in the market basket minus 0.55 percentage points. Under section 1886(b)(3)(B)(ii) of the Act, the FY 2003 percentage increase in the rate-of-increase limits for hospitals and hospital units excluded from the acute care hospital inpatient prospective payment system is the market basket percentage increase.

In accordance with section 1886(d)(3)(A) of the Act, we are proposing to update the standardized amounts, the hospital-specific rates, and the rate-of-increase limits for hospitals and hospital units excluded from the prospective payment system as provided in section 1886(b)(3)(B) of the Act. Based on the proposed revised and rebased first quarter 2002 forecast of the FY 2003 market basket increase of 3.3 percent for hospitals subject to the acute care hospital inpatient prospective payment system, the proposed update to the standardized amounts is 2.75 percent (that is, the market basket rate of increase minus 0.55 percent percentage points) for hospitals in both large urban and other areas. The proposed update to the hospital-specific rate applicable to SCHs and MDHs is also 2.75 percent.

Consistent with section 1886(e)(3) of the Act, we are proposing a recommendation for updating payments for hospitals and distinct-part hospital units that are excluded from the hospital inpatient prospective payment system. Facilities excluded from the hospital inpatient prospective payment system include psychiatric hospitals and units, rehabilitation hospitals and units, long-term care hospitals, cancer hospitals, and children's hospitals.

In the past, hospitals and hospital units excluded from the hospital inpatient prospective payment system have been paid based on their reasonable costs subject to limits as established by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). Hospitals that continue to be paid based on their reasonable costs are subject to TEFRA limits for FY 2003. For these hospitals, the proposed update is the percentage increase in the excluded hospital market basket (currently estimated at 3.4 percent).

Inpatient rehabilitation facilities (IRFs) are paid under the IRF prospective payment system for cost reporting periods beginning on or after January 1, 2002. For cost reporting periods beginning during FY 2003, the Federal prospective payment for IRFs is based on 100 percent of the adjusted Federal IRF prospective payment amount, updated annually (see the August 7, 2001 final rule (66 FR 41316)).

Effective for cost reporting periods beginning during FY 2003, we are proposing that long-term care hospitals would be paid under a prospective payment system under which long-term care hospitals receive payment based on a 5-year transition period (see the March 22, 2002 proposed rule (67 FR 13416)). We are also proposing that long-term care hospitals may elect to be paid on 100 percent of the Federal prospective rate at the beginning of any of its cost reporting periods during the 5-year transition period. For purposes of the update factor, the portion of the proposed prospective payment system transition blend payment based on reasonable costs for inpatient operating services would be determined by updating the long-term care hospital's TEFRA limit by the current estimate of the excluded hospital market basket (or 3.4 percent).

In its March 1, 2002 Report to the Congress, MedPAC recommended that the base payment rates for Medicare covered services under the hospital inpatient prospective payment system be increased by the market basket percentage increase minus 0.55 percent for hospitals located in large urban areas, and by the full market basket percentage increase for hospitals located in all other areas (page 66). MedPAC did not make a separate recommendation for the hospital-specific rate applicable to SCHs and MDHs. MedPAC also presented a new approach for updating the hospital inpatient prospective system payment rates, which assesses the adequacy of current payments and accounts for the increase in efficient providers' costs in the upcoming year. While this approach is not fundamentally different from what MedPAC has done in the past, it no longer produces a detailed update framework for direct comparison with the Secretary's framework. We discuss MedPAC's recommendations concerning the update factors and our responses to these recommendations in section III. of this Appendix C. Below we describe the basis of our FY 2003 update recommendation (as shown in Table 1).

II. Secretary's Recommendations

Under section 1886(e)(4) of the Act, we are recommending that an appropriate update factor for the standardized amounts is the market basket percentage increase minus 0.55 percentage points for hospitals located in large urban and other areas. We are also recommending an update factor of the market basket percentage increase minus 0.55 percentage points for the hospital-specific rate for SCHs and MDHs. We believe these recommended update factors for FY 2003 would ensure that Medicare acts as a prudent purchaser and provide incentives to hospitals for increased efficiency, thereby contributing to the solvency of the Medicare Part A Trust Fund.

Rehabilitation hospitals and units are now paid under the IRF prospective payment system. For cost reporting periods beginning on or after October 1, 2002, the IRF prospective payment is based on 100 percent of the adjusted Federal IRF prospective payment system amount updated annually.

Effective for cost reporting periods beginning during FY 2003, we have proposed that long-term care hospitals be paid under a prospective payment system (67 FR 13416). For purposes of the update factor, the portion of the proposed prospective payment system transition blend payment based on reasonable costs for inpatient operating services for FY 2003 would be determined by updating the TEFRA target amount for long-term care hospitals by the most recent available estimate of the increase in the excluded hospital operating market basket (or 3.4 percent).

We recommend that the remaining excluded hospitals and units (which are excluded from the acute care hospital inpatient prospective payment system and will continue to be paid on a reasonable cost basis in FY 2003) receive an update of 3.4 percent. The update for excluded hospitals and hospital units is equal to the most recent available estimate of the increase in the excluded hospital operating market basket. Based on the proposed revised and rebased first quarter 2002 forecast for FY 2003, the proposed market basket rate of increase for excluded hospitals and hospital units is 3.4 percent.

As required by section 1886(e)(4) of the Act, we have taken into consideration the recommendations of MedPAC in setting these recommended update factors. Our responses to the MedPAC recommendations concerning the update factors are discussed below. Consistent with current law, we are proposing an update recommendation of the market basket percentage increase minus 0.55 percentage points for the hospital inpatient prospective payment system operating cost standardized amounts for FY 2003. This proposed update recommendation is supported by the following analyses that measure changes in hospital productivity, scientific and technological advances, practice pattern changes, changes in case-mix, the effect of reclassification on recalibration, and forecast error correction.

A. Productivity

Service level labor productivity is defined as the ratio of total service output to full-time equivalent employees (FTEs). While we recognize that productivity is a function of many variables (for example, labor, nonlabor material, and capital inputs), we use the portion of productivity attributed to direct labor since this update framework applies to operating payment. To recognize that we are apportioning the short-run output changes to the labor input and not considering the nonlabor inputs, we weight our productivity measure by the share of direct labor services in the market basket to determine the expected effect on cost per case.

Our recommendation for the service productivity component is based on historical trends in productivity and total output for both the hospital industry and the general economy, and projected levels of future hospital service output. MedPAC's predecessor, the Prospective Payment Assessment Commission (ProPAC), estimated cumulative service productivity growth to be 4.9 percent from 1985 through

1989 or 1.2 percent annually. At the same time, ProPAC estimated total output growth at 3.4 percent annually, implying a ratio of service productivity growth to output growth of 0.35.

Absent a productivity measure specific to Medicare patients, we examined productivity (output per hour) and output (gross domestic product) for the economy. Depending on the exact time period, annual changes in productivity range from 0.3 to 0.35 percent of the change in output (that is, a 1.0 percent increase in output would be correlated with a 0.3 to 0.35 percent change in output per hour).

Under our framework, the recommended update is based in part on expected productivity—that is, projected service output during the year, multiplied by the historical ratio of service productivity to total service output, multiplied by the share of direct labor in total operating inputs, as calculated in the hospital market basket. This method estimates an expected productivity improvement in the same proportion to expected total service growth that has occurred in the past and assumes that, at a minimum, growth in FTEs changes proportionally to the growth in total service output. Thus, the recommendation allows for unit productivity to be smaller than the historical averages in years that output growth is relatively low and larger in years that output growth is higher than the historical averages. Based on the above estimates from both the hospital industry and the economy, we have chosen to employ the range of ratios of productivity change to output change of 0.30 to 0.35.

The expected change in total hospital service output is the product of projected growth in total admissions (adjusted for outpatient usage), projected real case-mix growth, expected quality-enhancing intensity growth, and net of expected decline in intensity due to reduction of cost-ineffective practice. Case-mix growth and intensity numbers for Medicare are used as proxies for those of the total hospital, since case-mix increases (used in the intensity measure as well) are unavailable for non-Medicare patients. Thus, expected FY 2003 hospital output growth is simply the sum of the expected change in intensity (1.0 percent), projected admissions change (1.9 percent), and projected real case-mix growth (1.0 percent), or 3.9 percent. The share of direct labor services in the market basket (consisting of wages, salaries, and employee benefits) is 61.7 percent (based on the proposed revised and rebased hospital market basket discussed in section IV. of the preamble of this proposed rule).

Multiplying the expected change in total hospital service output (3.9 percent) by the ratio of historical service productivity change to total service growth of 0.30 to 0.35 and by the direct labor share percentage 61.6, provides our productivity standard of 0.9 to 0.7 percent. Because productivity gains hold down the rate of increase in hospitals' costs, this factor is applied as a negative offset to the market basket increase.

B. Intensity

We base our intensity standard on the combined effect of three separate factors: changes in the use of quality enhancing services, changes in the use of services due to shifts in within-DRG severity, and changes in the use of services due to reductions of cost-ineffective practices. For FY 2003, we recommend an adjustment of 1.0 percent. The basis of this recommendation is discussed below.

Following methods developed by CMS' Office of the Actuary for deriving hospital output estimates from total hospital charges, we have developed Medicare-specific intensity measures based on a 5-year average using FYs 1997 through 2001 MedPAR billing data. Case-mix constant intensity is calculated as the change in total Medicare charges per discharge adjusted for changes in the average charge per unit of service as measured by the Consumer Price Index (CPI) for hospital and related services and changes in real case-mix. [1] The 5-year average percentage change in charge per discharge was 6.3 percent, the 5-year average annual change in the CPI for hospital and related services was 4.5 percent, and the 5-year average annual change in case-mix was −0.3 percent. Dividing the change in charge per discharge by the product of the real case-mix index change and the CPI for hospital and related services yields a 5-year average annual change in intensity of 2.0 percent. To account for the proportions of the overall annual intensity increases due to ineffective practice patterns and to the combination of quality-enhancing new technologies and within-DRG complexity, we assume that one-half of the annual increase is due to each of these factors. Our recommended adjustment excludes the estimated amount of the overall intensity increase due to ineffective practice patterns. Thus, we are recommending an intensity adjustment for FY 2003 of 1.0 percent.

C. Change in Case-Mix

Our analysis takes into account projected changes in case-mix, adjusted for changes attributable to improved coding practices. For our FY 2003 update recommendation, we are projecting a 1.0 percent increase in the case-mix index. We define real case-mix change as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher weighted DRGs, but do not reflect greater resource requirements. We do not believe changes in coding behavior will impact the overall case-mix in FY 2003. As such, for FY 2003, we estimate that real case-mix is equal to projected change in case-mix. Thus, we are recommending a 0.0 percent adjustment for case-mix.

D. Effect of FY 2001 DRG Reclassification and Recalibration

We estimate that DRG reclassification and recalibration for FY 2001 resulted in a 0.3 percent change in the case-mix index when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the GROUPER. Therefore, we are recommending a −0.3 percent adjustment for the effect of FY 2001 DRG reclassification and recalibration.

E. Forecast Error Correction

We make a forecast error correction if the actual market basket changes differ from the forecasted market basket by 0.25 percentage points or more. There is a 2-year lag between the forecast and the measurement of forecast error. The estimated market basket percentage increase used to update the FY 2001 payment rates was 3.4 percent. Our most recent data indicates the actual FY 2001 increase was 4.1 percent. The resulting forecast error in the FY 2001 market basket rate of increase is 0.7 percentage points. This forecast error is a result of prices for wages, benefits, and utilities increasing more rapidly than expected. The effects of a labor shortage within the health services industry caused hospitals to increase wages greater than initially projected. Increases in actual benefits were faster than projected due to a greater than expected increase in health insurance premiums. Finally, market conditions for natural gas and electricity caused

[1] In the past, we have considered the upper bound of real case mix to be from 1.0 to 1.4 percent annually, with any increase beyond this bound assumed to be due to changes in coding practices. Because none of the annual changes in observed case mix change during the 5-year period from FY 1997 through FY 2001 exceeded 1.0 percent, it is all assumed to be real case mix change.

prices for those products to increase more rapidly than expected.

The following is a summary of the update range supported by our analyses:

HHS'S FY 2003 UPDATE RECOMMENDATION

Market basket	MB
Policy Adjustment Factors:	
Productivity	−0.9 to −0.7
Intensity	1.0
Subtotal	0.1 to 0.3
Case-Mix Adjustment Factors:	
Projected Case-Mix Change	1.0
Real Across DRG Change	−1.0
Subtotal	0.0
Effect of FY 2001 DRG Reclassification and Recalibration	−0.3
Forecast Error Correction	0.7
Total Recommendation Update	MB + 0.5 to MB + 0.7

While the above analysis would suggest an update between market basket plus 0.5 percentage points and the market basket plus 0.7 percentage points, the Secretary is recommending, consistent with current law, an update of the market basket percentage increase minus 0.55 percentage points (or 2.75 percent) for hospitals in all areas.

We believe that a 2.75 percent update factor for FY 2003 will appropriately reflect current trends in health care delivery, including the recent decreases in the use of hospital inpatient services and the corresponding increase in the use of hospital outpatient and postacute care services. Also, consistent with current law, we are recommending that the hospital-specific rates applicable to SCHs and MDHs be increased by the same update, 2.75 percentage points.

Since the inception of the acute care hospital inpatient prospective payment system, hospitals have received a full market basket update only once, in FY 2001. The stabilization of overall hospital margins in recent years suggests that the restrictions on market basket increases have not resulted in inadequate hospital payments. Modest limits below full market basket updates could be linked to continued careful review of Medicare hospital margin data to ensure that margins do not worsen among certain hospital types with negative and declining Medicare margins.

III. MedPAC Recommendations for Assessing Payment Adequacy and Updating Payments in Traditional Medicare

In its FY 2002 Report to Congress, MedPAC developed a new approach for updating fee-for-service payments that breaks the process into two basic parts: assessing the adequacy of current payments; and accounting for the increase in efficient providers' costs in the coming year. MedPAC points out this new approach "is not fundamentally different from what the Commission has done in the past, but we expect formalizing the two parts of our process will lead to greater emphasis on the broad question of whether the amount of money in the system currently is right and less emphasis on the role of specific cost-influencing factors" (page 39).

In assessing payment adequacy, MedPAC reviews the relationship between costs and payments (conventionally expressed as a margin). On the payment side, MedPAC applied the annual payment updates specified in law through FY 2002 and then modeled the effects of other policy changes that have affected the level of payments. On the cost side, MedPAC estimated the increases in costs per unit of output over the same period using the change in cost per adjusted admission in the American Hospital Association's annual survey of hospitals for FY 2000, and the CMS projected increase in the FYs 2001 and 2002 market baskets (page 58). MedPAC estimated that the inpatient Medicare margin would be 10.8 percent in FY 2002 (with FY 2003 payment rules). This amount is down slightly from MedPAC's estimate of 11.9 percent in FY 1999. In addition to the inpatient Medicare margin, MedPAC measured the overall Medicare margin, incorporating almost all Medicare-related payments and costs to hospitals. This overall Medicare margin was estimated to be 3.8 percent. The report notes that "the Commission does not plan to specify a 'standard margin,' although we will take the need for a small positive margin into account as we assess the adequacy of various fee-for-service payments" (page 43).

In addition to considering the relationship between estimated payments and costs, MedPAC also considered the following three factors to assess whether current payments are adequate (page 43):

- Changes in access to or quality of care;
- Changes in the volume of services or number of providers; and
- Changes in providers access to capital.

MedPAC found no evidence that the hospital cost base is inappropriate and concluded that Medicare payment is adequate and no payment adequacy adjustment is needed for FY 2003.

MedPAC recommends gradually eliminating the differential in the standardized amounts for hospitals in large urban and other areas. MedPAC's data on margins and its analysis of costs suggest that a different standardized amount (the large urban standardized amount is 1.6 percent higher than the amount for other areas) is unwarranted. MedPAC estimates the FY 2002 Medicare inpatient margins will range from 5 percent for rural hospitals to 14 percent for hospitals in large urban areas. Because much of this difference is due to the greater proportion of IME and DSH payments going to hospitals in large urban areas, MedPAC removed DSH payments and the portion of the IME payment above the measured cost relationship between IME and hospitals' costs, and found that hospitals in large urban areas still have Medicare margins that are about 4 percentage points higher than other urban and rural hospitals (page 64).

MedPAC believes that "(e)liminating the differential would improve payment equity across geographic areas and also help to simplify the payment system" (page 63). For example, eliminating the standardized amount differential would also eliminate the need for hospitals to reclassify for a higher standardized amount through the MGCRB. Therefore, MedPAC recommends holding the update for hospitals in large urban areas to the legislated level of the market

basket percentage increase minus 0.55 percent for FY 2003, while updating the other areas standardized amount by the full market basket percentage increase.

MedPAC accounts for providers' cost changes in the coming payment year primarily through a forecast of input price inflation, which estimates how much providers' costs would rise in the coming year if the quality and mix of inputs they use to furnish care and the types of patients they treat remain constant. MedPAC relies on CMS' market basket estimate to forecast input price inflation, but considers other factors that may affect providers' costs. These other factors are scientific and technological advances, changes in DRG case-mix complexity, site-of-service substitution, and other one-time factors.

In the past, MedPAC recommended specific adjustments to its update recommendation for each of these factors. In its March 2002 Report to Congress, MedPAC did not provide specific estimates for these factors, but stated "(a)fter considering all factors that might potentially affect the rate of growth in efficient providers' costs, we conclude that the appropriate adjustment for cost growth in fiscal year 2003 is the forecasted increase in the market basket, or 2.9 percent" (page 66). This market basket forecast was based on the December 2001 market basket estimated by CMS' Office of the Actuary, and does not reflect the proposed revisions and rebasing discussed in section IV. of the preamble of this proposed rule.

MedPAC's second recommendation related to updating payments under the hospital inpatient prospective payment system is that the Congress should increase the base rate for inpatient services covered by Medicare's prospective payment system in FY 2003 by the market basket percentage increase minus 0.55 percent for hospitals in large urban areas and by the market basket percentage increase for hospitals in all other areas. MedPAC focused on the operating update only because it applies to 92 percent of hospitals' Medicare costs. The report noted that, in its March 2000 report to Congress, MedPAC recommended combining the operating and capital payment systems into a single prospective payment system.

Response: As described above, we continue to use our detailed update framework to develop our recommended update for FY 2003. However, we believe MedPAC's new approach will be useful to focusing the policy discussion more directly on the overall adequacy of hospital payments. We look forward to continuing to work with MedPAC to refine and utilize both methodologies in an effort to produce analyses that provide the most helpful information for setting the annual updates.

We agree with MedPAC's recommendation that the current law update for FY 2003 of the market basket percentage increase minus 0.55 percentage points is appropriate for the operating system update. However, we are not recommending differential updates to gradually eliminate the higher standardized amount for hospitals in large urban areas, as recommended by MedPAC. We believe the stabilization of overall hospital margins in recent years suggests that modest limits below full market basket updates provide adequate payments. We agree, however, that certain hospital types that show clear evidence of negative and declining Medicare margins should be monitored closely.

Because the operating and capital prospective payment systems remain separate, CMS continues to use separate updates for operating and capital payments. The proposed update to the capital payment rate is discussed in section III. of the Addendum of this proposed rule.

[FR Doc. 02–11290 Filed 5–8–02; 8:45 am]

BILLING CODE 4120–01–P

Federal Register

Thursday,
May 9, 2002

Part III

National Archives and Records Administration

36 CFR Part 1230
Micrographic Records Management; Rule

EDITOR'S NOTE:

The Office of the Federal Register is publishing the following document in a special format to illustrate proposed changes to the appearance of the printed and PDF pages of the daily Federal Register. This experimental format uses a two-column layout, sans serif fonts, larger and bolder headings in the preamble and tables, bullets in the Summary, more space between lines of regulatory text, and makes other changes to the appearance of text and tables. The format changes are intended to improve the readability and public understanding of Federal regulations and notices without increasing white space that would affect printing costs charged to agencies. The proposed format would result in no change or a slight decrease in the number of pages printed. The format changes shown below do not affect the legal status of the final rule issued by the National Archives and Records Administration.

We invite agencies and members of the public to comment on the proposed format by email at: fedreg.legal@nara.gov, or by U.S. mail at: National Archives and Records Administration, Office of the Federal Register (NF), Federal Register Format Changes, 700 Pennsylvania Ave., NW, Washington, DC 20408-0001. For more information the proposed format, go to the Federal Register web site at: http://www.nara.gov/fedreg/plainlan.html#top.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1230

RIN 3095-AB06

Micrographic Records Management

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is revising its Micrographic Records Management regulations to:

- Update the editions of standards incorporated by reference to the most current edition; and
- Rewrite the regulations in plain language format.

This final rule will affect Federal agencies.

DATES: This rule is effective June 10, 2002. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of June 10, 2002.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301-713-7360, ext. 240, or fax number 301-713-7270.

SUPPLEMENTARY INFORMATION: NARA published a proposed rule on September 11, 2001, at 66 FR 47125, for a 60-day public comment period. We received comments from 2 Federal agencies, 1 records management professional organization, and 2 members from the public. Following is a summary of the comments and a discussion of the changes that we made to the proposed rule.

Terminology (§§ 1230.4 and 1230.7(f))

ARMA International (ARMA) recommended replacing the term "records schedule" with "records retention schedule" in § 1230.7(f) and defining the suggested term in § 1230.4, Definitions. We did not adopt this comment because "records schedule" is a standard records management term that is used throughout NARA regulations. The term does not need to be included in Part 1230 because it is already defined in 36 CFR 1220.14, which applies to the entire Subchapter B.

Discontinuing Filming Temporary Records (§ 1230.10)

A Federal agency asked if NARA would require agencies to request approval before discontinuing filming temporary records when the records, regardless of format, would be kept for the same period of time. Agencies are not required to request approval to film temporary records (§ 1230.10(b)) and the same is true for discontinuing microfilming temporary records. The principle, which has been in place for many years now, is that the nature and use of temporary records is not changed when the original paper is copied to microform.

Filming Requirements (§ 1230.14)

A Federal agency pointed out that § 1230.14 no longer includes the phrase "when the original paper records will be destroyed or otherwise disposed of," though § 1230.22 still makes that distinction. We did not intend to change § 1230.14(a) when we reformatted the paragraph in plain language, and have added the phrase in this final rule. We also modified § 1230.14(a)(2) for clarity.

Using Dry Silver Film for Permanent Records (§ 1230.14)

A member from the public recommended that we consider revising the section to permit the use of dry silver film for filming permanent records. We did not adopt this change because for long-term retention, the dry-silver film is much riskier than the traditional silver-gelatin film.

- Dry silver film that meets the ISO standard has a life expectancy rating of only 100 years, while wet-processed silver-gelatin film with a polyester base has a higher life expectancy rating of 500 years.
- Dry silver film is never "fixed" meaning, it will remain potentially developable for an indefinite period of time. Fixing is the process of removing the light sensitive silver salts. This means if the film is ever exposed to high temperatures (e. g., 120 degrees Fahrenheit to 130 degrees Fahrenheit) such as with an air conditioner failure, the film will "develop" and turn completely black, causing a catastrophic loss of all the information on the film.

Quality Standards (§ 1230.14(d))

ARMA and a member from the public suggested adding a clause to the second sentence so that it will read as follows: "Perform resolution tests using a ISO 3334-1991 Resolution Test Chart or a commercially available certifiable target manufactured to comply with this standard, and read the patterns following the instructions of ISO 3334–1991." We accept this comment and have incorporated the suggested clause.

Film and Image Requirements for Temporary Records (§ 1230.16(a))

ARMA recommended use of the ARMA glossary to define temporary records in this section. We did not adopt this comment. Section 1230.16(a) does not define "temporary records" but pertains to film and image requirements. We require that temporary records retained for 100 years or longer meet the same image requirements as permanent records. This is not a new requirement. It already exists in the current regulation.

Inspection Period (§ 1230.22(b))

ARMA suggested changing the inspection period from every 2 years to every 5 years because they believe the longer inspection period is sufficient under appropriate storage conditions and would be less costly. No Federal agency has objected to the 2-year inspection requirement that NARA selected.

We partially accept this comment. We believe that it is important to conduct an initial inspection when the microfilm is 2 years old to identify any problems that did not appear when the film was processed and to ensure that it is stored in the proper environment. Acetate-based microfilm stock, which was used prior to 1990, is more susceptible to deterioration than the polyester-based

microfilm used today. Therefore, we are retaining the requirement for inspection every 2 years for microfilms produced before 1990. Unless there is a catastrophic event (e.g., extended failure of environmental controls), microfilms produced during or after 1990 must be inspected on a 5-year cycle after the initial 2-year inspection.

Percentage of Inspection Sampling (§ 1230.22(a))

ARMA commented that § 1230.22(a) does not indicate the percentage of inspection sampling that is required. They questioned whether inspection is to cover 100 percent of all rolls of film or a lesser sampling. They recommended a sampling of approximately 10 percent because it would provide a reliable inspection and help reduce costs incurred with the inspection process. They also recommended adding a separate section to address microfilm inspection procedures. We did not adopt these comments. There is no need for a change in language, since we believe that what ARMA is concerned about is adequately covered in ANSI/AIIM MS45–1990. That standard addresses both the proper sampling procedures (1/1000th of the group or 100 microforms, whichever is greater, or the whole group if less than 100 microforms) and the proper inspection procedures. No additional language is, therefore, required.

This final rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. This rule does not have any federalism implications.

List of Subjects in 36 CFR Part 1230

Archives and records, Incorporation by reference.

For the reasons set forth in the preamble, NARA revises part 1230 of title 36, Code of Federal Regulations, to read as follows:

PART 1230—MICROGRAPHIC RECORDS MANAGEMENT

Subpart A—General

Sec.

1230.1 What does this part cover?
1230.2 What is the authority for this part?
1230.3 Publications incorporated by reference.
1230.4 Definitions.

Subpart B—Program Requirements

1230.7 What must agencies do to manage microform records?

Subpart C—Microfilming Standards

1230.10 Do agencies need to request NARA approval for the disposition of all microform and source records?
1230.12 What are the steps to be followed in filming records?
1230.14 What are the filming requirements for permanent and unscheduled records?
1230.16 What are the film and image requirements for temporary records, duplicates, and user copies?

Subpart D—Storage, Use and Disposition Standards of Microform Records

1230.20 How should microform records be stored?
1230.22 What are NARA inspection requirements for permanent and unscheduled microform records?
1230.24 What are NARA inspection requirements for temporary microform records?
1230.26 What are the use restrictions for permanent and unscheduled microform records?
1230.28 What must agencies do to send permanent microform records to a records storage facility?
1230.30 How do agencies transfer permanent microform records to the legal custody of the National Archives?

Subpart E—Centralized Micrographic Services

1230.50 What micrographic services are available from NARA?

Authority: 44 U.S.C. 2907, 3302 and 3312.

Subpart A—General

§ 1230.1 What does this part cover?

This part covers the standards and procedures for using micrographic technology to create, use, store, inspect, retrieve, preserve, and dispose of Federal records.§ 1230.2 What is the authority for this part?

44 U.S.C. chapters 29 and 33, authorize the Archivist of the United States to:

(A) Establish standards for copying records by photographic and microphotographic means;

(B) Establish standards for the creation, storage, use, and disposition of microform records in Federal agencies; and

(C) Provide centralized microfilming services for Federal agencies.

§ 1230.3 Publications incorporated by reference.

(A) *General.* The following publications are hereby incorporated by reference into Part 1230. They are available from the issuing organizations at the addresses listed in this section. They may also be examined at the Office of the Federal Register, 800 North Capitol Street NW, suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. These materials are incorporated as they exist on the date of approval, and a notice of any change in these materials will be published in the **FEDERAL REGISTER.**

(B) *American National Standards Institute (ANSI) and International (ISO) standards.* ANSI standards cited in this part are available from the American National Standards Institute, 25 West 43rd St., 4th Floor, New York, NY 10036. The standards can be ordered on line at http://webstore.ansi.org/ansidocstore/default.asp.

ISO 10602:1995(E), February 1, 1995, Second edition, Photography–Processed silver-gelatin type black-and-white film–Specifications for stability.

ANSI/PIMA IT9.2–1998, April 15, 1998, American National Standard for Imaging Materials—Photographic Processed Films, Plates, and Papers—Filing Enclosures and Storage Containers.

ANSI/ISO 5.2-1991, ANSI/NAPM IT2.19–1994, February 20, 1995, American National Standard for Photography—Density Measurements—Part 2: Geometric Conditions for Transmission Density.

ANSI/ISO 5-3-1995, ANSI/NAPM IT2.18–1996, March 8, 1996, American National Standard for Photography—Density Measurements—Part 3: Spectral Conditions.

ISO 18911: 2000(E), First edition, November 1, 2000, Imaging materials–Processed safety photographic films—Storage practices.

(C) *Association of Information and Image Management (AIIM) Standards.* You may obtain the following standards from the Association of Information and Image Management, 1100 Wayne Avenue, suite 1100, Silver Spring, MD 20910. The standards can be ordered on line at http://www.aiim.org/.

ANSI/AIIM MS1–1996, August 8, 1996, Standard Recommended Practice for Alphanumeric Computer-Output Microforms—Operational Practices for Inspection and Quality Control.

ANSI/AIIM MS5–1992, December 21, 1992, Standard for Information and Image Management–Microfiche.

ANSI/AIIM MS14–1996, August 8, 1996, Standard Recommended Practice–Specifications for 16mm and 35mm Roll Microfilm.

ANSI/AIIM MS19–1993, August 18, 1993, Standard Recommended Practice–Identification of Microforms.

ANSI/AIIM MS23–1998, June 2, 1998, Standard Recommended Practice–

Production, Inspection, and Quality Assurance of First-Generation, Silver Microforms of Documents.

ANSI/AIIM MS32–1996, February 16, 1996, Standard Recommended Practice–Microrecording of Engineering Source Documents on 35mm Microfilm.

ANSI/AIIM MS41–1996, July 16, 1996, Dimensions of Unitized Microfilm Carriers and Apertures (Aperture, Camera, Copy and Image Cards).

ANSI/AIIM MS43–1998, June 2, 1998, Standard Recommended Practice–Operational Procedures–Inspection and Quality Control of Duplicate Microforms of Documents and From COM.

ANSI/AIIM MS45–1990, January 22, 1990, Recommended Practice for Inspection of Stored Silver-Gelatin Microforms for Evidence of Deterioration.

ANSI/ISO 3334–1991, ANSI/AIIM MS51–1991, May 10, 1991, Micrographics—ISO Resolution Test Chart No. 2—Description and Use.

§ 1230.4 Definitions.

The following definitions apply to this part:

Archival microfilm. A photographic film that meets the standards described in § 1230.14 and that is suitable for the preservation of permanent records when stored in accordance with § 1230.20(a). Such film must conform to film designated as LE 500 in ANSI/NAPM IT9.1–1996.

Background density. The opacity of the area of the microform not containing information.

Computer-assisted retrieval (CAR) system. A records storage and retrieval system, normally microfilm-based, that uses a computer for indexing, automatic markings such as blips or bar codes for identification, and automatic devices for reading those markings and, in some applications, for transporting the film for viewing.

Computer Output Microfilm (COM). Microfilm containing data converted and recorded from a computer.

Facility. An area used exclusively to make or copy microforms.

Microfilm. **(1)** Raw (unexposed and unprocessed) fine-grain, high resolution photographic film with characteristics that make it suitable for use in micrographics;

(2) The process of recording microimages on film; or

(3) A fine-grain, high resolution photographic film containing microimages.

Microform. Any form containing microimages.

Microimage. A document such as a page of text or a drawing that is too small to be read without magnification.

Permanent record. Permanent record has the meaning specified in § 1220.14 of this chapter.

Records storage facility. Records storage facility has the meaning specified in § 1220.14 of this chapter.

Temporary record. Temporary record has the meaning specified in § 1220.14 of this chapter.

Unscheduled record. Unscheduled record has the meaning specified in § 1220.14 of this chapter.

Use or work copies. Duplicates of original film made to be used for reference or for duplication on a recurring or large-scale basis. These are not preservation master copies, which must be stored unused as specified in § 1230.20.

Subpart B—Program Requirements

§ 1230.7 What must agencies do to manage microform records?

Federal agencies must manage microform records by taking the following actions:

(A) Assign responsibility for an agencywide program for managing microform records and notify the National Archives and Records Administration (NWM), 8601 Adelphi Rd., College Park, MD 20740-6001 of the name and title of the person assigned the responsibility.

(B) Manage the microform records as part of other records and information resources management programs of the agency.

(C) Include microform records management objectives, responsibilities, and authorities in pertinent agency directives and disseminate them to appropriate officials.

(D) Address records management issues, including disposition, before approving new microform records systems or enhancements to existing systems.

(E) Train the managers and users of microform records.

(F) Develop records schedules covering microform records and finding aids, secure NARA approval, and apply the disposition instructions.

(G) Schedule computerized indexes associated with microform records, such as in a computer-assisted retrieval (CAR) system, in accordance with part 1234 of this chapter.

(H) Review practices used to create and manage microform records periodically to ensure compliance with NARA standards in this part.

Subpart C—Microfilming Standards

§ 1230.10 Do agencies need to request NARA approval for the disposition of all microform and source records?

(A) *Permanent or unscheduled records.* Agencies must schedule both source documents (originals) and microforms. NARA must approve the schedule, Standard Form (SF) 115, Request for Records Disposition Authority, in accordance with part 1228 of this chapter before any records, including source documents, can be destroyed. NARA will not approve the destruction of original records that have intrinsic value, or security classified or otherwise restricted original records that are scheduled as permanent, or original records that are scheduled as permanent and that have other characteristics that would limit the usefulness of microform copies for public reference.

(1) Agencies that comply with the standards in § 1230.14 must include on the SF 115 the following certification: "This certifies that the records described on this form were (or will be) microfilmed in accordance with the standards set forth in 36 CFR part 1230."

(2) Agencies using microfilming methods, materials, and procedures that do not meet the standards in § 1230.14(a) must include on the SF 115 a description of the system and standards used.

(3) When an agency intends to retain the silver original microforms of permanent records and destroy the original records, the agency must certify in writing on the SF 115 that the microform will be stored in compliance with the standards of § 1230.20 and inspected as required by § 1230.22.

(B) *Temporary records.* Agencies do not need to obtain additional NARA approval when destroying scheduled temporary records that have been microfilmed. The same approved retention period for temporary records is applied to microform copies of these records. The original records can be destroyed once microfilm is verified, unless legal requirements prevent their early destruction.

§ 1230.12 What are the steps to be followed in filming records?

(A) Ensure that the microforms contain all information shown on the originals and that they can be used for the purposes the original records served.

(B) Arrange, describe, and index the filmed records to permit retrieval of any particular document or component of the records. Title each microform roll or fiche with a titling target or header. For fiche, place the titling information in

frame 1 if the information will not fit on the header. At a minimum, titling information must include:

(1) The title of the records;

(2) The number or identifier for each unit of film;

(3) The security classification, if any; and

(4) The name of the agency and organization the inclusive dates, names, or other data identifying the records to be included on a unit of film.

(C) Add an identification target showing the date of filming. When necessary to give the film copy legal standing, the target must also identify the person who authorized the microfilming. See ANSI/AIIM MS19–1993 for standards for identification targets.

(D) The following formats are mandatory standards for microforms:

(1) *Roll film.* (I)*Source documents.* The formats described in ANSI/AIIM MS14–1996 must be used for microfilming source documents on 16mm and 35mm roll film. A reduction ratio no greater than 1:24 is recommended for typewritten or correspondence types of documents. See ANSI/AIIM MS23–1998 for the appropriate reduction ratio and format for meeting the image quality requirements. When microfilming on 35mm film for aperture card applications, the format dimensions in ANSI/AIIM MS32–1996, Table 1 are mandatory, and the aperture card format "D Aperture" shown in ANSI/AIIM MS41–1996, Figure 1, must be used. The components of the aperture card, including the paper and adhesive, must conform to the requirements of ANSI/PIMA IT9.2–1998. The 35mm film used in the aperture card application must conform to film designated as LE 500 in ANSI/NAPM IT9.1–1996.

(II) *COM.* Computer output microfilm (COM) generated images must be the simplex mode described in ANSI/AIIM MS14–1996 at an effective ratio of 1:24 or 1:48 depending upon the application.

(2) *Microfiche.* For microfilming source documents or computer generated information (COM) on microfiche, the formats and reduction ratios prescribed in ANSI/AIIM MS5–1992 (R1998) must be used as specified for the size and quality of the documents being filmed. See ANSI/AIIM MS23–1998 for determining the appropriate reduction ratio and format for meeting the image quality requirements.

(E) *Index placement.* (1) *Source documents.* When filming original (source) documents, place indexes, registers, or other finding aids, if microfilmed, either in the first frames of the first roll of film or in the last frames of the last roll of film of a series. For microfiche, place them in the last frames of the last microfiche or microfilm jacket of a series.

(2) *COM.* Place indexes on computer-generated microforms following the data on a roll of film or in the last frames of a single microfiche, or the last frames of the last fiche in a series. Other index locations may be used only if dictated by special system constraints.

§ 1230.14 What are the filming requirements for permanent and unscheduled records?

(A) *General requirements.* (1) Apply the standards in this section for microfilming of:

(I) Permanent paper records where the original paper record will be destroyed or otherwise disposed of;

(II) Unscheduled paper records where the original paper record will be destroyed or otherwise disposed of; and

(III) Permanent and unscheduled original microform records (no paper originals) produced by automation, such as computer output microfilm (COM).

(2) Do not destroy permanent or unscheduled paper records after microfilming without authorization from NARA on a SF 115 (see § 1230.10(a)).

(B) *Film stock standards.* Polyester-based silver gelatin type film that conforms to ANSI/NAPM IT9.1—1996 for LE 500 film must be used in all applications.

(C) *Processing standards.* Microforms must be processed so that the residual thiosulfate ion concentration will not exceed 0.014 grams per square meter in accordance with ANSI/NAPM IT9.1–1996. Follow processing procedures in ANSI/AIIM MS1–1996 and MS23–1998.

(D) *Quality standards.* (1) *Resolution.* (I) *Source documents.* Determine minimum resolution on microforms of source documents using the method in the Quality Index Method for determining resolution and anticipated losses when duplicating, as described in ANSI/AIIM MS23–1998 and MS43–1998. Perform resolution tests using a ISO 3334-1991 Resolution Test Chart or a commercially available certifiable target manufactured to comply with this standard, and read the patterns following the instructions of ISO 3334–1991. Use the smallest character used to display information to determine the height used in the Quality Index formula. A Quality Index of five is required at the third generation level.

(II) *COM.* Computer output microforms (COM) must meet the requirements of ANSI/AIIM MS1–1996.

(2) *Background density of images.* The background ISO standard visual diffuse transmission density on microforms must be appropriate to the type of documents being filmed. The procedure for density measurement is described in ANSI/AIIM MS23–1998. The densitometer must meet with ANSI/NAPM IT2.18–1996, for spectral conditions and ANSI/NAPM IT2.19–1994, for geometric conditions for transmission density.

(I) Recommended visual diffuse transmission background densities for images of documents are as follows:

CLASSIFICATION	DESCRIPTION OF DOCUMENT	BACKGROUND DENSITY
Group 1	High-quality, high contrast printed book, periodicals, and black typing.	1.3–1.5
Group 2	Fine-line originals, black opaque pencil writing, and documents with small high contrast printing.	1.15–1.4
Group 3	Pencil and ink drawings, faded printing, and very small printing, such as footnotes at the bottom of a printed page.	1.0–1.2

CLASSIFICATION	DESCRIPTION OF DOCUMENT	BACKGROUND DENSITY
Group 4	Low-contrast manuscripts and drawing, graph paper with pale, fine-colored lines; letters typed with a worn ribbon; and poorly printed, faint documents.	0.8–1.0
Group 5	Poor-contrast documents (special exception).	0.7–0.85

(ii) Recommended visual diffuse transmission densities for computer generated images are as follows:

FILM TYPE	PROCESS	DENSITY MEASUREMENT METHOD	MIN. DMAX[1]	MAX. DMIN[1]	MINIMUM DENSITY DIFFERENCE
Silver gelatin	Conventional	Printing or diffuse	0.75	0.15	0.60
Silver gelatin	Full reversal	Printing	1.50	0.20	1.30

[1]Character or line density, measured with a microdensitometer or by comparing the film under a microscope with an image of a known density.

(3) *Base plus fog density of films.* The base plus fog density of unexposed, processed films must not exceed 0.10. When a tinted base film is used, the density will be increased. The difference must be added to the values given in the tables in paragraph (d)(2) of this section.

(4) *Line or stroke width.* Due to optical limitations in most photographic systems, film images of thin lines appearing in the original document will tend to fill in as a function of their width and density. Therefore, as the reduction ratio of a given system is increased, reduce the background density as needed to ensure that the copies will be legible.

§ 1230.16 What are the film and image requirements for temporary records, duplicates, and user copies?

(a) *Temporary records with a retention period over 99 years.* Follow the film and image requirements in § 1230.14.

(b) *Temporary records to be kept for less than 100 years.* NARA does not require the use of specific standards. Select a film stock that meets agency needs and ensures the preservation of the microforms for their full retention period. Consult appropriate ANSI standards, available as noted in § 1230.3, or manufacturer's instructions for processing microfilm of these temporary records. Follow the manufacturer's recommendations for production and maintenance of temporary microfilm to ensure that the image is accessible and usable for the entire retention period.

Subpart D—Storage, Use and Disposition Standards for Microform Records

§ 1230.20 How should microform records be stored?

(a) *Permanent and unscheduled records.* Store permanent and unscheduled microform records under the extended term storage conditions specified in ISO 18911:2000 and ANSI/PIMA IT9.2–1998, except that the relative humidity of the storage area must be a constant 35 percent RH, plus or minus 5 percent. Do not store non-silver copies of microforms in the same storage area as silver gelatin originals or duplicate copies.

(b) *Temporary records.* Store temporary microform records under conditions that will ensure their preservation for their full retention period. Agencies may consult Life Expectance (LE) guidelines in ANSI/AIIM standards (see § 1230.3 for availability) for measures that can be used to meet retention requirements.

§ 1230.22 What are NARA inspection requirements for permanent and unscheduled microform records?

(a) Agencies must inspect, or arrange to pay a contractor or NARA to inspect the following categories of microform records stored at the agency, at a commercial records storage facility, or at a NARA records center following the inspection requirements in paragraph (b) of this section:

(1) Master films of permanent records microfilmed in order to dispose of the original records;

(2) Master films of permanent records originally created on microfilm;

(3) Other master films scheduled for transfer to the National Archives; and

(4) Master films of unscheduled records.

(b) The films listed in paragraph (a) of this section must be inspected initially in accordance with ANSI/AIIM MS45—1990. All films must be inspected when they are 2 years old. After the initial 2-year inspection, unless there is a catastrophic event, the films must be inspected as follows until legal custody is transferred to the National Archives and Records Administration:

(1) For microfilm that is/was produced after 1990, inspect the microfilm every 5 years.

(2) For microfilm that was produced prior to 1990, inspect the microfilm every 2 years.

(c) To facilitate inspection, the agency must maintain an inventory of microfilm listing each microform series/publication by production date, producer, processor, format, and results of previous inspections.

(d) The elements of the inspection shall consist of:

(1) An inspection for aging blemishes following ANSI/AIIM MS45–1990;

(2) A rereading of resolution targets;

(3) A remeasurement of density; and

(4) A certification of the environmental conditions under which the microforms are stored, as specified in § 1230.20(a).

(E) The agency must prepare an inspection report, and send a copy to NARA in accordance with § 1230.28(b). The inspection report must contain:

(1) A summary of the inspection findings, including:

(I) A list of batches by year that includes the identification numbers of microfilm rolls and microfiche in each batch;

(II) The quantity of microforms inspected;

(III) An assessment of the overall condition of the microforms;

(IV) A summary of any defects discovered, e.g., redox blemishes or base deformation; and

(V) A summary of corrective action taken.

(2) A detailed inspection log created during the inspection that contains the following information:

(I) A complete description of all records inspected (title; roll or fiche number or other unique identifier for each unit of film inspected; security classification, if any; and inclusive dates, names, or other data identifying the records on the unit of film);

(II) The date of inspection;

(III) The elements of inspection (see paragraph (a)(4) of this section);

(IV) Any defects uncovered; and

(V) The corrective action taken.

(F) If an inspection shows that a master microform is deteriorating, the agency must make a silver duplicate in accordance with § 1230.14 to replace the deteriorating master. The duplicate film will be subject to the inspection requirements (see § 1230.22) before transfer to a record center or to the National Archives.

(G) Inspection must be performed in an environmentally controlled area in accordance with ANSI/AIIM MS45–1990.

§ 1230.24 What are NARA inspection requirements for temporary microform records?

NARA recommends, but does not require, that agencies use the inspection by sampling procedures described in § 1230.22(a) and (b).

§ 1230.26 What are the use restrictions for permanent and unscheduled microform records?

(A) Do not use the silver gelatin original microform or duplicate silver gelatin microform of permanent or unscheduled records created in accordance with § 1230.14 of this part (archival microform) for reference purposes. Agencies must ensure that the archival microform remains clean and undamaged during the process of making a duplicating master.

(B) Use duplicates for:

(1) Reference;

(2) Further duplication on a recurring basis;

(3) Large-scale duplication; and

(4) Distribution of records on microform.

(C) Agencies retaining the original record in accordance with an approved records disposition schedule may apply agency standards for the use of microform records.

§ 1230.28 What must agencies do to send permanent microform records to a records storage facility?

(A) Follow the procedures in part 1228, subpart I, of this chapter and the additional requirements in this section.

(B) Package non-silver copies separately from the silver gelatin original or silver duplicate microform copy and clearly label them as non-silver copies.

(C) Include the following information on the transmittal (SF 135 for NARA records centers), or in an attachment to the transmittal. For records sent to an agency records center or commercial records storage facility, submit this information to NARA as part of the documentation required by § 1228.154(c)(2) of this chapter:

(1) Name of the agency and program component;

(2) The title of the records and the media/format used;

(3) The number or identifier for each unit of film;

(4) The security classification, if any;

(5) The inclusive dates, names, or other data identifying the records to be included on a unit of film;

(6) Finding aids that are not contained in the microform; and

(7) The inspection log forms and inspection reports required by § 1230.22(a) (5) and (6).

(D) Agencies may transfer permanent microform records to a records storage facility meeting the storage requirements in § 1230.20(a) (see § 1228.152(e)(3) of this chapter for NARA centers) only after the first inspection or with certification that the microforms will be inspected by the agency, an agency contractor, or a NARA records center (on a reimbursable basis) when the microforms become 2 years old.

§ 1230.30 How do agencies transfer permanent microform records to the legal custody of the National Archives?

(A) Follow the procedures in part 1228, subpart L, of this chapter and the additional requirements in this section.

(B) Originate the transfer by submitting an SF 258, Agreement to Transfer Records to the National Archives of the United States, unless otherwise instructed by NARA.

(C) If the records are not in a NARA records center, submit the information specified in § 1230.28(c).

(D) Transfer the silver gelatin original (or duplicate silver gelatin microform created in accordance with § 1230.14) plus one microform copy.

(E) Ensure that the inspection of the microform is up-to-date. If the microform records were recently produced, please note that NARA will not accession permanent microform records until the first inspection (when the microforms are 2 years old) has been performed.

(F) Package non-silver copies separately from the silver gelatin original or silver duplicate microform copy and clearly label them as non-silver copies.

Subpart E—Centralized Micrographic Services

§ 1230.50 What micrographic services are available from NARA?

Some NARA records centers provide reimbursable microfilming services, including preparing, indexing, and filming of records, inspection of film, and labeling of film containers. Agencies desiring microfilming services from NARA should contact the Office of Regional Records Services (NR), 8601 Adelphi Rd., College Park, MD 20740-6001, or the director of the NARA records center serving the agency's records (see § 1228.150(a) of this chapter). The fees for microfilming services will appear in NARA bulletins, which are available on NARA's web site at http://www.nara.gov/records/policy/bulletin.html or from the Modern Records Programs (NWM), 8601 Adelphi Road, College Park, MD 20740-6001.

Dated: April 23, 2002.

John W. Carlin,

Archivist of the United States.

[FR Doc. 02–10588 Filed 5–8–02; 8:45 am]

BILLING CODE 7515–01–U

Federal Register

Thursday,
May 9, 2002

Part IV

Department of Education

Capacity Building for Traditionally Underserved Populations; Inviting Applications for New Awards for Fiscal Year (FY) 2002; Notices

DEPARTMENT OF EDUCATION

Capacity Building for Traditionally Underserved Populations

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services announces priorities under the Capacity Building for Traditionally Underserved Populations program. The Assistant Secretary may use one or more of these priorities for competitions in fiscal year (FY) 2002 and in later years. We take this action to focus on meeting the needs of traditionally underserved populations. We intend these priorities to enhance the capacity and improve the participation of minority entities to compete for Rehabilitation Services Administration (RSA) discretionary grants and to improve services provided to minority people with disabilities under programs that are authorized under the Rehabilitation Act of 1973, as amended (Act).

EFFECTIVE DATE: These priorities are effective June 10, 2002.

FOR FURTHER INFORMATION CONTACT: Ellen Chesley, U.S. Department of Education, 400 Maryland Avenue, SW., room 3318, Switzer Building, Washington, DC 20202–2649 Telephone: (202) 205–9481 or via Internet: *Ellen.Chesley@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8133.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: Under section 21 of the Act, the Capacity Building for Traditionally Underserved Populations program is designed to support awards to minority entities and Indian tribes to provide training, technical assistance, or related activities to carry out certain programs authorized under the Act or to improve services under the Act. Section 21 of the Act also authorizes awards to eligible entities to enhance the capacity and increase the participation of minority entities and Indian tribes in activities funded under the Act. "Minority entity" is defined under section 21(b)(5) of the Act as a historically Black college or university, Hispanic-serving institution of higher education, American Indian tribal college or university, or another institution of higher education whose minority student enrollment is at least 50 percent.

Under section 21 of the Act, only three types of awards can be made as follows: (1) Section 21(b)(2)(A)—Making awards to minority entities and Indian tribes to carry out activities under programs authorized under titles II, III, VI, and VII of the Act. (2) Section 21(b)(2)(B)—Making awards to minority entities and Indian tribes to conduct research, training, technical assistance, or a related activity to improve services provided under the Act, especially services provided to individuals from minority backgrounds.

(3) Section 21(b)(2)(C)—Making awards to a State or a public or private nonprofit agency or organization, such as an institution of higher education or an Indian tribe, to provide outreach and technical assistance to minority entities and Indian tribes to promote their participation in activities funded under the Act, including assistance to enhance their capacity to carry out those activities.

We published a notice of proposed priorities for this program in the **Federal Register** on November 28, 2001 (66 FR 59526).

Except for editorial and technical revisions, there are no significant differences between the notice of proposed priorities and this notice of final priorities.

Analysis Of Comments and Changes

In response to our invitation in the notice of proposed priorities, 20 parties submitted comments on the proposed priorities. An analysis of the comments and of any changes in the priorities since publication of the notice of proposed priorities follows.

Generally, we do not address technical and other minor changes. Also, we may choose not to address suggested statutory changes that we are not authorized to make under the applicable statutory authority.

Comments: Four commenters recommended that we include a priority similar to Proposed Priority 1 for Traumatic Brain Injury (TBI), because there is a need for services in this area. Further, they indicated that TBI is an underserved population that should be included as a minority entity. In addition, nine commenters recommended that Priority 4—Capacity Building for Minority Entities—should support not only minority institutions, but also agencies and organizations that are owned or controlled by minority individuals.

Discussion: We cannot consider these populations and entities as "minority entities" under the Act. Section 21 of the Act specifically defines "minority entity" as a historically Black college or university, Hispanic-serving institution of higher education, American Indian tribal college or university, or another institution of higher education whose minority student enrollment is at least 50 percent.

Changes: None.

Comments: Six commenters recommended that for Proposed Priority 3—Establishing New Rehabilitation Training Programs—we use the Higher Education Act of 1965, as amended (HEA) definition for a Hispanic-serving institution of higher education.

Discussion: The Department of Education uses the HEA definition of "Hispanic-serving institution of higher education." The HEA definition applies to all priorities of the Act, not just Priority 3.

Changes: We've added a provision in the priorities section to clarify that all priorities should use the HEA definition of Hispanic-serving institution of higher education.

Comments: One commenter recommended that capacity building for minority entities be expanded to include other programs like special education and the 21st Century Learning Centers.

Discussion: Section 21(b)(2)(A) of the Act specifies that capacity building must be directed to promoting the participation of minority entities in activities funded under the Act. Thus, there is no authority to include programs, such as special education and the 21st Century Learning Centers, which are not activities funded under the Act.

Changes: None.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities, we invite applications through a notice in the **Federal Register.** When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application

of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities: For purposes of these priorities, a "minority entity" includes a Hispanic-serving institution whose Hispanic student enrollment is 25 percent of the institution's student population.

Priority 1—Train Staff of the Independent Living Services for Older Individuals Who Are Blind Program

We will fund a project that meets this priority. The project funded must meet the requirements in section 21(b)(2)(B) of the Act. A project must provide training that would—

(1) Increase the capacity and skills of staff of federally funded independent living programs serving older blind minority consumers in networking towards building trust within racial and ethnic minority communities;

(2) Increase the ability of staff of federally funded independent living programs serving older blind racial and ethnic minority consumers to identify and build partnerships with key or specific organizations and resources that provide infrastructure supports and specialized services to racial and ethnic minority consumers and their families;

(3) Increase the skills and capacity of staff of federally funded independent living programs serving older blind racial and ethnic minority consumers to understand family and community values and traditions of aging racial and ethnic minority consumers that will lead to improved methods of effective communication and dissemination of information about independent living services and other related resources for aging individuals with visual disabilities.

A project must—

(1) Partner or collaborate with other key institutions and agencies that have expertise in this training, technical assistance, and networking area;

(2) Develop a regional training and technical assistance activity that will enhance and improve the knowledge and skills of staff of federally funded independent living programs (i.e., field professionals and direct service providers) serving older blind consumers and improve outreach to racial and ethnic minority consumers and communities to increase their involvement in the independent living program funded under the Act;

(3) Provide training and technical assistance based upon a needs assessment of the region or geographical area being assisted;

(4) Include an evaluation component based upon clear, specific performance and outcome measures; and

(5) Report the results of the evaluation in its annual performance report.

Training must focus on the following:

(1) Specific methods on how to integrate and build alliances with key organizations, institutions, and individuals within a community to reach older individuals who are blind from racial and ethnic minority backgrounds.

(2) Specific training on how to identify, develop, and evaluate appropriate mediums of communication in disseminating critical information about this program.

(3) Specific training on the definitions of blindness and disability in the context of racial and ethnic minority cultures and the attitudes associated with these terms.

(4) Specific training on the implication of health-related conditions associated with certain racial and ethnic minority groups (i.e., diabetic retinopathy, glaucoma, hypertension, etc.).

(5) Specific training on what are some of the "promising practices" that are currently being used to educate consumers from racial and ethnic minority groups about these medical conditions and their relationship to blindness.

Priority 2—Community Rehabilitation Programs

We will fund projects that meet the priority. Projects funded must meet the requirements in section 21(b)(2)(B) of the Act.

Projects must—

(1) Focus on referring more minorities currently served by community rehabilitation programs having service agreements, as well as those not having service agreements, to the vocational rehabilitation system;

(2) Target community rehabilitation programs serving large numbers of minorities with disabilities;

(3) Involve partnerships with community rehabilitation programs that serve significant numbers of minorities with disabilities;

(4) Provide training on diversity;

(5) Develop and conduct a survey that looks at why clients and consumers from minority backgrounds are reluctant to enter, remain in, or successfully exit the vocational rehabilitation program;

(6) Design and implement strategies that address the findings of the survey to increase the numbers of clients and consumers from minority backgrounds who successfully navigate through the vocational rehabilitation system;

(7) Identify effective practice models for service provision to unserved and underserved populations;

(8) Disseminate those models across the United States to community rehabilitation program sites used by minority persons with disabilities;

(9) Disseminate information about the vocational rehabilitation program and its potential benefits to minorities and other appropriate community agencies and organizations involved in community outreach activities;

(10) Enhance the capacity of clinics and outreach personnel to detect and respond to potential clients and consumers who are reluctant to enter the vocational rehabilitation system;

(11) Employ public relations and marketing strategies to highlight the vocational rehabilitation program in minority communities;

(12) Include an evaluation component based upon clear, specific performance and outcome measures; and

(13) Report the results of the evaluation in its annual performance report.

Priority 3—Establishing New Rehabilitation Training Programs

We will fund projects that meet the following priority. Projects funded must meet the requirements in section 21(b)(2)(B) of the Act.

Projects must—

(1) Enhance and increase the capacity of minority institutions of higher education to prepare more individuals for careers in the public vocational rehabilitation program, including individuals from minority backgrounds;

(2) Be located at minority institutions of higher education, including community colleges whose minority student enrollment is at least 50 percent, that are interested in establishing new first-time rehabilitation training programs at the associate degree, undergraduate degree, and graduate degree levels;

(3) Include an evaluation component based upon clear, specific performance and outcome measures; and

(4) Report the results of the evaluation in its annual performance report.

Priority 4—Capacity Building for Minority Entities

We will fund projects that meet the priority. Projects funded must meet the requirements in section 21(b)(2)(C) of the Act.

Projects must—

(1) Provide outreach, capacity building, and technical assistance to minority entities and Indian tribes to promote their participation in activities funded under the Act, including assistance to carry out those activities;

(2) Provide a variety of training and technical assistance activities, including grant writing workshops that focus on RSA and National Institute on Disability and Rehabilitation Research discretionary grant programs, the peer review process, selection criteria, training on disability legislation (i.e. Americans with Disabilities Act, Rehabilitation Act, etc.), and technical assistance to minority entities that are first-time recipients of grants funded under the Act in order to increase their ability to carry out their grants;

(3) Include an evaluation component based upon clear, specific performance and outcome measures; and

(4) Report the results of the evaluation in its annual performance report.

Intergovernmental Review

This program is subject to Executive order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

(Catalog of Federal Domestic Assistance Number 84.315 Capacity Building for Traditionally Underserved Populations)

Program Authority: 29 U.S.C. 718b.

Dated: May 6, 2002.

Loretta L. Petty,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–11645 Filed 5–8–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.315]

Capacity Building for Traditionally Underserved Populations; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: The Capacity Building for Traditionally Underserved Populations program is designed to support projects that provide training, technical assistance, or related activities to improve services provided under the Rehabilitation Act of 1973, as amended (Act), especially services provided to individuals from minority backgrounds. Section 21 of the Act speaks to enhancing the capacity and increasing the participation of "minority entities" in programs funded under the Act. "Minority entity" is defined under section 21 as a historically Black college or university, Hispanic-serving institution of higher education, American Indian tribal college or university, or another institution of higher education whose minority student enrollment is at least 50 percent.

For FY 2002 the competition for new awards focuses on projects designed to meet the priorities we reference in the PRIORITIES section of this application notice.

Eligible Applicants: For priorities 1, 2, and 3, minority entities as defined under section 21(b)(5) of the Act as a historically Black college or university, Hispanic-serving institution of higher education, American Indian tribal college or university, or another institution of higher education whose minority student enrollment is at least 50 percent are eligible to apply.

For priority 4, public or nonprofit private agencies, institutions, and organizations, including Indian tribes and institutions of higher education, are eligible to apply.

Applications Available: May 9, 2002

Deadline for Transmittal of Applications: June 24, 2002

Deadline for Intergovernmental Review: August 23, 2002

Estimated Available Funds: $2,558,320

Note: The Administration has requested $1,769,170 for this program for FY 2003. The actual level of funding, if any, depends on final congressional action.

Estimated Range of Awards:
Priority 1—$145,000–$165,000
Priority 2—$175,000–$225,000
Priority 3—$145,000–$165,000
Priority 4—$175,000–$225,000

Estimated Average Size of Awards:
Priority 1—$150,000
Priority 2—$200,000
Priority 3—$150,000
Priority 4—$200,000

Maximum Award: We will reject any application that proposes a budget exceeding $165,000 for Priorities 1 and 3 and a budget exceeding $225,000 for Priorities 2 and 4 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards:
Priority 1—1
Priority 2—3
Priority 3—4
Priority 4—3

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Page Limit: Part III of the application, the application narrative, is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 45 pages, using the following standards:

- A "page" is 8.5″ x 11″ on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet, Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities:

This competition focuses on projects designed to meet the priorities in the notice of final priorities for this program, published elsewhere in this issue of the **Federal Register**.

For FY 2002 the priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet one or more of the priorities.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html*

Or you may contact ED Pubs at its e-mail address: edpubs@inet.ed.gov

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.315.

FOR FURTHER INFORMATION CONTACT: Ellen Chesley, U.S. Department of Education, 400 Maryland Avenue, SW., room 3318, Switzer Building, Washington, DC 20202–2649. Telephone: (202) 205–9481, or via Internet: *Ellen.Chesley@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DG, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Program Authority: 29 U.S.C. 718(b).

Dated: May 6, 2002.

Loretta L. Petty,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–11646 Filed 5–8–02; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Thursday,
May 9, 2002

Part V

Office of Personnel Management

Federal Employees Retirement System and Civil Service Retirement System; Present Value Factors and Normal Cost Percentages; Notices

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Retirement System; Present Value Factors

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is providing notice of adjusted present value factors applicable to retirees who elect to provide survivor annuity benefits to a spouse based on post-retirement marriage and to retiring employees who elect the alternative form of annuity or elect to credit certain service with nonappropriated fund instrumentalities. This notice is necessary to conform the present value factors to changes in economic assumptions and demographic factors approved by the Board of Actuaries of the Civil Service Retirement System.

EFFECTIVE DATE: The revised present value factors apply to survivor reductions or employee annuities that commence on or after October 1, 2002.

ADDRESSES: Send requests for actuarial assumptions and data to the Office of the Actuary, Room 4307 STOP, Office of Personnel Management, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Patrick Jennings, (202)–606–0299.

SUPPLEMENTARY INFORMATION: Several provisions of the Federal Employees Retirement System (FERS) require reduction of annuities on an actuarial basis. Under each of these provisions, we are required to issue regulations on the method of determining the reduction to ensure that the present value of the reduced annuity plus a lump-sum equals, to the extent practicable, the present value of the unreduced benefit. The regulations for each of these benefits provide that we will publish a notice in the **Federal Register** whenever we change factors used to compute the present values of these benefits.

Section 842.706(a) of Title 5, Code of Federal Regulations, prescribes the method for computing the reduction in the beginning rate of annuity payable to a retiree who elects an alternative form of annuity under 5 U.S.C. 8420a. That reduction is required to produce an annuity that is the actuarial equivalent of the annuity of a retiree who does not elect an alternative form of annuity. The present value factors listed below are used to compute the annuity reduction under section 842.706(a) of Title 5, Code of Federal Regulations.

Section 842.615 of Title 5, Code of Federal Regulations, prescribes the use of these factors for computing the reduction required for certain elections to provide survivor annuity benefits based on a post-retirement marriage or divorce under section 8416(b) or (c) or section 8417(b) of title 5, United States Code. Under section 11004 of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, effective October 1, 1993, OPM ceased collection of these survivor election deposits by means of either a lump sum payment or by installments. Instead, OPM is required to establish a permanent actuarial reduction in the annuity of the retiree. This means that OPM must take the amount of the deposit computed under the old law, and "translate" it into a lifetime reduction in the retiree's benefit. The reduction is based on actuarial tables, similar to those used for alternative forms of annuity under section 8420a of title 5, United States Code.

Subpart F of part 847 of Title 5, Code of Federal Regulations, prescribes the use of similar factors for computing the deficiency the retiree must pay to receive credit for certain service with nonappropriated fund instrumentalities made creditable by an election under section 1043 of Public Law 104–106.

The present value factors currently in effect were published by OPM (62 FR 19151) on April 18, 1997. Today, OPM is publishing a notice in the **Federal Register** to revise the normal cost percentage under the FERS Act of 1986, Public Law 99–335, based on changed economic assumptions and demographic factors approved by the Board of Actuaries of the Civil Service Retirement System. Under section 8461(i) of title 5, United States Code, those changed economic assumptions require corresponding changes in the present value factors. The revised factors will become effective in October 2002 to correspond with the changes in FERS normal cost percentages. For alternative forms of annuity, the new factors will apply to annuities that commence on or after October 1, 2002. See 5 CFR 842.706. For survivor election deposits, the new factors will apply to survivor reductions that commence on or after October 1, 2002. See 5 CFR 842.615(b). For obtaining credit for service with certain nonappropriated fund instrumentalities, the new factors will apply to cases in which the date of computation under section 847.603 of Title 5, Code of Federal Regulations, is on or after October 1, 2002. See 5 CFR 847.602(c) and 847.603.

OPM is, therefore, revising the tables of present value factors to read as follows:

TABLE I.—FERS PRESENT VALUE FACTORS FOR AGES 62 AND OLDER

[Applicable to annuity payable following an election under Section 8416(b) or (c) or Section 8417(b) or Section 8420a of Title 5, United States Code, or under Section 1043 of Public Law 104–106]

Age	Present value factor
62	165.6
63	161.3
64	156.9
65	152.3
66	148.0
67	143.8
68	139.5
69	135.2
70	130.8
71	126.5
72	122.1
73	117.5
74	112.9
75	108.1
76	103.4
77	98.4
78	94.1
79	90.0
80	85.4
81	80.6
82	75.9
83	71.6
84	67.4
85	62.9
86	58.7
87	55.7
88	53.3
89	50.8
90	47.7

TABLE II.A.—FERS PRESENT VALUE FACTORS FOR AGES 40 THROUGH 61

[Applicable to annuity payable following an election under Section 8416(b) or (c) or Section 8417(b) or Section 8420a of Title 5, United States Code, or under Section 1043 of Public Law 104–106 when annuity is not increased by COLA'S before age 62]

Age	Present value factor
40	176.8
41	176.3
42	175.9
43	175.4
44	174.6
45	173.5
46	172.5
47	171.8
48	171.0
49	169.8
50	168.6
51	168.2
52	168.0
53	167.8
54	167.3
55	167.0
56	166.7
57	166.6

TABLE II.A.—FERS PRESENT VALUE FACTORS FOR AGES 40 THROUGH 61—Continued

[Applicable to annuity payable following an election under Section 8416(b) or (c) or Section 8417(b) or Section 8420a of Title 5, United States Code, or under Section 1043 of Public Law 104–106 when annuity is not increased by COLA'S before age 62]

Age	Present value factor
58	166.7
59	166.8
60	167.3
61	167.7

TABLE II.B.—FERS PRESENT VALUE FACTORS FOR AGES 40 THROUGH 61

[Applicable to annuity payable following an election under Section 8416(b) or (c) or Section 8417(b) or Section 8420a of Title 5, United States Code, or under Section 1043 of Public Law 104–106 when annuity is increased by COLA'S before age 62]

Age	Present value factor
40	245.5
41	242.4
42	239.2
43	235.8
44	232.3
45	228.7
46	224.9
47	221.1
48	217.1
49	212.9
50	209.1
51	205.8
52	202.4
53	198.8
54	195.1
55	191.3
56	187.4
57	183.4
58	179.3
59	175.1
60	170.9
61	166.6

TABLE III.—FERS PRESENT VALUE FACTORS FOR AGES AT CALCULATION BELOW 40

[Applicable to annuity payable following an election under Section 1043 of Public Law 104–106]

Age at calculation	Present value of a monthly annuity
17	287.9
18	286.4
19	284.8
20	283.0
21	281.2
22	279.4
23	277.6
24	275.6
25	273.5
26	271.4

TABLE III.—FERS PRESENT VALUE FACTORS FOR AGES AT CALCULATION BELOW 40—Continued

[Applicable to annuity payable following an election under Section 1043 of Public Law 104–106]

Age at calculation	Present value of a monthly annuity
27	269.2
28	266.9
29	265.1
30	264.4
31	263.6
32	261.8
33	259.9
34	258.1
35	256.1
36	254.0
37	251.9
38	249.7
39	247.3

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–11570 Filed 5–8–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Retirement System; Normal Cost Percentages

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is providing notice of revised normal cost percentages for employees covered by the Federal Employees Retirement System (FERS) Act of 1986.

DATES: The revised normal cost percentages are effective at the beginning of the first pay period commencing on or after October 1, 2002.

Agency appeals of the normal cost percentages must be filed no later than November 12, 2002.

ADDRESSES: Send or deliver agency appeals of the normal cost percentages to the Board of Actuaries, care of Frank D. Titus, Associate Director for Retirement and Insurance, Office of Personnel Management, Room 4A10, 1900 E Street, NW., Washington, DC 20415.

Send requests for actuarial assumptions and data to the Office of the Actuary, Room 4307 STOP, Office of Personnel Management, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Patrick Jennings, (202)–606–0299.

SUPPLEMENTARY INFORMATION: The FERS Act of 1986, Pub. L. 99–335, created a new retirement system intended to cover most Federal employees hired after 1983. Most Federal employees hired before 1984 are under the older Civil Service Retirement System (CSRS). Section 8423 of title 5, United States Code, as added by the FERS Act of 1986, provides for the payment of the Government's share of the cost of the retirement system under FERS. Employees' contributions are established by law and constitute only a small fraction of the cost of funding the retirement system; employing agencies are required to pay the remaining costs. The amount of funding required, known as "normal cost," is the entry age normal cost of the provisions of FERS that relate to the Civil Service Retirement and Disability Fund (Fund). The normal cost must be computed by OPM in accordance with generally accepted actuarial practice and standards (using dynamic assumptions). Subpart D of Part 841 of Title 5, Code of Federal Regulations, regulates how normal costs are determined.

The Board of Actuaries of the Civil Service Retirement System approved a revised set of economic assumptions for use in the dynamic actuarial valuations of CSRS and FERS. These assumptions were adopted after the Board reviewed statistical data prepared by the OPM actuaries and considered trends that may affect future experience under the Systems.

Based on its analysis, the Board concluded that it would be appropriate to assume a rate of investment return of 6.75%, a reduction of .25% from the current rate of 7%. The Board reduced the anticipated rate of inflation from 4% to 3.75% and retained the projected rate of General Schedule salary increases at 4.25%. These salary increases are in addition to assumed in-grade increases that reflect past experience.

The new assumptions anticipate that over the long term the annual rate of investment return will exceed inflation by 3% and General Schedule salary increases will exceed inflation by .5% a year, as compared to 3% and .25%, respectively, under the previous assumptions.

The Board also adopted new demographic or "non-economic" assumptions. The new demographic rates are based on methodology adopted by the Board in November 2000, in conjunction with its comprehensive review of an extensive 10-year experience study prepared by the OPM actuaries.

The normal cost calculations depend on both the economic and demographic

assumptions. The demographic assumptions are determined separately for each of a number of special groups, in cases where separate experience data is available. Based on the new economic assumptions and demographic factors, OPM has determined the normal cost percentage for each category of employees under § 841.403 of Title 5, Code of Federal Regulations. The Government-wide normal cost percentages, including the employee contributions, are as follows:

	Percent
Members	17.1
Congressional employees	17.2
Law enforcement officers, firefighters, and employees under section 302 of the Central Intelligence Agency Act of 1964 for Certain Employees	24.0
Air traffic controllers	23.2
Military reserve technicians	14.0
Employees under section 303 of the Central Intelligence Agency Act of 1964 for Certain Employees (when serving abroad)	16.5
All other employees	11.5

Under § 841.408 of Title 5, Code of Federal Regulations, these normal cost percentages are effective at the beginning of the first pay period commencing on or after October 1, 2002.

The time limit and address for filing agency appeals under §§ 841.409 through 841.412 of Title 5, Code of Federal Regulations, are stated in the **DATES** and **ADDRESSES** sections of this notice.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–11571 Filed 5–8–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Civil Service Retirement System; Present Value Factors

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is providing notice of adjusted present value factors applicable to retirees who elect to provide survivor annuity benefits to a spouse based on post-retirement marriage and to retiring employees who elect the alternative form of annuity, owe certain redeposits based on refunds of contributions for service before October 1, 1990, or elect to credit certain service with nonappropriated fund instrumentalities. This notice is necessary to conform the present value factors to changes in economic assumptions and demographic factors approved by the Board of Actuaries of the Civil Service Retirement System.

EFFECTIVE DATE: The revised present value factors apply to survivor reductions or employee annuities that commence on or after October 1, 2002.

ADDRESSES: Send requests for actuarial assumptions and data to the Office of the Actuary, Room 4307 STOP, Office of Personnel Management, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Patrick Jennings, (202)–606–0299.

SUPPLEMENTARY INFORMATION: Several provisions of the Civil Service Retirement System (CSRS) require reduction of annuities on an actuarial basis. Under each of these provisions, we are required to issue regulations on the method of determining the reduction to ensure that the present value of the reduced annuity plus a lump-sum equals, to the extent practicable, the present value of the unreduced benefit. The regulations for each of these benefits provide that we will publish a notice in the **Federal Register** whenever we change factors used to compute the present values of these benefits.

Section 831.2205(a) of title 5, Code of Federal Regulations, prescribes the method for computing the reduction in the beginning rate of annuity payable to a retiree who elects an alternative form of annuity under 5 U.S.C. 8343a. That reduction is required to produce an annuity that is the actuarial equivalent of the annuity of a retiree who does not elect an alternative form of annuity. The present value factors listed below are used to compute the annuity reduction under section 831.2205(a) of title 5, Code of Federal Regulations.

Section 831.303(c) of title 5, Code of Federal Regulations, prescribes the use of these factors for computing the reduction to complete payment of certain redeposits of refunded deductions based on periods of service that ended before October 1, 1990, under section 8334(d)(2) of title 5, United States Code.

Section 831.663 of title 5, Code of Federal Regulations, prescribes the use of similar factors for computing the reduction required for certain elections to provide survivor annuity benefits based on a post-retirement marriage under section 8339(j)(5)(C) or (k)(2) of title 5, United States Code. Under section 11004 of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, effective October 1, 1993, OPM ceased collection of these survivor election deposits by means of either a lump sum payment or by installments. Instead, OPM is required to establish a permanent actuarial reduction in the annuity of the retiree. This means that OPM must take the amount of the deposit computed under the old law, and "translate" it into a lifetime reduction in the retiree's benefit. The reduction is based on actuarial tables, similar to those used for alternative forms of annuity under section 8343a of title 5, United States Code.

Subpart F of part 847 of title 5, Code of Federal Regulations, prescribes the use of similar factors for computing the deficiency the retiree must pay to receive credit for certain service with nonappropriated fund instrumentalities made creditable by an election under section 1043 of Public Law 104–106.

The present value factors currently in effect were published by OPM (62 FR 19149) on April 18, 1997. Today, OPM is publishing a notice in the **Federal Register** to revise the normal cost percentage under the FERS Act of 1986, Public Law 99–335, based on changed economic assumptions and demographic factors approved by the Board of Actuaries of the Civil Service Retirement System. Those changed economic assumptions require corresponding changes in the present value factors. The revised factors will become effective in October 2002 to correspond with the changes in FERS normal cost percentages. For alternative forms of annuity and redeposits of employee contributions, the new factors will apply to annuities that commence on or after October 1, 2002. See 5 CFR 831.2205 and 831.303(c). For survivor election deposits, the new factors will apply to survivor reductions that commence on or after October 1, 2002. See 5 CFR 831.663(c) and (d). For obtaining credit for service with certain nonappropriated fund instrumentalities, the new factors will apply to cases in which the date of computation under section 847.603 of title 5, Code of Federal Regulations, is on or after October 1, 2002. See 5 CFR 847.602(c) and 847.603.

OPM is, therefore, revising the tables of present value factors to read as follows:

CSRS PRESENT VALUE FACTORS APPLICABLE TO ANNUITY PAYABLE FOLLOWING AN ELECTION UNDER SECTION 8339(J) OR (K) OR SECTION 8343A OF TITLE 5, UNITED STATES CODE, OR UNDER SECTION 1043 OF PUBLIC LAW 104–106 OR FOLLOWING A REDEPOSIT UNDER SECTION 8334(D)(2) OF TITLE 5, UNITED STATES CODE

Age	Present value factor
40	280.4
41	276.4
42	272.7
43	268.8
44	264.1
45	259.0
46	254.0
47	249.3
48	244.8
49	239.3
50	233.8
51	229.5
52	225.4
53	221.0
54	216.2
55	211.4
56	206.6
57	201.9
58	197.2
59	192.5
60	187.9
61	183.1
62	177.9
63	172.9
64	167.8
65	162.7
66	157.7

CSRS PRESENT VALUE FACTORS APPLICABLE TO ANNUITY PAYABLE FOLLOWING AN ELECTION UNDER SECTION 8339(J) OR (K) OR SECTION 8343A OF TITLE 5, UNITED STATES CODE, OR UNDER SECTION 1043 OF PUBLIC LAW 104–106 OR FOLLOWING A REDEPOSIT UNDER SECTION 8334(D)(2) OF TITLE 5, UNITED STATES CODE—Continued

Age	Present value factor
67	153.0
68	148.1
69	143.2
70	138.3
71	133.4
72	128.6
73	123.5
74	118.4
75	113.1
76	107.9
77	102.6
78	97.9
79	93.4
80	88.5
81	83.4
82	78.4
83	73.8
84	69.4
85	64.6
86	60.3
87	57.1
88	54.6
89	51.9
90	48.7

CSRS PRESENT VALUE FACTORS APPLICABLE TO ANNUITY PAYABLE FOLLOWING AN ELECTION UNDER SECTION 1043 OF PUBLIC LAW 104–106 (FOR AGES AT CALCULATION BELOW 40)

Age at calculation	Present value of a monthly annuity
17	335.0
18	332.8
19	330.4
20	328.0
21	325.4
22	322.9
23	320.2
24	317.5
25	314.7
26	311.8
27	308.8
28	305.7
29	303.3
30	302.1
31	300.7
32	298.1
33	295.4
34	292.9
35	290.1
36	287.2
37	284.5
38	281.5
39	278.3

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–11572 Filed 5–8–02; 8:45 am]

BILLING CODE 6325–50–P

Reader Aids

Federal Register

Vol. 67, No. 90

Thursday, May 9, 2002

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–523–5227**
Laws	**523–5227**
Presidential Documents	
Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**
Other Services	
Electronic and on-line services (voice)	**523–3447**
Privacy Act Compilation	**523–3187**
Public Laws Update Service (numbers, dates, etc.)	**523–6641**
TTY for the deaf-and-hard-of-hearing	**523–5229**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.nara.gov/fedreg**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://hydra.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, MAY

21559–21974	1
21975–22336	2
22337–30306	3
30307–30532	6
30533–30768	7
30769–31104	8
31105–31710	9

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5437 (See Proc. 7553) 30535
6962 (See Proc. 7554) 30537
7547 21559
7548 30307
7549 30309
7550 30311
7551 30313
7552 30533
7553 30535
7554 30537
7555 31105
7556 31107
Executive orders:
12958 (See Order of May 6, 2002) 31109
13263 22337
Administrative orders:
Orders
May 6, 2002 31109

5 CFR

591 22339
Ch. VII 30769
2634 22348

7 CFR

301 ..... 21561, 30769
Ch. XIII 30769
Proposed Rules:
929 21854
1427 31151

8 CFR

Proposed Rules:
3 31157
236 31157
240 31157
241 31157

9 CFR

Proposed Rules:
53 21934

10 CFR

15 30315
430 21566

11 CFR

Proposed Rules:
110 31164

12 CFR

203 30771
609 30772
620 30772
790 30772
792 30772

13 CFR

Proposed Rules:
121 30820

14 CFR

13 31402
23 21975,
39 ..... 21567, 21569, 21572, 21803, 21975, 21976, 21979, 21981, 21983, 21985, 21987, 21988, 22349, 30541, 30774, 31111, 31113, 31115, 31117
61 30524
63 30524
65 30524
71 ..... 21575, 21990, 30775, 30776, 30777, 30778, 30779, 30780, 30781, 30782, 30783
95 30784
97 ..... 21990, 21992
300 30324
1240 31119
1260 30544
Proposed Rules:
25 ..... 22363, 30820
33 22019
71 ..... 22020, 22366
121 ..... 22020, 22363
125 22020
135 22020
187 30334

16 CFR

Proposed Rules:
1500 31165

17 CFR

30 30785
200 30326
270 31076
274 31076
Proposed Rules:
240 30628
270 31081

18 CFR

2 31044
35 31044
284 30788
388 21994
Proposed Rules:
35 22250

20 CFR

Proposed Rules:
416 22021
655 30466
656 30466

21 CFR

101 30795
310 ..... 31123, 31125

520.....21996
558.....21996, 30326, 30545
Proposed Rules:
314.....22367
601.....22367

22 CFR

41.....30546
Proposed Rules:
203.....30631

26 CFR

1.....30547
Proposed Rules:
1.....30634, 30826
31.....30634

27 CFR

4.....30796
5.....30796
7.....30796
19.....30796
20.....30796
22.....30796
24.....30796
25.....30796
26.....30796
27.....30796
44.....30799
70.....30796
251.....30796

28 CFR

Proposed Rules:
16.....31166

30 CFR

Ch. VI.....30803
917.....30549
948.....21904
Proposed Rules:
948.....30336

32 CFR

286.....31127
701.....30553
706.....30803, 30804

33 CFR

117.....21997
165.....21576, 22350, 30554, 30556, 30557, 30805, 30807, 30809, 31128
323.....31129
Proposed Rules:
100.....22023
165.....30846

34 CFR

Proposed Rules:
106.....31098
200.....30452, 30461

36 CFR

242.....30559
1230.....31692
Proposed Rules:
Ch. I.....30338
7.....30339

37 CFR

Proposed Rules:
1.....30634
2.....30634

38 CFR

17.....21998

39 CFR

111.....30571
Proposed Rules:
265.....31167
501.....22025, 31168

40 CFR

9.....22353
51.....21868
52.....21868, 22168, 30574, 30589, 30591, 30594, 31143
62.....22354
63.....21579
81.....31143
96.....21868
97.....21868
124.....30811
228.....30597
232.....31129
261.....30811
271.....30599
Proposed Rules:
51.....30418
52.....21607, 22242, 30637, 30638, 30640, 31168
62.....22376
63.....21612, 30848
81.....31168
89.....21613
90.....21613
91.....21613
94.....21613
271.....30640
1048.....21613
1051.....21613
1065.....21613
1068.....21613

42 CFR

81.....22296
82.....22314
1001.....21579
Proposed Rules:
405.....31404
412.....31404
413.....31404
414.....21617
482.....31404
485.....31404
489.....31404

43 CFR

1820.....30328

44 CFR

64.....30329
Proposed Rules:
67.....30345

47 CFR

22.....21999
24.....21999
63.....21803
64.....21999
73.....21580, 21581, 21582, 30818
Proposed Rules:
5.....22376
25.....22376
73.....21618, 22027, 30863, 31169, 31170, 31171
76.....30863
97.....22376

48 CFR

Ch. 18.....30602

49 CFR

214.....30819
1511.....21582
Proposed Rules:
107.....22028
171.....22028
172.....22028
177.....22028
571.....21806
572.....22381

50 CFR

100.....30559
222.....21585
223.....21585
224.....21586
300.....30604
600.....30604
622.....21598, 22359
648.....30331, 30614
660.....30604, 30616
679.....21600, 22008
Proposed Rules:
17.....30641, 30642, 30643, 30644, 30645
222.....31172
223.....31172
228.....30646
600.....21618
622.....31173
635.....22165
648.....22035
660.....30346

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 9, 2002

AGRICULTURE DEPARTMENT

Rural Housing Service

Guaranteed Rural Rental Housing Program; published 4-9-02

ENVIRONMENTAL PROTECTION AGENCY

Clean Water Act:

Recognition Awards Program; published 2-8-02

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Jurisdictional separations procedures—

MTS and WATS structure; joint board establishment; technical amendments; published 4-9-02

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Medical devices:

Device tracking; published 2-8-02

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Inventions and contributions; published 5-9-02

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Hazelnuts grown in—

Oregon and Washington; comments due by 5-13-02; published 3-14-02 [FR 02-06147]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Magnuson-Stevens Act provisions—

Domestic fisheries; exempted fishing permit applications; comments due by 5-14-02; published 4-29-02 [FR 02-10489]

West Coast States and Western Pacific Fisheries—

Coral reef ecosystems; comments due by 5-17-02; published 3-18-02 [FR 02-06469]

Western Pacific pelagic; comments due by 5-14-02; published 4-29-02 [FR 02-10081]

DEFENSE DEPARTMENT

Acquisition regulations:

Commercial items—

Contingent fees for foreign military sales; restriction; comments due by 5-13-02; published 3-14-02 [FR 02-05954]

DEFENSE DEPARTMENT

Acquisition regulations:

Security functions at military installations or facilities; comments due by 5-13-02; published 3-14-02 [FR 02-05953]

Small Business Administration and DOD; partnership agreement; comments due by 5-13-02; published 3-14-02 [FR 02-05952]

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Outer Continental Shelf regulations—

California; consistency update; comments due by 5-13-02; published 4-12-02 [FR 02-08952]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Rhode Island; comments due by 5-13-02; published 4-12-02 [FR 02-08825]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Rhode Island; comments due by 5-13-02; published 4-12-02 [FR 02-08826]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Nevada; comments due by 5-13-02; published 4-12-02 [FR 02-08289]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Nevada; comments due by 5-13-02; published 4-12-02 [FR 02-08290]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Illinois; comments due by 5-15-02; published 4-15-02 [FR 02-08948]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Illinois; comments due by 5-15-02; published 4-15-02 [FR 02-08949]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Kentucky; comments due by 5-13-02; published 4-11-02 [FR 02-08683]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Kentucky; comments due by 5-13-02; published 4-11-02 [FR 02-08684]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

New Hampshire; comments due by 5-16-02; published 4-16-02 [FR 02-09066]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

New Hampshire; comments due by 5-16-02; published 4-16-02 [FR 02-09067]

Hazardous waste:

Project XL (eXcellence and Leadership) program; site-specific projects—

New Jersey Gold Track Program; comments due by 5-16-02; published 4-16-02 [FR 02-08951]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Allethrin; comments due by 5-17-02; published 3-18-02 [FR 02-06487]

Water pollution control:

Ocean dumping; site designations—

Atlantic Ocean offshore Wilmington, NC; comments due by 5-16-02; published 4-1-02 [FR 02-07774]

FEDERAL COMMUNICATIONS COMMISSION

Practice and procedure:

Consumer complaint mechanism; establishment; comments due by 5-16-02; published 4-16-02 [FR 02-08795]

Radio stations; table of assignments:

Florida; comments due by 5-13-02; published 4-8-02 [FR 02-08399]

Massachusetts; comments due by 5-14-02; published 3-27-02 [FR 02-07189]

Washington; comments due by 5-13-02; published 4-11-02 [FR 02-08749]

Television broadcasting:

Noncommercial educational broadcast station applicants; comparative standards reexamination; comments due by 5-15-02; published 4-23-02 [FR 02-09871]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

GRAS or prior-sanctioned ingredients:

Menhaden oil; comments due by 5-13-02; published 2-26-02 [FR 02-04327]

HEALTH AND HUMAN SERVICES DEPARTMENT

Debt Collection Improvement Act of 1996; implementation:

Administrative wage garnishment; comments due by 5-13-02; published 3-13-02 [FR 02-05924]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Freedom of Information Act; implementation; comments due by 5-13-02; published 3-12-02 [FR 02-05874]

Manufactured home construction and safety standards:
Housing program fee; comments due by 5-15-02; published 4-15-02 [FR 02-09000]

INTERIOR DEPARTMENT
Land Management Bureau
Minerals management:
Coal management—
Coal lease modifications, etc.; correction; comments due by 5-13-02; published 4-12-02 [FR 02-08890]
Mining claims under general mining laws; surface management; comments due by 5-13-02; published 4-12-02 [FR 02-08873]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Critical habitat designations—
Various plants from San Bernardino Mountains, CA; comments due by 5-15-02; published 2-12-02 [FR 02-02761]

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Pennsylvania; comments due by 5-16-02; published 4-16-02 [FR 02-09233]

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Nonimmigrant classes:
Admission period for B nonimmigrant aliens; comments due by 5-13-02; published 4-12-02 [FR 02-08927]

JUSTICE DEPARTMENT
Privacy Act; implementation; comments due by 5-14-02; published 3-15-02 [FR 02-06204]

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Records management:
Nixon Presidential materials; reproduction; comments due by 5-14-02; published 3-15-02 [FR 02-06190]

STATE DEPARTMENT
Exchange Visitor Program:
Regulations; revisions; comments due by 5-13-02; published 4-11-02 [FR 02-06072]

TRANSPORTATION DEPARTMENT
Coast Guard
Boating safety:
Propeller injury avoidance measures; Federal requirements; comments due by 5-13-02; published 3-26-02 [FR 02-07230]
Ports and waterways safety:
Carquinez Strait, CA; safety zone; comments due by 5-16-02; published 4-16-02 [FR 02-09131]
Colorado River, AZ and NV; safety zone; comments due by 5-15-02; published 4-19-02 [FR 02-09681]
Detroit Captain of Port Zone, Lake St. Clair, Selfridge Air National Guard Base, MI; security zone; comments due by 5-13-02; published 4-11-02 [FR 02-08786]
Regattas and marine parades:
Weymouth 4th of July Celebration; comments due by 5-13-02; published 4-11-02 [FR 02-08789]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Air Tractor, Inc.; comments due by 5-17-02; published 3-20-02 [FR 02-06628]
Cessna; comments due by 5-13-02; published 3-28-02 [FR 02-07428]
Rockwell Collins, Inc.; comments due by 5-17-02; published 3-20-02 [FR 02-06629]
Airworthiness standards:
Special conditions—
Raytheon Aircraft Models 200 and 300; comments due by 5-17-02; published 4-17-02 [FR 02-09115]
Class E airspace; comments due by 5-16-02; published 4-16-02 [FR 02-09123]

TREASURY DEPARTMENT
Comptroller of the Currency
Fees assessment; comments due by 5-17-02; published 4-25-02 [FR 02-10277]

TREASURY DEPARTMENT
Customs Service
Financial and accounting procedures:
User fees; changes; comments due by 5-17-02; published 3-18-02 [FR 02-06369]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

S. 2248/P.L. 107–168

To extend the authority of the Export-Import Bank until May 31, 2002. (May 1, 2002; 116 Stat. 131)

Last List April 23, 2002

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://hydra.gsa.gov/archives/publaws-l.html* or send E-mail to **listserv@listserv.gsa.gov** with the following text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

Microfiche Subscription Prices:

Federal Register:

One year: $264.00
Six months: $132.00

Code of Federal Regulations:

Current year (as issued): $298.00

Superintendent of Documents **Subscription** Order Form

Order Processing Code
* 5419

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

_____ **Federal Register** (MFFR) ☐ One year at $264 each
☐ Six months at $132.00

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $298 each

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

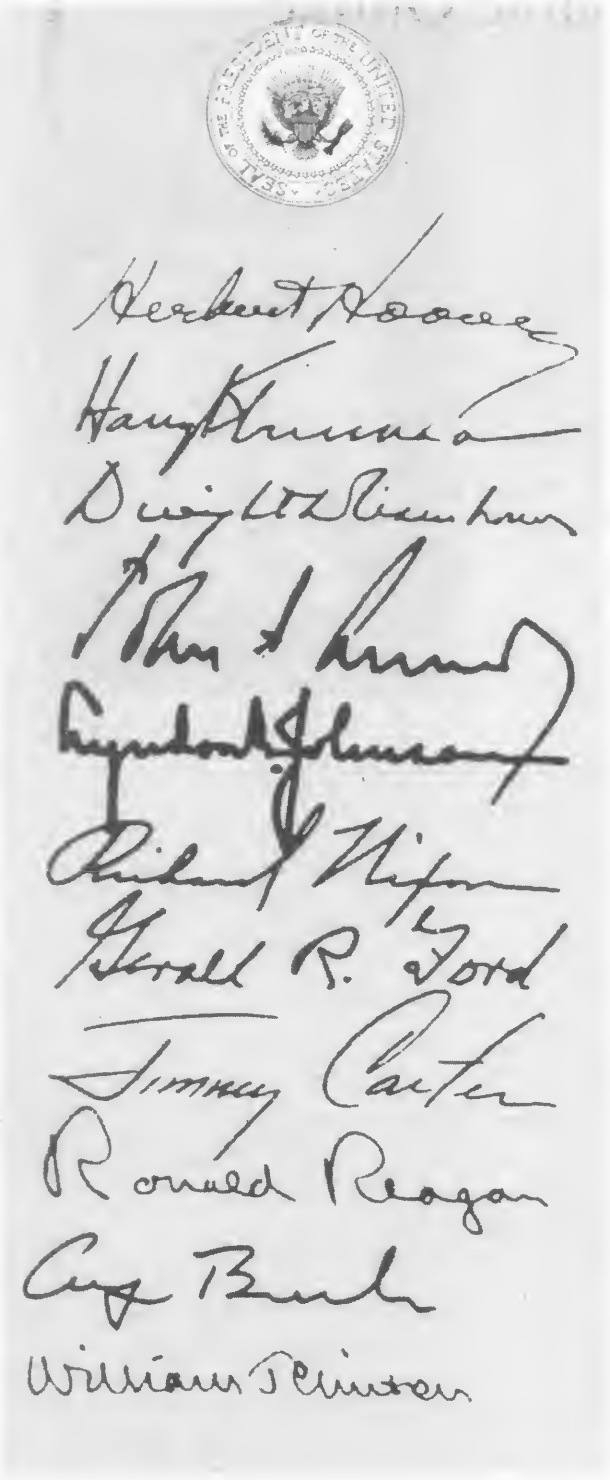
Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Public Papers of the Presidents of the United States

William J. Clinton

1993 (Book I)	$51.00
1993 (Book II)	$51.00
1994 (Book I)	$56.00
1994 (Book II)	$52.00
1995 (Book I)	$60.00
1995 (Book II)	$65.00
1996 (Book I)	$66.00
1996 (Book II)	$72.00
1997 (Book I)	$69.00
1997 (Book II)	$78.00
1998 (Book I)	$74.00
1998 (Book II)	$75.00
1999 (Book I)	$71.00
1999 (Book II)	$75.00
2000–2001 (Book I)	$68.50
2000–2001 (Book II)	$63.00

Published by the Office of the Federal Register,
National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA

(Rev. 2/02)

Order Now!

The United States Government Manual 2001/2002

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$41 per copy

Superintendent of Documents **Publications** Order Form

United States Government INFORMATION
PUBLICATIONS ★ PERIODICALS ★ ELECTRONIC PRODUCTS

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

Order Processing Code
***7917**

☐ **YES**, please send me ——— copies of **The United States Government Manual** 2001/2002, S/N 069–000–00134–3 at $41 ($51.25 foreign) each.

Total cost of my order is $ ———. **Price includes regular domestic postage and handling** and is subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 9/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Would you like to know. . .

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

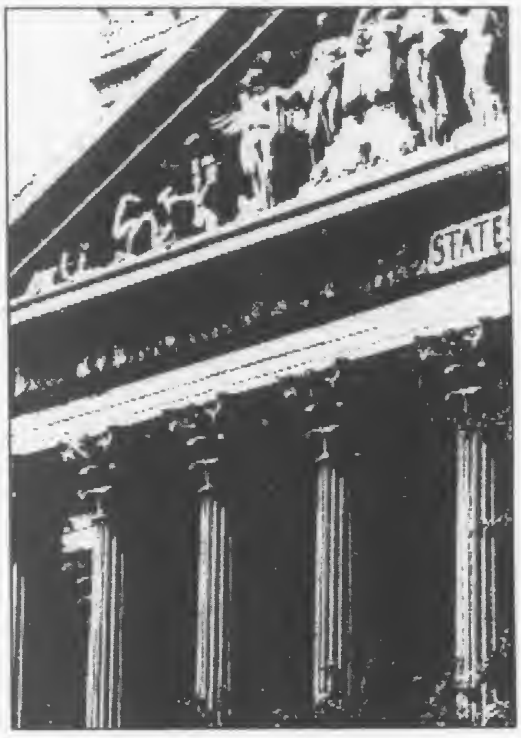
LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected. $35 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references. $30 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.



Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5421**

☐ **YES**, enter the following indicated subscriptions for one year:

——— **LSA (List of CFR Sections Affected)**, (LCS) for $35 per year.
——— **Federal Register Index** (FRUS) $30 per year.

Charge your order. It's Easy!
To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing Signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Printed on recycled paper